



Sectoral Risk Assessment 2020

**Assessment of Money Laundering Risks
facing the NPO and DNFBP Sectors in
the Virgin Islands**



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1. Table of Acronyms

| | |
|-----------------------------|---|
| Agency | The BVI Financial Investigation Agency |
| AML | Anti-money laundering |
| AML Code | Anti-Money Laundering and Terrorist Financing Code of Practice 2008, as amended |
| AML Regulations | Anti-Money Laundering Regulations 2008, as amended |
| BVI | The Virgin Islands |
| CDD | Customer due diligence |
| CFATF | Caribbean Financial Action Task Force |
| CFT | Countering the financing of terrorism |
| Compliance manual | A written system of internal controls which includes policies, processes and procedures for forestalling and preventing money laundering and terrorist financing, as required by the AML Code. |
| DNFBP | Designated non-financial businesses and professions These are businesses defined as undertaking relevant business in the AML Regulations and those defined within the DNFBP Notice. |
| DNFBP Notice | Non-Financial Business (Designation) Notice, 2008 |
| ECDD | Enhanced customer due diligence |
| FATF | Financial Action Task Force |
| FATF Recommendations | The Revised FATF Recommendations 2012: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf |
| FIU | The Agency's Financial Intelligence Unit |
| FSC | The BVI Financial Services Commission |
| ML | Money laundering |
| MLRO | Money laundering reporting officer |
| NPO | Non-profit organisation |
| NPO Act | Non-Profit Organisations Act, 2012 |
| NPO Board | Non-Profit Organisation Registration Board, as referred to in the NPO Act |
| PEP | Politically exposed person |
| SAR / STR | Suspicious activity report / suspicious transaction report |
| Territory | The Virgin Islands |
| TF | Terrorist financing |



2. Executive Summary

- 2.1. This Sectoral Risk Assessment Report follows the Territory's first National Risk Assessment undertaken in 2014.
- 2.2. The Report covers the NPO and DNFBP sectors within the Territory and identifies some key current vulnerabilities within these sectors as it relates to anti-money laundering. Having reviewed the responses provided by the NPOs and DNFBPs, and the vulnerabilities which have been identified, it has become apparent that the crux of the issues is the poor compliance culture within these supervised entities or in some instances, the lack of regard for implementing a good compliance culture.
- 2.3. Compliance culture, or rather good compliance culture, defines how an entity operates on a day-to-day basis when it comes to AML/CFT governance. It has a direct impact on the effectiveness of the systems and controls that an entity has in place.
- 2.4. A poor compliance culture weakens an entity. It weakens the effectiveness of its systems and controls. It opens the entity up to potential ML abuse and subsequently places it at risk of criminal penalties. Generally, criminals will target an entity when they know its compliance culture is weak as it is more likely that they are able to circumvent the systems and controls in place.
- 2.5. As the supervisor of NPOs and DNFBPs for the purposes of preventing and forestalling money laundering and countering the financing of terrorism, the Agency is firmly of the view that an entity's compliance culture is key to ensuring AML/CFT.
- 2.6. This Sectoral Risk Assessment has identified certain ML vulnerabilities within the supervised sectors which speak directly to their compliance culture. Some of these are:
 - a lack of understanding of the AML provisions and how they apply to the particular entity/sector;
 - the generally held view that AML/ML is only relevant for financial institutions/trust companies;
 - that due diligence only occurs for donations/payments received and not donations/payments made out of an entity;
 - the low numbers of SARs being submitted (are suspicious transactions being identified?); and
 - being able to determine whether the MLROs holding the position meet the requisite requirements.
- 2.7. A lack of understanding of the AML provisions together with the generally held view that AML is only relevant for financial institution is a big vulnerability within the supervised entities and one that is a cause for concern. NPOs and DNFBPs could be viewed as "non-financial" institutions. Therefore, with the exception of legal practitioners, accountants and notaries, most of the supervised entities will not have persons working within them who would have had exposure to AML matters. This is the crux of the issue. And so, the poor compliance culture identified within these sectors is not necessarily as a result of a deliberate act of refusing to undertake compliance, but a sign of the nature of their operations.



- 2.8. The issues surrounding misunderstanding of the due diligence provision and the low numbers of SARs submitted to the Agency by the supervised sectors stem from the above identified vulnerability – a misunderstanding of the AML provisions and how they apply to supervised entities.
- 2.9. As part of the Sectoral Risk Assessment, the Agency has identified what steps it will take to mitigate and address the vulnerabilities identified within the supervised sectors. The Agency has already commenced a programme of focused outreach sessions with NPOs and DNFBPs. The Agency will continue with this outreach programme, holding more specific sessions to discuss the vulnerabilities identified by this Sectoral Assessment. The ultimate aim being to increase awareness of the Territory's AML requirements and to improve the compliance culture within the supervised sectors, which will ultimately lead to a reduced risk of ML abuse.
- 2.10. Additionally, an essential component of any good compliance culture is an effective system of written controls which include policies, processes, and procedures for the purposes of AML. The Agency continues to work with supervised entities to build these mechanisms and provides thorough and detailed feedback when assessing the internal controls, as required by the AML Code. This work will further be enhanced by the examinations taking place by the Agency.



3. Introduction

- 3.1. The Agency is responsible for receiving, obtaining, investigating, analysing and disseminating information which relates to or may relate to a financial offence or the proceeds of a financial offence; or a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.
- 3.2. The Agency is also designated as the receiver of all disclosures of information which are required to be made pursuant to any financial services legislation relevant to its functions, including suspicious transactions reports and disclosures from foreign authorities.
- 3.3. In addition to the above, the Agency is responsible for the supervision and monitoring of NPOs and DNFBPs for the purposes of forestalling and preventing money laundering and countering terrorist financing. The DNFBP sector includes legal practitioners, accountants, notaries public, real estate agents, jewellers, precious metals and stones dealers, vehicle dealers, yacht brokers and dealers of other high valued goods such as furniture, machinery and art (relating to paintings and sculptures that are of intrinsic value).





- 3.4. As part of this Sectoral Risk Assessment, all NPOs and DNFBPs supervised by the Agency were asked to complete a risk assessment questionnaire. The questionnaire required entities to provide to the Agency a significant amount of information on their operations. The data received was used for the purposes of this Sectoral Risk Assessment. In addition, all entities which completed and returned a questionnaire were also re-risk assessed by the Agency. This enabled the Agency to update its entity risk ratings based on current data.
- 3.5. Since the passing of Hurricanes Irma and Maria in 2017, the climate as it relates to the NPO sector and some of the DNFBP sector has changed significantly. Following the passing of the hurricanes, a number of entities (both NPOs and DNFBPs) ceased to operate. Many persons left the Territory, and many entities had no choice but to move their operations to a different location. A significant number of entities also advised the Agency that they lost the majority of their records to the hurricanes. Some of these entities are still facing the effects of the hurricanes and are working towards getting back to their previous position.
- 3.6. As a result of the issues highlighted above, the Agency made a decision to base this Sectoral Risk Assessment on data gathered from 2017 (post hurricane) to 2019. Given the issues that the Agency was advised of by entities, it was felt that trying to request pre-hurricane records may cause the supervised sector undue stress given that the Agency was already notified that most of these records were lost. Entities were asked to provide 2017 data on a best endeavours basis.
- 3.7. With respect to this and the obvious record keeping implications, one key point of note is that most of the entities which lost their records have either completely digitised or are working towards digitising their record keeping to mitigate the risks of the same happening in the future.
- 3.8. Additionally, it is worth noting that this Sectoral Risk Assessment has been carried out during the Covid-19 period, during which time the Territory faced a one month 24-hour lockdown, business restrictions and curfews, which are still ongoing. The effects of the pandemic have been felt within the Territory and by the entities supervised by the Agency. Many NPOs within the Territory were called to provide urgent assistance to those impacted by the pandemic, whilst also facing an inability to raise funds. Many DNFBPs have been unable to operate fully during this time, and those which did, have been impacted. Notwithstanding the additional ML risks which arose as a result of the pandemic, given all that was occurring, the Agency had to take a cautious approach in its data collection exercise.
- 3.9. For the purposes of consistency, the following is considered for each sector – Composition, Transactions Activity, International Exposure and Compliance with AML requirements. The Report then analyses the ML vulnerabilities for the sectors and concludes with the Agency's proposed actions to mitigate the risks the vulnerabilities have presented.
- 3.10. The Report covers the NPO sector in its entirety, whereas each of the DNFBP sectors are outlined separately.



4. Jurisdictional Money Laundering Overview

- 4.1. Money laundering is the act of concealing, retaining, converting, transferring or in any other way moving funds acquired, directly or indirectly, from an unlawful activity or otherwise from an unlawful source.



- 4.2. Looking at compliance culture, it appears that the general view within the NPO sector and certain DNFBPs sectors is that ML only occurs in financial institutions dealing with large sums of money, which includes trust and corporate services providers regulated by the FSC. Whereas, in reality, such practices can occur almost in any field. Globally, it has been found that the NPO and DNFBP sectors are vulnerable to ML risks and have been used to facilitate such activities.
- 4.3. ML can occur at any stage and in any field. It is prevalent in society today and has devastating consequences on countries and economies. The BVI is an international finance centre, with many global entities holding offices and operating from within. This increases the Territory's ML risks as persons based outside of the BVI may wish/try to use entities based within the Territory to launder proceeds of crime. More locally, the ML threats come from crimes such as drug trafficking, smuggling, etc. Further, many of the supervised entities (NPOs and DNFBPs) have international exposure. A number of NPOs operating within the Territory receive monies from or send monies abroad. All these factors raise the Territory's ML risk level.
- 4.4. Under the FATF Recommendations, countries are required to identify, assess and understand their ML/TF risks as they apply to NPOs and DNFBPs as well as apply a risk-based approach to supervision, which is commensurate with those risks.
- 4.5. Further, the FATF Recommendations have made it mandatory for countries to require DNFBPs to identify, assess and take effective action to mitigate their ML and TF risks. In particular, the Recommendations state that due diligence requirements apply to DNFBPs.



- 4.6. The regulations in the BVI require both NPOs and DNFBPs to have in place systems and controls for the purposes of preventing and forestalling ML and countering TF. This Report focuses solely on the ML risks. A separate report will be issued outlining TF risks.
- 4.7. A vast number of NPOs operating within the Territory are considered to be small to medium in size, and, therefore, are considered to hold a lower ML risk. However, the very nature of the activities of the NPO sector is what makes the sector vulnerable. So, just because an NPO is classified as small/low risk, does not mean it would not be exposed to ML risks.
- 4.8. It is generally accepted that the NPOs operating within the Territory are genuine NPOs, set up for the benefit of their members and the community. However, the risk still remains that they may be used for the purposes of ML. As such, it is the Agency's role to ensure that NPOs comply with the AML requirements and have in place controls which would prevent any such abuse from occurring. The Agency continues to supervise, monitor, and educate NPOs in this regard, with a view to improving the compliance culture and reducing the ML risks/vulnerabilities.
- 4.9. It is also worth noting that during these Covid-19 times, there have been known cases across the globe where NPOs have been scammed, abused or have been used for the purposes of ML. This is an increasing risk given the current climate. The Agency has previously issued the following guidance for NPOs in relation to this:
- <https://www.fiabvi.vg/Portals/0/NPO%20Public%20Advisory%20-%20Covid%2019.pdf?ver=2020-05-05-155208-463>
- 4.10. As it relates to ML risks within the DNFBP sector, the categories of businesses within the sector are very different and so the risks and vulnerabilities vary significantly. In terms of analysis and similarities, the sector can be divided into two categories:
- those which are engaged in the provision of services (legal practitioners, accountants, notaries, real estate agents); and
 - those which are engaged in the provision of goods (persons undertaking the business of buying and selling boats, vehicles, jewellery, precious metals/stones and other goods of high value such as furniture, machinery and art (relating to paintings and sculptures that are of intrinsic value).
- 4.11. Each category and the type of service/good provisioned does carry with it its own risks. The provision of goods does carry a minimum threshold of \$15,000 where cash payments are concerned.
- 4.12. Details of the specific ML risks and vulnerabilities identified by this Sectoral Risk Assessment, for each supervised sector, are covered in Section 5 below. Consideration has been given to the vulnerabilities identified, the threats posed, and the information which the sectors supplied on how risks are mitigated.



4.13. **Risk ratings – money laundering sectoral risks**

4.14. As part of the Sectoral Risk Assessment, the data received was used to analyse and score the inherent ML vulnerabilities, mitigating controls and residual risk of the sectors.

4.15. In determining the inherent ML vulnerabilities within the NPO and DNFBP sectors, the Agency considered the following pre-determined criteria:

- Inherent characteristics - the extent of the sector’s economic significance, complexity of operating structure, and scope and accessibility of operations;
- Nature of products and services - the nature and extent of the vulnerable products and services and the volume, velocity and frequency of client transactions associated with these products and services;
- Nature of clientele - the inherent vulnerabilities associated with the sector’s clientele profile, nature of business relationship (with clients), customer status, client’s occupation/businesses, and facility to identify the beneficial owner for most of the customers (i.e. complex business structure vs. individual);
- Geographic reach - the exposure to high-risk jurisdictions as identified by the FATF;
- Nature of the delivery channels - the extent to which the delivery of products and services can be conducted with anonymity (face-to-face, non-face-to-face, use of third parties) and complexity (e.g., multiple intermediaries with few immediate controls or no accountability in identifying the originator of the transaction); and
- Susceptibility to abuse - the extent to which the sector has been identified in, reported suspicious activities, and criminal proceedings (locally and internationally).

4.16. The scores were then off-set against the following mitigating controls:

- Knowledge of AML/CFT obligations
- Prior risk assessment rating
- Risk mitigation policies & procedures in place
- Maintenance of BO information
- Actions taken by the Supervisor (the Agency)

4.17. As a result, a residual risk rating was established.

4.18. Each of the sectors received a residual risk rating using the following scale:

| | |
|------------------------|--|
| Low -4 - 2 | |
| Medium Low 3 - 9 | |
| Medium High 10 – 16 | |
| High 17 - 24 | |



4.19. The NPO sector is considered in its entirety. However, the DNFBP sub-sectors are considered on their own. The results are as follows:

| Sector | Inherent Vulnerability | Mitigating Controls | Net Score | Residual Risk Rating |
|--|------------------------|---------------------|--------------|----------------------|
| NPO | 15 Medium Low | 3 Medium Low | 12 | Medium High |
| DNFBPs: | - | - | - | - |
| Legal practitioners, Accountants and Notaries Public | 20 Medium High | 5 Medium Low | 15 | Medium High |
| Real estate agents | 15 Medium Low | 3 Medium Low | 12 | Medium High |
| Vehicle dealers | 16 Medium High | 2 Low | 14 | Medium High |
| Yacht brokers and dealers | 17 Medium High | 2 Low | 15 | Medium High |
| Jewellers/ Precious metals and stones dealers | 17 Medium High | 2 Low | 15 | Medium High |
| Other high value goods dealers | Not assessed | Not assessed | Not assessed | Not assessed |



5. Sectoral Money Laundering Risks

5.1. Sector 1 - Non-Profit Organisations

5.1.1. Introduction

5.1.2. The NPO Act came into force on 1 January 2013. It defines an NPO as:

“a body of persons whether incorporated or unincorporated, established solely or primarily for the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the benefit of the public, or a section of the public and which raises or disburses funds in pursuance of its objectives primarily within the Territory”.

5.1.3. NPOs are recognised for the vital role they play within the community, within the Territory as well as around the world. It is now globally accepted that whilst most NPOs are used for legitimate purposes, they can also be used to facilitate money laundering. As a result, the Territory has put in place regulations and legislation to supervise and monitor NPOs for the purposes of AML.

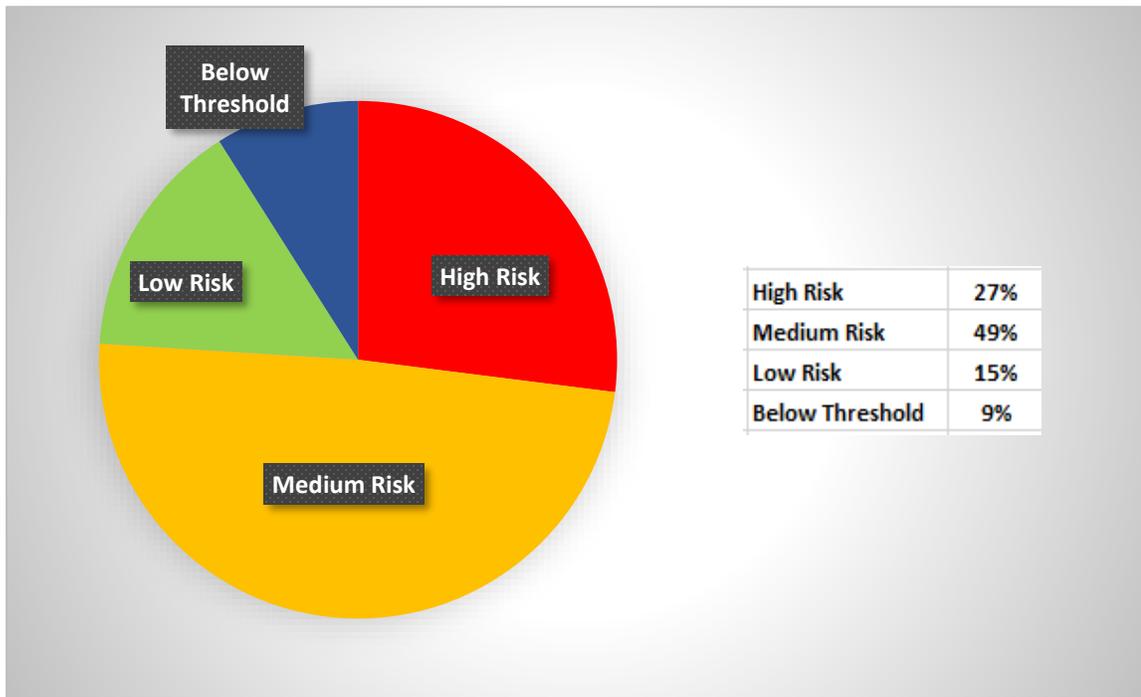
5.1.4. All NPOs operating from or within the Territory are required to be registered with the NPO Board. The Agency is responsible for their supervision and monitoring from an AML/CFT perspective.

5.1.5. At the time of the writing of this report, the Agency had made contact with 151 active NPOs operating from within the Territory.

5.1.6. Assessment of threats

5.1.7. The Agency takes a risk-based approach to its supervision of NPOs, undertaking risk assessments on active NPOs on an ongoing basis to ensure an appropriate level of supervision.

5.1.8. As noted previously, as part of the Sectoral Risk Assessment, the Agency sought to re-assess all active NPOs so that they received updated risk ratings. As it currently stands the risk ratings of the NPO sector are broken down as follows:



5.1.9. Towards the start of 2020, the Agency revised its risk assessment matrix, which is used by the Agency to evaluate and assign a risk rating to each entity. As the Agency moves forward with its programme of desk based and onsite examinations, it has taken a cautious approach to risk. As can be seen, the majority of NPOs have been classified as Medium Risk. The risk assessment exercise showed that these organisations, although not completely high risk, have some factors which may make them more vulnerable to ML. However, it is the Agency's view that in time, once the risks/vulnerabilities can be properly mitigated, some of these will be re-classified as Low Risk.

5.1.10. Comparatively, the NPOs which have been classified as High Risk fall most definitively within the High Risk category. There are various risk factors associated with these organisations, which the Agency views as potential threats for the purposes of ensuring AML.

5.1.11. **Composition**

5.1.12. Although a small number of new NPOs are formed annually, the majority of NPOs within the sector have been long established. Of these, approximately 95% carry out their activities within the Territory.

5.1.13. The NPO sector within the BVI is very varied and includes, but is not limited to, the following categories:

- Community organisations
- Religious organisations
- School clubs and associations
- Sporting associations
- Youth organisations



- 5.1.14. Out of the current NPOs listed as active with the Agency, approximately 50% are categorised as Religious Organisations. The remaining NPOs are a varied mix of the above types of organisations. This is felt to be a true and accurate reflection of the nature of the NPO sector within the Territory, as the main objectives of the NPOs are very much community focused.
- 5.1.15. With reference to the demographic of the persons holding controlling/management positions within high risk NPOs, given the diversity of the BVI and, in particular, the diversity of nationalities, this is completely wide ranging. A significant number of NPOs are controlled/managed by nationals of various other countries. However, as noted, given the diversity of the BVI, this is not considered a cause for concern. Only 14% of NPOs indicated that PEPs were involved with the organisations in some form.
- 5.1.16. **Transaction activity**
- 5.1.17. The cash and donation activity within the sector varies depending on the size and type of NPO in question. The fund-raising activity within the sector predominantly occurs via the hosting of events, and general donations. However, the Agency is aware that certain, larger NPOs undertake significant amounts of cash during the hosting of events. The Agency has been working with these NPOs to ensure that appropriate measures and controls are in place for the effective handling and recording of funds collected.
- 5.1.18. The types of donations received can vary from cash, to cheque, to wire transfer. Increasingly, the Agency has seen more and more instances of items/gifts being donated to NPOs or on behalf of NPOs. The latter is where a weakness in controls might occur. For example, where an individual donates items of high value (laptops, fridges, equipment, etc) to another party, but does so in the name of the NPO. This type of donation could very well be used to circumvent the AML controls an NPO has in place, to move items of high value from one party to another which would generally not be allowed/be subject to checks had the items/monies been transferred directly. Whilst the Agency does not wish to curtail donations made in the community spirit, NPOs should be mindful that such donations being made in their name, will be viewed as if the donation was received by the NPO itself and then forwarded (made) to the third party. Therefore, NPOs are reminded that the due diligence provisions are still applicable where the relevant threshold is met.
- 5.1.19. A very small number of NPOs take online donations, either via a web portal, PayPal or other similar systems. Given the concerns surrounding PayPal and online money transfer services in relation to alleged ML and micro-laundering, where the Agency becomes aware of an NPO using this system, it ensures that the NPO has the appropriate controls in place. NPOs should be mindful of the risks associated with PayPal and other types of online payment systems and ensure that their compliance manuals include the appropriate procedures.
- 5.1.20. In terms of donations received which go above the \$10,000 threshold, a considerable number of NPOs operating within the Territory are considered “small” and do not receive donations of such size.
- 5.1.21. However, for the larger (and some medium) NPOs, donation activity does go above the threshold. It is noted that in those instances where this has occurred, the value of the donation is significantly



higher than \$10,000. In these circumstances, the AML Code requires that due diligence be undertaken. For those NPOs that currently do not receive donations over the threshold, they are still required to have in place the appropriate policies, processes, and procedures to ensure the appropriate steps are taken should this ever occur.

5.1.22. **International exposure**

5.1.23. About 40% of NPOs that are known to the Agency either collect funds from or issue funds outside of the Territory. There is no particular trend as to the geographical location the funds are sent to or received from. This varies significantly from NPO to NPO.

5.1.24. The main religious organisations generally have affiliations with other religious groups, predominantly in the USA. As is established practice, the religious organisations send monies/dues back to the parent group/affiliate.

5.1.25. The sporting organisations receive grants from global organisations. Where this occurs, it is usually the practice that the grant is received from a very large and established organisation.

5.1.26. A small number of entities send funds to jurisdictions which are considered to be high risk or are in close proximity to high risk jurisdictions. At this stage, the Agency does not have the precise data to establish the value of the funds sent to these jurisdictions, but will be collecting this as part of its compliance examinations programme. Where the Agency becomes aware of these, the NPOs are monitored more closely. When making payments or sending funds to third parties, NPOs should remain vigilant and be mindful that they are still required to ensure that the funds are: a) being sent to a legitimate party; and b) that the funds are being used for the purposes for which they were sent.

5.1.27. As noted above, donations received/made via PayPal receive additional scrutiny from the Agency. The particular risk here is that this method could be used to launder monies in small quantities (micro-laundering) so as to avoid the thresholds in place. Micro-laundering is referred to the attempt to steer clear of the attention of law enforcement agencies by moving small amounts of money over the course of a large number of transactions, often across geographies.

5.1.28. NPOs should also be mindful that donations/payments via PayPal are treated the same as any other donations/payments, and so, record keeping and due diligence requirements continue to apply.

5.1.29. **Compliance with AML requirements**

5.1.30. From the data gathered, approximately 70% of NPOs have a compliance manual in place. Of the NPOs which noted that they did not have a compliance manual in place, the majority of these are categorised as Religious Organisations.

5.1.31. From a record keeping perspective, much of the NPO sector is very astute about this requirement. A vast majority of NPOs keep records of transaction activity, to include financial records. However, concerns arise in relation to whether the records being kept are in line with AML obligations. This



is an area that the Agency will be looking at when undertaking compliance examinations in order to fully determine the risk within the sector.

5.2. Sectoral Money Laundering Vulnerabilities

5.2.1. Overall, the NPO sector appears to have a basic understanding of the AML requirements. There are some red flag indicators within the sector, which the Agency is aware of and is conducting ongoing monitoring in relation to these.

5.2.2. In undertaking the sectoral risk assessment, the Agency has identified the following key risks and vulnerabilities to be addressed:

5.2.3. Customer due diligence

5.2.4. The AML Code places very specific requirements as it relates to effective customer due diligence measures. Section 19(2) of the AML Code specifies that due diligence is to be completed when dealing with applicants for business – this should include payments received and sent. Although it appears that, on the whole, the majority of NPOs are aware of and will undertake due diligence on donations received, there appears to be a lack of the same occurring where payments are made out of NPOs.

5.2.5. It is found that there appears to be a misconception that the due diligence requirements only apply to instances where donations are received. NPOs need to be aware that ML risks are still present when they are making payments/donations out to third parties. Therefore, they need to be aware of where the funds are going, what are they being used for, exactly who is receiving them? Otherwise, they leave themselves exposed to the risk of being used for ML.

5.2.6. To clarify, the Agency is in no way implying that an NPO may have been misused, because the data received for the sector, as a whole, does not support that. Nonetheless, this has been identified as a weakness within the sector as there is a possibility that the sector could be misused.

5.2.7. Enhanced customer due diligence

5.2.8. As noted above, the data received shows that overall there appears to be an understanding of due diligence requirements. Unfortunately, the same cannot be said for ECDD requirements. This is perceived to be an area of weakness within the sector. Although it appears that the NPO sector does carry out some sort of ECDD, a concern which has materialised is whether the due diligence itself is “enhanced enough”. Upon review, there is not much of a difference between CDD & ECDD procedures being applied by NPOs.

5.2.9. The Reporting function

5.2.10. Particular emphasis is placed on the significantly low numbers of SARs which have been submitted by the NPO sector within recent years. This causes the Agency to question why this is occurring.



The Reporting function is a critical tool in the fight against ML and, it is critical that the function is implemented and understood fully within NPOs.

5.2.11. Religious organisations

5.2.12. One of the biggest vulnerabilities which has been identified as part of this assessment is the religious organisations sector. There are various factors which indicate that this sector is an area of much concern. It does not appear that the majority of the sector keeps its NPO registration up to date, which is fundamental. Other concerns relate to the quality of written controls in place for the purposes of AML, where those controls have not yet been approved by the Agency. Additionally, it is observed that the sector itself is more prone to being abused for the purposes of ML due to the trusting nature of the sector itself. Generally, the NPOs operating within this sector will want to assist those in need – this trusting nature can be abused. We have also seen examples where religious organisations will send monies abroad for the benefit of other communities. However, given the concerns in relation to whether due diligence is being undertaken when funds are sent out of NPOs, it is yet to be determined whether the appropriate checks and record keeping measures are undertaken at this stage.

5.3. Conclusion

5.3.1. Given the above identified vulnerabilities, the Agency, as the supervisory body for NPOs, has outlined the following programme of activities – the main purposes of which will be to improve the compliance culture and to educate the sector on their key responsibilities in order to mitigate the risks arising. This will be followed by a programme of examinations to test the extent of the vulnerabilities within the sector.

5.3.2. The programme of activities will consist of **outreach sessions, issuance of guidance documents and themed examinations**, further details of which are provided as follows:

5.3.3. Outreach sessions

5.3.4. One of the supervisory functions of the Agency is to undertake outreach sessions with the NPO sector. The Agency made plans to undertake outreach during Q2 of 2020, however, as a result of Covid-19 and social distancing this was not possible and was, therefore, delayed. Given the ongoing pandemic, the Agency adapted its approach and made the decision to hold outreach sessions online instead of face to face. As a result, during Q4 of 2020, the Agency held webinars for NPOs titled “What is AML/CFT and why is it important for NPOs?”

5.3.5. The Sectoral Risk Assessment provided the Agency with some key data on the vulnerabilities within the sector. The Agency intends to use the data to make the outreach webinars more specific to the vulnerabilities identified. As part of its supervisory programme for 2021 and 2022, the Agency will be undertaking focused outreach with the NPOs, with respect to the vulnerabilities identified in 5.2 as well as focusing on compliance culture.



5.3.6. Guidance documents

5.3.7. To support the webinars, and with the intention of providing further guidance to NPOs to improve compliance cultures, the Agency will be issuing further guidance to entities. The guidance will be detailed and provide NPOs with further information on the requirements of the AML Code.

5.3.8. Themed examinations

5.3.9. The themed examinations will look at a sample of NPOs. The sample will be carefully selected based on any inherent risks identified with particular NPOs, the entity's size and their areas of work. The themed examinations will be focused on the following areas:

5.3.10. Effective customer due diligence measures

5.3.11. This set of themed examinations will focus on CDD and ECDD requirements provided within the AML Code, and which apply to NPOs. The examination will cover the review of a sample of the entity's transaction files. The file reviews will evaluate the entity's compliance with: a) its own documented procedures; and b) the requirements provided within the AML Code. As identified above, particular focus will be given to payments/donations made by entities.

5.3.12. Additionally, focus will also be given to high risk transactions (donations or payments) where ECDD has been applied or should have been applied. In doing so, the Agency will be reviewing an entity's risk assessment procedures, and more specifically how a relevant customer, business relationship or one-off transaction was risk assessed to establish the appropriate level of due diligence required.

5.3.13. The Reporting function

5.3.14. This set of themed examinations will focus on the Reporting function within NPOs and all associated requirements relative to this. Focus will be given to the NPO's as well as its staff/members/volunteers' understanding of the reporting function and requirements; the SAR procedures; and their effectiveness.

5.3.15. The examinations will consist of document reviews and interviews with relevant personnel.

5.3.16. Religious organisations

5.3.17. Given the concerns noted above with this sector, the Agency is of the view that the sector as a whole receives a set of examinations in order to aid the Agency in fully determining and mitigating the ML vulnerabilities. Therefore, the sector will receive desk-based examinations and extensive feedback where their internal controls/compliance manuals are found to not meet the requirements. Where appropriate, the Agency will incorporate the sector within the above two themed examinations, however, where this is not possible, full onsite examinations will be undertaken.



5.4. Sector 2 - Designated Non-Financial Businesses and Professions

5.4.1. Introduction

5.4.2. The Agency's supervisory powers, as it relates to DNFBPs are detailed within the AML Regulations, the AML Code as well as the DNFBP Notice, and apply to the following:

Legal practitioners, notaries public or accountants undertaking relevant business, that is, the provision of services to clients, which involve transactions concerning any of the following activities:

- Buying and selling of real estate;
- Managing of client money, securities, or other assets;
- Management of bank, savings or securities accounts;
- Organisation of contributions for the creation, operation or management of companies; and
- Creation, operation or management of legal persons or arrangements, or buying and selling of business entities.

Real estate agents undertaking relevant business, that is, the business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate.

Persons engaged in the business of **dealing in precious metals or precious stones** when such transactions involve accepting a cash payment of \$15,000 or more or the equivalent in any other currency.

Persons engaged in the **business of buying and selling boats, vehicles, jewellery or other high valued goods** such as furniture, machinery and art (relating to paintings and sculptures that are of intrinsic value), when such transactions involve accepting a cash payment of \$15,000 or more or the equivalent in any other currency.

5.4.3. At the time of writing, the Agency has made contact with 67 DNFBP businesses operating from within the Territory. The Agency is of the view that there are more businesses which fall under this category, however, has struggled to make contact with these businesses due to various reasons, one being gaps within the supervisory framework as they relate to registration. This is a critical issue and a resolution has been proposed by way of legislative changes, which will enable the Agency to have more supervisory oversight.

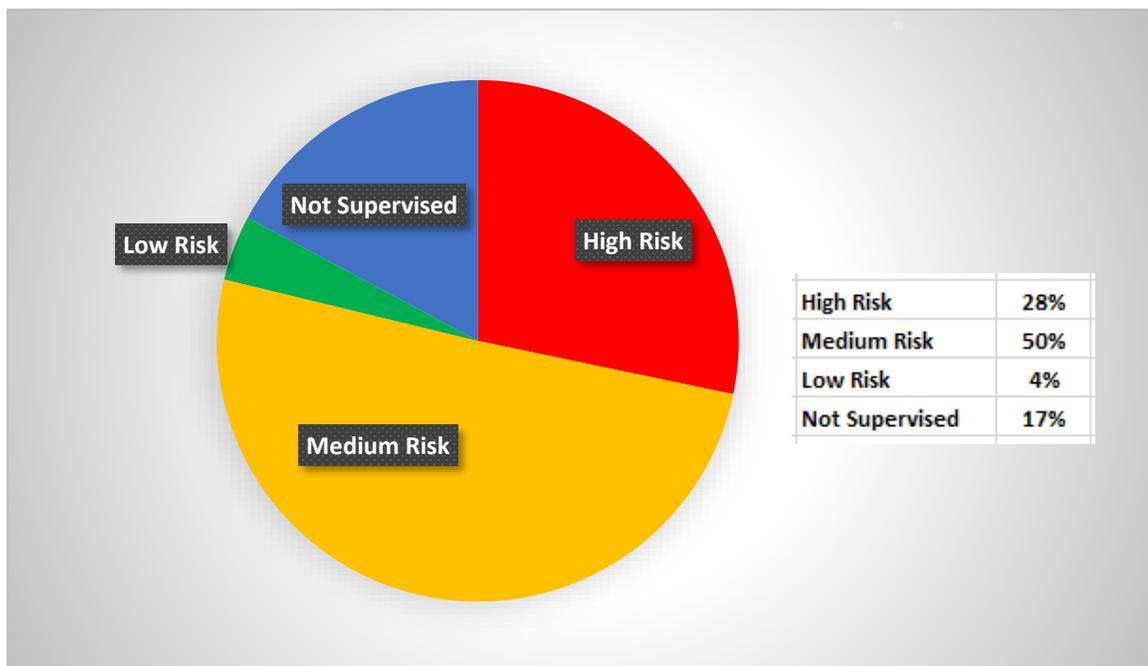
5.4.4. In addition to this, an issue the Agency has encountered is the DNFBPs failing to reply to Agency circulars. This has resulted in the Agency not being able to risk assess the sector properly. As with the above, the proposed legislative changes should provide the Agency with more supervisory oversight and curtail this issue going forward.



5.4.5. Assessment of threats

5.4.6. The Agency takes a risk-based approach to its supervision of DNFBPs and undertakes risk assessments on active DNFBPs on an ongoing basis to ensure an appropriate level of supervision.

5.4.7. As part of the Sectoral Risk Assessment, the Agency sought to re-risk assess the active DNFBP sector. As noted above, the Agency has faced some difficulties in receiving information from certain DNFBP sectors. Therefore, the following risk ratings are heavily caveated as **indicators** of the risk ratings of the sector and are subject to change:



5.4.8. Where an entity has been listed as Not Supervised, this means that they have been assessed as not undertaking relevant business, or that they do not meet the threshold set out in the DNFBP Notice. These entities are advised that should their business model change in the future, which brings them in line for supervision, they are required to contact the Agency.

5.5. Sector 2A - Legal Practitioners

5.5.1. The number of legal practitioners providing relevant business from or within the Territory is comparatively small as it relates to the overall number of legal practitioners within the Territory.

5.5.2. An issue that arose during the Sectoral Risk Assessment was that many legal practitioners were of the view that they did not fall within the definition of relevant business. There appears to be a misunderstanding of the requirements of the relevant business provisions. Those legal practitioners therefore, were of the view that they did not fall under the remit of the Agency to be supervised, as they did not undertake any of the services outlined within the AML Regulations, namely:



- Buying and selling of real estate;
- Managing of client money, securities, or other assets;
- Management of bank, savings or securities accounts;
- Organisation of contributions for the creation, operation or management of companies; and
- Creation, operation or management of legal persons or arrangements, or buying and selling of business entities

5.5.3. Some entities were of the view that although they provided legal services in relation to the transaction types listed, they did not directly get involved in the transactions themselves. Therefore, they did not undertake relevant business.

5.5.4. To clarify, relevant business covers the provision of services which involve transactions in relation to any of the activities listed above. This involves undertaking the specified transactional activities as well as advisory services in respect of the same.

5.5.5. As a result of this misunderstanding, the Agency is of the view that some legal practitioners, who should be supervised are not – as the Agency is not aware of their operations. This issue is discussed further below.

5.5.6. **Composition**

5.5.7. Most of the entities which fall within the Agency's supervision are established global law firms who have long-standing offices in the Territory. In this respect, it can be noted that they will have in place global compliance systems to ensure their compliance with AML/CFT regulatory requirements. In most cases, the compliance functions are also conducted by the regional or international compliance teams.

5.5.8. The types of services provided varies from firm to firm, as per their business model but remains within the definition of relevant business services.

5.5.9. Where it was found that entities did not fall within the definition of the AML Regulations, they were advised as such by the Agency and advised that should they begin to undertake any of the services defined, they must contact the Agency.

5.5.10. **Transaction activity**

5.5.11. Given the nature of relevant business itself, the types of customers that are served by this sector are generally high net worth individuals, and corporate and business clients, with the majority of work being undertaken for corporate clients.

5.5.12. It is difficult to find trends within transactional activity as the size and value of transactions varies so greatly, depending on the work undertaken, the type of entity, and in actuality, the transaction itself.

5.5.13. As an example, where services are provided in relation to the buying and selling of business entities, the approximate value of the transactions reported in any given year ranged from \$8



million to \$3 billion. Similarly, where legal services have been provided in relation to transactions involving the buying and selling of real estate, the approximate value of the transactions reported in any given year ranged from \$500,000 to \$85 million. This goes to show the variety of the sector within the Territory, as well as the range of services provided.

5.5.14. To note, entities were asked to indicate the approximate number of transactions, as well as the approximate value of those transactions per year. Therefore, the figures provided do not relate to any one transaction but represent the total value of the transactions undertaken in that particular year.

5.5.15. Given the nature of the transactions, the preferred method used for payments taken/sent is wire transfers. The level of actual cash used for these transactions is little to none.

5.5.16. Although it is difficult to comprehensively comment on the transactional data, one key matter of note is the sheer size and variety of this sector. The Agency's risk-based approach is even more pertinent here and supervision is tailored to the different entities.

5.5.17. **International exposure**

5.5.18. As noted above, the majority of entities undertaking relevant business are part of global law firm partnerships, and therefore, provide services internationally.

5.5.19. Of note here is that the services provided are almost exclusively on a non-face-to-face basis to global clients. There is no particular trend as to the geographical region. Most entities noted providing services to clients based in the US, the UK, China, Hong Kong, Russia and the BVI.

5.5.20. A number of entities indicated that they had provided services to clients classified as PEPs or based in high risk jurisdictions. Upon a review of this data, the number of transactions where this has been the case is low when compared to the total number of transactions undertaken by the firms.

5.5.21. **Compliance with AML requirements**

5.5.22. All entities indicated that they have in place AML controls, which include policies, processes and procedures as required by the relevant legislation.

5.5.23. All entities also indicated that they undertake CDD in accordance with the BVI AML requirements and that due diligence is undertaken prior to a matter commencing. With reference to higher risk clients, most entities undertake some form of ECDD. However, the information provided on the level of ECDD undertaken causes the Agency to consider whether this is being completed to the standard required. A small number of entities did not explicitly explain their procedure. This is a red flag as it could be an indicator of weak AML controls.

5.5.24. Additionally, the information supplied by a small number of entities causes the Agency to question whether appropriate due diligence is being undertaken on the ultimate client. To begin with, is the correct client being identified appropriately. As an example, it is usual practice for entities to



provide legal services to clients of other firms, perhaps a firm based outside of the BVI. So, another law firm may contact an entity in the BVI for legal services on matters pertaining to BVI law, in relation to a transaction they are involved in or on behalf of one of their clients. Entities should remain mindful of the provisions of the AML Code relating to due diligence, which requires them to enquire into and identify the applicant for business, or the intended customer, and verify their identity.

- 5.5.25. Of course, there is the option to utilise the Reliance provisions contained within the AML Code, where relevant, however, not before the ultimate client is identified. The Reliance provisions allow an entity to, for the purposes of establishing a business relationship or to conduct a transaction, rely on an introduction made by a third party and, therefore, place Reliance on the due diligence undertaken by that third party, provided certain requirements and conditions are met.
- 5.5.26. Out of the DNFBP sector, legal practitioners appear to be the only sub-sector which uses the Reliance provisions in the AML Code. Approximately 37% of the legal practitioners stated that they use Reliance. Misuse of the Reliance provisions can often be considered a threat for AML purposes, however, given the low number of entities which actually use the provision, it would seem that the preference is to undertake their own due diligence, instead of placing Reliance.
- 5.5.27. Most entities have in place detailed procedures for undertaking ongoing monitoring of transactions. However, a small number do not appear to do this or provided information which indicated that there is a misunderstanding as to what ongoing monitoring is. The AML Code requires an entity, where a business relationship exists, to conduct ongoing monitoring of that relationship and the transactions undertaken for the purposes of anti-money laundering. From the information provided, it does not appear that some entities are complying with this requirement. The lack of ongoing monitoring is considered a risk to this sector, given the types of transactions it undertakes.
- 5.5.28. One particular risk which has been identified, and which requires emphasis, is the position of the MLRO. A number of entities reported that their MLRO is also a partner within the firm. Although not explicitly prohibited in the AML Code, this can cause conflicts of interest. Generally, where a business partner/owner/shareholder holds the position of MLRO, there may be circumstances where they have to decide between a potentially lucrative client and any ML exposure. Entities should be mindful of this risk and put in place controls to mitigate it, should conflicts of interest arise.
- 5.5.29. Additionally, the role of the MLRO holds a lot of responsibility, as outlined in the AML Regs. Therefore, from a best practice perspective, it should be held by an individual who has the time to dedicate to the role, especially within entities such as law firms.
- 5.5.30. An emerging risk which also needs to be emphasised is whether the MLRO function and the SAR procedures within the sector are effective. Although all entities indicated having in place a procedure for reporting suspicious transactions, the number of internal and external SARs being reported is effectively little to none as comparable to the volume of transactions undertaken.



5.5.31. As part of the Sectoral Risk Assessment, the Agency asked entities what they felt were the key threats and vulnerabilities facing their sector with respect to ML. The responses to this question from legal practitioners varied. Most agreed that threats would come from certain types of work such as property purchases, advising on and creation of trusts and companies and managing of client monies. The sector also identified the following vulnerabilities:

- laxity in undertaking due diligence;
- failure to establish source of funds; and
- sanctions controls.

5.5.32. As part of its examinations programme, the Agency will be focusing on these issues to consider the true extent of the threats these raise.

5.6. Sector 2B - Accountants

5.6.1. The majority of accountants operating within the Territory do not undertake relevant business.

5.6.2. There are a small number that did reply to the Agency to confirm that they fell within its supervision. As with the legal practitioners, overall, the types of customers that are served by this sector are high net worth individuals, and corporate and business clients, with the majority of the work being undertaken for corporate clients.

5.6.3. Having reviewed the data provided by these, the trends identified in relation to this sub-sector are effectively the same as those identified for legal practitioners. Therefore, these have not been repeated. Persons undertaking relevant business in this sector are asked to be mindful of the risks identified in Sector 2A – Legal Practitioners.

5.6.4. As with some of the other DNFBP sectors, the Agency is aware that not all persons falling within this category of business have contacted/responded to the Agency. This has meant that the Agency has been unable to undertake a comprehensive risk assessment due to the lack of data. This is an issue the Agency is working to rectify and further details on this are outlined below.

5.7. Sector 2C - Notaries Public

5.7.1. The Agency is not in a position to evaluate the risk within this sector, as it has faced challenges in receiving a response from notaries public undertaking relevant business within the Territory. The Agency is aware that there is a high volume of notaries public operating within the Territory and is actively working towards a solution in relation to this issue.

5.7.2. More generally, most notaries public operating within the Territory will also be employed by law firms here. Where the law firms are also supervised entities, and the notaries are undertaking the work by way of their employment, then the ML risks are mitigated as the law firms will have their own internal AML controls in place.



5.8. Sector 2D - Real Estate Agents

5.8.1. Although the real estate sector within the Territory is fairly large when it comes to rentals, the buying and selling of real estate is predominantly undertaken by a small number of the larger and more established agents. The Agency estimates that there are approximately 10-15 agents undertaking the business of buying and selling real estate within the Virgin Islands. Unfortunately, not all of them responded to the Sectoral Risk Assessment and the trends identified are therefore taken from those that did.

5.8.2. Composition

5.8.3. Entities covered within this sector do not solely undertake the business of buying and selling real estate. They will also likely provide rentals and property management services (residential and commercial). For the purposes of the Sectoral Risk Assessment and supervision, focus has been given solely to the buying and selling element, as per the definition of relevant business.

5.8.4. Transaction activity

5.8.5. The majority of clients served by this sector are individuals, with some being high net worth individuals. The data indicates that on average the clients consist of 10% high net worth individuals and 10% corporate. Some entities indicated a higher corporate/business client percentage, but it remains to be seen whether these are in fact individual transactions being undertaken via the set-up of a corporate vehicle and, therefore, would ultimately be classed as “individual” transactions.

5.8.6. With reference to the real estate sales, generally these relate to residential and land sales, with a very small percentage of commercial sales also occurring.

5.8.7. The size and value of transactions vary significantly from entity to entity, depending on their areas of focus as well as the real estate market. From the transactional data received, the following general observations are made:

- The approximate value of residential sales transactions undertaken in any given year ranged from \$3 million to \$10 million;
- The approximate value of land sales transactions undertaken in any given year ranged from \$200,000 to \$2 million.

5.8.8. To note, entities were asked to indicate the approximate number of transactions, as well as the approximate value of those transactions per year. The figures provided do not relate to any one transaction but represent the total value of the transactions undertaken in a particular year.

5.8.9. All entities indicated undertaking the following activities in the course of a transaction:

- receiving or paying funds;
- depositing or withdrawing funds; and
- transferring funds by any means.



- 5.8.10. Given the types of services provided as part of undertaking a transaction, this may increase the sector's/entity's ML risk if they do not have in place appropriate controls for purposes of AML.
- 5.8.11. The method used to take and make payments varied from entity to entity. The majority of payments appear to be made via wire transfers and cheques.
- 5.8.12. **International exposure**
- 5.8.13. The vast majority of sales transactions relate to properties/land within the Territory. However, it is noted that some entities do undertake transactions where the properties are not in the Territory.
- 5.8.14. The level of non-face-to-face business conducted varied significantly between the entities and so there was no apparent trend identified in relation to this. However, of note is that where non-face-to-face business is conducted, the clients are predominantly based in the US.
- 5.8.15. Given the ML risks involved within this sector, this is an area of high significance and entities are reminded that they must ensure the proper due diligence is conducted, especially in cases where non-face-to-face business is being undertaken, in order to effectively mitigate any associated ML risks. It is well known that the real estate sector (reference is made to the real estate sector globally and not the real estate operating within the Territory) has a higher risk of ML, given the very nature of their business and the activities they carry out as part of the transactional work. This means that all professionals working within this sector must be astute to these risks and put in place adequate controls to mitigate them.
- 5.8.16. **Compliance with AML requirements**
- 5.8.17. All entities indicated having in place policies, processes, and procedures for the purposes of AML.
- 5.8.18. Entities also provided details of their CDD procedures, which appear to be in line with the requirements. However, concerns arise as to how the sector deals with higher risk / PEP clients, and how it applies ECDD where appropriate. A number of entities indicated that they did not have mechanisms in place to identify PEPs and/or clients based in high risk jurisdictions. Furthermore, where entities indicated that they do undertake ECDD, the Agency was unable to determine the quality of ECDD being undertaken, and the extent to which the ECDD procedures vary from the CDD procedures.
- 5.8.19. These concerns are further supported by the data collected, which appears to indicate that this sector had little to no contact with any PEPs/high risk individuals over the past 3 years. Additionally, no SARs were filed with the Agency by any of the entities within this sector for the periods 2017, 2018 and 2019. This is not in line with the risks present within the real estate sector and the overall widely accepted understanding that this sector is vulnerable to ML abuse. There is no evidence to support that any ML has occurred within this sector over the time period. However, the lack of data on PEPs/high risk individuals is a cause of concern. The Agency is concerned that the sector is not properly identifying individuals who fall within these categories. If this is the case, the Agency is further concerned that the controls in place to mitigate the



additional ML risks which arise with these categories of persons are not adequate enough. This is a clear risk for this sector, and therefore, needs further investigation.

- 5.8.20. One point of note is that neither of the entities indicated that they place Reliance, as provided for in Section 31 of the AML Code. However, given the nature of the work undertaken within this sector, as it can include introductory work, and given the concerns highlighted above in relation to due diligence within this sector, the Agency is unable to say for certain that the sector does not place Reliance. The Agency is concerned that there may be a misunderstanding of the provisions.

5.9. Sector 2E - Jewellers and Dealers of Precious Metals and Stones

- 5.9.1. As per the DNFBP Notice, the AML Code is applicable to persons engaged in the business of buying and selling of jewellery when such transactions involve accepting a cash payment of \$15,000 or more. The AML Regulations also place a similar threshold on persons involved in the business of dealing in precious metals or stones.
- 5.9.2. Given the potential ML threats, the term “cash” is not solely applicable to paper money but includes other types of monetary instruments, including cheques and card payments, where bank financing is not involved.
- 5.9.3. As part of the data collection for the Sectoral Risk Assessment, the Agency was contacted by a number of entities and persons engaged in the business of buying and selling jewellery and dealing in precious metals/stones. Upon a review of the returned questionnaires, the Agency established that the operations of the majority of these are quite small and given the value of the items they sell, they would not undertake transactions which would meet the threshold set out. Therefore, they do not fall within the supervision of the Agency.
- 5.9.4. A small number of entities do meet the threshold, that is undertaking transactions involving cash payments of \$15,000 or more. However, given that these are less than five, the Agency is unable to report on the trends arising from these, as doing so may disclose confidential information about the businesses and make them easily identifiable. The Agency continues to supervise these entities for the purposes of ML.
- 5.9.5. **General risks**
- 5.9.6. In order to ensure that tangible information continues to be supplied to the sector, the Agency notes the following general risks within the sector:
- 5.9.7. Given the nature of the transactions involved, it is important to have in place procedures and systems to undertake real time due diligence. For example, if a customer comes to the store and wishes to make a \$15,000 purchase in cash, whilst the business may wish to proceed with the transaction as quickly as possible from a commercial perspective, it is still liable to the due diligence requirements provided in the AML Code. The entity must ensure that it has the relevant controls in place to enable due diligence to be undertaken in a timely manner, prior to the



completion of the transaction. If the entity fails to verify the source of funds and proceeds with the transactions, it may have unwittingly become involved in money laundering.

- 5.9.8. The BVI is a high tourism destination and many tourists visiting the Territory purchase jewellery whilst visiting. The requirements to undertake due diligence and verify the source of funds will still apply where tourists are concerned. Whilst the Agency is mindful that dealers need to consider commerciality when undertaking transactions, it also advises all dealers that the AML requirements remain applicable to all which fall within the DNFBP Notice, at all times.
- 5.9.9. Dealers of jewellery, precious metals and stones by their very nature operate a high value business, engaging in both purchase and sale (similar to some of the other DNFBP sectors). Entities should be mindful that due diligence requirements apply to both sale and purchase transactions.
- 5.9.10. Given that the items being purchased and sold are imported into the Territory, this gives the entities operating within this sector significant international exposure. Entities should ensure that they have appropriate procedures in place for purchasing their precious metals, stones and jewellery items.
- 5.9.11. Particular attention needs to be paid to suppliers/sellers based in countries posing a higher ML risk or being in close proximity to a country which has a high ML risk. When undertaking such transactions, dealers must ensure that they go through the proper process of identifying and verifying the parties they are dealing with.
- 5.9.12. Further, where entities have an ongoing business relationship with suppliers, they must have a procedure in place to undertake ongoing monitoring of that relationship.
- 5.9.13. Given the above risks, it is important to ensure that appropriate training is given to staff handling these types of transactions. The training should not only cover the ML risks to the business but also cover the entities' policies, processes, and procedures so that staff are aware of them and follow them accordingly.
- 5.9.14. Additionally, dealers of jewellery, precious metals and stones must ensure that adequate records are kept, in accordance with the requirements contained within the AML Code.

5.10. Sector 2F - Vehicle Dealers

- 5.10.1. As with some of the other DNFBP sectors, the Agency faced challenges in receiving responses from this sector. This fact alone is a cause for concern as it calls into question the compliance culture within the sector as a whole.

5.10.2. Composition

- 5.10.3. From the information gathered, the composition of the sector is very varied, ranging from some very large, established entities which dominate the sector to the smaller entities which do



undertake the buying and selling of vehicles, however, on an ad hoc basis so the activity is much less frequent.

5.10.4. The types of vehicles sold are both new and used and the composition of sales varies per type of business.

5.10.5. Transaction activity

5.10.6. The sector as a whole has been identified as having a higher risk of being exposed to ML because of the nature of the transactions involved. Additionally, the majority of entities indicated that during the course of a transaction they undertake all of the following activities:

- receiving or paying funds;
- depositing or withdrawing funds; and
- transferring funds by any means.

5.10.7. As a result of the varying sizes of businesses which operate within this sector, it is difficult to establish a trend or give a clear indication of the size of transactions in any given year. As an example, the approximate number of transactions undertaken in 2019 ranged from 21 for one business and 371 for another business. It is clear that the larger entities undertake a high volume of transactions.

5.10.8. On average the value of cars sold ranged from \$25,000 - \$40,000. A small number of vehicles sold were of significantly higher value.

5.10.9. As part of reviewing the transactional activity, the Agency reviewed the number of cash transactions over the \$15,000 threshold and found the following was reported:

- A small number of entities did not undertake any cash payments for the periods 2017, 2018 and 2019.
- Where cash payments are undertaken, the numbers of transactions are fairly small.
- One entity did not produce any data as they do not keep records of such.
- One entity noted that where cash payments are undertaken, this is usually done in instalments, but that the instalments fall below the \$15,000 threshold.
- Some entities stated they do not undertake “cash” payments and, therefore, do not fall within the remit of supervision by the Agency.

5.10.10. Given the above, the Agency is concerned that there is a misunderstanding within this sector of how the \$15,000 cash threshold provided in the DNFBP Notice is applied.

5.10.11. The general view within the sector appears to be that “cash” refers to paper money, whereas for the purposes of AML supervision, it refers to transactions which occur where no bank financing is involved. So, a “cash payment” can include payments using other types of monetary instruments, including cheques and card payments. Even though a payment is made via a wire transfer, although reduced, this does not necessarily mean that the risk of ML is automatically negated. Entities are encouraged to ensure they have appropriate controls in place for such



transactions. Entities are also required to ensure that such transactions are subject to the appropriate due diligence measures, including verification of source of funds.

- 5.10.12. This is a pertinent risk, given that over 95% of payments were wire transfers. The Agency is particularly concerned as to whether the sector has been undertaking the relevant due diligence for wire transfer transactions above the threshold amount. The Agency will be focusing on this when undertaking compliance examinations. Entities are encouraged to review their transactions and ensure that corrective action is taken, where necessary.
- 5.10.13. Where cash payments are made via instalments, the practice within some entities appears to be that the threshold is applied to each instalment payment. This is incorrect. The threshold does not apply to each instalment, but to the total value of the transaction. For example, a vehicle is sold at \$30,000 and three cash payments of \$10,000 are made in instalments for the purchase. The value of the transaction, and for the purposes of the threshold, is \$30,000. Therefore, regardless of whether or not three payments of \$10,000 were made, the transaction will be considered to be over the \$15,000 threshold and appropriate due diligence measures must be taken.
- 5.10.14. The Agency advises all vehicle dealers that any transaction which did not follow the above protocols will be seen as an attempt to circumvent the AML controls. Entities should review their transactions for the relevant periods and consider whether any corrective action should be taken, to include the filing of a SAR.

5.10.15. International exposure

- 5.10.16. Overall, services are provided to clients based within the Territory. One entity noted that they do provide services to clients based outside of the Territory, being other islands within the region.
- 5.10.17. Of note is that the majority of entities stated that their international exposure comes from the purchase of vehicles, usually from the USA but also from Japan, Korea and India. Therefore, funds will be issued outside of the Territory for the purchase of vehicles which are then shipped to the Territory for onward sale. Where this occurs, entities are required to ensure that they undertake due diligence on the relevant parties involved. Payments made to suppliers are covered by the AML Code and appropriate due diligence should be taken on the parties prior to the transfer of monies.

5.10.18. Compliance with AML requirements

- 5.10.19. Given what has already been highlighted above, the sector's compliance with AML requirements is an area of significant concern for the Agency.
- 5.10.20. The sector provided mixed responses in relation to the controls in place. Some entities noted that they had very extensive controls in place, but some had none.



- 5.10.21. As a result of not having in place the appropriate policies, processes, and procedures for the purposes of AML, the majority of entities do not appear to conduct adequate CDD when undertaking the buying and selling of vehicles. More particularly, the identification information being currently collected is not sufficient to meet the requirements.
- 5.10.22. The same can be applied to ECDD requirements. The majority of entities indicated that they do not undertake additional checks for any higher risk type of client.
- 5.10.23. In addition, the majority of entities indicated not having in place an MLRO.
- 5.10.24. The above is compounded by the SAR data in relation to this sector. A small number of entities indicated having in place SAR procedures, but the majority do not. This is evident as no SARs were submitted by the sector for the periods 2017, 2018 and 2019.
- 5.10.25. As part of the Sectoral Risk Assessment, the Agency asked the sector to self-identify the ML vulnerabilities they feel the sector faces. Some of the key vulnerabilities identified were making purchases with significant volumes of cash, staggering the purchase so that the cash amount remains below the threshold and vehicles being purchased on behalf of third parties. Each of these vulnerabilities and the risks they pose are crucial for the sector to understand.
- 5.10.26. Some of the answers provided to this question, also indicate that some of the entities within this sector do not fully comprehend the risks associated with ML. Whilst it is completely feasible that the majority of transactions will carry little to no ML risk, all entities must still be astute to the risks and vulnerabilities to their sector and have systems and controls in place to avoid the risks of becoming involved in ML, the consequences of which can be significant.
- 5.10.27. Making a purchase with a significant amount of cash isn't prohibited. However, the requirements on vehicle dealers is to ensure that where this is occurring the appropriate risk assessment, due diligence and source of funds investigations are conducted to determine that the purchase isn't occurring for the purposes of ML, but is in itself a genuine purchase.
- 5.10.28. The same applies where a vehicle is being purchased on behalf of a third party. The vehicle dealer is obligated, as a supervised entity, to ensure that adequate due diligence is undertaken, which include looking at source of funds.
- 5.10.29. If a purchase is staggered so that the cash amount remains below the threshold, or if this is being proposed, then this behaviour is clearly in breach of the AML legislation. As previously noted, the \$15,000 threshold as it relates to cash purchases, is per transaction/purchase and not per payment. Staggering of payments to make them fall below the threshold should not be used as a means to circumvent AML legislation. Further, where such a transaction is proposed by a prospective client, entities should consider filing a SAR/STR with the Agency.



5.11. Sector 2G - Yacht Brokers and Dealers

5.11.1. Although the yachting industry within the BVI is significant, the number of entities involved in the business of buying and selling of boats is considerably small.

5.11.2. Composition

5.11.3. As with the other DNFBP sectors, the size of yacht brokers/sellers varies, depending on the entity and their particular expertise and sector demands. However, it is noted that most entities who engage in the business of buying and selling boats, will also have an element of renting/day sails business to supplement their income. This does not apply to all circumstances, as there are also smaller business outfits solely undertaking the business of buying and selling boats.

5.11.4. Overall, the types of boats sold are both old and new.

5.11.5. Transaction activity

5.11.6. As with the vehicle dealers, this sector has also been identified as having a higher risk of being exposed to ML, given the nature of the transactions. During the course of a transaction, all entities indicated undertaking the following activities:

- receiving or paying funds;
- depositing or withdrawing funds; and
- transferring funds by any means.

5.11.7. Whilst these activities are considered normal in the course of such transactions, they are also what make the sector highly vulnerable to abuse. More specifically, a yacht broker/seller may facilitate, during the course of a normal transaction, the transferring of funds between a seller and a buyer. If the proper checks and controls are not in place, this process of transferring funds could very well be used to launder the proceeds of crime.

5.11.8. There is no apparent trend here as to the type of client an entity engages. This really varies based on their business model. The range of clients served by this sector ranges from individuals, businesses, and corporate clients.

5.11.9. One key issue which has come to light is that there appears to be a misunderstanding within the sector, as with other sectors, when it comes to the \$15,000 cash threshold provided in the DNFBP Notice. Most entities indicated that they do not take cash payments, and that pretty much all payments are completed via a wire transfer. The general view within the sector appears to be that “cash” refers to paper money, whereas it actually refers to transactions which occur where no bank financing is involved. Whilst it is possible that boats are purchased with loan financing, it is also possible that purchases occur without financing and this is where the risk lies. Even though a payment is made via a wire transfer which reduces any potential ML risk, this does not necessarily negate it.



5.11.10. This is a pertinent risk, given that over 95% of payments were wire transfers. The Agency is particularly concerned as to whether the sector has been undertaking the relevant due diligence for wire transfer transactions above the threshold amount. The Agency advises all yacht brokers and dealers to review their transactions and ensure corrective measures are taken on relevant transactions. The Agency will be focusing on such when compliance examinations are undertaken.

5.11.11. **International exposure**

5.11.12. The sector carries out its activities worldwide. A significant number of clients served by this sector are non-residents. The majority of entities indicated that their clients are based in the USA. Some of the entities indicated that they knew the clients “personally” even though the transaction occurred on a non-face-to-face basis. However, from the answers provided, there appears to be a misunderstanding of the question and this needs further investigation.

5.11.13. All entities indicated that they collect funds from and/or issue funds to individuals outside of the BVI. This may include:

- Facilitating payments between boat yards/sellers and buyers. This can include receiving monies from a buyer who is based outside of the Territory which are then transferred to a seller also based outside of the Territory.
- Payments to international boat yards.
- Buyers & sellers sending and receiving proceeds of sales through the broker even where the broker only represents one party.

5.11.14. Each of these services pose potential ML risks and entities must ensure that appropriate controls are in place to make certain that the required due diligence is undertaken to mitigate these.

5.11.15. **Compliance with AML requirements**

5.11.16. Most entities indicated having a compliance manual in place, however, the majority have not yet had their manual approved by the Agency. As such, the Agency has significant concerns about the sector’s compliance with AML requirements.

5.11.17. In particular, the Agency has concerns that the sector isn’t effectively implementing due diligence provisions and especially ECDD provisions. An alarming number of entities indicated that they did not have in place any additional controls for PEP/higher risk clients. Additionally, entities indicated that they do not cross-reference names of clients with sanctions lists. This causes the Agency to consider whether entities may have had higher risk clients, but because effective controls are not in place, these clients did not face the proper due diligence measures.

5.11.18. Although all entities indicated having in place procedures for reporting suspicious activity, no SARs have actually been submitted to the Agency for the periods 2017, 2018 and 2019.



- 5.11.19. Furthermore, most entities, when asked what they felt were the key ML risks facing their sector, indicated that they did not believe there was any ML risk within this sector. This only compounds the Agency's concerns above.
- 5.11.20. Given that the responses received appear to be similar across the board, it can be safely concluded that there is an issue across the sector as it relates to AML vulnerabilities. In particular, work needs to be undertaken by the Agency to inform the sector of the ML risks and vulnerabilities pertinent to this sector, as well as the importance of having in place effective controls to mitigate those risks.
- 5.11.21. Notably, all entities indicated that they do not use the Reliance provisions specified in the AML Code.

5.12. Sector 2H – High Value Goods Dealers

- 5.12.1. The Agency is not in a position to evaluate the risk within this sector, as it has faced challenges in receiving a response from the businesses operating within. The Agency is actively working towards a solution in relation to this issue.

5.13. Sectoral Money Laundering Vulnerabilities

- 5.13.1. The data gathered has shown some clear red flags within the DNFBP sectors, some of which are pertinent to particular sectors, but some appear to affect DNFBPs as a whole.
- 5.13.2. In undertaking the Sectoral Risk Assessment, the Agency has identified the following key vulnerabilities to be addressed:

| | Customer due diligence | Enhanced Due Diligence | Suspicious Activity Reporting | The role of the MLRO |
|--|------------------------|------------------------|-------------------------------|----------------------|
| Legal Practitioners | | X | X | X |
| Accountants | | X | X | X |
| Notaries Public | TBD | TBD | TBD | TBD |
| Real Estate Agents | | X | X | X |
| Jewellers / Precious metals and stones | X | X | X | X |
| Vehicle dealers | X | X | X | X |
| Yacht brokers and dealers | X | X | X | X |
| High value goods dealers | TBD | TBD | TBD | TBD |



5.13.3. Customer due diligence

5.13.4. With respect to those persons involved in the buying and selling of jewellery, vehicles and boats (essentially those defined in the DNFBP Notice), the data has shown significant issues as it relates to CDD. In particular, the misunderstanding as it relates to the cash threshold causes the Agency to question whether due diligence on cheques and wire payments over the threshold amount are occurring. It is the Agency’s view that this might not be the case, causing a significant vulnerability within the sector whereby persons have been undertaking cash transactions over the threshold but have not been subject to the appropriate due diligence process. All entities falling within this category are asked to review their transaction files and ensure that they hold appropriate due diligence. Failure to do so may be considered a breach of the AML Code and the AML Regulations.

5.13.5. Enhanced customer due diligence

5.13.6. As noted in the various sectors, the data gathered has caused the Agency to question whether sufficient ECDD procedures are in place where higher risk/PEP clients are involved. Attached to this is the concern whether ECDD is correctly understood within the sector. Most of the ECDD procedures described were similar to the basic CDD requirements. The very nature of ECDD is that additional, “enhanced” checks are undertaken to mitigate the additional risks which might be present with a transaction or business relationship. The Agency’s concerns are that the ECDD being collected is not “enhanced enough” to meet the requirements and, more importantly, to match the risks.

5.13.7. Suspicious activity reporting

5.13.8. The legislative and regulatory framework is very clear on the reporting of suspicious activity and transactions. As previously noted, this is an area of concern for the Agency across the board. The following are the numbers of SARs filed with the Agency by the specific sectors:

| | 2017 | 2018 | 2019 |
|--|------|------|------|
| Legal Practitioners | 9 | 8 | 14 |
| Accountants | - | 2 | 17 |
| Notaries Public | - | - | - |
| Real Estate Agents | - | - | - |
| Jewellers / Precious metals and stones | - | - | 2 |
| Vehicle dealers | - | - | - |
| Yacht brokers and dealers | - | - | - |
| High value goods dealers | - | - | - |

5.13.9. Given the types of transactions undertaken, the sectors involved, and the general ML risks associated with these, the Agency would expect higher numbers of SARs being submitted. The causes behind the low numbers require further investigation but in the main, the Agency believes it is down to compliance culture within the business and a lack of understanding of the purpose of suspicious activity reporting.



5.13.10. The role of the MLRO

5.13.11. Particular emphasis is placed on the low number of SARs being submitted internally and externally to the Agency within recent years. This causes the Agency to question whether: a) the MLRO is sufficiently qualified to hold this position; and b) whether the role of the MLRO is an effective one within the entities.

5.13.12. As per the AML Code, the MLRO plays a very significant role in the monitoring and implementing of the AML regime, including monitoring adherence to the entity's internal control systems to ensure compliance with the relevant requirements. The AML Regulations are very specific as to the roles and duties of the MLRO. In particular, the MLRO is responsible for ensuring that all staff comply with:

- the legal and regulatory provisions applicable to the entity;
- the provisions contained within the entity's compliance manual; and
- any reporting obligations.

5.13.13. In addition, the MLRO is the designated liaison between the entity and the Agency and bears the responsibility for ensuring matters are reported to the Agency in a timely manner.

5.14. Failure to Respond to the Agency

5.14.1. One of the biggest challenges the Agency faced whilst undertaking the Sectoral Risk Assessment and as a supervisor, is the failure of DNFBP businesses to respond to the Agency's requests for information. This also prevents the Agency's ability to supervise these sectors, and thus, carries a significant ML risk.

5.14.2. As a result of this issue, the Agency has given consideration as to how it can prevent this going forward. As such, amendments to the FIA Act are being proposed, which would place greater obligations on DNFBPs.

5.14.3. More specifically, it is proposed that a specific DNFBP Registration process be set up. This would require all entities which fall within the DNFBP definition, to register with the Agency and to keep the Agency updated on their operations. The intention of this proposed amendment is to put the registration obligations in law, which would make a failure to reply/failure to register an offense.

5.15. Conclusion and Next Steps

5.15.1. The Sectoral Risk Assessment has highlighted some critical vulnerabilities within the DNFBP sector, one of them being a potential lack of or misunderstanding of the regulations as they apply to the sector. Additionally, other vulnerabilities highlighted require further investigation before a determination can be made.



5.15.2. As a result, the Agency intends to undertake a programme of **outreach sessions, issuance of further guidance and themed examinations** with the sector, further details of which are provided as follows:

5.15.3. **Outreach sessions**

5.15.4. As part of its supervisory role, the Agency undertakes outreach sessions with the sector. The sessions are generally aimed at the various sub-sectors specifically, and can even be held with entities specifically, upon request.

5.15.5. As part of its planned activities and upon reviewing the initial data which came out of this Sectoral Assessment, the Agency undertook some initial outreach aimed at the DNFBP sector during Q4 of 2020. Given the ongoing pandemic, the Agency made the decision to hold outreach sessions online instead of face to face. As a result, the Agency held webinars for DNFBPs titled “What is AML/CFT and why is it important for DNFBPs?”

5.15.6. Further to this, the Agency will be using the data gathered and the vulnerabilities identified within this report to tailor its outreach (webinar) sessions further and deliver more focused webinars during the course of 2021 and 2022.

5.15.7. **Guidance documents**

5.15.8. To support the webinars, and with the intention of providing further guidance to the DNFBPs, the Agency will be issuing further guidance to entities. The guidance will be detailed and provide further information on the requirements of the AML Code. The guidance issued will be sector specific.

5.15.9. **Themed examinations**

5.15.10. The themed examinations will look at a sample of entities from each sub-sector. The sample will be carefully selected based on inherent risks identified by the Agency, the entity’s size and areas of work. The themed examinations will be focused on the following areas:

5.15.11. **Effecting customer due diligence measures**

5.15.12. This set of themed examinations will focus on CDD and ECDD requirements provided within the AML Code, and which apply to DNFBPs. The examination will cover a review of the entity’s written procedures and a sample of the entity’s client/transaction files. The file reviews will evaluate the entity’s compliance with: a) its own procedures; and b) the requirements provided within the AML Code.

5.15.13. Additionally, focus will also be given to where ECDD has been applied or should have been applied. In doing so, the Agency will be reviewing an entity’s risk assessment procedures, and more specifically how a relevant customer, business relationship or one-off transaction was risk assessed to establish the appropriate due diligence required.



5.15.14. Given that the due diligence requirements are applicable to the DNFBP sectors equally, for the purposes of consistency, the examinations will occur during the same period.

5.15.15. The role of the MLRO

5.15.16. This set of themed examinations will focus on the MLRO function as well as all associated requirements in relation to the role of the MLRO. Particular focus will be given to the duties undertaken by the MLRO, the entity and staff understanding of the MLRO function, SAR procedures, and the effectiveness of the role as well as the effectiveness of their procedures. Additionally, focus will also be given to the low numbers of SARs being submitted by the sector so that the Agency can seek to gain clarity as to why this is occurring. As part of this theme, the Agency will also be assessing whether the MLRO's currently holding their position meet the criteria set out in the AML Regulations.



6. Emerging Risks

6.1. As with any Sectoral Risk Assessment, it is also important to review the risks which have not been covered. As part of its supervisory function, the Agency has made observations of potential emerging ML risks within the Territory.

6.2. Based on such observations, car rentals (currently not supervised) and yacht charter companies which also undertake sales have been identified as emerging risks. The particular risks in relation to these are detailed as follows:

6.3. Car rental businesses

6.3.1. Engaging in sales activity

6.3.2. During the Agency's assessment of the vehicle dealers it was noted that a number of these entities also operate car rentals services as an added aspect of their day to day business. Having noted this, consultation was made with the Department of Trade and it was revealed that in 2020 alone over 250 licences were issued to car rental businesses operating within the Territory. Further review of social media, local publications and other sources uncovered evidence that many of the licensed car rentals also engage in the selling of vehicles. Some businesses do this as a means of replenishing or updating their fleet on a regular basis, whilst others engage in the buying and selling of fleet vehicles whenever approached by prospective buyers without the requisite permissions.

6.3.3. To clarify, the Agency is in no way implying that these businesses have been used for the purposes of ML as there is no evidence of this. However, in considering the fact that they do sell their fleet of vehicles, albeit this is not their primary business, a gap has been identified by the Agency which it considers to be a vulnerability in the AML framework.

6.4. Yacht charter companies

6.4.1. Engaging in sales activity

6.4.2. The Agency through its media monitoring activities has come across some yacht charter companies, which regularly engage in the sale of fleet vessels, during the normal course of business, similar to the car rental companies. It was also noted that this was being done not with older and/or depreciated vessels, but with newly acquired vessels which were being actively advertised for sale. Following further review and consultation it was revealed that the charter companies share a similar view expressed by some of the car rental companies. That is, they should be allowed to sell from their fleet as part of their regular course of business, to update their fleet on an ongoing basis.

6.4.3. As with the car rentals above, the Agency is in no way implying that these businesses have been used for the purposes of ML as there is no evidence of this. However, in considering the fact that they do sell their fleet of boats, albeit this is not their primary business, a gap has been identified



by the Agency which it considers to be a vulnerability in the AML framework. The vulnerability being that these businesses would not follow AML requirements, because they are not being required to, but may well be targeted by criminals looking to purchase their fleet, as part of the ML process.



7. Conclusion

- 7.1. The Sectoral Risk Assessment has identified some very serious findings within the supervised entity sectors. It is the Agency's intention that by providing a detailed analysis of the findings, this will help the particular sectors in identifying their own ML vulnerabilities and aid them in reviewing their own controls. All supervised sectors are encouraged to analyse the results of this report in detail and contact the Agency should they have any queries.
- 7.2. Supervised entities are required to maintain an effective system of internal controls, which includes written policies, processes, and procedures. However, what makes the controls effective is their implementation. A system can only be as strong as the persons implementing it. Therefore, entities are encouraged to ensure that once the controls are in place, all staff receive training on them. There is no worth in having in place a system (a compliance manual) which meets all legal and regulatory requirements, but it is not followed by the entity, or by the persons within it.
- 7.3. As noted at the start of this report, the results point to one key theme – **compliance culture**.
- 7.4. The Agency intends to undertake focused work on compliance culture, with the aim of improving the supervised sector's knowledge of AML requirements and their effectiveness in the global fight against ML. The Agency's approach to this has already been outlined within this report.
- 7.5. The outcome of the Sectoral Risk Assessment will shape the Agency's approach to supervision for the remainder of 2021.