



# Anti-money laundering and counter-terrorist financing measures

## **Barbados**

### **Mutual Evaluation Report**

February 2018



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## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Barbados as at the date of the on-site visit 5-16<sup>th</sup> December 2016. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Barbados' AML/CFT system, and provides recommendations on how the system could be strengthened.

### A Key Findings

- Barbados submitted a National Risk Assessment (NRA), dated June 30, 2016, in advance of the onsite examination. Although Barbados has indicated that the NRA was a presentation of already identified ML/TF risks there remains a concern that it had been prepared solely for the purposes of the assessment and accordingly participation in the NRA process was sub optimum and therefore the scope and depth of analysis did not comprehensively identify the ML/TF threats and vulnerabilities to which the country was currently exposed.
- Whilst progress has most certainly been made by both the Central Bank of Barbados (CBB) and the Financial Services Commission (FSC) in developing and refining their respective financial sector risk assessment frameworks, this has not been the case in respect of the AMLA and the International Business Division (IBD).
- The 2016 NRA failed to comprehensively identify national ML/TF threats and vulnerabilities and critically there was limited analysis of terrorist financing (TF) risk, transparency of legal persons and arrangements, and the risks associated with Trust and Corporate Service Providers (TCSPs) and cross border cash movements.

#### *International Cooperation*

- Based on the information reviewed, there is some evidence of international collaboration or co-operation in respect of money laundering (ML) investigations, and terrorism as well as other forms of international cooperation.

#### *Legal persons and arrangements*

- Basic information for legal persons is captured and is publicly available.
- Beneficial ownership (BO) information of legal persons is obtained and available at the company's registered office or at the office of the service provider. There is no information that the competent authorities have verified and confirmed the implementation of the maintenance of the BO information by the service providers..
- The legal provision permits discretion to maintain the records pertaining to BO information at some other place in Barbados, as designated by the directors of the company, without a requirement for notification to be given to the competent authority. This therefore limits the requirement for availability and accessibility to BO information. There is no information that the authorities have verified and confirmed the maintenance of BO information.
- There is a legal obligation within the Guidelines for Corporate and Trust Service Providers Act of 2015 (CTSPA) to keep BO information on legal arrangements.
- There is a requirement within the guidelines for trusts as legal arrangements to keep BO information.

### *Licensing and Supervision*

- Barbados has conducted an effective risk assessment of the Money Value Transfer Service (MVTs) sector and has concluded that the risk is low. MVTs are therefore appropriately registered by the CBB. Barbados has now advised that MVTs will also be licenced.
- Gaming institutions are not casinos and are not currently regulated and supervised for AML/CFT purposes. To date a risk assessment of this sector has not been conducted.
- The supervision of the DNFBP sector appears disjointed and to a certain extent ad hoc with the FSC providing supervisory capability under Memoranda of Understanding (MOUs) to both the AMLA and the IBD.
- The FSC has a developing understanding of the ML/TF risks across the financial sectors and Financial Institutions (FIs) for which it is responsible. The FSC's risk assessment process focuses on the largest FIs in each sector. Whilst this approach has merit, unless validated, it could compromise both the integrity of the sector risk assessments by failing to adequately identify the nature and extent of the ML/TF risks across each sector as a whole, and the integrity of the supervision methodology.
- Whilst both the CBB and the FSC have developing risk assessment and supervisory frameworks in place, the Assessors are concerned that there is an imbalance between offsite and onsite supervision. In this context the onsite supervision cycle is not currently fully aligned to the risk ratings allocated to the individual FIs.
- The IBD has not been able to satisfactorily demonstrate to the Assessors that it has been able to effectively supervise the IBD sector and the corporate and trust services providers in particular. Whilst an MOU between the IBD and the AMLA is in place to provide interim supervision capability, this is not considered to be a sustainable solution.
- It is evident that supervisors generally are not applying the full range of available sanctions for non-compliance by FIs and DNFBPs with AML/CFT requirements.
- The FIs under the purview of the CBB have an understanding of their ML/TF risks and overall the majority have implemented the necessary mitigating procedures whilst some are in the process of doing so.
- For FIs regulated by FSC, it has been determined that not all Credit Unions understand their risk and have implemented the necessary preventive measures.
- Across the insurance and securities sectors, not all FIs have a good understanding of the ML/TF risks to which they are exposed and therefore have not yet implemented appropriate ML/TF risk mitigation controls.
- In respect of DNFBPs (corporate and trust service providers) supervised by the IBD lacked an understanding of their ML/TF risk exposure and therefore have not implemented appropriate ML/TF risk mitigation controls.

### *Financial Intelligence and ML Prosecution*

- It is evident that the legal obligation to report 'attempted or aborted transactions' is not discharged by all reporting entities and therefore all pertinent information necessary for the FIU to effectively carry out its function is not received.

- The annual average number of Suspicious Activity Reports (SARs) submissions across the DNFBP sector is 19 for the period under review. There are some sectors, for example, gaming arcades, which are not supervised as DNFBPs and others such as online-gaming and real estate dealers, where the statistics show, have not reported SARs.
- There is no systematic method of capturing data to show the effectiveness of the FIU and LEAs. Therefore, the extent to which financial intelligence disseminated by the FIU is used by LEAs and other competent authorities is not measured.
- The categories of statistics captured by the FIU are limited as not all requests from the FIU to the reporting entities for financial information are captured as a statistic. Consequently, areas such as outgoing domestic request for information, status of LEA investigations initiated by financial intelligence or including FIU intelligence, was not available.
- The FIU's information technology (IT) system to conduct comprehensive analysis, including strategic and operational analysis, is inadequate. Furthermore, there is no evidence that the FIU conducts strategic analysis.
- There is no efficient feedback system from the FIU to the reporting entities when SARs are submitted, and additionally, there is limited feedback from LEAs and competent authorities to the FIU on the usefulness of the financial intelligence the FIU provides.
- ML charges are not pursued as primary offences. Priority is placed on the prosecution of predicate offences.
- The Royal Barbados Police Force (RBPF) has disclosed that in their pursuit of ML investigations they are required by the High Court, based on a practice developed overtime in the jurisdiction, to utilize the office of the DPP to make an application to obtain production orders.
- There is no designated asset recovery direction or cash seizure provisions and the Exchange Control Act has been used as an alternative law to (recover the proceeds of crime) pursue ML as opposed to the Proceeds of Crime Act. The authorities have indicated that there is a policy directive to enact the Proceeds of Crime and Instrumentalities Bill in 2017 which will repeal the POCA and provide for civil forfeiture.

#### ***Terrorism Financing***

- Barbados has recorded no investigations, prosecution or convictions for TF.
- Barbados has limited experience on TF. There has been no information related to the TFS, and Barbados has disclosed that it will not be implementing TFS of the UN Resolution.

## **B. Risks and General Situation**

2. The National Risk Assessment (NRA) of Barbados identified six (6) areas of risk namely: 1) geographical/jurisdictional risk; 2) services risks; 3) customer (service user) risks; 4) gatekeepers risk; 5) crime risk and 6) terrorism financing risks. However, based on the onsite assessment, it was determined that there were material deficiencies in the NRA. Barbados is therefore encouraged to continue with the completion of the planned 2017 NRA to better determine its AML/CFT threat profile and vulnerabilities.
3. The lower risks identified in the Scoping Note included: burglaries, gambling and corruption. Based on interviews conducted onsite, these risks remain low, however the gambling (gaming arcades) was identified as a higher risk area, based on the volume and prevalence of the said activity in the jurisdiction. In addition, there were customers engaging in financial transaction equal or above the

designated threshold. Barbados should consider an immediate and comprehensive re-evaluation of the ML risk represented by the gaming arcades.

4. Terrorism was identified as being low risk in the NRA. It was thereafter identified as an area of vulnerability in the Scoping Note. During the onsite examination, and the discussion with the Special Branch it was revealed that due to the geographic location of Barbados, regional and international travellers transiting through the jurisdiction, who are known or suspected of criminal activity, are flagged and information shared with regional or international counterparts. Persons in transit are often not landed and invariably do not disembark the aircraft. In one incident, a person suspected of being related to terrorist activities used Barbados as a transit point for onward travel to another destination. That individual however did not leave the premises of the airport.
5. The regime as related to legal persons and legal arrangements is present as there is the presence of transparency wherein basic information is held publicly. While the maintenance of BO information at the corporate office is presently in line with one limb of the recommendation, this is obfuscated where the director of a company can decide to maintain the information at another location in Barbados without the mandatory requirement for the director to immediately notify the Registrar of Companies, this mitigates against timely access to information as well as access to information that is up-to-date. Further there has not been a disclosure to substantiate how the authorities verify and confirm that BO information is obtained and maintained save for the annual attestation, there is no support as to how is this attestation is corroborated.
6. With the expansion in the FATF Recommendations to include new Conventions on the UNSCRs proliferation of weapons of mass destruction (WOMD), Barbados has disclosed that by Chapter VII of the UN Convention the resolution was adopted into national law, however there is no domestic law to implement the same. Therefore, there remains a significant gap in the legal framework.
7. The reality that confiscation of criminal proceeds is primarily pursued under the Exchange Control Act (ECA) as opposed to the Proceed of Crime Act, (POCA) presents a major deficiency and in this vein the authorities in Barbados have determined the need to shortly promulgate the Proceed and Instrumentalities of Crime Bill which will improve the legal framework for seizures, confiscation, and asset forfeiture. This presents a limitation to the recovery of criminal proceeds under the ECA on the basis that not all proceeds of crime will be money.

## **C. Overall Level of Effectiveness and Technical Compliance**

8. The overall position of Barbados is that it has exhibited progress towards improving its AML/CFT regime since the 3<sup>rd</sup> Round Mutual Evaluation. The ML/TF regime has been improved by way of new laws and amendments to existing laws. Within this 4<sup>th</sup> Round Mutual Evaluation, the new international standard still includes combating ML and TF, however there is the new element of financing of proliferation of weapons of mass destruction (PF) for which the country is required to satisfy this new element in this round. The Assessment Team determined that in Barbados matters related to proliferation and targeted financial sanctions (TFS) are yet to be implemented. This represents a significant gap in the overall implementation of the revised Recommendations. There were also technical deficiencies in terms of the enforcement of sanctions, fostering national cooperation, confiscation and asset forfeiture, transparency and international cooperation. **In conclusion, the overall level of effectiveness in the jurisdiction is low taking the 11 Immediate Outcomes into consideration.**

### *C.1 Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

9. The AMLA is the AML/CFT policy making body in Barbados. The AMLA brings together the relevant stakeholders and guides the process whereby technical compliance gaps are addressed. The AMLA, led by the Honorable Attorney General, did recognise the limitation within the FIU in terms of conducting the monitoring of the DNFBPs, as the FIs are being regulated by the CBB and IDB. In light of this recognition, an MOU was established where the FSC was recently assigned the task of conducting the examinations of the DNFBPs sector. However, this process is in its infancy and no information has been gleaned as to any success in that approach, and this therefore remains a deficiency in the assessment of risk for that particular sector.

*C.2 Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

10. There has been some focus on seizing and confiscating/forfeiting the proceeds of crime. The main instruments used to achieve this goal are: cash seizures, civil recoveries, and post-conviction forfeitures. The Financial Crimes Investigation Unit (FCIU) pursues the recovery of proceeds of criminal conduct through close collaboration with other LEAs, external agencies, such as the Regional Security System (RSS), international partners and prosecutors. It was disclosed to the Assessors that in instances of general criminal investigation, the Royal Barbados Police Force (RBPF) is always brought in once cash is found during the course of an investigation. In general criminal investigations, monies seized by the Customs Department are handed over to the Police if the RBPF is involved in the cases. The Human Trafficking Unit also disclosed that monies are routinely handed over to the RBPF. However, it was not disclosed that confiscation is a paramount consideration at the outset of these criminal investigations.
11. The FCIU a department within the RBPF is the primary ML investigative authority. The agency uses the information from the FIU in some investigations of ML offences, and to some extent, to trace criminal proceeds. However, other LEAs and competent authorities have made limited use of information from the FIU in their investigations and other functions.
12. Barbados has a functional legal framework for domestic ML investigations. LEAs have access to a range of information to support their investigations, which includes, criminal history and police records, public databases and financial intelligence from the FIU. Under the Money Laundering and Financing of Terrorism (Prevention and Control) Act (MLFTA), the FIU is empowered to request from FIs any information to perform its analysis. Further, the Director of the FIU can request information from any public authority where the Director has reasonable grounds to believe that an ML/FT investigation should be conducted.
13. Barbados' institutional framework, i.e., the formal procedures and practises that shape the activities and behaviours of the FIU, the Customs and Excise Department and the RBPF/FCIU, should be clearly defined so as to enable its investigators and personnel involved in AML/CFT to be more adept in their area of expertise and more aware of the methods of operations.
14. The Proceeds of Crime Act (POCA) is in force, however, the FCIU uses the provisions of the ECA, when pursuing proceeds of crime. Indeed, there is at least one instance where cash in the sum of BDS\$47,120.00 was seized using the provisions of the ECA but eventually returned, based on the legal opinion of the Solicitor General, that the cash was improperly seized and did not meet the threshold within POCA.

*C3. Terrorist and proliferation financing (Chapter 4 - IOs 9-11; R.5-8)*



15. The RBPF has recently taken the necessary steps to place more focus on possible acts of terrorism and TF. The main legal provision for TF is the Anti Terrorism Act (ATA). The ATA criminalises TF and the FCIU works together with other agencies within the RBPF to address terrorism and terrorist related activities.
16. The Barbados authorities advised that acts of TF have not featured in Barbados. The country also indicated that no records have suggested that TF is an issue of concern for the jurisdiction. However, Barbados has still reached out to international partners for guidance on qualitative information on terrorism relating to the island. The Scoping Note identified TF as an area of vulnerability, in the jurisdiction. However, competent authorities are of the opinion that TF is not an area of vulnerability. The Assessors noted that as a result of the information obtained from the interviews conducted during the onsite, the country's geographic location and with the jurisdiction being a hub for international flights, there was an instance of a person who was suspected of being related to terrorism, transiting through the country. This is a contributing factor as to why terrorism is considered a vulnerability to the jurisdiction.
17. For Non Profit Organisations (NPOs), Barbados is still required to take the necessary measures to comply with the newly revised Recommendation 8. The fact that Barbados assigned a low risk rating to TF risks means therefore that TF risks, although acknowledged, are not given the necessary priority even though some of the required legal and regulatory framework are in place. The Barbados authorities advised that the Special Branch of the RBPF has deployed special resources to identify any threat of terrorism related activity and that no such threats have been identified in the NPO community or otherwise. Further, past and ongoing activity in the NPO sector does not speak to any terrorist risk in this sector. A risk assessment is still required or the findings of the Special Branch require articulation to underscore the national position.
18. As a direct result of the jurisdiction not implementing the UNSCR related to the prevention, suppression and disruption of PF, there is no legal mechanism or international instrument to assess whether there is implementation of TFS related to proliferation financing without delay. The authorities have indicated that there is no evidence of WOMD in the jurisdiction and there is no evidence related to the funding activity. The authorities have declared further that the country's infrastructure enables it to address such concerns should such matters materialise. Notwithstanding, there is no information as to the manner in which TFS could be addressed absent a legal framework and no opportunity for implementation.

#### *C.4 Preventive Measures (Chapter 5 - IO4; R.9-23)*

19. Barbados has changed its AML/CFT regime significantly since the 3<sup>rd</sup> round mutual evaluation in 2008. However, despite the expansion of the AML/CFT regime, DNFBPs and the CTSPs sector under the purview of the IBD still need to be subjected to the AML/CFT obligations. Barbados has started with the necessary steps, however, this has not resulted yet in an increase in the effectiveness level of the IO.4. This is despite a substantial level of compliance with the relevant FATF Recommendations. Therefore, Barbados must address the legislative deficiencies to increase the level of technical compliance and effectiveness with the FATF Recommendations. The RBA approach to AML/CFT has been implemented by the FIs regulated by the CBB, while the FSC and IBD need to give proper follow-up to the lack of RBA by several FIs and DNFBPs under their purview.

20. FIs and CTSPs regulated by the CBB have generally adopted preventive measures. Many of the FIs have a Canadian based head office, and the CBB also considers the robustness of the AML/CFT supervision of the OSFI but independently determines the ML/TF risks of FIs.
21. Barbados is planning to start with onsite visits of the CTSPs sector by the IBD, therefore there is not sufficient information to determine the level of compliance with CDD and record keeping, by this sector. For FIs regulated by the FSC and IBD, the Assessment Team has determined that CDD and record keeping measures are being applied inconsistently and that retrospective CDD in most instances have either not started or are still being finalized. For FIs regulated by the CBB in general they have appropriate CDD and record keeping policies and procedures in place and apply these in a consistent and adequate manner.
22. The Assessment Team has determined that due to the way BO information is required to be maintained per the Companies Act, the Corporate Affairs and Intellectual Properties Office (CAIPO) can be in the position of not having up-to-date information on this subject. While there is no deficiency in mandating that BO information be held at the registered office of the company, there is no requirement for annual filing of the actual BO information, and further, CAIPO does not have the legislative power to monitor or inspect the registered office to ensure that BO information is obtained.

*C. 5 Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

23. Whilst the CBB and the FSC apply a no objection policy to changes in beneficial ownership, the IBD and the AMLA do not. This represents a material gap in the DNFBP vetting process.
24. The licensing, registration and other measures instituted by Barbados mitigate to an extent the risk of criminals and related parties from entering the financial sector. However, post licencing (except for the CBB and the FSC) there is no ongoing fit and proper testing. Therefore, an IDB licensee or a DNFBP could potentially be manged and / or controlled by criminals and related parties for an extended period.
25. As previously noted, only the CBB and the FSC complete fit and proper testing on a regular basis. Whilst regular periodic fit and proper testing has merit and should be adopted by all relevant supervisors, the frequency of testing could be increased and the criteria standardised.
26. MVTs have been risk assessed and identified as low risk and are appropriately registered with the CBB and subject to the AML/CFT Guidelines applicable to commercial banks. Under an MOU with the AMLA, the CBB has conducted a number of onsite visits to MVTs. Barbados has recently indicated that MVTs will be licenced in due course.
27. Whilst the IBD has indicated that they require to be notified of subsequent changes in the BO of CTSP licensees, the absence of a no objection process exposes the IBD to an enhanced risk of criminal control or involvement in a licensee for an extended period. While there exist within several pieces of legislation, including within the Corporate Trust and Service Providers Act (CTSPA), a requirement to notify a change of information annually or sooner, as well as in the International Business Companies Act (IBCA) and Societies with Restricted Liability Act (SRLA) (the Minister to be notified of changes as they occur) and the MLFTA requiring disclosure of a material change, these do not all expressly include BO information. Further, although information is submitted to financial supervisors, there is no legal mechanism cited as to how this information moves to CAIPO. Therefore, outside of the annual filing to CAIPO of some level of information, such information sits

in different records within the jurisdiction thus mitigating against timely access to information by competent authorities.

28. Except for corporate and trust service providers the licencing of the DNFBP sector is not mandatory.
29. At present gaming institutions are registered with the Customs and Excise department but are not licensed or supervised for AML/CFT purposes. The registration process does not appear to have robust registration procedures in place to prevent criminal control or involvement.
30. Dealers in precious metals and stones are not licensed or registered. However, the FIU has recently started onsite supervisory visits to this sector. At present, there is only one dealer in precious metals and stones operating in Barbados through various companies. Given the size of the operations, the company has no material impact on the total financial assets in Barbados. The FSC has determined that this dealer posed a low ML/TF risk. This was confirmed by the Assessment Team during the onsite interview with the dealer. The setup of the transactions and the internal audit preventive measures instituted by the company contributed to the low ML/TF risk rating assigned by the FSC.
31. Accountants and lawyers fall under the second schedule of the MLFTA. Most accountants are registered with the Institute of Chartered Accountants in Barbados, although this is not mandatory. Their registration is for professional requirements and not for AML/CFT purposes. Lawyers are required to become members of the Barbados Bar Association and register with the Supreme Court. Accountants and lawyers who act as CTSPs are required to be licenced by the IBD and therefore are subject to the IBD's AML/CFT Guidelines.
32. The competent supervisory authorities have adequate supervisory powers to ensure compliance with AML/CFT requirements which include authority to conduct onsite inspections and compel production, without a court order, of all relevant information. The competent supervisory authorities are also broadly empowered to impose disciplinary and financial sanctions.
33. Whilst the CBB and the FSC have a risk-based supervision framework in place the IBD does not and is therefore unable to effectively supervise the IBD sector and CTSPs in particular. Whilst the FSC is currently providing supervisory capability to the IBD under an MOU it is not evident that this approach is sustainable. The AMLA has supervisory responsibility for the DNFBP sector however as with the IBD, the AMLA is not able to effectively supervise the DNFBP sector. Under an MOU between the FSC and the AMLA the mandate to supervise the DNFBP sector is being fulfilled by the FSC. It is not evident that the FSC has the necessary resources to continue to conduct supervision activities on behalf of the IBD and the AMLA. Barbados should therefore move quickly to formalise the supervision framework for both these sectors.
34. Whilst the CBB and the FSC employ a risk-based approach to AML/CFT supervision and it is recognised that their respective risk assessment processes continue to be refined it was not evident to the Assessors that the FSC had risk rated all FIs.
35. The FSC operates a risk based approach to AML/CFT supervision with onsite visits conducted in accordance with the output from the risk assessment process and in accordance with an onsite work programme designed to monitor compliance with AML/CFT requirements. However, it is noted that discrete AML/CFT visits separate from the prudential onsite supervision program (which also included AML/CFT) only began in July of 2016. Whilst the FSC uses a supervisory ladder to determine the nature of its supervisory response to issues identified during the onsite supervisory process the Assessors had concerns as to the consistent application of the supervisory ladder.

36. The FSC and the CBB did provide some analysis indicating that their recent supervisory activities have had a positive impact on compliance by FIs, across each sector. However, the Assessors did not consider that the authorities had a robust mechanism in place to accurately calibrate the impact of their supervision methodology on the compliance standards of FIs.
37. Whilst the IBD and the AMLA have supervisory responsibility for IBD licensees and DNFBPs respectively, historically they have exercised a limited supervisory role (it should be noted that the largest corporate service provider is licensed by the CBB and has been supervised on an ongoing basis). However, recently both the IBD and the AMLA executed MOUs with the FSC to provide additional supervisory capability. Accordingly, there is insufficient legacy information to determine the impact of recent supervisory activities on compliance by CTSPs.
38. The IBD lacks capacity to conduct supervision as evidenced by the fact that supervision is provided by the FSC. In practice, the IBD operates primarily as a licensing authority and historically has not actively supervised the IBD sector. However, pursuant to a recent MOU with the FSC, the FSC is also providing supervisory capability in respect of the supervision of corporate and trust service providers specifically.
39. Evidence strongly indicates that supervisors are not applying the full range of available sanctions for varying degrees of non-compliance by FIs and DNFBPs with AML/CFT requirements. Sanctions which have been applied are not considered proportionate and dissuasive and are therefore not considered effective.

#### *C.6 Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

40. The Barbados system is generally effective in ensuring access to basic ownership information on legal person. However, the system is not as effective in respect of BO information. There is no information to show that LEAs can successfully carry out investigation into ML networks of legal person, and can identify and prosecute beneficial owners. Barbados also has not instituted a risk assessment of the ML/TF risks related to legal person and legal arrangements. In that regard, there is no information on the extent to which such legal persons and legal arrangements are misused by criminals. The accessibility of public basic information does not outweigh the timely access to BO information; such information could be kept at a location that is not immediately known to the Registrar of companies. Consequently, in some instances, it may be unknown whether such records are maintained in an accurate manner and are up-to-date.

#### *C.7 International Cooperation (Chapter 8 - IO2; R. 36-40)*

41. Barbados through several arms of government ranging from law enforcement and the prosecutorial arm has engaged in some level of international cooperation as it relates to mutual legal assistance and extradition. Some international and regional partners have indicated that the information provided by Barbados is useful, timely and comprehensive. It was disclosed that there has been specific regional cooperation in respect of drug possession investigation and prosecution which led to convictions; also, there was a fraud investigation related to an instance of regional cooperation which commenced with the request for banking information but was not pursued to the point of prosecution due to the lack of evidence. Internationally, with respect to fraud there has been the immobilisation of bank records and the preparation of witness statements. There was also one specific instance of cooperation sought from an international jurisdiction which was not

consummated. It was gleaned that there has been a specific instance of international cooperation however that matter is presently *sub judice*. It was disclosed that based on Barbados' geographical location the authorities have put mechanisms in place to share information with strategic regional jurisdiction and the relevant agencies with regards to suspected terrorist movement.

42. Barbados cooperates with its international law enforcement counterparts, which has resulted in the prosecution and conviction of persons in some instances. Mutual legal assistance and extradition mechanisms are also used.
43. Extradition requests are generally dealt with by the authorities, however, there remains one extradition matter outstanding for the review period. Based on the information reviewed, there is evidence of international co-operation with respect to predicate offences, but no evidence of international cooperation with respect to ML investigations.
44. During the onsite examination, there was no information available to show that competent authorities have been providing and responding to foreign requests for co-operation in identifying and exchanging basic and BO information of legal persons and legal arrangements. It is also noted however that, during the review period no requests were made to the jurisdiction for BO information.

#### **D. Priority Actions**

45. The prioritised recommended actions for Barbados, based on these findings are
  - Barbados should proceed to conduct a more comprehensive assessment of its AML/CFT risks threats and vulnerabilities. This risk assessment should be completed by AMLA in conjunction with FIs and DNFBPs, LEA and competent authorities, with input from the private sector.
  - Having conducted a comprehensive review of AML/CFT threats and vulnerabilities with the participation of all stakeholders Barbados should ensure that the results are disseminated to stake holders and the necessary measures, including resources, are put in place to mitigate the risks identified.
  - The ML/TF risks associated with gaming institutions should be assessed and if merited gaming institutions should be regulated and supervised for AML/CFT purposes.
  - In particular, Barbados should promptly address the specific ML/TF risk posed by TF, legal persons, legal arrangements, foreign companies, private companies, public companies, NPOs, and the gaming institutions (particularly the slots/arcade gaming sector) by formulating and implementing strategies to mitigate these risks.
  - All supervisors should adequately identify and assess the ML/TF risk profiles of their respective sectors and institutions in similar maner to those best practices adopted by the CBB.
  - Licensing requirements for FIs and DNFBPs in Barbados should universally require approval (in some form) for changes in BO and changes in key appointees.
  - The FSC and the CBB should review the integrity of their risk assessment and supervisory methodologies to ensure that there is a proper balance between onsite and offsite supervision and that onsite supervision cycles are linked to the risk ratings attached to the FI.
  - All supervisors should begin applying the full range of available sanctions for non-compliance by FIs and DNFBPs in keeping with prevailing AML/CFT requirements.
  - The FSC should take appropriate measures to make sure that all credit unions, insurers and securities companies understand their ML/TF risks and implement the corresponding risk

mitigation controls. The IBD should increase the understanding of ML/TF risks by CTSPs. Reporting entities should be made aware of their legal obligation to also report ‘attempted or aborted transactions’.

- Competent Authorities primarily the FIU and LEAs should ensure that statistics are kept in a comprehensive and easily retrievable manner. This would enable the authorities to measure the successes and possible shortcoming in the AML/CFT regime of the jurisdiction including that of whether financial intelligence is being effectively utilized by the competent authorities.
- The categories of statistics captured by the FIU should be broadened to include, areas such as outgoing domestic requests and ‘suspected’ offences observed in the AML/CFT environment both for information for LEAs and to support LEA investigations.
- The FIU’s IT system to facilitate the conduct of comprehensive analysis, including strategic and operational analysis, should be upgraded. Furthermore, there is a need for the FIU to conduct strategic analysis as this serves as an important component in the AML/CFT framework of the jurisdiction.
- ML charges should be pursued as primary offences by LEAs and prosecutorial authorities. Furthermore, the judicial system needs to be assessed and reviewed to ensure that ML/TF offences and related predicate matters are sufficiently prioritised.
- Barbados should implement a written policy objective that is communicated to the Prosecutors and LEAs to ensure that confiscation is of paramount importance to the relevant agencies and that assets derived from criminal conduct or intended for criminal conduct are confiscated based on this policy objective.
- The Authorities need to treat, as a priority, the promulgation of the Proceeds and Instrumentalities of Crime Bill to address deficiencies regarding cash seizures, confiscation and asset forfeiture.
- Barbados should ensure that LEAs, Prosecutors and Judges receive adequate and continuous training and development relative to confiscation and the recovery of criminal proceeds. Furthermore, the related institutions should also be staffed to effectively deal with confiscation.
- Increased focus should be placed on terrorism, terrorism related activities and terrorist organisations considering information that based on the geographical location of the island, it is being used as a transit point for terrorist fighters.
- The implementation of the UNSCRs on proliferation of WMD should be undertaken by the establishment of policies and mechanisms to implement all UN TFS to combat TF and the financing of proliferation without delay and the monitor of reporting entities for compliance with the targeted financial sanctions.
- Amendment to COMPA to include a requirement for the Director to immediately notify the Registrar of Companies of the relocation of BO information other than the known registered address.
- Barbados should take measures to assess the risks of ML/TF posed by the misuse of legal persons and legal arrangements. Barbados should also take measures to ensure that BO information for legal persons is maintained and available.
- The non-issuance of the certificate of good standing obfuscates the sanctions regime for non-compliance with the filing obligations. Barbados should therefore consider applying the fines which forms part of the sanctioning regime.

- Immediate training should be arranged for the FIU personnel in analysing complex financial data, strategic analysis and using analytical tools to enhance the intelligence product.
- The IBD and the AMLA should quickly move to strengthen the AML/CFT supervisory framework for the DNFBP sector through risk-based assessment, targeted and prioritised supervisory onsite visits and outreach.
- The operational needs of law enforcement supported by the FIU should be articulated between the agencies. Barbados should take steps to improve relations between law enforcement (which should include the Customs and Excise and BRA, and the FIU) to ensure that there is maximum use of the financial intelligence products. This can be done through joint and coordinated meetings.
- The FIU should increase its information sources, such as timely access to customs declarations, timely access to BO information and SARs from FIs which includes attempted or aborted transactions, to complement its intelligence reports.

## *Compliance and Effectiveness Ratings*

### *Effectiveness Ratings*

<b>IO.1</b> Risk, policy and coordination	<b>IO.2</b> International cooperation	<b>IO.3</b> Supervision	<b>IO.4</b> Preventive measures	<b>IO.5</b> Legal persons and arrangements	<b>IO.6</b> Financial intelligence
<b>Low</b>	<b>Mod</b>	<b>Mod</b>	<b>Mod</b>	<b>Mod</b>	<b>Low</b>
<b>IO.7</b> ML investigation & prosecution	<b>IO.8</b> Confiscation	<b>IO.9</b> TF investigation & prosecution	<b>IO.10</b> TF preventive measures & financial sanctions	<b>IO.11</b> PF financial sanctions	
<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	

### *Technical Compliance Ratings*

#### AML/CFT Policies and coordination

<b>R.1</b>	<b>R.2</b>
<b>PC</b>	<b>LC</b>

#### Money laundering and confiscation

<b>R.3</b>	<b>R.4</b>
<b>LC</b>	<b>PC</b>

#### Terrorist financing and financing of proliferation

<b>R.5</b>	<b>R.6</b>	<b>R.7</b>	<b>R.8</b>
<b>LC</b>	<b>LC</b>	<b>NC</b>	<b>NC</b>

#### Preventive measures

<b>R.9</b>	<b>R.10</b>	<b>R.11</b>	<b>R.12</b>	<b>R.13</b>	<b>R.14</b>
<b>C</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.15</b>	<b>R.16</b>	<b>R.17</b>	<b>R.18</b>	<b>R.19</b>	<b>R.20</b>
<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>PC</b>
<b>R.21</b>	<b>R.22</b>	<b>R.23</b>			
<b>LC</b>	<b>LC</b>	<b>PC</b>			

#### Transparency and beneficial ownership of legal persons and arrangements

<b>R.24</b>	<b>R.25</b>
<b>PC</b>	<b>LC</b>

#### Powers and responsibilities of competent authorities and other institutional measures

<b>R.26</b>	<b>R.27</b>	<b>R.28</b>	<b>R.29</b>	<b>R.30</b>	<b>R.31</b>
<b>C</b>	<b>C</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>PC</b>
<b>R.32</b>	<b>R.33</b>	<b>R.34</b>	<b>R.35</b>		
<b>PC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>		

#### International cooperation

<b>R.36</b>	<b>R.37</b>	<b>R.38</b>	<b>R.39</b>	<b>R.40</b>
<b>PC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>



## MUTUAL EVALUATION REPORT

### *Preface*

1. This report summarises the AML/CFT measures in place in Barbados as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness in Barbados' of the AML/CFT system, and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to Barbados from 5-16<sup>th</sup> December 2016.
3. The evaluation was conducted by an Assessment Team consisting of: Mr. Jefferson Clarke, Mission Leader (CFATF Secretariat); Ms. Jasmine Wade, Legal Expert (Antigua and Barbuda); Mr. Kevin Dolan, Financial Expert (Bermuda); Mr. Jean Candelaria, Financial Expert Curacao; and Mrs. Mary Martinez-Campbell (Law Enforcement Expert (Trinidad and Tobago). The Mutual Evaluation Team of the CFATF Secretariat also provided input to Barbados' mutual evaluation process. The report was reviewed by Mr. Gordon Hook, Executive Secretary of the APG; Mr. Francesco Positano and Ms. Masha Rechova of the FATF Secretariat and Mrs. Maureen Simms, Deputy Governor of the Bank of Jamaica.
4. Barbados previously underwent a CFATF Mutual Evaluation in 2006, conducted per the 2004 FATF Methodology. The 2006 evaluation and follow-up reports to 2016 have been published and are available at <http://www.cfatf-gafic.org> For the sake of brevity, on those topics where there has not been any material change in the situation of Barbados or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation, but includes a cross-reference to the detailed analysis in the previous report as relevant.
5. Barbados' 2006 Mutual Evaluation concluded that the country was compliant with 9 Recommendations; largely compliant with 13; partially compliant with 31; and non-compliant with 6. Barbados was rated compliant or largely compliant with 9 of the 16 Core and Key Recommendations. Barbados exited the follow-up process in June 2016 on the basis that the outstanding recommended actions were minor and the country was scheduled to undergo the 4<sup>th</sup> Round mutual evaluation in the second half of 2016. As such, in accordance with procedures Barbados outstanding issues of the 3<sup>rd</sup> Round follow-up process were incorporated in the 4<sup>th</sup> Round mutual evaluation.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

6. Barbados is the most easterly of the archipelago of islands located in Caribbean Sea and is within close proximity of the other islands that makes up the eastern Caribbean including Grenada, St. Lucia and St. Vincent and the Grenadines. The island is one hundred and sixty six (166) square miles with a population of approximately two hundred and seventy seven thousand (277,000) inhabitants as at 2010. The official language is English and the official currency is the Barbados Dollar (BBD) although US currency is also accepted. The Central Bank of Barbados (CBB) exercises tight control of foreign currency entering the Barbados economy and is also responsible for among other things fostering monetary stability and promoting sound financial structures Barbados is a parliamentary democracy and constitutional monarchy recognizing Her Majesty Queen Elizabeth II as the Head of States. She is represented by the Governor General (Ceremonial figure) who is appointed by the Honorable Prime Minister who heads the Cabinet of Ministers that includes the Honorable Attorney General. Barbados parliamentary system has been in existence since 1639, making it the third oldest parliament in the British Commonwealth. Barbados is ranked in the Index of Economic Freedom 2014 as the 8<sup>th</sup> freest economy in Latin America and the Caribbean and 45<sup>th</sup> in the world. Barbados is also ranked by the World Economic Forum's Global Competitiveness Report 2014-2015 as having the 4<sup>th</sup> most stable banking system in the Western Hemisphere.
7. International business is an important component of Barbados' economy and attracts investors from many different jurisdictions. Off-shore investment coming out of Canada is by far the largest source of investment funds for Barbados whilst Britain and the United States of America are sources of regular business for Barbados. There is also a relatively high volume of movement of people between those jurisdictions and Barbados.

### *ML/TF Risks and Scoping of Higher-Risk Issues*

#### *Overview of ML/TF Risks*

8. Barbados maintains a low domestic crime rate relative to the rest of the Caribbean region. The June 2016 NRA as presented by Barbados identified the primary predicate offences for ML as: drug related offences; theft; burglary; robbery and fraud. In 2015 Barbados recorded 1190 drug related criminal offences which accounted for 15% of the total number of recorded national crime statistic. Please refer to Table 1 below for the categories of offences with higher ML risk as determined by Barbados:

**Table 1: Category of offences with highest ML/TF risk – 2015 statistics**

Offences	Number of offences for 2015	Overall percentage of crime in 2015
Drug related	1190	15%
Theft	1037	14%
Burglaries	1384	17%
Robberies	300	3.9%
Fraud	218	2.51%

9. The 2016 NRA, as presented by Barbados, identified six categories of risks namely: geographic risks, service risks, customer (service user) risk, gatekeepers' risks, crime risk and terrorism

financing risk. Three of these risks, namely, geographical risk, service risk, and customer risk were among the channels used to identify ML/TF risks to the financial sector. During the onsite the Authorities articulated that the level of threats and vulnerabilities in the financial sector were measured by the level of activities in the said financial sector. As a result, the Assessors were concerned that the risk assessment methodology was overly simplistic and not supported by comprehensive quantitative and qualitative data from key input sources and therefore concluded that the short form NRA was a high level intrinsic risk assessment which did not adequately identify ML/TF threats and vulnerabilities. Without adequately identifying the threats and vulnerabilities the Assessors determined that effective national AML/CFT policies and risk mitigation strategies could not be developed. In particular, the terrorism and terrorist financing risk assessment were significantly deficient. The Assessors did however recognize that this was an initial NRA and were encouraged that Barbados had committed to reform its NRA product in 2017 using the World Bank tool.

10. With respect to drug trafficking there were two Caribbean countries identified as high-risk jurisdictions. National measures taken to address these risks include targeted controls at the points of entry, increases in maritime patrols in the waters around Barbados and the better use of intelligence by competent authorities. Whilst the Assessors applaud these measures, the Assessors determined that given 15% of national crime were related to drug related offences, the NRA should have included more comprehensive data to facilitate the identification of the specific threats and vulnerabilities.
11. Barbados' AML/CFT legislative framework has had changes to the MLFTA, its ATA with the most recent amendment occurring in 2015. The recent changes include making ML a standalone offence and so too financing of terrorism. Further, the FIU has a limited understanding of the operational needs of its stakeholders. However, the institutional framework for all agencies operating within the AML/CFT regime should be strengthened through the merging of interest and establishment of standing operating procedures which govern their role and functions.

### *Country's risk assessment & Scoping of Higher Risk Issues*

12. The NRA did not identify and assess ML/TF threats and vulnerabilities. Barbados' NRA was conducted under the auspices of the AMLA with participation by approximately 11 representatives two of whom came from the private sectors. However, it was noted that private sector representation at AMLA is limited because the two individuals do not represent their respective private sector bodies but provided the experience they have in their fields (legal and insurance). This limited private sector participation was not a wide enough representation of the related stakeholders. However, some private sector participation took place at the working group level. The Assessors were concerned that the participation of the financial sector was sub optimum. Particularly, it was not evident that the sector specific risk assessments done by the CBB and FSC formed part of the NRA. Whilst the NRA employed a risk rating methodology the Assessors were concerned that the risk ratings were not based on pertinent empirical data.
13. One significant observation is that the NRA did not expressly identify ML as a specific stand-alone offence. Barbados advanced that ML was not reflected as a standalone offence in the NRA because in the history of keeping records, ML had never been identified as a major crime neither through number of offences nor impact on the national economy. The authorities further surmised that ML offences would probably be subsumed in fraud records. It is not satisfactory to identify ML as a risk only within the context of a predicate offence considering that there are several stand-alone ML cases pending adjudication in Barbados.

14. Whilst the NRA did identify drug trafficking as a significant risk, the Assessors were concerned that there was a limited analysis as to the nature, scope and scale of the threats and the vulnerabilities. Without this the Assessors consider that it would prove difficult to construct an effective national risk mitigation strategy.
15. In the NRA there is no information on how the Authorities intend to mitigate the ML risk arising from the identified criminal activities/predicate offences, particularly those which are deemed to be higher risk. Those activities/predicate offences included: drugs offences, theft, burglary, robbery and fraud. The information provided by the authorities in the NRA suggests that the limited amount of ML charges emanating from the predicate offences is evidence that the proceeds from the offences do not enter the financial sector. However, this remains un-substantiated in the absence of evidence provided to demonstrate such finding. Importantly the Assessors determined that the TF assessment is significantly deficient and that insufficient qualitative and quantitative data was used to support the low risk rating. In so far as the following risk: services risks, DNFBPs (gate keepers) risks and to some extent customer (services customer) risk, no sector specific information is provided. Regarding the mitigation of crime risks, the Authorities stated that the Royal Barbados Police Force (RBPF) seeks to prevent burglary offences through public education initiatives which addresses the ways in which residents may secure their premises, community policing efforts, the neighbourhood watch programme, and other measures. Notwithstanding the RBPF's efforts, it is significant that the offence of burglary represented the highest percentage of crimes committed in Barbados during 2015.
16. During the onsite the Assessment Team gave an increased focus to the threats and vulnerabilities outlined below. They represent not only the areas of high ML/TF risks but those that were of significant interest or concern to the Assessment Team based on publicly available material and information provided by Barbados in preparation for the onsite visit.

#### *Threats*

17. **Drug trafficking:** Barbados has indicted that the trade in illegal drugs is the most prevalent challenge for the RBPF. Additionally, drug offences are the main source of criminal funds. Drug offences account for 15% of Barbados'<sup>1</sup> overall crime. Therefore, the NRA has identified drug trafficking as a significant risk.
18. **Money laundering:** Barbados has recorded 18 standalone ML offences and four persons convicted in 2014 and 2016 for ML which originated from other predicate offences. Notwithstanding, the NRA did not expressly identify ML as a specific stand-alone risk as articulated at paragraph 15 of this report. In essence, ML is not identified as a major crime and this practice must be reviewed and addressed, both at the level of the NRA and in the general operational context.
19. **Porous borders:** The jurisdiction has porous borders which are utilized by drug traffickers to smuggle narcotics into the jurisdiction. Furthermore, as a result of the jurisdiction having an international airport along with an international sea port, these are utilized by the traffickers to ship narcotics to other jurisdictions. Drug traffickers have used Barbados to ferry drugs, some of which are destined to other jurisdictions.

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<sup>1</sup> Barbados' NRA (page 9)

20. **Human trafficking:** Barbados is listed as a Tier 2<sup>2</sup> country in the US Department of State Report. A Tier 2 country is one which does not fully comply with the Trafficking Victims Protection Act (TVPA- USA law), minimum standards for the elimination of human trafficking but is making significant efforts to bring itself into compliance with this law. However, the Authorities advanced that part of the progress made in the area of human trafficking was the establishment of a counter trafficking unit staffed with personnel from the RBPF. The personnel are trained to adopt a ‘victim centred approach’ when they have to deal with persons who are brought before them. Further, in order to pursue human trafficking crimes, the Trafficking In Persons Act was enacted in June 2016. Additionally, there is a national task force against trafficking in persons which comprises several key agencies. Barbados has a national plan for human trafficking in place whereby the national task force meets monthly to deal with all matters regarding human trafficking.

#### *Vulnerabilities*

21. **Designated Non-Financial Businesses and Professions (DNFBPs):** Real estate agents are facilitators of transactions for the sale and purchase of real property and as a rule they do not handle the money involved in a transaction. Barbados’ view is that real estate agents present no risk for ML. Following discussion with the Real Estate Agents during the onsite, the Assessors are of the view that indeed the real estate agents in Barbados present no ML risk, as they are not involved in the flow of funds between the parties involved in the final real estate transaction. All real estate transactions must be facilitated by a lawyer. The functions of lawyers and accountants captured for AML/CFT obligations are not regarded as a major risk by Barbados<sup>3,4</sup>. The Trust Companies and Service providers Act (TCSPA) provides for the examination of the services providers. Both the International Business Division (IBD) and the AMLA have entered into MOUs with the FSC to provide the supervisory capability to enable the IBD and the FIU to fulfil their supervisory responsibilities. The existing supervision arrangements with regard to DNFBPs are not sustainable.
22. **Transparency and beneficial ownership of corporate structures Financial Secrecy:** Information surrounding the ownership of companies including that relative to ultimate BO details are not maintained in official records and are not publicly available<sup>5</sup>. The AML/CFT supervision of TCSPs and their role in the establishment of corporate structures was reviewed in detail by the Assessors. There was a determination whether Barbados’ TCSPs are indeed treated like FIs for AML and CFT purposes and that the relevant FATF Recommendations are applied to this sector. Additionally, the Assessors have noted that without the legislative mandate the information to be gleaned from an examination of this sector may not be up-to-date and would be limited in facilitating an understanding of such a vulnerable sector which are the gatekeepers to the international financial services sector.
23. **Terrorist financing:** Barbados articulated that there are no terrorism funds in the jurisdiction and the likelihood of terrorist funds being sent to Barbados to finance terrorism elsewhere as improbable.<sup>6</sup> While the Authorities indicated that the jurisdiction had been used as terrorist transit in one single instance, this did not generate a TF offence. The Assessment Team is of the opinion that Barbados should take into account that the country can be used to layer illicit funds to finance terrorism in other jurisdictions. Therefore the Assessors suggest that Barbados should increase the

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<sup>3</sup> Barbados’ NRA (page 8)

<sup>4</sup> Barbados’ NRA (page 8)

<sup>6</sup> Barbados’ NRA (page 11)

weight assigned to external funding of terrorist financing. The Assessment Team also encourages Barbados to reassess the low risk assigned to external funding in terrorist financing.

24. **Proliferation of weapons of mass destruction:** Barbados indicated that it has no weapons of mass destruction and that therefore such a scenario would not materialise. In case it did, Barbados indicated that it can be treated as a predicate act to terrorism. However, the requirement of the Recommendation is that the country should establish the necessary legal authority to implement and enforce targeted financial sanctions.. Notwithstanding, the difference in views the Assessors do not consider PF to be a high-risk area.

### *Materiality*

25. Of the 28 international banks, only 16 engage in third-party business, and of the remaining 12, five are holding companies whose only activity is the investment in subsidiaries. Third-party licensees engage in such activities as trust and portfolio/investment management. As at December 31, 2015, total assets reported by international banks were BDS\$82 billion with deposit-taking entities accounting for BDS\$5.6 billion in deposits. Of the BDS\$11 billion in deposits (year end 2015) in the domestic system, commercial banks accounted for 82% and non-banks 8%. With respect to the international banks only four of the top ten banks engaged in third-party business, with three involved in deposit taking. Four banks were managing third-party assets ranging from BDS\$300 million to BDS\$5.5 billion at the end 2015.
26. Given its intermediary role, its significance, the high volume of transactions both domestically and internationally and the wide international reach, the banking sector is an important player in the national framework of Barbados. In the domestic financial system, commercial banks dominate by asset size, when compared not only to trust companies, finance companies and merchant banks but also other FIs such as insurance companies and credit unions. At the end of 2015, commercial banks accounted for 60% of total assets of the financial sector, while finance and trust companies contributed another 8%. The CBB therefore has oversight for a significant segment of the financial sector with the assets of international banks far out numbering that of domestic deposit-taking licensees.
27. Barbados has confirmed that the financial sector is dominated by large Canadian-parented foreign banks which are regulated by the Office of the Superintendent of Financial Institutions Canada (OSFI). Canadian banks have had a long history in Barbados and the MOU in place with OSFI has allowed for the sharing of information through supervisory colleges and regulator to regulator direct contact. Stringent group policies are in force and the CBB monitors licensees to assess that they comply with the higher of home and host country standards.
28. The 2016 Financial Stability Report prepared and published by the CBB provided a break-down of the assets held by financial institutions. The report shows “commercial banks remained the dominant player in the financial system holding 55% of domestic financial assets. The insurance industry accounted for 13%, while credit unions continued to gain share, attracting 8% of the market compared to 7% five years ago. Trust and finance companies, mutual funds and private pension schemes each held less than 10% of the system’s assets.
29. Interconnectedness and cross border linkages remain a key feature of the financial system. All five banks are foreign-owned. The larger insurance companies operate both regionally and internationally, and some have mutual funds and pension investment businesses. At the same time, several trust and finance companies are owned by banks, or are affiliated with credit unions or other non-financial conglomerates.

30. The financial landscape continued to be characterised by a high level of concentration, with the three Canadian banks accounting for 75% of total bank assets. At the same time, the largest seven of thirty-four credit unions represented 92% of the industry. The life-sector accounted for two-thirds of the insurance market with only six insurers operating and the top three life insurers accounting for 95% of total industry assets. There were 15 general insurance companies, with the top three holding 63% of general insurers' assets. Furthermore, the six largest of 303 pension plans captured 46% of total assets under management.
31. At the time of the assessment five MVTs entities operated in Barbados with only one entity providing outbound services. MVTs sector providers facilitated a total of BDS\$126.07 million in transactions in 2015. This represented less than 1% of all funds flow activity. Further, the average inbound and outbound transaction size in 2015 was BDS\$510 and BDS\$687, respectively.
32. The DNFBP sector in Barbados is made up of mainly lawyers, (645); accountants (83); and TCSPs (83).

### ***Structural Elements***

33. The key structural elements for AML/CFT controls appear to be present in Barbados. Political and institutional stability and accountability and the rule of law are present. Barbados has an independent judicial system headed by the Chief Justice. Issues of staffing at both the magistracy and the judiciary have a negative effect on the timely delivery of justice in Barbados. Whilst case management has been given due consideration this is impacted by the availability of only 10 magistrates and two judges who must attend to approximately 18,000 to 21,000 court filings every year. This is impacting the effectiveness of the judicial system in addressing AML/CFT matters.

### ***Background and other Contextual Factors***

#### ***Overview of AML/CFT strategy***

34. There is no formalised AML/CFT strategy for Barbados, however, the overall goal of the AMLA which is exercised through the FIU, is to prevent or control ML and TF through the collection and analysis of financial intelligence. Among the objectives to attain the goal set by the AMLA is to develop and maintain intelligence sharing structures and systems, establish close working relationships with FIs and relevant local and international agencies, and encourage compliance with the guidelines issued by the AMLA. As it relates to addressing the AML/CFT goal of encouraging compliance with the guidelines issued by the AMLA and other AML/CFT obligations, the AMLA facilitated an MOU with the FSC to carry out onsite supervision of the DNFBP sector. To do this, the FSC first considers the inherent risk of those sectors subsets which are regulated which is followed by the issuance of a questionnaire which captures both quantitative and qualitative requirements of the AML/CFT laws and regulations, and FATF Recommendations. The approach is supplemented by onsites which give the quality of risk practises across the AML/CFT regulated sectors.
35. The FSC noted that from 2012, prudential and AML/CFT examinations were done together (prior to 2012 such visits were conducted by the Office of the Supervisor of Insurance). However, from July 2016, in an attempt to create a more robust AML/CFT compliant infrastructure, the FSC began stand-alone AML/CFT visits. As part of the plan to manage AML/CFT risks, a three-year work plan for on sites was created. The plan will cover not only AML/CFT issues but also other elements because of the broad mandate of the FSC. Such other elements include providing technical assistance



and advice to the International Business Unit or to any other government agency in relation to its responsibilities under any law to supervise, regulate or monitor any business operating in Barbados.

36. The Regional Security System (RSS) is presently based in Barbados and offers tangible support to the RBPF on improving the jurisdictions' ML and confiscation regime. The RSS was created out of the need for a collective response to security threats impacting the stability of the region. The members of the RSS are the six Organisation of Eastern Caribbean States namely Antigua and Barbuda, Dominica, Grenada, Saint Lucia, Saint Kitts- Nevis, Saint Vincent and the Grenadines along with Barbados. The RSS comprises of several departments including an Asset Recovery Unit (ARU) whose mandate is tackle serious crime in the Caribbean through robust partnership and the application of proceeds of crime and money laundering legislation<sup>7</sup> Thus far, the RSS-ARU have provided technical support and training, as well legislative drafting support in the form of the Proceeds of Instrumentalities and Crime Bill which has not yet been enacted. The Assessors were informed that the Honorable Attorney General has given the political commitment to enact the Bill within the first quarter of 2017. The RSS-ARU continues to build capacity and capability not only within law enforcement agencies but FIUs, Public Prosecutors and the Judiciary.
37. In Barbados, the RSS seeks to enhance the efforts of Barbados's LEAs in countering serious organised crime, particularly drug trafficking, by utilising cash seizure, ML and confiscation legislation, as key components in financial investigation and asset recovery. With the support of the RSS-ARU, the jurisdiction has completed the drafting of 'model' proceeds of crime legislation to remedy legislative deficiencies and encourage the introduction and use of civil forfeiture legislation. The underlying purpose of the RSS-ARU is to provide a framework of legal advisors and financial investigations advisors to support, mentor and train law enforcement personnel, primarily in investigations. Although not formalised in a national AML/CFT strategy, the aforementioned are some of the strategies in addressing Barbados's AML/CFT risks and vulnerabilities.
38. Barbados was ranked 4<sup>th</sup> and 24<sup>th</sup> among Latin American/Caribbean and worldwide, respectively for soundness of its banking sector and 11<sup>th</sup> and 56<sup>th</sup> among Latin American/Caribbean and worldwide, respectively with regard to the regulation of its security exchanges according to the Global Competitive Report 2016/2017. The global competitive report 2016-2017 produced by the World Economic Forum assess the competitive landscape of countries economies, providing insight into the drivers of productivity and prosperity.

### *Overview of the legal & institutional framework*

#### ***Legal System***

39. The Barbados legal system is founded in British common law. The judicial system comprises a lower Magistrates Court and the Supreme Court of Judicature, which sits as a High Court and Court of Appeal vested by the constitution with unlimited jurisdiction. The Supreme Court of Judicature consists of a Chief Justice and three Puisne Judges. The Honorable Attorney General is responsible for the administration of the legal and judicial system. Final appeal from Barbadian courts is with the Caribbean Court of Justice (CCJ), based in Trinidad and Tobago.
40. The responsibilities for Barbados AML/CFT policies are divided amongst the Ministry of Finance, Ministry of Home Affairs, Office of the Attorney General and several agencies within those

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<sup>7</sup> [www.rss.org.bb](http://www.rss.org.bb)



Ministries. Consequently, the competent authorities and agencies responsible for the formulation and implementation of Barbados' AML/CFT policies are:

- **CBB** - The CBB is the competent authority in respect of the licensing, regulation and supervision of international banks falling under the International Financial Services Act (IFSA) and commercial banks, trust and finance companies and merchant banks falling under the FIA.
- **IBD** - The IBD is the competent authority in respect of the licensing, regulation and supervision of entities governed by the Corporate and Trust Service Providers Act (CTSPA), the International Business Companies Act (IBCA), the Societies with Restricted Liability Act (SLRA), the Private Trust Companies Act (PTCA), the Foundations Act (FA) and the International Trusts Act (ITA).
- **AMLA and FIU** - Barbados has established an AMLA which has responsibility for the setting of policy and the general administration of the country's AML/CFT programme. This body is composed of the principal public agencies which have some responsibility for these issues. All the competent authorities sit on the board of AMLA. It is the responsibility of the FIU to keep the AMLA always informed of trends and all matters related to AML/CFT. All suspicious activity reports are submitted to the FIU. These reports are logged and analysed and the statistics and trends therefrom are shared with AMLA. Since all the competent authorities sit on AMLA, they are all constantly aware of what is happening on the Island with regard to ML/TF issues.
- **FSC** - The FSC is the competent authority in respect of the licensing, regulation and supervision of credit unions and FIs governed by the various Acts set out in the second schedule of the FSCA (Exempt Insurance Act, Insurance Act, Occupational Pensions Act, Securities Act and Mutual Funds Act).
- **Police** -The Special Branch of the RBPF collects intelligence with respect to all threats to national security. This includes paying attention to threats of terrorism and efforts to finance such activity.
- **FCIU** – This is a department within the RBPF with responsibility for the investigation of ML and TF.
- **DPP** - Responsible for the handling of criminal prosecutions including those related to ML/TF and acts as consulting partner with the RBPF.
- **Office of the Attorney General** – Primary legal advisor to the Government of Barbados including ML and international treaties. Formulate and implement targeted programmes and enact legislation.

### *Overview of the financial sector and DNFBPs*

41. The financial sector in Barbados consists of the following:

**Table 3: Financial Sector**

<b>Sector</b>	<b>Amount</b>
Banks	5
Life insurers	9
Non-bank and financial companies	13
International banks	28
Credit unions	33
Securities*	36

\*Securities comprise securities companies, investment advisers, dealers, underwriters, and mutual fund administrators.

42. The DNFBP sector in Barbados consists of the following:

**Table 4: Barbados' DNFBP sector**

<b>Sector</b>	<b>Amount/Number</b>
Casinos	0
Real estate agents	137
Dealers in precious metals and stones	27
Lawyers	645
Accountants	83
Trust and company service providers	83

#### *Overview of preventive measures*

43. The legal basis of AML/CFT obligations for the FIs and DNFBPs in Barbados and the enforceable instruments through which they are applied, are as follows:

- Money Laundering and Financing of Terrorism (Prevention and Control) 2011-23 (MLFTA);
- Proceeds of Crime Act – CAP 143;
- Mutual Assistance in Criminal matters CAP 140A;
- Transnational and Organized Crime (Prevention and Control) Act;
- Corporate and Trust Providers Act 2015;
- Anti Terrorism Act, CAP 158;
- Anti Terrorism Amendment Act 2015-28;
- International Business Companies Act CAP 77;
- International Business Companies (Amendment) Act, 2012;
- International Financial Services Act;
- Financial Institutions Act, CAP 324A
- International Financial Services (Amendment) Act;
- International Trusts Act CAP 245-1;
- International Trusts (Amendment) Act;
- Insurance Act CAP 310;
- Insurance Amend Act;
- Cooperatives Societies Act CAP 378A
- Cooperatives Societies (Amendment) Act;
- Securities Act CAP 318 A;
- Securities (Amendment) Act;
- FSC AML/CFT Guidelines 2013;
- CBB AML/CFT Guidelines 2013 (updated 2016);
- IBU AML/CFT Guidelines 2015;
- Drug Abuse (Prevention and Control) Act;

44. The CBB, FSC and IBU have issued AML/CFT guidelines in conjunction with the AMLA for licensees and registrants, which fall under their respective purview. These Guidelines are considered enforceable means and provide guidance to the licensees and registrants regarding their obligations

under the MLFTA. As per the MLFTA these obligations are mandatory and the sanctions for non-compliance/offences are deemed effective, proportionate and dissuasive. According to the provisions of the CTSPA and the Securities Act, several licensees are dually supervised by the CBB, FSC and IBD.

#### *Overview of legal persons and arrangements*

45. The AMLA is responsible for the supervision of the DNFBPs sector and has delegated this function to the FIU. Both the IBD and the FIU have entered into MOUs with the FSC to provide supervisory capability as this sector does not directly fall under the ambit of the FSC.

#### *Overview of supervisory arrangements*

46. The competent supervisory authorities for the financial sector are the CBB, the FSC and the IBD. The CBB is responsible for the licensing, regulation and supervision of domestic and international banks falling under the IFSA and Trust and Finance Companies and Merchant Banks falling under the FIA. The IBD is responsible for the licensing, regulation and supervision of entities governed by the Corporate and Trust Service Providers Act, the International Business Companies Act, the Societies with Restricted Liability Act, the Private Trust Companies Act, the Foundations Act and the International Trusts Act. The FSC is responsible for the licensing, regulation and supervision of credit unions and FIs governed by the various acts set out in the second schedule of the FSCA (Exempt Insurance Act, Insurance Act, Occupational Pensions Act, Securities Act and Mutual Funds Act).

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The jurisdiction has not demonstrated that it has a comprehensive understanding of the ML/TF risks within the country. In particular the assessment of the TF risk is significantly deficient. Moreover, the risk assessment conducted by Barbados did not encourage input from private sector stakeholders who would be in a good position to understand the risks that are associated with their sectors.
- Barbados should include its legal persons and legal arrangements and the gaming sector in its NRA.
- The CBB understands and identified the ML/TF risks specific to the banking sector.
- The application of enhanced or reduced due diligence measures detailed in sector specific guidelines are not fully supported by an understanding of the ML/TF risks.
- The findings of the NRA did not fully comport with information obtained from LEAs working on the ground, indicating that system of national coordination requires further enhancement to be truly effective.
- The findings of the risk assessment have not been disseminated to the relevant stakeholders particularly those within the private sector, thereby allowing them to have knowledge of such risks, threat and vulnerabilities and taking measures to mitigate same.

#### **Recommended Action**

- The NRA or the sanitised results of the NRA should be disseminated to the relevant public-sector authorities, law enforcement and the private sector to generate policies therefrom.
- The private sector bodies, including the FIs and the DNFBPs, should be consulted in the NRA exercise going forward.
- The NRA should contain threats vulnerabilities and appropriate risk mitigation measures.
- National coordination requires further enhancement to be truly effective.
- The application of any enhanced or reduced due diligence measures should be predicated on the understanding of the risks identified in either the NRA or sector specific risk assessments.
- Input to the NRA should include LEAs.

The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1, R.2 and R.33.

### **Immediate Outcome 1 (Risk, Policy and Coordination)**

#### *Country's understanding of its ML/TF risks.*

47. The NRA identified six risks as follows: 1) geographical/jurisdictional risk; 2) services risks; 3) customer (service user) risks; 4) gatekeepers risks; 5) crime risks and 6) terrorism financing risks. Together with the identification of the six risks an explanation has been provided in support in the Immediate Outcomes. Notwithstanding, nowhere in the NRA was there any indication of what the actual risks were or how money is laundered in Barbados. There was also no indication of whether

or not Barbados' banking sector was exposed in any way. Based on the interviews conducted during the onsite assessment the first observation was that the ratings assigned to the risks were not substantiated.

48. The authorities in Barbados have not articulated and or demonstrated any policy and or activity that came about as a result of the NRA. However, Barbados has indicated that it will conduct a comprehensive NRA, utilizing the World Bank tool as a guide, to facilitate a more transparent methodology. The country is therefore encouraged to complete the NRA so it can fully identify, assess understand and mitigate ML/TF risks.
49. The CBB and FSC have developed a risk-based methodology which it used to facilitate its understanding of the ML/TF risks to which the domestic and international banks, trusts and finance companies, and merchant banks were exposed. This methodology identified the leading risk factors by non-deposit and deposit taking entities.
50. The FSC has indicated that it completed sector risk assessments across the Credit Union, Insurance and Securities sectors and has risk rated each sector. The methodology here was to derive risk assessments from a review of the inherent sector risk and risk self-assessments conducted by the larger FIs in each sector; aggregated sector specific qualitative and quantitative data; and the output from onsite examinations conducted on the larger FIs in each sector. No sample risk assessments were provided by the FSC and the Assessors were not able to determine the extent to which there was an understanding of the ML/TF risks faced by this sector.
51. Based on the information gleaned, the understanding of the risks as identified in the NRA and the application of the same have not been utilised by policy makers, supervisors, FIs and DNFBPs. Indeed, the FIs and DNFBPs interviewed during the onsite examination did not have sight of the NRA, or any sanitized appropriate levels of information, neither was there any specific identification of how a risk identified within the NRA led to the development of a policy and the relevant deployment of resources and other mitigating factors. This is contrary to the information gleaned at the meeting with the AMLA where it was indicated that a "bottom up approach" was used in completing the NRA. The information elicited over the course of the onsite review supported a "top down approach".
52. The Assessors have already expressed concerns as to the integrity of the methodology used to complete the 2016 NRA. In particular the Assessors were not provided with supporting evidence that pertinent qualitative and quantitative information underpinned the NRA methodology and the risk ratings. In addition, the Assessors determined from discussions with FIs and DNFBPs that private sector involvement was limited.

#### *National policies to address identified ML/TF risks*

53. Whilst the Assessors are of the opinion that the NRA was completed primarily for the purposes of the CFATF assessment, this does not invalidate the work done by Barbados to complete its first NRA. The Assessors recognize that the completion of an NRA is not mandatory but there is a requirement that the jurisdiction should understand the ML/TF risks to which it is exposed and has developed and implemented appropriate risk mitigation strategies. The Assessors do not consider that the 2016 NRA is in a form which can adequately inform the development of a national risk mitigation strategy. The Assessors do recognize that with respect to the financial sector, the CBB and the FSC continue to develop their sector and FI risk assessments and implement risk mitigations strategies. These risk assessments continue to be refined and can be configured to feed into the next NRA. The Assessors are encouraged that Barbados has committed to reforming the NRA using the

World Bank tool and is now in the process of completing data calls with all relevant stakeholders to obtain the necessary data. This will enable Barbados to comprehensively identify national ML/TF threats and vulnerabilities and develop appropriate risk mitigation strategies.

### *Exemptions, enhanced and simplified measures*

54. Barbados has not implemented any exemptions from its AML/CFT measures. However, the jurisdiction has prescribed in sector specific guidelines issued by the CBB and the IBD, the circumstances in which enhanced or reduced due diligence measures may be employed using a risk-based approach. The risk-based approach was not predicated on either the NRA or the CBB's sector specific risk-based methodology.

### *Objectives and activities of competent authorities*

55. The competent authorities sit as members of the AMLA thus ensuring that there is full supervisory coverage at the policy development level. AMLA was created by Barbados to oversee and coordinate the AML/CFT activities and thus sets the national AML/CFT policy for Barbados. Its functions are prescribed in the MLFTA and are AML/CFT specific. Based on the copies of minutes of AMLA meetings provided to the Assessors, the activities of the AMLA are quite consistent with these functions. Each member of AMLA uses their individual forum for interacting with their stakeholders. They consult with those stakeholders and take that feedback to the AMLA thus helping to ensure that AMLA's activities evolve in line with current AML/CFT needs of the jurisdiction. The AMLA has an NRA working group committee which brings to the AMLA their understanding of the AML/CFT risks to their various sectors, but this is a work in progress.

### *National coordination and cooperation*

56. Barbados has established the AMLA which has responsibility for the setting of policy and the general administration of the country's AML/CFT programme. This body is composed of the principal agencies which have some responsibility for AML/CFT issues. All competent authorities sit on the Board of AMLA to include the Chairperson, Attorney at Law for the Faculty of Law of the University of the West Indies; the Deputy Chairperson, a retired banker from the private sector; the Solicitor General or representative; the Commissioner of Police or representative; the Commissioner or Inland Revenue or representative; The Comptroller of Customs, or representative; the Supervisor of insurance or representative (now the FSC); the Registrar of Corporate Affairs and Intellectual Property, or representative; the Head of Banking and Supervision Department (or nominated representative); together with two additional members from the private sector with experience in law and insurance regulation.
57. The AMLA meets on average monthly or at least eight times per year. The minutes of these meetings are presented to the Honorable Attorney General and discussed at the level of the Cabinet. This represents a demonstration of the political commitment of Barbados to the AML/CTF process. The meetings are held at the office of the FIU, which is the office of AMLA. Based on the organisation structure, there is in theory the scope for national coordination as the mechanism and authority are well established to give effect to the said coordination. However, there is no formal terms of reference for the AMLA and no evidence of national AML/CFT policies being produced by this authority.
58. The main determination of the true extent of national cooperation was anticipated to be featured in the NRA as produced by Barbados. However, upon closer analysis it was discerned that many of the risks and the ratings and weight attributed to the same, did not comport with what was obtained on

the ground. It therefore begs the question as to whether the intent of NRA is truly borne out. At the end of the onsite evaluation it was determined that the system of national coordination requires further enhancement to be truly effective.

59. The FSC and the CBB have an MOU in place to facilitate the effective discharge of their respective supervisory remits. There is also evidence that joint supervisory visits between the CBB and the FSC take place as may be required. The CBB has also entered into an MOU with the AMLA to act as designated supervisor for the MVTs sector. The IBD and the AMLA have also entered into MOUs with the FSC to provide supervisory capability with respect to the DNFBPs sector.

#### *Private sector's awareness of risks*

60. The jurisdiction produced an NRA dated 30 June 2016. This NRA contained no evidence of direct contribution from the private sector neither did it contain any information that reflected private sector involvement, to include FIs and DNFBPs. Upon closer analysis of the NRA it became clear that the result of the NRA were produced with limited information from the private sector. Further that the private sector was not privy to the results and contents of the NRA, even at a very high level, neither was there any sector specific assessments conducted even though the CBB has shared its RBA methodology with its supervisees. This leads to the conclusion that the private sector is not *au fait* with the risks that face the county to conduct any mitigation efforts.
61. Whilst the private sector is represented on the AMLA, there is limited evidence that the private sector participated effectively in the NRA working group. In addition, several FIs and DNFBPs who were interviewed by the Assessors advised that they were unaware of the NRA process or the production of the 2016 NRA. However, several of the larger FIs across each sector confirmed responding to recent data calls which were issued by both the CBB and the FSC to assist in the refinement of their sector risk assessments.
62. There is evidence that several of the larger FIs in each financial sector do have a good understanding of the ML/TF risks to which they are exposed and are using information collated as part of the data call process to enhance their ML/TF risk assessment frameworks.

#### *Overall conclusions for Immediate Outcome 1*

63. Barbados submitted a NRA dated June 30, 2016 in which it proposed to identify and assess the ML/TF risks for the country. However, the NRA as presented is general in nature and did not reflect qualitative and quantitative information to support the conclusions. The NRA further did not articulate the risk-based approach that was engendered commensurate with the risks identified. It did not elaborate on the specific obligations and decisions for the jurisdiction to identify and assess their ML/TF risks on an ongoing basis. It did not express the objective at the country level in terms how the information within the NRA would provide input for potential improvements to the AML/CFT regime, including through the formulation or calibration of national AML/CFT policies. Barbados does not have national AML/CFT policies in place. Because of the NRA being limited in scope, the jurisdiction has articulated that it intends to conduct a more in-depth NRA using the World Bank Analytical tool.
64. **Barbados has achieved a low level of effectiveness for IO1**



### CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### Key Findings and Recommended Actions

##### Immediate Outcome 6

- Barbados has a functional FIU that receives SARs from FIs and DNFBPs. The FIU also disseminates financial intelligence to law enforcement authorities including the FCIU of the RBPF as a result of its operational analysis. Whilst the FIU has demonstrated that it has conducted some level of operational analysis, the Unit has not undertaken any strategic analysis which is in keeping with the FATF Methodology.
- To conduct its analysis, the FIU can request information from any FI, DNFBPs, or public authority. However, the FIU's ability to conduct proper operational analysis to support the needs of law enforcement is limited. These limitations appear to include, the FIU's lack of direct access to databases, including the timely access to BO information, and the lack of a proper information technology system as a tool to conduct comprehensive analyses. Based on a lack of timely access to relevant information, the sharing of financial intelligence to develop evidence for use in the investigation and tracing of criminal proceeds related to ML, associated predicate offences and TF is stymied.
- Although, the FIU has demonstrated that it does maintain accurate information in some areas that are specific to its mandate, there appears to be deficiencies in the way information is captured, as information is not always easily retrievable. This factor had an impact on the FIU's and other competent authorities' ability to demonstrate effectiveness in accordance with the methodology for the immediate outcome.
- The FIU's financial intelligence and information is utilized to a negligible extent by LEAs to obtain investigative tools and used in the arrest and charging of persons for ML offences. Additionally, the financial intelligence and information used is not commensurate with the ML risks in the jurisdiction.
- A feedback system was initiated by the FIU however, it is not utilised by law enforcement and competent authorities to provide feedback to show that the reports disseminated by the FIU consistently add value to their work.
- The FCIU demonstrated that it utilises financial intelligence from the FIU to a limited extent to assist in its investigations. However, no information was provided to the Assessors to demonstrate that other competent authorities utilised financial intelligence to undertake their functions.
- The number of SARs submitted by the DNFBP sector is low. The DNFBPs submitted a total of 24 SARs to the FIU for the years 2012 to 2015.



- It appears that the principle of reporting ‘attempted transaction’ or ‘aborted transaction’ is not applied by all the reporting entities. Therefore, pertinent information that may support the operational needs of the FIU and law enforcement is unavailable to the FIU.
- Approximately 56% of SARs submitted to the FIU (a total of 898 for the period 2012 to 2015) are categorised as ‘on-going analysis’. A significant number of SARs (including SARs from 2012) are still awaiting analysis, and the fact that only 1.34 % of the SARs received were analysed and disseminated to the relevant competent authorities, (12 of the 898 SARs received for the reviewed period), suggests that there is a significant limitation in the FIU’s analysis capability or a weaknesses in the quality of the SARs it received for the period under review.
- There is no systematic method through which the Customs transmit reports of cross-border currency declarations and BNIs to the FIU.

#### ***Immediate Outcome 7***

- LEAs which are part of the AML/CFT framework are aware of the high-risk issues as identified in the NRA. However, there is no evidence to show that ML is investigated and offenders prosecuted in line with the perceived risks.
- The FCIU, a department established within the RBPF, was created as a specialized unit responsible for the investigation of ML offences. However, ML is not pursued as the primary offence as the priority of LEAs is towards investigations, charges and prosecution of predicate offences.
- There appears to be a good working relationship between the FCIU and the Drug Squad. The information presented showed that several parallel investigations were initiated between the FCIU and the Drug Squad, albeit that most of these investigations did not result in prosecutions. The persons charged in these matters were considered ‘persons of little value’ to the criminal network. Further, the relationship between the FCIU and the Drug Squad needs to be mirrored to other LEAs and departments within the RBPF especially those departments which investigate predicate offences that have a high-to-medium risk for ML.
- In cases where investigative tools such as production orders are required, there are inordinate delays. These delays negatively impact the work of the FCIU.

#### ***Immediate Outcome 8***

- There is no explicit cash seizure provision within the POCA for cash and BNI derived from or intended for criminal conduct or criminal activity respectively. Presently, cash is seized, in accordance with the provisions under the ECA (attempting to import/attempting to export without the necessary permission of the CBB). Barbados recognized this shortcoming and the Proceeds and Instrumentalities of Crime Bill was drafted to address this shortcoming.
- Barbados has not advanced a policy objective or Standard Operational Procedures (SOP) as it relates to confiscation of the proceeds of crime and instrumentalities, which will guide personnel in matters, for example, where predicate offences are reported to the FCIU, what will be the steps to conduct asset tracing with the intention to confiscate. The policy should be communicated to agencies involved in the confiscation process, including the Office or the DPP.

- Confiscation of the proceeds of crime and instrumentalities is not consistent with the jurisdiction AML/CFT policies and priorities. Further, confiscation is not pursued commensurate with the risk identified.
- Law enforcement and prosecutors are not adequately trained in the area of confiscation and lack the necessary human resources to trace, identify and effectively undertake confiscation proceedings.
- There is at present no asset sharing agreement. However, a draft asset sharing agreement was created with assistance from the United Nations Office on Drugs and Crime (UNODC).

### ***Recommended Actions***

#### ***Immediate Outcome 6***

- The FIU should review the manner/method in which it conducts its analysis and look at the factors that may affect the quality of the intelligence reports it disseminates to determine whether the lack of access to the widest range of information and/or analytical capacity, the lack of direct access to databases and the lack of IT and human resource is affecting the quality of its intelligence product. This should be done to enhance the FIU's operational function and to add value to the intelligence product it disseminates to competent authorities.
- The FIU should conduct a review of its analytical capabilities including a review of SARs outstanding from 2012. Further, to improve its analytical capability the FIU should consider acquiring and utilising the appropriate IT system/analytical tools to support its present human resource capacity. This may also address the number of SARs awaiting analysis and would lead to an increase in the FIU's dissemination of financial intelligence.
- The relevant authority should seek to increase and develop the human resource capacity of the FIU to ensure that the FIU has adequate staff to undertake its core functions. This recommendation is based on the annual increase in SARs submissions and the decrease in the number of SARs analysed and financial intelligence disseminated.
- The FIU should begin conducting strategic analysis as it is a key function of FIUs and an important component of the AML/CFT framework. The purpose of strategic analysis, *inter alia*, should be to provide policy makers and competent authorities with an insight of trends and patterns relating to ML and TF in the jurisdiction.
- The FIU should enhance the process for managing the workflow of financial information from the point of receipt, the analysis of information, and the dissemination of the intelligence to competent authorities.
- LEAs and competent authorities should utilize the FIU and the FIU's intelligence product on a greater and consistent basis. This should include when investigations are being conducted for ML, associate predicate offences and TF.
- Law enforcement officers should be granted additional training in the use of financial intelligence, including advance training in this competency.

- The FIU should continuously engage the users of its financial intelligence and undertake an assessment to determine the types of financial intelligence needed by the competent authorities and thereby strengthen its analysis product. This can be achieved through the use of the feedback forms and regular inter-agency meetings between the operational agencies including but not limited to, LEAs such as specialised departments of the RBPF, specifically those that investigate predicate offences that are higher risk to ML, and the Customs and Excise Department.
- The relevant competent authorities, particularly the FIU and the reporting entities, should ensure that SARs related to attempted/aborted transactions are submitted to the FIU.
- The FIU and Customs department should establish a formal process for the transmission of cross-border currency declarations and BNIs to the FIU.
- The FIU should undertake an analysis of SAR submissions to ensure that the volume submitted is commensurate to the risk profile of the sectors, particularly the DNFBPs, and also to determine the reasons for the low reporting.
- The FIU should provide up-to-date and continuous guidance to reporting entities which should include suspicious indicators to support their identification of suspicious transactions.
- The FIU and other competent authorities should ensure that comprehensive and updated data and statistics are maintained. This would alert and inform competent authorities of possible weakness in the AML/CFT system and assist with the jurisdiction achieving greater compliance with the FATF requirements and demonstrating effectiveness in future evaluations.

#### ***Immediate Outcome 7***

- LEAs should ensure that ML cases, including complex cases of self-laundering, third party laundering and parallel financial investigation are prioritized commensurate with the Country's ML risk.
- LEA can utilise FATF guidance on AML/CFT related data and statistics-2015. This guide is available on the CFATF's website. A systematic data collection system can assist in assessing effectiveness.
- LEAs should seek to increase and enhance its human resource capacity to ensure that there is adequate staff to undertake its functions of financial investigations.
- Barbados should ensure that section 42 of the POCA, which makes provisions for police officers to obtain production orders, is strictly followed or ensure that the Office of DPP is staffed with the adequate human resource to alleviate delays when applying to the Court for production orders or other investigative tools.
- Attempts should be made at the level of the judiciary to have ML cases addressed promptly. Where possible, but not limited to, a dedicated court for the attention of ML matters should be established, or an adequate number of judicial officers appointed to facilitate timely attention to ML cases.

- Competent Authorities should ensure that there are institutional frameworks for LEAs to prioritize ML. This should include a mechanism for all investigators of predicate offences (proceed generating crime), to initiate or cause to be initiated ML investigations with a focus on large and complex cases. This mechanism for selection of cases for ML investigations may include criteria such as, financial thresholds of the case, property or assets involved, links to organised crime, the nature and seriousness of the offence, loss of revenue to the government, and availability/sufficiency of evidence.

#### ***Immediate Outcome 8***

- The judiciary should as a matter of priority adjudicate on the backlog of predicate offences in which LEAs are seeking to commence confiscation proceedings.
- Barbados should pursue matters related to the instrumentalities and property of equivalent value for ML in similar manner as general criminal proceeds.
- The Proceed and Instrumentalities of Crime Bill should be enacted and implemented.
- The jurisdiction should expedite its stated intent to create synergies between the LEA, Customs and Immigration, Coast Guard and the BRA to create greater efficiency in the present system.
- Barbados should implement measures for the sharing of assets that are subject to confiscation.
- LEAs and the Office of the DPP along with other competent authorities should put measures in place to ensure that confiscation is consistent with the Country's AML/CFT framework and ensure that confiscation is pursued in accordance with the risks identified in the NRA.
- The Authorities should ensure that agencies which are engaged in confiscation proceedings specifically the Office of the DPP and FCIU are adequately trained and staffed to undertake their functions with regards to confiscation proceedings.

The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

#### ***Use of financial intelligence and other information***

65. The Barbados FIU is an administrative type FIU established as a department within the Office of the Attorney General. The FIU is the authority designated to receive SARs from reporting entities including FIs and DNFBPs in accordance with the MLFTA. The primary functions of the FIU are: the receipt and analysis of financial intelligence and information; and the dissemination of intelligence products to law enforcement and public authorities. The FIU is described as the office of the AMLA and besides its core functions, the FIU also has a responsibility to keep the AMLA informed of trends, statistics and all matters related to AML/CFT. This responsibility is critical as all competent authorities including LEAs and Regulators are represented on the board of AMLA, which is the primary entity responsible for ensuring that the stability of the AML/CFT system is maintained.
66. The main source of financial information for the FIU is the SARs it receives, which are stored in the FIU's database. The FIU also utilizes open and close sources of information on the internet to which

it has direct access, such as World-Check<sup>8</sup> to access additional information it needs to conduct analysis. All other information required for analysis is accessed indirectly, through written request. The FIU can request information from all FIs, DNFBPs and public authorities including the tax authority, as needed to perform its functions. However, the FIU does not capture as a statistic, requests for information made to domestic authorities. Thus, there is no evidence to support or corroborate the stated action of the FIU of making requests to domestic authorities and therefore accessing a wide variety of other relevant information to support its functions. Statistics play an important role in demonstrating the strength, weakness and level of effectiveness of the AML/CFT system. Therefore, an appropriate method of capturing statistics is necessary, which should include data on domestic requests for information, *inter alia*.

67. Information held in databases such as criminal records from the RBPF and information on BOs can only be accessed following a written request from the director of the FIU. The Assessors are of the belief that due to the lack of direct access to these critical databases, the timeliness and adequate content of the FIU's disclosures, can be negatively affected.
68. Further, the Assessors are of the opinion that the intelligence products disseminated to LEAs by the FIU require more detail and in-depth analysis for them to adequately support LEAs operational needs. This opinion is based on two samples of the FIU's disclosures to the LEAs that were reviewed by the Assessors. Whilst these disclosures contained subject data, there was no in-depth analysis and no recommended actions. The Assessors therefore recommend that the FIU review the manner/method in which it conducts its analysis and look at the factors that may affect the quality of the intelligence reports it disseminates to determine whether the lack of access to the widest range of information and/or analytical capacity, the lack of direct access to databases and the lack of IT and human resource is affecting the quality of its intelligence product.
69. The financial intelligence products disseminated by the FIU are primarily developed from the receipt of SARs and information obtained from FIs and DNFBPs. The FIU has the authority to request information from all reporting entities and public authorities. This gives the FIU reasonable scope to access financial information to conduct its functions. From the LEAs perspective, financial information/intelligence can also be obtained by the LEAs from the FIs through the use of investigative tools, e.g. production orders and also through requests to the FIU.
70. With respect to making international requests, statistics showed that for the period 2012 to 2015, eight requests for assistance were made by the FIU through the Egmont Secured Web (ESW)<sup>9</sup>. The Assessors therefore conclude that the FIU's use of the ESW is negligible and demonstrates that the FIU is not requesting information from its regional and international counter-parts including foreign FIUs to conduct its functions particularly analysis of STRs that may have extra-jurisdictional nexus. For the FIU to access the widest possible range of information to conduct its primary function, secured information platforms such as the ESW, should be used fully. Therefore, the FIU is encouraged to maximize the use of the ESW to share financial intelligence and to access relevant information.
71. The FIU shares information and financial intelligence with other competent authorities on its own volition/spontaneously, or upon request. These competent authorities do not have direct access to FIU's information and therefore are required to make individual requests to the FIU for

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<sup>8</sup> A highly structured close source database on intelligence or heightened risk individual and organisation.

<sup>9</sup> A secure communication system to exchange information between FIUs who are members of the Egmont Group.

information/intelligence when required for their functions, including investigations, prosecution, or asset tracing, freezing and confiscation. The information provided to the Assessors showed that the FCIU, a department within the RBPF, is one of the principal requesters of information, although to a limited extent. Units within the RBPF such as the Drug Squad and Fraud Unit, would make an indirect request to the FIU via the FCIU. The information also shows that these departments are also requesting information to a negligible extent to investigate associate predicate offences. There is no information to suggest that other competent authorities such as the Customs and Excise Department, are requesting or utilizing the FIU in obtaining financial information to conduct their respective functions, particularly investigating ML, associate predicate offences and TF along with tracing, identifying, freezing and confiscating the proceeds of crime commensurate with the ML/TF risk identified by the jurisdiction.

72. A review of the requests for information to FIU from competent authorities, excluding the RBPF, showed that for the period under review (2012-2015), seven requests were made to FIU from one LEA and two public authorities. A total of four requests were made to the FIU in 2012 and three in 2013, to which the FIU responded to six of the seven requests. For 2014 and 2015 there were no requests from domestic competent authorities. The foregoing information supports the conclusion that competent authorities are not utilizing the FIU to the fullest extent to obtain financial information/intelligence to conduct their functions. **Table 5** provides a breakdown of the requests and responses made by competent authorities, excluding the RBPF to the FIU.

**Table 5: Requests & Responses Relating to Other Local Competent Authorities**

	2012		2013		2014		2015	
	Requests	Responses	Requests	Responses	Requests	Responses	Requests	Responses
LEA member 1	2	2	1	1	0	0	0	0
Public Authority B	2	2	1	0	0	0	0	0
Public Authority C	0	0	1	1	0	0	0	0
<b>TOTAL</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

73. The FCIU makes a formal request for information relevant to a case/person/entity to the FIU when conducting investigations. The Assessors were informed that in urgent cases, the FCIU makes informal requests to the FIU which are generally responded to within one day. Informal requests for information from the FCIU to the FIU, though stated by the authorities to be frequent, is however not recorded. Therefore, there is no statistical data available to corroborate the information provided by the authorities to the Assessors and to demonstrate effectiveness.
74. The RBPF accesses information held by the FIU, to be used in ML investigations as well as the investigations of other predicate offences. The information provided by the FIU is also used to support affidavits of investigators when applying for production and restraint orders in accordance with the POCA. The types of information shared by the FIU with the RBPF for the period 2012 to 2015, include responses to local requests (LRs), STRs which relate to matters that were voluntarily submitted to the RBPF, overseas responses (OREs) and 'Other' types of information, for example, information received from the public or an anonymous call. A total of 74 disclosures were shared with the RBPF, of which 69 were as a result of RBPF's requests. Matters which were voluntarily submitted to RBPF accounted for three disclosures, one disclosure each were categorised as OREs and 'Other'. Responses to requests is the largest type of information disseminated by the FIU. The sharing of information by the FIU to the RBPF which were recorded is shown at **Table 6**. Based on

the statistical data provided, the Assessors believe this is a low number of requests made by the FCIU which is not commensurate with the Country's risk of ML and associate predicate offences.

**Table 6: Information/Intelligence shared by the FIU with the RBPF**

Year	Type of Information Shared				
	LRs	STRs	ORE	Other	TOTAL
2012	26	0	0	0	26
2013	14	2	0	1	17
2014	19	0	0	0	19
2015	10	1	1	0	12
<b>TOTAL</b>	<b>69</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>74</b>

75. The financial intelligence produced by the FIU's operational analysis does not support the operational needs of law enforcement to conduct financial investigations and to identify and trace criminal assets. This can be deduced from lack of prosecution and confiscation as a result of the intelligence products disseminated and lack of qualitative data to show that financial intelligence was used to advance and add value to the investigation, prosecution and tracing of criminal assets. Further, the FIU did not demonstrate that it conducts strategic analysis. Strategic analysis is an important component to the AML/CFT framework as it provides insight for policy makers, competent authorities and other stakeholders on ML/TF risk, trends and methods. As a result of conducting strategic analysis, the FIU among other things, would be able to support its law enforcement partners and also policy makers, in identifying possible services and sectors in Barbados which are vulnerable to ML/FT and how the proceeds of crime are laundered. Further, with Barbados recently conducting its NRA, there is no indication that strategic analysis from the FIU's perspective formed a basis for the NRA.
76. The FIU is the main source of financial intelligence for LEAs. The FIU relies on SARs as the primary source of financial information which is then analysed and disseminated to LEAs. For the system to be effective, the delivery of reliable, accurate and up-to-date information from the point of the reporting entities to the FIU, and further from the FIU to LEAs, is necessary. This would assist the competent authorities to perform their functions efficiently. Whilst the FIU has demonstrated that it continues to receive SARs from the reporting sector there is no timeframe within the legislation for FIs and DNFBPs to file SARs with the FIU, thus, potentially negatively affecting the timely receipt of information which the FIU needs to support its functions. The primary method of the FIU receiving SARs is by hard copy (paper form) under confidential cover.
77. The Assessors were informed that the FIU also receives information from the Customs and Excise Department in relation to cross-border declaration of currency and bearers negotiable instrument (BNIs). The Assessors were informed that these declaration forms are submitted on a weekly basis, once such declarations are made. This information on cross-border currency declaration and BNIs shared with the FIU is not used as a means for analysis or production of financial intelligence.
78. The mechanism for sharing information concerning cross-border currency declarations and BNI between the FIU and Customs, only recently commenced at the end of 2016. Requests from LEAs are made to the FIU and form part of the collection of information in the FIU's database. SARs and to a lesser degree LEA requests for information are the main source of the FIU's information for the conduct of its analysis. Barbados does not maintain cash transaction reports.

79. The principle of reporting ‘attempted transaction’ or ‘aborted transaction’ is not applied by all the reporting entities. A review of attempted or aborted transactions reported to the FIU for the period 2012 to 2015 showed a total of 143 submissions, of which 130 were submitted by the commercial banks whose attempted transactions reporting to the FIU have been increasing annually. This amount (130 attempted/aborted SARs) represents over 90% of the attempted/aborted transaction. The attempted/aborted SARs shows that nine reports were submitted from the finance company sector and one from the insurance sector. Of the seven hundred and 755 entities in the DNFBP sector, two attempted/aborted SARs were reported from one DNFBP sector, i.e., attorney-at-law sector. The characteristics of an effective system includes a wide variety of financial intelligence which is collected and used by competent authorities to investigate ML, associated predicate offences and TF, to which, SARs related to an attempted/aborted transaction, is also a part. The requirement to report SARs that are ‘attempted’ or ‘aborted’ should be reiterated in the training and awareness sessions for all reporting entities. **Table 7** refers to submissions for attempted or aborted transactions for 2012 to 2015.

**Table 7: Attempted or aborted transactions submitted – 2012 to 2015**

SECTOR	YEAR				No. of ‘Attempted/Aborted’ submissions
	2012	2013	2014	2015	
Commercial Banks	21	28	29	52	130
Finance Company	0	1	0	8	9
Insurance	0	0	0	1	1
Credit Union	0	0	0	1	1
Attorney-at-Law	0	1	0	1	2
<b>TOTAL</b>	<b>21</b>	<b>30</b>	<b>29</b>	<b>63</b>	<b>143</b>

80. The Assessors were informed by officials of the FIU that the SARs received from the FIs and DNFBPs are generally of a good quality as far as it relates to content and information provided and the narrative relating to the suspicious or unusual activity. Any challenges or inconsistencies observed in SARs submissions to the FIU are discussed with the Compliance Officer of the reporting entity. Discussions on deficiencies in SARs filing is done informally or, alternatively, through a meeting between the FIU and the FI or DNFBP to assess the entity’s needs prior to a training session which is conducted by the FIU. Furthermore, the FIU addresses matters of SAR quality at annual meetings of Compliance Officers. Notwithstanding what has been articulated by the FIU pertaining to the quality of SARs being of good quality, the fact that only 12 disclosures were disseminated during the review period (2012-2015) from a total of 898 SARs received suggests that the quality of the SARs received may not be of a good quality or there are challenges with the operational analysis of the FIU.
81. For the period 2012 to 2015, 898 SARs were submitted to the FIU. A total of 874 SARs were submitted by six institutions from the FIs sector, namely, commercial banks, credit unions, finance companies, international banks, insurance companies and MVTs providers, representing 97% of the submissions. Submissions from the DNFBPs sectors totaled 24 SARs which represented just 3% of the total submissions. The reporting entities were attorneys-at-law, accountants and dealers in the precious metals sector. The overall reporting of SARs from the DNFBP sectors is low. In particular, in 2013 only one SAR was submitted from a single entity from the DNFBP sector. For the four-year period, attorneys-at-law and accountants submitted just five SARs each. The low submissions of SARs from the DNFBP sector suggests that there is either a lack of emphasis in identifying and reporting suspicious activities and/or transactions, or there is need for the DNFBP sector to be



supported by way of awareness and training sessions in identifying suspicious activity and understanding the ML/TF risks impacting Barbados.. The Assessors recommend that the authorities address this deficiency with urgency.

82. A review of the SARs over the review period suggested that the grounds for suspicion was predominantly where account activity was not in-keeping with the customers' profile or a refusal to complete source of funds, and discrepancies or inconsistencies in customer information. The predicate offence of fraud was noted to be frequent reason in the SAR submissions. The type of frauds suspected were internet/email scams and cheque frauds. Assessors were informed that concealing BO was an area for which reporting entities filed SARs with the FIU.
83. The SARs filed by reporting entities are detailed in **Table 8**.

**Table 8: SARs filed by reporting entities – 2012 to 2015**

Reporting Entity	2012	2013	2014	2015	TOTAL
<b>FINANCIAL SECTOR</b>					
Commercial Banks	167	157	188	164	676
Credit Unions	4	8	4	19	35
Finance Companies	15	6	8	25	54
International Banks	7	11	11	8	37
Insurance Company	1	5	5	8	19
MVTS	0	0	1	52	53
<b>SUBTOTAL</b>	<b>194</b>	<b>187</b>	<b>216</b>	<b>224</b>	<b>874</b>
<b>DESIGNATED NON-FINANCIAL BUSINESS AND PROFESSIONALS (DNFBPs)</b>					
Attorneys-at-Law	2	1	1	1	5
Accountants	3	0	0	2	5
Dealers in precious metals	0	0	14	0	14
<b>SUBTOTAL</b>	<b>5</b>	<b>1</b>	<b>16</b>	<b>55</b>	<b>77</b>
<b>TOTAL</b>	<b>199</b>	<b>188</b>	<b>232</b>	<b>279</b>	<b>898</b>

84. A comparison between the number of SARs submitted, analysed and the resulting number of intelligence reports disseminated, by the FIU to LEAs after analyses, shows that dissemination was very low. The data presented shows that SAR submission to the FIU has increased gradually, with the lowest 188 submitted in the year 2013. The annual SAR submission is shown in **Table 9** and the Intelligence Reports disseminated is shown in **Table 10**

**Table 9: SARs reported from 2012 to 2015**

Year	2012	2013	2014	2015	TOTAL
No. of SARs reported by all Reporting Entities	199	188	232	279	<b>898</b>

**Table 10: Intelligence Reports disseminated from 2012 to 2015**

	2012	2013	2014	2015	TOTAL
*Intelligence reports to RBPF	0	11	0	1	<b>12</b>
<b>TOTAL SAR DISSEMINATION AFTER ANALYSIS</b>	<b>0</b>	<b>11</b>	<b>0</b>	<b>1</b>	<b>12</b>

*\*Intelligence reports includes spontaneous reports after FIU's analysis of SARs.*

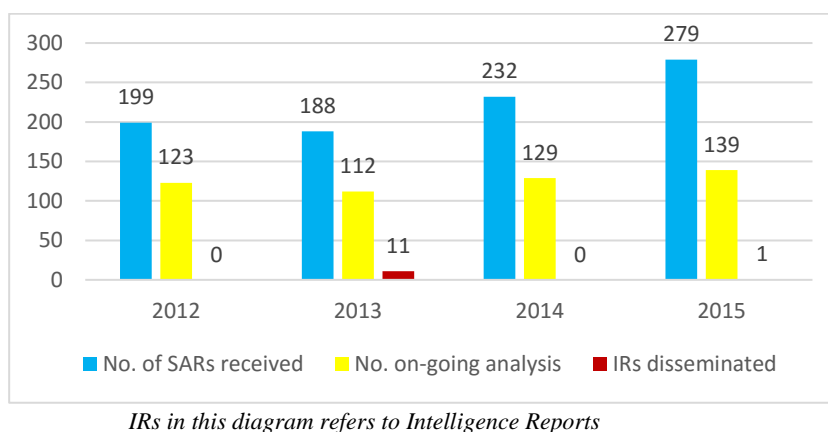
85. Of the 898 SARs submitted, 12 intelligence reports were sent to the RBPF after analysis with 11 of these disclosures occurring in one year namely 2013. These 12 disclosures represent approximately

1.34% of all SARs filed. The analysis of SARs and dissemination of intelligence by the FIU is very low and demonstrates that the FIU is not effectively performing its core functions. Further, the number of disclosures after analysis, when compared to the increase in SAR submissions annually, also suggests that the human resource capacity engaged in analysis at the FIU, (which is two senior Analysts), may be insufficient for the 225 average number of SARs submitted annually. Additionally, the human resource at the FIU would benefit from technological support for conducting comprehensive analyses would be useful for the FIU and will more than likely, boost the FIUs analytical capabilities.

86. The data provided to the Assessors shows that the FIU categorises SARs submissions as ‘analysed’, ‘closed’ and ‘on-going analysis’. The statistics provided by the FIU shows that the majority of the SARs submitted are categorized as on-going analysis. For the years 2012 to 2015, of the (898) SARs the FIU received, 503 SARs are categorised as ongoing analysis. This represents just over half (56.1 %) of the reports it received. 54 of the reports it received during the period were categorised as closed. An analysis of the number of SARs submitted and the number categorised as ‘ongoing analysis’, further demonstrates that the FIU does not have the human capacity and supporting mechanisms such analytical tools to conduct its primary function of analysis and dissemination of intelligence to LEAs and competent authorities taking into consideration that reporting particularly FIs are increasing their filings with the FIU.

87. **Chart 1** gives a comparison of SARs received, the number of SARs in the on-going analysis category and the number of intelligence reports disseminated. The diagram suggests that there was an inability to conduct analysis by the FIU over the years which resulted in a very low output of intelligence reports. The data shows that whilst SAR submissions by reporting entities have increased during the period under review, the number of reports analysed by the FIU are on the decline.<sup>10</sup> This information further suggests that the authorities needs to undertake a comprehensive evaluation of the human resource capacity and the technological support at the FIU in an effort to ensure that it can adequately fulfil its mandate. Also, the ability of reporting entities to assess suspicious transactions/activities, must be improved to ensure that there are more analysis and dissemination of intelligence products. Further, the FIU should propose a strategy to take appropriate action in analysing the SARs identified as ‘on-going analysis’.

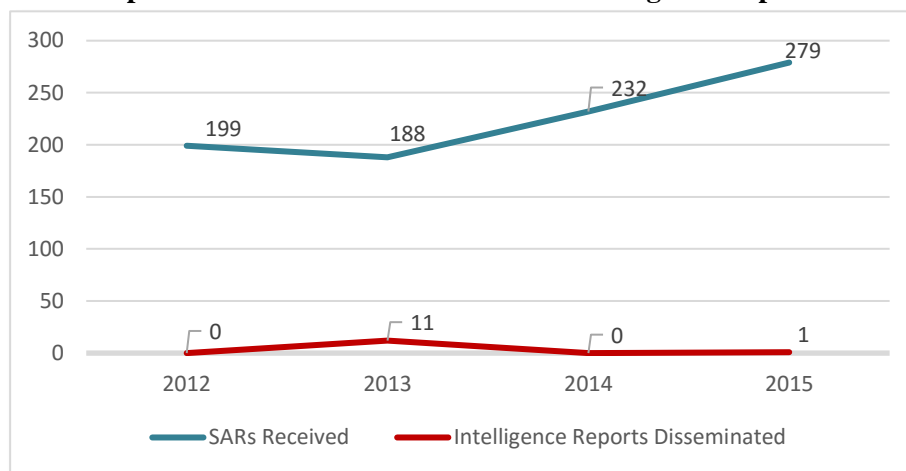
88. Chart 1: SARs received, number of SARs on-going analysis and IRs disseminated



<sup>10</sup> 2012: 61.8%, 2013: 59.8%, 2014: 55.6% and 2015: 49.8 %

89. With respect to the reporting entities, the 12 disclosures after analysis suggests that 98% of the SARs submitted may not have met the threshold for a disclosure to be made to law enforcement. The information provided to the Assessors shows that of the 12 disclosures made, seven were spontaneous disclosures. There were 11 disclosures in 2013 and one in 2015 with no disclosures for 2012 and 2014. The very low turnover of SARs into intelligence reports suggests that the reporting entities require guidance and training in identifying suspicious transaction/activity in order to improve the quality of their submissions as a significant amount of the reports analysed did not meet the threshold for dissemination. **Chart 2** shows a comparative view of SARs received and intelligence reports disseminated for the years 2012 to 2015.

**Chart 2: Comparative View – SARs received and intelligence Reports disseminated**



*Operational needs supported by FIU analysis and dissemination*

90. The RBPF is main recipient of financial intelligence disseminated by the FIU. The FIU described the transmission of intelligence to the RPBF as a ‘system’, that is expected to limit unauthorised persons from accessing the information contained there-in. The FIU is satisfied that the security protocol for the transmission of the intelligence reports is suitable. The authorities should consider implementing a documented standard procedure for the transmission of intelligence products between the agencies, carefully outlining the process, the persons authorised to deliver and receive the intelligence products.
91. The RBPF informed the Assessors that the intelligence reports disseminated by the FIU are detailed. However, a review to determine the extent to which it is supporting the operational needs of the RPBF, showed marginal use in ML cases. This is reflected in the statistics provided at **Table 11**.
92. Whilst it was stated by the FCIU that the financial intelligence reports from the FIU are useful, it is unclear whether the FIU is familiar with the operational needs of the RBPF and in particular FCIU. For the year 2012, there were at least eight instances where, the financial intelligence disseminated by the FIU led to ML charges or assisted in obtaining a production or restraint order. For the period 2013-2015 the financial intelligence reports (and responses to request) disseminated by the FIU assisted in obtaining three production orders. This represents a decrease in the use of financial intelligence products disseminated when compare to 2012. The Assessors were not provided with any information as to what accounted for the decline in the use of FIU’s disclosures from 2012.
93. Having conducted analyses of 395 SARs, for the period 2012 to 2015, 12 intelligence reports were disclosed to LEA, that resulted in one ML case being laid before the Court and ten productions orders along with three restraint orders being obtained. The Assessors were informed that ten of the disclosures by the FIU have nexus to ML whilst two were related to the predicate offence of drug trafficking. **Table 11** shows the number of investigations supported by financial intelligence.

**Table 11: Number of cases supported by financial intelligence from the FIU**

Year	No. of ML Cases	Other		Remarks
		Pro. Order	Restraint Order	
<b>2012</b>	<b>1</b>	4	3	<i>FIU's intelligence led to ML charge and assisted in obtaining the orders</i>
<b>2013</b>	<b>0</b>	3	0	<i>FIU's intelligence assisted in obtaining the orders</i>
<b>2014</b>	<b>0</b>	0	0	
<b>2015</b>	<b>0</b>	3	0	<i>FIU's intelligence assisted in obtaining the orders</i>
<b>Total</b>	<b>1</b>	<b>10</b>	<b>3</b>	

### *Cooperation and exchange of information/financial intelligence*

94. The FCIU provided a sample case to demonstrate how financial intelligence was used to support a joint investigation by the FCIU and the Drug Squad. At the completion of the operation an individual was charged for drug trafficking, which is high risk for ML. The sharing of information between the FIU and law enforcement is governed by an MOU established between the agencies. While the use of financial intelligence must be improved, the case highlighted below shows co-operation and co-ordination among the agencies and the value of financial intelligence.

#### *Example of co-operation and exchange of information/financial intelligence*

The FIU shared intelligence with the FCIU regarding a national of an international jurisdiction, resident in Barbados who was at the time, engaging the attention of the LEA of another international jurisdiction. The FCIU commenced an investigation based on the intelligence shared by FIU. The investigations showed that the subject was involved in drug trafficking. A joint operation between the FCIU and the Narcotics Unit was launched and a search warrant was executed at the residence of the subject. Illegal drugs and money were found during the search of the residence. The subject was charged for drug trafficking and ML.

95. To facilitate information sharing, the FIU signed several MOUs with other competent authorities. These competent authorities include, the CBB, the FSC and the IBD. There is also an MOU with the CAIPO and the Barbados Stock Exchange. In November 2016, an MOU was established between FIU, Customs and Excise Department, Immigration Department and the RBPF to formalize existing working relationships between these entities.
96. There is no MOU between the FIU and the BRA. For the FIU to access tax information it must write to BRA requesting that information. There was no formal request for information made to BRA by the FIU during the period 2012 to 2016. However, requests for information were made to the Inland Revenue Department which predated the BRA
97. The FIU provided nine disclosures to one foreign LEA for the period under review, outside of the use of the ESW. Where the ESW is not used as the medium of transfer of information, the information is shared via official channels.

98. The foreign FIUs which requested information from the FIU indicated that intelligence shared by the FIU was comprehensive and provided leads for further action. However, the consensus by the responding foreign FIUs was that the information shared by the Barbados FIU should be shared with alacrity.

*Overall conclusions on Immediate Outcome 6*

99. Competent authorities including LEAs are not utilising financial intelligence to the fullest extent and in some cases, financial intelligence is not used at all, to pursue ML/TF investigations and to identify, trace and confiscate the proceeds of crime. The Assessors found that the FCIU has utilized the FIU to obtain financial intelligence to a very limited extent and has made requests on behalf of other departments within the RBPF, to the FIU, but this is only to a negligible extent and it is not commensurate with the risk to the jurisdiction. There is no information to suggest that agencies such as the Customs and Excise Department, Immigration Department and Barbados Revenue Authority, are using the FIU to obtain information or financial intelligence which can assist in their investigations of predicate offences, ML and TF, tax crimes and to identify and trace assets.
100. Co-operation and exchange of information and financial intelligence among competent authorities is ad hoc and cannot be easily quantified in the absence of data and statistics. Statistics in some instances are not easily retrievable and further, statistics such as domestic requests for information is not recorded. Whilst there are several MOUs between competent authorities including operational units, at the time of the onsite there was no established procedure for domestic sharing of information/intelligence between the FIU and Customs and Excise Department for the receipt of currency declaration information by the FIU.
101. The overall reporting of SARs from the DNFBP sectors is low and suggests that institutions are not aware of their obligations or maybe in need of guidance. Furthermore, the principle of reporting 'attempted transaction' or 'aborted transaction' is not applied by all the reporting entities and suggests that the SAR reporting obligations is not well understood by all the reporting entities. The low reporting of SARs by the DNFBP sectors and none reporting of attempted/aborted transactions by some entities may affect the FIUs ability to access useful financial information in order to conduct analysis and further, to provide LEA with valuable intelligence.
102. The intelligence reports disseminated to LEAs by the FIU after analysis is very low in comparison to the number of SARs received. The Assessment Team concludes that the FIU is not adequately fulfilling its primary function which is to analyse and disseminate financial intelligence and information. This maybe due to inadequate human resources that are responsible for analysis, (2 Senior Analysts), lack of supporting mechanisms such as analytical software that would compliment its human resource and the quality of the reports it received from the reporting entities is lacking sufficient details. In light of the average number of SARs submitted annually, there maybe a need for the FIU and the relevant competent authority to review the factors that maybe hampering its core functions.
103. Finally, based on the information gathered during the assessment, the Assessors conclude that the FIU's analysis does not seemingly support the operational needs of law enforcement to conduct financial investigations into ML, associate predicate offences and TF along with the ability to identify and trace criminal assets. Further, the FIU does not conduct strategic analysis that would among other things identify possible threats and vulnerabilities of ML/TF to the jurisdiction.
104. **The rating for immediate outcome 6 is low level of effectiveness.**

## *Immediate Outcome 7 (ML investigation and prosecution)*

### *ML identification and investigation*

105. The FCIU is the unit within the RBPF tasked with the responsibility of investigating all financial crimes including ML. The FCIU can conduct proactive investigations into ML or on referrals from other police departments of the RBPF or other competent authorities, including the FIU. Furthermore, the FCIU can investigate cases that are referred through the Mutual Legal Assistance Treaty (MLAT) process from international competent authorities. Section 7 of the MLFTA gives power to law enforcement to investigate cases regardless of the jurisdiction in which the offence occurred, as any act done by a person outside of Barbados which would be an offence if conducted in Barbados, constitutes and offence.
106. Other police units within the RBPF investigating predicate offences would engage the FCIU with cases that have a nexus to ML. These units include, the Drug Squad, Fraud Department and Major Crime Unit. There is a good level of co-operation between the FCIU and the police units to facilitate parallel financial investigations into ML. Predicate offences that are suspected to have a nexus to ML are generally discussed and examined for evidence of ML and to identify and trace assets that may be the subject of confiscation. Procedures were disclosed for the selection of ML investigations, however, they were not documented.
107. In October 2013, the FIU conducted a training session for the RBPF on “The Role of the Financial Intelligence Unit”. The FIU supports the FCIU with AML/CFT training which is geared toward assisting investigators in their understanding of the FIU’s role in AML/CFT. The FCIU provided data to the Assessors, which showed that personnel within the department were exposed to training in some core skills of financial investigations during the years 2012 to 2016, which included Sources of information/intelligence, Interviewing Techniques, Theory and Practical exercises, Evidence for Money Laundering Prosecutions and Introduction to drafting of applications for Production Orders and other investigative tools. Also, it was disclosed that on two occasions officers from the FCIU were seconded to the St. Vincent and the Grenadines FIU for two months where they were exposed to the practical elements of financial investigations. The Assessors applaud the effort of the Authorities on the practical exposure to the St. Vincent and the Grenadines FIU as this would have been beneficial to the Unit. The Assessors were informed that officers of the Fraud Unit and Drug Squad of the RBPF attended training at the Caribbean Regional Drug Law Enforcement Training Centre (REDTRAC), where they received training in the techniques of financial investigations. Notwithstanding, officers with the responsibility to investigate ML, predicate offences and tracing assets, outside of the FCIU and Fraud Unit, must be granted in-depth training and practical exposure to adequately carry out their mandate. The level for training of officers with responsibility for investigating ML and tracing criminal proceeds can be increased.
108. The FCIU conducts investigation into ML where the predicate offence is not identified and have also pursued stand-alone ML charges in cases where the predicate offence was identified. Importantly, whilst there were some stand-alone ML charges, it was expressed to the Assessors by the Authorities, that a significant effort is made to investigate and prosecute offenders for predicate offences, as in many cases it may be easier to pursue a successful prosecution for the predicate offence than it would for ML. According to the authorities this may be the preferred method as the goal is to disrupt the criminal activity and prosecuting offender(s) engaged in criminal conduct, which is addressed by prosecuting for a predicate offence.
109. Law enforcement officials investigating the offence of ML have several investigative tools which can be utilized to investigate the offence in accordance with the MLFTA. These tools includes



Production Orders which is one of the main tools utilized by the FCIU. The information provided to the Assessors by the competent authorities (previously referenced in Table 11), shows that a total of 10 production orders were obtained during the period 2012-2015. The information provided showed that four of these orders were obtained in 2012 with three for each year, 2013 and 2015. There was no production order obtained in 2014. The MLFTA outlines the procedure for obtaining the production orders. The FCIU relies on an Attorney from the Office of the Director of Public Prosecution to accompany the investigator to the High Court to obtain the order which is granted by a Judge. The Assessors were informed that sometimes there are delays in the process of the granting of a production order which can impede the investigation or the tracing of the proceeds of crime. This delay is beyond the remit of the Office of the Director of Public Prosecution and the investigators as they are required to await the Court in granting a hearing for the production order. Whilst the Assessors note the effort of the FCIU in utilizing this investigative tool in conducting investigations, this is only done to a negligible extent. Furthermore, outside of the FCIU, there is no indication that other departments within the RBPF or other LEAs, are utilizing the investigative mechanisms under the MLFTA.

110. The Assessors deduced that the reasons for the delay in the determination of ML cases before the Court are: (i) a backlog in the judicial system; (ii) insufficient amount of judicial officers in the judicial system; (iii) Counsel assigned to the Office of the DPP are tasked with regular Court assignments and other office duties in addition to prosecuting ML matters; (iv) ML cases are not given priority at the Courts and must await its trial date, as would any other matter.
111. Barbados has no direct cash seizure or civil recovery provisions. Therefore, investigators are dependent on the ML mechanism to disrupt or dismantle organized crime networks and remove illicit proceeds of crime. RBPF representatives indicated that the police have recently contributed to cash seizure legislation the Proceeds of Crime Instrumentalities bill. The FCIU informed the Assessors, that they have pursued stand-alone ML cases from 2012. The information provided to the Assessors shows that from 2012 to 2015, 18 standalone ML charges were laid against 12 persons. During the said period, one charge was withdrawn against one individual, thereby leaving a total of 11 cases. The information shows that there were no convictions for stand-alone ML investigation for the period under review, as all 11 cases are pending before the Court. **Table 12** represents the number of standalone ML cases being pursued by FCIU.

**Table 12: Standalone ML charges – 2012 to 2015**

Year laid	Number of ML charges	No. of persons charged	Status of matters
2012	2	2	All pending
2013	7	3	All pending
2014	7	5	All pending
2015	2	2	1 pending 1 withdrawn
<b>TOTAL</b>	<b>18</b>	<b>12</b>	

112. In some cases, even though there may have been a nexus to a predicate offence, the FCIU laid standalone ML charges. Two examples of standalone ML by the FCIU are detailed below.

**Case example 1:**

Members of the FCIU were conducting investigations into the financial affairs of the subject #1. Investigations revealed that Subject #1 was the owner of two domestic businesses. Subject #1 created false invoices which indicated that the business was generating finance from work done on behalf of many customers. Those “customers” on whose behalf work was perceived to have been completed, were interviewed; they denied that the subject had conducted work of any kind on their behalf. Investigations revealed that the business was a sham and was being used to launder the proceeds of drug trafficking. Statements were recorded from local authorities; statement showed that the subject was a ‘non-filer’, and the necessary taxes were not paid.

Financial activity showed the placement of funds occurred under the guise that they were from his business activities. Subject #1, the launderer, was also involved in another scheme, with the assistance of another person. In this scheme, the person was used to provide “dummy” financial information to support applications for loans from FIs. The loans were used primarily to purchase high end vehicles and were serviced with proceeds from drug trafficking. The launderer was arrested and charged for ML. This case is currently pending before the court.

NB: Having obtained the oroduction order, it is certain that further charges will be made against this subject.

**Case example 2:**

This Subject A is the owner of two domestic businesses that are registered in Barbados. A warrant was executed at the residence of Subject #1 mentioned in Case example 1, and several documents were brought away which showed a connection with between Subject #1 and Subject A. Investigations and analysis of the documents showed that Subject A assisted with falsifying certain statements for Subject #1’s business. He also provided Subject #1 with information indicating that he, Subject #1, was one of his senior employees, to support him obtaining vehicular loans. Subject A cooperated with authorities and admitted his participation. Investigations were conducted and statements were recorded to show the assistance Subject A provided. The launderer Subject A was arrested and charged. These matters are pending before the court.

NB: Having obtained the Production Order, it is certain that further charges will be made against this subject.

113. Where a ML investigation is ongoing and the authorities deduce that there is insufficient evidence to substantiate a charge for ML, alternative criminal justice measures is pursued. One such measure involves, where persons are found in possession of currency which they failed to declare; or where persons departing Barbados are found to have currency more than BDS\$500.00 or the equivalent of BDS\$1,000.00 in a foreign currency without the permission of the Exchange Control Authority, the currency can be seized in accordance with the provisions of Section 5, Part II of the Forth Schedule of the Exchange Control Act Cap 71. The Authorities provided examples of cash seizures where the Exchange Control Act was used. Two such sample cases are highlighted below.

***Case Example:***

A 38 year old national of a regional country was arrested and formally charged in 2015, that he, without the permission of the Exchange Control Authority, attempted to export from Barbados to an international jurisdiction, notes amounting to US\$ 10,970.00 whilst at the GAIA.

The accused was scheduled to depart Barbados to the named international jurisdiction the same day in 2015. The same date 2015, the accused was at the GAIA preparing for departure to the international jurisdiction when he was stopped by Customs officials and a search executed on his person. During the search, US\$ 4,000.00 was found and seized as a result of him not having the necessary CBB authorization to export currency. The accused was handed over to the police who conducted a further search of his person and also his luggage. During the search of his luggage, USD 6,970.00 was found concealed in a folder. The money was seized and the accused was interviewed and could not give a satisfactory account or how the money was accumulated.

A ML investigation was conducted; however, challenges were encountered in trying to obtain evidence from the regional jurisdiction which would either prove or disprove a charge of ML. Accused pleaded guilty and all the monies (US\$10,970 was forfeited. The accused was also fined \$1,000.00 Barbados dollars.

\*\*\*\*\*

***Case Example:***

A 28 year old national of Barbados was arrested and charged, that he, on the date in question, was in possession of foreign currency of foreign currency to wit: US\$ 19,267.00 whilst at the GAIA without the necessary permission from the CBB.

In 2015, the subject departed Barbados and travelled to an international jurisdiction. At the time, he was in possession of the mentioned money. The accused was refused entry into the USA and deported to Barbados. On arrival at the GAIA he was interviewed by Police and a search was executed on his person and luggage. The mentioned money was found on his person. This case is still pending before the court.

**Total monies seized: USD 19,267.00**

**Outcome of case: Matter before the Court**

*Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

114. The NRA identified drug related crimes as high risk. The Barbados authorities recognises that drug offences are the main source of criminal proceeds and further, can have significant consequences to the Country's financial system if not addressed. Drug proceeds are mainly generated from cannabis and cocaine and relates to the offences of possession of a drug, offering to supply, and trafficking. As a result of drug crimes being considered high risk for the Country and the assessment of its consequences to the financial system if not properly addressed, a strategic policy decision was taken by the authorities to monitor the movement of illicit drugs through the airport so as to identify its origin and disrupt the criminal networks. Based on the foregoing, a UN sponsored Airport Communication Programme (AIRCOP) was adopted to address the issues identified in the preceding paragraph. AIRCOP is a multi-agency, anti-trafficking initiative which strengthens detection, interdiction and investigative capacities of participating airports including the GAIA. AIRCOP primarily focuses on monitoring the drug movement through the airport, however, this project is in an early stage of implementation. AIRCOP is joint initiative with the RBPF, Customs and Excise Department, Immigration and the Joint Regional Communication Centre (JRCC).
115. The competent authorities recognised that human trafficking is a concern for the jurisdiction hence, the Sex Crimes and Trafficking Unit (SCTU) was established. This unit comprises of officers from the RBPF. From 2015, there were two cases related to human trafficking which engaged the SCTU and the FCIU. The prosecution of the cases started in February 2015 and ended in 2016. The alleged victims were from a Caribbean jurisdiction and opted to not pursue the matters. Hence, the cases were discontinued by the authorities as a result of the lack of evidence.
116. An area of note, is the number of persons charged under the Sexual Offences Act for sex crimes committed against minors. However, no ML charges were laid against the persons.

**Table 13: Number of persons charged for sexual offences against minors**

Year	Number of persons charged
2012	22
2013	24
2014	31
2015	27
2016 up to Nov, 2016	22
<b>Total</b>	<b>126</b>

*Types of ML cases pursued*

117. A medium risk was assigned to the predicate offences of theft, burglary, robbery and fraud. There is no standardized method of capturing statistics across the different law enforcement units, neither is there a methodology to capture statistics across the AML/CFT regime. The data provided in **Table 13** shows that FCIU preferred 32 ML charges against nine individuals charged for various predicate offences in 12 separate cases. These predicate offences include offences such as theft of money, robbery, criminal deception and 'going equip'. The data provided further shows that three of these 12 ML cases were disposed by the Court with conviction of the offenders for ML offences. The sanctions imposed by the Court ranged from seven years to three years imprisonment with forfeiture

of the criminal proceeds in some of the cases. **Table 14** outlines predicate offences which resulted in ML charges.

**Table 14: Predicate offences resulting in ML charges by the FCIU**

Year laid	Predicate offence	Number of ML charges	No. of persons charged	Status of matters	
				Year sentenced	Outcome
2012	Theft of money	3	1	2016	<ul style="list-style-type: none"> <li>• <b>Sentenced to 5 yrs. for ML,</b></li> <li>• 3 yrs. for theft</li> <li>• Other theft cases still pending</li> </ul>
	Possession of Cannabis	1	1	-	-
	Possession of drugs with intent, Trafficking	1	1	-	-
2013	Theft of money	9	1	2016	<ul style="list-style-type: none"> <li>• <b>Sentenced to 7 yrs. for ML,</b></li> <li>• 2 counts Theft</li> <li>• Others matters pending</li> </ul>
	Going Equip (Matter relates to skimming ATM)	2	2	2014	<p><b>Accused #1:</b></p> <ul style="list-style-type: none"> <li>• <b>Sentenced to 3 years for ML and Going Equipped.</b></li> <li>• Money found in possession forfeited – ***(\$190,378.00 BDS\$, 10,000 Yen, 65,400 euros, \$1.00 Malaysian, 100 Rands, 10 Rues and \$1,500.00 E.C).</li> <li>• Fined \$200,000.00 BDS\$ or 2 yrs. imprisonment</li> </ul> <p><b>Accused #2:</b></p> <ul style="list-style-type: none"> <li>• <b>Sentenced to 3 years for ML and Going Equipped.</b></li> <li>• Money found in possession forfeited – (\$151,158.00 BDS).</li> <li>• Fined \$150,000.00 BDS or 2 yrs. imprisonment.</li> </ul> <p><b>Money was paid in both cases.</b></p>
	Possession of cannabis Possession with intent to supply / Trafficking	1	1	Pending trial	
2014	Theft of Money	8	1	Pending trial	
	Robbery	1			

	Serious Bodily Harm	1		
2015	Criminal Deception	2	1	Pending trial
	Theft of Money	2		
	Possession of cocaine	1		
	Possession with intent Trafficking			
<b>TOTAL</b>		<b>32</b>	<b>9</b>	

\*\*\* BDS\$ = Barbados dollars, Rand = South African currency, Rues = Russian currency, E.C = Eastern Caribbean currency, NA = Not applicable

118. From 2012 to 2015 the FCIU engaged in parallel investigations with other police units. Drug trafficking is identified as having the highest risk and as such, the FCIU pursued parallel ML investigations in collaboration with the Drug Squad's matters. The FCIU has conducted 147 parallel drug related matters with the Drug Squad during the period 2012 to 2015, with the number of investigations fluctuating annually. However, when compared with the data provided in **Table 14**, there were only four ML cases involving charges against four individuals for drug offences. These cases have not been adjudicated upon and are still pending before the Court. Based on the data presented and considering that drug trafficking is considered to be high risk, the Assessors have concluded that ML is not being investigated in context with the risk identified. **Table 15** gives a breakdown of parallel investigations conducted by the FCIU during the review period.

**Table 15: Parallel investigations between the FCIU and Drug Squad**

Year	No. of parallel investigations
2012	35
2013	34
2014	30
2015	48
<b>Total</b>	<b>147</b>

119. When pursuing investigations, the FCIU accesses tax information from BRA through written requests. An MOU is in progress of being negotiated between the FCIU and the BRA. The timeframe for it being signed is not known.
120. The ML methods which were observed to be used in Barbados were featured in 'case example 1', para 114 - **False Invoicing** – use of false invoices to justify the funds deposited in bank accounts of domestic business, and 'case example' at para 115 - **Currency Smuggling** - the physical illegal movement of currency and monetary instruments across the border.
121. The FCIU must be recognized for its effort in conducting ML investigations, in particular, stand-alone ML cases. Notwithstanding this, the Assessors were not provided with any information to show the mechanism utilized by the FCIU and other LEAs to initiate and prioritize ML cases commensurate with the Country's risk. Further, the Assessors were not provided with any information to suggest that ML investigations involving complex schemes has been undertaken by the Police as there has been no prosecution on matters of this nature; neither is there any prosecution relative to third party laundering; or prosecution where the predicate offence was committed in another jurisdiction or the predicate offence has a nexus to a foreign jurisdiction taking into consideration that drug trafficking is considered to be high risk and the authorities identified two

Caribbean countries which were moving drugs through the airport and maritime respectively. All the offences for which the subjects were charged for ML occurred within the jurisdiction.

*Effectiveness, proportionality and dissuasiveness of sanctions*

122. In the case of the ‘going equip’ offence shown in Table 13, the Barbados authorities forfeited BDS\$374,255.50) or an equivalent of US\$187,127.75 (US\$1.00 equivalent to BDS\$2.00) which was paid into the Treasury Department. There was no significant number of cases that were pronounced upon by the Court to determine the effectiveness, proportionality and dissuasiveness of sanctions. However, the MLFTA identified the penalties for natural and legal persons, which appears reasonable. The sanctions are outlined in the TC Annex and includes on summary convictions a sentence of five years imprisonment or a fine of BDS\$200,000 and on indictment a fine of BDS\$2,000,000 or 25 years imprisonment. As shown in **Table 13** (Predicate offences resulting in ML charges by FCIU), the offence of ‘theft of money’ resulted in three counts ML and the offender was sentenced to five years for ML and three years for the predicate offence. The sanctions in this case do not appear to be proportionate considering the number of charges. Also, the accused in the ‘going equip’ matters were sentenced to 3 years for two counts ML, with one accused being fined the sum of BDS\$150,000.00 or two years imprisonment. The sentence in this case also is not proportionate considering that the predicate offence carried the same penalty as the ML offence. Furthermore, the information shows that one individual charged for the offence of theft and nine counts of ML was merely sentenced to seven years imprisonment. Whilst the sanctions given to the offenders varies on different occasions, based on the facts presented to the Assessors, the sanctions do not appear to be proportionate or dissuasive.
123. Of the ML and predicate offences which were brought before the Courts, none involved legal persons, and therefore it is not possible to assess the effectiveness, proportionality and dissuasiveness of sanctions as they relate to legal persons. The 12 reports that were sent to the RBPF by the FIU involved natural persons, with the suspected predicate offences being ML and drug related offences. The assessment conducted revealed that there are many types of legal persons and legal arrangement that could be created in Barbados.

*Overall conclusion on Immediate Outcome 7*

124. The FCIU is the sole law enforcement agency which appears to have knowledge and experience for investigating ML. Efforts should be made by the relevant authorities for the officers of the FCIU to have continuous training in the rudiments of ML investigations and for other departments of the RBPF and other law enforcement agencies to be exposed to training to develop their investigative ability for ML and related predicate offences.
125. The FCIU in some instances have utilised investigative tools under the POCA to conduct ML investigations, some of which were successful before the Courts. The FCIU in collaboration with the Drug Squad, have undertaken 147 parallel investigations which shows some measure of collaboration between the agencies. However, the number of prosecutions and convictions from parallel drug offences and ML investigations is minimal and non-existent respectively, taking into consideration that drug trafficking is considered to be a high-risk crime.
126. The information presented to the Assessors does not show that potential ML cases are identified and prosecuted in accordance with the Country’s risk. There were no stand-alone ML convictions within the jurisdiction as LEAs are seemingly more focused on conducting prosecution for the predicate offences whilst ML cases are not prioritised by the Court. Furthermore, whilst the effort of the FCIU and the Drug Squad is recognized for conducting parallel investigations, there is no indication that

other departments within the RBPF are utilizing the FCIU to the fullest extent to conduct parallel investigations.

127. The level of training of officers with responsibility for investigating ML and tracing criminal proceeds is inadequate. Officers must be exposed to theoretical and practical aspects of ML/TF investigations.
128. **The rating for immediate outcome 7 is a low level of effectiveness.**

#### *Immediate Outcome 8 (Confiscation)*

129. The authorities have indicated that the policy objective is removing the profit from crime and as such there has been a focus on seizing and confiscating/forfeiting the proceeds of crime. The main instruments used to achieve this goal are: cash seizures, civil recoveries, and post-conviction forfeitures. The FCIU pursues the recovery of proceeds of criminal conduct through close collaboration with other LEAs, external agencies such as the RSS, international partners, UK and prosecutors. Whilst the authorities communicated this policy objective to the Assessors, no written policy such as an SOP was presented to the Assessors to demonstrate that such policy exists and LEAs and prosecutors along with other competent authorities are aware of this policy.

#### *Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

130. Confiscation of criminal proceeds is conviction based and pursued to a limited extent. Matters related to the instrumentalities and property of equivalent value are not pursued in a similar manner in respect of ML. It was disclosed that for the review period no confiscation orders were granted because none of the pending cases that are applicable for confiscation were concluded by the Court. There are cases involving predicate offences currently before the court that are appropriate for confiscation including one where the DPP has made an application for a confiscation order (BDS\$859,899.92) or an equivalent of US\$429,949.96. The Authorities did not indicate the likelihood of success for these cases. It was further admitted that the delays in the judicial system and the general backlog of cases were negatively affecting the conclusion of cases where confiscation were likely. The relevant judicial authorities recognised this deficiency and indicated that additional Crown Counsel are being sought to bolster and support the Office of the Director of Public Prosecutions.
131. In all instances when pursuing crime whereby cash is located, all law enforcement agencies revert to the FCIU. There are many tangible instances of special task forces and joint operations between various agencies with their objective being the confiscation of criminal proceeds. In cases where cash is seized, the cash is kept in Police custody in safe-keeping while the matter is before the Court. After the Court deliberates, if the matter is adjudicated in favour of the Crown and a forfeiture or confiscation order is issued by the Court, the cash is placed in the Consolidated Fund. The Assessment Team was informed that discussion has started on the establishment of an “interest bearing account” for funds that are subject to law enforcement seizures.
132. Presently the FCIU, although having the principal Act of the POCA, revert to the provision of the ECA, when pursuing proceeds under the POCA. In instances of border control matters the FCIU reverts to the provisions of the ECA to prosecute matters, while in all other instances of cash seizures the POCA is used to proffer charges. The Assessors were informed that the reason for proceeding under the ECA is that the likelihood of early prosecution is realised with matters under the ECA as opposed to the POCA. The Authorities indicated that there was at least one instance involving a case



of human trafficking where cash in the amount of BDS\$47,120.00 was seized. However, the cash was returned to the person from whom it was seized following the legal opinion of the Solicitor General that the cash was improperly seized and did not meet the threshold within POCA. The RSS which has an office in Barbados is offering tangible support to the RBPF in the form of providing valuable technical assistance and training, as well as a legislative drafting support to the extent that a Proceed and Instrumentalities of Crime Bill was drafted. However, the Assessors were advised that the Bill had a delay of 18 months and is now with the Honorable Attorney General. The enactment of this Bill will bode well for the future matters.

*Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

133. Cash seizures on sea are subject to the provision of the ECA. The charge proffered by LEAs usually surrounds attempting to import or export without the necessary permission of the CBB. Having seized the cash, the FCIU conducts trace analysis and the money is kept in possession informally for the originating country. Thereafter the MLAT procedure follows.
134. There is a good working relationship between Barbados and its regional counterparts. This is predicated on the drug trade as Barbados is a transshipment point for cocaine. In most instances, monies seized on sea represent the money that goes ahead of the product (drug). The Authorities noted that recent trends suggest that cash seizure activity has decreased and attribute this decrease to a strengthened cash seizure legislation in one of its neighbouring jurisdiction namely, St. Vincent and the Grenadines. According to the Authorities, with the sea route becoming less feasible for money launderers to move their illicit cash, there is now the move towards the use of money remittance services and even the Postal Service that provides the service of selling and mailing money orders to transmit money. It was further stated that third parties are being used to conduct cash transactions, with many persons being unwittingly made cash couriers in many instances. The authorities have sought to mitigate this trend by the FCIU working with the FIU and FIs to keep the public informed.
135. Restraint orders are used as a tool to initiate confiscation proceedings and are done in collaboration with law enforcement and the Office of DPP. The process involves an application that is supported by affidavit and forwarded to the office of the DPP. The Office of the DPP verifies that the affidavit sufficiently supports the application for the restraint order, which is then laid before a Judge. In the year 2012 three (3) restraint orders was obtained by the FCIU in collaboration with the support of intelligence from the FIU.
136. For the reviewed period (2012-2015), BDS\$341,536 were confiscated from persons charged for predicate offences and ML.

*Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

137. The Barbados Customs and Excise Department is an integral part of the confiscation regime. The Customs and Excise Department disclosed that through the threshold declaration form they monitor the movement of cash across the border. However, the Authorities disclosed where there is a declaration above the threshold of BDS\$10,000.00, the procedure involved taking the passenger (outgoing) (incoming) to a dedicated secure location at the Customs office. The money is then counted in the presence of the passenger, a statement is filed and the money is returned irrespective of the amount. Thereafter, the declaration form is duly prepared and submitted to the FIU. However, the infrequency of the submission of the form, which is on a weekly basis, mitigates against the effectiveness of the confiscation regime to seize property before they dissipate or the origin or intended purpose of the money can be traced.

138. The Assessment Team was informed that according to the CUSA, confiscation addresses prohibited goods. Currency is not considered a 'good' and therefore, currency is dealt with under the ECA. It is assessed that with regard to confiscation provisions, sanctions are not proportionate, dissuasive or effective.
139. Barbados has recognised the extent of the inefficiencies of the current system and has indicated that there is the move afoot to create greater synergies between LEA and Customs, Immigration, and the Coast Guard.
140. The BRA was established in April 2014 and has assumed some customs functions along with some law enforcement authority and potentially greater enforcement capabilities.

*Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.*

141. There is no evidence that confiscation is being pursued in line with national AML/CFT policies in Barbados. Whilst the authorities articulated to the Assessors that there is a policy objective regarding confiscation, they have not demonstrated that confiscation is a priority. It is believed that the confiscation of proceeds including assets is not being conducted in line with the high risks issues identified in the NRA including drug trafficking. Officers at both the investigative and prosecutorial levels appear to have not been adequately trained towards operationalising the legislation dealing with confiscation in its present form. The POCA makes provisions for the DPP and the FCIU to identify and trace and initiate the freezing and seizing of property related to confiscation orders or proceeds of crime, and section 38 of the MLFTA provides for the identification, tracing and initiating the freezing of property relating to proceeds of crime. However, the use of the legislation to its fullest extent was not demonstrated by the authorities.
142. Within the RBPF the FCIU is the lead unit that is responsible for financial investigations related to confiscation. There are presently no existing cash seizure legislation. Consequently, while there is the broad statement to take the profit out of crime, the incongruence of the use of the ECA and not the POCA renders the system inconsistent and ineffective as it relates to ML/TF.
143. While there exists a principal act of POCA, the implementation of confiscation proceeds under the ECA, this does not comport with the high-level statement of the authorities seeking to take the profit out of crime. The regime does not advance the high-level statement in that criminals could ostensibly benefit from the loophole of the crime being prosecuted under one act as opposed to the other with different sentencing regimes and different levels of fines.

*Overall Conclusion on Immediate Outcome 8*

144. Competent authorities have indicated that criminals are deprived of the proceeds of crime, the deprivation of instrumentalities however has limited success. In addition, the authorities have not articulated specified measures and approaches to target the said proceeds or instrumentalities, these materialize as a result of general law enforcement processes. The authorities have disclosed an instance of the repatriation of funds but have also disclosed that due to the evolution of the transshipment of drugs moving from being trafficked on the sea to now being posted in mail, and the fact that neighbouring islands had enacted stronger future laws, the regional cooperation has reduced.
145. The authorities indicated that in general parallel financial investigations takes place. It was disclosed that in instances of general criminal investigation, the RBPF is always brought in once cash is found during an investigation. Monies seized by the Customs department in a general criminal

investigation is handed-over to the RBPF. The Human Trafficking Unit also disclosed that where money is found during an investigation it is handed-over to the FCIU. However, it was not disclosed whether confiscation is a paramount consideration at the outset of these criminal investigations. On all occasions when money is handed over to the FCIU in conjunction with the investigation of a predicate offence forfeiture is considered. However, confiscation is dependent on the outcome of the matter. The authorities have indicated that potentially the tainted property concept could give effect to prosecutions for property of equivalent value as opposed to cash, however there is no information to substantiate this assertion. There are provisional measures such as freezing and seizure used to prevent dissipation or flight of assets. The authorities did disclose that the legal instrument to obtain a court order is often delayed at the office of the DPP and this has limited the utility of freezing and seizure measures.

146. It was disclosed that cross-border flows of currency both inbound and outbound are closely monitored, as both actual declaration of 'cash in possession being above the threshold', and 'undeclared cash', are captured by the electronic screening processes at the GAIA. As for the customs declaration form regime for passengers travelling with more than BDS\$10,000 currency, it was stated that the submission of the forms to the FIU was done on a weekly basis. The Assessors were unable to substantiate this information. Further, there were no graduate submissions in instances of high priority cases such as those where tainted currency could be dissipated, thereby reducing the success of a ML investigation in the first instance. Based on the information ascertained, when an inbound traveller at the airport discloses that currency in their possession is above the threshold, the regime only requires a physical verification of the cash and the said cash is not seized but instead returned to the traveller. The Customs official will in-turn forward this information to the FIU. The Assessors were also informed that where there is information which suggests suspicion of a possible criminal offence on the part of the traveller and the cash in their possession, the regime allows for a physical verification of the cash, it will not be seized but also returned to the traveller and the information transmitted to the FIU. There was no indication that analysis is conducted on the declarations transmitted to the FIU. This presents a gap for the misuse of such currency declarations process and a potential misuse of the system for ML. Finally, the declaration system is conviction based, without the pronouncement of guilt, the reversion to instrumentalities and property of equivalent value cannot be successfully pursued.
147. Generally, it was communicated that the measure adopted to preserve and manage the value of seized or confiscated cash was to deposit the same into the Government Consolidated Fund. It was disclosed by Customs in one instance involving a departing passenger who was in possession of more than BDS\$10,000.00 when that cash was seized and immediately deposited into the Consolidated Fund. However, the nature of the Consolidated Fund is that it is used to pay all the expense of the Government, therefore the authorities have not disclosed how the funds are safeguarded separate and apart from other deposits into the Consolidated fund. In the circumstances, a separate measure could be more efficient in treating with seized and confiscated funds.
148. The aforementioned delay at the office of the DPP would have a cascading effect on the speed of the prosecution of such matters. This then lends itself to delays in the judicial proceedings commencing and all together they hinder the treatment of the proceeds and instrumentalities of crime and assets of equivalent value. Further as it relates to the investigation and prosecution, the authorities acknowledged that there is need to enact provisions to assist with confiscation of proceeds, instrumentalities and property of equivalent value. Consequently, the Proceeds and Instrumentalities of Crime Bill was drafted and is being progressed.
149. Once enacted the Proceeds and Instrumentalities of Crime Bill will give competent authorities the power to deal with cash seizures, and it will bring in the full remit of civil recovery of the proceeds

of crime and rectify the current deficiencies. It will also strengthen investigative powers of competent authorities and the ability to restrain assets, widen the powers of obtaining confiscation orders and attend to asset management. Overall, there is presently, some inability to fully address matters of confiscation of proceeds, instrumentalities and property, however, the authorities have shown the commitment to address this challenge when the resources to perform their functions would have been improved. More should be done as it relates to training for officers, both at the investigative and prosecutorial levels with regard to confiscation proceedings. Training should include both classroom and practical elements for all officers. However, specialist officers with responsibility for ML/TF, confiscation and its derivatives, should undergo annual training to ensure they are kept current.

150. **The rating for Immediate Outcome 8 is a low level of effectiveness.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

##### ***Immediate Outcome 9***

- Barbados has not initiated a TF investigation or prosecution, and therefore has had no convictions. There is an unresolved matter related to the filing of a STR in 2012 but there is no information available as to why the matter has been left in abeyance.
- There is no documented counter-terrorism strategy within the jurisdiction.
- The risk rating of TF in the NRA was low. This did not comport with the information disclosed at the onsite.

##### ***Immediate Outcome 10***

- NPOs are not subject to proactive monitoring regarding TF. Further, no targeted approach has been applied to the sector and no risk assessment has been conducted to determine that NPOs pose a low or high risk by terrorist and terrorism financiers .

##### ***Immediate Outcome 11***

No legal mechanism or international instrument to assess whether there is implementation of TFS related to PF without delay

#### ***Recommended Actions***

##### ***Immediate Outcome 9***

- The SBU should establish a mandate and policy guidance as it relates to its operations.
- The country should undertake to risk profile TF and establish a national strategy regarding TF.
- The SBU should conduct a comprehensive review of the NRA to re-evaluate its TF risks.
- Barbados assessment of its TF vulnerabilities should be improved, and this should include its regional TF vulnerabilities and to determine if there are changes in the country's profile for terrorism and/or TF.
- Subsequent to its comprehensive review of its TF risk, Barbados should establish a clear strategy for managing TF matters and develop adequate procedures and guidelines for law enforcement investigation and prosecution of TF offences.
- Officers of the SBU and FCIU should be continuously trained in TF, including advance training.

##### ***Immediate Outcome 10***

- The jurisdiction should gather intelligence on the NPO sector to inform the SBU in respect of its mandate.
- Barbados should implement a targeted approach and conduct outreach and oversight, through the FIU, as to the risks within its non-profit organizations and identify the NPOs which are most vulnerable to TF abuse.

- While the present NPO sector is supervised pursuant to the COMPA, Barbados should consider the inclusion of charities in AML/CFT monitoring regime.
- The authorities should ensure that NPOs understand their risk to TF, increase their awareness of the methods and risk of abuse of the NPO sector in general.

#### ***Immediate Outcome 11***

- Barbados should enable TFS related to PF to be implemented as it relates to the UN Resolution on WMD.
- The jurisdiction must adopt, specified, legislation to give legal effect to WMD as the reliance on the provisions within the ATA is insufficient to satisfy the Recommendation.
- A competent authority should be assigned to each financial and non-financial sector for enhanced supervision and monitoring of PF related to TFS.

The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R.5-8.

#### ***Immediate Outcome 9 (TF investigation and prosecution)***

151. The RBPF has created a specialised unit within the Special Branch to manage matters related to terrorism. At the time of the onsite, it was stated that this new Unit was created in April of 2016 and will be the lead agency responsible for intelligence gathering related to terrorism. The authorities have disclosed that currently, this specialist unit is staffed to meet the demands of the jurisdiction. However, where the need arises, there is a cadre of additional trained personnel available to assist.
152. The main legal provision for the TF is the ATA. The ATA criminalises TF and the FCIU works together with the Special Branch to treat with terrorism and terrorist related activities. The Special Branch is stated to be in receipt of related TF intelligence and they conduct related investigations. The Special Branch has the mandate for gathering intelligence on counter terrorism and are responsible for collecting intelligence on terrorist groups and their activities. They are supported by the RSS which provides another layer of intelligence and protection. A MOU exists between the FIU and the RBPF by which the FIU can share intelligence with the FCIU on TF.
153. There is also cooperation with the international agencies regarding the sharing of information. To date no intelligence of FT was received by the FCIU for investigation, however the Authorities advanced that the investigative framework is in place to deal with FT investigations and to identify the specific role of the terrorist financier.

#### ***Prosecution/conviction of types of TF activity consistent with the country's risk-profile***

154. The Barbados authorities had advised that acts of terrorism and TF have not featured in Barbados. It was indicated that there are no records to suggest that terrorism or TF is an imminent threat and that the jurisdiction reached out to international partners such as Canada, UK and the United States of America for guidance. The guidance requested by the Barbados authorities was for information on potential terrorist threat to the jurisdiction. Within the Scoping Note terrorism was identified as an area of low vulnerability. At the end of the onsite review, the prosecution/conviction of terrorist type activities was consistent with the country's risk profile as articulated, however the country did not undertake to risk profile TF in the first instance.

155. Barbados has had no instance of terrorist activity and so the jurisdiction is unable to demonstrate whether or not it possesses the ability to successfully investigate, prosecute and convict persons for TF offences related to the collection, movement and utilisation of funds. This statement of fact is made on the basis that no such incidents occurred during the review period. However, the authorities indicated that in 2012, on receipt of a SAR, relating to the forwarding, by wire transfer, of a small amount of funds to a country known to be affiliated with terrorist activity, the matter was referred to the Commissioner of Police for investigation. As to the conclusion of the matter and the actions of the RBPF there was no further information.
156. The authorities indicate they have had no international requests related to TF or terrorism for the review period. It was also articulated that the investigative powers used to investigate ML are the same powers and resources to be used in the event of the TF investigation. This arguably presents a limitation to the most efficient use of resources. This lack of specialisation renders the system less efficient as dedicated resources produce optimal results, however based on the information that there has been no instance of terrorist activity then the resource allocation/duplication cannot be tested in practice. Notwithstanding the above, Barbados has had no instance of terrorist activity, therefore it is arguable that the resource capacity is commensurate with the low risk.
157. While the NRA process established that the TF risk is low, there remains moderate gaps in Barbados's overall understanding of this risk/vulnerability to the jurisdiction and therefore, greater attention should be given to the assessment of TF. However, the assessors note that AMLA in conjunction with a number of supervisory authorities have issued guidelines, these guidelines contains explanation and descriptions of what constitutes TF and the red flag indicator for misuse of TF which should prompt a STR related to TF. The guidelines also refer to new technologies. The following are the examples of the guideline issued: (1) AMLA/FIU AML/CFT Guidelines May 2016 for (Attorneys at law and Accountants). (2) The IBD Guidelines issued April 2016 for (CTSPs, IBCs, SRLs, Private and International Trust and Foundations). The CBB Guidelines issued October 2013 for (FIs under the FIA and IFSA). The FSC Guidelines issued November 2013 (FIs regulated by the FSC). The Assessor note that in the MLFTA at section 26(5) it allows AMLA to issue guidelines, however such guidelines shall be published in the official Gazette. As it stands the Assessors have only discerned that the FSC guidelines have been published in the official gazette. It means therefore that there is an potential issue regarding enforceability of the said guidelines.

#### *TF identification and investigation*

158. The authorities have disclosed international and regional agencies which assist in facilitating a regional security system to intercept the drug trade and which can also be used to support TF investigations. As an example, Barbados, as a hub for international travel, is susceptible to ML and TF and the movement of money or persons. There has been an instance where a 'suspected' person utilised the jurisdiction's air space to transit through to other jurisdictions. The action taken by the authorities, was to monitor the movement of that person from Barbados to the other destinations.
159. On the question of whether there was a national TF strategy, the authorities disclose that in keeping with the national AML/CFT policy and the mandate of the FIU, any TF case will be given high priority and financial intelligence can be ascertained in that event from reporting entities within 24 hours. There is a mechanism in place to share information between the FIU and the Reporting Entities. With respect to information held by public authorities, Section 30 of the MLFTA 2011-23 directs public authorities to provide the information to the FIU upon request. A policy document for the purpose of transmitting the information has not been disclosed and no actual example of Section 30 being put into practice has been provided. From the perspective of the FIs and DNFBPs and their identification of suspicious activity related to TF, and the mitigation of such risks to the financial



sector being misused for TF by foreign groups, there is no aggressive position on this matter by the authorities. As noted in para. 203, the IBD has not been able to determine how well CTSPs apply enhance or specific measures for PEPs, new technologies, targeted financial sanctions, related to TF.

160. The Authorities disclosed that they have adopted the regional CARICOM strategy on terrorism as a national terrorism strategy. A White Paper, ‘Future CARICOM Counter Terrorism Strategies’, was developed to give effect to the regional strategy as embodying the national strategy. Accordingly, this paper is premised on “Future” strategies which means they are not yet implemented, therefore the paper does not advance a national strategy for Barbados neither has Barbados articulated how TF is to be addressed in the White Paper. Barbados authorities advanced, that where an investigation on a person suspected of being a terrorist or engaging in terrorism related activities has been initiated, the relevant agencies would be flagged and the person would be monitored on the island and information relayed to associates at the destination. It was stated that the dissemination of this information can be done within minutes to other law enforcement entities locally, regionally and internationally.
161. Barbados articulated that it has invested heavily in a programme to monitor the movement of persons at the airport. The programme is still in its infancy.

*TF investigation integrated with -and supportive of- national strategies*

162. Notwithstanding the assertion of a TF strategy, based on the information gathered, the Assessment Team determined that the level of TF investigation is not as integrated as it should be. However, it was disclosed that a two-week training was conducted in March 2016 with the Special Branch for personnel with responsibility for investigating TF. Additionally, such personnel are exposed on an ongoing basis with Interpol which provides the support in monitoring terrorist activity. Notwithstanding the training and support of the Interpol, it is determined that the training and resources, inclusive of standard operating procedures and the institutional framework required for the operations and management of terrorism and TF related investigations, are not adequate for officers with the responsibility to investigate these matters. It was asserted that training was conducted in the area of TF related matters over the period but has this was not substantiated. The authorities provided information on training received by the FCIU on ML matters and minimal specialised training for the personnel involved in TF intelligence gathering or investigations for personnel of the Special Branch. Consequently, the sufficiency of the exposure on training for TF matters is inadequate.
163. As a means of demonstrating the national and more so regional strategy, it was explained that with a spate of terrorist activities in Europe and the number of tourist visiting Barbados it was considered imperative to take appropriate measures. These measures are also predicated on intelligence that persons from Trinidad and Tobago travel to Syria, using Barbados as a transit point. Measures adopted include a cyber element which was borne out of the recognition that the internet is used as a form of radicalisation for terrorism. Barbados authorities indicated that there is daily communication with Trinidad and Tobago and other regional authorities to share alerts and information.
164. The FIU advanced that there were no SARs disclosing issues of TF or terrorism related information. Notwithstanding this, the FIU indicated that part of its training module to the reporting entities includes TF and indicators for such activity.
165. Taking into consideration the above, the priority given to TF related matters is not fully commensurate with the vulnerability. It is unclear whether the measures by Barbados will be a



success in countering TF as these efforts are still in their infancy. Therefore, the effectiveness of these efforts cannot be tested and determined.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

166. Barbados has not levied any sanction or measures against natural or legal persons as there has been no prosecutions or convictions. The legal provisions in the ATA include sanction that are considered proportionate and dissuasive. However, during the review period no sanctions had been levied and therefore the test of effectiveness cannot be assessed.

#### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

167. The authorities have disclosed the alternative methods to include – freezing of assets; confiscation; and production orders which they potentially can use to disrupt and prevent TF. In practice however, none of these alternative methods have even been applied.

#### *Overall Conclusion on Immediate Outcome 9*

168. Barbados has some characteristics of an effective TF system but there is a need for fundamental improvement in relation to develop its TF framework to mitigate and deal with the threat of TF. The creation of a new unit with the Special Branch as the lead agency of the RBPF to deal with terrorism and TF related matters indicates the new level of priority geared towards TF in the jurisdiction. There is however some inconsistency between the intelligence garnered from the onsite process and the findings of the NRA as it relates to the threat of TF to the jurisdiction. Presently the Special Branch has given priority to provide intelligence on terrorism and TF. This is based on information that Barbados, due to the geographical location of the jurisdiction, has been used as a transit point for potential terrorists. As a result, the authorities are now monitoring the movement of people and money. This is a positive development. In the circumstances, there has been limited information to test the overall terrorism regime or implementation to determine effectiveness as no such incident has occurred in the jurisdiction.
169. In the NRA, the Barbados authorities enunciated that terrorism, TF and all matters related, have not been a feature on the island, in the past or now. The RBPF was pro-active and requested from its foreign counterparts, information for intelligence purposes, on any terrorist threat to Barbados. The responses showed that no threat existed at the time. Based on these predictions, the authorities surmised in the NRA that the risk rating for TF was low. As part of its national strategic plan, the RBPF included greater focus on terrorism. In the context of investigation of terrorism and the formation of a specialist agency to manage TF, there is need to acquire relevant training and support from experienced units and jurisdictions.
170. It was noted that TF was risk rated low. The authorities opined that there is no evidence that terrorist related activities or financing has occurred and the likelihood of such occurrence is low. TF investigations are therefore not a principal focus. From the perspective of the reporting entities, there are no SARs submissions to the FIU related to TF. From the onsite interviews, it was noted that Barbados is sometimes used as a travel route by persons suspected of travelling to jurisdictions which have a high risk for terrorist activities.
171. The Special Branch of the RBPF was designated as the agency with responsibility for intelligence gathering into TF and terrorist activities. In 2016, the authorities committed a new unit within the Special Branch, to focus on TF and related matters. There is however, no written policy for the new unit. The FCIU is responsible for the conduct of parallel financial investigations into TF. Further,

pursuant to Article 4 of the (1996) Treaty establishing the RSS, the Special Branch can co-operate and liaise with the RSS on matters related to TF intelligence initiatives.

172. While TF and related matters are diagnosed as low, the Barbados authorities continue to monitor whether there is any imminent risk to the island. For the purpose of monitoring TF risk and threats to Barbados, the authorities are supported by the United States and Canada through the Regional Intelligence Fusion Centre (RIFC) and the JRCC. Additional support is garnered from Interpol and the Barbados based Regional Trends Analysis Cell (RTAC) operated out of the RSS. In March 2016, Special Branch officers were exposed to anti-terrorism training sponsored by the US-Interpol for personnel in the Eastern Caribbean countries. The Officers with responsibility for investigating terrorism and TF have received some training but have not actually conducted related cases. Extensive training in terrorism and TF matters is necessary.

173. **The rating for Immediate Outcome 9 is a low level of effectiveness.**

***Immediate Outcome 10 (TF preventive measures and financial sanctions)***

174. Barbados has implemented UNSCR 1267 and 1373 to prevent terrorist and terrorist organisations. Implementation of targeted financial sanctions for TF without delay is not expressly addressed in law.
175. Generally, on the question of the level of international cooperation by relevant competent authorities in reducing TF flows and in turn prevent terrorist acts, the authorities indicate they share information with international agencies, however no further information was provided.
176. Regarding how competent authorities communicate UNSCR designations and obligations to FIs, DNFBPs and the general public, the authorities indicated that the Permanent Representative to the UN forwards the information relating to the UNSCRs to the Ministry of Foreign Affairs and Foreign Trade, Ministry of Defense and Security, Immigration Department, Commissioner of Police and the Director of the FIU. This dissemination is done by facsimile from the UN Permanent Representative. The FIU in turn forwards the information to the financial community namely, FIs, DNFBPs and regulators, via email blasts. IBD generally communicates UNSCR designations and obligations to the DNFBPs via email. Consequently, this information is helpful, however it does not include any timelines which would lend itself to an analysis to make a determination of whether or not the dissemination is done without delay. Due to the adoption of the relevant Conventions on sanctions and designation of person, there is a legal requirement to implement TFS for TF without delay. On the question of the timeliness of the communication, the authorities have not indicated any timelines, as required.

***Targeted approach, outreach and oversight of at-risk non-profit organisations***

177. The RBPF's SBU, as an agency for TF, has not provided information about the focus and targeted approach regarding NPOs because any outreach would be conducted by the FIU. It was disclosed that no intelligence has ever been gathered in respect of NPOs being used for TF. The AMLA, and by extension the FIU, therefore have no outreach and oversight for such purposes. The level of oversight related to NPO is specific to ML and not TF as the authorities have disclosed that there is no evidence of TF.
178. Based on the information gleaned, there have not been any focused and proportionate measures applied to the NPOs at all, indeed no assessment was conducted on the NPOs which may be most vulnerable to TF abuse. Hence no risk-based approach has been applied to the sector to identify the

nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. The authorities have asserted that banks have a mechanism for identifying and mitigating the risk posed by NPOs with respect to TF, because such banks are required to know their NPOs risk profile and monitor activities to ensure that they understand and mitigate their risk. As such because the CBB regulates banks and as the CBB has issued AML Guidelines and there is the existence of the requirements of the MLFTA together they constitute the requirement to report suspicion of TF. The approach as articulated by the authorities underscores an indirect approach to the requirements, however the recommendation requires a direct approach. The assertion of the authorities fails to satisfy the requirement to have a direct targeted approach, with outreach conducted and oversight exercised in dealing with the most vulnerable NPOs. The authorities also assert that the CBB AML/CFT Guideline requires licensees to observe the functional definition of NPOs based on activities and characteristics which places NPOs at risk for TF abuse. They also indicated that licensees (banks) are in turn subject to supervision by the CBB to ensure compliance. Based on all the information provided the requirements of the recommendation need to be addressed at a more fundamental level. Indeed, the requirement of the recommendation commences with an understanding of the most vulnerable NPOs that are at risk, this will then progress to a targeted/ risk based approach. In the final analysis, based on the implementation articulated, the authorities in the jurisdiction have not engaged in the first instance to identify the NPOs most at risk for TF abuse.

#### *Deprivation of TF assets and instrumentalities*

179. Barbados has not had any instances of seizing TF assets or instrumentalities. The absence of seizures is commensurate with the country's risk profile regarding TF as being low.

#### *Consistency of measures with overall TF risk profile*

180. Barbados has not demonstrated that it has an effective system to combat TF. The application of the UNSCR 1267/1373 renders the legal framework to be in existence as international instruments to guide and develop measures and policies to address TF risks. Notwithstanding this, the authorities have not disclosed a precise policy. The jurisdiction has not conducted any TF risk assessment, therefore a corresponding risk-based approach to TF supervision has not been adopted and as a result the jurisdiction is not able to demonstrate an effective risk-based implementation. Based on the information gleaned, no TF risk profile has been developed or deployed hence the jurisdiction does not have a good understanding of the TF risks and the level of effectiveness for this immediate outcome is low.

#### *Overall Conclusion on Immediate Outcome 10*

181. The authorities have disclosed that the present NPO sector is supervised pursuant to the Companies Act however there was no information that the NPOs are supervised for CTF compliance. The sector remains vulnerable to potential misuse for TF as a proper assessment has not been carried out to identify and focus on those NPOs that would be most susceptible to misuse for TF.
182. Barbados is limited in having a fully effective system to combat TF, the non-occurrence of a terrorist act does not address the likelihood of TF as one can exist without the other. Therefore, the jurisdiction lacks the experience in implementing the relevant UNSCRs that would facilitate the identification and deprivation of resources to support terrorist activities and organizations. Further, Barbados has not sufficiently identified and assessed TF as a risk which has resulted in action to appropriately and proportionately mitigate the risk.

183. **The rating for Immediate Outcome 10 is a low level of effectiveness.**

*Immediate Outcome 11 (PF financial sanctions)*

184. Barbados has not implemented, within their domestic law, the UNSCR related to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. The authorities have indicated that there is no evidence of weapons of mass destruction and there is no evidence related to the funding activity; this statement is however not supported with verifiable information. The authorities have declared further that the country's infrastructure enables it to address such concerns should such matters materialise. This statement is without support or verifiable information hence the effectiveness of their stated regime cannot be tested.

185. The competent authorities have disclosed that UN resolutions, including UN Resolution 1540, as passed by the UN Security Council under Chapter VII of the UN Charter and already requires all States to adopt and enforce appropriate laws to give effect to the Resolution as well as other effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery to non-State actors, for terrorist purposes. In their view, this means that the Resolutions were passed and immediately applicable to Barbados. More so, there is nothing that Barbados must now do to accept the jurisdiction of these Resolutions. However, it is the understanding that a domestic legal framework whether it be primary or secondary legislation must be enacted to give the UN resolution legal effect in Barbados. At present, the jurisdiction does not have primary or secondary legislation to implement the PF related TFS under resolution 1718(2006) and resolution 2231(2015). It is accepted that proliferation is included in some guidelines used for the financial sector to file SARs by the FIs and local authorities. The AML/CFT Guidelines issued by the CBB, the FSC and the IBD direct their licensees to freeze any funds or assets held by individuals so designated and submit a report corresponding to same to the AMLA. There has however been no information to test the implementation of the application of this guideline.

*Implementation of targeted financial sanctions related to proliferation financing without delay*

186. As a direct result of the jurisdiction not implementing the Convention, UNSCR on proliferation of weapons of mass destruction (WMD), there is no legal mechanism to assess whether there is implementation of TFS related to proliferation financing without delay. The authorities referred to the judgment Attorney General v. Joseph, [2006] CCJ 1 (AJ) where the Rt. Honourable Mr. Justice de la Bastide and the Honourable Mr. Justice Saunders, opined "The classic view is that the court will presume that the local Parliament intended to legislate in conformity with such a treaty where there is ambiguity or uncertainty in a subsequent Act of Parliament. In such a case, a municipal court will go only so far as to look at the treaty to try to resolve the ambiguity". Upon reading the dicta, it is the respectful opinion that the Court's opinion is predicated upon the existence of an enactment to thereafter move the Court to adjudicate upon whether ambiguity exists. The Court never opined on the treaty without the existence of a domestic law. At paragraph 55 of the said judgment the Court stated "The classic view is that, even if ratified by the Executive, international treaties form no part of domestic law unless they have been specifically incorporated by the legislature. In order to be binding in municipal law, the terms of a treaty must be enacted by the local Parliament. Ratification of a treaty cannot ipso facto add to or amend the Constitution and laws of a State because that is a function reserved strictly for the domestic Parliament. Treaty-making on the other hand is a power that lies in the hands of the Executive. See: JH Rayner (Mincing Lane) Ltd v Dept. of Trade & Industry[FN31]. Municipal courts, therefore, will not interpret or enforce the terms of an unincorporated treaty. If domestic legislation conflicts with the treaty, the courts will ignore the treaty and apply the local law. See: The Parlement Belge [FN32]". Consequently, the existence of the domestic law is the starting point. In that regard, in the aforementioned decision of Attorney General v. Joseph, there was an Act of Parliament to bring into play considerations of deficiencies

when compared to the treaty, it is on this basis that the Court adjudicated and drew the conclusion that Parliament must have intended to legislate in accordance with the treaty. Accordingly, because of the non-existence of a domestic law regarding the implementation of TFS related to proliferation without delay, the effectiveness cannot be achieved.

187. Therefore, on the question of the implementation of TFS in relation to proliferation no information has been provided.

*Identification of assets and funds held by designated persons/entities and prohibitions*

188. The jurisdiction has not disclosed information in respect of the identification of assets and funds held by designated person or entities including the Democratic Peoples' Republic of Korea (DPRK) and Islamic Republic of Iran and prohibitions in furtherance of the WMD. The authorities have simply stated that there are no WMD in Barbados therefore, the effectiveness of the implementation cannot be tested.

189. The authorities have indicated that neither FIs nor DNFBPs have had occasion to act pursuant to the requirements set out for PF because there have been no instances of such activity. This notwithstanding, all sections of the financial industry have been exposed to training by the FIU in this area and have been made aware of their obligations with respect to TFS in relation to proliferation. When the FIs and DNFBPs are trained/sensitized by the FIU with respect to their obligations related to TFS, they are advised that they should frequently, "run" updates to the UN lists through their client/customer databases. There is no information whether or not the FIs and DNFBPs have applied the training received therefore the utility of the training cannot be ascertained.

*FIs and DNFBPs understanding of and compliance with obligations*

190. It was disclosed that the FIU conducts training for the financial industry on FP. This exposure is often interconnected with the training related to FP. Training exposes participants to the use of the UN Watch List in respect of its client and customer database. There is however no information as to the usefulness of the information as received by the FIs and DNFBPs or whether they have actually used third party software on the UN lists of designations.

*Competent authorities ensuring and monitoring compliance*

191. The authorities have advised that regulators conduct information gathering exercises from entities they supervise and in so doing can identify levels of compliance. Further the FIU by its receipt of STRs would be able to immediately assess relevant and related information. No further quantitative or qualitative data has been supplied to underscore this information.

*Overall Conclusion on Immediate Outcome 11*

Due to the non-implementation of the UNSCRs on proliferation of WMD, there is no legal mechanism or international instrument to assess whether there is implementation of TFS related to PF without delay. Therefore, this IO could not be tested in practice. Therefore, during the period of review Barbados was unable to effectively identify and prevent persons and entities from raising, moving and using funds in the proliferation of weapons of mass destruction.

192. **The rating for Immediate Outcome 11 is a low level of effectiveness**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### *Key Findings*

- FIs and CTSPs under the purview of the CBB meet their AML/CFT reporting obligations on suspected proceeds and funds of crimes in support of terrorism and the reporting requirement of section 23 of the MLFTA. In general, these entities have a good understanding of the ML/TF risks they face and have implemented the necessary preventive measures to mitigate these risks through group compliance programmes and group internal audit and compliance functions.
- Licensees of CBB have adequate measures in place to deal with PEPs, correspondent banking, new technologies, wire transfer rules, higher risk countries and targeted financial sanctions related to TF.
- The monitoring process of PEPs, their family members and associates is not being done consistently by FIs across the sectors under the purview of the FSC.
- In general, the largest FIs across the different sectors under the purview of the FSC have a good understanding of the ML/TF risks they face. In practice however, it has been determined that the implementation of risk-based mitigation of ML/TF risks is done inconsistently with retrospective CDD being one of the main areas that needs to be addressed.
- The FSC has allocated significant resources to the supervision of the largest FIs across the sectors under its ambit and indicated that all FIs under its supervision have a relationship manager. The Assessors are concerned that this strategy may compromise the holistic supervision of each sector. In addition, the FSC is currently providing supervisory capability to both the FIU and the IBD and this could further compromise the FSC's core supervisory capability.
- The largest FIs across the different sectors under the purview of the FSC seem to meet their reporting obligations. However, this does not seem to be the cases for the majority of smaller FIs.
- For the insurance sector, it was determined that the entities did not provide evidence that they prepare their own AML/CFT risk assessments to support their understanding of the ML/TF risks and AML/CFT obligations.
- The MLFTA provides FSC, CBB and IBD with the provisions to prevent tipping off.
- The IBD has not been able to determine the level of compliance with CDD, EDD and record keeping for CTSPs and DNFBPs under its purview because the supervisory regime for this sector is still nascent.
- The IBD and the FIU as currently configured are not able to effectively supervise the sectors for which they have supervisory responsibility and in particular the CTSP sector under the ambit of the IBD. However, the Assessors do recognise that the two largest CTSP providers are licensed by the CBB and have been subject to ongoing adequate AML/CFT supervision by the CBB.
- As the supervisory regime is still in its nascent stage, the IBD could not provide any information as to whether the CTSPs under its purview apply internal controls and procedures to ensure compliance with AML/CFT requirements.

#### ***Recommended Actions***

- The FSC and IBD should step up the efforts to have the FIs and DNFBPs under their purview understand their ML/TF risks. The FSC already started with this process.
- The FSC and IBD should apply the regulatory measures at their disposal more forcefully to encourage FIs and DNFBPs under their supervision to take the necessary mitigating actions about the ML/TF risks they face.



- The IBD should start as soon as possible with the onsite examination regime for the CTSPs under its purview in order to inform the supervisory process of the DNFBPs under its purview.
- Barbados should consider having the onsite examinations of the CTSPs under the sole purview of the IBD carried out by the CBB, as the CBB already has the supervisory onsite and offsite framework for CTSPs in place.
- The credit unions, insurance sector and securities companies under the ambit of the FSC need to improve the monitoring process of PEPs, their close family members and associates as required by the FSC's AML/CFT Guidelines and the FATF Recommendations. Additionally, general insurers need to consider a risk-based approach commensurate with their customer base to meet the necessary KYC requirements.

The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9–23.

### ***Immediate Outcome 4 (Preventive Measures)***

#### ***Understanding of ML/TF risks and AML/CTF obligations***

193. FIs and CTSPs regulated by the CBB represent 68% of the total financial assets under supervision in Barbados and generally have a high understanding of their ML/TF risks and AML/CFT obligations. 60% of the financial assets under supervision are under the management of domestic banks. The CBB determines through onsite examinations and qualitative information, including ML/TF self-assessments, that these FIs and CTSPs understand the risks involved and have taken the necessary preventive measures to mitigate their ML/TF risks. One FI, jointly supervised by CBB and FSC, is in the process of implementing the necessary measures based on recommendations of the CBB.
194. Both the domestic and international banking sectors understand their ML/TF risks and AML/CFT obligations. For the domestic banks, it was determined that CBB also considers the robustness of the AML/CFT supervision of the OSFI on the three banks with a Canadian parent. CBB has indicated however, that although some reliance is placed on the home country's supervisors, ultimately, CBB independently determines the ML/TF risks of the domestic banking sector, including the domestic banks with a Canadian parent.
195. Not all FIs in the general insurance sector understand the ML/TF risk they face and have therefore not implemented the appropriate risk-based frameworks to mitigate these risks. This is especially the case with three of the five general insurers. The two life insurers, two largest general insurers and one mixed insurance company operating in Barbados in general have a better understanding of their ML/TF risks and AML/CTF obligations. The same is applicable to the credit union sector and the securities sector.
196. During the assessment, the Assessors found that in general DNFBPs with a dual role, that is, acting as a lawyer and as a CTSP do understand the ML/TF risks and AML/CFT obligations involved and seem to take the necessary risk-based approach to mitigate the ML/TF risks. However, in their role in real estate dealings, it does not seem that all lawyers understand the risks involved given that information of CDD is not always shared between the real estate agents and the lawyers.
197. Dealers in precious metals do understand the ML and TF risks they face and in general have taken guidance with respect to ML/TF issues from their head offices abroad.

#### ***Application of risk mitigating measures***

198. Domestic commercial banks, international banks and CTSPs regulated by the CBB do apply risk based mitigating measures in accordance with the ML/TF risks posed by their respective customer bases.
199. Several FIs under the purview of FSC are not consistently applying the risk-based approach to risk mitigation. For the credit union sector, the AML policy of the top three credit unions was found to be appropriate to mitigate inherent ML risk considerations and encompass key requirements of legislation and FSC's AML/CFT Guidelines. No information was provided as to TF risk mitigation for the credit union sector. Several other credit unions still need to document issues regarding ML/TF risks. However, given that the top three (3) largest credit unions are open-bond credit unions, i.e. open to the general public, the issue of TF should be addressed. For the insurance sector, including the top two (2) general insurers, it was determined that the AML policy design is effective. However, notwithstanding the low risk, improvements are required in the AML policy design for the other three general insurers. For the securities sector, it is noted that for four of the five securities companies the AML policy design is adequate to mitigate inherent ML risks. Improvement in the AML policy design is required for the one securities company. For the MFAs, it is noted that that AML policy design is appropriate to mitigate inherent ML risk considerations. The FSC has determined that for the largest FIs in each of the sectors under its supervision, there is a high level of understanding of the risks involved, however there is a low level of implementation of risk based frameworks to mitigate these risks.
200. As its supervisory framework for the entities under its purview is still nascent, the IBD has not been able to verify compliance with its AML/CFT Guidelines for CTSPs for which it is the sole regulator. Therefore, the IBD has not been able to determine yet what the level of compliance for this sector is and if the necessary risk-based approach to risk mitigation is being applied. The CTSPs under the purview of the CBB are subjected to the ongoing regulatory frame work of the CBB and have been found to be able to apply risk mitigation in accordance the ML/TF risks they face.

*Application of enhanced or specific CDD and record keeping requirements*

201. FIs and CTSPs regulated by the CBB in general have appropriate CDD and record keeping policies and procedures in place and apply these in a consistent and adequate manner. CBB licensees apply enhanced and specific measures regarding PEPs, correspondent banking, wire transfers, targeted financial sanctions related to TF, new technologies and higher risk countries as identified by the FATF.
202. While onsite visits of the CTSP sector solely under the purview of the IBD have commenced, the IBD is still in the process of determining the level of compliance with CDD and record keeping for these entities. Therefore, IBD has not been in a position yet to determine how well CTSPs apply enhanced or specific measures for PEPs, new technologies, targeted financial sanctions related to TF and high-risk countries as identified by FATF. Together with the mutual funds administrators and securities firms supervised by the FSC, the CTSPs under the sole ambit of the IBD represent 5% of the financial assets under supervision in Barbados.
203. The monitoring process of PEPs, their family members and associates in the credit union sector, the insurance sector and the securities sector is not done consistently by all the FIs operating in these sectors. Not all FIs carry out the monitoring process as is required according to the FSC's AML/CFT Guidelines thus by extension not complying with the FATF recommendations on PEPs.
204. For the credit union sector, it has been determined that CDD and record keeping measures are being applied inconsistently. Retrospective CDD in most instances has either not started or finalized and there is an inconsistent risk-based approach to verification of proof of address and source of income. One area requiring improvement is a documented process where credit unions evaluate, based on



the outstanding KYC information, if the risk is material enough to sever a business relationship with an existing customer. The credit union sector represents 9% of the total financial assets supervised in Barbados. There are 34 credit unions in Barbados and it is worthwhile to mention that the 7 largest credit unions represent 92% of the credit union sector in Barbados.

205. For the life insurance sector, it was determined that that risk profiling systems are not yet fully implemented and that the responses from the retrospective due diligence process are inconsistent. One area requiring improvement is a documented process where the life insurers evaluate, based on the outstanding KYC information if the risk is material enough to sever a business relationship with an existing customer. For the general insurers, it was determined that the main area requiring improvement is the consistent implementation of obtaining KYC information such as proof of address and for business companies to obtain adequate corporate customers KYC requirements. The insurance sector represents 18% of the total financial assets supervised in Barbados. Both the life insurance and general insurance sectors represent a relatively low ML/TF risk to Barbados given the products and services that are being offered.
206. For securities companies and MFAs, it is noted that these entities are aware of their CDD and record keeping obligations but inconsistently apply a risk-based approach to verification of proof of address and source income. In the securities sector, the FSC noted an improvement in the CDD and record keeping of the top two MFAs, but overall it was determined that this sector applies CDD measures inconsistently.
207. For DNFBPs under the purview of the IBD it was determined that the awareness of high risk countries needs to improve.
208. FIs and DNFBPs are required to comply with the AML/CFT Guidelines of the respective competent authorities. As the supervisory framework for CTSPs falling solely under the purview of the IBD is still nascent, Barbados could not supply information on whether BO information is collected, kept and updated as required by the IBD's AML/CFT Guidelines. Information on BO is adequately collected and updated by the licensees of the CBB and the FSC. CBB reviews this information as part of their ongoing monitoring process.

### *Reporting obligations and tipping off*

209. Please refer to table 8 for an overview of the reported STRs by FIs and DNFBPs for the period 2012 – 2015. Most STRs (75% of the totals SARS reported, 82% of total SARS reported by the financial sector) were reported by commercial banks. During the same period attorneys-at-law and accountants have also filed SARs. In 2015 the number of SARs filed by the credit union sector increased from four in 2014 to 19 in 2015. This could be a sign that the sector, or at least the largest credit unions, are beginning to understand the ML/TF risk they face as a result of training and guidance by the supervisors. Another important development is that the reporting of SARs by the MVTS sector has increased from one in 2014 to 52 in 2015, which is an indication that this sector has an understanding of its reporting obligation and the the ML risks they face.
210. For the CTSPs under the purview of the IBD, the Assessment Team could not determine the extent to which these DNFBPs met their reporting requirements since the IBD only recently started with the regulatory regime for these DNFBPs. Therefore, there are no relevant statistics available. For CTSPs under the (dual) supervision of the CBB, the Assessment Team did not find reasons for concern regarding the reporting obligations to the CBB.
211. Overall no information was available on the practical measures to prevent tipping-off. Section 23 of the MLFTA prohibits directors, officers and staff members of FIs from disclosing the fact that a STRs has been reported to the FIU. CBB has offsite and onsite working programmes in place to monitor tipping-off and uses its supervisory ladder to address non-compliance. The IBD regulatory

framework for CTSPs is nascent and therefore no relevant information could be provided to the Assessment Team regarding tipping-off.

212. Based on the onsite interview, it appears that some reporting entities in one of the DNFBPs sector may not be fully discharging their legal obligation to report attempted or aborted suspicious transactions. Therefore, the relevant CA should ensure that all reporting entities in this sector understand the relevance and importance of reporting aborted or attempted suspicious transactions and their legal obligation to do so.

#### *Internal controls and legal/regulatory requirements impending implementation*

213. For the CTSPs under its purview, the IBD has yet to determine how well internal control procedures about compliance with AML/CFT requirements are met.
214. CBB regulated FIs in general apply the necessary internal control procedures well. There are no legal or regulatory requirements that impede FIs ability to comply with AML/CFT requirements. Consolidated AML/CFT and group supervision is addressed by the CBB by meeting on a regular basis with internal audit or compliance teams of the parent companies of licensees as part of ongoing supervision. CBB uses this information to feed into the licensees' risk profile. CBB also uses reports obtained from centralized functions residing at the parent level to further inform the risk profile of its licensees.
215. For FSC regulated entities there are also no legal or regulatory impediments to compliance with AML/CFT requirements. However, in practice the implementation of risk-based risk mitigation is done inconsistently across the different FIs regulated by the FSC. Retrospective CDD is one of the main areas that needs to be addressed by these FIs.
216. General insurers in Barbados need to improve their independent compliance function oversight. The life insurers and the mixed insurance companies have independent compliance functions in place. For the mixed insurance companies, the FSC has determined that the independent compliance function is improving. At the life insurers, the compliance oversight functions were found to be adequate.
217. There was also no internal audit functions oversight of AML programmes for the general insurance sector. For the sole mixed insurance company operating in Barbados, the FSC did not find proof that the AML programme was reviewed by the internal audit function.

#### *Overall conclusions for Immediate Outcome 4*

218. The FIs and CTSPs under the purview of the CBB apply the relevant AML/CFT preventive measures in accordance with their risks and adequately report suspicious transactions. The CBB is responsible for the supervision of 68% of the total financial assets in Barbados and therefore the lead oversight role and the maturity and adequacy of the its supervisory regime comes into play as a material factor in determining the effectiveness of Barbados in applying preventive measures. However, the Assessors believe the issues regarding preventive measures by FIs and CTSPs under the ambit of the FSC and IBD should be resolved in the short term.
219. For FIs across the different sectors, under the ambit of the FSC, it was determined for the insurance sector that not all FIs understand the ML/TF risk they face and have therefore not implemented the appropriate risk-based AML/CFT preventive measures. For the credit union sector, it was determined that mainly the largest four credit unions understand the ML/TF risk they face and the AML/CFT obligations they must comply with. In general, the credit union sector in Barbados does not adequately apply AML/CFT preventive measures. Therefore, it remains a question if the SARs reported by this sector reflect the actual transactions which should be reported.

220. IBD still needs to determine the level of compliance with its AML/CFT Guidelines for CTSPs under its sole supervision. As the IBD supervisory framework still is nascent, the effectiveness of the application of preventive measures for these entities have not yet been determined.

**The rating for Immediate Outcome 4 is a moderate level of effectiveness**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- With the exception of the FSC and CBB, the procedures adopted by licensing/registration authorities to vet and approve post licensing/ post registration changes in beneficial ownership are generally not sufficiently robust.
- Dealers in precious metals and stones falling under the second schedule of the MLFTA are not subject to any form of licensing or registration for AML/CFT purposes.
- Gaming institutions although not casinos, are not subject to regulation and supervision for AML/CFT purposes. However, there are a number who execute transactions above the FATF designated threshold. It is noted that Barbados has not yet conducted a risk assessment of this sector.
- MVTS are registered for AML/CFT purposes. Although MVTS registered with the CBB are subject to the CBB's AML/CFT Guidelines, there are no bespoke AML/CFT Guidelines for standalone MVTS. However, in the context of materiality it is noted that there is currently only one standalone MVTS provider.
- The supervision of the DNFBP sector as a whole is the responsibility of the IBD and the AMLA. Whilst structural improvements are being made the supervisory framework remains ad hoc and disjointed with the FSC having to provide supervisory capability to both the IBD and the AMLA under various MOUs. In addition, neither the AMLA or the IBD (in the context of CTSP's specifically) have proprietary risk assessment frameworks in place and therefore in the opinion of the Assessors, the DNFBP sector has not yet been adequately risk assessed. Consequently, there is no risk based supervision methodology in place.
- The FSC has a developing understanding of the ML/TF vulnerabilities across the financial sectors and FI's for which it is responsible. However, in the view of the Assessors an over focus on the largest FIs in each sector does not reflect the varied composition of each of the sectors and therefore there is a concern that the ML/TF vulnerabilities across each sector as a whole may not have been adequately identified and assessed.
- Whilst the FSC has focused resources on the supervision of the largest FI's in each sector, the Assessors consider that this focus could compromise the effective supervision of each sector as a whole. In addition, the FSC is also providing supervisory capability to both the FIU and the AMLA and this could further compromise the FSC's ability to adequately supervise each of the sectors for which it is responsible.
- Whilst both the CBB and the FSC have developing risk assessment and supervisory frameworks in place, the Assessors are concerned that there is an imbalance between offsite and onsite supervision. In this context the onsite supervision cycle is not currently fully aligned to the risk ratings allocated to the individual FIs.
- The Assessors noted that certain FSC remedial action plans agreed with FI's had been "open": for significantly extended periods. In addition, although both the CBB and the FSC have formal escalation guidelines in place, the Assessors were not able to determine that they were being

consistently implemented. The Assessors believe this is supported by the limited application of proportionate and dissuasive sanctions by both the CBB and the FSC.

- The AMLA and the IBD as currently constituted are not able to independently supervise the sectors for which they have supervisory responsibility and in particular the CTSP sector which is recognized as a significant ML/TF risk. However, in mitigation the Assessors also recognize that many the larger CTSPs are also licensed by the CBB and have therefore been subject to ongoing AML/CFT supervision for an extended period.
- The FSC is currently providing supervisory capability to both the IBD and the FIU under appropriate MOUs. However, in certain cases, the Assessors noted that the FSC requires an individual letter of appointment before conducting on site supervisory visits. It has not been satisfactorily demonstrated to the Assessors that overall this is a sustainable solution.

### ***Recommended Actions***

- Registration and licensing authorities should review their licensing/registration procedures to ensure that subsequent changes in beneficial ownership are adequately recorded, vetted and approved (post or pre)
- Dealers in precious metals and stones falling under the second schedule of the Money Laundering and Financing of Terrorism (Prevention and Control Act) should be licensed or registered for AML/CFT purposes.
- The FSC should continue to review its sector risk profiles to ensure that they accurately reflect the varied composition of each sector and its ML/TF risk profile.
- Both the FSC and the CBB should review their existing supervisory methodologies to ensure that the onsite supervisory schedule is properly aligned to the output from the risk assessment process. In addition, the FSC should review its current resource requirements to ensure that it is able to effectively continue to discharge its expanded supervisory remit.
- The FSC and the CBB should review the status, integrity and effectiveness of their existing escalation procedures in respect of the non-compliance by FI's with their AML/CFT obligations. The consideration and application of proportionate and dissuasive sanctions where merited should also be a key focus.
- The IBD and the AMLA should each develop their own risk assessment frameworks and risk-based supervision methodologies.
- Barbados should review the existing DNFBP supervisory framework to determine if the existing framework whereby the FSC provides supervisory capability under various MOU's is fit for purpose and sustainable.

The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26–28 & R.34–35.

### ***Immediate Outcome 3 (Supervision)***

#### ***Financial Services Commission (FSC)***

221. The FSC is the Competent Authority (CA) in respect of the licensing, regulation and supervision of Credit Unions and FIs governed by the various laws set out in the second schedule of the FSCA (Exempt Insurance Act, Insurance Act, Occupational Pensions Act, Securities Act and Mutual Funds Act).

*Central Bank of Barbados (CBB)*

222. The CBB is the CA in respect of the licensing, regulation and supervision of international banks falling under the IFSA and Trust and Finance Companies and Merchant Banks, and Commercial Banks falling under Part II & III of the FIA.

*International Business Division*

223. The IBD is the CA in respect of the licensing, regulation and supervision of entities governed by the CTSPA, the IBCA, the SWRLA, the Private Trust Companies Act, the Foundations Act and the ITA.

*The Anti-Money Laundering Authority*

224. The AMLA is the CA in respect of the supervision of DNFBPs falling under the second schedule of the MLFTA. The AMLA has delegated the supervisory function to the FSC.

*Licensing, registration and controls preventing criminals and associates from entering the market*

*Measures to prevent criminals and their associates from entering the market*

225. The CBB and the FSC have both developed frameworks for processing licence applications and these processes include the application of fit and proper tests to directors, managers and shareholders who control 10% or more of shares. With respect to determining control, the FSC identifies the natural person(s) who exercises ultimate control. The Fit and Proper Questionnaire used by the FSC and the CBB requires the provision of a police certificate and the disclosure of any past criminal record or regulatory enforcement action. Both supervisors use third party data providers to attempt to verify information provided in the questionnaire and to obtain additional information which may be relevant to licence applications under consideration.
226. The fitness and proprietary tests conducted by the FSC are completed on a regular (three-year) cycle and those conducted by the CBB on a four-year cycle. In addition, both the FSC and the CBB operate a notification and approval requirement respectively in respect of subsequent changes in directors, senior managers and beneficial owners.
227. Subsequent changes in BO, in accordance with the prevailing 10% threshold requirement, are subject to prior approval in the case of the CBB and notification in the case of the FSC.
228. The IBD has a framework in place for licensing entities within its remit. With respect to CTSPs specifically, the process requires the submission of an application form and fit and proper questionnaires for everyone providing regulated services and for partners, directors, managers, senior officers and beneficial owners holding more than 10%. Information must also be provided as to whether the individual has been subject to any adverse legal or regulatory enforcement action. As necessary the IBD will use external data providers to verify information received and obtain additional information which may be relevant to the application. The IBD did not provide any statistics re the number of license applications which were rejected.
229. The IBD requires subsequent changes in beneficial ownership, directorships and senior management positions to be notified by way of an annual filing requirement. With respect to CTSPs, the CTSPA requires the corporate service provider to notify such changes to the IBD at least a month before the intended change. There is also a MOU signed by the AMLA and the regulatory authorities including the IBD. It is this document which allows the competent authorities to obtain adequate, accurate and current BO information from the relevant regulatory authority.
230. There are currently five MVTs in Barbados which are registered with the CBB. They account for less than 1% of fund flows and are agents of international MVTs providers. The CBB has assessed the MVTs sector as low risk however Barbados has now indicated to the Assessors that it will replace the current MVTs registration regime with a licensing regime.



231. As previously noted although gaming institutions are not casinos they do execute transactions over the USD/EURO 3000 threshold. Although licenced annually by Customs and Excise they are not regulated or supervised for AML/CFT purpose. The Betting and Gaming Committee conduct limited due diligence on members. The Assessors would recommend that Barbados include a risk analysis of this sector in the next NRA.
232. Dealers in precious metals and stones are not licensed or registered however the FIU has recently started onsite supervisory visits to this sector. At present, there is only one dealer in precious metals and stones operating in Barbados through various companies. Given the size of the operations the company has no material impact on the total financial assets in Barbados. The FSC has determined that this dealer posed a low ML/TF risk. This was confirmed by the Assessment Team during the onsite interview with the dealer. The setup of the transactions and the internal audit preventive measures instituted by the company contributed to the low ML/TF risk rating assigned by the FSC
233. Accountants and lawyers fall under the second schedule of the MLFTA. Whilst most accountants are licenced by the Institute of Chartered Accountants in Barbados, this is not a mandatory requirement. In addition, no evidence was provided to the Assessors to demonstrate the integrity of the licencing process. Lawyers are obligated to become members of the Barbados Bar Association and are required to register with the supreme court, however no evidence was provided to the Assessors to demonstrate the integrity of the registration process. Both accountants and lawyers who act as CTSPs are also required to be licenced by the IBD.
234. Real estate agents falling under the second schedule of the MLFTA are required to register with the supreme court. No data was provided to enable the Assessors to satisfactorily determine that the perimeter was being effectively policed.

#### *Supervisors' understanding and identification of ML/TF risks*

235. As a mature supervisor, the CBB has risk rated each sector and has a good understanding of the ML/TF risk across the banking and non-banking sectors. The CBB continued to develop its risk assessment methodology in 2016 by using targeted data calls to FI's to capture relevant qualitative and quantitative data. This information has been used to further refine the sector risk assessments and risk rate all FI's. Example FI risk profiles were provided by the CBB.
236. Although the FSC has indicated that all FIs, not just the largest FI in each sector have been risk rated no evidence was provided to confirm this. In addition, example FI risk assessments were not provided by the FSC.
237. The FSC utilises a risk-based approach to AML/CFT supervision and has completed sector risk assessments across each of the sectors for which it has supervisory responsibility. The sector risk assessments are derived from a review of the inherent sector risk, risk self-assessments conducted by the larger FIs in each sector, aggregated sector specific qualitative and quantitative data and the output from onsite examinations conducted on the larger FIs in each sector. As with the CBB, the FSC continued to develop its risk assessment methodology in 2016 by using targeted data calls to the larger FIs in each sector to capture additional qualitative and quantitative data to further refine its sector risk assessments. The FSC's stated intention is to incorporate the recent data call information into an annual filing requirement for the FIs in each sector.
238. Whilst the FSC has a developing understanding of the ML/TF risk across the Credit Union, Insurance (Life Insurance, Non- Life Insurance, Mixed Insurance Companies, Insurance Brokers) and Securities (Registered Brokers, Investment Advisers and Mutual Fund Administrators) sectors and has risk rated each sector, the Assessors remain concerned that the focus on the risk posed by the largest FIs in each sector does not accurately reflect the varied composition of each of the sectors

and therefore the ML/TF vulnerabilities across each sector as a whole may not have been adequately identified and assessed.

239. The IBD has not yet developed a proprietary risk assessment framework and therefore has a limited understanding of the ML/TF risks within the sector for which it has supervisory responsibility. The IBD indicated that it was aware of the higher risks posed by the CTSP sector and actively engaged with the FSC to provide additional supervisory capability under an appropriate MOU. However, the Assessors were not provided with any evidence to demonstrate that the IBD had in fact conducted a sector risk assessment.
240. In the absence of a risk assessment framework to identify, assess and mitigate ML/TF risk in the DNFBP sector, the FIU has no substantive understanding of the ML/TF risk in the sector for which it has supervisory responsibility. However, the AMLA has been instrumental in the issuance of AML/CFT guidance to the DNFBP sector and has also engaged with the FSC to provide supervisory capability under an appropriate MOU.

*Risk-based supervision of compliance with AML/CTF requirements*

241. Whilst the FSC has a risk assessment framework in place, the Assessors were concerned that it was not properly aligned to the overall supervision methodology. In this context there was no evidence of an onsite supervision cycle (detailing frequency and scope) predicated on the risk profile of the FI (although the FSC indicated that they aimed to conduct a minimum of 20 on site supervisory visits per annum) As at March 2016 the FSC examined 12 of the 34 credit unions representing 93% of total sector assets. Core findings indicated a need to improve the customer risk rating process, the implementation of risk adjusted customer due diligence and the verification of source of funds. In the latter half of 2016, the FSC conducted AML/CFT follow up visits to four of the larger credit unions and noted some improvement in the implementation of risk adjusted customer due diligence measures. However, residual weaknesses in the verification of source of funds were identified. When compliance deficiencies are identified the FSC uses a supervisory ladder to guide the supervisory response however it was not evident to the Assessors that this process was sufficiently robust or effective. In particular it was noted that regardless of the materiality of compliance deficiencies, escalation was restricted to “remediation measures” and no sanctions were ever applied. The Assessors are concerned that the focus by the FSC on the largest FIs in each sector could command available resources and potentially compromise the integrity of the supervision of each sector as a whole.
242. The FSC has a suite of domestic and international MOUs in place to facilitate the effective discharge of its supervisory obligations. Whilst the FSC has indicated that with respect to those FIs subject to dual regulation domestically, joint supervisory visits between the CBB and the FSC do take place, no evidence was provided as to the number, nature and scope of these visits.
243. Pursuant to MOUs with the IBD and the AMLA, the FSC has recently conducted several AML/CFT focused onsite visits to CTSPs and other DNFBPs. The initial findings from the on sites to the non-CTSPs revealed a general lack of understanding of AML/CFT requirements and obligations. In certain circumstances, the FSC requires an individual letter of appointment before conducting on site supervisory visits. In addition, neither the AMLA or the IBD (in the context of CTSPs specifically) have proprietary risk assessment frameworks in place and therefore the DNFBP sector has not been adequately risk rated. Consequently, there is no risk based supervision methodology in place
244. The CBB utilises a risk-based approach to supervision with on sites (and desk based reviews) conducted in accordance with the output from the risk assessment. Over the period 2012-2016 the CBB conducted 25 supervisory onsite visits (which also included AML/CFT) in accordance with its risk assessment framework. Whilst the CBB does conduct significant desk offsite (desk based) monitoring informed by and also informing the risk assessment process, the Assessors did have a



concern that the balance between offsite monitoring and onsite supervision may not be optimum. The expectation is that supervisory onsite visits are conducted in accordance with the output from the overall risk assessment process i.e. FIs are risk rated as high, medium or low and the supervision onsite cycle is aligned accordingly. This would require the roll out of a supervision cycle with the frequency of onsite determined by the risk profile of the FI,

245. The CBB has a robust onsite work programme to monitor compliance by FIs with AML/CFT requirements. The CBB advised that findings from onsite visits were recorded, analysed and fed into the risk assessment process.
246. In November of 2016 the CBB, under the provisions of an MOU with the AMLA conducted on sites to all MVTS registered with the CBB. The CBB has a strong understanding of the MVTS market and the associated ML/TF risk and noted no material findings. The MVTS sector represents only 1% of the financial sector. Barbados has advised the Assessors that it will shortly replace the registration regime with a licensing regime.
247. In practice, the IBD has operated primarily as a licensing authority and has not actively supervised the IBD sector. However, pursuant to a recent MOU with the FSC, the FSC is now providing supervisory capability with respect to the supervision by the IBD of the higher risk CTSP sector. The Assessors do recognize that the two largest CTSPs are also licenced by the CBB and have therefore been subject to ongoing AML/CFT supervision. Whilst this is a positive development and resources permitting the FSC supervisory remit would be extended to include risk based onsite inspections to all relevant IBD licensees. The Assessors note that the FSCA Section 4(1) (h) lists among the functions of the FSC “to provide technical assistance and advice to the IBU or to any other government agency (including supervisory authorities) in relation to its responsibilities under any law to supervise, regulate or monitor any business operating in Barbados.

*Remedial actions and effective, proportionate, and dissuasive sanctions*

248. Pursuant to the relevant provisions of the MLFTA, the CBB, FSC, IBD and the FIU are empowered to apply remedial actions and sanctions.
249. Whilst the FSC has implemented a supervisory ladder to guide the appropriate supervisory response to identified AML/CFT deficiencies and in practice has required several FIs to complete remedial action plans, there is a concern that many remedial action plans have remained open for a significant period (beyond 12 months). In addition, no evidence has been provided to the Assessors to confirm that the application of sanctions is a considered supervisory response. This is supported by evidence that sanctions have never been applied against any FI for a material failure to comply with their AML/CFT obligations.
250. The CBB imposed 14 directives across a range of FI’s during the period 2012 to 2015. No data was available for 2016 because onsite were still ongoing. During the period, there were 16 remedial measures involving FIs. Although employing the ‘supervisory ladder,’ it was noted that given satisfactory compliance by FI’s the CBB did not find it necessary to apply any form of sanction involving the application of a financial penalty. The Assessors noted a number onsite visits (at least two) which resulted in material findings and CBB remediation measures but none resulted in the application by the CBB of sanctions involving a financial penalty. The Assessors concluded that in such circumstances the CBB should also consider the application of financial penalties in conjunction with remediation measures.
251. The IBD has only recently entered into an MOU with the FSC under which the FSC will perform certain supervisory functions in respect of CTSPs and potentially other licensees. However, given the recent nature of this arrangement there is no evidence to date of the application by the IBD of remedial actions and/or sanctions. The AMLA has recently entered an MOU with the FSC under which the FSC will perform certain supervisory functions in respect of select DNFBPs. However,

given the recent nature of this arrangement there is no evidence of the application of remedial actions and/or sanctions.

### *Impact of supervisory actions on compliance*

252. During the period, July to August 2016, the FSC visited several of the largest FIs across each sector to determine if remedial action plans previously agreed with the FSC were being adhered to. The FSC concluded that there was satisfactory improvement, particularly in the credit union sector and therefore there was no need to apply additional remedial actions or sanctions. However, on reviewing several action plans, it was evident that a number (at least two) had been open for an extended period. This raises the question as to the integrity of the FSC's oversight of the end to end remediation process.
253. The CBB conducted 25 supervisory onsite visits to FIs during the period 2012 to 2016, ten of which were conducted in 2016. All on-sites are conducted using a standard pre-visit protocol and executed using an onsite work program which includes a comprehensive review of AML/CFT requirements. In addition, the CBB conducts risk based offsite (desk based) reviews informed by and informing the output from the risk assessment process and this forms an integral part of its review/monitoring process. The Assessors are of the view that an onsite supervision cycle should be defined for each risk rating category. This would address any concern of an apparent imbalance between offsite and onsite supervision visits of individual FIs. Whilst the scope and output from the CBB onsite visit is robust, the Assessors are concerned in particular that remediation plans agreed with individual FIs are not in all cases being closed in a timely manner. This raises a question about the post onsite process. The CBB indicated that some elements of the remedial action plans, for example those that involve an IT solution could extend closure of an issue, but completion dates are agreed with the FIs and monitored on an ongoing basis. The CBB indicated that the reduction in identified compliance deficiencies and the increasing number of unusual reports and SARs over the period in 2011 to 2015 were indicators of heightened awareness amongst FIs and in addition, the retention by domestic banks of international correspondent banking relationships did support the assertion that CBB supervision was effective. However, at the time of the assessment the Assessors did not consider that a robust mechanism was in place to accurately assess and analyze the impact of their supervision activities on the compliance standards of FIs.
254. The IBD has supervisory responsibility for IBD licensees and the AMLA has ultimate oversight responsibility for the DNFBP sector. Historically the IBD has not exercised a robust supervisory role and only recently entered into MOUs with the FSC to provide additional supervisory capability. An MOU between the AMLA and FSC was recently signed. Given that 18 onsite visits had taken place at the time of the assessment there was insufficient information for the Assessors to determine the effectiveness of these supervision activities on compliance by DNFBPs (including CTSPs) with their AML/CFT requirements. However, the preliminary findings of the FSC indicate instance of a lack of AML/CFT awareness within the DNFBP sector.

### *Promoting a clear understanding of AML/CTF obligations and ML/TF risks*

255. In consultation with the regulated sector, the FSC has issued AML/CFT Guidance (2013) to ensure that all FIs are aware of their AML/CFT regulatory obligations. The FSC conducted outreach to the credit union sector in 2014 and in 2016 engaged with the largest FIs across each sector to ensure that these FIs understood their AML/CFT regulatory obligations. FIs were also reminded of their ongoing regulatory obligations. In July of 2016 the FSC met with the captive insurance sector also advising them of their role in the CFATF MEVAL process. Whilst the FSC has taken several proactive steps in 2016 (e.g. outreach sessions on the NRA process) to promote understanding across the financial sector there is limited evidence that a coordinated education and communication strategy is in place to clearly articulate national and sector risks and ensure that within this context FIs understand their AML/CFT obligations.

256. In consultation with the regulated sector, the CBB issued AML/CFT Guidance (2013) to ensure that all FIs were aware of their AML/CFT regulatory obligations. Although there is no coordinated education and communication strategy, the CBB does meet periodically with the senior executives and officers of FIs. Whilst such meetings are fundamental to the supervision process they are not a substitute for a coordinated communication strategy which clearly articulates national and sector risks and ensures that within this context FIs understand their risk exposure and AML/CFT obligations.
257. During 2016 the IBD took several proactive steps to promote understanding of risks particularly with respect to the CTSP sector. This included discussions on the NRA process and the finalisation and issuance of updated AML/CFT Guidelines for the CTSP sector and the regulatory obligations placed upon the sector. In 2015 the IBD was involved in a limited number of strategic alliances with the relevant professional associations to discuss the implementation of the CTSP Act. In addition, during 2015 and 2016 the IBD clearly focused on the CTSP sector however as with the CBB and the FSC there is limited evidence of a comprehensive communication strategy which clearly articulates the national and sector risk and ensures that within this context IBD licensees understand their AML/CFT obligations.
258. Although the AMLA has supervisory responsibility for the DNFBP sector, the FIU performs the training function for supervisory authorities, FIs and DNFBPs. However, information has only been provided in respect of the number of entities which the FIU has trained for each of the years 2012 to 2015. In 2015 only five entities received training. No information was provided for 2016. Overall there is limited evidence of a developed training programme.

### *Overall Conclusion on Immediate Outcome 3*

259. Whilst the CBB, FSC and the IBD have licencing and registration frameworks in place, coordinated improvements can be made to mitigate the potential risk of criminal control of FIs, CTSPs and other IBD licensees. The vetting and approval process surrounding subsequent changes in beneficial ownership should be reviewed to ensure that they are sufficiently robust. In addition, the integrity of the licencing and registration of the DNFBP sector as a whole should be reviewed. Whilst MVTS are registered and the sector has been assessed by the CBB as broadly low risk, Barbados has now indicated that it will move to licence MVTS.
260. The CBB and the FSC employ a risk-based approach to AML/CFT supervision and it is recognized that these frameworks are continually developing and improving. There is however a residual concern as to whether the CBB's and the FSC's risk-based supervision methodologies are adequately aligned to the output from their risk assessment process. In addition, there are also concerns as to the integrity of the FSC's management of the end to end remediation process.
261. Neither the IBD or AMLA have been able to effectively supervise the sector for which they are responsible (including importantly in the case of the IBD, CTSPs). Accordingly, both the IBD and the FIU have attempted to address this deficiency by entering into MOUs with the FSC to provide additional supervisory capability (there is also a statutory underpinning in respect of the FSC supporting the IBD and the FIU). There is a significant concern that the current framework compromises the capability of the FSC and is not sustainable and therefore Barbados should quickly move to formalise the supervision framework for both these sectors.
262. It was evident to the Assessors that the CBB, FSC, IBD and AMLA are not applying the full range of sanctions available for non-compliance by FIs and DNFBPs with the applicable AML/CFT requirements. In particular whilst there is evidence that the CBB and the FSC are requiring FIs to remediate deficiencies (not always in a timely manner) they are not also applying appropriate sanctions in cases where significant deficiencies have been identified. Although the Assessors

strongly do not agree, the CBB is of the opinion that its procedure in isolation is effective and takes various factors e.g. compliance history and commitment of an FI into account when deciding on the type and severity of sanctions.

263. **The rating for Immediate Outcome 3 is a Moderate level of effectiveness**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- Basic information on the creation and types of legal person and arrangements is publicly available.
- BO information on legal persons and legal arrangements may be available to the FIU and competent authorities generally however the existing framework demonstrate a significant gap in the timely access to such information.
- By a combination of the legal and supervisory frameworks, there are some limited measures in place to prevent the misuse of legal persons and legal arrangements for ML/TF.
- There exist provisions within the COMPA and its guidelines which when implemented make legal persons and legal arrangements transparent.
- Competent authorities have not demonstrated that they have identified, assessed or understood the ML/TF risks that emanate through the misuse of legal persons and arrangements.
- The legal provision which permits a discretion to maintain the record of BO information at some other place in Barbados designated by the directors of the company may affect the timely manner in which competent authorities access beneficial ownership.
- The requirement for an annual filing of change to directors, shareholders and beneficial owners supports the competent authorities having accurate and up to date information but does not address changes which may occur during the course of the year..
- The competent authorities conduct desk based reviews of FIs and DNFBPs however there is limited onsite monitoring and or inspection or a triggering mechanism whereby the competent authorities ensure that basic and BO information is correct for legal persons and arrangements.
- The competent or supervisory authorities have not demonstrated the application of sanctions where there is a failure to comply with filing and record keeping requirements or obligations to keep up-to-date information regarding basic and beneficial ownership.
- There is a requirement within the guidelines for trusts as legal arrangements to keep BO information during the course of the year.

#### ***Recommended Actions:***

##### ***Immediate Outcome 5***

- Barbados should identify, assess and understand the ML/TF vulnerabilities to which legal person can be exposed especially in light of the large size of the international financial sector by conducting the relevant sector risk assessment.
- The COMPA and the FSCA should be amended for companies to explicitly obtain, keep and update BO information inclusive of the threshold of ownership that should be applied.

- Barbados should ensure that there is a legal requirement for changes in the management of DNFBPs to be disclosed during specified time limits, with the relevant notification and approval, so as to increase enforceability.
- The Companies Act should be amended to require all companies to explicitly obtain and maintain up-to-date and accurate information on directors, shareholders and beneficial owners.
- Timely access by the FIU and competent authorities to accurate and up to date information on beneficial owners of legal persons and legal arrangements should be implemented as a matter of priority.
- The sanctions provided under the COMPA should be increased to ensure that they are effective, proportionate and dissuasive and thereafter applied.
- The competent authorities should conduct monitoring of trusts to ensure they hold accurate and up to date information and ensure that the same is available in a time manner.

The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25.

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

#### ***Overview of legal persons***

264. Barbados has taken positive steps towards implementing the legal requirement for information on beneficial ownership of legal persons and legal arrangements to be obtained and maintained. It has developed an all-embracing registration and licencing system so as to ensure that all relevant information on legal persons are within the knowledge of the relevant competent authority. Laws require BO information that is not held by the Registrar of CAIPO to be held at the corporate office and be accessible to investigative authorities and the public. The types of legal persons that can be created include: domestic companies, international business companies, NPOs and Charities. All creation/incorporation and basic ownership information on the types of persons and arrangements are available publicly for a fee and there is the allowance for the extraction of copies of records. An online search or a physical search can be conducted at the office of CAIPO who is the overall repository of all legal persons and legal arrangements to determine the existence of the entity in law. Information on the creation of legal persons and the requirement to obtain and record basic and BO information is publicly available. On the issue of BO, while it is said that BO information is maintained at the company's registered office, there is no information as to the manner in which competent authorities verify and confirm that the said information is actually maintained because as noted, desk based reviews are conducted but with limited onsite monitoring.

#### ***Public availability of information on the creation and types of legal persons and arrangements***

265. Companies, foreign sale corporations, international business corporations, foundations and trusts may be created in Barbados. A breakdown of the types and numbers of legal persons and legal arrangements is provided in the table 16 below.

**Table 16: Breakdown of types and number of legal persons and legal arrangements in Barbados**

Type of legal person – sector	Number Registered	Type of legal person and legal arrangements Process of existence	Type of register for basic information	Basic features
Companies limited by shares without nominal or par value - Domestic	22,764	Legal person – incorporation	Public – Company Registry	Companies Act - pursuant to the CA such a legal person is formed for the purpose of carrying on any trade or business for gain and has a separate legal personality to its incorporators
Foreign Sales Corporations - Domestic	2,885	Legal person – incorporation	Public – Company Registry	A FSC is a foreign corporation established in an approved location by a U.S. export oriented corporation and which allows US exporters to permanently exempt a portion of their profits derived from export sales from US taxes. Barbados qualified as one of the first jurisdictions for Foreign Sales Corporations following the conclusion of an exchange of information agreement between Barbados and the United States of America. The FSC must meet certain United States requirements in order to qualify in the United States. The FSC must meet certain conditions: Be designated as an FSC in the USA; Be incorporated in Barbados; Be engaged in foreign trade transactions as its principal objective and activity; Ensure that its shareholders are not residents of Barbados or any other CARICOM country.
External company - Domestic	2,327	Legal person – registration	Public – Company Registry	Any incorporated or unincorporated body formed under the laws of a country other than Barbados;
International/Exempt Societies with Restricted Liability – International	1393	Legal person – incorporation	Public – Company Registry	Similar to what is known as a Limited Liability Company (LLC) in other jurisdictions, a Society with Restricted Liability (SRL) can take one of two forms. It can either be set up as an International / Exempt SRL; or a Non-Exempt/ Domestic SRL. International / Exempt SRLs, are used mainly for international transactions and are prohibited from owning land for business purposes and transacting business with CARICOM residents.
Domestic/Non-Exempt Societies with Restricted Liabilities – Domestic	213	Legal person – incorporation	Public – Company Registry	Similarly, to ISRL these DSRL /. Non-Exempt SRLs are subject to standard corporate tax rates but are allowed to transact business with CARICOM residents who can have ownership share in the company exceeding 10%.
Non-Profit Organisations – Domestic	738	Legal person – incorporation	Public – Company Registry	An NPO primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, social proposes. The Company has no authorised share capital, is to be carried on without pecuniary gain to its members, and any profits or other accretions to the assets of the Company are to be used in furthering its undertaking. Such a company must nonetheless after its annual meeting send to the Registrar a copy of its annual financial statement the assets and liabilities of the company in the form of a balance sheet; the revenue and expenditure of the company since the date of incorporation or the date of the previous financial statement;

				and the names of donors where the donation in each case exceeds \$20 000 and, where a donor is an entity within the meaning of the Anti-Terrorism Act, the beneficial owners and directors of the entity.
Segregated cell companies – Domestic	UNKNOWN	Legal person – incorporation	Public – Company Registry	A company incorporated or continued for the purpose of carrying on (a) financial services activity including insurance, banking and mutual fund activity; or (b) such activity of a non-financial nature as approved by the Minister, in accordance with a plan whereby the assets and business operations are divided into cells, for the purpose of segregating and protecting the cellular assets of the company in the manner provided by the Act. A "cell company", shall, notwithstanding that it may create one or more cells, be a single legal person and the creation by a cell company of a cell does not create, in respect of that cell, a legal person separates from the company.
International business companies- International	3,040	Legal person – incorporation	Public – Company Registry	An IBC is a company that is licensed to carry on business in manufacturing, trade or commerce from within Barbados, for customers residing outside of Barbados. It is premised on legislative framework (tax incentives and benefits), non-legislative framework (financial services and infrastructure of the island). Barbados commenced operating IBCs as early as 1965, when it first enacted legislation providing tax incentives to offshore companies
International Banks - International	28	Legal person – incorporation	Public – Company Registry	A company must have a licence before engaging in the international banking business. In order to establish an international offshore bank in Barbados, details of the proposed bank must first be submitted to the Central Bank of Barbados for consideration of the application. . Upon the advice of the Central Bank, approval for a licence is granted by the Minister of Finance prior to the incorporation of a company. A license to operate is issued only to qualified foreign banks and eligible companies. Licenses are under the overall control and oversight of the Central Bank of Barbados
Private trusts – International	1	Legal arrangement – registration	None public	A Private Trust Company (PTC) is a limited company authorized to act as trustee of one or more family trusts. It is not permitted however to offer its trusteeship services to the general public. A PTC is an alternative to using a professional trust company as the appointed trustee although it would still be common for a professional trustee to be engaged as administrator of the underlying trust(s). A PTC is first registered at CAIPO then licensed to operate as a PTC by the IBD under the PTC Act 2012-22 .
Foundations - International	0	Legal arrangement – registration	None public	The Foundations Act 2013-2 and Regulations have never been used or enforced and are currently being amended. No Foundations have been created.
International trust - International	531	Legal arrangement – registration	None public	This is a trust in respect of which (i) the settlor is resident outside Barbados at the time of the creation of the trust and at such times as the settlor adds new property to the trust; (ii) at least one of the trustees is resident in Barbados; (iii) no beneficiary, other than a person who is a resident of Barbados at the time of the creation of the trust and at such



				times as the settlor adds new property to the trust; and (iv) the trust property does not include any immovable property situate in Barbados or an interest in any property so situate. International Trusts must be set up by a non-resident and its beneficiary must also be a non-resident of Barbados. There are no minimum capital requirements for Barbados Trusts and they can be either of fixed interest or discretionary. International Trust Conditions: The trust deed must specify that the International Trusts Act applies. At least one trustee must be a resident of Barbados. The settlor and the beneficiaries must be non-residents of Barbados. The assets of the trusts cannot include Barbados real estate. Income earned within Barbados must be taxed and remitted to Barbados. The perpetuity period is up to 100 years.
Domestic Trust – Domestic	40	Legal arrangement – registration	None public	A domestic Barbados trust involves a private trust deed with trustee that is either (1) a Barbados domestic company whose articles stipulate that it can only be trustee of one company (2) a Barbados resident individual (3) a Barbados licensed professional trustee company that is licensed under the Barbados domestic Banking Act. (Financial Institutions Act). With respect to taxation of Barbados domestic trusts, (a) Section 40 of Barbados Income Tax Act provides that a domestic trust is to be taxed as an individual and the trust is subject to tax on a worldwide basis in Barbados; and (b) A Barbados domestic trust can therefore get an individual tax number from the Barbados Revenue Authority and has to pay income tax on income earned. The Trustee needs to have KYC on each of the beneficiaries. The Barbados Trustee is subject to worldwide tax in Barbados and has to report fees earned. If the trust has more than USD2M on its balance sheet then it needs an audit by a professional auditor in Barbados. The Barbados domestic trust has to file annual individual tax returns - therefore has to maintain financial accounts.
Partnerships General / Limited Arrangements	11	Legal arrangement- registration	None public	Partnerships are governed by the Limited Partnership Act Cap. 312, which involves the participation of corporate entities; and the Partnership Act Cap. 313.

266. There are three authorities in Barbados which include CAIPO, FSC and IDB each having a individual and interconnected legislative mandate that govern the holding and retention of basic and BO information, individually and collectively. These are explained as follows:
267. CAIPO implementation – CAIPO implements the COMPA, the formation and operation of all companies, partnerships, societies, body or other group for carrying on any trade or business for gain. Incorporation is conducted through the signing and sending of the Articles of Incorporation to the Registrar of Companies. When the Articles of Incorporation is submitted to the Registrar it is accompanied by a statutory declaration of an attorney-at-law as being conclusive of the facts therein. In that regard, the observations are as follows:

- (a) Firstly, at the point of the incorporation of the legal person, no CDD or fit and proper assessment is conducted. In response, the authorities advise that service providers are required to conduct due diligence when applying for a licence for an IBC and SRL for example. Item 22 of the application form for IBCs requests contact details of the ultimate beneficial shareholder if different from shareholder information.
- (b) Secondly, any individual can form a company and therefore incorporators are not restricted to attorneys-at-law (service providers). This would have provided a mitigating factor because whereas attorneys are officers of the court, other persons are not and therefore the undertakings made in the statutory declaration may not always be verified and confirmed as true, therefore there is not always the safeguard against a person who fails to be fit and proper becoming involved with legal persons and legal arrangements.
- (c) Thirdly, there is compliance for the company to maintain a register of shareholders showing a record of the beneficial ownership of companies incorporated or registered in Barbados and this is held at the registered office, however the ability to maintain such information at another location may mitigate against the availability of the records taking into consideration there is no requirement for notification.

268. IBD – implementation - the IBD implements licensing and/or registration of IBCs, ISRLs, ITS and Foundations. The IBD also administers the CTSPA. Based on the onsite assessment examination the relationship and process explained is as follows:

- (a) All entities at incorporation whether domestic or international first register with CAIPO, thereafter for entities that wish to conduct international business, they proceed to be licensed with the IBD. The Authorities advised that service providers are required to provide BO information when applying for a licence for IBCs and SRLs and such information remains resident with the service provider. Service providers also provide at Item 22 of the application form for IBCs and SRLs contact details of the ultimate beneficial shareholder if different from the shareholders.
- (b) When applying for a licence for an IBC/ISRL, applicants are asked to provide shareholder information and ultimate BO information. The application forms also ask for detailed information on the true purpose of the entity inclusive of the jurisdictions where it intends to carry out its business activities. Officers in the International Business Division will ask follow up questions where the description of proposed business activity appears vague and lacking in clarity. A licence will not be granted until this information is provided. This information is not publicly available. A licensee that either fails to notify the CBB in the required timeline or to submit a confidential statement form may be deemed to be operating in an unsafe and unsound manner and therefore subject to sanctions. The licensee would be directed to comply by a prescribed timeline failing which laddered sanctions would be applied depending on the issue e.g. outstanding attachment to the form.
- (c) Basic information for incorporation remains with CAIPO. All additional information is held by IBD and corporate and trust service providers
- (d) Based on the information received during the onsite assessment FIs and DNFBPs, inclusive of the relevant competent authority, disclosed that they do institute measures to know the ultimate BO, however, this is not based on the provision of the IBCA but more so other Guidelines (CBB and IBD) issued by the competent authority.
- (e) With respect to International Trusts, details relative to the creation of this entity is maintained at the IBD, this information is not publicly available. CTSPs keep legal and BO information on an International Trust.

269. FSC implementation – FSC has oversight of the non-bank sector, including exempt insurance companies, insurance companies, occupational pension benefits, securities and mutual funds and credit unions. Further, based on the information provided the FSC, by the delegated authority of the FIU, and pursuant to an MOU which comports with the FSCA, the FSC was tasked with conducting examination of FIs and DNFBPs and this has actually been implemented but is still in its infancy stage. The following were the relevant observations:
- (a) Of the legal persons licensed or registered, the FSC keeps a register, such register is open to public inspection.
  - (b) Companies supervised have a legal mandatory filing date after a change. For credit unions and insurance companies there is the obligation to notify of changes to the corporate structure and particulars of registration within 30 days of the change with sanctions for non compliance. For Mutual Funds and Securities there is the requirement to notify with seven days of the change with sanctions for non compliance. The FSC also has a general prior vetting power wherein any person operating in a financial business can be assessed to determine if they are fit and proper.
  - (c) At the onsite assessment, it was disclosed that generally whilst there is a pre-approval required for the principal representative of insurance entities, all other management posts are subject to post notification and post approval where a fit and proper assessment is conducted. Therefore, at the time of the change there is the allowance of up to 30 days to notify the FSC. Therefore, this may impact the accuracy of the information accessible by the public and the relevant competent authority at the material time.
270. Overall, with respect to the creation and operations of legal persons and legal arrangements in Barbados, the Corporate Registry both on its website and in law publicly discloses formation information.

*Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

271. Barbados submitted a NRA dated June 30, 2016, this was limited in scope and depth, and the jurisdiction was encouraged to complete a more fulsome risk assessment which they have proposed to do utilizing the World Bank Tool. Nonetheless at the time of the onsite assessment further information was gleaned as to the identification, assessment and understanding the vulnerabilities and extent to which legal persons can be misused for ML/TF. The information disclosed is as follows:
272. CAIPO – The authorities indicated in their Immediate Outcome document that a desk review of the operations of domestic companies are conducted and where the operations are not of an insurance business or financial in nature, there is no such review as the authorities have indicated that generally these operations do not pose a risk to AML and CFT operations. Based on discussions during the onsite assessment, the relevant competent authority, being the Registrar of Companies, has never conducted a risk assessment and or examination of the registrants to identify and understand the vulnerabilities and the extent to which legal person can be misused for ML/TF. The risk posed by legal persons will be addressed by the ongoing NRA using the World Bank tool. It was also disclosed, during the onsite assessment, by the Barbados authorities that the way in which they seek to mitigate the requirement to prevent the misuse of legal persons and legal arrangements was a reliance on the annual filing mechanism where annual returns are mandated. It was also disclosed that the annual attestation form contained an express requirement to declare that BO information is being retained. Consequently, upon the failing to file, the law permits the Registrar of CAIPO to strike off from the register a company that neglects or refuses to file an annual return. It was however disclosed by the authorities that in practice the enforceability mechanism is not applied and instead the Registrar simply withholds the Certificate of Good standing until the required filing is complete. Further, it was not disclosed whether there was any assessment of the frequency of the none filings as a means

of assessing the impact. In so doing this sector has not yet been assessed for the vulnerabilities posed by legal persons and how they can be misused for ML/TF thereby demonstrating a low level of effectiveness.

273. IBD - In identifying, assessing and understanding vulnerabilities of entities, it is stated that the supervision and regulation department currently conducts desk reviews at the time of the initial application, at the time of renewal on submission of the annual form. When reviewing applications for licensing, if there is the concern that the activity being contemplated is one falling under a higher risk category of banking or insurance, these applications for licensing are always referred to the CBB or the FSC. Prior to the referral the corporate and or trust service provider is asked a series of questions on the structure being set up, its purpose and a detailed business plan. Both the CBB and FSC together with the IBD have agreed to the relevant triggers which may warrant closer examination. If the FSC or the CBB decides that the case in question has a higher risk profile than one that an IBC or ISRL would ordinarily have, the IBD will then advise the service provider accordingly and make a referral to the relevant regulator. If there is further failure to satisfy the outstanding requirements, the said legal person will not be granted a licence from the IBD. As a general rule, applications involving shareholders from certain countries considered “higher risk” will receive different consideration than shareholders from jurisdictions considered “lower risk” being recognized as a source of vulnerability. Notwithstanding, the onboarding process outlined and the due diligence and fit and proper procedures, this is not akin to the requirement to identify, assess and understanding vulnerabilities in the IBC sector where legal person are concerned, that is to say there is the requirement for a country wide assessment to identify and assess ML/TF risks. In so doing this sector has not yet been assessed for the vulnerabilities it poses to legal persons and how they can be misused for ML/TF.
274. CBB - The CBB disclosed that Internal Guidance is issued to the sector. Such guidance is intended to allow the relevant sectors to assess inherent risk in customers, products and services, geographic regions and distribution channels associated with activities in the local banking sector. The guidance attempts to understand e.g. the inherent risk in types of corporate customers (public, private, small and medium sized enterprises) and NGO/NPO/Charities. The guidance recognize key factors such that: (a) A CBB licensee must have a physical presence and cannot have a shell company in its structure; (b) licensees offering cross-border wire or fund transfers should not conduct correspondent and respondent banking relations with shell banks; (c) Barbados’ law prohibits companies from issuing shares in bearer form; (d) CBB licensees must ensure they can identify the beneficial owners of corporate customers with nominee shareholders and should immobilise bearer shares; (e) nominees are regulated under the MLFTA as corporate and trust service providers; (f) trustees of international trusts or offshore trusts and licensed trust companies fall under the MLFTA. This guidance & ratings are incorporated into the net ML/TF tool currently in use and refreshed periodically. The ML/TF tool has risk weighted the sector as moderate. Notwithstanding, while these processes assess vulnerabilities, there has been no disclosure that at the end of the exercise a picture of the sector as a whole is formulated to then inform on the overall vulnerabilities. In so doing this sector has not yet been assessed for the vulnerabilities it poses to legal person and how they can be misused for ML/TF. The authorities have disclosed that information from the NRA will eventually be included in the sector assessment which will clarify the risks and vulnerabilities and further strengthen policies relative to legal persons.
275. It is to be noted that while the relevant competent authorities are credited for conducting some measure of assessment, the FSC which regulates the DNFBPs sector has not indicted any assessment process with which they are engaged. In conclusion, as it relates to this core issue, the jurisdiction has not conducted a process of identifying, assessing and understanding the vulnerabilities and extent to which legal persons created in the country can be misused for ML/TF.

### *Mitigating measures to prevent the misuse of legal persons and arrangements*

276. IBD - As it relates to the IBD which is responsible for the licensing and regulation of IBCs, at both the application and licensing stage, IBCs are subjected to a fit and proper assessment inclusive of assessing the profile of individual applicants and senior management, taken together with identification information and qualifications background. Shareholder information at the standard 10% threshold must be disclosed as per the IBD Guidelines and is retained by the IBD. Further, during the due diligence process, for information related to convictions or investigations regarding ML, the IBD liaise with the RBPF and also has access to information from Interpol. As it relates to ongoing monitoring to prevent misuse of legal person and legal arrangement, based on the information provided, the Director of IBD has only conducted limited examinations relative to the sector they regulate, such examinations are pursuant to an MOU on behalf of the FIU. For legal arrangements, there is issuance of the IBD Guidelines, this abode well for providing a framework for mitigation for misuse however there is little information that the IBD conducts the necessary follow ups to verify the adherence to the implementation of the Guideline. Therefore, there is no information to determine the extent to which the IBD has knowledge of how and if there is misuse of legal persons and legal arrangements, and any implementation measures applied.
277. CBB- Several CTSPs are licensees of the CBB and are therefore subject to ongoing supervision and oversight. The Authorities have advised that among these CBB licensees is the largest international trust provider, which together with the other dual licensees, account for more than half of the IBDs ITS registrants. Requirements relating to post licensing change of BOs of CBB licensees are provided for under the FIA and the IFSA respectively. The confidential statement form is utilized to undertake background checks on shareholders, executive officers, directors, alternate directors and other key persons of licensees. In addition, the CBB Corporate Governance Guidelines require that, board members and their alternates, and senior management must be approved by the CBB as part of their fit and proper assessments. As such, the licensee is required to notify the CBB of any changes to its directors and senior management within 14 days of the change. This is in keeping with international standards based on established Basel Banking Supervision Core Principles. By the implementation of these timelines the CBB seeks to give effect to measures to prevent misuse of legal person and legal arrangements for ML/TF purposes.
278. FSC - The FSCA grants express permission to the FSC to cause an assessment of the affairs of a FI, for amongst other things, to determine whether the provision of the MLFTA and the guidelines related thereto have been complied with. During the onsite assessment, the FSC demonstrated that since being given its mandate in October 2016, they have reviewed 10 of 12 DNFBPs which were deemed systemically important with the intention being to elicit findings about vulnerabilities, and recommendations to be included in the report for follow-up remedial action. This process is in its infancy and the effectiveness could not be tested fully.
279. All DNFBPs including dealers in precious metals, exercise CDD, however some of the other KYC measures are not well known. The AMLA has recently published a guideline to bridge the gap together with an awareness program. In the real estate sector, the FSC observed that the compensation controls on the lawyers act as a built-in safeguard for real estate transactions in that money is not presented directly to the real estate agent. As CAIPO is the overarching body where all domestic companies and IBCs are formed, the ability to have updated information outside of an annual filing limits the ability to implement mitigating measures. Further, there is no trigger obligation to file an update, but even if there was a filing, because CAIPO did not have the initial listing, there is no substantive way they could compare any changes, and in any event, they are simply filings and not notifications of change. The IBD requires a submission of a Declaration Form annually or sooner if there is a fundamental change. All of this is undermined by the provision in the COMPA that whilst the information can be kept at the companies registered office, it also permits a

discretion to maintain the record of BO information at some other place in Barbados designated by the directors of the company.

*Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and legal arrangements*

280. As the COMPA is the overarching legislation where all domestic and international business corporations are formed, there is no requirement for the permission to be received or notification given to the Registrar should the director give effect to changing the location of the corporate records, this severely limits the requirement for having adequate, accurate and current BO information in a timely manner for legal persons; however the prudential regulators still have access.
281. IBD – Pursuant to various provisions within the ITA and the MLTFA, CTSPA imposes a duty on a CTSPs and or trustees to keep information legal and BO information on its customers. Relative to the IBD AML Guidelines however, while the provisions provide for the existence of a technical compliance framework, this information does not address the issue of the timely access to the relevant information, nor has any example been given of the effective implementation to have the timely access to such information.
282. FSC - The FSC has enhanced its licensing framework with the introduction of its fit and proper regime. The Confidential Fit and Proper Questionnaire has been incorporated into its license renewal policy and are completed by individuals at least every three (3) years. However, while licensing requirements provide for the existence of a technical compliance framework, this does not address the issue of the timely access to the relevant information, nor has any examples been given of timely access to such information.

*Effectiveness, proportionality and dissuasiveness of sanctions*

283. Companies and their officers are subject to penalties for failure to comply with provisions under the COMPA. However, there is no active monitoring by CAIPO to ensure that the information submitted on the returns is accurate and up-to-date. The penalty for the late filing of Annual Returns is BDS\$10 dollars per day with no maximum penalty. The offence of providing false information in any return or other document required to be filed under the COMPA carries a penalty of imprisonment and a fine. However, in practice this is not applied and the company is not struck from the record. In terms of remedial actions and sanctions, no sanctions have ever been applied. CAIPO stated that one method of control is the refusal to issue a Certificate of Good Standing (COGS). However, CAIPO accepted that the company can continue to function and do other transactions which do not require the certificate, hence this mitigates against effective, proportional and dissuasive sanctions. Together with CAIPO other regulatory and supervisory authorities exercise follow up procedures, however there is no information on the imposition of fines upon failure to comply with the relevant laws to ensure compliance. The authorities assert that because the COGS is a requirement for the conduct of commercial transactions, that correspondent entities would not engage in business with companies that are not in good standing. Further, that although the company remains registered and may engage in minor activities, no substantial business or undertakings would be possible. In that regard, it is noted that unless and until a corresponding entity requests a COGS, then the company can indeed engage in both major and minor transaction without being affected by the sanction for being non compliant; this sanction is therefore arguably not effective.

*Overall conclusion for Immediate Outcome 5*

284. Barbados has limited measures in place to prevent legal persons and legal arrangements from being used for criminal purposes. In respect of basic information on companies, the retention of the information is transparent as such information is publicly available. In respect of the BO information which is maintained outside of the corporate registry (this is not a deficiency) the Authorities have

indicated that the various MOUs between competent authorities enhance the timely exchange of information.

285. Based on the legal framework, where the BO records which are to be maintained at the company's office can be changed by the director dictating that the BO records be kept at some other location in Barbados, this mitigates against transparency of legal persons. The maintenance of BO information is not only permitted to be at the company office itself but also the corporate registry office. However, the monitoring of the corporate service providers is limited and therefore would not always disclose failure to maintain BO information. The authorities assert that wherever kept, the legal responsibility of the directors to be in a position to make that information available to competent authorities or the public is not affected. Further, based on the information from CAIPO, there is no single and consistent form being used to file an annual attestation information regarding the maintenance of beneficial ownership information, this remains a significant deficiency on the basis that if the information is not mandated to be presented in a uniformed manner inconsistency in the information may not be detected.
286. Neither legal persons and legal arrangements regime contain any trigger mechanism in the event of changes in the incorporation information and only annual filings are offered up to attest to maintaining BO information. In that regard, for legal persons, in instances where the information regarding BO is being kept at another location based on the decision of a director, no information has been provided as to how such information could be accessible to LEA and the FIU in a timely manner. The authorities have cited the existence of other prudential regulators as an indication that at some level some competent authorities have access to the relevant information. Further, no mechanism has been disclosed as to how BO information which is held with the service provider is accessed by LEAs. Additionally, in respect of the annual filings, there was no disclosure as to an established mechanism in practice to monitor the failure to file, or any follow-up based on a risk-based approach. Finally, should there be a failure to file such annual information, no information has been disclosed as to the application of sanctions which are proportionate or dissuasive in instance of breaches. Therefore, based on the application of the legal and supervisory framework, legal persons and legal arrangements are not fully prevented from being misused for ML or TF, and information on BO may not be clearly available to competent authorities without any impediments.
287. **The rating for Immediate Outcome 5 is a moderate level of effectiveness.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- Barbados has demonstrated some characteristics of an effective system of international cooperation.
- There is evidence of collaboration or cooperation in respect of predicate offences and terrorism and during seizures, but no evidence of cooperation on specific ML investigations, prosecutions and convictions.
- Whilst it is acknowledged that Barbados does have some characteristic of an effective international cooperation system, there are instances where extradition requests to Barbados have proven to be a challenge. The Assessment Team has determined that there has been significant progress, with one matter being outstanding.
- The authorities stated that no requests for information were received from international agencies, neither was there a need for foreign co-operation in identifying and exchanging basic and BO information on legal persons or legal arrangements. No request was filed during the review period.
- The understaffing at the Office of the DPP negatively affects the efficiency and timeliness with which Barbados can react to requests for MLA.

#### ***Recommended Actions***

##### ***Immediate Outcome 2***

- Barbados is required to satisfy the specific outstanding extradition request/ or provide timely status updates as a continued demonstration of cooperation with international authorities.
- The authorities should continue to request or satisfy the request for information on the exchange of financial intelligence and identifying and exchanging basic and BO information of legal persons and legal arrangements.
- Barbados should resolve the matter of understaffing of legal counsels at the Office of the DPP as soon as possible.

The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

### ***Immediate Outcome 2 (International Cooperation)***

#### ***Providing constructive and timely MLA and extradition***

288. Barbados has established the infrastructure to facilitate the effective and efficient exchange of information in response to MLA requests as well as timely responses to extradition requests. Where such assistance requires information on legal persons, the FIU, which is the local coordinating authority, has access to the Corporate Registry's database and this information is readily available. This Office is also a party to a MOU with the FIU and other regulatory bodies which governs the sharing of information. Barbados has, through its Central/Competent Authority (The Attorney General) and with the assistance of the DPP; the FIU and the RBPF, provided relevant and timely information pursuant to international co-operation requests. The obligation is carried out, provided that the requests from such countries, are compliant with the domestic laws, and provided the exchanges of information do not breach the Conventions which Barbados has signed and ratified.



289. The length of time over which a response to a request is made, varies. It is almost impossible to give an accurate response as to how long a response takes as there are many variables including Court decisions after legal submissions. The quality of the assistance provided by Barbados pursuant to international cooperation requests will ultimately be determined by the Requesting States, as they will determine whether the information is useful for their purposes. The RBPF has participated in matters of requests for information in relation to Mutual Legal Assistance and other requests from foreign jurisdictions. However, such formal requests are not made directly to the police.
290. The RBPF receives request from the Office of the DPP for investigative support. Such information requires an investigation to be conducted, a procedure that is within the province of the police. A request may necessitate an application being made to the High Court for some relevant order to be made, such as production, restraint, freezing or confiscation. Applications of this nature must be supported by affidavit evidence. The officer responsible for the investigation would usually draft the affidavit and send it to the Office of the DPP. That office would verify whether the affidavit is adequate to support the application for the relevant order. The documents are then signed by the investigator and produced before the Judge to secure the order. The order is then relayed to the investigator to have it served on the relevant party. The order stipulates the time for the documents to be produced. Notice of service is signed by the investigator and then returned to the office of the DPP. The determination is then made by the court.
291. It was disclosed by both the Office of the DPP and the RBPF that there is a significant issue regarding the delay of the progression of requests once they are submitted to the Office of the DPP. In fact, due to the admitted under staffing of legal counsels within the DPP's office, requests are not advanced expeditiously, thereby affecting the efficiency of the system. Nothing has been articulated as to a policy position regarding such institutional and administrative matters.
292. Barbados has also indicated that it has acted on 39 requests from regional jurisdictions, 23 incoming MLAT requests were made through the DPP's office, while two outgoing MLAT requests were made by the RPF. One of the cases in which a request was made by the RPF through the MLAT process was a matter involving fraudulent transfers perpetrated by a person employed at a senior level in the government service.

**Table 17** below provides an indication of the number of MLAT requests received and processed by Barbados under the MACMA and other treaties.

**Table 17: Mutual Legal Assistance requests**

Type of Request	Period	Amount
International	2012	10
Regional		0
International	2013	4
Regional		0
International	2014	5
Regional		0
International	2015	4
Regional		0

*Providing constructive and timely MLA and extradition*

293. During the year 2016 in the international response provided the following has been noted: Belgium indicated that over the period it made one request to FIU and has not received a response. USA indicated that for MLA for the period it made six requests and three satisfied, one pending and one

withdrawn. As for extradition, the USA made two requests. One is pending and the other was withdrawn. The UK indicated over the period it made ten requests; however, there was no information that they were all satisfied. Over the review period, the jurisdiction has made one MLA request to Japan.

294. All the said international and regional partners have indicated that the information provided by Barbados was useful, timely and comprehensive. However, one international partner has indicated that prior extradition requests have proved to be a challenge.
295. Of the prosecutorial arm, it was disclosed that there has been specific regional cooperation requests in respect of drug possession investigation and prosecution which led to convictions. Also, there was a fraud investigation related to a regional cooperation requests which commenced with the request for banking information but was not pursued to the point of prosecution due to the lack of evidence. Internationally, with respect to fraud there has been the immobilisation of bank records and the preparation of witness statements. There was also one specific instance of cooperation sought from an international jurisdiction which was not consummated.
296. Of the law enforcement, it was gleaned that there has been a specific international cooperation request however that matter is presently sub judice. It was disclosed that Barbados based on its geographical location is a hub for the movement of persons and money where terrorism is concerned. The authorities disclosed that there is a mechanism to share information with strategic regional jurisdiction and the relevant agencies whereby the law enforcement agencies flag and monitor movements and relay to their regional or international associates in other destination jurisdictions where the movement of possible terrorist are concerned.
297. There has also been the established specific regional cooperation arrangement between Barbados and Trinidad and Tobago based on specific example of the travel related to one specified terrorist through Barbados and back to Trinidad and Tobago. In the circumstance, a watch list was created to assess further movements.
298. It was disclosed that the jurisdiction will continue to give effect to an international arrangement between the law enforcement, Customs and JRCC which though in its infancy would assist with the monitoring of the movement of drugs. More particularly, there has been no information provided as to the sharing of information pursuant to a principal Act, statutory instruments or MOU or legal instrument. In conclusion, based on the totality of the information gleaned, whilst there has been specific collaboration or cooperation in respect of predicate offences, and terrorism, no such cooperation in respect of ML matters was disclosed.
299. Barbados cooperates with its international law enforcement counterparts, which has resulted in the prosecution and conviction of persons in one case. MLA and extradition mechanisms are also used.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

300. Barbados has made requests for international cooperation. The response in one instance has remained outstanding. In addition, the Office of the DPP collaborates with the Ministry of Foreign Affairs to determine with which specific countries Barbados has Agreements or MOUs, before the transmission of sensitive, information pursuant to such requests. In addition, from time to time the RBPF makes requests for legal assistance for international cooperation through the Office of the DPP to advance investigations into ML and associated predicate offences. There were two such case for the period.

**Notable Case:**

The subject was employed within the Government service in a senior position. His position afforded him the opportunity to meet high level officials and negotiate on behalf of the Government. The subject used his position to sell information to a private International company. The subject subsequently used personal banking information to receive the payment for the information.

During the course of the investigations the police utilised international cooperation in obtaining information from two private international companies. To successfully prosecute this crime, it was necessary to obtain investigative assistance via MLAT requests.

### *Seeking other forms of international cooperation for AML/CTF purposes*

301. Based on the international response, received by the team of the Assessors, Barbados has experienced one successful sharing of information with an international partner. Feedback from a regional partner showed that over the period three requests were made and all three were satisfied.
302. Generally, it was disclosed that Barbados' FIU has good relationships with other regional FIUs. FIU to FIU informal communications is a common practice. This is true of information sought by Barbados as well as information needed by other FIUs. The FIU has exchanged information with foreign counterparts for investigating AML/CFT pursuant to the existing laws. Further, as a member of the Egmont Group of FIUs, the Barbados' FIU can utilize the ESW as a tool to share information with its counterparts. The table 18 below depicts how this has been used in practice:

**Table 18: Requests through the ESW**

	2012	2013	2014	2015
Reports sent by FIU to other FIUs	0	5	4	9
Spontaneous Referrals from FIU	0	1	7	0
Requests for information sent by FIU	0	7	1	0
Requests Received from foreign FIUs	28	28	20	33

303. The FIU has signed several MOUs with foreign jurisdictions including Albania, Bangladesh, Bermuda, Canada, Guatemala, Moldova, Netherlands Antilles (former), Nigeria, Panama, St. Lucia, St. Maarten, St. Vincent and the Grenadines, and Trinidad and Tobago. However, based on the MLFTA, Barbados' FIU can share information with any FIU once that country also possesses appropriate safeguards to protect the information to be shared. The clause within the MOUs provide the parameters for the information exchange including the fact that the request for information must set out a brief set of facts including names and other information on the subjects, the alleged or purported ML, TF or related activity and the nexus with the requested country. Information regarding the handling of the information as an appropriate safeguard to be employed including an undertaking of confidentiality is expressed in the MOUs.
304. There have been occasions where the FIU has requested countries to provide clearly the nexus with Barbados where it is not identifiable from a perusal of the facts that there is a nexus with Barbados. On the face of it, the request may appear as a blanket request for information or may appear as more of a fishing expedition. There is no information as to the number of instances in which this has occurred during the review period. There have been a negligible number of requests to the Barbados

FIU from non-counterparts. Routinely, these requests may originate from another police force through the RBPF.

305. Prior to the establishment of the Fourth Round Methodology, the FIU has been contacted on only one occasion for information by a regional organisation. The FIU was willing to share information on the basis with an MOU with that entity. The FIU shares intelligence informally with the Inland Revenue Department of the United States Embassy based on the Tax Exchange Information agreement (TEIA) between the two countries. This information provided may lead to a request for MLA being forwarded to the Central Authority of Barbados. The FIU has periodically assisted with the MLA requests sent to Barbados once this information has been provided to it from the Central Authority through the DPP's Office.
306. In pursuing the exchange of information between competent authorities for the purposes of AML/CFT, there is ready collaboration between Barbados and regional and international police forces. To advance the prosecutions of ML matters, the prosecutors coordinate with members of the RBPF, who in turn gets assistance from International and Regional police forces, Immigration, Customs and Foreign Embassies. Some of these agencies include: Crown Prosecution Service (CPS) of the UK, Department of Justice (DOJ) of the United States of America, IML of United States of America, Drug Enforcement Agency (DEA) of United States of America, RCMP & Department of Justice (DOJ) of Canada. There is no statistical information to support this statement.
307. Where the RBPF is concerned, informal requests are a regular occurrence of day to day policing within the FCIU. Requests are made routinely to agencies such as Interpol which is facilitated through our local Interpol office. Requests are also made on a police to police basis with several other jurisdictions.

**Table 19: Statistics showing other forms of international cooperation used by law enforcement:**

<b>Year</b>	<b>Incoming Requests</b>	<b>Informal</b>	<b>Outgoing Requests</b>	<b>Informal</b>
<b>2012</b>	11		13	
<b>2013</b>	12		10	
<b>2014</b>	8		18	
<b>2015</b>	10		11	
<b>Total</b>	41		52	

*Providing other forms of international cooperation for AML/CTF purposes*

308. Barbados has confirmed that the FIU has utilized the ESW as a tool to share information. This is to the extent that over the period 18 reports were sent by FIU to other FIUs while eight spontaneous referrals were sent from the FIU.
309. The FIU has indicated that it has MOUs between international and regional parties to permit the sharing of information provided the information sharing comports with the appropriate safeguards to protect the information shared and to keep the same confidential.
310. The jurisdiction has shared tax information with Inland Revenue Department of the United States Embassy based on Tax Exchange Information Agreement (TEIA).
311. Other forms of international cooperation are provided through spontaneous referrals between countries to facilitate the exchange of relevant information for AML/CFT purposes. Such situations may arise where a requesting State seeks information from Barbados, but Barbados may not be able

to provide that particular information and Barbados refers the requesting state to another country which can facilitate the request.

*International exchange of basic and beneficial ownership information of legal persons and arrangements*

312. The jurisdiction has the legal framework to give effect to the sharing of basic company information. This information is held publicly. However, there is an impediment to the sharing of BO information as this information is not held at the corporate registers office. During the onsite assessment, no information was provided as to actual examples of competent authorities providing and responding to foreign requests for co-operation in identifying and exchanging basic and BO information of legal persons and legal arrangements, however, there has not been any request over the review period.

*Overall conclusions for Immediate Outcome 2*

313. Barbados has put in place the legal and administrative frameworks to facilitate MLA and extradition requests and to facilitate international cooperation. However, the Crown Counsels assigned to the dedicated Units under the Office of the DPP are also tasked with regular court assignments and other office duties in addition to MLA requests, which make it difficult for them to handle court cases and process MLA requests. This results in delays in dealing with the MLA requests, notwithstanding the authorities assert that MLA requests are prioritized and are not usually delayed.
314. Barbados has also processed non-contentious MLA requests within a reasonable period, but delays may occur in the handling of more contentious requests through no fault of the jurisdiction as such delays are caused whereby there is a failure or delay on the part of third parties to provide the information requested by foreign states or there is resistance from the defendant or subject by the exercising of their Constitutional rights. This prevents the Central Authority from being able to satisfy the requests in a timely manner.
315. Coordination among domestic agencies when investigating ML related matters and pursuing confiscation orders pursuant to MLA requests is also reasonable. However, improvements are required, especially to increase the use of international cooperation requests to enhance Barbados' investigation and prosecution functions, particularly as they relate to timely exchange of information. Authorities have generally demonstrated that they are able to cooperate constructively with their foreign counterparts.
316. Barbados through several arms of government ranging from law enforcement and the prosecutorial arm has engaged in some level of international cooperation as it relates to mutual legal assistance and extradition.
317. Barbados cooperates with its international law enforcement counterparts and this has resulted in the prosecution and conviction of persons in one instance. However, authorities lack comprehensive statistics to show the timeframe in which individual requests have been processed and provided.
318. The FIU has signed several MOUs with foreign jurisdictions including Albania, Bangladesh, Bermuda, Canada, Guatemala, Moldova, Netherlands Antilles (former), Nigeria, Panama, St. Lucia, St. Maarten, St. Vincent and the Grenadines, and Trinidad and Tobago. However, based on the MLFTA, the FIU may share information with any FIU once that country also possesses appropriate safeguards to protect the information to be shared.
319. Overall, all the said international and regional partners have indicated that the information provided by Barbados was useful, timely and comprehensive. Only one international partner has indicated that prior extradition requests have proved to be a challenge.
320. **The rating for Immediate Outcome 2 is a moderate level of effectiveness.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008. This report is available at: [Barbados third round mutual evaluation report](#).

### *Recommendation 1 - Assessing Risks and applying a Risk-Based Approach*

This requirement was newly added to the FATF recommendation when they were last revised in 2012. Therefore, this recommendation was not assessed in the 3rd Round MER of Barbados which occurred on 2008.

3. **Criterion 1.1** - Barbados submitted an NRA dated June 30, 2016 in which it proposed to identify and assess the ML/TF risks for the country. However, the NRA as presented is general in nature and did not reflect qualitative and quantitative information to support the conclusions. The NRA did not articulate the risk-based approach that was engendered commensurate with the risks identified. It did not elaborate on the specific obligations and decisions for the jurisdiction to identify and assess their ML/TF risks on an ongoing basis. It did not express the objective at the country level in terms how the information within the NRA would provide input for potential improvements to the AML/CFT regime, including through the formulation or calibration of national AML/CFT policies.
4. **Criterion 1.2** – Barbados has indicated that section 8 of the MLFTA provides for the AMLA to carry out the function to co-ordinate actions to assess risks. This section only establishes AMLA in so far as the monitoring and supervision of FIs and endows it with the legislative power to co-ordinate action to assess risk beyond its scope of institutions at a national level.
5. **Criterion 1.3** – Barbados has indicated that the CBB sector assessment methodology which includes both AML/CFT and prudential elements will be subject to periodic review and will be engrained in the supervisory practices by way of regular prudential returns to augment ongoing surveillance and risk profiles maintained on licensees. The risk assessment itself will be refreshed periodically, (and the timing may be triggered by a change in circumstances, such as changes in management or business activities) to ensure that risk profiles remain current. The FSC completes risk assessments on an annual cycle of onsite examinations using a risk based methodology for scoping, they have only recent commenced the same Sectoral guidelines require supervised entities to develop risk assessment programmes. Risk assessment is kept up to date through on-going on-site inspections by regulators. Taking into consideration the requirements of the criterion to have the overall country wide assessment, the response provided by Barbados does not wholly address the requirement. It is commendable that each sector including the RBPF conduct their own assessment however this is limited to that sphere.
6. **Criterion 1.4** – The jurisdiction has indicated that regulators keep careful records of their assessments. All the key stakeholders, including the CBB, IBD, FSC (together single regulatory bodies (SRBs)) and the RBPF, are members of the AMLA and there is no barrier to the exchange of information among regulators. Further that this is provided for in the actual legal framework, in the MLFTA.
7. **Criterion 1.5** – The CBB and the FSC utilize a risk-based approach for the allocation of resources in the supervision of their respective licensees and registrants. Information as to whether other competent authorities utilize a similar approach has not been provided.



8. **Criterion 1.6** – Barbados has informed the Assessment Team that no entities are exempted from compliance with FATF standards.
9. **Criterion 1.7** – The CBB (sections 6.1. and 7.4), IBD (section 9) and FSC (section 6.4, 6.5 and 6.6) AML/CFT Guidelines address the requirements of the sub criterion 1.7a. Section 8 of the IBD AML/CFT Guidelines, section 2.0 of the FSC AML/CFT Guidelines and section 2.0 of the CBB AML/CFT Guidelines comply with the requirement of sub criterion 1.7(b). However, no specific citations requiring all FIs and DNFBPs to take enhanced measures to manage and mitigate higher risks or to ensure that this information is incorporated into their risk assessments have been provided. The AML/CFT Guidelines of the CBB, FSC and IBD are based on the obligations FIs and DNFBPs have under the MLFTA.
10. **Criterion 1.8** – The authorities have advised that all sectors AML/CFT guidelines specify in what circumstances reduced due diligence may be applied as authorized by section 17 of the MLFTA 2011. CBB sections 7.0 and 7.5 of the CBB AML/CFT Guidelines; IBD section 13 of the IBD AML/CFT Guidelines and the FSC section 6.8 of the FSC AML/CFT Guidelines indicate under which circumstances reduced customer due diligence is applicable.
11. **Criterion 1.9** – The CBB, IBD and the FSC through their respective AML/CFT Guidelines require FIs and DNFBPs under their supervision to document a risk-based approach for their AML/CFT programs and implement measures in accordance with the requirements of criterion 1.11. The CBB, IBD and the FSC utilize a risk-based approach to the supervision of their respective entities. In this regard, it should be mentioned that Barbados has been rated partially compliant on R. 26 given that the risks of FSC’s focus on the largest FIs across the sectors under its purview and partially compliant on R.28 given that the FIU and IBD do not have a risk assessment framework in place.
12. **Criterion 1.10** - Section 6.1 of the CBB AML/CFT Guideline requires licensees to design and implement an AML/CFT framework to include documenting a risk-based approach which considers inter alia customer base, products and services, delivery channels and geographic areas. Relevant risk factors are considered to determine the risk profile and implement appropriate risk mitigation controls. Licensees are required to periodically review the risk assessment framework and risk ratings and consider ML/FT typologies. Similar requirements are also set out in section 5.1 of the FSC AML/CFT Guidelines and section 9.1 of the IBD’s AML/CFT Guidelines.
13. **Criterion 1.11** - Section 19 (1) of the MLFTA 2011 requires FIs to have policies, procedures and controls in place to combat ML/FT and (b) to develop audit functions to evaluate compliance with said policies, procedure and controls. Further, section 6.0 the CBB AML/CFT Guideline requires director approval of AML/CFT policies and procedures, as well as the requirement for the senior management to develop sound risk management programs which include the development of policies, procedures and controls for AML/ CFT. Section 9.0 the CBB AML/CFT Guideline requires internal audit to carry out reviews to evaluate how effectively compliance policies are being implemented and to identify and note weaknesses in policies and procedures, corrective measures and ensure timely follow-up of actions. Section 7.4 of the CBB AML/CFT Guideline requires enhanced due diligence for high risk accounts.
14. With respect to the FSC, section 5.0 of the FSC AML/CFT Guidelines requires directors to approve AML/CFT policies and procedures appropriate for the risks faced by FIs and FIs to document a risk-based approach in their AML/CFT programs. This approach requires an assessment of the risk posed by the nature of the business and the implementation of appropriate mitigation measures, while maintaining an overall effective program. Additionally, AML/CFT programs must include an audit function to test the system. FIs must ensure that systems are in place to periodically review the risk assessment and risk rating framework and ensure that the necessary risk adjusted CDD is completed.

15. With respect to licensees of the International Business Division (IBD) section 9 of the IBD AML/CFT Guidelines requires the implementation of internal policies, controls and procedures for the identification, assessment and mitigation of ML/TF risk.
16. FIs under the supervision of the FSC are required (enforceable means) to take measures to identify higher risk scenarios and implement enhanced CDD measures. IBD licensees are required to obtain senior management approval for policies, controls and procedures and to monitor the implementation of enhanced CDD measures for high risk scenarios.
17. **Criterion 1.12** - Section 17(1) (a) of the MLFTA provides for issuing guidelines specifying when reduced or simplified measures can be applied. The authorities have advised that these are reflected in all the AML/CFT Guidelines (enforceable means). In respect of the CBB reduced or simplified measures are specified in section 7.5 of their AML/CFT Guidelines. The FSC addresses reduced CDD in section 6.8 of its AML/CFT Guidelines, while section 13 of IBD's AML/CFT Guidelines addresses reduced CDD.

#### ***Weighting and Conclusion***

18. The deficiencies include the following: the risk assessment is general in nature with little in-depth analysis or quantitative information to support the conclusions, no designation for the AMLA to co-ordinate actions to assess national ML/TF risk, no mechanism to keep national risk assessment up to date, no mechanism to provide information on the results of the national risk assessment(s) to all relevant competent authorities and SRBs, FIs and DNFBPs. Only the CBB and the FSC utilize a risk-based approach for the allocation of resources, no specific citations requiring all FIs and DNFBPs to take enhanced measures to manage and mitigate higher risks or to ensure that this information is incorporated into their risk assessments, no information has been provided as to whether DNFBPs are required to implement the obligations of Rec. 1; no information has been provided as to whether supervisory bodies other than the CBB and the FSC have imposed criterion 1.10 requirements on their licensees and registrant; FIs under the supervision of the FSC are not required to take enhanced measures to manage and mitigate identified higher risks and FIs under the supervision of the IBD do not require senior management approval for policies, controls and procedures nor to monitor implementation of controls or take enhanced measures for higher risks and no citation for measures allowing FIs to apply reduced or simplified measures.
- Recommendation 1 is rated partially compliant.**

#### ***Recommendation 2 - National Cooperation and Coordination***

19. In its third mutual evaluation report (MER), Barbados was rated Compliant with the requirements in Rec. 31.
20. **Criterion 2.1** – Barbados does not have a national AML/CFT policies in place. The jurisdiction has sector specific guidelines. The AML/CFT Guidelines of CBB and FSC have been informed by sectorial risk assessments. IBD has AML/CFT Guidelines in place, however no sectorial risk assessment has been performed for FIs and DNFBPs under its purview. The CBB and FSC AML/CFT Guidelines are regularly reviewed. The results of the June 30, 2016 NRA still need to be translated into a comprehensive national AML/CFT policy. However, based on the limited scope of the said NRA, this will limit the overall national policy which could be generated, in this regard the jurisdiction has articulated that it intends to conduct a more in-depth NRA using the World Bank tool.
21. **Criterion 2.2** – The AMLA is the body established under Section 8 of the MLFTA to supervise FIs to prevent money laundering and terrorist financing. The AMLA maintains oversight of the national AML/CFT framework and is made up of eleven members, drawn mainly from the key public-sector agencies that relate directly to AML/CFT. The Board of AMLA meets monthly to discuss ML/FT risks and general matters. All amendments to the AML/CFT legislative framework are considered



and ratified by the AMLA based on policy recommendations prepared by various public-sector stakeholders. In addition to AMLA, sector risk assessment undertaken by regulators may inform on revisions of laws and Guideline. In accordance to Section 9(1) of the MLFTA, the executive functions of the Authority are carried out by the FIU, which is responsible for the day to day work of AMLA.

22. **Criterion 2.3** - The AMLA is the body established to maintain oversight of the national AML/CFT framework as established under Criterion 2.1 & 2.2; where it meets monthly to provide a forum to discuss AML/CFT matters. The composition of the AMLA is, along with the Chairman and Deputy Chairman, the Solicitor General, the Commissioner of Inland Revenue Department, the Commissioner of Police, the Supervisor of Insurance, the Comptroller of Customs, the Registrar of Corporate Affairs and Intellectual Property, and Head of Banking Supervision of the CBB and two additional members from the private sector with experience in law and insurance regulation. Section 29 of the MLFTA provides for information sharing among public authorities; coordination and cooperation also exists as necessary with other relevant authorities not on AMLA. Further, an MOU was established in May 2014 (“the MOU”) which supports the exchange of information, coordination, cooperation and consultation amongst domestic regulatory authorities, which include the CBB, the FSC, FIU, CAIPO, and the IBD of the Ministry of Industry, International Business, Commerce and Small Business Development. Barbados has indicated that at the operational level there is cooperation and coordination among competent authorities. However, policy makers are not a party to the MOU which exists among competent authorities.
23. **Criterion 2.4** – Technically the MOU is sufficiently broad in scope to also address combating the FP of WOMD. The competent authorities intend, either through their own initiatives or by request, to share relevant information, including but not limited to information on financial matters, corporate structure, administration, quality of organization and systems, the quality of management and any other information that may be relevant to the supervision of regulated entities. The competent authorities will also seek to identify group operations and share any information that can facilitate adjustments to consolidated financial statements or present a risk to the operation of a regulated entity. In addition, there is also a MOU between Government of Barbados and the United Nations and the on Drugs and Crime (UNODC), World Customs Organization (WCO), Interpol Airport Communication Project (which provides for cooperation among the Customs and Excise Departments), the RBPF and the Immigration Department.

#### ***Weighting and conclusion***

24. Barbados has implemented national AML/CFT policies however it is not evident that the policies were informed by the NRA or sector level risk assessments. The AMLA is the designated coordination body responsible for national AML/CFT policies. Barbados has several MOUs in place to enable domestic competent authorities to cooperate and coordinate however LEAs are not a party to this MOU. With respect to the combatting of the FP of WOMD specifically, the Assessors found no evidence that the competent authorities had any form of coordinated strategy in place. **Recommendation 2 is rated largely compliant.**

#### ***Recommendation 3 - Money laundering offence***

25. In the 3<sup>rd</sup> Round MER, Barbados was rated LC. The main deficiencies identified were as follows: (i) the authorities should review the adequacy of the legislative coverage of human trafficking, corruption and bribery to ensure coverage of all designated categories of offences; (ii) the different men’s rea elements of ML offences under the MLFTA and section 19 of DAPCA were not harmonised. (iii) the language of section 4 of the MLFTA should be reviewed with a view to removing the current limitation which requires that there be an intention for the extraterritorial act to be also committed in Barbados. Since then Barbados has remedied the deficiencies by the passage of the Transnational Organised Crime (Prevention and Control) Act No. 3 of 2011; the Prevention

of Corruption Act, 2012-31 and amending the Money Laundering and Financing of Terrorism (Prevention and Control) Act 2011 which amended the Drug Abuse (Prevention and Control) Act, Cap 131.

26. **Criterion 3.1** – ML has been criminalised based on the Vienna Convention and the Palermo Convention.
27. In respect of Article 3(1)(b) &(c) of the Vienna Convention. Barbados has ratified the same in accordance with international law on May 23, 1969 and date of Deposit being June 24, 1971. The Convention was incorporated into domestic law with the passage of the MLFTA. The criminalization of the offence of money laundering is captured pursuant to Sections 5-6 of the Act wherein a person who engages; directly or indirectly in a transaction that involves money or other property or a benefit that is some proceeds of crime; or the person receives; possesses, conceals, disposes of, or brings into or sends out of Barbados, any money or other property that is some proceeds of Crime. Thereafter, a “Proceeds of Crime” is defined and incorporated into section 2 (1) of the MLFTA. The objects and purpose of the MLFTA section 3 is identified as the reformation of the law in respect of the prevention and control of money laundering and financing of terrorism and the provision for related matters.
28. In respect of Article 6(1) Palermo Convention, Barbados signed onto the Palermo Convention (UN Convention against Transnational Organized Crime) on September 26, 2001 and ratified the same in accordance with international law on November 11, 2014. The Convention was incorporated into domestic law by the Transnational Organized Crime Prevention and Control) Act, 2011-3 (First Schedule). Article 6 of the Convention expressly criminalized the laundering of proceeds of crime and section 3 of the Transnational Organized Crime Prevention and Control) Act provides for the criminalization process. It is noted that there is no information that the Palermo Convention has been deposited.
29. **Criterion 3.2** – In the 3<sup>rd</sup> Round MER page 27, it was questioned whether the MLFTA means that the legislation has the potential to cover a wide array of serious predicate offences; and whether the full compass of the FATF “designated categories of offences” is adequately satisfied. Barbados stated that all offences carrying a penalty of twelve (12) months imprisonment are predicate offences for ML and that no serious offence carries a lesser penalty. Further, in relation to the offence of ML, section 6 of the MLFTA identifies offences with: (i) on summary conviction a fine of \$200,000 or imprisonment for 5 years or both; (ii) on conviction or indictment a fine of \$2,000,000 or imprisonment for 25 years or both. In addition, the Fourth Schedule of the MLFTA in the List of Scheduled Offences amends the Proceeds of Crime Act Cap. 143 by repealing the List of Scheduled offences relating to predicate offences. The criminalisation of all serious designated categories of offences are within the Fourth Schedule of the MLFTA. However, whilst criterion does not require countries to create a separate offence of “participation in an organised criminal group and racketeering”, Barbados has enacted the Transnational Organized Crime Prevention and Control) Act, 2011-3.
30. **Criterion 3.3** – Predicate offences are covered as discussed in Criterion 3.2. Barbados applies a combined approach, and at a minimum predicate offence comprise all serious offences. Based on the information provided, predicate offences constitute all offences within the category of serious offences within the jurisdiction as they are punishable by a minimum of one year’s imprisonment and more. Pursuant to the amendment of the MLFTA in the Fourth Schedule all serious offences are included as predicate offences to money laundering. Section 2 of the MLFTA provides that “unlawful activity” means (a) any activity that by the law of Barbados or any other country is a crime and is punishable by death or imprisonment for a period of not less than twelve (12) months; and (b) a scheduled offence as defined in section 3 of the Proceeds of Crime Act (POCA). The POCA in its Schedule includes drug possession; drug trafficking and terrorism which are all serious crimes and are predicate crime to money laundering. The Drug Abuse (Prevention and Control) Act, Cap.131.

(DAPCA) also includes; a) possession of a controlled drug for purpose of supply at section 6(3); b) trafficking in a controlled drug at section 18); and c) assisting another to retain the benefit of drug trafficking at section 19, all being serious crimes and remain predicate offence to money laundering. The penalties are defined in the Fourth Schedule of the DAPCA in relation to sections 6(3); 18 and 19.

31. **Criterion 3.4** – ML offences extends to any type of property that directly or indirectly represents the proceeds of crime. Pursuant to the MLFTA, section 2(1) defines “property” to include money and all other property, real or personal, including things in action and other intangible or incorporeal property, wherever situated and includes any interest in such property. In addition, the definition of “proceeds of crime” in the MLFTA means “any property or benefit derived, obtained or realized directly or indirectly by any person from unlawful activity wherever committed and any other property or benefit that is mingled with such property or benefit.” It is however unclear how the issue of “value” is addressed in the legislation. Where the definition of the word “funds” in the ATA is closely compared to the FATF definition, the words mirror in large measure the expressed words of the FATF and goes even further. This is as opposed to, when the definition of the word “property” in the MLFTA is compared to the FATF definition; it becomes evident that certain key words are not within the definition, these include words such as the words “legal documents or instruments”. Consequently, the definition of the word “property” in the MLFTA should be revisited to render it more consistent with the definition of the words “funds” in the ATA. Further within the definition of “funds” in the ATA, it makes no express reference to the use of the word “property”. this would therefore require a legislative amendment.
32. **Criterion 3.5** – Barbados has stated that the legislation requires a conviction of a predicate offence before proof that property is the proceeds of crime is established, pursuant to the MLFTA. At paragraph 100 in the 3<sup>rd</sup> Round MER, it was stated that where a person is charged with an offence under section 20 of the MLFTA, and the Court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, then it shall be presumed, unless the contrary is proved, that the property was derived from the proceeds of crime (section 20A (1) In such a case, the standard of proof is on a balance of probabilities as per section 20A (2). The Assessors note that where a conviction for a predicate offence is therefore a prerequisite to successful prosecution for money laundering under the MLFTA, this is contrary to the requirement of the criterion.
33. **Criterion 3.6** – This criterion was addressed by section 7 of the MLFTA which provides that “an act done by a person outside of Barbados which would be an offence if done within Barbados, is an offence for this Act.”
34. **Criterion 3.7** – Based on the amendment to the List of Scheduled Offences in the POCA, the following is included: a) possession of controlled drugs for purpose of supply, as per section 6 (3) DAPCA; b) trafficking in a controlled drug, per section 18 DAPCA; c) assisting another to retain benefit of drug trafficking, per section 19 DAPCA; and d) terrorism offences, section 3 and 4 Anti-Terrorism Act, Cap 158 (ATA). The matter of self-laundering is not addressed in the legislation and therefore there is limited scope to it resulting in a charge.
35. **Criterion 3.8** – The MLFTA, section 5 (2) deals with “knowledge” or “reasonable grounds to suspect that the property or benefit is derived or realized directly or indirectly from some form of unlawful activity...” and relates to where person is an individual section 5(2)(a) and where the person is a financial institution section 5 (2)(b). The legislation does not specifically address the issue of “objective factual circumstances”. Barbados has explained that objective factual circumstances is like circumstantial evidence. The Evidence Act, Cap. 121, provides for the admissibility of circumstantial evidence in various situations. For example, sec. 84 provides for the admission of evidence conduct based, inter alia, on the circumstances in which an act was done. Sec. 58 (2) provides that for deciding whether a statement is admissible the court may draw any reasonable

inference (a) from the circumstances in which the statement was made or otherwise came into being; or (b) from the circumstances, including the form and contents of the document in which the statement is contained. Further that Barbados is a common-law jurisdiction, the admissibility of evidence of circumstances remains applicable in common law jurisdictions unless codified by statute, this position is accepted.

36. **Criterion 3.9** - Dissuasive criminal sanctions apply to natural persons convicted of ML whether summarily or on indictment. In accordance with the MLFTA, section 6 provides: the breakdown in respect of a summary conviction the fine and the term of imprisonment for the person who committed the offence and the person who aid and abets; in respect of a conviction on indictment to include the fines and terms of imprisonment. Taking into consideration that the fines include at the highest \$200,000 with 5 years of imprisonment for a summary conviction; and \$2,000,000 with a term of imprisonment of 25 years for conviction on indictment, the time frame and the fines appear to be proportionate and dissuasive but to a limited degree as stated in Recommendation 35.
37. **Criterion 3.10** – The MLFTA at section 45 provides for liability of officers of bodies corporate, in that any conduct engaged in on behalf of a body corporate by a director, servant or agent of that body corporate within the scope of his actual or apparent authority; or (b) any other person at the direction or with the consent or agreement whether expressed or implied, of a director, servant or agent of that body corporate where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent, with or conspiracy to commit; attempt; aiding and abetting; facilitating; and counselling the commission; shall be deemed to have been engaged in by the body corporate. In addition, section 44 create the actual offence of ML as it relates to such officers of bodies corporate as it relates back to section 6 of the MLFTA which expressly establishes the offence of money laundering.
38. **Criterion 3.11** – Pursuant to section 6(2) of the MLFTA: “a person who aids, abets, counsels or procures, the commission of, or conspires to commit, the offence of money laundering is guilty of an offence and is liable on (a) summary conviction, to a fine of \$150 000 or to imprisonment for 4 years or to both; or (b) conviction on indictment, to a fine of \$1 500 000 or to imprisonment for 15 years or to both.”

### ***Weighting and Conclusion***

39. There is no express provision how the issue of “value” is addressed in the legislation; Additional legal scope is required for the issue of self-laundering and should clearly specify that, the offence of self-laundering (to include both the persons who committed the predicate offence and third-party launderers) should also apply to the person who has committed the offence other than ML, that generated the proceeds of crime. Further, taking into consideration the definition of “property” for ML, this should mirror the definition of “funds” for committing terrorist acts. The definition of “funds” and “property” within the ATA and MLFTA should be consistent taking into consideration terrorism is a predicate offence to ML. It is noted that the legislation does not establish an actual monetary fine for such legal person, with such fine being proportionate or dissuasive.
- Recommendation 3 is rated largely compliant**

### ***Recommendation 4 - Confiscation and provisional measures***

40. Barbados was rated ‘PC’ for R.4 (formerly R.3) in its 3<sup>rd</sup> MER. That Report identified five (5) deficiencies: (i) Forfeiture/restraint orders only limited to proceeds of money laundering, predicate offence of drug-trafficking, terrorist acts and financing of terrorism; (ii) No specific provision for forfeiture of instrumentalities under the MLFTA; (iii) No provision for *ex parte* application for freezing or seizing property subject to confiscation under the MLFTA; and (iv) No provision for production inspection orders under MLFTA. The fifth deficiency relates to effectiveness which is not considered as part of the TC assessment under the 2013 Methodology. R. 4 now requires

countries to also have mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.

41. **Criterion 4.1 Sub-criterion 4.1 (a) & (b)** - At section 5 (1) (a), the benefits derived by a person because of his commission of a scheduled offence is captured. Section 5 (1) (b) provides measures for the forfeiture of 'tainted' property which is property used in or about the commission of the offence. However, these measure does not cover the intended use of property so used. (c) There is no legislative provision provided addressing that requirement that property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or organization has been captured. (d) - Section 19 outlines the rules for determining benefit and assessing value, amount to be recovered under Confiscation Order. Sections 23, 25, 28 and section 31 of the POCA as amended by the AT (Amendment) Act 2015-28 refers to the confiscation, seizure and restraint of tainted property wherever it may be found included in the hands of a third party, on charge, conviction or reasonable suspicion of the commission of a scheduled offence.
42. **Criterion 4.2** – Section 42 of the POCA provides the measures whereby police is permitted to apply to a Judge in Chamber for an order against a person who has possession or control of any document relevant to identifying, locating or quantifying property of a person convicted of a scheduled offence. (b) - The DPP can apply for restraint orders pursuant to section 31 (1) of the POCA. A restraint order here is applicable where a person has either been charged or convicted of a scheduled offence and can be obtained against either realisable property, which is any property held by that person or any property which he has gifted, or specified property held by another person. The intent, per section 31 (1A) is to prevent that property from being disposed or otherwise dealt with by that person or anyone else. (c) Regarding voiding actions, section 38 of the MLFTA make provisions for the DPP to make an application to a Judge, for an order, to prohibit any person from completing a transaction, or to freeze a bank account for up to 5 days. The measures here appear limited in that it only captures ongoing transactions and bank accounts. Also, see 4.1(b) above. Section 31 (b) of the POCA as amended by the AT (Amendment) Act 2015-28 provides that a restraint order may be sought where a person has been convicted, charged, about to be charged or reasonably suspected of a scheduled offence. However, the voiding of actions includes the ability to intervene where a transaction (conveyance or transfer) has already occurred does not appear to be covered in the legislation. (d) Investigative measures are supported by Section 39 of the MLFTA allowing members of the Police Force or other person named in the warrant, to enter any premises of a financial institution to remove documents or material where a magistrate is satisfied a ML or TF offence was committed. The measures at s.39 of the MLFTA seem restricted to supervisory enforcement of FIs. These powers are also outlined in Part III of the POCA. These provisions are additional to the powers outlined in Section 39 MLFTA where search and seizure are provided.
43. **Criterion 4.3** - The rights of bona fide third parties are protected by the provisions of POCA section 10 (4) (a) and 13 (1) in so far as their interests in property subjected to forfeiture is concerned. No measure regarding property which is subject to confiscation.
44. **Criterion 4.4** - The POCA and the MLFTA hold provisions for the disposal of property frozen, seized or confiscated. Section 41 of the POCA allows for the Court, upon application of the Director of Public Prosecutions or any person having an interest in the property, to dispose of or otherwise dealt with in accordance with the law. Section 32 (1) (g) of the POCA, allows the Court to direct a Public Trustee or other person as the Court appoints to take custody of the property and manage or deal with the property in accordance with the directions of the Court. MLFTA Section 41 make provisions for the management of documents seized with respect to FIs or other premises under section 39-40 of the MLFTA.

#### ***Weighting and conclusion***

Persons involved in criminal conduct very often place assets in the name of; control of; or gift to third parties; and as such, adequate measures must be instituted for this purpose. The ability to void actions is extremely limited. While there are provisions to include a wider range of offences, application by the appropriate authority to the Court for restraint orders, search warrants, power to freeze assets, there are still moderate shortcomings in this recommendation. There is no legislative provision provided addressing the requirement for property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or by terrorist organizations. Owing to the significance of this recommendation, to permanently deprive offenders of their illicit gains and to remove proceeds of crime, it appears that measures are not included for property held by third parties as in sub-criterion 4 (2) (c) and 4 (1) (d). **Recommendation 4 is rated partially compliant.**

#### *Recommendation 5 - Terrorist financing offence*

45. In the 3rd Round MER Barbados was rated 'C' for R. 5 (formerly SR II) with no underlying factors.
46. **Criterion 5.1-** TF has been criminalised based on the Terrorist Financing Convention. This is because of the combined effect of the MLFTA and the ATA. With the ratification of the treaty as a schedule to the ATA, the International Convention for the Suppression of Financing of Terrorism was incorporated into the domestic law. However, the attempt to commit the TF offence, the participation as an accomplice in the attempted offence, the organization of an attempted offence and the contribution to the commission of an attempted offence by a group of persons acting with a common purpose; are not included in Section 4 of the ATA. Section 4 of the ATA only provides that a person who is in or outside Barbados directly or indirectly, unlawfully and wilfully (a) provides or collect funds; (b) provides financial services or makes such services available to persons with the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used, in full or in part in order to carry out an act shall be guilty of an offence. The TF offence does not refer to the absence of a link between the funds and the terrorist acts.
47. **Criterion 5.2.** -Pursuant to the ATA, section 4, a person who is in or outside Barbados directly or indirectly, unlawfully and wilfully (a) provides or collect funds; (b) provides financial services or makes such services available to persons with the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used, in full or in part in order to carry out an act that constitutes an offence under or defined in any of the Treaties listed in the Second Schedule is guilty of an offence. The legislation includes a comprehensive listing of relevant offences. However, the legislation does not expressly address the issue of the criminalization of an act by a terrorist organisation or an individual terrorist unless it is linked to a specific offence.
48. **Criterion 5.3 -** In accordance with the ATA, funds is defined at section 2 as, (a) assets of every kind, whether tangible or intangible, moveable or immoveable, however acquired; and b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets as bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit (inclusive list follows). Notwithstanding the conjunctive nature of ATA section 2 (a) and (d), the appearance of the words "however acquired" is restricted to section 2(a) of the overall definition. It means therefore that as it relates to section 2(b) of the definition, the legislation is silent as to the distinction between funds from legitimate or illegitimate sources or any words to that effect in respect of section 2(b). However, it is arguably that whereas by virtue of section 2(b) which relates to "legal" documents and instruments, this means by their nature such documents and instruments are presumed to be created by virtue of a bonafide legal process, in so doing the question of illegitimacy would not necessarily arise, as a result this section 2(b) satisfies the requirements for the purpose of the recommendation.
49. **Criterion 5.4 -** (a) Per the ATA, section 4(2) expressly provides that for an act to constitute an offence under subsection (1) it is not necessary to prove that the funds or the financial services were

used to carry out the offence. (b) However, the criminalization of terrorism financing does not allow for a charge to be laid where there is the absence of proving that the funds were linked to a specific terrorist act(s).

50. **Criterion 5.5** – Pursuant to the ATA, section 4(1) includes the words “unlawfully and wilfully”. The appearance of the word wilful addresses the mental element of actual knowledge that the act is forbidden. However, it may have the effect that it could limit the liability to circumstances where the offender should have suspected that the conduct is forbidden in law, notwithstanding the intentional or reckless disregard of such law. The inclusion of the word “unlawfully” however underscores that the act is a criminal offence, and that ignorance of the law is no excuse once the offence occurs. The legislation does not expressly address the issue of “intent”, however the same is satisfied by inference being drawn based on the circumstantial evidence.
51. **Criterion 5.6**- The ATA provides at section 4(1) that providing or collecting funds for criminal purposes would render one liable on conviction on indictment to imprisonment for a term of 25 years. There are no fines for the offences under ATA, however the inclusion of the ultimate sanction of imprisonment renders the sanction both dissuasive and proportionate.
52. **Criterion 5.7**- At section 5(b) of ATA, there is a provision for liability of a legal entity to include liability on conviction on indictment to a fine of \$2,000,00 notwithstanding (a) any criminal liability that may have been incurred by an individual that was directly involved in the commission of the offence; or (b) any civil or administrative sanctions that may have been imposed by law. The sanction appears to be dissuasive and proportionate. Parallel, criminal, civil or administrative proceedings can be conducted.
53. **Criterion 5.8** – Per the ATA, the combined effect of the offence of terrorism section 3(1) aiding, abetting, counselling; procuring, inciting or soliciting the commission of the offence section 3(2)(a); conspiring with another to commit an offence section 3 (2)(b) satisfies the criterion. The legislation therefore allows for the inclusion of a person who participates as an accomplice in the offence, or one who organizes or directs the offence, or intentionally contribute to the offence.
54. **Criterion 5.9** - This criterion is satisfied by the amendment to MLFTA of the POCA Schedule. Thus, terrorism offences under section 3 or 4 of ATA are now within the schedule. The amendment of Part 1 schedule inserts in the ATA statutory offences which is a predicate offence.
55. **Criterion 5.10** – Based on section 4(1) and section 12 of ATA the criterion is satisfied. Within the ATA, section 3 creates to offence of terrorism. Section 12 in turn addresses the issue of jurisdiction. The section provides that where a person is alleged to have committed an offence under the Act, proceedings in respect of that offence may be commenced in Barbados where the alleged offence (a) is committed by a national (b) was directed towards or resulted in an act against a national; (c) was directed towards or resulted in the carrying of an act against a State or government facility outside the jurisdiction; (d) was directed towards or resulted with a committed or an attempt to compel the jurisdiction to do or refrain from doing any act; e) was committed by a stateless person who is ordinarily resident; (f) was committed on board an aircraft that is operated by the Government of Barbados or a national; or committed on board a vessel flying the flag of Barbados or is registered; (h) threatens the national security. However, as indicated above the “attempt” to commit an offence is not covered by the ATA. Additionally, the ATA does not provide for offences that will occur inside or outside Barbados.

### ***Weighting and Conclusions***

56. The appearance of the words wilful adds the mental element of knowledge that the act is forbidden. It may have the effect that it could limit the liability to circumstances where the offender should have suspected that the conduct is forbidden in law. Further the issue of “attempt” as is required is absent from the legal provision. **Recommendation 5 is rated largely compliant.**



***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

57. R. 6 (formerly SR. III) was rated 'PC' in the 3<sup>rd</sup> Round MER with the underlying factors being that (i) there were no requirements to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee and (ii) divergent policy re forfeiture/restraint under ATA and POCA. Since then Barbados has done the following: (i) The POCA schedule has been amended to include sections 3 to 6 of the ATA. The MLFTA refers to both ML & TF. (ii) The ATA became enforceable on the publication of the November 5, 2015 Official Gazette. This Act enables the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee in keeping with the UN Security Resolutions 1267 and 1373. (iii) The freezing & forfeiture regimes under the ATA were removed and are placed under POCA. The Schedule to the ATA amends the POCA in this regard.

***Criterion 6.1*** - (a) At section 15 of the ATA, the Attorney General (AG) is the Competent Authority for dealing with matters pertaining to the operation of the ATA specifically criminal investigations and extraditions. It is however the DPP under the AT(A)A that is provided with powers to make an application for a terrorist designation. The ATA does not contain any measures that allow the AG to propose persons or entities to the 1267/1989 Committee to be designated. The regime does bestow the power to the Ministry of Foreign Affairs to have the ability to propose persons or entities to the 1267/1989 Committee upon consultation with the Attorney General (b) Section 8 of the ATA as cited by the authorities with the DPP's ability to apply to a Judge to declare a designated or legal entity as a listed entity and to freeze the funds of the listed entity, together with the power to review all orders that are made pertaining to UNSCRs designations. This measure is in keeping with required responses by countries to UNSCR listings/designations. There are mechanisms for identifying targets for designation based on the designation criteria that is set out in the relevant UNSCRs. (c) The issue of reasonable grounds or basis for making a proposal for designation is satisfied. Section 8. (1) (ii) of the ATA provides: Subject to subsection (4), the Court may, where it is satisfied on the application by the Director of Public Prosecutions that (b) a request has been made by the appropriate authority of another State, in accordance with section 16, in respect of a person (ii) in respect of whom there is reasonable suspicion that the person has committed an offence referred to in subparagraph (i), make an order, in this Part referred to as a "freezing order", freezing the funds in the possession of or under the control of that person. Hence there is no conditionality of having the existence of criminal proceedings in order to proceed with the designation. (d) the requirements of the criterion to follow the procedure and the standard forms for listing has not been substantiated. (e) Section 8(2) of the ATA provides: (2) An application for a freezing order under subsection (1) may be made ex parte and shall be in writing and be accompanied by an affidavit stating (a) where the person referred to in subsection (1) has been charged, the offence for which he is charged; (b) where the person has not been charged, the grounds for (i) believing that the person committed the offence; or (ii) having a reasonable suspicion that the person committed the offence; (c) a description of the funds in respect of which the freezing order is sought; (d) the name and address of the person who is believed to be in possession of the funds; and (e) the grounds for believing that the funds are related to or are used to facilitate an offence referred to in subsection (1) and that the funds are subject to the effective control of the person. In this manner, the Court procedures are enshrined in law as it relates to freezing, however the additional specificity to facilitating the listing of the designee is still required in law or other enforceable means.

58. ***Criterion 6.2*** - As noted above the DPP is the Competent Authority for designations pursuant to UNSCR 1373. Pursuant to section 8 of the ATA, the DPP can apply to a Judge to have an individual or legal entity declared a listed entity and freeze the funds of the listed entity. However, the criteria for listing in the cited section do not include all the UNSCR 1373 listing Criteria. There are measures for UNSCR 1373 listing based on requests from other countries where the AT(Amendment) A 2015-



28, by its enactment amends Section 31 POCA which provides for the freezing mechanism with respect to terrorist designation orders. There are mechanisms for identifying targets for 1373 designation or dealing with requests for designations by other countries. However, the ATA has measures requiring the DPP to decide as to whether a request is supported by reasonable grounds or a reasonable basis. Barbados uses an evidentiary standard of 'reasonable ground' when determining whether to propose an individual or entity for designation pursuant to 1373 and there is no requirement that a criminal matter must exist. There is however, mechanisms provided for Barbados to make a request to another country to give effect to its 1373 freezing mechanism where the MACMA has been amended at Section 29 by the AT (Amendment) A to provide for Barbados' relationship with other countries with respect to any matter requiring legal assistance including matters relating to freezing. Subsection 3 states that any co-operation requested under subsection (1)(b) or (c) shall be rendered based on reciprocity. In so doing this could arguably present limitation, in that reciprocity becomes a condition precedent to legal assistance, indeed the underlying intention of the criterion is for countries to give assistance albeit the crime does not occur within their jurisdiction, and this provision does not advance this type of assistance.

59. **Criterion 6.3** - (a) Within the AT(Amendment)A 2015-28, section 8(1) the DPP may apply to the Judge for an order to designate a person as a terrorist or a terrorist entity. The DPP's application will be supported by Affidavit evidence, it is within the said Affidavit, that the information is enclosed which identifies persons and entities for designation, this information which is included in the Affidavit is ascertained by the DPP based on intelligence supported by the relevant LEA. (b) The DPP may apply to the Court for a restraining (freezing) order pursuant section 32 of POCA, as amended in the Schedule of the AT(A)A. The Application of the DPP for a freezing order may be made *ex parte* as per section 31 of the POCA as amended in the schedule of the AT(A)A. An *ex parte* Application in judicial proceeding is conducted in the absence of the person whose assets are proposed to be frozen; and hence such an application is without notice and can be interpreted as an urgent process. Further, POCA section 32(1B) provides that an Order to be made by the Court shall be made without delay.
60. **Criterion 6.4** - By the operation of section 8 of the AT(A)A it provides for taking action without delay. Section 8(1) provides that the DPP may apply to the judge in Chambers for an order designating a person as a terrorist or terrorist entity. The Application of the DPP for a terrorist designation shall be made *ex parte* as per section 8(2) of the AT(A)A, such an Application in judicial proceeding is conducted in the absence of the person proposed to be designated, hence such applications can be interpreted as an urgent process.
61. **Criterion 6.5** (a) - The DPP may apply to the Court for a restraining (freezing) order pursuant section 32 of POCA, as amended in the Schedule of the AT(A)A. The Application of the DPP for a freezing order may be made *ex parte* as per section 31 of the POCA as amended in the schedule of the AT(A)A. An *ex parte* Application in judicial proceeding is conducted in the absence of the person whose assets are proposed to be frozen; and hence such an application is without notice and can be interpreted as an urgent process. Further, POCA section 32(1B) provides that an Order to be made by the Court shall be made without delay. (b) - The making of an order, under section 8(3) of the ATA referred to as a "freezing order", freezing, relates to the funds in the possession of or under the control of that person. It therefore captures all fund as defined in the ATA, without distinction or qualification. (c). In accordance with section 8(5), the Court may, in making an order under subsection (1), give directions with regard to: (a) the duration of the freezing order; or (b) the disposal of the funds for the purpose of (i) determining any dispute relating to the ownership of or other interest in the funds or any part thereof; (ii) its proper administration during the period of the freezing order; (iii) the payment of debts incurred in good faith prior to the making of the order; (iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or (v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him. Therefore, the natural and legal person is not

involved in such decision making such power rests with the judiciary in keeping with UNSCR. *Sub-(d)* Section 10(1) AT(Amendment) Act 2015-28 provides that the DPP shall within 7 days of the decision of the judge in Chambers at first instance or upon appeal shall cause the terrorism designation order to be published in the Official Gazette and at least 2 daily newspaper in circulation, and may publish such notice electronically. *(e)* The AT(A) has amended Section 23 of the MLFTA, 2011-23 to make it a requirement on FIs and DNFBPs to report any transaction (including attempted and aborted transactions) that is conducted by, or relates to, a person against whom a terrorist designation order is in force or relates to the property of such a person." Section 8.2, of the CBB AML/CFT Guidelines stipulate " in addition, pursuant to the United Nations Resolutions on terrorist financing, licensees should freeze any funds or other assets held for individuals or organisations listed on the UN list of persons connected to terrorism or to a person against whom a terrorist designation order is in force, and submit a report to the Authority", in this instance the Authority would be the FIU. *(f)* Pursuant to the ATA Part IV, section 8 (8) and (9) combined satisfies the requirements. Section 8 (8) states, a freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith. Section (9) states, where the Court makes an order for the administration of frozen funds the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings taken to establish a claim to the funds or to an interest in the funds unless the court in which the claim is made believes the person has been guilty of negligence in respect of the taking of custody and control of the funds.

62. **Criterion 6.6 (a) to (g)-** With respect to 6.6(a) and (b) Section 9(1)(b) of the AT(A) provides for delisting adopted by UNSCR 1267, as well as the legal authority and procedure to delist and unfreeze. With respect to 6.6 (c), Section 9(1)(b) AT(A) provides for a review mechanism to delist, unfreeze funds and entities which no longer meet the criteria for designation. With respect to 6.6(d) and (e) no relevant provision have been identified within the AT(A) or any other relevant law. With respect to 6.6(f) and (g) Section 10(1) of the AT(A) provides for publically known procedures to unfreeze and mechanism to communicate delisting and unfreezing.
63. **Criterion 6.7 -** Section 8 (5) of the ATA provides that the Court may, in making an order under subsection (1), give directions with regard to (a) the duration of the freezing order; or (b) the disposal of the funds for the purpose of determining any dispute relating to the ownership of or other interest in the funds or any part thereof; (ii) its proper administration during the period of the freezing order; (iii) the payment of debts incurred in good faith prior to the making of the order; (iv) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family; or (v) the payment of the costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him. In so doing Barbados has made exceptions to access in relation to basic expenses, legal fees and so on. However, in so far as the extraordinary expenses contemplated in UNCSR 1452 this is not provided for in law. It is not clear in the legislation the specific carve out for access to funds if freezing measures are applied to persons designated by a supra national country pursuant to UNSCR 1373.

#### ***Weighting and conclusions***

64. There are no mechanism that permit Barbados to propose designations or entities to the 1267/189 Committee or the 1988 Committee of the UN based on the designation criteria set out in the relevant UNSCRs. In relation to UNSCR 1373 Barbados has a mechanism to identifying targets for designation, and they are mechanism for receiving a request for designation. The public notice is published within seven days of the Order. There are Guidelines to FIs to report freeze any funds or other assets held for individuals or organizations listed on the UN list of persons connected to terrorism or to a person against whom a terrorist designation order is in force, and submit a report to the Authority. The provision in MCMA for assistance to be given based on reciprocity limits the underlying purpose of the criterion which is to give full assistance where required without any

promise in return. There are powers in law with respect of the de-listing and unfreezing of fund. Barbados has made exceptions to access in relation to basic expenses, legal fees and so on, however, in so far as the extraordinary expenses contemplated in UNCSR 1452 this is not provide for in law. It is not clear in the legislation the specific carve out for access to funds if freezing measures are applied to persons designated by a supra national country pursuant to UNSCR 1373. There are no procedures to implement the targeted financial sanctions without delay. **Recommendation 6 is rated largely compliant**

#### *Recommendation 7 – Targeted financial sanctions related to proliferation*

65. This Recommendation is a new addition to the existing recommendation therefore Barbados has not been previously evaluated against this recommendation.
66. **Criterion 7.1** - There is no domestic legislation or statutory instrument to implement TFS relating to Iran and the Democratic People’s Republic of Korea (DPRK) without delay.
67. **Criterion 7.2** - Barbados has not communicated the establishment of the domestic legislation and identify competent authorities responsible for implementing and enforcing TFS. They assert that the requirements of targeted sanctions may be satisfied through the implementation of any part of the country’s infrastructure which is able to achieve this end. They further assert that there is nothing in the Recommendation which speaks to distinct legislation in order to achieve what may be achieved via the existing legislative regime. Finally, that the necessary mechanisms are all in already existing laws. That being said the jurisdiction has not identified a standalone legislation or any provision within an existing legislation which addresses the recommendation. Consequently, it is a reasonable to conclude that since there are no measures undertaken to comply with UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons.
68. **Criterion 7.3** - Barbados has not put any measures in place to monitor and ensure compliance by FIs and DNFBPs with the relevant laws or enforceable means governing the obligations in this Recommendation, nor does it have civil, administrative or criminal sanctions if such institutions do not comply.
69. **Criterion 7.4** - Barbados has not supplied any publicly known procedures developed or the implementation to submit de-listing requests to the Security Council.
70. **Criterion 7.5** – There is no domestic legislation regarding the measures undertaken regarding contracts, agreements or obligations that arose prior the date on which an account becomes subject to targeted financial sanction pursuant to UNSCRs.

#### ***Weighting and Conclusion:***

71. No legal authority has been identified to implement and enforce targeted financial sanctions Barbados has not met any of the criteria in Rec. 7. **Recommendation 7 is rated non-compliant.**

#### *Recommendation 8 – Non-profit organisations*

72. This Recommendation which was formerly SR. VIII was rated ‘LC’ in the 3<sup>rd</sup> MER with the lone deficiency being that sanctions for breaches of the Charities Act were not dissuasive. During the October 2016 FATF Plenary, the ECG recommended the Plenary to adopt the revised R8. The revised R.8 must be applied in the context of the ongoing mutual evaluation of the 4<sup>th</sup> round of Barbados as follows: If a country’s onsite visit has not yet taken place (the case of Barbados at the time of the revision of R8), the country must be assessed for compliance with the revised R.8/INR.8 on the basis of the revised Methodology criteria for R.8 and IO.10. The responses of Barbados on the previous R.8 have been taken into account when determining the technical compliance for the revised R.8. Barbados has not submitted a response based on the revised R.8

73. **Criterion 8.1** - In the context of Barbados' regulatory framework non-profit entities include non-profit organisations as incorporated under the Companies Act, Cap.308 and charities as registered under the Charities Act, Cap.243. However, Barbados has not conducted a risk based approach to identify the subset of organizations which may pose an inherent high risk as opposed to those who pose little or no risk. There is nothing in law to identify the authority who should exercise the risk based exercise and how it should be conducted. Further in the response of Barbados there is no information that the legislation refers to matters related to the terrorist activity vis-a-vis the charity (8.1 (b) (c) and (d). Some consideration is given to the fact that the Charities Act and the Companies Act have been included under the MLFTA in the Fourth Schedule then in so doing they are subject to the AML/CFT regime at a minimum.
74. **Criterion 8.2** -Barbados has provided information to include but not limited to the first and last part of paragraph 8.2, and which supports 8.2(a) and (d), in that section 41 of the Charities Act requires the filing of annual Financial Statements consisting of an income and expenditure account relating to the reporting period As for sub criterion 8.2 (b) Barbados has already indicated there is no outreach and there is nothing in law to compel such an outreach. As for sub criterion 8.2(c) Barbados has not indicated that they have started addressing the issues with the sector.
75. As to sub criterion 8.2 (d), NPOs to conduct their business must use the services of commercial banks which are licensed by the CBB. However, no information was brought forward by Barbados to indicate that NPOs are actively encouraged to transact their business through regulated financial channels
76. **Criterion 8.3** Overall Barbados has demonstrated the legislative mandate to supervise and monitor charities, however this is across the board and not based on a risk based approach by the appropriate authorities. According to Barbados CAIPO is in the process of inspecting and examining its NPO sector. This process however, has not finalized as yet for those non-profit organisations which have been identified.
77. **Criterion 8.4– (a) and (b).** Barbados has conducted a risk based approach examination of the NPO sector. 10% of the NPO sector still needs to be examined because of their external funding. However, it is not clear if this has happened based on the revised Rec. 8 The available sanctions for misuse of the NPO sector are effective, proportionate and dissuasive There are no measures which apply to NPOs which account for a significant portion of the resources under the control of the sector.
78. **Criterion 8.5** - There is provision for the exchange of information between the Registrar and the revenue authority relative to the names and addresses of institutions which have been treated as being established for charitable purposes – Section 8 of the Charities Act.
79. Further the supervisory provisions at Part V of the Charities Act have been strengthened to the extent that the Attorney General is now authorised to direct the Financial Intelligence Unit to carry out an investigation into the affairs of the organisation – Section 38 (2).
80. Section 38 (1A) of the Charities Act gives the Attorney General the authority to examine or make inquiries into any charity that is suspected of having committed an offence under section 3 or 4 of the Anti-Terrorism Act. Although there are several MOUs between the relevant authorities, Barbados has not demonstrated that all necessary steps have been taken to ensure that co-operation, co-ordination and information sharing between the relevant authorities is effective.
81. **Criterion 8.6** -Requests for information on NPO's are done through the same channels as other international requests for information.

#### ***Weighting and conclusion***

82. Barbados has indicated that an assessment was done of the NPO sector. However, this assessment was not risk based as Barbados has also indicated that the assessment was done by examining the

profile of all NPOs. Furthermore, Barbados has not made an outreach to the NPO sector regarding TF issues. As Barbados has not encountered instances of TF, the Assessors are not sure if sufficient attention was given to TF related issues during the profiling of the NPO sector. **Recommendation 8 is rated non-compliant.**

#### *Recommendation 9 – Financial institution secrecy laws*

83. This Recommendation, formerly R.4, was rated PC in the 3<sup>rd</sup> MER since the CBB could not share information with other domestic financial sector supervisory agencies, the Registrar of Cooperatives could only share information via a court order and the Ministry of Economic Affairs and Development did not have the authority to compel information from licensees or to disclose information to domestic or foreign counterparts. The above deficiencies were addressed by amendments to the FIs Act CAP344A (FIA) and provisions in the Fourth Schedule of the MLFTA 2011.
84. **Criterion 9.1** - The CBB under section 34 of the Central Bank of Barbados Act, Cap 323 (CBBA), sections 47 – 48 of the FIA and section 31 of the MLFTA 2011 can conduct inspections and access relevant information from its licensees under these statutes. Similar provisions are set out in Sections 53-54 of the IFSA for international banks. The FSC under section 39 of the FSCA
85. Section 44 (2) of FIA permits the CBB to share information with the Commissioner of Inland Revenue, the Deposit Insurance Corporation and any supervisory or regulatory authority of FIs within or outside Barbados. In the case of FIs outside Barbados, there must be a reciprocal arrangement with that authority for exchange of information. Section 48 (2) of the IFSA contains a similar provision. The MLFTA is applicable to all supervisory authorities and in conjunction with the various MOUs between the supervisory authority's information is shared. The various secrecy laws do not stand in the way of implementing the FATF recommendations.

#### *Weighting and Conclusion*

86. Financial secrecy laws in Barbados do not inhibit the implementation of FATF recommendations, especially R. 13 (correspondent banking), R. 16 (wire transfers) and R. 17 (reliance on third parties). **Recommendation 9 is rated Compliant.**

#### *Recommendation 10 – Customer due diligence*

87. This Recommendation, formerly R. 5, was rated PC in the 3<sup>rd</sup> MER due to no legislative requirements for FIs to undertake CDD measures for occasional transactions that were wire transfers, to verify that any person purporting to act on behalf of the customer was so authorized and verify the identity of that person, to determine who were the natural persons that ultimately own or control the customer, to conduct on-going due diligence and to verify individual customer identity using reliable, independent source documents and data. There was also no express prohibition against reduced CDD measures where there was a risk of ML and FT. Additionally, requirements for the scrutiny of transactions and updating of CDD data or documents, measures for high and low risk categories of customers, timing of verification and failure to complete CDD and application of CDD requirements to existing customers were only enforceable on the licensees of the CBB and the Supervisor of Insurance. The above deficiencies were addressed by the MLFTA 2011 and revisions of the relevant regulatory AML/CFT Guidelines.
88. **Criterion 10.1** - While there is no specific prohibition against anonymous accounts, section 18(3) of the MLFTA 2011 requires all customer accounts of a FI to be kept in the true name of the account holder.
89. **Criterion 10.2.** - CDD is required in the circumstances covered by sub criteria 10.2 (a) through (e). for CBB and FSC licensees. CDD measures for occasional transactions are also addressed. Furthermore, section 15 of the MLFTA also covers the requirements of sub criterion 10.2.

90. **Criterion 10.3** - The requirements of sub criterion 10.3 are set out in section 15 (1) (b) of the MLFTA 2011 whereby Identification and verification are required for customers of FIs using reliable, independent source data, documents or information.
91. **Criterion 10.4** - The requirements of this sub criterion are set out in section 15 (3) of the MLFTA 2011 whereby FIs are required to identify all persons acting on behalf of another and section 15(1)(b) of the MLFTA whereby FIs are required to verify the identity of customers.
92. **Criterion 10.5** - Section 15(4) of the MLFTA 2011 requires FIs to establish the identity of the individual who is the beneficial owner of the customer and verify the identity by means of reliable documents, data or information from an independent source. Section 7.0 (ii) of the CBB AML/CFT Guideline defines a beneficial owner as a person or entity on whose behalf an account is maintained. This is repeated in section 6.0 (ii) of the FSC AML/CFT Guidelines. According to the CBB AML/CFT Guidelines, beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
93. **Criterion 10.6** - Section 7.0 (2) (B) of the CBB AML/CFT Guideline requires licensees to obtain reliable, data or information from an independent source on the purpose and intended nature of the business relationship. This requirement is further stipulated in sections 7.1 and 7.2 of the CBB AML/CFT Guideline in specific CDD obligations for individual and corporate customers. Section 7.0 (2) A requires the FIs to take reasonable measures to understand the ownership and control structure of the customer. Similar requirements are set out in sections 6.0, 6.1 and 6.2 of the FSC AML/CFT Guidelines.
94. **Criterion 10.7** - Section 16 of the MLFTA 2011 requires FIs to carry out ongoing due diligence on business relationships and examine transactions to determine that they are consistent with FIs' knowledge of the customer, their business and risk profile and where required the source of funds.
95. About criterion 10.7(b) section 7.0 (4) of the CBB AML/CFT Guideline requires FIs to update identification records on a risk-focused basis to ensure that all existing customer records are current and valid. Section 6.0 deals with the risk based approach to CDD, while section 7.4 focuses on enhanced due diligence and section 7.6 deals with retrospective due diligence on a risk basis.
96. Section 9.1 (e) and (f) of the IBD AML/CFT Guidelines do comply with the requirements of sub criterion 10.7 (b)
97. Section 6.0 of the FSC's AML/CFT Guidelines complies with the requirements of sub criterion 10.7 (b).
98. **Criterion 10.8** - Requirements of the criterion are set out in section 7.0 (2) (A) and (B) of the CBB AML/CFT Guideline. Similar measures are outlined in section 6.0 (ii) (a) and (b) of the FSC AML/CFT Guidelines. Section 12.5 of the IBD's AML/CFT Guidelines requires all persons and institutions to implement reasonable measures for ensuring identification of ownership and control structure of the customer (legal person or legal arrangement), while section 9.1 (b), (c) and (e) indicate that a FI must understand the customer's business and ownership structure.
99. **Criterion 10.9** - Section 7.2 of the CBB AML/CFT Guideline stipulated CDD obligations for corporate customers including the requirements of 10.9 (a), (b) and (c). Requirements applicable to trusts are set out in section 7.4.1 of the CBB AML/CFT Guideline. The above measures are replicated in sections 6.2 and 6.4.1 of the FSC AML/CFT Guidelines. Barbados has indicated that although not captured under the IBD AML/CFT guidelines, the elements of sub criterion 10.9 are considered in the application/registration forms for these FIs as well as in the obligations imposed by the MLFTA. Barbados should take sub criterion 10.9 into account for FIs resorting under the IBD

in the same way it does for FIs falling under the supervision of CBB and FSC: that is in the IBD AML/CFT Guidelines.

100. **Criterion 10.10** - Section 7.2 (e) of the CBB AML/CFT Guideline requires licensees to obtain identity information on beneficial owners including those who ultimately own and control a corporate customer. While identification of shareholders is not required for corporate customers listed on a recognized stock exchange and not subject to effective control by a small group of individuals, the identity of persons with a minimum of 10% shareholding for private corporate customers is required. Section 7.2 (f) also requires the identification of directors and officers who exercise effective control over the business. Similar measures are set out in sections 6.2 (e) and (f) of the FSC AML/CFT Guideline regarding identification of beneficial owners, directors and officers of a corporate customer. Sections 11.2 and 12.5 of the IBD AML/CFT Guidelines indicate that all persons and institutions must implement reasonable measures to determine the ultimate BO information on all verification subjects before submission of applications for licensing. However, the IBD AML/CFT Guidelines are not as specific as the CBB and FSC AML/CFT Guidelines on sub criterion 10.10.
101. **Criterion 10.11**- Section 7.4.1 of the CBB AML/CFT Guideline sets out the requirements for the identification of the parties to trusts. Similar measures are set out in section 6.4.1 of the FSC AML/CFT Guideline and section 12.2 of the IBD AML/CFT Guidelines, while the International Trust Act Cap 245 prescribes what information must be filed with the IBD.
102. **Criterion 10.12** - The necessary guidelines still need to be included in the FSC AML/CFT Guidelines.
103. **Criterion 10.13** - The necessary guidelines still need to be included in the FSC AML/CFT Guidelines.
104. **Criterion 10.14** - Requirements of this criterion are set out in the last paragraph on page 13 of section 7.0 of the CBB AML/CFT Guideline. Similar requirements are stipulated in the penultimate paragraph on page 22 of section 6.0 of the FSC AML/CFT Guidelines and section 13.1 and 13.2 of the IBD's AML/CFT Guidelines.
105. **Criterion 10.15** - Section 7.0 of the CBB AML/CFT Guideline requires licensees to adopt risk management procedures with respect to the conditions under which a customer may utilize a business relationship prior to verification. The same requirement is stipulated in section 6.0 of the FSC AML/CFT Guidelines and section 13.2 of the IBD AML/CFT Guidelines.
106. **Criterion 10.16** - FIs must perform CDD measures for their existing customers. These measures have to be based on the FIs' own assessment of materiality and risk. CBB and FSC guidelines are uniform in this regard. About FIs supervised by IBD, section 9.1 of the IBD AML/CFT Guidelines takes this criterion into account.
107. **Criterion 10.17** - FIs are required by CBB and FSC AML/CFT guidelines to perform enhanced CDD in cases where ML/TF risks are higher. The IBD AML/CFT Guidelines do make mention of enhanced CDD, for all IBD's licensees and registrants. The CBB and FSC Guidelines do contain a more extensive description, in comparison to the IBD's AML/CFT Guidelines, of all possible situations in which FIs must perform enhanced CDD.
108. **Criterion 10.18** - The circumstances under which FIs can apply reduced CDD measures are described in the CBB, IBD and FSC guidelines. These guidelines state that reduced CDD measures are not to be applied in cases where suspicion of ML or TF exists.
109. **Criterion 10.19** - Section 7.0 (2) of the CBB AML/CFT Guideline and section 6.0 (2) of the FSC AML/CFT Guidelines require that where FIs are unable to complete relevant CDD measures, they should not start or continue business relations with any customers, or perform any transaction for



those customers and are required to terminate an existing business relationship for failure to comply with relevant CDD measures and to consider making a suspicious transaction report (STR) in the above situation.

110. **Criterion 10.20** - Section 7.0 of the CBB AML/CFT Guideline and section 6.0 of the FSC AML/CFT Guidelines stipulate that where there is suspicion of ML/FT, licensees should be cognizant of tipping off a customer when conducting due diligence. The licensee should make a business decision whether to open the account or execute the transaction as the case maybe and submit a STR to the FIU.

***Weighting and conclusions:***

111. The deficiencies identified above include the lack of CDD requirement for beneficiaries of Life Insurance Policies and the lack of an extensive description of situations in which FIs must perform enhanced CDD in the FSC's AML/CFT Guidelines. Furthermore, the IBD AML/CFT Guidelines are not as specific as the CBB and FSC AML/CFT Guidelines on sub criterion 10.10 while the elements of sub criterion 10.9 are only considered in the application/registration forms for the FIs under the supervision of the IBD and not in the IBD AML/CFT Guidelines. **Recommendation 10 is rated largely compliant.**

***Recommendation 11 – Record-keeping***

112. This Recommendation (previously Core Recommendation 10) was rated NC in the 3<sup>rd</sup> MER (2008). The underlying deficiencies were that there was no general requirement for documentation to be retained for a period of 5 years post the termination of the business relationship. In addition, only records of business transactions more than USD 10,000 were required under law to be retained for five years post the termination of the relationship. Section 18 (2) of the MLFTA now addresses these deficiencies.
113. **Criterion 11.1** - Section 18 (1) of the MLFTA places a general duty on FI's to establish and maintain business transaction records (including CDD) of all business transactions. Section 18 (2) of the MLFTA does require FI's to maintain business transaction records (as defined under Section 2) for a period of 5 years post the termination of the business relationship or with respect to an occasional transaction, the date of the transaction. Section 10 (1) [Internal and External Records] of the CBB AML/CFT Guidelines for FI's licenced under the FIA and the IFSA (issued by the CBB in conjunction with the AMLA), requires that licensees comply with Section 18 (2) of the MLFTA and that such records should be accessible in a timely manner. Section 9 [Record Keeping] of the FSC AML/CFT Guidelines issued in 2013 by the FSC embeds the requirements as set out in Section 18 (2) of the MLFTA.
114. **Criterion 11.2** - Section 18 (2) of the MLFTA does require FIs to maintain business transaction records (as defined under Section 2) for a period of 5 years post the termination of the business relationship or with respect to an occasional transaction, the date of the transaction.
115. Section 10 (1) [Internal and External Records] of the CBB AML/CFT Guidelines requires that licensees comply with Section 18 (2) of the MLFTA and that such records are accessible in a timely manner. Section 10(1)(ii) also requires FIs to maintain internal written findings of transactions investigated.
116. Section 9 [Record Keeping] of the FSC Guidelines embeds the requirements as set out in Section 18 (2) of the MLFTA. Section 9 (1) also requires the maintenance of any internal written findings of transactions investigated.
117. **Criterion 11.3** - Section 2 of the MLFTA appropriately defines both "business arrangement" and "business record". Section 10 (0) [Record Keeping] of the CBB AML/CFT Guideline requires that

licensees comply with Section 18 (2) of the MLFTA and that such records are in a format which can be reconstructed. Section 9 [Record Keeping] of the FSC Guidelines embeds this same requirement.

118. **Criterion 11.4** - Section 10 [Record Keeping] of the CBB AML/CFT Guidelines, requires that licensees comply with Section 18 (2) of the MLFTA and that such records are in an easily accessible format and can be promptly provided to authorities. Section 9 [Record Keeping] of the FSC Guidelines embeds this same requirement.
119. Section 17 of the IBD Guidelines requires FIs to maintain a broad spectrum of records including CDD and transaction records. Section 18 [Contents of Records] of the CTSPA Guidelines (for licensees and registrants under the CTSPA, the IBCA, the SWRLA, the Private Trust Companies Act 2012- 22, the Foundations Act 2013-2 and the International Trust Act CAP 245) also embeds a similar requirement.

### ***Weighting and Conclusion***

120. Record keeping requirements are comprehensive. **Recommendation 11 is rated compliant.**

### ***Recommendation 12 – Politically exposed persons***

121. This Recommendation (previously Recommendation 6) was rated partially compliant (PC) in the 3<sup>rd</sup> Round MER (2008). The underlying deficiency being that the requirements in respect of politically exposed persons (PEPs) were only enforceable on the licensees of the CBB and the Supervisor of Insurance. R. 6 now includes two new categories of PEPs i.e. domestic and international organisations PEPs. The level of due diligence that should be applied to these two categories is dependent on where a high risk exists in the business relationship. The AML/CFT Guidelines which have been issued across all sectors include this definition.
122. The CBB AML/CFT guideline captures all banking FIs whilst the FSC AML/CFT guidelines capture the non-bank FIs listed in the First Schedule of the MLFTA and includes: Persons engaged in relevant insurance business; A market actor, self-regulatory organization, participant and issuer of securities within the meaning of the Securities Act; a mutual fund and mutual fund administrator within the meaning of the Mutual Funds Act or any person who manages a mutual fund; and a credit union within the meaning of the FSMA. The CBB AML/CFT guideline and FSC AML/CFT guidelines are in concert regarding PEP requirements.
123. **Criterion 12.1** –The measures applicable to foreign PEPs fully address the requirements that FIs: have appropriate risk-management systems in place, obtain management approval before establishing or continuing a relationship with a foreign PEP; reasonably establish the source of funds and wealth; and conduct enhanced ongoing monitoring during the course of the business relationship. These measures are captured under section 7.4.6 (1) of the CBB AML/CFT guideline and section 6.4.6 of the FSC AML/CFT guidelines.
124. **Criterion 12.2** - The CBB AML/CFT guideline and FSC AML/CFT guidelines cover the requirement for FIs to apply measures to determine whether the customer or beneficial owner is a domestic or international organisation PEP and to apply the four measures detailed at 12.1 above where the risk is higher. These measures are captured under section 7.4.6 (2) of the CBB guideline and section 6.4.6 of the FSC AML/CFT guidelines.
125. **Criterion 12.3** - The requirement that FIs apply the PEP measures to family members and or close associates of all types of PEPs is directly addressed at section 7.4.6 (2) of the CBB AML/CFT guideline and section 6.4.6 of the FSC AML/CFT guidelines.
126. **Criterion 12.4** – The required measures are not in place.

### ***Weighting and Conclusion***

127. Whilst the current PEP measures substantively meet the criteria it is noted that there are no provisions in place to require relevant FIs to determine whether the ultimate beneficial owner of a life insurance policy is a PEP. **Recommendation 12 is rated largely compliant.**

***Recommendation 13 – Correspondent banking***

128. This Recommendation, formerly R. 7, was rated LC in the 3<sup>rd</sup> MER since there was no specific requirement for FIs to ascertain whether a respondent institution had been subject to a money laundering or terrorist financing investigation or regulatory act. This deficiency was addressed by revisions to the CBB AML/CFT Guidelines. This Recommendation incorporates requirements on FIs in relation to shell banks (former R. 18).
129. **Criterion 13.1** - Section 7.4.8 of the CBB AML/CFT Guideline details all the requirements of sub criterion 13.1. FIs are required to carry out a risk assessment of respondent institutions, satisfy themselves that there is an equivalent AML/CFT program in place, and perform an assessment of the quality of bank supervision and regulation in the respondent's country and whether the respondent bank has been subject to a money laundering or terrorist financing investigation or regulatory action. Senior management approval is required before establishing the relationship.
130. **Criterion 13.2** – There are no specific requirements for “payable-through accounts” in the CBB AML/CFT Guideline. However, the CBB Guidelines section 7.4.8 indicate which due diligence measures the correspondent bank must take about the respondent banks’ AML/CFT systems it works with. The CBB Guideline takes sub criteria 13.2 (a) and (b) into account through sections 7 (Customer Due Diligence) and 10 (Record Keeping).
131. **Criterion 13.3** – Barbadian FIs are prohibited from entering or continuing correspondent banking relations with shell banks. These institutions are also required to take appropriate measures to ensure their correspondents do not permit accounts to be used by shell banks.

***Weighting and conclusion***

132. Even though in the CBB AML/CFT Guidelines, the requirement to clearly understand the respective AML/CFT responsibilities of the correspondent and respondent institutions by carrying out specific due diligence measures covers the requirements of sub criteria R13.2 (a) and (b), there are no specific requirements for “payable-through accounts”). Furthermore, Barbados complies with sub criteria R. 13.1 and R.13.3. **Recommendation 13 is rated largely compliant**

***Recommendation 14 – Money or value transfer services***

133. This Recommendation formerly SR. VI was rated NC in the 3<sup>rd</sup> MER since stand-alone MVT providers were not adequately regulated or supervised for compliance with AML/CFT requirements and MVT operators were not required to maintain a current list of agents. Since the 2008 MER, legislative amendments to the FIA to bring the business of MVTS under the regulation and supervision of the CBB have been drafted and are still to be enacted. The new element in this Recommendation is the requirement to actively identify and sanction unlicensed or unregistered money value transfer services (MVTS) providers.
134. **Criterion 14.1** - Barbados has not finalized the necessary legislative amendments to the FIA to regulate and supervise MVTS. At present MVTS are not required to be licensed or registered. Natural or legal persons already licensed or registered as FIs in Barbados are permitted to perform MVTS. According to Barbados standalone MVTS are not material in the risk and context of Barbados. Furthermore, MVTS are registered by the CBB.
135. **Criterion 14.2** - MVTS are not licensed but registered as already stated under 14.1. The CBB however, informed the Assessment Team that there are to their knowledge no illegal or clandestine MVTS. The actions that can be taken in case of ML/TF are mentioned under section 6 of the MLFTA.

136. **Criterion 14.3** - MVTS that are carried out by licensed FIs are subjected to monitoring of their AML/CFT compliance and are subjected to the MLFTA in this regard. The lone standalone MVTS is monitored based on the CBB's AML/CFT Guidelines for banks.
137. **Criteria 14.4 and 14.5** - The lone MVTS provider is not licensed in Barbados but registered with the CBB. there are no tailor made nor specific AML/CFT Guidelines for MVTS and their agents.

***Weighting and conclusion***

138. Most of the sub criteria on R.14 have been met by Barbados, while other sub criteria are partially to mostly met. MVTS should be licensed or registered and Barbados has chosen to register its MVTS providers. Barbados still has to make the necessary amendments to the FIA into law. However, the relative importance of the MVTS sector has to be taken into account. CBB has undertaken an assessment of the MVTS sector and determined that for fiscal year 2015 the MVTS sector facilitated a total of \$126.07 million in inbound (59.1%) and outbound (40.9%) transactions. According to Barbados only one MVTS provides outbound services. Furthermore, it was determined that MVTS providers account for less than 1% of all funds flow activity and that the average inbound and outbound transaction size in 2015 was \$510 and \$687, respectively. **Recommendation 14 is therefore rated largely compliant**

***Recommendation 15 – New technologies***

139. This Recommendation (formerly R. 8) was rated 'PC' in the 3<sup>rd</sup> MER, as the requirements for non-face to face customers are only enforceable on the licensees of the CBB and the Supervisor of Insurance. Revised R.15 focuses on preventing risks associated with all new or developing technologies and new products and business practices and sets out a new obligation for countries to identify and assess the risks.
140. **Criterion 15.1** - Section 6 [Role of the Board and Senior Management] of the CBB AML/CFT Guideline, requires licensees to pay special attention to new and developing technologies when assessing ML/TF risks. Licensees are required to (a) identify and assess ML/TF risks arising from new products/services and delivery channels; new business practices and new or developing technologies for new and existing products and (b) manage and mitigate such risks. Risk assessments should take place prior to the launch or use of such products/services, channel, business practices and technologies. Section 7.4.3 sets out the specific requirements placed on licensees when conducting non-face to face business. Section 6.4.3 (Non-Face to Face Customers) of the FSC Guidelines sets out the specific requirements placed on licensees when conducting non-face to face business. Section 13.2 [Timing and Duration of Verification] of the IDB AML/CFT Guidelines sets out specific requirements with respect to conducting non-face to face business but Both CBB and FSC licensees are specifically required to identify and assess AML/CFT arising from new products, new business, new delivery mechanisms and new developing technologies arising from new and existing technologies.
141. **Criterion 15.2** - (a) Section 6.1 of the AML/CFT Guidelines issued by the CBB and section 5.1 of the AML/CFT Guidelines issued by the FSC require FIs to apply a Risk Based Approach and; to identify manage and mitigate the risks of new products/services, channel, business practices and technologies.

***Weighting and Conclusion***

142. The necessary provisions requiring FIs to identify and assess the ML/TF risks of new products, new businesses practices, new delivery mechanisms and developing technologies are in place. This includes measures to assess the associated risks prior to the launch or use of new products and to take measures to manage and mitigate the risks. **Recommendation 15 is rated compliant.**

### **Recommendation 16 – Wire transfers**

143. This Recommendation formerly SR. VII was rated PC in the 3<sup>rd</sup> MER since stand-alone money remitters were not subject to regulatory oversight to ensure compliance with the requirements of SR. VII. The deficiency was not addressed since amendments to the banking legislation to bring stand-alone money remitters under the supervision of the CBB have not been enacted. The Recommendation includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R.6 and R.20.
144. **Criterion 16.1** - Section 7.4.9 of the CBB AML/CFT Guidelines requires FIs to include full originator information in cross border wire transfers over USD 1,000 in accordance with the criterion. The above requirements are applicable to FIs licensed under the FIA and IFSA i.e. those under the supervision of the CBB. Though the required beneficiary requirements are not specifically addressed in the CBB AML/CFT Guidelines, verification of this information is undertaken by the CBB during examinations therefore the required information is maintained.
145. **Criterion 16.2** – The CBB Guidelines serve as a guideline to FIs supervised by CBB how to comply with their obligations in relation to the MLFTA Section 7.4.9(I) of the CBB AML/CFT Guidelines requires that where a FI acts as the ordering financial institution, the licensee should obtain, retain and verify the full originator information, i.e. the originator's name, account number (or unique identifier where the originator is not an account holder), and address for wire transfers in any amount and section 7.4.9(ii) requires the ordering FI to include in cross-border wire transfers above the BDS\$2,000 threshold, full originator information. Batch transfers that include cross-border wire transfers sent by a money/value transfer service provider should be treated as cross-border transfers. 7.4.9(ii) therefore applies. According to the CBB AML/CFT Guidelines section 7.4.9 (vi) FIs should apply a risk based system in reviewing wire transfers for complete originator information and the reporting of unusual or suspicious activity.
146. **Criterion 16.3** - Section 7.4.9 of the CBB AML/CFT Guideline does establish a *de minimise* threshold and the information as to originator and beneficiary based on sub criteria 16.2 is part of the onsite working programme information that is requested during onsite examinations by the CBB.
147. **Criterion 16.4** - FIs are required to identify their customers and to verify their identity where there is any suspicion of ML or TF based on sections 7.0, 8.0 and 7.5 of the CBB AML/CFT guideline and section 17(2) of the MFLTA.
148. **Criterion 16.5**- Section 7.4.9 (iii) of the CBB AML/CFT Guideline requires FIs to include originator information for domestic wire transfer.
149. **Criterion 16.6** - Section 7.4.9 (iii) of the CBB AML/CFT Guideline requires FIs to include originator information for domestic wire transfer and speaks to the amount of days within which the ordering institution should be required to make the information available (3 business days).
150. **Criterion 16.7** - The FIs obligations of section 18 of the MLFTA 2011 which are in accordance with the requirements of Rec. 11 include information on all parties to all transactions thereby covering originator and beneficiary information.
151. **Criterion 16.8** – Has been met through sections 7.4.9, 7.0, 7.5 and 8.0 of the CBB AML/CFT Guidelines and through the requirements of sections 17(2) and 18 of the MLFTA.
152. **Criterion 16.9** - Sections 7.4.9 (v) of the CBB AML/CFT Guideline details that where the FI acts as an intermediary FI, the licensee should ensure that all originator information from cross-border transfers of any amount, remain with the related domestic transfers. In addition, to the originator information, FIs are also required to include beneficiary information when executing the transfer in addition, section 7B question 1 of the CBB AML/CFT working paper confirms that this is verified as part of examinations conducted.

153. **Criterion 16.10** - As set out in section 7.4.9 (v) of the CBB AML/CFT Guideline where difficulties arise in maintaining information with the wire transfer, then all information received from the ordering financial institution should be retained by the intermediary FI for no less than five years in accordance with Section 18 of the MLFTA 2011. This measure complies with the requirements of the criterion including beneficiary information, which is captured under MLFTA section 18 and supported in CBB's AML/CFT guideline (section 10.0) to maintain business transaction records for a minimum of 5 years.
- Criterion 16.11**- Section 7.4.9 (v) requires intermediary FIs to take measures to ensure that all originator information from all cross-border transfers remain with the related domestic transfers and that all information received from the ordering financial institution be kept for at least five years in accordance with Section 18 of the MLFTA
154. **Criterion 16.12** - Sections 6.0 and 7.0 of the CBB AML/CFT Guidelines require FIs to have risk based policies and procedures when executing, rejecting or suspending a wire transfers when the required beneficiary or originator information is missing. Also, as part of the onsite working programme sheet/questionnaire of the CBB, it is verified whether the necessary policy and procedures have been implemented.
155. **Criterion 16.13** - Section 7.4.9 (vi) of the CBB Guideline requires beneficiary FIs to apply a risk-based system to review transfers for complete originator information. Beneficiary information is not included, but given that it is required to execute the transfer, the necessary information on originator and beneficiary is in the possession of the beneficiary FIs.
156. **Criterion 16.14** - Section 15 of the MLFTA and section 7 of the CBB AML/CFT Guidelines indicates all the relevant situations in which CDD must be carried out, including for situations as described under sub criterion 16.14.
157. **Sub criterion 16.15** - Sections 6.0, 6.1 and 7.4.9 of the CBB AML/CFT Guidelines requires FIs to have risk based policies and procedures for determining when to execute, suspend or reject a wire transfer and the necessary follow-up that must be given. Also, as part of the onsite working programme sheet/questionnaire of the CBB, it is verified whether the necessary policy and procedures have been implemented.
158. **Sub criterion 16.16** - Schedule 1 of the MLFTA 2011 includes MVTS providers as FIs thereby subjecting them to the requirements of the MLFTA 2011. However, except for criterion 16.4 which is set out in the MLFTA 2011, all the requirements of R.16 as detailed above are set out in the CBB AML/CFT Guideline which is not applicable to MVTS providers, even though (as evidenced during the onsite assessment) CBB apply the AML/CFT Guidelines for banks to the MVTS. Furthermore, no further information/comment was presented by Barbados.
159. **Sub criterion 16.17** - Schedule 1 of the MLFTA recognizes MVTS as FIs and there are no specific guidelines for MVTS to comply with the requirements of sub criterion 16.17. However, given that MVTS providers fall under the AML/CFT regime for banks and that the requirement to report STRs is captured under section 23 of the MLFTA which is also applicable to MVTS providers.
160. **Criterion 16.18** – It is a requirement for FIs per CBB AML/CFT guideline 8.2. to look at the relevant UN resolutions by inter alia accessing the UN's website for relevant information.

#### ***Weighting and Conclusion***

161. The main deficiency with the current measures is that the CBB AML/CFT Guidelines are not specifically applicable to MVTS (as the Guidelines applicable to commercial banks are applied).  
**Recommendation 16 is rated largely compliant**



### *Recommendation 17 – Reliance on third parties*

162. This Recommendation (formerly R.9) was rated PC in the 3<sup>rd</sup> MER since requirements for third parties and introduced business were only enforceable on the licensees of the CBB and the Supervisor of Insurance. There was also no requirement for FIs to satisfy themselves that the third party was regulated and supervised in accordance with Recommendations 23, 24 and 29 and no indication of authorities determining in which countries third parties that satisfy the conditions of being regulated and supervised and comply with CDD requirements could be based.
163. **Criterion 17.1** - Requirements regarding reliance on third parties are set out in section 7.4.4 of the CBB AML/CFT Guideline. Ultimate responsibility for customer identification and verification remains with the licensee relying on third parties. The licensee is required to obtain copies of due diligence documentation from the introducer prior to the commencement of the business relationship thereby complying with criteria 17.1 (a) and (b). The licensee also must satisfy himself that the introducer is regulated, supervised or monitored for, and has measures in place for compliance with CDD and record-keeping requirements in line with the FATF Recommendations. The exact requirements are set out in sections 6.4.4 of the FSC AML/CFT Guidelines and section 13.1 of the IBD AML/CFT Guidelines thereby cover all FIs.
164. **Criterion 17.2** –Section 6.6 of the FSC AML/CFT Guidelines encourages and section 7.4 of the CBB AML/CFT Guidelines requires FIs to consult publicly available information to ensure that they are aware of countries/territories which may pose high risk. Section 13.1 of the IBD AML Guidelines stipulates that the licensee is required to ensure that the quality and effectiveness of supervision and regulation in the introducer's country of domicile meets the standard set by the FATF Recommendations. However, IBD AML/CFT Guidelines do not provide for the requirements about third parties that are part of a financial group.
165. **Criterion 17.3** - FIs under the purview of the CBB (AML/CFT Guidelines section 7.4.4) and the FSC (AML/CFT Guidelines section 6.4.4) are required to apply the same measures when relying on a third party that is part of the same financial group and must take country risk in consideration. This criterion is covered in section 13.1 of the IBD's AML/CFT Guidelines.

### *Weighting and Conclusion*

166. The requirement to have regard to information available on the level of country risk is applicable to FIs under the supervision of the CBB, the FSC and IBD. The deficiencies have been addressed by revisions in the CBB AML/CFT Guideline and issuance of the FSC AML/CFT Guidelines and the IBD AML/CFT Guidelines. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance. No information has been received from the IBD (criterion 17.2) while at the same time the IBD AML/CFT Guidelines do not provide for the requirements with regard to third parties that are part of a financial group. Therefore, Barbados has been rated largely compliant. **Recommendation 17 is rated largely compliant.**

### *Recommendation 18 – Internal controls and foreign branches and subsidiaries*

167. This Recommendation is a combination of former R.15 and R. 22. R. 15 was rated PC in the 3<sup>rd</sup> MER since the legislative provisions for internal controls, compliance and audit did not include the imposition of penalties and sanctions for failure to comply with the provisions. There was also no enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention. Additionally, requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees were only enforceable on the licensees of the CBB and the Supervisor of Insurance.



168. R. 22 was rated PC since the requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados and to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures were only enforceable on the licensees of the CBB and the Supervisor of Insurance. Also, there was no requirement for branches and subsidiaries in host countries to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.
169. Deficiencies of R. 15 and R. 22 were addressed by revisions in the CBB AML/CFT Guidelines and the issuance of the FSC AML/CFT Guidelines and the IBD AML/CFT Guidelines. No new requirements have been included in R. 18.
170. **Criterion 18.1** - Section 19 of the MLFTA 2011 requires FIs to develop and implement internal policies, procedures and controls to combat ML and FT and develop audit functions to evaluate such policies, procedures and controls. Section 21 of the MLFTA 2011 requires FIs to make employees aware of the AML/CFT laws and institutional AML/CFT procedures and policies and provide training in the recognition of transactions involving ML or FT.
171. Section 9.0 of the CBB AML/CFT Guideline makes the provision that all licensees should designate a suitably qualified person at the management level, with the appropriate level of authority, seniority and independence as Compliance Officer. The duties of the Compliance Officer are also listed. This section also makes provision for the internal audit department to carry out reviews to evaluate how effectively compliance policies are being implemented. Section 11 of the CBB AML/CFT Guideline stipulates that licensees should establish ongoing employee training programmes targeted at all employees but added emphasis on the training of the Compliance Officer and the compliance and audit staff. Section 12.0 of the CBB AML/CFT Guideline adds that licensees should undertake due diligence on prospective staff members and develop a risk-focused approach to pre-employment screening. The criterion requirements are set out in section 5.0 of the FSC AML/CFT Guidelines which are applicable to all entities under the supervision of the FSC. The IBD AML Guidelines, sections 6.0, 8.0, 10.0 and 11.0 do make mention of the requirements about an effective and independent risk-based oversight function for the appointment of a reporting officer about AML/CFT issues and the testing and evaluation of the compliance program.
172. **Criterion 18.2** - Financial groups also must comply with the requirements of sub criterion 18.1. as the CBB, FSC and IBD AML/CFT Guidelines also are applicable to them. Section 2 of the CBB Corporate Governance Guideline requires FIs to have sound and effective measures and systems in place to facilitate the generation and exchange of information within the group about all areas of risk. Furthermore, group policies must be adapted to the host country environment. As part of the CBB onsite working programme, information is requested during onsite examinations to verify compliance. No information was received on this sub criterion from FSC and IBD.
173. **Criterion 18.3** - Section 2.0 of the CBB AML/CFT Guideline requires FIs to ensure that their group policies on AML/CFT are complied with at their foreign branches and majority owned subsidiaries. FIs should apply the AML/CFT requirements that are higher. FIs are also required to comply at the minimum with the MLFTA in case operations are outsourced. Licensees are also required to inform the CBB and the AMLA if the locally applicable laws and regulations prohibit the implementation of the AML/CFT Guideline. Section 6 also requires that branches and subsidiaries abroad comply at a minimum with the provisions of the MLFTA. Similar measures are outlined in sections 2 and 5 of the FSC AML/CFT Guideline. Although the MLFTA requires financial groups to apply AML/CFT measures consistent with home country and host country requirements, contrary to the CBB and FSC AML/CFT Guidelines, the IBD AML/CFT Guidelines do not specifically address this issue.

### ***Weighting and Conclusion***

174. The deficiencies include no information about FIs under the supervision of the FSC and IBD on sub criterion 18.2 and the fact that the IBD AML/CFT Guidelines do not address the requirements of sub criterion 18.3. **Recommendation 18 is rated largely compliant.**

*Recommendation 19 – Higher-risk countries*

175. This Recommendation (formerly R. 21) was rated “NC” in the 3<sup>rd</sup> Round MER (2008). The underlying deficiencies being that FI’s were not required to give special attention to business relationships with countries that did not sufficiently apply the FATF Recommendations. In addition, no framework was in place to ensure FI’s were made aware of AML/CFT deficiencies in other jurisdictions and no countermeasures were issued in situations where business relationships had been established with such jurisdictions. R. 19 requires the application of EDD, where there is a risk, to transactions and business relationships from countries for which this is called for by the FATF. Countries are required to inform FIs of possible AML/CFT weaknesses in other countries.
176. **Criterion 19.1** - Section 6.4 (Enhanced Due Diligence) of the FSC Guidelines identifies that a customer relationship may be high risk by virtue of the customers connection to a particular country. Section 6.6 (Higher Risk Countries) of the FSC Guidelines places a general obligation on FI’s to ensure that they are aware of higher risk jurisdictions. Section 7.4 (Enhanced Due Diligence) of the CBB AML/CFT Guidelines, requires inter alia that licensees should observe (and implement) the Public Statements issued by FATF and CFATF as it relates to business relationships and transactions with natural and legal persons and FI’s from listed countries and incorporate this information in their risk assessments. Section 9.1 [Duty of Vigilance] of the IBD AML/CFT Guidelines requires that licencees observe Public Statements issued by FATF and CFATF and incorporate this information in their risk assessments.
177. **Criterion 19.2** - Barbados has not provided evidence that it is positioned to apply risk adjusted counter measures against high risk jurisdictions either independently or when requested by the FATF to do so.
178. **Criterion 19.3** - Section 7.4 [Enhanced Due Diligence] of the CBB AML/CFT Guideline requires that licensees should observe Public Statements issued by FATF and CFATF and incorporate this information into their customer risk assessments. Section 9.1 [Duty of Vigilance] of the IBD Guidelines requires that licencees observe Public Statements issued by FATF and CFATF and incorporate this information in the customer risk assessment. Section 6.4 (Enhanced Due Diligence) of the FSC’s AML/CFT Guidelines requires that licensees should observe Public Statements issued by FATF and CFATF and take this into consideration when risk rating a customer. Whilst the issued AML/CFT Guidance requires the observation (and implementation) of Public Statements issues by FATF and CFATF there is no evidence that Barbados has measures in place to proactively communicate its concerns to the regulated sector about deficiencies in the AML/CFT systems of other countries.

*Weighting and Conclusion*

179. Whilst there are requirements to observe (and implement) the Public Statements issued by FATF and CFATF and to apply EDD when it is determined that a customer is high risk, Barbados has not put measures in place to enable it to proactively communicate its concerns to the regulated sector about deficiencies in the AML/CFT systems of other countries. In addition, Barbados has not provided satisfactory evidence that it is positioned to apply risk adjusted counter measures against high risk jurisdictions either independently or when requested by FATF to do so. **Recommendation 19 is rated partially compliant.**

*Recommendation 20 – Reporting of suspicious transactions*

180. This Recommendation (formerly R.13 and SR. IV) was rated ‘LC’ and ‘LC’ respectively in the 3<sup>rd</sup> MER. For both Recommendations, the factor underlying the rating was that there was no

requirement to report attempted transactions. Human trafficking, corruption and bribery were not adequately addressed in legislation as predicate offences. The recommended action was addressed with the amendment of the term “**transaction**” in section 2 of the MLFTA, to include an attempted or aborted transaction. In terms of the review of the Standard by the FATF, this Recommendation is unchanged.

181. As reflected in the FUR, the MLFTA now defines a transaction as including an attempted or aborted transaction. Included as designated offences, *inter alia* are: (i) corruption and bribery under the Prevention of Corruption Act of 2011; and (ii) participation in an organised criminal group and racketeering; trafficking in human beings and migrant smuggling; illicit arms trafficking; and smuggling; in the TOCPA.
182. **Criterion 20.1** - Section 23 of the MLFTA requires FIs to report to the FIU in circumstances where there are reasonable grounds to suspect that funds related to a transaction are the proceeds of a crime, involve the financing of terrorism or are otherwise suspicious in nature. The MLFTA however does not prescribe that such transactions must be reported promptly. The AML/CFT Guidelines for FIs and DNFBPs of November 2016 requires suspicious activity to be reported forthwith. In the circumstances that the AML/Guidelines are not law, as required for STR reporting obligations, thus the compulsion that FIs report forthwith is diminished.
183. **Criterion 20.2** - The MLFTA defines transaction as including an attempted or aborted transaction. As indicated in criterion 20.1, all suspicious transactions should be reported. There is no indication of a threshold regarding suspicious transactions reporting.

#### ***Weighting and Conclusion***

184. FIs are required to report all suspicious transactions as per the FATF Standard including attempted and aborted transactions regardless of the amount involved in the transaction, however there is no requirement to ensure prompt reporting. **Recommendation 20 is rated partly compliant.**

#### ***Recommendation 21 – Tipping-off and confidentiality***

185. Barbados was rated ‘PC’ for R.21 (formerly R.14) in its 3<sup>rd</sup> MER. There were two weaknesses: (1) MLFTA establishes inconsistent mandatory and voluntary reporting provisions; and (2) immunity provision under MLFTA is not referable to mandatory reporting provisions. There are no significant changes to this Recommendation for the Fourth Round.
186. **Criterion 21.1.** Section 48.6 of the MLFTA provides that an FI, an officer, employee or agent of the FI, whilst acting during his employment, or a public authority *is* protected against any action, suit or proceedings in relation to the reporting of suspicious or unusual transactions to the Director. Section 48(6) of the MLFTA extends to actions taken by a public authority, FI or person pursuant to Section 48(5) and Section 23 or 30.
187. **Criterion 21.2.** Section 43 of the MLFTA makes tipping-off an offence. Where a person knows or suspects that an investigation into ML or TF has been, is being or is about to be made, or an order has been made or may be made requiring the delivery of production of any document and divulges that fact, or falsifies, conceals, destroys anything that is material to the investigation, is guilty of an offence. In addition, section 48(5)(b) extends the offense of tipping-off to circumstances where a public authority has information about a suspicious or unusual transaction or a FI has account information that would otherwise be of assistance in the enforcement of the MLTFA. Tipping-off however, is not explicitly prohibited where STRs and other pertinent information is in the process of being filed or have not been filed yet with the FIU.

#### ***Weighting and Conclusion***

188. There is a general prohibition for the offence of tipping-off where it is suspected that an investigation into ML/FT is being made or is about to be made. However not all STRs result in investigations.

Further, tipping-off is not applicable where STRs or other information are in the process of being filed or not yet filed with the FIU. **Recommendation 21 is rated largely compliant.**

***Recommendation 22 – DNFBPs: Customer due diligence***

189. In the 2008 MER, Non-Core Recommendation 12 [Customer Due Diligence] was rated Non-Compliant (NC). The underlying deficiencies were in respect of the non-enforcement of Recs 5, 6, 8 – 11 and 17 in respect of those DNFBP's not regulated and supervised by the CBB.
190. **Criterion 22.1** - Section 4 of the MLFTA applies to all DNFBP's. Part IV of the MLFTA sets out the applicable CDD requirements.
191. DNFBPs (corporate and trust service providers) are also regulated and supervised by the CBB are subject to the AML/CFT Guideline for FIs licenced under the FIs Act CAP. 324A and the International Financial Services Act Cap. 325, issued by the CBB in conjunction with the AMLA. Pursuant to section 4 of the MLFTA, the Act applies to all Non-Financial Business Entities and Professions as set out in the Second Schedule. As noted in the 14<sup>th</sup> FUR all categories of DNFBPs are covered except for notaries and other legal professionals, which based on Barbados' context cannot provide any financial services on behalf of clients/customers. *Criterion 10.1* Is addressed by section 18(3) of the MLFTA, which requires customer account names to be held in the true name of the holder of the account. *Criterion 10.2* - Section 15 of the MLFTA applies to non-financial business entities and professions in Barbados and specifies the identification and verification of customers. *For Criterion 10.3* - section 15(1) of the MLFTA provides for the identification and verification of customers by means of reliable documents, data or information from an independent source. *Criterion 10.4* -Is addressed by section 15(2) and (3) of the MLFTA. *About criterion 10.5*, the identification of the beneficial owner (BO) is addressed by section 15(3) and (4) of the MLFTA. *Criterion 10.6* – Is addressed through the IBD AML/CFT Guidelines. *Criterion 10.7* - Is addressed in part through section 16 of the MLFTA, which requires ongoing due diligence for every business arrangement and the close examination of the transactions of the arrangement to ensure that the transactions are consistent with the knowledge of the relevant customer, his commercial activities, if any, and risk profile, and where required the source of funds. The criterion is also covered in the IBD AML/CFT Guidelines. *Criteria 10.8* - Is addressed in the AML/CFT Guidelines of the IBD. *Criterion 10.9* – although addressed by the MLFTA, this criterion is not covered by the IBD AML/CFT Guidelines. *Criterion 10.10* - The IBD AML/CFT Guidelines lacks the specificity to cover this criterion. *Criterion 10.11* - The AML/CFT Guidelines of the CBB and IBD and the provisions in the International Trust Act Cap 245 cover CDD for beneficiaries of life insurances policies. *Criterion 10.12 and 10.13* are not applicable in the context of R. 22.1 *Criterion 10.14, 10.15 and 10.16* are met by the IBD and CBB AML/CFT Guidelines. *Criterion 10.17* The IBD AML/CFT Guidelines only make mention of enhanced CDD for PEPs and do not contain an extensive description of all possible situations in which FIs must perform enhanced CDD. *Criterion 10.18* – The IBD AML/CFT Guidelines clearly indicate in which circumstances, simplified CDD measures can be applied. Barbados references section 17 of the MLFTA, which provides the authority to make guidelines to determine the applicability of enhanced or simplified CDD measures. *Criterion 10.19* – Addressed, as it is covered by the AML/CFT Guidelines of the IBD. *Criterion 10.20* - Sections 15 and 16 of the IBD AML/CFT Guidelines comply with this sub criterion except for the requirement to prevent tipping off in cases of non-compliance with CDD requirements. and sections 9.1 of the IBD AML/CFT guidelines. R.10.6 Section 9.1 (e) and (f) of the IBD AML/CFT Guidelines do comply with the requirements of sub criterion 10.7 (b, Section 13.4 of the IBD AML/CFT Guidelines does take the requirements of sub criterion 10.19 into account Sections 15 and 16 of the IBD AML/CFT Guidelines comply with this sub criterion (10.20) except for the requirement to prevent tipping off in cases of non-compliance with CDD requirements.
192. **Criterion 22.2 – Criterion 11.1** is dealt with by section 18 of the MLFTA, which requires the establishment and maintenance of business transaction records of all business transactions and

requires that the established records be kept for a period of no less than 5 years from the termination of the business arrangement or the transactions where the transaction is an occasional transaction or such longer period as may be specified by the Authorities. There is no specification as to whether the data is domestic or international, however since the requirement specifies all business transaction, this can be inferred. *Criterion 11.2* is addressed by section 18(1) and (2) of the MLFTA. The definition of ‘business transaction record’ contained in section 2 of the MLFTA includes all records obtained during the CDD process, account files and business correspondence. *Criterion 11.3* as section 4(1) of the MLFTA as amended by the A.T (Amendment) Act 2015-28 states that the act applies to DNFBPs in the same way as it applies to FIs. The requirements for record keeping by FIs are set out in section 18 of the MLFTA. *Criterion 11.4* through sections 30(2)(b), (c) and 30(4) of the MLFTA.

193. **Criterion 22.3** – For *criterion 12.1*, section 6.4.6 of the IDB AML/CFT Guidelines is relevant about the requirements in relation to performing CDD requirements on foreign PEPs. For *criterion 12.2*, the Authorities reference the IDB AML/CFT Guidelines. For *criterion 12.3*, section 6.4.6 of the IDB AML/CFT Guidelines has similar measures. The IDB AML/CFT Guidelines also defines ‘family members’ and ‘close associates’.
194. **Criterion 22.4** - Section 13.2 [Timing and Duration of Verification] of the IDB Guidelines provides for requirements in terms of the receipt of payments in non-face to face relationships. Criterion 15.1 is addressed by section 8 of the IDB AML/CFT Guideline. The requirements of the IDB AML/CFT Guidelines are for special attention to be paid to new and developing technologies. Additionally, the Authorities have stated that the Board of the AMLA meets monthly to discuss ML/TF risks and general matters. These discussions inform changes to the relevant AML/CFT legislative framework. For criterion 15.2, the same sections of the IDB AML/CFT Guidelines discussed are referenced with emphasis on the part that require risk assessment of new products and risk mitigation about new products and technologies.
195. **Criterion 22.5** - *Criterion 17.1* section 13.1 of the IDB’s AML/CFT Guidelines take the requirement of *criterion 17.2* into account. *Criterion 17.3*. Section 18 [Content of Records] of the Guidelines for the Detection and Prevention of Money Laundering and Financing of Terrorism and Proliferation in Barbados (for licensees and registrants under the Corporate and Trust Service Providers Act 2015 - 2, the International Business Companies Act Cap.77, the Societies with Restricted Liability Act , Cap 318B. the Private Trust Companies Act 2012- 22, the Foundations Act 2013-2 and the International Trust Act CAP 245), provides that records held by third parties are not regarded to be in ready retrievable form unless the the third party per se is a regulated entity.

### ***Weighting and Conclusion***

196. There are CDD requirements for DNFBPs that require identification and verification of customers using reliable documents and data and ongoing due diligence. Most of the measures to deal with record keeping and PEPs are present. Measures to address new technologies are in place, while there are some gaps about reliance on third parties. **Recommendation 22 is rated largely compliant.**

### ***Recommendation 23 – DNFBPs: Other measures***

197. Recommendation 23 (formerly R. 16) was rated ‘NC’ in the 3<sup>rd</sup> MER because the requirements of the former R. 13-15, 17 and 21 were not adequately applied to DNFBPs that were not licensed by the CBB. The MLFTA is applicable to all DNFBPs (Reference Schedule Two of the MLFTA). DNFBP’s include lawyers, accountants, real estate agents, corporate and trust service providers and dealers in precious metals and stones.
198. **Criterion 23.1** 23 of the MLFTA requires DNFBPs to report to the FIU in circumstances where there are reasonable grounds to suspect that funds related to a transaction are the proceeds of a crime, involve the financing of terrorism or are otherwise suspicious in nature. Section 16 of the IDB



AML/CFT Guidelines also requires the reporting of suspicious transactions to the reporting authority. The AML/CFT Guidelines for DNFBPs (Real Estate Agents, Attorneys-at-Law, Accountant and Dealers in Precious Metals and Stones) of November 2016 all require these DNFBPs to report suspicious activity forthwith.

199. **Criterion 23.2 - Criterion 18.1**, is partially addressed by sections 19 and 21 of the MLFTA, with section 19 requiring DNFBPs to develop and implement internal control policies; functions to evaluate such policies and a procedure to audit compliance. Section 21 requires DNFBPs to make employees aware of the laws pertaining to ML and TF and to provide employees with the appropriate training in the recognition and handling of transactions involving ML or TF. Section 9 of the AML/CFT Guidelines for Attorneys-at-Law and Accountants and Real Estate Agents and section 10 of the AML/CFT Guidelines for Dealers in Precious Metals outline certain internal controls including the appointment of a compliance officer at senior management level. Section 8.1 of the Guidelines for Attorneys-at-Law and Accountants and Real Estate Agents and section 9.1 of the Guidelines for Dealers in Precious Metals and Stones underscore the requirement for training on an on-going basis as a key component of the requisite internal controls.
200. **Criterion 23.3** Section 9.1 of the IBD AML/CFT Guidelines require FI's to conduct enhanced due diligence when conducting business transactions with persons from jurisdictions designated as high risk by FATF. However, Barbados has not provided evidence that it is positioned to apply risk adjusted countermeasures against high risk jurisdictions either independently or at the specific request of FATF.
201. **Criterion 23.4 (R. 21)** - Section 48 (6) of the MLFTA provides statutory protections for persons who in accordance with the Act disclose information to the Director which they reasonably believe may be of assistance in the enforcement of the Act. Sections 43 and 44 of the MLFTA provide for criminal sanctions against any natural and/or legal persons who prejudice an investigation by way of an unlawful disclosure.

#### ***Weighting and conclusion***

202. About R. 23, there is no requirement for Barbados to impose countermeasures independently of a call by the FATF to do so and the lack of a mechanism for DNFBPs to be advised about weaknesses in the AML/CFT systems of other countries. **Recommendation 23 is rated partially compliant**

#### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

203. Recommendation 24 (formerly R. 33) was rated 'PC' in the 3<sup>rd</sup> MER. The underlying factors were identified as (i) the authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry. (ii) the authorities should enact legislative requirements for legal persons to disclose BO information. Since then Barbados has placed an obligation on service providers to capture beneficial ownership information under the Corporate (Miscellaneous Provisions) Act 2015 where there was an amendment to section 170 to make provisions for registered offices to maintain details pertaining to beneficial owners. The CA was amended to include 15A to require that a director or authorized officer of a company to certify in annual return filed that information related to beneficial ownership is maintained at the registered office of the company. As for exempt insurance companies, IBCs and international SRLs the AML Guidelines address the requirements for beneficial ownership requirements. Both the CA and the SRL were amended to include references to a record of the beneficial ownership of companies incorporated or registered in Barbados or the society receptively.
204. **Criterion 24.1** – (a) There are legal mechanisms within Barbados to identify and describe the different types, forms and basic features of legal persons. Please see Table 16 within Immediate Outcome 5. (b) The processes for the creation of legal persons in Barbados, together with the obtaining and recording of basic and BO information all commence with CAIPO. Both domestic as

well as international business companies are all incorporated at CAIPO, and duly incorporated pursuant to COMPA; thereafter they are licensed or registered with the other supervisory authorities such as the CBB, the FSC and the IBD under their respective laws. In Barbados, legal persons include the following (i) Companies limited by shares without nominal or par value which includes insurance, credit unions; (ii) Foreign Sales Corporations; (iii) External companies; (iv) Societies with Restricted Liability which include International, Exempt and Domestic; (v) Non-Profit Organisations; (vi) Segregated cell companies and (vii) international business companies which includes international banks. Creation under COMPA is facilitated by the signing and sending of articles of incorporation to the Registrar of Companies. The Articles includes the basic ownership information of the company to include the proposed name of the company; the classes and any maximum number of shares that the company is authorised to issue; transfer rights of shares of the company; and the number of directors. The office of the Registrar of Companies is a public office. Basic ownership information as filed pursuant to section 395 of the COMPA must be maintained on the Register of Companies in which the name of corporation that is incorporated, continued, registered, restored and not subsequently struck off the register. Section 396 of the COMPA provides that upon the payment of a prescribed fee a person shall be entitled to make copies of or extracts from a document required by the Act or the regulations to be submitted to the Registrar, with one exception which is not material to this assessment. Accordingly, taking into consideration the provision in section 395 COMPA where the name of the company and the Articles of Incorporation are submitted at incorporation and kept on the Register, such information constitutes BO information, this information is therefore publicly available.

205. Section 170 of the COMPA specifies that the company shall prepare and maintain at its registered office records containing articles and the by-laws as amended, register of shareholders, register of debenture holders, register showing the name and the latest known address of each person to whom the privileges, options or rights have been granted. Other than information contained in the Registrar's Register pursuant to section 395 of the COMPA which constitutes basic ownership information, all other information related to legal persons are held pursuant to section 170 of the COMPA. For BO information, such information is not included in the Registrar's Register, however such information is not required to be held publically. Notwithstanding, section 175(4) of the COMPA provides that any person may, during the usual business hours of the company and upon payment of a reasonable fee examine the records of the company referred to in section 170 of the COMPA, such access constitutes private availability. Consequently there is a mechanism to obtain and record beneficial ownership information.
206. Barbados has legal mechanisms to identify and describe the different types, forms and basic feature of legal persons. In addition there are legal processes which mandate the creation of legal persons. There are also legal processes for obtaining and recording the basic and BO information. All types of legal persons are required to register with the Company Registry which provides formation information on its website. Basic ownership information is publicly available. BO information is available through the AML/CFT obligations of FIs and DNFBPs. Consequently, information on BO information that is obtained and recorded however it is not publicly available as this is not required.
207. **Criterion 24.2** – Barbados submitted a NRA dated 30 June 2016. However, this was determined to be limited in scope and did not demonstrate that it dedicated specified attention to ML/TF risks associated with all types of legal persons that can be formed in Barbados.
208. **Criterion 24.3** –The Register of Companies which is maintained with CAIPO contains basic ownership information as discussed above in criterion 24.1. The Notice of Address of Registered Office are compulsory filings at the stage of incorporation/registration and may be inspected at the Corporate Registry which is a public record. The COMPA also provides for the extraction of copies of the records on payment of a fee.



209. **Criterion 24.4** – The supervisory authorities are the CBB, and CAIPO who both have the legislative authority to mandate the relevant sectors to maintain a register of shareholders at the register office of the company. With respect to the CBB, section 13 of the FIA demands that licensees submit to the CBB, at the beginning of each year, a list of all shareholders holding more than 5% of its stated capital, and that any changes to that list be also submitted as determined by the CBB. Section 7 of the IFSA requires that applicants give the names and addresses of the shareholders and the number of shares directly or indirectly held by them. Under Section 13 of the IFSA, no transfer of shares can take place without the approval of the CBB. With respect to CAIPO, the requirement to maintain the register is treated with at section 170 of the COMPA and section 24 of the SWRLA. As for where the information is maintained, where section 170 of the COMPA permits the discretion to maintain the record "...at some other place in Barbados designated by the directors of the company" provides an alternative location contrary to the requirements of the Recommendation. The Recommendation requires that the company registry be notified of the location of the register, however this provision does not expressly mandate the notification of the Registrar should the directors of the company determine to keep the documents in any other location in Barbados.
210. **Criterion 24.5** –The supervisory authorities the CBB and the CAIPO have the legislative authority to mandate accurate and timely information. With respect to the CBB the following are relevant: section 4.4.2 of the Corporate Governance Guidelines requires all licensees to notify the CBB of any changes in directors within (14) days; section 45 of the FIA compels all its licensees to submit annually a list containing the full and correct names of all directors. Under section 6 of the IFSA, any changes in the place of business must be approved by the CBB; section 49 of the IFSA makes it an annual obligation for licensees to report on the names of its directors. With respect to the CAIPO (i) the information referred to in 24.3, companies are required to file with the Registrar a Notice of Changes of registered details with thirty (30) days of that change. In the event of non-compliance, provision has been made under the 2015 amendment for the imposition of a BDS\$100 penalty. (ii) with respect to the information referred to at criterion 24.4, in the prescribed form (Form35) for the filing of an Annual Return, the Officer of the company must certify that the company has maintained at its Registered Office the records of the company including the records pertaining to beneficial ownership. An Annual Return must be filed on or before the 31<sup>st</sup> January in respect to Domestic Companies and 1<sup>st</sup> April in the case of External Companies. The legal mechanism relied on is an annual attestation/filing, as such this mitigates against the public register being accurate and updated on a timely basis.
211. **Criterion 24.6** – The Authorities have provided various citations to address this issue. Based on the citations provided, Barbados has given effect to this sub-criterion by implementing (b) of the sub-criterion in that there is the legal requirement for companies to obtain BO information. However, while there is a requirement to obtain BO information, there is no express legal requirement to hold the said information up-to date. Further, the annual filing requirement does not achieve the requirement in the present legal formulation. The jurisdiction has given effect to the sub-criterion as follows: section 170 of the COMPA, mandates that companies maintain at the registered office a record of shareholders with a statement of the number of shares held by each and the BOs, who holds the shareholders. However, there the provision in section 175 of the COMPA to hold such information at a location which the director of the company may determine, limits the requirement that the information is kept at a specified location. The CBB Guideline, section 7.2, requires an understanding of the ownership and control structure of the customer and the requirement to procure information on BO as per the FIA, IFSA and the MLFTA. However there is no dual requirement to keep the information up to date.
212. **Criterion 24.7** – FIA licensees are required to submit annually a list of shareholders in accordance with section 13 of the FIA. This measure does not address the issue of the BO information being as accurate and up-to-date as possible as an annual filing is not an instantaneous update as is contemplated by the criterion. Changes in significant interest in a FIA licensee are addressed at

section 10 of the FIA, which must be approved of the Minister, but this is limited to Barbados banks only and not all other FIs. Declarations made by IFSA licensees under section 7 of the IFSA must be kept updated by the operation of Section 13 of the IFSA. These references are applicable to BO as they relate to shares/share structure and prior permission. The Authorities also cited section 16 of the MLFTA, which is the ongoing due diligence measure, however this does not directly address the issue of accurate and up-to-date BO information. Section 13 of the FIA is referenced as containing a threshold reporting of 5% or more of stated capital for internal ongoing monitoring purposes. However, when the section is read it does not disclose monitoring which occurs simultaneous with the changes especially when the ongoing monitoring is premised on the annual filing as a condition precedent. In other words, unless there is an annual filing disclosing a change there is no trigger mechanism to require accurate and up-to-date information. However, the inclusion of the Minister providing approval of the change allows for accurate and updated information. There is also the observation that there is an absence of an express definition of the word “beneficial owner” which is in keeping with the FATF definition. In so doing this absence of the underlying definition may render some of the BO information being maintained to be unable to satisfy this critical criterion to keeping such information accurate and up-to-date as possible.

213. **Criterion 24.8** – This criterion is not satisfied where it is the position that since entities must have a licensed corporate service provider, who is mandated to keep ultimate BO information then such information is always accessible to the regulator. The issue for the criterion is competent authorities such as the FIU, having access, this is opposed to regulators. In respect of subcriterion (a) there is no express requirement for natural person to be authorized and accountable to competent authorities for providing basic and BO information and giving further assistance; (b) there is no express requirement that a DNFBP authorized and accountable to competent authorities for providing basic and BO information and giving further assistance; (c) no other specific measures were articulated. The legal framework therefore does not permit the direct reach and access as is contemplated by the criterion.
214. **Criterion 24.9** – Pursuant to section 383 of the COMPA company records are required to be retained for six (6) years following the dissolution of a company. Further, pursuant to section 18 of the MLFTA business transaction records are to be maintained for at least (5) years from the termination of the business arrangement. This therefore covers both the domestic and international sector. However the provision is restricted to the entities that are subject to the COMPA, therefore not all persons, authorities, entities and the company itself (its administrators liquidators) are required to maintain the records for a similar period as contemplated to satisfy the criterion.
215. **Criterion 24.10** - In the event of non-cooperation by a company official in the production of BO information this may be addressed particularly by law enforcement authorities through the process of the Court. It is noted that the legal process has its inherent delays which mitigates against timely access. The Authorities have noted that pursuant to section 53 of the IFSA the competent authority has power to access books and records.
216. **Criterion 24.11** - Within the governing law of the CBB and the CAIPO bearer shares are prohibited pursuant to section 29 (2) of the COMPA where no company may issue bearer shares or bearer share certificates. Section 7.4.7 of the CBB AML/CFT Guideline requires FIs which have foreign customers that issue bearer shares, to immobilize the shares as a means of monitoring the identity of the owners of such companies. Barbados therefore has a combined approach of prohibiting bearer shares and immobilising bearer shares.
217. **Criterion 24.12** – The legislative framework for legal entities provides for the existence and functions of proxies as outlined in Part I Division F of the COMPA. Proxy shareholders are required to hold ownership information on domestic and international companies. However, there is no dual obligation within the COMPA to disclose the identity of the nominator to the Registrar for it to be included in the relevant Register. Entities providing these services (proxy) are therefore required to

become licensed under the CTSPA. However the CTSPA does not contain a provision to mandate the maintenance of nominator information nor a proviso to make this information available to the Registrar. Neither does the MLFTA have an obligation to make those BO information records specific to nominators, available to the Registrar.

218. **Criterion 24.13** - With respect to CAIPO, within the COMPA, there is an absence of penalties for legal persons such as the striking off the Register. There is also the absence in law of graduated administrative sanctions moving from a suspension to revocation of licence for legal persons.
219. **Criterion 24.14** – (a) and (b) Section 44 of FIA permits the CBB to disclose information to any supervisory or regulatory authority of FIs in Barbados, while section 44 of the FIA permits sharing of information to any appropriate authority outside Barbados, provided there is a reciprocal arrangement with that authority for the exchange of information. The CBB has also entered Memoranda of Understanding with relevant competent authorities outside of Barbados for the sharing of information. Further, section 53 of the IFSA enables the CBB to request any information from appropriate authorities in any country where the holding company, parent company, or any other shareholder company is located. Sections 27 – 30 of the MLFTA allows the AMLA to disseminate relevant information within or outside Barbados, communicate information to any national FIU of a foreign state or public authority and to receive disclosures of information from any source. However, in respect to the subcritierion (a) and (b) based on the legal framework just cited, the extent to which BO information can be exchanged is still unclear, this includes the exchange of information on shareholders. (c) There has not been any specific information of competent authorities using their investigative powers, pursuant to the law to obtain BO information on behalf of foreign counterparts. Consequently, although the above stated measures do provide for an exchange of information, the requirement of this sub criterion is that countries should rapidly provide international cooperation, and the information provided does not mandate rapid sharing of information.
220. **Criterion 24.15** - There is no information that Barbados monitors the quality of assistance it receives from other countries in response to requests for basic and BO information or requests for assistance in locating beneficial owners residing abroad.

#### ***Weighting and conclusions***

221. In this Fourth Round, mutual evaluation, Barbados has the legal framework wherein all service providers engaged in the business of providing corporate services by being subject to the CTSPA and the MLFTA are mandated to obtain and keep of records of BO information. Basic company information is publicly available during the usual business hours and upon the payment of a reasonable fee. However, where the COMPA permits the discretion to maintain the record at some other place in Barbados designated by the directors of the company provides an alternative location contrary to the requirements of the Recommendation. The Recommendation requires that the company registry be notified of the location of the register, however this provision does not expressly mandate the notification of the Registrar should the directors of the company determine to keep the documents in any other location. The stated penalty in respect of the filing of annual return, is not dissuasive and this will arguably mitigate against having accurate and updated records on a timely basis. The legal and supervisory framework does not facilitate the direct reach and access of competent authorities as is contemplated by the criterion, although there exists MOUs between the authorities which could facilitate the sharing of information. The rapid sharing of basic and BO information to facilitate international cooperation is not explicit. **Recommendation 24 is rated Partially Compliant**

#### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

222. Recommendation 25 (formerly R. 34) was rated ‘PC’ in the 3rd MER. The main factors underlying the rating were that international trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants were not subject to measures for monitoring and ensuring

compliance with AML/CFT requirements i.e. retention of beneficial ownership and control information. In 2013, the CBB and AMLA issued AML/CFT guidelines for FIs Licensed under FIA, and the IFSA. Guidelines are enforceable within the jurisdiction. Since then, Barbados placed the onus on service providers to obtain and maintain BO information. Further the monitoring and supervision is conducted by the FSC having been given the legislative mandate under the ITA.

223. There are legal mechanisms within Barbados to identify and describe the different types, forms and basic features of legal arrangements in Barbados. Please see Table 16 within Immediate Outcome 5. There are both domestic as well as international trust companies incorporated under CAIPO and then regulated and supervised, in the instance of international trust, by IBD. In Barbados, legal persons include the following (i) international trust which includes offshore trusts; (ii) domestic trust; and (iii) private trusts. Creation under ITA - A trustee of an international trust created in Barbados shall file with the Director of the IBD Division the following to aid in its registration: (a) a copy of the instrument creating the trust and copies of any other instrument amending or supplementing the instrument; (b) a register in which the following information is set out: the name of the settlor, a summary of the purposes of the trust, the name of the protector of the trust, and such documents as are necessary to show the true financial position of the trust. This information is confidential and not available to the public; (ii) Domestic trust and (iii) Private trust; (iv) Foundations (v) Partnerships.
224. **Criterion 25.1** - (a) By a combination of AML/CFT Guidelines, section 12.2 from which the CBB and, IBD operate and also in accordance with the statutes (the FIA & IFSA) trustees of express trusts are mandated to hold and maintain current information on the settlor, beneficiaries, controllers and trustees, this is to the extent that all persons and institutions implement all reasonable measures to determine the ultimate BO information related to any Trust for which they act. (b) The AML/CFT Guidelines mandate the holding of basic information on professionals to include lawyers or any other service provider who acts on behalf of the Trust. This is squarely within the requirement of the criterion. (c) Professional trustees are required to maintain information for a minimum of five years pursuant to the AML/CFT Guidelines, section 17.
225. **Criterion 25.2** –With respect to the CBB, section 7.4.1 of the Guideline requires ongoing due diligence to be applied to keep abreast of changes to any of the parties of the trust. With respect to the IBD, section 13.7 of the Guidelines require periodical verification checks when transactions are subsequently undertaken. Further, the IBD Guideline at section 12.2 requires: all persons and institutions to implement all reasonable measures to determine the ultimate BO information related to any trust for which they act. Section 17 of the IBD Guideline provides that to demonstrate compliance with the MLFTA and to allow for timely access to records by the IBD or the Reporting Authority, licensees should establish a document retention policy that provides for the maintenance of a broad spectrum of records to include (a) entry records; (b) ledger records; (c) supporting records. These measures facilitate the maintenance of accurate and up-to-date information.
226. **Criterion 25.3** - The IBD Guidelines mandate that trustees should disclose their status to FIs and DNFBPs when forming business relationships or carrying out an occasional transaction above the threshold. The IBD Guidelines, provides that in the performance of “fiduciary services” where provided to an international trust or private trust company, acting as corporate and/or individual trustee, such fiduciaries should comply with the Guidelines, which include verification and client acceptance procedures. More particularly, IBD Guideline provides that service providers should obtain satisfactory references in accordance with the party giving the instructions for the engagement or appointment of a new trustee, as well as satisfying itself that assets settled into the trust are not or were not made as part of a criminal or illegal transaction to dispose of assets. The general legal obligations pursuant to the MLFTA together with the Guidelines for legal arrangements support the express obligation for trustees to disclose their status to FIs and DNFBPs, and there is a requirement for occasional transactions to also require such information.

227. **Criterion 25.4** - With respect to the CBB, trustees that are licensees under the FIA and the IFSA are subject to compliance with information disclosures. Section 13 of the FIA and section 7 of the IFSA provide the powers necessary to obtain information on BO of any corporate vehicle. With respect to the IDB, as the competent authority section 28 of the ITA provides for disclosure subject to an order of the Court, in any civil or criminal proceedings, where such disclosure of information refers to any information relating to the trust generally. This section will also be applicable to FIs and DNFBPs, which includes information on beneficiaries of the trust, and any other matter or thing respecting an international trust. As such the law does not prohibit trustees from providing information to competent authorities, however there is no legal requirement for providing FIs and DNFBPs information on beneficial ownership and assets held under management.
228. **Criterion 25.5** –With respect to the CBB, as a competent authority, pursuant to the CBB Act and the AML/CFT Guidelines licensees must provide any information requested by the CBB. With respect to the IDB, as a competent authority, trustees are responsible for maintaining the information that can be held by a common authority. Part IV of the CTSPA gives the Director of the IDB the power to request any information from the service provider (trustee of international trust). With respect to law enforcement authorities, as a competent authority, there is no information regarding their access powers to obtain timely access to information held by trustees and other parties (FIs and DNFBPs in particular) to include information on (a) beneficial ownership ; (b) the residence of trustees; (c) any assets held or managed by FIs and DNFBPs in relation to trustee business.
229. **Criterion 25.6** – Section 28 of the ITA permits the disclosure of confidential information pursuant to the terms of the international trust, a Court order, or with the written permission of the beneficiary. However for (a) this section does not satisfy the requirement to facilitate access by foreign counterparts to basic information held by registries or domestic authorities and for (b) it does not satisfy the requirement to have the exchange of domestically available information on trust or other legal arrangements and (c) competent authorities may use their investigative power and Petition the Court seeking an order to obtain BO on behalf of their foreign counterparts.
230. **Criterion 25.7** – (a) The CBB under section 107 of the FIA, and section 56 of the IFSA provides that should a licensee that is a trustee fail to produce any information required by the CBB, that licensee would be guilty of an offence and liable on summary conviction to a fine of BDS\$25,000 plus BDS\$5,000 daily for each day that the breach continues (FIA), and BDS\$2,500 daily for each day that the offence continues (IFSA). Further, pursuant to section 13 of the ITA, where a trustee of an international trust created in Barbados fails to keep a copy of the trust instrument and copies of any other instrument amending or supplementing the instrument or a register which particularises specific details of the trust, or refuses to allow a person to inspect the instrument, register or documents, or deed, or allow an inspection of the of the creation instruments, or makes, or authorises the making of, any a false statement that he knows to be false or does not believe to be true; that person is guilty of an offence and is liable to on summary conviction to a fine of BDS\$10,000. In addition to such fine the Court may order and has the discretion to order the trustee to cease to be a trustee of international non-charitable purpose trusts for 2 years. (b) It is noted that the aforementioned sanctions are all criminal in nature, however the quantum and the daily application facilitate the same being dissuasive and proportionate.
231. **Criterion 25.8** - Barbados has proportionate, dissuasive sanctions, both criminal and administrative for failing to grant competent authorities timely access to information regarding trust prescribed by the FIA and IFSA. In addition, section 30(5) of the MLFTA prescribes that failure of a FI to provide information on a timely basis may result in suspension of its licence. The license may also be suspended under Section 31(5) of the MLFTA for failure to comply with a request of an officer authorized to inspect its record. Pursuant to section 13 of the ITA, where a trustee of an international trust created under section 10 fails to comply with refuses to allow a person to inspect the instrument, register or documents, any deed or register or makes, or authorises the making of, any a false

statement that he knows to be false or does not believe to be true, he is guilty of an offence and is liable to on summary conviction to a fine of BDS\$10,000, and in addition to such fine the Court may order. The Court also has the discretion to order the trustee to cease to be a trustee of international non-charitable purpose trusts for 2 years.

### ***Weighting and Conclusions***

232. In 2013, the CBB and AMLA issued AML/CFT guidelines for FIs Licensed under the FIA and the IFSA. In 2015, the IBD and AMLA issued AML/CFT guidelines for Licensees and Registrants under the CMTSPA the IBCA, the SRLA, the PTCA, FA and ITA. IDB Guideline provides that service providers should obtain satisfactory references in accordance with the party giving the instructions for the engagement or appointment of a new trustee; as well as satisfying itself that assets settled into the trust are not or were not made as part of a criminal or illegal transaction to dispose of assets. While, there is no clear obligation in terms of measures when carrying out an occasional transaction above the threshold for trustees, the general legal obligations pursuant to the MLFTA together with the Guidelines for legal arrangements support this aspect of the Recommendation being satisfied. With respect to the IDB, as the competent authority, the ITA provides for disclosure subject to an order of the Court, in any civil or criminal proceedings, where such disclosure of information refers to any information relation to the trust generally. This section will also be applicable to FIs and DNFBPs, which includes information on beneficiaries of the trust, and any other matter or thing respecting an international trust. There are also included in the legal framework penalties for breaches by trustees. **Recommendation 25 is rated largely compliant.**

### ***Recommendation 26 – Regulation and supervision of FIs***

233. This Recommendation, formerly R. 23 was rated PC in the 3<sup>rd</sup> MER. Underlying this rating it was noted that the Securities Commission (SC) had no power of approval over ownership of significant or controlling interests of its licensees. It was further noted that the SC was not required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees. It was also noted that MVTs were not subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.
234. The FSC as the current relevant supervisory authority has a fit and proper framework in place. MVTs are currently registered and supervised. Barbados has advised that MVTs will be licenced in due course.
235. Recommendation 26 [Regulation and Supervision of FIs] was issued in 2012 and includes additional requirements with respect to the establishment or continued operation of shell banks.
236. **Criterion 26.1** - Section 8 (1) of the MLFTA designates the AMLA to monitor and supervise all FIs in accordance with the Act. The FSC was established in 2011 by the FSCA to regulate and supervise non-bank FIs. FI's are defined in schedule two of the Act as any institution governed by the Exempt Insurance Act, CAP .308A, the INSA CAP. 310, the Occupational Benefits Act CAPS 350B, the Securities Act, CAP 318A and the Mutual Funds Act, CAP. 320B. The CBA 2012 designates the CBB as the competent authority to supervise commercial banks, trust companies, merchant banks, finance companies and international banks.
237. **Criterion 26.2** - Section 4.1 of the FIA provides that subject to Part III of the FIA and the Offshore Banking Act no person may carry on banking business in Barbados without a licence issued under Part II of the FIA. Section 24 provides that no person other than a bank licenced under the FIA shall carry on the business of a trust company a finance company or a merchant bank without a licence issued under Part II. Section 5 (1) of the IFSA provides that no person shall carry on any international financial service in or from within Barbados at any time when that person is not a licensee under the IFSA. Section 6 (1) of the FSCA provides that no person shall operate any business which is regulated under any of the specified enactments without first applying to the FSC to be registered or

to obtain a licence. Bureau de change services are licensed by the CBB under the FIA. In this context, all FIs which are subject to the Core Principles are licensed. Barbados has confirmed that it does not permit the establishment or operation of shell banks. MVTs are currently registered and supervised by the CBB and Barbados has advised that MVTs will be licensed in due course.

238. **Criterion 26.3** - The CBB's "Framework for Licensing of FIs 2013-02" sets out the criteria for licensing persons under the FIA and the IFSA. Section 3 (Licensing) requires an assessment of the fitness and propriety of the shareholders, including the ultimate BOs, proposed directors and their alternates and executive officers. Section 10 of the FIA requires Ministerial approval in respect of a person holding 10% + of a bank incorporated in Barbados. In granting Ministerial approval, the Minister will apply the fit and proper conditions as set out in section 10 (2) of the FIA. The CBB has indicated it reserves the right to undertake due diligence on any shareholder and that this has been done in the past.
239. Section 7 (1) of the IFSA requires the provision by the applicant of shareholder details and Section 13 (1) (v) requires Ministerial approval to the transfer of any shares. Section 13 (4) of the IFSA requires Ministerial approval in respect of a person holding 10% of an entity (licensed under the IFSA). Section 9 of the IFSA provides a general power (but not an obligation) allowing the Minister to examine the financial status and history of the applicant and any of its directors, associates or affiliates. Section 46 of the MLFTA provides that a person convicted of an indictable offence under the MLFTA (or a similar offence committed abroad) may not be licensed to carry on the business of a licensed FI. Section 6 (1) FSCA provides that no person shall operate any business which is regulated under any of the specified enactments without first being licensed by the FSC. Section 6 (3) requires that a person be fit and proper to operate a financial services business. The above measures apply to shareholders and the management of FIs.
240. **Criterion 26.4** - The CBB supervises onshore and offshore Commercial Banks and Trust and Finance Companies and Merchant Banks. All banks in Barbados (onshore and offshore) are foreign owned. The CBB is the home state supervisor for one banking group and has evidenced that this group is supervised in accordance with the Basel Core Principles and subject to consolidated supervision. MVTs are currently registered with the CBB with legislation pending to formally license MVTs. The CBB has risk rated the MVTs sector and assessed it as low risk and supervises the sector pursuant to an MOU with the AMLA.
241. The FSC and the CBB have advised that FIs who are subject to the IAIS, IOSCO and Basel core principles are regulated and supervised and subject to consolidated supervision. However, it was not evident to the Assessors that consolidated supervision included AML/CFT.
242. **Criterion 26.5** - The CBB and the FSC conduct risk assessments at the sector and FI levels. The risk assessment process is supplemented by an ongoing data calls and the collation of information directly relevant to the key risk indicators.
243. **Criterion 26.6** - The CBB and the FSC update individual FI risk assessments on a periodic basis using information received from various sources e.g. internal audit reports, AML/CFT reviews, board reports and when specific trigger events occur.

### ***Weighting and Conclusion***

244. The CBB and the FSC have completed sector and FI risk assessments and these are updated periodically and generally inform the onsite supervisory programme. Whilst the FSC continues to develop and improve its risk assessment framework the Assessors have a concern that the focus by the FSC on the largest FIs across each sector may not fully reflect the varied composition of the



sectors. This could compromise the integrity of the sector risk profiles and the supervision methodology. **Recommendation 26 is rated compliant.**

***Recommendation 27 – Powers of supervisors***

245. **Criterion 27.1** - The CBB is defined in Part II of the Third Schedule of the MLFTA 2011 as a regulatory authority with supervisory powers. Section 47 of the FIA and section 53 of the IFSA provides the CBB with the legal basis to perform onsite examinations in case it is needed. Section 4 of the FSC Act provides general authority for the FSC to supervise and regulate the operation of FIs. Section 37 of the MLFTA gives both the FSC and CBB the legal authority to determine if FIs under their purview are in compliance with AML/CFT requirements. Under section 8(1) of the MLFTA, AMLA is also authorised to monitor and supervise entities (including FIs) under the said MLFTA.
246. **Criterion 27.2** - Section 31 of the MLFTA provides for designated supervisory authorities to conduct onsite inspections to determine whether a financial institution follows the provisions of the Act. Section 47 of the FIA provides for the CBB to examine or cause an examination to be made by any of its officers or any person authorised by it, of the affairs of each licensee as it considers necessary. Section 53 of the IFSA also provides that the CBB can conduct an examination of a licensee to determine whether the provisions of the Act (or associated regulations) are being complied with. Section 14 (1) (ii) of the FSC Act provides that the FSC may conduct an onsite visit to determine compliance with the MLFTA and associated AML/CFT guidelines.
247. **Criterion 27.3** - Although Section 31 of the MLFTA provides broad powers of entry and inspection and allows for the copy of any relevant documents it does not provide broad authority to compel the production of information. However, section 48 of the FIA provides that the CBB can compel any auditor, director, employee or affiliate of a licensee to furnish such information as the CBB may consider necessary for the purposes of the examination. Compliance with AML/CFT requirements are provided for by sections 37 (1), 37(2) and 37(4) of the MLFTA. Section 52 provides broad powers in respect of the inspection of the books of holding companies. Section 15 of the FSCA provides the FSC with a broad power to compel the production of documents and information.
248. **Criterion 27.4** Criminal penalties for breaches of the provisions of individual AML/CFT requirements are stipulated in the MLFTA. The offenders can be referred by the supervisory authorities to law enforcement. Additionally, sections 50 to 59 of the FIA and section 57 of IFSA gives supervisory authorities the power to impose supervisory sanctions when they consider a licensee is engaging in unsound financial practice (including AML/CFT breaches). Sanctions under the FIA include requiring the FI to cease the unsound practice and take appropriate remedial action, restrict transactions for a specified period, suspend the FI's licence for a period of not more than a month or seize management and control of the licensee.
249. Section 57 of the IFSA allows for the CBB to require the FI to take immediate remedial action or to appoint a person to advise the FI on remedial action or suspend the FI's licence for a period of not more than three months. Failure to take remedial action or desist from the behaviour which resulted in suspension can lead to revocation of the FI's licence.
250. Neither the FIA or the IFSA impose pecuniary sanctions. However, sections 34 to 36 of the MLFTA impose sanctions in cases where an FI has failed to comply with the requirements of the MLFTA, any AML/CFT guidelines or directives issued by the AMLA. Sanctions include: issuing a warning or reprimand; giving a directive; imposing an initial penalty of BDS\$5,000 (US\$2,500) for an offence and an additional penalty of BDS\$500 (US\$250) for each day that a FI fails to cease the penalised activity or take remedial measures; or recommending to the appropriate licensing authority the suspension of any or all activities of the FI or the revocation of the licence of the FI. While the

above provisions are specific to the AMLA, section 37(2) of the MLFTA extends these powers to regulatory authorities with primary responsibility to monitor and supervise FIs for compliance with AML/CFT obligations.

### ***Weighting and conclusion***

251. Supervisory authorities in Barbados have the necessary powers to oversee and actively monitor compliance by FI's with their AML/CFT obligations, the sanctions that are available for non-compliance are proportional and dissuasive. **Recommendation 27 is rated is rated compliant.**

### ***Recommendation 28 – Regulation and supervision of DNFBPs***

252. Recommendation 28 (formerly R.24) was rated 'NC' in the 3<sup>rd</sup> MER The underlying deficiency related to an absence of measures to monitor and ensure the compliance of DNFBPs (except those licenced by the CBB) with AML/CFT requirements. To a large extent Barbados has now addressed this issue by using the FSC to provide the necessary capability.
253. **Criterion 28.1** – (a) (b) (c) There are no casinos in Barbados.
254. **Criterion 28.2** –The MLFTA designates the FIU as the competent authority with supervisory responsibility for ensuring that the DNFBP sector (excluding the CTSP sector) is complying with its AML/CFT regulatory obligations. Pursuant to the CTSPA, the IDB is the designated competent authority with supervisory responsibility for ensuring that CTSPs are complying with their AML/CFT regulatory obligations.
255. **Criterion 28.3** –The DNFBP sector (including in this context CTSP) is subject to supervision and monitoring in respect of compliance with ongoing AML/CFT requirements.
256. **Criterion 28.4** - (a) the MLFTA provides both the FIU and the IBD with the necessary powers to perform their supervisory functions however there is a question as to whether the existing supervisory arrangement employed by the IBD and the FIU are sustainable (b) the licensing/registration process with respect to DNFBPs (CTSPs) is disjointed and it is not evident that the BOs of DNFBPs and their senior managers are adequately vetted (c) there is no evidence that the FIU or the IBD have applied any form of sanctions.
257. **Criterion 28.5** - (a) and (b) Neither the FIU or the IBD have a risk assessment framework in place.

### ***Weighting and Conclusion***

258. The FIU and the IBD have the necessary supervisory powers and have entered into MOUs with the FSC to provide supervisory capability to monitor ongoing compliance by the DNFBP sector with applicable AML/CFT requirements. Whilst this is a positive development there is a concern that this arrangement is not sustainable and a permanent solution is necessary. In addition, the neither the FIU nor the IBD have a risk-based supervision framework in place. **Recommendation 28 is rated Largely Compliant.**

### ***Recommendation 29 - Financial intelligence units***

259. Barbados was rated 'LC' for R.29 (formerly R.26) in its 3<sup>rd</sup> MER. The lone deficiency was related to the FIU not publishing an annual report since 2000/2001 and shortcomings with the content of that report. Since Barbados' 3<sup>rd</sup> round MER, changes to the FATF Standards now require several additional measures to be in place. Issues that arise, based on the new measures, are whether the FIU: (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information; (iii) has the ability to disseminate information spontaneously; (iv) information is protected by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU's facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has

distinct and core functions if it is located within the existing structure of another authority; (d) is able to individually and routinely deploy its resources as it freely determines; and (vi) has applied for Egmont membership.

260. **Criterion 29.1** - The offices of the Director and public officers of the FIU are established in accordance with the Public Service Act (Section 9 MLFTA). Section 2 of the MLFTA refers to the AMLA as the authority appointed by the Minister, the Minister being the Attorney General. The FIU is the operational arm of the AMLA. According to section 13 (4) of the MLFTA the Director of the FIU shall discharge the functions of the Act with respect to the receipt, analysis and dissemination of reports and information. FIs are required to report to the Director of the FIU transactions of a suspicious or an unusual nature. The functions of the FIU include those outlined in sections 23, 24, 28, 29, 30, 32 and 48 of the MLFTA.
261. **Criterion 29.2**– (a) According to section 23 of the MLFTA, the Director of Barbados’ FIU is the central agency for the receipt of reports relating to proceeds of crime, reports involving financing of terrorism, or reports of a suspicious or an unusual nature, telegraph or wired funds, or transfers of currency in and out of Barbados where the transaction appears suspicious or unusual in nature. Section 4 of the MLFTA was amended by the AT (Amendment) Act, thereby clarifying and strengthening the position that the obligations under the MLFTA relate both to FIs and DNFBPs. Therefore, STRs from DNFBPs are received by the Director of the Barbados FIU. Section 23 1(b) of the MLFTA requires FIs and non-financial business entities and professionals to monitor and report to the Director of Barbados FIU any exchange of currency or instruction for the transfer of international funds, whether by telegraph or wire, into and out of Barbados, where the transaction appears to be of a suspicious or an unusual nature.
262. **Criterion 29.3** – (a) The Director of the FIU may require a FI to produce any information (MLFTA section 30 (2) (c)), which the Director considers necessary to fulfil the FIU’s functions. (b) The Director of the FIU is empowered to request information or a document from the records held by a public authority but only where the Director has reasonable grounds to believe that an investigation pursuant to the MLFTA should be conducted in accordance with the MLFTA section 30 (3). This does not amount to the widest possible range of information and can only be triggered where an investigation is to be conducted. In the context that the Barbados FIU is an administrative type FIU its analysis functions may not benefit from this measure. Further, there are no measures permitting the FIU access to databases.
263. **Criterion 29.4** (a) While there are no provisions for the conduct of operational and strategic analysis, the FIU has demonstrated that it conducts operational analysis, as it has received SARs and disseminated intelligence reports to law enforcement. (b). Section 27 (a) and 13 (4) of the MLFTA allows the AMLA to compile statistics and records, disseminate the information and make recommendations. The law requires that the Authority produce annual reports, however, none was produced since 2012. The Authorities advised that annual reports for the years 2013 to 2015 will soon be sent for approval by the AMLA.
264. **Criterion 29.5** – section 29 of the MLFTA supports information sharing from the Director of the FIU to a public authority for the purposes of the said MLFTA. Public authority is defined at section 2 of the MLFTA and includes regulatory authority or other public institution. Section 32 of the MLFTA allows the FIU to share information with the Police where there are reasonable grounds to believe that a transaction involves criminal activity. Whilst the FIU has several MOUs for effecting the dissemination of information to competent authorities, there are no provisions for the FIU to disseminate information spontaneously and upon request. MOUs between the FIU and competent authorities provides guidance on the secure dissemination of information. The information is sent under “confidential cover” and is hand delivered to the competent authority. The correspondence is addressed to the authorized person to protect its contents. The individual in receipt of the correspondence must sign as having received same.

265. **Criterion 29.6 (a)** – Section 48 (2) of the MLFTA outlines confidentiality provisions for staff. Staff of the FIU are prohibited from publishing or disclosing information received in the conduct of their duties. The FIU advised that its operations manual gives the parameters for the handling, storage, dissemination and protection of information in its domain. Information including SARs are forwarded to the Director of the FIU and are logged in an electronic and manual form. After it is logged, the Director disseminates SARs, or requests for information to the relevant staff member. There is an electronic and manual storage system in place. Electronic files are password protected and physically stored in locked fireproof cabinets. However, there are no detailed rules or procedures governing the security and confidentiality of the FIU’s database and process for the dissemination of financial intelligence to competent authorities. **(b)** - Staff members at the FIU are governed by the Secrecy Act 1918 and Section 48 of the MLFTA, a copy of which they are required to read and sign on joining the FIU. Staff of the FIU are not required to take an oath on assumption of duty. Senior employees hold the highest level of access to the information held at the FIU. The internal ‘File Handling Process’ for SARs, LR’s and OREs show that the file is first dealt with by an administrative secretary for initial processing, before the file is submitted to the Director FIU. It was disclosed that the administrative secretary undergoes a similar vetting procedure as the senior members of the FIU staff. The established vetting policy of the FIU for its staff was not viewed by the Assessors. Signed correspondence is restricted to only the Director and senior analysts. Documents moving to and from the FIU are sent and received under “confidential cover,” addressed to a specific individual and hand-delivered. The individual in receipt of the correspondence must sign as having received the correspondence. **29.6 (c)** - Access to the FIU and its computer system is restricted. The physical structure of the office of the FIU is properly secured with adequate security measures. Computers and other electronic devices are password protected from external threats. There is no signage on the exterior of the building or on the external door of the FIU to alert of its presence. Information is stored on servers with the necessary security protocols for the servers with off-site backup.
266. **Criterion 29.7 (a)** - Section 13 (3) of the MLFTA provides that the Authority may delegate any of its functions under the MLFTA to the Director except the functions outlined in Section 26. Section 26 refers to the function of issuing guidelines to FIs. The Authorities advocated that the performance of these functions as set out in the said MLFTA are performed freely by the Director of the FIU without interference, whether political or otherwise. Further, the Authorities advised that the Director does not consult the AMLA to analyse cases or to disseminate reports of its findings to competent authorities. Sections of the FIU’s Operations Manual also outlines the procedures of “Confidentiality” and “Political and Other Affiliations”. **Criterion 29.7 (b)** - Section 29 (1) of the MLFTA empowers the Director of the FIU to share the information it receives with any Public Authority in Barbados. MOUs between the parties also allow the FIU to disseminate information to competent authorities. The FIU is a member of the Egmont Group and therefore utilises the ESW to receive and share information internationally. **Criterion 29.7 (c)**. The FIU is the office of the AMLA based on Section 9 of the MLFTA. The AMLA is the Board for AML/CFT, however, the functions of the Director FIU are outlined in section 13 (4). Section 13 (3) states the Director shall not perform those responsibilities under Section 26, which is to issue guidelines to FIs. The core functions of the Director FIU are outlined in sections 23, 24, 28, 29, 30, 32 and 48 of the MLFTA and includes the receipt, analysis and dissemination of reports and information. **Criterion 29.7 (d)**. The FIU receives its annual subvention from the Office of the Attorney General and is subject to the usual budget consultation about its future. When the Director of the FIU prepares the budget, it is brought to the attention of the Board of AMLA for the Board’s understanding of the FIU’s activities. With respect to human resource allocation the positions are advertised, the interviews take place with the Judicial and Legal Services Commission or Public Services Commission, depending on the post to be filled. The Director FIU and the Chairman, AMLA forms part of the panel for interviewing prospective candidates.

267. **Criterion 29.8** - The Barbados FIU has been a member of the Egmont Group since 2002.

***Weighting and conclusion***

268. The national centre for the receipt, analysis of suspicious reports in relation to ML, TF and predicated offences, is the FIU. The FIU Director whilst empowered to request information or a document from a public authority can do so only where the Director has reasonable grounds to believe that an investigation pursuant to the MLFTA should be conducted. The law requires that the AMLA produce annual reports, however, none was produced after 2012. Consequently, the opportunity for Barbados to benefit from strategic analysis products through its annual reports, was not realized. There are no measures allowing the dissemination of information spontaneously and upon requests to other entities. The internal 'File Handling Process' at the FIU is first dealt with by an administrative secretary for initial processing, before the file is submitted to the Director FIU. The security clearance level and the understanding of responsibilities which relates to handling sensitive and confidential information by some Administrative personnel should be addressed by the FIU. However, there are no detailed rules or procedures governing the security and confidentiality of the FIU's database and process for the dissemination of financial intelligence to competent authorities. The independence and autonomy of the FIU and its distinct function from the AMLA is ambiguous. **Recommendation 29 is rated partially compliant.**

***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

269. Barbados was rated 'C' for R. 30 (formerly R. 27). Recommendation 30 requires that there should be a designated Law Enforcement Authority (LEA) responsible for ML/TF investigations in a national context. Countries should designate a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation.

270. **Criterion 30.1** - The authorities indicated that the FCIU a department within the RBPF established in 1998, was formed for the purpose of investigating matters related to proceeds of crime including ML. The RBPF has a general mandate to investigate all crimes in Barbados. The FCIU being part of the RBPF is vested with the powers under Part II of the Police Service Act Chapter 167, Section 4, which is to, *inter alia*, prevent and detect crime and enforce all laws and regulations with which it is charged. In Barbados, the FCIU is recognised as the law enforcement agency with responsibility to investigate matters related to ML/TF and associated predicate offences. However, it has not been specifically designated by a police Departmental or Standing Order or any other enforceable means. The Authorities informed the Assessment Team that a standing order designating the FCIU as the law enforcement agency with responsibility for investigating ML/TF and associated predicated offences is still to be completed.

271. **Criterion 30.2** - There is no legislative provision or other measures authorising the FCIU to conduct parallel financial investigation. However, though not provided for in law or other means, the FCIU conducts financial investigations parallel to criminal investigations of ML. The Authorities advanced that the FCIU is authorised to pursue financial investigations into ML/TF or any predicate offence, and that the FCIU was formed to attend to all matters related to the POCA and AT (amendment) A.

272. **Criterion 30.3** - Part I (2) (a & e) of the POCA states that the principal objective of the POCA is to deprive persons of the proceeds of and the benefits derived from the commission of scheduled offences and to enable law enforcement authorities to trace such proceeds, benefits and property. The POCA makes provisions for the DPP and the RBPF/FCIU to identify and trace and initiate the freezing and seizing of property relating to confiscation orders or proceeds of crime, and Section 38 of the MLFTA gives the FIU the provision to identify, trace and initiate the freezing of property relating to proceeds of crime. Section 38 of the MLFTA makes provision for the Director of the FIU to freeze a bank account for a period not exceeding five (5) days. However, the provisions do not articulate that the tracing and freezing is done expeditiously.

273. **Criterion 30.4** - There are no non-LEA designated to pursue financial investigations into predicate offences. Therefore, this criterion is not applicable.
274. **Criterion 30.5** - There is no anti-corruption enforcement authority in Barbados. The FCIU is designated to investigate ML/TF offences arising from anti-corruption matters, therefore this criterion is not applicable to Barbados.

***Weighting and conclusion***

275. The FCIU is the recognized agency responsible for investigating ML and TF offences. Notwithstanding that the FCIU was formed to investigate ML, associated predicate offences and TF, the applicable measures are not yet formalised. Further, the procedures and policies for dealing with investigations for ML/TF and predicate offences are not outlined. The FCIU does not have legal authority to conduct parallel financial investigation, however, the FCIU has demonstrated that it does conduct parallel financial investigation. LEAs are authorized to freeze, restrain and seize property related to proceeds of crime based on sections 225 (2)(c), 28, 31 and 32 of POCA. Additionally, the Director of the FIU is authorized by section 38 of the MLFTA to apply to a Judge in Chambers for an order to freeze a bank account of person for a period not exceeding five (5) days. However, the provisions do not articulate that the tracing and freezing is done expeditiously. **Recommendation 30 is rated largely compliant.**

***Recommendation 31 - Powers of law enforcement and investigative authorities***

276. Barbados was rated 'C' for R. 31 (formerly R. 28). R. 31 expands the powers of LEAs and Investigative Authorities (IAs). Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and be able to request information from FIU when conducting relevant investigations.
277. **Criterion 31.1** (a) A police officer may apply to a Judge in Chambers, pursuant to Section 42 of the POCA, for a production order against any person suspected of having possession or control of documents relevant to identifying, locating or quantifying property of a person who has either been convicted or suspected of having committed a scheduled offence. (b) - A magistrate may issue a search warrant, to a police officer, authorising him to search any premises for a document that may afford evidence of the commission of an offence under the MLFTA and section 84 of the Magistrate's Courts Act. At section 47 (1) of the POCA a police officer may apply to a Judge for a warrant to search the premises for documents relevant to identifying, locating or quantifying property of a person who has either been convicted or suspected of having committed a scheduled offence. (c) The authorities advocated that there is no compulsory measure for the Police for taking witness statement as this is a voluntary process. (d) The measures applicable to the seizing and obtaining evidence can be found under the Drug Abuse Prevention Act (section 35 (2)) and generally at section 84 of the Magistrate's Courts Act.
278. **Criterion 31.2** - (a) to (d) - There are no measures permitting the use of a wide range of investigative techniques.
279. **Criterion 31.3** (a) and (b) - Sec. 30 (2) (b) and (c) of the MLFTA provide the Director of the FIU with power to instruct a financial institution to take such steps as the Director requires and to order the production of information. The Director can set the timeline to produce such information. Section 31 enables an authorised officer to access relevant information from a financial institution. Notwithstanding, there is no framework which requires reporting entities to identify natural or legal persons that hold or control accounts, inclusive of BO information in a timely manner.
280. **Criterion 31.4** - Competent authorities can request information from the FIU in support of their mandate. Section 29 MLFTA allows information sharing between public authorities. Additionally, law enforcement authorities conducting investigations may request information from the FIU by means of existing MOUs. MOUs exist between the FIU and the RBPF as well as a joint MOU which



exist between the FIU, RBPF, Customs & Excise and the Immigration Departments which facilitates the dual exchange of information.

### ***Weighting and conclusion***

281. Competent authorities investigating ML associated predicate offences and TF has the authority to ask for all relevant information held by the FIU based on section 29 of the MLFTA. However, there are no compulsory measures which allow for the searching of person and taking of witness statements. National laws do not support the interception of communications or accessing of computer systems without a warrant, i.e., legislative measures do not permit a wide range of investigative techniques. Further, no explicit legislative measures for LEAs to identify in a timely manner natural or legal persons ownership or control of accounts. **Recommendation 31 is rated partially compliant.**

### ***Recommendation 32 – Cash Couriers***

282. Barbados was rated 'LC' for R. 32 (formerly SR. IX) on the 3<sup>rd</sup> MER. The lone deficiency was the fact that suspicion of ML or TF or making a false declaration did not provide a basis for stopping and seizure of currency and negotiable instruments. The new requirements for the 4<sup>th</sup> Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards which ensure the proper use of information collected through the declaration/disclosure system.
283. **Criterion 32.1** - Barbados authorities advised that Customs Regulations 83 provides for a Declaration system which require travellers to declare on a Customs Declaration form whether they are travelling with more than BDS\$10,000.00. In addition, passengers leaving Barbados are not required to complete a Customs Declaration form but their baggage and person are screened by x-ray scanning equipment and any currency found more than the permitted amount by law is subject to seizure. Customs Regulations 178 provides that all postal packets are required to have affixed to it a parcel declaration.
284. **Criterion 32.2** - There is a written declaration system for all incoming travelers. Incorporated in that declaration is the requirement for arriving travelers carrying currency or monetary instruments over BDS\$10,000.00 or its foreign equivalent to declare the amounts by completing the relevant custom declaration form in accordance with Reg 83 of the CUSA and Regulation Cap 66. The declaration is presented to a Customs Officers who reviews it and may search the baggage or the person to ensure compliance with Sec. 245 of the CUSA and Regulations Cap 66 and Sec 24 of the ECA. It was advised by the authorities that BNIs are not a priority for monitoring, but the movement of cash is a point of focus. Passengers leaving Barbados are not required to complete a Customs Declaration form but their baggage and person are screened by x-ray scanning equipment and any currency found more than the permitted amount will be verified in the presence of the traveller and returned to the traveller. The completed declaration form is submitted to the FIU as soon as practicable.
285. **Criterion 32.3** as the jurisdiction has taken the approach of having an upfront Declaration system.
286. **Criterion 32.4** - Whilst section 5 of the CUSA generally endows all Customs officers with the same powers given by law to members of the RBPF, the specificity of the need for competent authorities to be able to request and obtain further information in the context of a false declaration has not been articulated, neither has it been articulated as a power held by law enforcement officers.
287. **Criterion 32.5** - A person who makes a false declaration is guilty of an offence in accordance with section 245 of the CUSA. Such a person shall on conviction on indictment be liable to a fine of BDS \$150,000 or three times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both such fine and imprisonment. Notwithstanding, the foregoing, neither the CUSA nor the Interpretation Act Chapter 1 includes currency or BNIs as a 'good'. The criminal sanctions appear to be proportionate and dissuasive however, where currency or BNIs are involved, because currency



and BNIs are not identified as a 'good', this may inhibit Barbados from having a sufficient range of options in which to impose an adequate sanction.

288. **Criterion 32.6** - Customs officers are required to forward the reports they receive to the Director of the FIU. (Section 24 (12)) of the MLFTA.
289. **Criterion 32.7** - There is an MOU which has been established between the RBPF, Customs, Immigration and FIU regarding the exchange of information for the investigation and prosecution of financial crimes. An existing MOU between RBPF, CED, IMM and FIU provides for co-ordination and co-operation. The MOU refers to the nature of the responsibilities of Customs, Immigration and Police and demands daily coordination and cooperation exchange of information to investigating and prosecuting financial crime. There is also the Police Act and the powers therein being exercisable by Customs officers. However, the Barbados authorities have indicated that the focus of Customs is on cash and not BNIs therefore the extent of the application for the MOU is limited.
290. **Criterion 32.8 (a)** - There are no measures which allow Customs to stop or restrain currency or BNIs where there is a suspicion of ML/TF or other predicate offences. Furthermore, the CUSA does not provide a timeline within which the cash or BNI can be stopped and restrained in cases of false declaration or false disclosure. The ECA is cited as granting powers in furtherance of the recommendation, however this power does not exist for the benefit of the customs procedures. **Criterion 32.8 (b)** - Where there is a false declaration or false disclosure there are no measures which speak to this provision being extended to BNIs and whether such detention can be used to ascertaining whether there is evidence of ML/TF or predicate offences.
291. **Criterion 32.9 (a - c)** - As outlined at criterion 32.6, all cross border declarations are submitted to the Director of the FIU according to MLFTA Section 24 (12). The Customs Act, Section 211 requires that documents be retained if Court proceedings are to be pursued. Further, all declarations which exceed the prescribed threshold of \$10,000.00 are compulsorily retained. Customs Regulations 83 provides that written declarations (Form C23 or C 24), be retained for a minimum of seven (7) years. Declarations retained contain information relating to the name of passenger, amount and type of currency, seizure receipt number, *inter alia*, which is recorded in a "Seizure Register." The seizure receipt is prepared in triplicate and the passenger is provided with a receipt for their own record. Barbados Customs is part of the Caribbean Customs Law Enforcement Council and the World Customs Organization and facilitates international co-operation and assistance in accordance with the MOUs of the international bodies.
292. **Criterion 32.10** - Barbados asserts the cross-border declaration requirements do not restrict trade payments between countries or limit the movement of capital. Further, all declarations are kept by Customs in accordance with departmental procedure. However, there is no specification where this measure exists, therefore it is concluded that there are no measures in place whereby the use of information is subject to strict safeguards to ensure its proper use.
293. **Criterion 32.11** - No measures speaking to sanctions in cases where persons are found physically transporting currency or BNIs, related to ML/TF or predicate offences was provided by the Barbados authorities. Furthermore, no provisions for confiscation measures to be applied where a person is found physically transporting currency or BNIs, related to ML/TF or predicate offences. The CUSA does not include cash and BNI as a 'good'.

#### ***Weighting and conclusions***

294. Barbados has a written declaration system that applies to travellers entering the jurisdiction. Such passengers are required to indicate whether they are travelling with BDS\$10,000 or its foreign equivalent. The declaration system however applies only to incoming passengers and not outgoing. Customs Regulations 178 provides that all postal packets are required to have parcel declaration

affixed to it. No information was available to show that this declaration system is applicable to currency and BNI transported via cargo. Section 5 of the CUSA gives Customs officers the same powers as members of the RBPF to request and obtain further information, albeit, there is no specificity for the Customs to do so in the context of false a declaration. While information is provided in respect of the requirement for out-bound transfer of currency, there is no information, other than seizure, in respect of the dissuasive sanctions. The other limb to the criterion is that the said sanctions should be proportionate and dissuasive, therefore although they exist in large measure, the power of a seizure limits dissuasiveness outside of arrest and detention. The legislation does not provide for a time period for such seizure and detention. Furthermore, there is no evidence that such seizure and detention can be imposed on cash and BNI linked to ML and TF based on the information provided by the jurisdiction. Finally, cash and BNIs are not included as a 'good' in the CUSA or the Interpretation Act. **Recommendation 32 is rated partially compliant.**

### *Recommendation 33 – Statistics*

295. This Recommendation (formerly R. 32) was rated 'LC' in the 3<sup>rd</sup> MER. The Assessors noted in the 3<sup>rd</sup> MER, that there were no statistics on cross-border declaration reports and that statistics available and that Barbados did not provide sufficient details on mutual legal assistance requests.
296. **Criteria 33.1** - Section 27 of the MLFTA establishes that the AMLA may compile statistics and records relevant to the purpose of this said law. (a) As the office of the AMLA, the FIU maintains statistics on SARs received and disseminated. However, the FIU does not maintain comprehensive statistics. For example, statistics on the offence to which an SAR may relate. (b) The FCIU of the RBPF keep general records from which statistics on ML/TF investigations, prosecutions and convictions can be generated but there is no obligation to maintain such statistics. (c) The RBPF maintains records on property frozen, seized and confiscated but is not mandated to maintain statistics for this purpose. (d) Records on MLA requests are maintained by the Central Authority but in this regard there is no obligation to maintain comprehensive statistics.

### *Weighting and Conclusion:*

297. Barbados in the case of the AMLA is mandated to maintain statistics however the RBPF/FCIU however has no such obligation. Comprehensive statistics are not captured and maintained by the FIU. For example, the FIU do not capture statistics on the offence to which an SAR may relate to. Further, the specificity of these measures to comprehensively assess the efficiency of the jurisdictions AML/CFT systems is lacking. **Recommendation 33 is partially compliant.**

### *Recommendation 34 – Guidance and feedback*

298. This Recommendation Formerly R.25 was rated PC in the 3<sup>rd</sup> MER because the FIU did not provide feedback on STRs to FIs and no specific guidelines had been issued for DNFBPs to implement and comply with AML/CFT requirements except those regulated by the CBB. While the FIU advised that specific feedback was being provided to FIs with respect to ongoing STRs, no statistics on such matters was provided. As such both deficiencies remain outstanding.
299. The FUR notes that the FIU provides feedback to FIs in respect of ongoing investigations resulting from an STR. The FUR also notes that the AMLA has set up a sub working group to advise the government on the establishment of a regulatory framework for DNFBP's.
300. **Criterion 34.1** - In October 2013 and pursuant to Section 26 of the MLFTA, the CBB (pursuant to the MLFTA) issued the AML/CFT Guideline for FIs licenced under the FIA and the IFSA. These Guidelines were updated in December 2016. In 2013 and pursuant to Section 53 of the FSCA the FSC (in conjunction with the AMLA) issued the AML/CFT Guidelines for FIs. In April of 2016 the IBD issued Guidelines for the Detection and Prevention of ML/TF and Proliferation in Barbados (for licensees and registrants under the CTSPA the TBCA, the SWRLA, the Private Trust Companies

and Foundations Act, and the ITA. The CBB AML/CFT Guidelines were subsequently updated in December of 2016. No guidelines were issued to the lone MVTs.

- 301. The AML/CFT Guidelines for the attorneys-at-law, accountants, dealers in precious metals and stones and real estate agents came into effect on November 28, 2016.
- 302. Feedback is addressed at page 21 of the FIUs Operations Manual. However, the feedback here is not focused on the detection and reporting of STRs.

***Weighting and Conclusion***

- 303. The AMLA has the legislative responsibility to issue guidelines to FIs which includes DNFBPs. AML/CFT Guidance has been issued for all FIs and DNFBPs and includes guidance, in essence, the FIU is dependent on the obligation of AMLA to issue guidelines to DNFBPs. Further, there is no provision for the FIU to provide feedback to reporting entities on the usefulness of the reports they provide. **Recommendation 34 is rated partially compliant.**

***Recommendation 35 – Sanctions***

- 304. This Recommendation Formerly R.17 was rated LC in the 3<sup>rd</sup> MER due to SC and the Registrar of Co-operatives having no general powers of sanctions to effectively address breaches by licensees and no administrative power to institute sanctions for AML/CFT breaches. These deficiencies were addressed by amendments to the relevant governing statutes of the SC and the Registrar of Co-operatives through the enactment of the MLFTA 2011. The SC and the Registrar of Cooperative Societies have been superseded by the FSC, an integrated regulatory body, established on April 1st, 2011 by the FSCA.
- 305. **Criterion 35.1** Sections 34 through 36 of the MLFTA specifically provide for administrative sanctions, suspension of activities and/or revocation of a licence and the imposition of pecuniary penalties. Whilst Section 36 (1) allows for the imposition of a USD 5000 penalty where an FI is in breach of Section 34 (1), this is not considered to be proportionate or dissuasive. The CBB have cited sections of the FIA and the IFSA as making provisions for sanctions for persons and licensees which do not comply with AML/CFT obligations. It should be noted that these sanctions are specific to breaches of the FIA and IFSA and can only be applied indirectly to AML/CFT non-compliance under the aegis of unsound financial practice.
- 306. These sanctions have been assessed under the powers of the supervisors in Rec. 27. About the AML/CFT requirements of Recs 6, and 8 to 23, the only citations indicated dealing with any of these Recs are sections 18 and 23 of the MLFTA 2011 which address respectively Recs. 11 and 20. The specific sanction for Rec. 11(record-keeping) and Rec.20 (suspicious transaction reporting) in sections 18 and 23 of the MLFTA 2011 respectively is a fine of BD\$100,000 (USD50, 000) for FIs, non-financial entities or professionals. While the above fines maybe dissuasive for professionals they are not for FIs and non-financial entities. Additionally, they are limited to only two Recs and are not proportionate.
- 307. **Criterion 35.2** - Sections 43, 44 and 45 of the MLFTA indicate that sanctions are also applicable to individual persons and managers of FIs and DNFBPs Barbados in the context of non-compliance with the AML/CFT requirements in Barbados..

***Weighting and Conclusion:***

- 308. Referenced sanctions are limited and not proportionate or dissuasive for FIs and do extend (indirectly) to directors and senior management of FIs and DNFBPs. **Recommendation 35 is rated largely compliant.**

### *Recommendation 36 – International instruments*

309. Recommendation 36 (formerly R. 35 and SR. I) were rated ‘LC’ and ‘PC’ respectively in the 3<sup>rd</sup> MER. For R. 35, the deficiencies were that all designated categories of offences were not adequately addressed in the range of predicate offences; instrumentalities intended for use in the commission of an offence were not subject to restraint/forfeiture measures; and the custodial definition of serious crime under the restraint/forfeiture regime was narrower than the Palermo Convention. About SR. I, the deficiencies were the lack of requirements to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee. The overlap between the ATA and the POCA about freezing/forfeiture and ambiguous aspects to ATA forfeiture power, both detracting from effectiveness. Based on the information provided in the Follow Up Reports for Barbados, as it pertains to R. 35 and SR. I, legislation was enacted to deal with the issue of the predicate offences; specifically, human trafficking and updating corruption and bribery laws. However, there are still some outstanding issues about freezing measures.

310. **Criterion 36.1** –Barbados has signed and ratified the following Conventions:

Convention	Date Signed	Date Ratified
1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)	May 23, 1969	June 24, 1971
2000 UN Convention against Transnational Organized Crime (Palermo Convention)	September 26, 2001	November 11, 2014
United Nations Convention against Corruption (Merida Convention)	December 10, 2003	No Ratification
1999 UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)	November 13, 2001.	September 18, 2002.

311. **Criterion 36.2.** Barbados has implemented the Terrorist Financing Convention through the enactment of the Anti-Terrorism Act as amended. The jurisdiction has also made efforts to implement the Merida Convention through the enactment of the Prevention of Corruption Act, 2012 (PCA); however, this Act has not been proclaimed and so therefore is not valid regarding implementation. The Vienna Convention has been implemented through the Drug Abuse (Prevention and Control) Act as amended by the MLFTA. The Authorities have indicated that Articles. 8 and 9 of the Palermo Convention will be implemented by the Prevention of Corruption Act; however, this has not been proclaimed; together with the Transnational Organized Crime (Prevention and Control) Act, 2011.

### *Weighting and conclusion*

312. Barbados has ratified the relevant Conventions, however there is not full implementation of the Merida Convention since the Prevention of Corruption Act has not been proclaimed.  
**Recommendation 36 is rated partially compliant.**

### *Recommendation 37 - Mutual legal assistance*

313. Recommendations 36 and SR. V were rated ‘PC’ in the 3<sup>rd</sup> MER. The summary of factors underlying the rating were as follows: (i) the range of mutual legal assistance did not include the

instrumentalities of ML and FT; (ii) compulsory evidence gathering and forfeiture powers under POCA were not available to the Central Authority; (iii) the custodial element of the definition of serious crime under the restraint/forfeiture regime was narrower than the Palermo Convention; (iv) no mechanism to deal with dual jurisdictional conflict; (v) not possible to assess effectiveness of mutual legal assistance measures due to limited number of MLAT's. Other issues to be considered concerned (i) a case management system for MLA and (ii) the range of investigative techniques. Since then Barbados has achieved the following

- a. (I)the Fourth Schedule of the MLFTA amends section 2 of the MACMA to reduce the definition of "serious offences" to 4 years. The newly amended section 2(6) also expressly refer to instrumentalities of ML and TF.
- b. (ii)the new Section 31A of the MACMA now refer to sections 42-46 (production and inspection orders); section 47(search warrants) and section 48-9 (monitoring orders) of the POCA hence the provisions also now apply to MACMA. The MACMA has also been amended to include sections 16A and section 27A relating to assistance in obtaining a forfeiture or confiscation order
- c. (iii)the FIU is in the process of negotiating several MOUs and has signed MOUs with St. Vincent and the Grenadines, Bermuda and Nigeria.
- d. (iv)the authorities have reviewed the mutual legal assistance framework. The authorities state that they have yearly instances with countries in providing mutual legal assistance under the MACMA without any challenges.

314. (v) with respect to dual jurisdictional conflict, the authorities have advised that the principle to be applied is that the best venue for the prosecution of defendants should be determined by the country which has the best chance of a successful prosecution. This is usually based on the preponderance of the evidence gathered against the defendants. The authorities state that it is not uncommon for there to be a mere exchange of notes between the countries in this regard. This occurred with one fugitive who was wanted for murder in Barbados but held in Trinidad & Tobago for arson. The authorities wrote to the authorities in Trinidad and Tobago requesting his arrest . The countries agreed and the fugitive was successfully prosecuted in Barbados. This is one mere instance of the regular practice with countries.

315. **Criterion 37.1** - Barbados has a legal basis for providing a range of mutual legal assistance. The Mutual Assistance in Criminal Matters Act, Cap. 140A, (MACMA) establishes a framework. The statutory regime makes provision concerning mutual assistance in criminal matters between Barbados and countries other than Commonwealth countries. The types of assistance which may be requested or rendered relates to such matters as search, seizure, production and copying of documents and other material (sections 6, 8, 19, 21); taking evidence from persons, including prisoners transferred to the requesting country for the purpose (sections 6, 9, 19, 20, 22, 23); and serving documents (sections 11, 24). It covers tracing, restraining and forfeiting/confiscating the proceeds of "serious crimes", which is defined in section 2(1) to denote crimes for which there is: (i) a fixed sentence in law; (ii) a minimum custodial sanction of 5 years; or (iii) a minimum threshold value of the proceeds involved (the value of the property or benefits derived or obtained from the commission of which is, or is likely to be, not less than \$20,000 or such greater amount as may be prescribed). The MACMA however has no specific reference for aiding in a rapid manner, however the authorities have indicated that mutual legal assistance matters are handled expeditiously as the circumstances permit which therefore include the possible delays outside the control of the central authority.

316. **Criterion 37.2** - Under section 3 of MACMA, requests are sent through the Attorney General, who is appointed as the Central Authority for transmitting and executing requests. On receipt of the request for assistance by the Central Authority of Barbados, the request is directed to the relevant

agency or department for execution. However, there is no legal requirement which identifies a clear process concerning timeliness and prioritization as required in the criterion, nor was information provided on the maintenance of a case management system. The authorities have indicated that there is no hindrance in the relevant legislation to the timely disposal of matters.

317. **Criterion 37.3** - Requesting countries are required to supply to the Central Authority the information set out in the Schedule (section 17), which is designed to elicit sufficient details about the request to enable a proper assessment of the case. Section 18, in line with the customary approach, elaborates several circumstances in which the Central Authority has an obligation, or discretion, to refuse a foreign request. Mandatory refusal of a request applies in several cases including those where approval would: (i) violate the dual criminality Barbadian law rule or the rule against double jeopardy subsection (2)(d), (e), (f)); (ii) compromise security or public policy (subsection (2)(e)); (iii) give credence to an offence of a “political character”. In conclusion, there does not appear to be unreasonable or unduly restrictive conditions.
318. **Criterion 37.4** - Pursuant to section 18 (2) of MACMA it provides that a request for assistance made by a Commonwealth country shall be refused if, in the opinion of the Central Authority for Barbados: (a)(b) the offence is political; (c) based on race, sex, religion, nationality, place of origin or political opinions; (d) contrary to the Constitution; (e) double jeopardy; (f) no consent forthcoming; (g) unlawful steps to be institute; and (h) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so. Section 18 (3) provides that a request for assistance made by a Commonwealth country may be refused if, in the opinion of the central authority for Barbados (a)(b) the request in respect of conduct that could not have constituted an offence against the law of Barbados; (c) the request relates to the prosecution or punishment of a person. Based on the information provided there is express prohibition to refusal based on fiscal matters or on ground of secrecy and confidentiality, therefore this is interpreted that this would be permitted.
319. **Criterion 37.5** - In accordance with section 17(3) of the law it provides that where a Commonwealth country making a request for assistance under MACMA wishes the request, or any part of it, to be kept confidential, it shall so state, giving reasons, in the request, or in a document accompanying, but not forming part of, the request. Based on the fact that the legislation only specifies Commonwealth it is interpreted that this excludes non-Commonwealth countries, in so doing the criterion is not fully satisfied.
320. **Criterion 37.6 and 36.7** - Generally, the dual criminality principle is a precondition to (or at least may be required before) granting formal mutual legal assistance under the MACMA scheme; (ii) it is the substance of the foreign conduct, rather than technical characterisations, which will be examined to determine whether the behaviour would be regarded as a criminal offence in Barbados. Outside the MACMA framework, there is scope for mutual assistance to be rendered without insistence on dual criminality. Barbados has stated that the MACMA does not preclude the development of other forms of formal and informal cooperation in “criminal matters”, between Barbados and other states (or international law enforcement entities) [sections 5, 29]. It is observed that section 11(2) of the Securities Act does not require dual criminality as a prerequisite for the sharing of information; it simply states that “the Commission may co-operate with an agency of a foreign government about the investigation of a contravention of this Act or any similar written law whether the activities in question occurred within or outside Barbados”. On the facts, there appear no limitations to the dual criminality impeding the implementation of mutual legal assistance.
321. **Criterion 37.8** - Under MACMA certain processes may be invoked in the investigation of criminal matters and in relation to restraint, forfeiture and confiscation proceedings. Sections 2(1), Parts II-IV). MACMA is not intended to be exclusive, and operates without prejudice to existing or prospective cooperative arrangements, whether formal or informal, in the field of mutual assistance (section 5(1)). The types of assistance which may be requested or rendered relate to such matters as

search, seizure, production and copying of documents and other material (sections 6, 8, 19, 21); taking evidence from persons, including prisoners transferred to the requesting country for the purpose (sections 6, 9, 19, 20, 22, 23); and serving documents (sections 11, 24).

322. Barbados may request the help of another Commonwealth country in identifying and valuing proceeds reasonably believed to be in that jurisdiction, where a person has been charged with or convicted of a “serious offence” in Barbados, or alternatively, is reasonably suspected of having committed the offence (section 14). This power would, for example, facilitate the issue in the other country of search and seizure warrants to locate the relevant property. Under section 16, where (i) a person has been convicted locally, or charges have been, or are likely to be laid, and (ii) a forfeiture/confiscation order has been, or is expected to be made, there is power to seek a restraining order against suspected proceeds in the other state. Further, under section 15, where a restraining, forfeiture or confiscation order has been issued locally in relation to proceeds of such offences, the authorities may formally seek the enforcement of the order in a foreign state in which there are assets to which the order would apply. Comparable provisions exist where the investigations or proceedings are underway in the other Commonwealth country, and assets are believed to be in Barbados (sections 25-27).

### ***Weighting and Conclusion***

323. The MACMA provides a wide range of powers for Barbados to provide MLA. No legal requirement which identifies a clear process concerning timeliness and prioritization as required in the criterion. As it relates to the coverage of all “serious offences” the Fourth Schedule of the MLFTA amends section 2 of the MACMA to reduce the definition of “serious offences” to 4 years however as a threshold this severely limits the application to the widest range of predicate offences to ML and TF. This is inconsistent with the representations in Recommendation 3. **Recommendation 37 is rated largely compliant.**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

324. Barbados was rated ‘PC’ for R.38 in its 3<sup>rd</sup> MER. There were: No provision for foreign states to request local authority to apply for forfeiture/confiscation orders or vice versa except in limited circumstances under section 16 of the ATA; No provision for the freezing, seizure or confiscation of instrumentalities of ML and FT; No arrangements for co-coordinating seizure and confiscation actions with other countries; and no evidence of consideration of establishing an asset forfeiture fund. The new FATF requirements are at 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are: (i) whether measures exist for aiding requests for non-conviction based confiscation; (ii) whether measures exist for managing and disposing of property frozen, seized and confiscated; and (iii) whether measures exist for managing and sharing confiscated proceeds with other countries.
325. ***Criterion 38.1 (a), (b), (c), (d) and (e)*** - The MACMA Chapter 140A provides the regime to identify, freeze, seize or confiscate the required types of property, or property of corresponding value which are related to ML, predicate offences, or TF. Part 1 (c) of the MACMA defines ‘criminal matters’ to include forfeiture proceedings, proceedings to restrain dealings with property, proceedings for confiscation of property and proceedings for the imposition of pecuniary penalties calculated by reference to the value of property or benefits, arising out of criminal proceedings, whether such proceedings be characterised as criminal or civil proceedings.
326. Section 25 of the MACMA makes provision for the Central Authority of Barbados to assist a Central Authority of a Commonwealth country in identifying, locating or assessing the value or amount of property derived or obtained, directly or indirectly, from the commission of a specified serious offence.



327. Section 26 of the MACMA outlines the procedure where an order is made in a Commonwealth country and a request is transmitted to Barbados for assistance. Where an order is made in a Commonwealth country for confiscating or forfeiting property derived or obtained directly or indirectly from the commission of a specified offence, or an order imposing on the person against whom the order is made, a pecuniary penalty; or an order for a person to restrain dealing with property which is suspected on reasonable grounds of being, property so derived or obtained; the Attorney-General shall make an application to the Supreme Court.
328. Section 27 of the MACMA applies where the Central Authority of a Commonwealth country makes a request to the Central Authority of Barbados to identify a person who has been charged or is likely to be charged with a specified serious offence; or who has been convicted of a specified serious offence. This MACMA provides for Barbados to confiscate or forfeit property derived or obtained, directly or indirectly from the commission of the serious offence or impose on that person a pecuniary penalty calculated based on the value of the property so derived or obtained, and that property is suspected, on reasonable grounds to be in Barbados.
329. Part IV of the MACMA addresses mutual assistance between Barbados and non-Commonwealth countries. Barbados can also rely on ratified international treaties and conventions and on the principle of reciprocity as a basis for providing mutual legal assistance. This includes, countries party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998. Barbados can enforce foreign Court orders to seize and confiscate property on the basis of reciprocity.
330. Where an ‘external forfeiture order’ or external confiscation order’ order is made by a Court of a ‘designated country’ (a ‘designated country’ in this case means a country or territory outside of Barbados), the POCA at section 67 makes provisions for the Attorney General to act on behalf of the ‘designated country’ for the purpose of recovering proceeds of crime.
331. Notwithstanding the foregoing, the MACMA does not consider the timeliness or expeditious action in response to requests made for the purpose of Recommendation 38.
332. **Criterion 38.2** - There is no explicit provision in the MACMA on extending mutual legal assistance to non-conviction based proceedings. The MACMA refers to co-operation as it relates to ‘criminal matters’. The lone reference to provision in circumstances where a perpetrator is unavailable by reason of death, flight, absence, or unknown, is in Section 26 (3) of the MACMA, which allows the Supreme Court to register an order made by the Attorney General of Barbados on behalf of a requesting country (*in this case a Commonwealth country*), where the Supreme Court is satisfied that the person against whom the order was made (*in this case an order imposing a pecuniary penalty calculated by reference to the value of property so derived or obtained*); appeared in the proceedings, or, if he did not appear, that he received notice of the proceedings in sufficient time to enable him to defend them, or that he had died or absconded before such notice could be given to him.
333. **Criterion 38.3 (a)** - Where a person is charged or likely to be charged with or; convicted for a serious offence and a forfeiture or confiscation order is likely to be made against property or benefits derived from the commission of that crime, a request may be transmitted requesting that an order be made restraining the property where that property is in a Commonwealth country in accordance with Section 15 of the MACMA. Section 29 (a) of the MACMA applies to countries with bilateral treaties with Barbados with respect to mutual assistance in criminal matters, while 29 (b) provides that any co-operation that is requested by countries which are a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998, shall do so on the basis of reciprocity. (b) A mechanism for managing and disposing of property frozen, seized or confiscated is not addressed. However, the Barbados Authorities advanced that in partnership with the RSS, an appropriate regime will be developed to satisfy this requirement.

334. **Criterion 38.4** - There are no provisions which gives Barbados the ability to share confiscated property. However, the Authorities reported that Barbados co-ordinated in the past to have confiscated assets repatriated with other jurisdictions.

***Weighting and conclusion***

335. Deficiencies exist as it relates to the MACMA not making provisions for expeditious action in response to requests made for the purpose of Recommendation 38. There is no explicit provision in the MACMA on extending mutual legal assistance to non-conviction based proceedings. Further, no mechanism is place for managing and disposing of property frozen, seized or confiscated and there is no ability for the Authorities to share confiscated property. **Recommendation 38 is rated partially complaint.**

***Recommendation 39 – Extradition***

336. This Recommendation was rated ‘C’ in the 3<sup>rd</sup> MER. The revised FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.
337. **Criterion 39.1** (a) - Both ML and TF are extraditable offences. They are both included as an “extradition crime” pursuant to Section 4 and the Schedule of the Extradition Act, Cap. 189, listed at 37. (Money laundering) and 38. (any offence triable under the Anti-Terrorism Act) respectively in the Schedule. (b) In respect of the case management system, the procedure is outlined wherein where a Magistrate (i) is presented with a foreign arrest warrant or information alleging that a person located in Barbados is accused, or has been convicted of, an extradition crime committed in the foreign country, and (ii) if satisfied that such conduct if committed in Barbados would justify the issue of an arrest warrant, s/he may issue a warrant to apprehend the fugitive (section 10, 46(e)). This then sets in motion the process leading to an extradition hearing to determine whether the fugitive should be extradited. Barbados has stated that once an urgent request is made, the Office of the Attorney-General expeditiously forwards the request to the DPP for consideration. Based on the jurisdiction all extradition matters are deemed urgent, and that matters are prioritized as required based on the circumstances and urgency of the matter. Further, notwithstanding the procedure outlined, the law does not provide for specified timelines for the commencement, prosecution and extradition; hence information regarding case management is not within the legislation. Barbados has advised that because the judicial system is independent of the Executive the speed of the determination of matters is outside the control of other authorities. (c) By section 4 of the Extradition Act, an “extradition crime” is described as an offence. Exceptions to extradition include: offences if committed in Barbados, (a) would be a crime described in the Schedule (including murder and genocide, serious sexual offences, money laundering, terrorist acts and financial crimes), or (b) would be a crime that would be so described were the description to contain a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation necessary to constitute the offence, and for which the maximum penalty in that other country or state is death or imprisonment for a term of 12 months or more. By this response, the law establishes general permissive activity and qualifies it by exceptions. Barbados has further indicated that the Extradition Act prohibits extradition about crimes of a political character and requests made for prosecuting or punishing based on race, tribe, religion, sex, nationality or political opinions will also be refused. In this regard, the said exceptions do not appear to present unreasonable or unduly restrictive conditions but acts as important points of clarification.
338. **Criterion 39.2** (a) Barbados can extradite its own nationals as there is no legal prohibition against the same. The authorities will therefore take the necessary procedures where such a situation arises. (b) Section 22 of the Extradition Act stipulates that extradition requests may be made by

Commonwealth countries to the Attorney General. Requisitions can be forwarded by the requisite authority of the requesting state either through the consular office of Barbados located in the requesting state or by the consular office of the requesting state located in Barbados. The section also provides for the establishment of other means by arrangement with requesting states. Section 23 makes similar provision, *mutatis mutandis*, where the request emanates from a non-Commonwealth country. There is also a broadly reciprocal provision under section 43 of the Act where Barbados seeks the extradition of a fugitive located in a Commonwealth or non-Commonwealth country.

339. **Criterion 39.3** - The process for extradition is provided for under the Extradition Act as such, dual criminality is required for extradition. Barbados has opined that the description of an extradition crime suggests that the elements of the behaviour, rather than exact technical definition or categorization under law would be the deciding factor in determining dual criminality, thereby rendering the law satisfactory for the dual criminality requirement. Based on the response, the application of whether dual criminality is satisfied benefits from the wider categorization.
340. **Criterion 39.4** - Barbados has proposed section 22 of the Extradition Act as a response to this criterion. In the section, extradition requests may be made by Commonwealth countries to the Attorney General. Requisitions can be forwarded by the requisite authority of the requesting state either through the consular office of Barbados located in the requesting state or by the consular office of the requesting state located in Barbados. The section also provides for the establishment of other means by arrangement with requesting states. Section 23 makes similar provision, *mutatis mutandis*, where the request emanates from a non-Commonwealth country. There is also a broadly reciprocal provision under section 43 of the Act where Barbados seeks the extradition of a fugitive located in a Commonwealth or non-Commonwealth country. The process appears to be straight forward.

#### ***Weighting and conclusions***

341. Barbados has the legislative power to execute extradition request. Further the judicial system is independent of the Executive the speed of the determination of matters is outside the control of other authorities which has an effect the timeliness factor for responsiveness and prioritization in this response, no statute is identified in so far as pursuing matters without undue delay. Based on the response, the application of whether dual criminality is satisfied benefits from the wider categorization. **Recommendation 39 is rated largely compliant.**

#### ***Recommendation 40 – Other forms of international cooperation***

342. Barbados was rated LC with R.40. The main deficiencies were that the Ministry of Economic Affairs and Development cannot share information with foreign counterparts and that the Registrar of Co-operative Societies can only share information by Court Order.
343. Since then, Barbados has done the following: The Fourth Schedule of the MLFTA 2011 amended section 25(3) of the IBC Act to permit the disclosure of information under the MLFTA 2010. The Fourth Schedule of the MLFTA 2011 amended section 71 of the CSA by making provision for the sharing of information with foreign counterparts and were further address in recommendation 6, and 36 and 38. The jurisdiction was deemed at the end of the 3<sup>rd</sup> Round MER to be Compliant with this recommendation.
344. **Criterion 40.1** The legal framework in place to provide mutual assistance in criminal matters to foreign law enforcement and judicial authorities include the MACMA (Mutual Assistance in Criminal Matters Act), Proceeds of Crime Act, Money Laundering and financing of Terrorism Act, UN Convention Against Transnational Organized Crime, the UN Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances. Barbados has advised that the police have bilateral agreements in place in respect of specified criminal matters however no supporting information has been provided. Pursuant to these bilateral agreements the police provide legal assistance on request

however it is not clear whether mechanisms are in place to spontaneously share information and in what circumstances. Requests by Commonwealth Countries to Barbados for Assistance are governed by 17. (1) (2)) of the MACMA. Mutual assistance between Barbados and non-commonwealth countries is governed by Section 29 (1) which provides that the MACMA applies *mutatis mutandis* (a) to any country which has a bilateral treaty with Barbados in respect of mutual assistance in criminal matters; and (b) to any country which is party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

345. Section 27 of the MACMA applies to the procedure to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing or forfeiture order under the Anti-Terrorism Act. Section 28 of the MLFTA provides for the sharing of information with a FIU which is party to an information sharing agreement and is in a host state which has undertakings in place to protect the information and control its use.
346. **Criterion 40.2** (a) The following framework facilitates other forms of international cooperation: Section 44 of the FIA, section 48 of the IFSA and section 40 of the FSCA provide the legal basis to comply with sub criterion 40.2. (b) Sections 44 and 48 of FIA and IFSA respectively do not preclude the CBB to cooperate in accordance with the requirements of sub criterion 40.2 (b), while section 40 of the FSCA does the same for the FSC. (c) The CBB uses encrypted electronic and mutually agreed protocols signed off at the highest levels of both regulatory agencies to facilitate transmission and execution of requests. Also, the existing MOUs include provisions for the protection of information / execution of request. There are no clear and secure gateways specified by Barbados that explain how they transmit and execute the request. (d) Requests for information from the Central Bank of Barbados are sporadic. The MOUs provide the protocol for urgent requests. Section 5 of the Multilateral MOU among regional banking regulators provides the protocol for the execution of requests and notes that an urgent request for assistance or information will be expedited. Section 6.7 & 6.9 of the MOU between the Central Bank of Barbados and the Superintendence de Guatemala details the protocol for urgent requests. Section 8 of the MOU between the Central Bank of Barbados and the Office of the Superintendent of Financial Institutions in Canada provides the protocol for urgent requests. According to the MOUs in which the FSC is currently a part of allows for prioritization and timely execution of requests. (e) Sections 44 of FIA and 48 of IFSA deal with the issue on confidentiality. The CBB is obligated to use secure processes for safeguarding the information received. Further, Section 9 of the Multilateral MOU among regional banking regulators provides the protocol for confidentiality among the signatories. For FSC, confidentiality is dealt with in section 40 of the FSCA. FSC must use secure processes for safeguarding the information received.
347. **Criterion 40.3** - Barbados has advised that the FSC does not require a formal agreement to comply with the requirements of the MLFTA. The MLFTA (fourth schedule of the MLFTA) amended the Co-operatives Societies Act, the Mutual Funds Act, the Securities Act, the Insurance Act, and the Exempt Insurance Act and provides that the FSC can share information with other competent authorities provided that the requesting authority has provided an undertaking that the confidentiality of the information will be protected and that the information will be used for the agreed purposes.
348. **Criterion 40.4** - In practice, where a requesting authority seeks feedback on the usefulness of information provided and the outcome of the matter, the CBB always engages the requesting authority at a mutually agreed date. Where feedback is requested, the FSC seeks to provide in a desired timeframe agreed upon by both parties.
349. **Criterion 40.5**- Section 49 (1) of the MLFTA provides the grounds on which the police (or other public authority) can object to the disclosure of information required under Section 30 (a-d specifies the circumstances. Section 28 specifies the circumstances in which information received under

Section 30 can be communicated to any national financial intelligence unit of a foreign state. Section 48 the IFSA provides that the CBB can without the consent of a licensee and without restriction disclose information to any local supervisory or regulatory body or any overseas supervisory or regulatory body if an FI operates in that jurisdiction. Based on section 44 (2) the CBB may, without the consent of a licensee, disclose information received (a) to the Commissioner of Inland Revenue; (b) to the Deposit Insurance Corporation; (c) to any other supervisory or regulatory authority of FIs in Barbados; or (d) subject to subsection (3), to the appropriate supervisory authority of FIs in a country outside Barbados, at the request of that authority, where there is a branch, holding company or affiliate of the licensee operating in that country.

350. **Criterion 40.6** - According to the MOU among regional bank regulators information is not disclosed without written consent of the Requested Authority. Section 44 (2) of FIA also complies with the requirements of this sub criterion. Other measures which provide for establishing controls and safeguards for information exchanged by competent authorities are limited to the FSC. (fourth schedule of the MLFTA).

**Criterion 40.7** - The CBB has advised that the provisions of the multilateral and bilateral MOU's which it has entered provides a protocol for ensuring the confidentiality of information exchanged under the MOU's. Section 44 (2) of FIA provides for refusal if the requesting authority cannot satisfy the Central Bank that the requesting authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it. Section 40 of the FSCA provides for any information received by the FSC to be treated confidentially. Section 39(2) of the FSCA provides for refusal to provide information if the requesting competent authority cannot protect the information effectively.

351. **Criterion 40.8** - Section 8 of the Multilateral MOU among regional banking regulators provides for the "undertaking of inspection visits" and outlines that an Authority may make a request to undertake inspection visits to FIs in the Jurisdiction of the Requested Authority where relevant and necessary to fulfil its legal obligations as the supervisor of a Financial Institution. In addition, section 39 of the FSCA permits the FSC, without the consent of a financial institution to disclose information to any local supervisory or regulatory authority or to the appropriate supervisory authority where there is a branch, holding company or affiliate. This is the case with regard to the MOUs in place with the Superintendencia de bancos de Guatemala and the Canadian OSFI.

352. **Criterion 40.9** - Section 27 (b) of the MLFTA provides broad authority for the AMLA to disseminate information domestically and internationally. Section 28 of the MLFTA provides for the sharing of information with a foreign FIU which is party to an information sharing agreement and is in a host state which has undertakings in place to protect the information and control its use. In addition to confidentiality provisions in the MOUs, other measures are also in place such as at Section 44 (2) of FIA which provides, as a pre-requisite to the sharing of information, that the Central Bank is satisfied that the authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

353. **Criterion 40.10** - Barbados has referenced Section 27 (b) of the MLFTA as providing broad authority for the AMLA to disseminate information domestically and internationally. Section 28 of the MLFTA provides for the sharing of information with a FIU which is party to an information sharing agreement and is in a host state which has undertakings in place to protect the information and control its use. There is no specificity on providing feedback on the use of information provided.

354. **Criterion 40.11** - Barbados has referenced Section 27 (b) of the MLFTA as providing broad authority for the AMLA to disseminate information domestically and internationally. Section 28 of the MLFTA provides for the sharing of information, that is relevant to the purpose of the MLFTA, with a foreign FIU which is party to an information sharing agreement and is in a host state which has

undertakings in place to protect the information and control its use. Other information which the FIU has the power to obtain or access has not been addressed neither is the principle of reciprocity.

355. **Criterion 40.12** - Section 44(2)(c) of the FIA provides that the CBB can without the consent of a licensee disclose information to the appropriate supervisory authority of FI's outside Barbados at the request of that authority where the licensee has a branch, holding company or affiliate in that country.
356. Section 48 of the IFSA provides that the CBB can without the consent of a licensee and without restriction disclose information to any local supervisory or regulatory body or any overseas supervisory or regulatory body of an FI operating in that jurisdiction. Section 48 (2) (b) of the IFSA provides that the CBB can without the consent of the licensee disclose information to any domestic competent authority and on request to an appropriate regulatory authority of another country where the licensee has a branch, holding company or affiliate.
357. The MLFTA (fourth schedule of the MLFTA) amended the Co-operatives Societies Act, the Mutual Funds Act, the Securities Act, the Insurance Act, and the Exempt Insurance Act and provides that the FSC can share information with other competent authorities provided that the requesting authority has provided an undertaking that the confidentiality of the information will be protected and that the information will be used for the agreed purposes.
358. **Criterion 40.13** - Whilst Section 44(2)(c) of the FIA provides that the CBB can without the consent of a licensee disclose information to the appropriate supervisory authority of FI's outside Barbados at the request of that authority, this is restricted by the requirement that the licensee has a branch, holding company or affiliate in that country.
359. Whilst Section 48 (2) (b) of the IFSA provides that the CBB can without the consent of the licensee disclose information to any domestic competent authority and on request to an appropriate regulatory authority of another country, this is restricted by the requirement that the licensee has a branch, holding company or affiliate in that country.
360. The MLFTA (fourth schedule of the MLFTA) amended the Co-operatives Societies Act, the Mutual Funds Act, the Securities Act, the Insurance Act, and the Exempt Insurance Act and provides that the FSC can share information with other competent authorities
361. **Criterion 40.14** - Section 44(2) (c) of the FIA and Section 48 (2) (b) of the IFSA provide that subject to a shared regulatory responsibility the CBB can disclose information to a foreign competent authority. There is no restriction on the nature of the information which can be shared.
362. The MLFTA (fourth schedule of the MLFTA) amended the Co-operatives Societies Act, the Mutual Funds Act, the Securities Act, the Insurance Act, and the Exempt Insurance Act and provides that the FSC can share information with other competent authorities however the requesting authority must provide an undertaking that the confidentiality of the information will be protected and that the information will be used for the agreed purposes. There is no restriction on the nature of the information which can be shared.
363. **Criterion 40.15** - The provisions of the regional banking multilateral MOU provides a mechanism for the conducting enquiries on behalf of foreign counterparties and vice versa is relevant and necessary to discharge supervisory obligations. Country level MOU's provide for supervisory inspections to be conducted by home and host state supervisors.
364. **Criterion 40.16** - The provisions of the regional banking multilateral MOU (and bilateral MOU's) provide that information exchanged with foreign competent authorities cannot be used other than for the purpose specified without the explicit written consent of the requested competent authority and that the requesting competent authority must disclose it has a legal obligation to disclose the information to a third party and the circumstances surrounding such disclosure.

365. **Criterion 40.17** - Barbados has indicated that the police are able to exchange information for intelligence or investigative services. The information sharing procedures should be established for all situations in which there is exchange of information. Provisions in the MMOU and MOU for the regional commissions and TCIFSC, respectfully, provide a mechanism for the conducting of inspections on behalf of foreign counterparts and vice versa in order to facilitate effective group supervision.
366. **Criterion 40.18** - Requests by Commonwealth Countries to Barbados for Assistance are governed by 17. (1) (2)) of the MACMA. Mutual assistance between Barbados and non-Commonwealth countries is governed by Section 29 (1) which provides that the MACMA applies mutatis mutandis (a) to any country which has a bilateral treaty with Barbados in respect of mutual assistance in criminal matters; and (b) to any country which is party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Barbados has advised that the police can therefore conduct inquiries and obtain information on behalf of foreign counterparts. This would include Interpol.
367. Section 28 of the MLFTA provides for the sharing of information with a foreign FIU which is party to an information sharing agreement and is in a host state which has undertakings in place to protect the information and control its use. Sections 7 and 8 of the MMOU and MOU of the regional commissions and TCIFSC, respectfully, provide that information exchanged with foreign competent authorities cannot be used other than for the purpose specified without the explicit written consent of the requested competent authority
368. **Criterion 40.19** - Barbados has advised that the police do establish joint investigative teams as required and that as necessary bilateral and multilateral arrangements are established to facilitate same.
369. **Criterion 40.20** - The provisions of the multilateral and bilateral MOUs provide for the requesting authority to release confidential information to a third party with the consent of the requested authority. This is also a provision within MOUs which the Barbados FIU has put in place with other FIUs.

#### ***Weighting and Conclusion***

370. Barbados cooperates internationally through MOUs with several countries. However, there are no clear and secure gateways specified by Barbados that explain how they transmit and execute the requests they receive. Also, there is no specificity on providing feedback on the use of information provided by the AMLA. Furthermore section 44(2)(c) of the FIA provides that the CBB can, without the consent of a licensee, disclose information to the appropriate supervisory authority of FIs outside Barbados at the request of that authority only if the licensee has a branch, holding company or affiliate in that country. Taking these shortcomings into consideration but also considering the rating on each sub criterion the conclusion is that Barbados is largely compliant on the requirements of R.40. Further, based on the legal framework, competent authorities have the ability to provide the widest range of international cooperation, there may be question however regarding the speed in which the cooperation may be provided. In addition, there is a lawful basis for cooperation pursuant to the AML/CFT laws and other laws generally. It has not been observed that there are overly restrictive conditions for sharing and exchange of information. The FIU, financial supervisors, law enforcement authorities and non-counter parties have demonstrated that both formal and informal ability to share and exchange information. The sharing of information between the competent authorities is limited as it does not advance the sharing beneficial information held by TCSPs.
- Recommendation 40 is rated largely compliant.**



### *Summary of Technical Compliance – Key Deficiencies*

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> <li>• NRA was conducted but limited in the risks and vulnerabilities identified.</li> <li>• No application of a risk based on the limitation of the NRA</li> <li>• No policies and procedures have been created because of the NRA.</li> <li>• No process of the information used</li> <li>• No specific obligation for FIs and DNFBPs to take enhance measures to manage and mitigate risk</li> <li>• NRA did not assess the threats and vulnerabilities</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>• No policies were informed by the risks identified, and regularly reviewed – mostly met</li> <li>• No evidence of structured meetings between FIU and law enforcement for ML/FT operational and strategic matters.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>• A person needs to be convicted of a predicate offence when proving that property is the proceeds of crime,</li> <li>• The penalty for the dissolution of the legal entity for aggravated situations with the proportionate sanction should be in the MLFTA.</li> <li>• The offence of ML does not extend to property regardless of its value, as there is a legal gap in terms of the what constitutes property. It was noted that the definition of property should reflect the international standard.</li> </ul>
4. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>• The issue of third parties does not appear to be covered.</li> <li>• The voiding of actions includes the ability to intervene where a transaction (conveyance or transfer) has already occurred does not appear to be covered in the legislation</li> <li>• The confiscation of instrumentalities used or intended to be used to commit a scheduled offence is not possible if the</li> </ul>

		<p>instrumentalities is gifted or placed in the control of a third party.</p> <ul style="list-style-type: none"> <li>• No mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.</li> <li>• There are no provisions which enable the confiscation of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisation. The requirement to confiscate property of corresponding value is not permitted. A fine cannot substitute equivalent value confiscation.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>• The ATA does not include an express provision linking the criminalization of the offence of terrorism to terrorist acts which linked to a specific terrorist act(s).</li> <li>• TF offence are designated ML predicate offences; however, it was noted that the definition of fund in the ATA differ from the definition of property and this may mitigate against consistency.</li> <li>• The ATA does not include sanctions for an attempted offence for both individuals and legal persons for offences occurring inside or outside Barbados.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> <li>• The legislation is unclear as to how to specifically carve out access to funds if freezing measure are applied to persons designated by a supra national country pursuant to UNSCR 1452/1373.</li> <li>• MACMA includes a condition precedent of having reciprocity before assistance is given.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>• No established mechanisms to implement UNSCRs applying targeted financial sanctions relating to the proliferation of weapons of mass destruction and its financing.</li> <li>• Barbados has not communicated the establishment of the necessary legal authority and identify competent authorities responsible for implementing and enforcing TFS.</li> <li>• No measures identified to comply with UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons, the standards and procedures.</li> <li>• No guidance identified of the mechanism in place to monitor and ensure compliance by FIs and DNFBPs for TFS related to proliferation; nor have there been an identification of civil, administrative or criminal sanctions if such institutions fail to comply</li> </ul>

		<ul style="list-style-type: none"> <li>• No publicly known procedures identified or implemented to submit de-listing requests to the Security Council</li> <li>• No established measures identified about contracts, agreements or obligations that arose prior the date on which an account becomes subject to targeted financial sanction pursuant to UNSCRs 1718 or 1737.</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• Barbados has not completed risk based approach for NPOs that are inherently high risk</li> <li>• No obligation in law to identify an authority to conduct a risk-based assessment</li> <li>• No ensuring sector assessment provisions</li> <li>• No policies for promoting accountability and public confidence in the administration and management of the NPOs</li> <li>• No obligation targeted risk based supervision or monitoring of NPOs</li> <li>• No legal obligation to gather and investigate NPOs</li> </ul>
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>• Lack of CDD requirement for beneficiaries of Life Insurance.</li> <li>• FSC guideline needs to be revised.</li> </ul>
11. Record keeping	C	
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>• There is no legal requirement to ensure that with respect to life insurance policies specifically, FIs determine whether the ultimate beneficiaries are PEPs</li> </ul>
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• No specific requirements for “payable-through accounts”</li> <li>• No requirement to clearly understand the respective AML/CFT responsibilities of the correspondent and respondent institutions.</li> </ul>
14. Money or value transfer services	LC	MVTS should be licensed or registered and Barbados has chosen to register its MVTS providers. Barbados still has to make the necessary amendments to the FIA.
15. New technologies	C	
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>• The CBB AML/CFT Guidelines are not specifically applicable to MVTS.</li> <li>• There are no specific AML/CFT guidelines for MVTS.</li> </ul>

17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>IBD AML/CFT Guidelines do not provide for the requirements about third parties that are part of a financial group.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>IBD AML/CFT Guidelines do not address the requirements of sub criterion 18.3.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>Barbados does disseminate CFATF and FATF notices pertaining to high risk jurisdictions and the AML/CFT guidance issued by the CBB, FSC and the IBD requires FI's to consider these notices, however there are no specific provisions or measures in place to enable Barbados to apply countermeasures proportionate to the risks when called upon to do so by FATF, or independently of any call by FATF to do so.</li> </ul>
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> <li>No requirement in the MLFTA for SAR to be reported promptly to the FIU.</li> </ul>
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> <li>Tipping-off is not applicable where STRs or other information are in the process of being filed or not yet filed with the FIU.</li> </ul>
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> <li>IBD AML/CFT Guidelines do not provide for the requirements about third parties that are part of a financial group.</li> </ul>
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> <li>No statutory or enforceable requirement to promptly report suspicious transactions to the FIU.</li> <li>No statutory or enforceable requirement to appoint a compliance officer at the management level.</li> <li>No statutory or enforceable requirement to implement screening measures when hiring employees and ongoing employee training.</li> <li>No evidence that Barbados is positioned to apply any form of risk adjusted countermeasures against high risk jurisdictions either independently or at the specific request of FATF.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>Barbados has not conducted a specified ML/TF risk assessment specific to all forms of legal persons.</li> <li>Whilst there is an obligation to maintain the basic and beneficial ownership at a location notified by the company registry, the discretion to maintain the record at some other place in Barbados is designated by the directors of the company mitigates against timely access.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no provisions that mandate basic and beneficial ownership to be accurate and updated on a timely basis.</li> <li>• There are no dual requirements to give immediate notification to the company registry of a change in the place where BO is held.</li> <li>• There is no requirement in the governing legislation for company to keep basic and BO information for 5 years.</li> <li>• No timely access provision by competent authorities</li> <li>• No legal obligation to expressly provide for the use of bearer warrants</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	LC	<ul style="list-style-type: none"> <li>• No timely access provision by competent authorities.</li> <li>• No requirement to facilitate access by foreign counterparts to basic information held by registries or domestic authorities.</li> <li>• No requirement for exchanging domestically available information on trust or other legal arrangements.</li> </ul>
26. Regulation and supervision of financial institutions	C	
27. Powers of supervisors	C	
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> <li>• Gaming Institutions which fall under the second schedule of the MLFTA are licenced by customs &amp; excise but not currently supervised for AML/CFT purposes. Cruise ships which overnight in a Barbados port are permitted to provide casino services for non-Barbados residents but are not subject to any form of AML/CFT regulation.</li> <li>• Under the MLTFA, the FIU has the necessary powers to supervise the DNFBP 's for which it is responsible however the FIU has entered into an MOU with the FSC to provide supervisory capability. Whilst there is no mandatory licencing/registration requirement across the DNFBP sector the IBD has a robust licencing framework in place with respect to Corporate and Trust Service Providers. The IBD has also entered an MOU with the FSC under which the FSC provides supervisory capability in respect of Corporate and Trust Service Providers.</li> </ul>
29. Financial intelligence units	PC	<ul style="list-style-type: none"> <li>• Inability for the AMLA-FIU to fulfil its legislative obligation to produce an annual report within the stipulated time.</li> <li>• No explicit measures provision for the FIU to conduct strategic analysis.</li> </ul>

		<ul style="list-style-type: none"> <li>• The FIU Director, while empowered to request information or a document from a public authority, can do so only where there are reasonable grounds to believe that an investigation should be conducted.</li> <li>• The FIU does <u>not</u> have access to the widest possible range of information.</li> <li>• No measures allowing the dissemination of information spontaneously and upon request from other entities .</li> <li>• The independence and autonomy of the FIU and its distinct functions from the AMLA is ambiguous.</li> </ul>
30.Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• The orders formalising the FCIU as the designated law enforcement authority with responsibility for ML/TF and associated predicate offences has not been formalised.</li> <li>• The procedures and policies for dealing with investigations for ML/TF and predicate offences are not outlined.</li> <li>• The Director of the FIU is authorized by the MLFTA to trace and initial freezing, however, the provisions do not articulate that the tracing and freezing is done expeditiously.</li> <li>• The FCIU is not authorised to conduct parallel financial investigation.</li> </ul>
31.Powers of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> <li>• National laws do not support the interception of communications or accessing of computer systems without a warrant.</li> <li>• There are no compulsory measures which allow the searching of persons and taking of witness statements.</li> <li>• No explicit legislative measures for LEAs and IAs to identify in a timely manner natural or legal persons ownership or control of accounts.</li> </ul>
32.Cash couriers	PC	<ul style="list-style-type: none"> <li>• There is no declaration or disclosure system for outgoing cross border currency transactions</li> <li>• No legal obligation to seize cash which is above the threshold provided it is disclosed</li> <li>• No established obligation for declaration process regarding Customs and the FIU</li> <li>• No legal obligation for international cooperation between relevant competent authorities; although it happens in practice.</li> <li>• No legal obligation to ensure the proper use of the information collected through the declaration system.</li> <li>• No legal obligation to stop and restrain currency for a reasonable time to ascertain whether evidence of ML/TF is present.</li> </ul>
33.Statistics	PC	<ul style="list-style-type: none"> <li>• Whilst records on the operations of the relevant competent authorities is kept, there is no obligation for them to</li> </ul>

		maintain comprehensive statistics relating to the efficiency of Barbados' AML/CFT system.
34.Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• The FIU is dependent on the AMLA to issue guidelines to DNFBPs.</li> <li>• No provision for the FIU to provide feedback to reporting entities on the usefulness of the reports they provide.</li> <li>• No Annual Report was issued by the AMLA after 2012.</li> </ul>
35.Sanctions	LC	<ul style="list-style-type: none"> <li>• Sanctions are not proportionate or dissuasive for FIs and do not extend to directors and senior management of FIs and DNFBPs.</li> </ul>
36.International instruments	PC	<ul style="list-style-type: none"> <li>• Barbados has not fully implemented the Merida Convention as they have not implemented the Prevention of Corruption Act, 2012.</li> </ul>
37.Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• No legal obligation in MACMA to aid in a timely manner.</li> <li>• No legal requirement which identifies timeliness and prioritization and a cases management system</li> </ul>
38.Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• No legal provision to address non-conviction based proceedings</li> <li>• No legal basis for the confiscation of property of corresponding value.</li> <li>• No policy for asset forfeiture and sharing of assets between countries.</li> </ul>
39.Extradition	LC	<ul style="list-style-type: none"> <li>• No legal obligation to have a case management system for extradition on timely requests</li> <li>• No legal obligation to proceed to extradite notwithstanding dual criminality</li> <li>• No simplified extradition mechanism</li> </ul>
40.Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• The MLFTA has the legal obligation to communicate information to foreign states.</li> <li>• The principle of reciprocity was not addressed</li> </ul>



## **GLOSSARY OF ACRONYMS**

AIRCOP	Airport Communication Programme
AMLA	Anti-money Laundering Authority
ARU	Asses Recovery Unit
ATA	Anti-Terrorism Act CAP 158
ATAA	Anti-Terrorism (Amendment) Act, 2015-28 (AT(A)A)
BNI	Bearer negotiable instruments
BO	Beneficial Ownership
BRA	Barbados Revenue Authority
COMPA	Companies Act, Cap. 308
CHA	Charities Act CAP 243
CUSA	Customs Act, CAP 066
COMPAA	Companies Amendment Act 2011-8
CHAA	Charities (Amendment) Act 2010-12
CA	Competent Authority
CAIPO	Corporate Affairs and Intellectual properties office
CBB	Central Bank of Barbados
CBB	CBB AML/CFT Guidelines, 2013
CCJ	Caribbean Court of Justice
CLPRIEO	Customs (List of Prohibited and Restricted Imports and Exports) Order, 2009
CMPA	Corporate (Miscellaneous Provision) Act, 2015
CR	Companies Regulations, 1984 as amended
CSA	Cooperatives Societies Act CAP 378A
CTSPA	Corporate Trust and Service Providers Act, 2015
CTU	Counter Terrorism Unit
DAPCA	Drug Abuse (Prevention and Control) Act
DPP	Director of Public Prosecutions
EA	Extradition Act, CAP 189
ECA	Exchange control act
EIA	Exempt Insurance Act CAP 308A
EIAA	Exempt Insurance (Amendment) Act

ESW	Egmont Secured Web
FCIU	Financial Crimes Investigations Unit
FIA	Financial Institutions Act CAP. 324A
FIU	Financial Intelligence Unit
FSC	Financial Services Commission
FSC Guidelines	FSC AML/CFT Guidelines, 2013
INSA	Insurance Act CAP 310
IA	Interpretation Act, CAP.1
IAA	Interpretation (Amendment) Act, 2012-11
IBCA	International Business Companies Act CAP 77
IBCAA	International Business Companies (Amendment) Act
IBD	International Business Division
IDB Guidelines	IBU AML/CFT Guidelines, 2015 revision
IFSA	International Financial Services Act Cap 324A
IFSAA	International Financial Services (Amendment) Act
IR	Intelligence Report
INSA	Insurance Act
ITA	International Trusts Act CAP 245-1
JRCC	Joint Regional Communication Centre
LR	Local Request
MACMA	Mutual Assistance in Criminal Matters Act – CAP 140A
MEVAL	Mutual Evaluation
MFA	Mutual Fund Administrators
ML	Money laundering
MLFTA	Money Laundering and Financing of Terrorism (Prevention and Control) Act
MVTS	Money Value Transfer Service
NRA	National Risk Assessment
ORE	Overseas responses
OSFI	Office of the Superintendent of Financial Institutions
PF	Proliferation Financing
POCA	Proceeds of Crime Act – CAP 143
RBPF	Royal Barbados Police Force
RSS	Regional Security System

SA	Securities Act CAP 318A
SBU	Special Branch Unit
SC	Securities commission
SECA	Securities Act
SOP	Standard Operating Procedure
SWRL-2012	Societies with Restricted Liability Act (No.2) Act, 2012
SWRLA	Societies with Restricted Liability Act, Cap 318B
SWRLA-2012-3	Societies with Restricted Liability Act, 2012-3
TF	Terrorism Financing
TFS	Targeted Financial Sanctions
TOCPA	Transnational Organized Crime (Prevention and Control) Act
TVPA	Trafficking Victims Protection Act
WMD	Weapons of mass destruction



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## Anti-money laundering and counter-terrorist financing measures – Barbados *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Barbados as at the date of the on-site visit December 5-16, 2016. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Barbados' AML/CTF system, and provides recommendations on how the system could be strengthened.