

**MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

**TRINIDAD AND TOBAGO
Post Plenary**



This report is subject to CFATF confidentiality regulations. Any authorization for the dissemination, reproduction and distribution of all or part of it must be obtained from the CFATF Secretariat:

CFATF@cfatf.org

MAY 2007

TABLE OF CONTENTS

Preface - information and methodology used for the evaluation.....	3
EXECUTIVE SUMMARY.....	4
1 GENERAL.....	16
1.1 General information on Trinidad and Tobago.....	16
1.2 General Situation of Money Laundering and Financing of Terrorism.....	18
1.3 Overview of the Financial Sector and DNFBP	19
1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements	25
1.5 Overview of strategy to prevent money laundering and terrorist financing.....	27
2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES	43
2.1 Criminalisation of Money Laundering (R.1 & 2).....	43
2.2 Criminalisation of Terrorist Financing (SR.II).....	51
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	53
2.4 Freezing of funds used for terrorist financing (SR.III).....	56
2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)	56
2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32).....	65
3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS	85
3.1 Risk of money laundering or terrorist financing	85
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)....	86
3.3 Third parties and introduced business (R.9)	95
3.4 Financial institution secrecy or confidentiality (R.4)	96
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	98
3.6 Monitoring of transactions and relationships (R.11 & 21)	100
3.7 Suspicious transaction reports and other reporting (R.13-14, 25 & SR.IV).....	103
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22).....	109
3.9 Shell banks (R.18)	114
3.10 The supervisory and oversight system - competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)	115
3.11 Financial institutions - market entry and ownership/control (R.23).....	122
3.12 AML/CFT Guidelines (R.25)	125
3.13 Ongoing supervision and monitoring (R.23, 29 & 32).....	126
3.14 Money or value transfer services (SR.VI)	129
4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS.....	130
4.1 Customer due diligence and record-keeping (R.12) (applying R.5 to 10 to DNFBP)...	130
4.2 Monitoring of transactions and relationships (R.12 & 16) (applying R.11 & 21 to DNFBP).....	132
4.3 Suspicious transaction reporting (R.16) (applying R.13 & 14 to DNFBP)	133
4.4 Internal controls, compliance & audit (R.16) (applying R.15 to DNFBP).....	134
4.5 Regulation, supervision and monitoring (App. R.17 and 24-25 to DNFBP)	135
4.6 Other non-financial businesses and professions: Modern secure transaction techniques (R.20).....	137
5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS.....	138
5.1 Legal Persons – Access to beneficial ownership and control information (R.33).....	138
5.2 Legal Arrangements – Access to beneficial ownership and control information R.34).....	140

5.3	Non-profit organisations (SR.VIII)	141
6	NATIONAL AND INTERNATIONAL CO-OPERATION.....	142
6.1	National co-operation and coordination (R.31)	142
6.2	The Conventions and UN Special Resolutions (R.35 & SR.I)	144
6.3	Mutual Legal Assistance (R.32, 36-38, SR.V)	146
6.4	Extradition (R.32, 37 & 39, & SR.V)	157
6.5	Other Forms of International Co-operation (R.32 & 40, & SR.V).....	163
7	OTHER ISSUES	167
7.1	Other relevant AML/CFT measures or issues.....	167

Preface - information and methodology used for the evaluation

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Trinidad and Tobago was based on the Forty Recommendations 2003 and the Eight Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Trinidad and Tobago, and information obtained by the evaluation team during its on-site visit to Trinidad and Tobago from 30th of May to 10th of June 2005, and subsequently. During the on-site visit the evaluation team met with officials and representatives of relevant Trinidad and Tobago government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. Trinidad and Tobago had its first Mutual Evaluation by the CFATF in April 1995 and the second round Mutual Evaluation took place in June 2002. This report is the result of the third Round Mutual Evaluation of Trinidad and Tobago as conducted in the period stated here above. The examination team consisted of Ms. Gwen Amelo, Financial Examiner (Suriname), Ms. Renée Foggo, Legal Examiner (Bermuda), and Mr. Clouston Francis, (St. Vincent and the Grenadines) Law Enforcement Examiner. Mr. Russell Ursula, Deputy Director of the CFATF Secretariat, led the team. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems. The team would like to express its gratitude to the Trinidad and Tobago Government, particularly the Strategic Services Agency, for the arrangements made during the visit.

3. This report provides a summary of the AML/CFT measures in place in Trinidad and Tobago as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Trinidad and Tobago levels of compliance with the FATF 40+8 Recommendations (see Table 1).

Executive Summary

1. Background information

1. This report provides a summary of the AML/CFT measures in place in Trinidad and Tobago as of May-June 2005 (the date of the on-site visit). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Trinidad and Tobago's levels of compliance with the FATF 40 + 8 Recommendations). Based on the information received by the mission in the MEQ submitted by the authorities of Trinidad and Tobago prior to the on site visit and from interviews during the on site mission it could be ascertained that the authorities of Trinidad and Tobago have been pursuing to implement recommendations from the last CFATF mutual evaluation on site visit of June 2002. However some measures were still outstanding or were in need of further implementation

2. At the time of the team's visit, Trinidad & Tobago's AML/CFT legislative framework did not fully comply with international standards. The Central Bank of Trinidad and Tobago (CBTT) in September 2004 has issued (revised) AML/CFT guidelines to the financial institutions under its supervisory authority that were incorporating the FATF 40 + 8 Recommendations. These Guidelines were also endorsing the basic AML/CFT measures introduced in the Proceeds of Crime Act No. 55 of 2000 (POCA 2000) and were including a list of examples of suspicious transactions to assist financial institutions in recognizing the same. Interviews indicated to the Mission that financial institutions were generally following these Guidelines; however, the financial legislative framework of Trinidad and Tobago was still lacking relevant statutes for the CBTT Guidelines to be enforceable and the CBTT to be effective in its supervision of implementation of these Guidelines. The FIU was also in need of basic FIU legislation in order to enhance its structure and powers according to international Egmont standards, while the Financing of Terrorism (CFT) component of Trinidad and Tobago's legislative framework was not legislated.¹

3. The CBTT is the supervisory authority for all institutions licensed under the Financial Institutions Act 1993 and the Insurance Act 1980 (amended in 2004). These include Commercial Banks, Trust Companies, Merchants Banks, Finance Houses, Insurance Companies, Pension Plans and Cambios. There is no provision for bearer shares in the Companies Act 1995 (which came into force on 15th April, 1997). The Mission was however concerned to notice that Money Transfers are not licensed in Trinidad and Tobago and that Credit Unions (131 entities with assets estimated at \$4 billion at the time of the on site visit) are being supervised by a Credit Union Supervisory Unit within the Ministry of Finance, which does not include testing of compliance with

¹ The "Anti Terrorism Act No 26 of 2005" of Trinidad and Tobago was enacted on the 13th of September 2005. The Mission received a hard copy of the enacted legislation on the 2nd of February 2006. The Mission was not able to include this piece of legislation in its evaluation as being in force and effect since the elapsed time period of its enactment was not "immediately following the on-site Mission" according to the 2004 Methodology.

AML/CFT issues as one of its tasks. Up to the visit of the Mission the Ministry of Finance has issued no AML/CFT guidelines for these Credit Unions.

4. The Mission remained also concerned with the lack of supervisory authorities and supervision on the sector of Designated Non Financial Businesses and Professions (DNFBPs) in Trinidad and Tobago. According to POCA 2000, AML measures apply to most DNFBPs, however the indicated lack of supervisory measures in the DNFBP sector, is affecting the effective implementation of POCA 2000 measures in this sector.

5. The vulnerability for money laundering in Trinidad and Tobago's financial sector according to the authorities primarily exists as a result of its geo-strategic location between illicit drugs producing and drugs consuming countries of the world. Submitted SAR's according to figures from 2001 to 2004 received from the FIU were mainly in connection with suspected illegal drugs transactions and they provided intelligence for drug trafficking activities.

6. All SARs were received from financial institutions while the vast majorities (approximately 85%) were received from money transfer companies. No SARs were received from DNFBP's while statistics on prosecutions and convictions based on money laundering cases between 2001 and 2004 indicated no convictions. The mission as a result of this is concerned with the level of implementation and effectiveness of the AML/CFT systems in place in Trinidad and Tobago and the focus on money laundering and proceeds of crime issues at the time of the on site visit.

2. Legal Systems and Related Institutional Measures

7. Money laundering is criminalized at sections 43, 44, 45 & 46 of the POCA and the money laundering offence extends to all types of property that directly or indirectly represents the proceeds of crime. The term money laundering is not explicitly defined in POCA 2000, however it relates to specified offences, which includes all indictable offences, including drug trafficking or an offence specified in Schedule II of POCA (Fraud, Tax or Copyright offences), (section 2 (1)). Thus most serious offences are deemed to be predicated offences for confiscation of the proceeds of a specified offence. However, participation in an organized criminal group and racketeering; terrorism, including terrorist financing, trafficking in human beings, migrant smuggling; and piracy are not covered under Trinidad and Tobago's legislation.

8. T&T signed "The Palermo Convention" on the 26th September 2001 but it has not been ratified. There is a Transnational Organized Crime Bill in draft form but it was not finalized and submitted to Parliament at the time of the on site visit. Under POCA the offence of money laundering applies to natural persons who knowingly engage in money laundering activity, and the POCA does permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Legal persons can also be subject to civil proceedings with the cause of action being a common law offence but not a statutory one, however T&T's legislation does not provide for civil forfeiture.

9. T&T is not a party to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and had no legislation enacted criminalizing the financing of terrorism at the time of the on site visit. In hemispheric context T&T is party to the OAS Inter-American Convention against Terrorism 2002, which improves regional cooperation in the fight against terrorism, thereby enhancing hemispheric security; commits parties to endeavor to sign and ratify the relevant U.N. anti- terrorism instruments (a major element in U.N. Security Council Resolution 1373).

10. The POCA provides for the confiscation of property where a person is convicted of a specified offence (this comprises all indictable offences, including money laundering). Confiscation is allowed where it appears to the Magistrate or DPP that the person convicted may have benefited and has or may have realizable property. The POCA also makes allowance for the variation of a confiscation order to increase the amount of property or realizable property, where the amount the person is ordered to pay is less than the amount assessed to be the value of his proceeds of a specified offence. Section 18 of POCA provides for provisional measures detailing the circumstances in which restraint and charging orders can be made. Unlike confiscation orders, there does not need to be a conviction; it is sufficient if proceedings have been instituted for an offence to which the POCA applies.

11. POCA provides for the “designated authority” in Trinidad and Tobago to have power to carry out the functions of identifying and tracing property that may become the subject of confiscation orders. However, the current legislation is prohibitive in that production orders and search warrants are limited to offences under the Dangerous Drugs Act and the Second Schedule of POCA. The Mission recommends that the authorities consider widening the scope of offences that are subject to production orders and search warrants.

12. The Financial Intelligence Unit (FIU) of Trinidad and Tobago is a division of the Counter Drug and Crime Task Force (CDCTF). The primary function of the CDCTF is to gather intelligence on all criminal activities and disseminate accordingly to other law enforcement authorities for immediate action. The FIU was created simultaneously with the CDCTF in 1997. Following an informal agreement in 1997 by the Strategic Services Agency (SSA: an Agency within the Ministry of National Security), the Bankers’ Association and the FIU, all suspicious activities generated by financial institutions were sent to the FIU. Some financial institutions have complied with the agreement by submitting STRs to the FIU while other such as Credit Unions and DNFBPs have not. The Mission concludes that this is mainly due to lack of awareness and the absence of adequate FIU and financial institutions obligations legislation and regulations. The authorities of Trinidad and Tobago are recommended to continue working with the Financial Sector to improve the total number of reporting entities (e.g.: credit unions).

13. The FIU in addition is not a member of the EGMONT Group and does not have the legal authority to receive, analyse and disseminate disclosures of STRs and suspicious money laundering activities. The Proceeds of Crime Act was amended in 2000 and Section 55 of the Act made provision for the appointment of the Designated Authority

responsible for recovering all STRs submitted by financial institutions. The Designated Authority, as natural person, is now in immediate command of the FIU. The FIU itself does not have the authority to directly obtain additional information from reporting bodies. This authority can only be exercised under Section 32 of the Proceeds of Crime Act, which gives the Police Officer the ability to apply to a Judge for a production order, compelling the production of financial information from reporting parties during the investigation of Drug Trafficking or Money Laundering Offences.

14. Although there is no legal framework authorizing the FIU to disseminate financial information to domestic authorities for investigation or action, the Mission noted that it is done in practice, particularly with the Organized Crime and Narcotics Unit (OCNU). The evaluation team however remains concerned with this situation and urges the authorities of Trinidad and Tobago to introduce enforceable and adequate legislation in order to strengthen the structure of its FIU and address the existing legal deficiencies in its powers.

15. Additionally the Mission noted a lack of staff that was full time allotted to the FIU and which is needed in order to guarantee sufficient in depth analysis of incoming SAR's. The FIU in effect consisted of only 5 police officers and was in addition not publishing publicly periodical reports that include statistics, recent money laundering trends and techniques, and information regarding the FIU's activities. The Mission is recommending expansion of this unit with at minimum one Forensic Accountant and an Analyst in addition to providing more office accommodation.

16. The Mission also remained concerned with the limited (human) resources available to the Director of Public Prosecution's (DPP's) Office, which was obviously leading to a diminished prioritisation of money laundering and proceeds of crime prosecutions. The DPP is constitutionally responsible for the prosecution of all crimes in Trinidad and Tobago. It provides advisory services on matters of a criminal nature to all government departments and agencies. It is also responsible for the prosecution of money laundering offences, corruption, confiscation of criminal proceeds and extradition proceedings.

17. The assessment team again remained concerned with the information it received from the Courts that a number of magistrates are over worked, as there are a substantial amount of matters coming before the courts. More Courts and magistrates were felt to be needed. Several persons have been convicted in the Magistrates court for drug trafficking during the past few years, but no confiscation or forfeiture hearing followed. The Proceeds of Crime Act according to magistrates appears to be sufficient but enforcement by law enforcement entities is seen as the major problem. Statistics consulted by the assessment team confirmed and indicated that the provision for confiscation under the POCA is not widely used/implemented. There has been no confiscation of assets under POCA for ML offences.

18. The Trinidad and Tobago Police Service is responsible for investigating all predicate offences in accordance with the Police Service Act Chapter 15:01 and

Regulations. The OCNU is principally responsible for investigating Drug Trafficking offences from which criminal proceeds are most likely to be generated. The Customs and Excise Division plays a significant role in monitoring and intercepting trans-border cash flows. The Customs Declaration Form is provided to every passenger entering Trinidad and Tobago. The POCA gives a customs officer similar powers to that of police officers in relation to money laundering and forfeiture of the proceeds of crime. However, no statistics were available to the Mission that could indicate the effectiveness of implementation of AML/CFT measures by Customs at the borders of Trinidad and Tobago.

19. The SSA is the Agency that is primarily responsible for coordinating the Government AML/CFT programmes at the national level. The SSA recently developed a National Strategic Plan for 2005-2009, which outlines fifteen objectives of the Agency. One of the Strategic objectives directly deals with the elimination of the incidence of criminal money laundering and promotion of the confiscation of criminally derived assets. At the time of the on site visit of the Mission it was not possible to measure the rate of success and effectiveness of the implementation of this plan with regard to ALM-CFT issues due to its recent development and dissemination towards the relevant stakeholders.

20. The assessment team as indicated earlier remained concerned to note that despite the seeming availability of legislation there was no prosecution and conviction on money laundering cases at the time of the on site visit. This may be the case due to lack of:

- a. financial obligation regulations;
- b. adequate FIU legislation;
- c. sufficient resources (staff) and training in the area of investigation and prosecution of money laundering offences;
- d. a limited focus on money laundering and proceeds of crime issues by relevant authorities.

Preventive Measures – Financial Institutions

21. Trinidad and Tobago has been experiencing years of successive substantial growth spearheaded by its petrochemical and manufacturing sectors. It has a well developed and modern banking sector and its financial sector has been growing in regional importance as a result of acquisitions and establishment of subsidiaries and associate companies in other Caribbean countries. As for any developed financial center, Trinidad and Tobago's financial sector is vulnerable to money laundering and terrorist financing. Trinidad and Tobago has not conducted a comprehensive risk assessment of its complete financial sector (not only institutions supervised by CBTT) for AML/CFT. The CBTT however uses risk factors for AML/CFT and other prudential risk purposes.

22. POCA 2000, requires financial institutions to pay special attention to all complex, unusual, or large transactions, whether completed or not, to all unusual patterns of transactions, and to all insignificant but periodic transactions, which have no apparent economic lawful purpose. Upon suspicion that such transactions could constitute or be

related to illicit activities, financial institutions are required to report suspicious transactions to the “Designated Authority” in the form specified in the Third Schedule of POCA 2000.

23. Section 56 of POCA 2000 states that the Minister of Finance may issue Regulations prescribing customer identification obligations, customer due diligence (CDD), and record keeping requirements. The Mission understood as indicated earlier that the “Regulations” which are referred to here (financial obligation regulations) are not yet into force and because of this there is no legal basis for requirements in regard of KYC, CDD, and record keeping measures for financial institutions in Trinidad and Tobago. This absence of legally enforceable KYC, CDD, and more detailed record keeping measures was one of the major concerns for the Mission during its on site visit to Trinidad and Tobago and consequently the authorities of this country are urged to put the necessary regulations in place to adequately deal with this deficient matter.

24. The CBTT as indicated previously has revised its AML/CFT Guidelines (September 2004) for the financial institutions it supervises and these guidelines are informed by POCA 2000 and the FATF 40 + 8 Recommendations. However, these guidelines are not legally enforceable. The Mission received information through interviews with CBTT and some financial institutions under CBTT supervision however that even though these Guidelines may not be legally enforceable, still they were being adhered to by the supervised financial institutions and were being enforced by the CBTT through on site visits. The supervised financial institutions are obligated to establish internal procedures and policies to prevent money laundering and terrorist financing. These internal procedures should include inter alia CDD record retention, prohibition of anonymous accounts, the detection of unusual and suspicious transactions, prohibition to keep anonymous accounts and the reporting obligation. These financial institutions are also obligated to designate AML/CFT compliance officers. On site visits statistics of the CBTT has not indicated any administrative sanction to any of its supervised financial institutions based on non compliance with AML/CFT measures imposed by the CBTT Guidelines

25. Money or value transfers are not regulated in Trinidad and Tobago. However, as indicated earlier, the FIU has received over the period of 2001 to 2004 significant amounts of SAR’s from specifically one money transfer company, which not necessarily indicates that this sector is well informed and fully compliant. The evaluation team is concerned with the fact that most STR’s were submitted by only one money remitter in this period while no actions were undertaken by supervisory authorities in Trinidad and Tobago for closer scrutiny and supervision of the money transfers sector.

26. There are legislative measures in place to ensure that the “Designated Authority” (which functions within the FIU) and the CBTT have access on a timely basis to financial and administrative information. However the Mission recommends Trinidad and Tobago authorities to enhance the supervisory powers of the Securities and Exchange Commission and to regulate relevant powers for the Credit Unit Supervisory Unit. POCA 2000 gives the Designated Authority access to premises of the financial institution

to inspect any business transaction record or client information records kept by the institution and ask any relevant questions and make any notes or take any copies of such records. The Financial Institutions Act (1993) gives the Central Bank the power to request information from a licensee, while it also refers to the offence to suppress information.

27. The Securities and Exchange Commission has authority under the Securities Industry Act to conduct inspections or to compel production of information by the securities sector where the Commission is of the view that the registrant may be in breach of the Act. Under the POCA the SEC may conduct similar inspections or compel the production of information from dealers and investment advisors. However, at the time of the on site visit there were no specific AML/CFT Guidelines for the securities industry and no testing for compliance with provisions of the POCA. The Credit Union Supervisory Unit does not have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance because the Unit does not have legislative authority to conduct on-site examinations of credit unions. In addition, the Cambios (providing a money or currency changing service) are licensed and registered by the CBTT while the Cash Couriers (providing a money or value transfer service) are not licensed or registered by any authority. The Foreign Exchange Department of the Central Bank of Trinidad and Tobago is responsible for the supervision of the Cambios.

28. POCA 2000 states that when a SAR is made in good faith, the financial institutions or person engaged in relevant business activities and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil and administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication. The “Tipping Off” provision available in POCA 2000 is documented on all Production Orders that are served. This is done to ensure that employees who comply or assist in complying with these orders are made aware of the provision. It makes in addition to this the appointed “Designated Authority” (within the FIU) responsible for breach of confidentiality of information obtained during the course of his duty.

29. The mission found that the staff, including Compliance Officers, of most of the institutions that were interviewed had basic AML training. Staffs of the Securities Sector and the Cambios however have not been trained and generally there was no training available on CFT issues. In accordance with POCA 2000 every financial institution or person engaged in a relevant business activity are required to develop and implement a written compliance programme, which also includes the training of personnel in the identification of suspicious transactions. Since the POCA 2000 only covers Money Laundering, training on CFT transactions is not covered by the legislation. The institutions the mission interviewed indicated that they are in the process of training their personnel on mostly AML issues and in detecting suspicious transactions.

30 The Mission would like to recommend the authorities of Trinidad and Tobago to urgently remedy the deficiencies in its regulatory framework to address the attention of financial institutions for their branches and subsidiaries in other countries and to prohibit

relationship with Shell banks in a more formal way. There are no legal requirements for financial institutions to pay particular attention that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT requirements. The Mission observed that paragraph 9.2 of the CBTT AML/CFT Guidelines states that financial institutions should ensure, to the extent permitted by the locally applicable laws and regulations, that the CBTT AML/CFT Guideline is upheld by their branches, subsidiaries and associate companies abroad, especially in those countries where there are no or insufficient legal provisions to counter the incidence of money laundering and terrorist financing. There are also no legal requirements for financial institutions subject to the Core Principles to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

31. Section A of Appendix I (concerning correspondent banking) of the CBTT AML/CFT Guidelines states that banks should refuse to enter or continue a correspondent banking relationship with a bank in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group. The Central Bank also indicated that there is no information regarding any bank that has a banking relationship with a shell bank. The financial institutions interviewed by the Mission also indicated that it is part of their policy not to do business with shell banks.

32. The “fit and proper” requirements of the Financial Institutions Act, 1993 (FIA), the fit and proper guidelines and other corporate governance guidelines issued by the CBTT are aimed at ensuring that only persons of good character and high integrity become directors, controlling shareholders, controllers or managers in licensed financial institutions. The registration process as outlined in the Security Industry Act (SIA) also requires individual applicants to be of good character or in the case of companies, not have an un-discharged bankruptcy order, an appointed receiver manager, interests which may conflict with the conduct and integrity of the proposed business or a past history of suspension or expulsion from any other securities exchange. While the registration process does mandate for the exclusion of participants of dubious integrity, the SIA does not have specific provisions for the identification of beneficial shareholders or oversight in changes in management and ownership.

Preventive Measures – Designated Non-Financial Businesses and Professions

33. POCA 2000 indicates the following “relevant business activity”² as DNFBPs under its First Schedule:

- Real Estate Business
- Motor Vehicles Sales
- Courier Services
- Gaming Houses

² meaning an activity between two or more persons in which at least one person is acting in the course of a business referred to in the First Schedule of POCA.

- Jewelers
- Pool Betting
- National Lottery on Line Betting Games

This means that the abovementioned relevant business activities have to comply with the requirements as stated in the POCA 2000.

34. There are concerns regarding the scope of POCA 2000 for DNFBPs and there are no guidelines and administrative sanctions available specifically dealing with DNFBPs for breaches of AML/CFT obligations. The Trinidad and Tobago government additionally has not yet designated any authorities or SRO's to monitor DNFBPs for compliance with AML/CFT requirements.

35. According to the First Schedule of the POCA 2000 Lawyers, Notaries and Accountants do not fall under the scope of this Act. In regard of the Accountants there are two (2) associations to which Accountants in Trinidad and Tobago may wish to accede: the Institute of Chartered Accountants of Trinidad and Tobago (ICATT) and the more developed Association of Certified Chartered Accountants (ACCA), which is internationally connected. The ACCA has AML/CFT regulations in place for its members but the various legislations of the Caribbean Countries makes it difficult to implement these regulations rendering these self regulatory provisions to be ineffective and without supervision from any other authority.

36. T&T does not have Casinos but the Private Members Clubs (there are 72 Clubs registered) seem to operate like Casinos. The Board of Inland Revenue of Trinidad and Tobago deals with the Gaming Houses, Pool Betters and Private Member Clubs however only for Tax purposes. There is no real supervision on what these Clubs and Gaming Houses are doing and there are no AML/CFT guidelines with regard to these Clubs.

37. The real estate business or industry in Trinidad and Tobago is not regulated, but there is an Association of Real Estate Agents (AREA), that represents approximately 50% of all real estate agents in Trinidad and Tobago. There is need for this industry to be regulated (including AML/CFT regulations) while AREA may function as an SRO according to the SRO definition in the FATF Glossary if it receives adequate supervisory powers). The Association of Car Dealers of T&T has received information on the submitting of SAR's via a letter from the FIU and this was distributed among the members. However, this organization also has no supervisory authorities and has not followed through on the topic of AML/CFT towards its members.

38. The Mission was not able to interview any Jewelers or Dealers in precious stones and metals and was not able to check whether they comply with the requirements set out in the POCA 2000. However, no authority monitors these dealers for AML/CFT purposes.

39. There is no supervisory mechanisms and no guidelines in place for DNFBPs. The only regulations that apply to these entities are those in POCA 2000. The CDD requirements on existing customers are not included in POCA 2000 and the Mission

found that even though some of the DNFBPs do keep records of their customers this is done for tax purposes and not because of the requirements of Section 55 (1) of POCA 2000. In practice the DNFBPs do not carry out any CDD on existing customers.

40. It can be concluded that none of the relevant business activities (DNFBPs) named in the First Schedule of the POCA are supervised in respect of AML/CFT. This in the opinion of the mission is a major deficiency, because the law provides for the DNFBPs named in the First Schedule of the POCA 2000 to fully comply with the AML/CFT requirements set out here, however there is no effective implementation of the Law. Furthermore, the mission noted that most of the DNFBPs it has interviewed had very limited knowledge of the AML/CFT situation in T&T, of their responsibility under the legislation and of other general information about AML/CFT.

Legal Persons and Arrangements & Non-Profit Organisations

41. Legal persons in Trinidad are incorporated under the Companies Act of 1995 and are required to notify the Registrar of Companies, of relevant information on the management of the company, the address of the office or any changes as to shareholders (the latter when requested). The Registrar of Companies is mandated as the regulatory authority for the control of legal arrangements. However, there are no specific measures to prevent the unlawful use of such entities in relation to AML/CFT and to ensure that such entities register their information regarding the beneficial ownership and control of legal arrangements, including notification of any changes to the registered information.

42. The Registrar of Companies may at any time request in writing a company to furnish him with a copy of the register or any part of the register and the company is obliged to furnish the copy within fourteen (14) days after the day on which the requirement is received by the company. The Registrar of Companies has a register of Business names, that is, non-incorporated entities that are governed by the Registration of Business Names Act. There are currently between fifty and sixty thousand businesses registered under this Act. It appears that the only trust companies existing in Trinidad and Tobago are owned/operated/under the control of the Commercial Banks; in addition, trusts that are registered as deeds, i.e., in the Land Registry of the Registrar General's Department.

43. There is no mechanism in place to supervise non-profit organizations and there are no specific measures in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations. The Registrar of Companies is responsible for ensuring that all the required documents are filed, for vetting the proposed Articles of Incorporation of the organization, and for issuing guidelines for the registration of non-profit organizations. In this way the Registrar of Companies is able to ensure the bona fides of the application. However, Trinidad and Tobago should consider establishing an authoritative supervisory body and broadening the record keeping requirements for legal persons and non-profit organizations (including charities) also to ensure that adequate information on ownership and control is available to competent authorities.

National and International Co-operation

44. Trinidad and Tobago has a generally comprehensive system for national and international co-operation, however this can be further enhanced by the imposition of a legal framework for the FIU. Some of the mechanisms for national cooperation have also been recently established at the time of the on site visit and would need more time as to be able to assess them on their effectiveness. The SSA, Trinidad and Tobago's coordinating body at policy level for AML/CFT measures, in recent past also held discussions with financial institutions and other stakeholders pertaining to their obligations under the Proceeds of Crime Act 2000 and is the driving force behind the National Anti-Money Laundering Committee (NAMLC). The Committee had its informal launching in November 2004 and its composition includes representatives of various stakeholders, such as the Police Service, Customs and Excise Department, OCNU and SSA. Although the NAMLC was not quite active at the time of the on site visit, the SSA being the Committee's lead player consults regularly with other committee members concerning the implementation of policies and other systems to prevent money laundering.

45. The FIU misses relevant legislative framework as earlier indicated and is not a Member of the EGMONT Group. It is therefore hampered in developing effective gateways with its foreign counterparts that would allow it to exchange information directly. Information shared with its foreign counterparts is done informally and can only be used for intelligence purposes. Other Law Enforcement Agencies are sharing information with their foreign counterparts through Interpol, DEA and the World Customs Organization. Competent authorities are authorized to conduct enquiries on behalf of their foreign counterparts with whom there is a legal agreement or Memorandum of Understanding. Law Enforcement Agencies of Trinidad & Tobago also have the authority to conduct investigations on behalf of their foreign counterparts through Interpol.

46. The Mutual and Legal Assistance Treaty in Criminal Matters Act No 39 of 1997 legislates the process for mutual legal assistance. This Act appears to be taken seriously in Trinidad and Tobago and in general international co-operation appears satisfactorily. The Central Authority (body in the Ministry of the Attorney General) is in charge of international cooperation and MLATs and it maintains regular contact with OCNU and the FIU. Upon receipt of a foreign request for assistance by the Central Authority, OCNU or the FIU would usually assist in its execution and this encourages good collaboration between parties involved. The FIU and Police generally maintain statistics on cooperation with their national and international counterparts. The Central Authority also maintains statistics with regard to mutual legal assistance as well as statistics on extraditions and extradition requests as the coordinating body in this respect.

47. All request for extradition made to and by Trinidad and Tobago are coordinated by the Central Authority Unit and Trinidad and Tobago also extradites its own nationals. Extradition is available for any conduct, which is punishable by death or imprisonment

for not less than twelve months if committed in Trinidad and Tobago or within a fugitive's jurisdiction. The Central Authority Unit assists foreign and domestic authorities to obtain persons sought for prosecution or to serve a sentence.

48. Trinidad & Tobago is party to the Vienna Convention with the relevant implementing legislation. However it is not party to the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (The Terrorist Financing Convention). Trinidad and Tobago also has not signed the 2002 Inter-American Convention against Terrorism. However, Trinidad and Tobago has signed agreements with different governments in order to facilitate the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences.

49. In Trinidad and Tobago assistance would be obtained if there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained in Trinidad and Tobago. Exchanges of information are not prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions. A request would not be refused on grounds that the offence is of a fiscal nature or on the grounds of secrecy or confidential requirements. Generally mutual assistance would not be rendered in the absence of dual criminality. When dual criminality is taken into account it is the conduct that is considered and not the description of the offence.

50. Trinidad & Tobago currently does not have legislation in place to implement mechanisms such as controlled deliveries and is recommended to do so. In practice the T&T authorities maintain an excellent relationship with authorities in the United States of America and the United Kingdom and have coordinated seizure and confiscation efforts with their respective authorities. However, a more pro-active approach on international cooperation and co-ordination on AML/CFT issues are recommended. Trinidad & Tobago has provisions for an asset forfeiture fund however the fund is not established and used. Trinidad & Tobago has shared confiscated assets with countries where assets have been seized as a result of coordinated law enforcement initiatives.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1 *General information on Trinidad and Tobago*

1. Trinidad and Tobago is a twin island unitary State located at the southern most point of the archipelagic chain of Caribbean Islands, between 10° 30' and 11° 12' north latitude and 60° 30' and 61° 56' west longitude. The island of Trinidad, the larger of the two islands has approximately 7 kilometers at its closest point from the coast of Venezuela, on the South American mainland. Trinidad has a surface area of 4,769 square kilometers and Tobago 297 square kilometers. A distance of thirty-one kilometers separates Trinidad from Tobago. The capital of Trinidad is Port of Spain; the capital of Tobago is Scarborough. The population estimate for mid-year 2004 was 1,290,646 persons with 95 % residing in Trinidad.

2. Trinidad and Tobago is a firmly established democratic nation which achieved independence from the United Kingdom in 1962 and became a Republic in 1976 The Executive is headed by the Head of State or President and comprises an Executive Prime Minister and Cabinet. The Prime Minister and Cabinet's main functions are the setting of policies to guide the country's development, and the introduction of laws in the Parliament to be passed by the Legislature. When laws have been passed in Parliament, it is the responsibility of the Executive to ensure their implementation.

3. The Legislature called the Parliament is bi-cameral. It consists of the Lower House – the House of Representatives, comprising thirty-six elected Members presided over by the Speaker – and the Upper House – the Senate, comprising thirty-one appointed Senators – sixteen Government, including the President of the Senate who serves as Presiding Officer, six Opposition and nine Independent. The Legislature's primary function is to establish laws for the governance and guidance of all citizens. Recently the Government agreed with the Elections and Boundaries Commission to expand the electoral districts to forty-one instead of thirty-six for the next general election.

4. A Chief Justice heads the Judiciary. It comprises a Supreme Court and the Magistracy. The Supreme Court is made up of the High Court of Justice and the Court of Appeal. The High Court is presided over by twenty-nine Puisine Judges. The Court of Appeal is presided over by eight Judges. At a given sitting any three, one of whom may be the Chief Justice, may preside. The Magistracy is headed by the Chief Magistrate and presided over by forty-two Magistrates, thirteen of whom are Senior. In these courts the work of the Petty Civil Courts and Courts of Summary Jurisdiction in criminal matters is conducted. A paradigm shift with respect to the appellate process within the Caribbean community is now taking place. There is now a newly established Caribbean Court of Justice whose headquarters is based in Trinidad and Tobago. Its establishment began as a need for a Caribbean Court of Appeal to replace the Judicial Committee of the Privy Council in London as the final Court of Appeal for countries in the Region.

5. To date, all fourteen Member States of CARICOM have become signatories under the Agreement establishing the Caribbean Court of Justice, but as it stands the Court immediately has more jurisdiction over trade matters in the CARICOM Market and Economy than it does over judicial appeals in these countries. Several countries including Trinidad and Tobago are yet to get over constitutional and legal hurdles to pass the necessary legislation to enable them to use this Caribbean Court of Justice as their final appellate body. Thus far only Guyana and Barbados has been successful in passing the necessary legislation.

6. The appellate jurisdiction is vested in the first instance in the Court of Appeal, which hears appeals from the High Court, and the Magistrate's Court with a further right of appeal in the Judicial Committee of the Privy Council. The Director of Public Prosecutions, an independent office under the Constitution has the power to institute criminal proceedings, to take over and continue criminal proceedings initiated by any other person or authority and to discontinue proceedings. He may also give a fiat to private citizens to prosecute.

7. Within the last five years, the criminal justice sector generally, and the administration of justice in particular, have seen the introduction of laws designed to aid or strengthen the system itself. One example is the Justice Protection Act 2000, which was meant to address the intimidation and elimination of witnesses to pending cases in order to frustrate their successful prosecution. This is particularly so in criminal cases involving "gang-related" murders and illicit narcotics trafficking. The Act provides for the establishment of a programme for the protection of certain witnesses and other persons (e.g. jurors, judicial and law enforcement personnel and their families) and for matters incidental thereto. However, it is still necessary to pass regulations to govern the implementation of the legislation.

8. As to issues regarding transparency, good governance and measures to combat corruption: the Integrity in Public Life (Amendment) Act 2000 was recently enacted to replace the Integrity in Public Life Act 1987. The new legislation establishes an Integrity Commission, with greater jurisdiction and control over the financial activities and ethical conduct of persons in public life and persons exercising public functions. In 2003, on the invitation of the Office of the Attorney General, an independent consultant held discussions with stakeholders in the private and public sectors. A Report, which was accepted by Cabinet, outlined the proposed anti-corruption strategy consisting of: a programme of public consultations (this has already commenced and takes the form of questionnaire responses invited from select target groups), draft legislation, and public education.

9. The Government of Trinidad and Tobago recognizes the need to develop a comprehensive approach to deal with the problem of corruption, an approach, which goes beyond the singular focus of enforcement of criminal laws to include prevention, encompassing a review of national systems to eliminate the opportunities for corruption in them, and education. The education component has two aims:

- The short-term aim of persuading people that they can speak up on the issue; and
- The long-term aim of changing the society's perception about corruption.

10. Trinidad and Tobago signed and ratified the Inter-American Convention against Corruption in 1998 and since then the country has taken a number of steps to fight corruption including reviewing and updating legislation. The Government has a Prevention of Corruption (Amendment) Bill, which would establish an Anti-Corruption Commission to investigate allegations of corruption and where necessary, to refer matters to the Director of Public Prosecutions for criminal prosecution.

11. The Inter-American Convention Against Corruption Caracas, 29 March 1996 was also signed and ratified by Trinidad and Tobago on 15 April 1998 and aims to promote and strengthen the development by and cooperation among each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

12. The industrial economy of Trinidad and Tobago is more diversified than many of its Caribbean neighbors - with large reserves of petroleum and natural gas, heavy industries such as iron and steel as well as nitro gases and methanol producing enterprises. Additionally, there is a sound infrastructure, including modern telecommunication systems, two (2) international airports, three (3) major cargo ports and a financial services sector comprising, commercial banks, insurance companies and credit unions. The economy in Trinidad is strengthened essentially by petroleum and natural gas and in Tobago by Tourism. Preliminary estimates of GDP indicate that the Trinidad and Tobago economy was expected to grow by 6.2 percent in 2004 compared with 13.2 percent in 2003.

13. The vision of the Government is rooted in the determination to ensure that Trinidad and Tobago attains developed country status by 2020. The Government advocates upholding and advancing the human dignity of every individual, irrespective of race, colour, religion, culture, ethnicity, gender or social origin. Trinidad and Tobago's economic programme is aimed at reducing inflation and unemployment, raising official net international reserves, maintaining exchange rate stability and achieving significant and sustainable economic growth.

1.2 General Situation of Money Laundering and Financing of Terrorism

14. The vulnerability of Trinidad and Tobago primarily exists as a result of its geo-strategic location i.e. between producer countries of South America and consumer markets of the North America and Europe. Trinidad and Tobago's geographic structure with 432 kilometers of open coastline provides convenient drop-off and collection points for illicit drugs. The main areas of activity identified are the Southern and North Western peninsulas of Trinidad, which are closest to Venezuela. Organised crime such as drug trafficking, illegal arms sales and smuggling generate huge sums of money that create the

incentive to “legitimize” the ill-gotten gains through money laundering. Accordingly the Trinidad and Tobago authorities seem to consider illicit drug trafficking to be the primary predicate offence with regard to money laundering. However, The Proceeds of Crime Act 2000 criminalizes money laundering related to all “specified offences”. The Second Schedule makes reference to “specified offences” and these mean all indictable offences. Accordingly, offences such as murder, assault, kidnapping and firearms are predicate offences for money laundering.

15. Although there is no empirical evidence to support the theory that the illicit drug trade accounts for a majority of the crime and violence, which occurs in Trinidad and Tobago, circumstantial evidence makes possible a real linkage. Despite the fact that the country has been experiencing a decrease in serious crime, in general, over the last nine years (January – December 1996 to 2004 recorded a 11.1% decrease); some categories of violent crimes against the person—murders, kidnappings, felonious wounding, and robberies, as well as some categories of property crimes—larcenies and dwelling larcenies, have gradually increased over the same interval.

Drug Seizures 2002-2004

Year	2002		2003		2004	
	Number of Seizures	Quantity Seized	Number of Seizures	Quantity Seized	Number of Seizures	Quantity Seized
Heroin	2	10.38 kg	8	19.69 kg	4	16 kg
Cocaine HCL	1,012	486.18 kg	834	169 kg	1332	590 kg
Cannabis Plants	2,608	2,638.30 kg	3473	299.512 kg	3772	1513 kg
Ecstasy	1	8,420 tablets				

GANG RELATED MURDERS JANUARY-DECEMBER 2000-2003 JANUARY – APRIL 2004

Year	Total no. of Murders	% Contribution	Rank
2000	119	2.5%	# 6
2001	151	3.3%	# 7
2002	172	8.7%	# 3
2003	229	14.8%	# 1
Jan-April 2004	60	8.3%	# 3

Source: Counter Crime and Drug Task Force

16. At the time of the team’s visit, Trinidad and Tobago’s legislative powers were in the process of discussing an “Anti Terrorism Bill” The purpose of the bill is to criminalize and to provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities.³ The bill also provides for the confiscation, forfeiture and seizure of terrorist assets.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of Trinidad and Tobago’s Financial Sector

17. As a result of successful economic reforms introduced in 1995, the economy of Trinidad and Tobago has been experiencing years of successive substantial growth. This has been spearheaded by the petrochemical and manufacturing sectors. Trinidad and Tobago has well-developed and modern banking, communications and transportation sectors. Foreign investment and trade has been flourishing for the last several years and the important petrochemical sector has also spurred growth in other related sectors. The Country’s leading financial institutions are expanding and diversifying their corporate structures by acquiring and establishing subsidiaries and associate companies in other Caribbean countries.

Financial Institutions

18. An overview of the Trinidad and Tobago financial sector (banks, trusts and finance houses) at the end of 2004 gives the following indications:

Banks	6
Trust & Merchant Banks	7
Trust Companies	1
Merchant Banks	4
Finance Houses	6
Total Financial Institutions	24

Source: Ministry of National Security, SSA

19. The Central Bank of Trinidad and Tobago (CBTT) is responsible for the supervision of all institutions licensed under the Financial Institutions Act 1993 and the Insurance Act 1980. These institutions include the commercial banks, trust companies, merchant banks, finance houses, insurance companies and private pension plans. Approximately 80% of the assets of the financial sector in Trinidad and Tobago are held by these institutions. The CBTT uses a Risk Based approach for supervision of AML/CFT issues and requires the Board and Management of each institution under their corporate governance responsibilities to ensure that preventative measures are in place to combat money laundering and financing of terrorist activities. The proper mitigation of AML/CFT risks by the supervised institutions is considered to be integral to the safety

³ Idem note 1.

and soundness of these institutions. CBTT Guidelines on Combating Money Laundering and Terrorist Financing were revised in September 2004 to ensure that the standards required of supervised institutions are consistent with FATF's Revised and eight⁴ Special Recommendations revision of existing Guidelines. These Guidelines are on the Bank's web site at www.central-bank.org.tt.

Securities Market

20. An overview of the capital (securities) market of Trinidad and Tobago gives the following indication:

Classes of Registrants	Market Registrants	
	As at June 30, 2003	As at June 30, 2004
Brokers	10	11
Dealers	2	2
Investment Advisors	18	23
Reporting Issuers	74	75
Traders	7	4
Underwriters	7	7
Self-Regulatory Organizations	2	2
Securities Companies	20	21
TOTAL	140	145

Source: Trinidad and Tobago Securities and Exchange Commission

21. Over the period October 2003 to June 2004, there were many applications to the Trinidad and Tobago Securities and Exchange Commission (TTSEC) while the number of registrants in the various categories varied somewhat. At the end of June 2004, there were one hundred and forty-five (145) registrants with the TTSEC compared with one hundred and forty (140) for the same period in 2003. Meanwhile at the end of June 2004, sixteen (16) securities were registered at the TTSEC compared with twenty-two (22) securities in the same period a year earlier. The number of Debt Securities registered at the Commission reduced substantially (69.2 percent) from thirteen (13) securities in June 2003 to four (4) securities in 2004 while equities registered increased from six (6) in 2003 to eight (8) in 2004.

Securities Registered with TTSEC

⁴ SR IX was not adopted at that time by CFATF Countries.

Classes of Securities	As at June 2003	As at June 2004
Equity Issues	6	8
Collective Investment Schemes	2	2
Debt Securities	13	4
Derivative (Debt) Securities	1	2
Total	22	16

22. The TTSEC, regulated under the Securities Industry Act 1995 (SIA), is responsible for the supervision and regulation of the securities market. The supervisory functions as outlined in the SIA include maintenance of surveillance over the securities market, and the registration, authorization, and regulation of self-regulatory organizations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers. Dealers and investment advisers are “financial institutions” within the definition of that term in the Proceeds of Crime Act 2000. They are required to keep records and develop compliance programmes specified by Section 55 of the Proceeds of Crime Act 2000. The Designated Authority also has the power to enter the premises of any financial institution to inspect records in order to determine whether a compliance programme has been implemented and whether there is compliance with that Act and with any rules or regulations made there under. At the time of the on site visit there were no specific Anti-Money Laundering Guidelines for the Securities Industry.

Stock Exchange

23. The volume of shares traded on the Trinidad and Tobago Stock Exchange (TTSE) increased from 209.2 million over the period October-June 2002/2003 to 299.2 million, an increase of 43% and similarly the value of shares traded increased from \$937.5 million to \$2,205.3 million, an increase of over one hundred and fifty-three (153) percent.

24. Moreover, with the implementation of the Trinidad and Tobago Central Securities Depository, a computerized book entry system, in January 2003, investors buying and selling securities on the Exchange are now better able to process the transfer of ownership of securities very quickly and efficiently. Following on the improved trading performance market capitalization also increased significantly over the review period. At the end of June 2004, market capitalization increased to \$88.7 million, 77% higher than in June 2003. The composite index grew from 560.3 in June 2003 to 904.7 in June 2004, representing an increase of over 61%.

Mutual Fund Industry

25. The combined fund size of the industry increased to \$24.4 billion at the end of June 2004 despite the high levels of liquidity prevailing in the financial system, which has affected the yields on money market and other instruments. This represented an increase of 37.6 percent compared with the similar period for June 2003 and reflected improved performance in both the growth and income and money market funds.

Credit Unions

26. There are now approximately one hundred and thirty-four credit unions in Trinidad and Tobago, whose assets have been estimated at \$4 billion. Assets under management of the top six credit unions range from TT\$234,844,241 to TT\$ 1,030,680,694⁵. Credit Unions have invested in real estate, fixed deposits, mutual funds, local and foreign debt issues and equity shareholdings, travel agencies, guest houses, insurance brokers, security companies and furniture. The Commissioner for Co-operative Development is responsible for the supervision of co-operative societies and credit unions under the Co-operative Societies Act (CSA).

27. At present the Commissioner's main functions consist of the registration of co-operatives and credit unions, administrative compliance with the Act and the oversight of the development of co-operative principles and promotion of the industry. At the time of the on-site visit legislative and administrative framework required to bring into effect the transfer of the supervision of this Sector to the Central Bank was being finalized, with the intention to implement the transfer in the future.

Insurance Industry

28. There are thirty-four Non Life Insurance Companies registered in Trinidad and Tobago of which only twenty-nine are active. There are twenty-four registered Life Insurance Companies in Trinidad and Tobago of which fifteen are active. The numbers of Insurance distributors (brokers) are: 438. The Insurance (Amendment) Act No. 15 of 2004 was passed on May 25, 2004 and transferred the authority for the supervision of the insurance industry from the Supervisor of Insurance, Ministry of Finance, to the CBTT. With the passage of this Act all insurance companies, intermediaries and pension plans registered with the former Supervisor of Insurance under the Insurance Act 1980 have been deemed to be registered with the CBTT as of May 25th, 2004.

29. This change in supervisory authority has provided enhanced co-ordination in the oversight of the financial sector and synergistic benefits from the greater alignment and coherence of the supervisory methodologies regulating similar activities across different financial institutions.

⁵ The buying and selling rates of the Trinidad and Tobago dollar stood at approximately: 6.22 and 6.24 respectively for one United States dollar in June – May 2005.

Insurance Businesses in Trinidad and Tobago

	Numbers of active (registered) Companies 2003	Total Assets as at December 2003 in TT Dollars Million	Total Gross Premium December 2003 in TT Dollars Million
Non Life Insurance:	29 (34)	1,940	1,146
Life Insurance:	15 (24)	16,967	3,949
Composite Companies:	1	1,177	291
Total:	45 (58)	20,084	5,386

Number of insurance distributors: 438

Money Transfers and Cambios

30. Money Transfer Companies are not regulated and supervised in Trinidad and Tobago and the Mission received no official indications from the authorities of Trinidad and Tobago on the size of this industry in T&T. Major global money transfer companies are indicated to have approximately sixty-two agents in Trinidad and Tobago. There are also seven Cambios in Trinidad and Tobago with forty-one branches and they are licensed and supervised by CBTT. The Mission had interview with one Money Transfer Company in Trinidad that is operating region wide and has its head offices in Jamaica. This company at the same time had Cambio agents in sixteen locations in Trinidad and Tobago.

Overview of Designated Non Financial Businesses and Professions (DNFBP's)

Casinos

31. Casinos or Hazard Gaming Rooms are named: "Private Member Clubs" in Trinidad and Tobago. There were twenty private members club registered with the Board of Inland Revenue at the time of the on site visit. These clubs operate as Casinos. In addition at the time of the on site visit there were one hundred and forty-seven recreation clubs, which entertains gambling activities on a smaller scale. Recreational and members clubs must be registered with the Board of Inland Revenue (B.I.R.) before obtaining a license to operate. The B.I.R.-Miscellaneous Tax Department- is empowered to collect taxes from these clubs on their gaming devices under the Registration of clubs Act. The B.I.R conducts field visits and audits to ensure the clubs remit the correct taxes. At the time of the on site visit no system was in place to monitor Private Members Clubs with regards to money laundering and terrorist financing activities.

Real Estate

32. Approximately 50 % of the Real Estate Industry in Trinidad and Tobago is organized through the Association of Real Estate Agents (AREA), a self- regulatory organization (SRO). AREA has been established to elevate the real estate industry from

its previous position where each agency was in complete isolation, one from the other, into a more vibrant, efficient and reliable organization, capable of reflecting a more meaningful image and benefiting the real estate industry and the public throughout Trinidad and Tobago.

33. The Real Estate business is listed as a “relevant business activity” under the Proceeds of Crime Act 2000 and consequently real estate agents are subject to various anti-money laundering duties and responsibilities there under. AREA has introduced standardized Exclusive Listing Agreement forms, a commission rate structure, a computerized Multiple Listing Service and strictly enforceable rules and regulations governing transactions handled by its members. AREA has made significant headway in drafting regulations to control money laundering and promote transparency in the real estate business.

Accountants

34. Accountants of Trinidad and Tobago are organized under two associations: the Association of Chartered Certified Accountants (ACCA) and the Institute of Chartered Accountants of Trinidad and Tobago (ICATT). ICATT is responsible for members of the accounting profession in Trinidad and Tobago. The ACCA is the more developed and regional organization with its head office of Trinidad and Tobago officially known as ACCA Caribbean. This Trinidad based office is the centralized coordinating body which serves as a service provider to Caribbean markets within Jamaica, Guyana and Barbados. While accountants in Trinidad and Tobago do not fall within the definition of a Financial Institution or relevant business activity, they are covered by the general reporting provisions of the POCA.

35. A core function of ACCA is to pioneer the application of global benchmarking standards in various aspects as it applies to the accountant. Approximately 80-90% of all accountants in Trinidad and Tobago are members of the ACCA. As far as the Anti Money laundering framework is concerned, the Mission was informed during its visit to the ACCA head office that international professional conduct regulations that specifically address the whole issue of Money Laundering were being studied at the time of the on site visit as to be mirrored, introduced and implemented in Trinidad and Tobago in the near future.

Lawyers

36. Lawyers in Trinidad and Tobago are organized under the Law Association of Trinidad and Tobago, a body established under Section 3 of the Legal Profession Act (LPA) 1986. Its membership consists of practitioner and non-practitioner members as well as honorary members. The Association is governed by a duly constituted Council (First Schedule, Part A), comprising eighteen members, namely, the President, the Vice-President, and the Treasurer, ten Senior Ordinary members, and five Junior Ordinary members. Under the LPA the Council exercises a number of powers on behalf of the membership/Association. An important power relates to the disciplinary role regarding the professional conduct of members of the legal profession. While lawyers in Trinidad

and Tobago do not fall within the definition of a Financial Institution or relevant business activity, they are covered by the general reporting provisions of the POCA.

37. The Association's main duty and responsibility is to uphold the Constitution and the rule of law. It participates in debates to foster the notion of the supremacy of the Constitution and the law as a whole and comments on any situation concerning the Constitution. The Association aims to achieve its goals at all times in the noble tradition of professional independence, integrity, and social responsibility.

38. The objectives of the Association are to:

- Maintain and improve the standards of conduct and proficiency of the Legal Profession in Trinidad & Tobago;
- Represent and protect the interests of the legal profession in Trinidad & Tobago;
- Protect and assist the public in Trinidad and Tobago in all matters relating to the law;
- Promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;
- Promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;
- Promote, maintain and support the administration of justice and the rule of law.
- Do such other things as are incidental or conducive to the achievements of the purposes set out above.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

Companies

39. The Companies Act 1995 (CA, which came into force on 15th April, 1997) establishes the regime for the incorporation and registration of limited liability companies in Trinidad and Tobago. Legal persons incorporated under this Act are required to notify the Registrar of Companies, using the relevant prescribed forms, of the following:

- Appointments/ changes with respect to directors/company secretaries
- Address of registered office or any changes in this.
- Details as to shareholders are notified via Annual Returns.

40. As currently constituted, the Companies Act requires the notification of data relative to:

- Classes of shares
- Numbers of issued and outstanding shares
- Transfer of shares, shareholders
- Addition to, or reduction of, share capital accounts
- Company indebtedness (all of this information is submitted via the Annual Returns).

41. There is no provision for bearer shares in the Companies Act: Section 30(1) indicates that shares in a company are “personal estate and ... (are) transferable in the manner provided by this Act”; section 195 of the Act deals with transfer of shares and debentures.

Trusts

42. During the visit of the Mission it appeared that the only trust companies existing in Trinidad and Tobago are owned/operated/under the control of the commercial banks (Trust and Merchant Banks: seven (7), Trust Companies: one (1) according to figures supplied by the Trinidad and Tobago authorities). In addition, trusts that are registered, are registered as deeds, i.e., in the Land Registry of the Registrar General’s Department. It should be noted that in Trinidad & Tobago if a trust is established and that trust was involved in transactions with a financial institution, the financial institution would have to satisfy itself that the trust (legal arrangement) had the requisite authorization to carry out the transaction in order to protect their own interests and not risk liability issues.

43. Based on the interviews conducted, there does not appear to be a regulatory authority in place in Trinidad & Tobago that is responsible for legal arrangements, namely trusts, and ensuring that such entities register, at a designated authority, their information regarding the beneficial ownership and control of legal arrangements and notify such authority of any changes to the registered information.

Partnership

44. In Trinidad and Tobago Partnerships whereby two or more persons agree to pool expertise and financial resources and share in the profit and losses of the enterprise are common for the accounting and legal professions.

Sole Trader

45. Sole trader establishments in Trinidad and Tobago consist of an individual who establishes a business, which has no legal personality other than its owner who is personally liable for all the debts of the business.

Non Profit Organizations

46. Non-Profit Organizations in Trinidad and Tobago are corporations organized under special statutes for some purpose other than making a profit and are therefore afforded special tax treatment. The President must approve non-Profit Organizations desirous of the benefit of exemption from tax. Before approval is granted, the organization is examined to determine if it is a bona fide non-profit organization. All approved organizations are required to submit annually, Income and Expenditure statements certified by an accountant. The Board of Inland Revenue reviews these statements to ensure continued compliance.

47. The Registrar of Companies is responsible to check that the non-profit organizations whenever they are being established, file whatever documents they need to file. The number of non-profit organisations registered as of June 2005 was **1,577**,

consisting of Charitable, Religious, and Associations of Like interests e.g. gardening etc. Trinidad and Tobago authorities indicated that data is not stored to indicate the categories of organisations registered as non-profit in a detailed manner but are added to the database by name and data of registration. Also, the nature of work of the non-profit organization may determine where the organization registers, although most register under the Companies Act No. 35 of 1995. The articles of incorporation are required to be vetted by the Registrar of Companies prior to registration and this process allows for some level of screening for the Registrar to verify the bona fides of the proposed Non-Profit organization seeking to be registered.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

48. The combined effects of socio-cultural, demographic and economic change have presented a challenge to the Government of Trinidad and Tobago and its reactions have been underpinned by two (2) basic assumptions:

- The attitudes and capabilities of those persons assigned with a policy making and administrative role
- The capability of a service based economy to possess adequate resources to satisfy the requirements of a growing population while remaining compliant with international benchmarking standards i.e. FATF Recommendations.

49. The Trinidad and Tobago Government recognizes these as important factors to consider as strategic policy is developed since Trinidad and Tobago operates in an increasingly global market place. This strategy is intended to complement and enhance the existing AML framework and ensures the development of a sound CFT framework.

50. In December 2004, the Cabinet of Ministers of Trinidad and Tobago approved of a National Strategy to eliminate Illicit Production and Trafficking of Drugs Produced Naturally or Synthetically and to Promote Related Control Measures (2005-2009). Primarily because of the multi-sectoral character of supply reduction, the Strategy has been disaggregated into 15 strategic objectives each of which is supported by a separate Strategy and Plan of Action to be executed by a Multi-Sectoral National Committee of Stakeholders. The strategy spans a five-year period and among its strategic objectives is the Elimination of the Incidence of Criminal Money Laundering and Promotion of the Confiscation of Criminally Derived Assets. Towards this end, a National Committee established to Develop and Promote a Counter Money Laundering Framework was inaugurated on 7th December 2004 by the Minister of National Security, the CFATF Prime Contact for Trinidad and Tobago.

51. The remit of this Committee, is to promote on a continuing basis, Trinidad and Tobago's compliance with the global benchmarks - the 40+9 Recommendations of the Financial Action Task Force⁶ and to monitor adherence to the relevant United Nations

⁶ SR IX was adopted by the FATF, but not by the CFATF at the inauguration of the NAMLC in 2004. The T&T authorities notwithstanding this took SR IX on board in their AML / CFT vision.

Security Council Resolutions. The Committee includes the following major state regulatory entities:

- The Counter Crime and Drug Task Force (CCDTF)
- The Central Authority of Trinidad and Tobago
- The Central Bank of Trinidad and Tobago.

52. As chair of the National Committee, the Strategic Services Agency's role is pivotal as far as money-laundering initiatives are concerned. The Mission however was not able to ascertain the effectiveness of this National Committee.

53. In January 2005, under the aegis of the SSA, this National Committee initiated a public awareness program providing orientation of all financial sector stakeholders to requirements of Mutual Evaluation Exercises. The following benefited from this programme: the Banking, Insurance the Real Estate and Credit Union and Cooperative Sectors as well as the Legal and Accounting and Auditing Professionals.

54. As indicated previously, the SSA has a very pivotal role for Trinidad and Tobago as far as money laundering initiatives are concerned: At the regional level, the SSA's influence extends itself to Government's regional policy as it relates to crime and security issues. At the forum of the CARICOM Task Force on Crime and Security, the SSA serves as secretariat to the Trinidad and Tobago delegation.

55. At the national level, the SSA has been providing strategic direction to the Trinidad and Tobago Police Service on on-going initiatives to reduce serious crime trends and enhance the service's response capacity.

56. The Government of Trinidad and Tobago furthermore has committed itself to ensure the establishment of a solid and effective AML/CFT legislative framework that is continuously refined. In this regard an extensive range of proposed legislation is being considered such as:

- The Evidence (Amendment Bill)
- The Justice Protection Act, 2000
- The Financial Obligations Regulations
- Proceeds of Crime Act 2000 (Amendments)
- The Police Service Bill, 2002
- The Extradition (Commonwealth and Foreign Territories (Amendment) Bill,
- The Transnational Organized Crime Bill
- The International Criminal Court Bill.

b. The institutional framework for combating money laundering and terrorist financing

57. The institutional framework of Trinidad and Tobago for the combating of money laundering and terrorist financing consists of:

(i) Ministries

58. **Ministry of Finance:** Under section 56 the Proceeds of Crime Act, 2000, the Finance Minister may make Regulations which facilitates the purpose and provisions of the POCA 2000. These Regulations shall be made subject to an affirmative Resolution of Parliament. The section specifically allows the Minister of Finance to:

- Prescribe the types of records to be kept
- Prescribe the type of information to be included by financial institutions.
- Impose a requirement on financial institutions to keep these records
- Stipulate the information to be included in these records
- Time frames and methods for retaining records
- Identify the entities regulated by the POCA 2000
- Measures to ascertain the identity of clients with whom an institution transacts

59. **Ministry of Attorney General, including Central Authority:** The Central Authority Unit in the Ministry of the Attorney General is established pursuant to the Mutual Assistance in Criminal Matters Act 1997 as amended by Act No. 7 of 2001, as amended by Act No. 14 of 2004 which were enacted to deal with the increasing levels of transnational crime. The Unit consists of a Head of Unit who is the Counsel, a Legal Executive and an Administrative Supervisor. The Counsel in the Central Authority Unit, (CAU) assists the Attorney General in carrying out his functions under Sections 3(1) and 3(2) of the Act. The Central Authority Unit receives requests for assistance in any criminal matter from foreign domestic authorities, which upon receipt are immediately vetted, so as to ensure that they comply with the laws of Trinidad and Tobago and can be legally executed. Thereafter they are sent to the relevant agencies. The Central Authority is also responsible for executing extradition requests from issuing and requesting States.

60. **Ministry of Foreign Affairs:** This Ministry functions as the diplomatic channel through which authorities of other countries send requests for extradition and assistance under any MLAT with Trinidad and Tobago. Additionally, the Ministry of Foreign Affairs acts on the advice of line ministries in signing on to relevant international conventions, after having themselves verified that it would be in the best interest of Trinidad and Tobago to do so. Therefore, conventions such as the Vienna Convention would be signed on the Country's behalf through agents of this Ministry, e.g. The Minister of Foreign Affairs.

(ii) **Criminal justice and operational agencies**

61. **The Strategic Services Agency's (SSA):** The SSA is an agency within the Ministry of National Security. It is currently the Agency that is primarily responsible for coordinating the Government AML/CFT programmes at the national level. The SSA was created under the SSA Act, Act number 24 of 1995 and became operation on July 1, 1996. The functions of the SSA are described under Section 6 of the Act. One of the main functions is to develop strategic intelligence and make recommendations to the government on policies with regard to counter narcotics matters. The SSA is divided into four main departments.

62. **The Trinidad and Tobago Police Force:** The Trinidad and Tobago Police Service is responsible for investigating all predicate offences in accordance with the Police Service Act Chapter 15:01. The Police Service has a staff compliment of 6,300 and is headed by the Commissioner of Police, who has over thirty-nine years of service. He reports directly to the Minister of National Security. Trinidad and Tobago has nine (9) police divisions and sixty-eight police stations. Each station is in operation 24 hours a day and is supervised by an Inspector or a Sergeant. The Police Service is funded from allotments made to the Ministry of National Security by Parliament.

63. **The Organize Crime and Narcotics Unit (OCNU):** OCNU forms part of the Trinidad and Tobago Police Force and is principally responsible for investigating drug trafficking offences from which criminal proceeds are most likely to be generated. OCNU also conducts surveillance on behalf of other law enforcement agencies. It has a staff compliment of one hundred and twenty persons (120) and is headed by a Superintendent of Police who reports directly to the Commissioner of Police

64. **The Counter Drug and Crime Task Force (CDCTF):** the CDCTF was established on April 7, 1997 by Cabinet and falls under the purview of the Minister of National Security. Its primary function is to gather intelligence on all criminal activities and disseminate accordingly to other law enforcement authorities for immediate action. The CDCTF is staffed with ten (10) Police Officers, one (1) Customs Officer, and one (1) Immigration Officer, one (1) Attorney at Law on Retainer, one (1) Inland Revenue Officer and other Administrative Staff. The Immigration Officer is the Director of the CDCTF.

65. **The Financial Intelligence Unit (FIU):** The FIU is a division of CDCTF. It was created simultaneously with the CDCTF. This FIU unit conducts amongst others the following activities:

- Receipt of all Suspicious Activity Reports from banks and other financial institutions.
- Analyses of Suspicious Activity Reports to confirm or determine the nature of the suspicion.
- Investigation of those reports, which have been deemed suspicious.
- Criminal Financial investigations both proactively and reactively.
- Conduct of financial investigations utilizing the available legislative tools in the form of Production and Restraint Orders.

- Maintaining of relevant Databases- Training, sensitisation and support of reporting entities.

66. Five of the ten Police Officers forming part of the staff of the CDCTF are assigned to the Financial Intelligence Unit. Following an informal agreement in 1997 by the Strategic Services Agency, the Banker's Association and the FIU, suspicious activities generated by financial institutions are sent to the FIU. From 2000, the enactment of the POCA provided for the receipt of SARs by the Designated Authority. The Designated Authority in the POCA is not the same entity as the FIU. The FIU does not have legislation authorizing it to receive, analyse and disseminate disclosures of STRs and suspicious money laundering activities.

67. **The Designated Authority:** In 2000, the Proceeds of Crime Act (POCA) was enacted and Section 55 of the Act makes provision for the appointment of the Designated Authority responsible for receiving all STRs submitted by financial institutions. In October 2003, an Inspector of Police was appointed as the Designated Authority, via Notice 160 of 2003. His functions are outlined in Section 55 of the POCA. They include among other things, the inspection of any business transaction record or client information kept by a financial institution or person engaged in a relevant business activity and to ensure the implementation of the compliance programme according to the provisions of the POCA. The Designated Authority is now in immediate command of the FIU.

68. **The Customs and Excise Division:** The Customs and Excise Division has a staff compliment of nine hundred (900), headed by a Comptroller, who is supported by four (4) assistants. The Division is divided into several units including legal, canine and border patrol. The legal department with a staff of three (3) attorneys prosecutes all drug cases. The Proceeds of Crime Act gives a Customs Officer similar power to that of police officers in relation to money laundering and forfeiture of the proceeds of crime. However, it should be noted that Customs could only proceed summarily under the Customs Act when it regards importation or exportation of a prohibited substance. In practice, where the offence involves dangerous drugs, drug trafficking charges are preferred and the investigations are then deferred to the Police.

69. Customs Officers have the power under the Dangerous Drug Act to seize and detain cash at the border upon reasonable grounds for suspicions that it represents the proceeds of drug trafficking. Customs plays a significant role in monitoring and intercepting trans-border cash flows. The Customs Declaration Form is provided to every passenger entering Trinidad and Tobago. The passenger is required to fill out this Form to indicate whether or not he or she has TTD \$20,000.00 or its foreign equivalent in his or her possession. A separate Currency Declaration Form has to be completed when funds over the threshold are declared. This Form is detailed in content and helps to determine the source of funds declared.

70. **The Trinidad and Tobago Coast Guard:** The Coast Guard is the division of the Defence Force with lead responsibility for maritime crime interdiction. On its officers is

conferred the power to stop, board and search vessels within territorial waters.

71. Section 6 of the Defence Force Act Chapter 14:01 provides that an Officer, Petty Officer or any man in command of a unit of the Coast Guard has the power to do so if he has cause to suspect that any vessel is engaged in any unlawful operation whatever within territorial waters. He also has the power, if he thinks it necessary, to direct such vessel to proceed to any place as he may specify, and to use such force as may be necessary to compel the vessel to comply with any directions he gives as to the vessel's movements. He is empowered too, to pursue and detain with any assistance, any person whom he has reason to believe is engaged in or assisting in the carrying on of any unlawful operation.

72. **The Immigration Service of Trinidad and Tobago:** Every Immigration Officer in Trinidad and Tobago has the authority and powers of a Police constable to enforce the provisions of the Immigration Act. Immigration Officers are stationed at all ports of entry, and every person seeking admission into the country must appear before such an officer and be examined. They have the power to administer oaths and take evidence in any matter arising under the Act.

73. They can search without warrant any vessel (i.e. ship or aircraft) in Trinidad and Tobago and question any person who desires to enter or leave the country or who they believe is in the country otherwise than in accordance with the Act. They can also inspect any vessel bringing persons to and from Trinidad and Tobago, examine the persons and the baggage carried by it, examine any records or documents relating to such persons and take copies of extracts there-from and may hold and detain such vessel until such inspection and examination are completed.

74. **The Office of the Director of Public Prosecution's (DPP):** The DPP is constitutionally responsible for the prosecution of all crimes in Trinidad and Tobago. It provides advisory services on matters of a criminal nature to all government departments and agencies. The DPP's Office is currently staffed by the following: The Director of Public Prosecutions, one Deputy Director of Public Prosecutions, two Acting Assistant Directors of Public Prosecutions, four Acting Senior State Counsel, three State Counsel III, four Acting State Counsel II, five State Counsel, three Temporary State Counsel, two Senior Legal officers, sixteen Legal Officers and two Para-Legal Officers (who have done their law degrees, but have not completed their bar exams). The main focus of the DPP's office was the successful prosecution of violent crimes such as homicide and kidnapping at the time of the on site visit.

(iii) Financial sector bodies (Government)

75. **The Central Bank of Trinidad and Tobago (CBTT):** The CBTT is responsible for the supervision of all institutions licensed under the Financial Institutions Act 1993 and the Insurance Act 1980. These institutions include the commercial banks, trust companies, merchant banks, finance houses, insurance companies and private pension plans. The Central Bank requires the Board and Management to effectively perform their corporate governance responsibilities and to implement preventive measures to combat

money laundering and financing of terrorist activities. The Cambios also fall under the supervision of the CBTT namely the Foreign Exchange Department.

76. **The Securities and Exchange Commission:** Under the Securities Industry Act 1995, (SIA) the Trinidad and Tobago Securities and Exchange Commission is responsible for the supervision and regulation of the securities market. The supervisory function as outlined in the SIA includes maintenance of surveillance over the securities market, and the registration, authorization, and regulation of self-regulatory organizations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers.

77. Money laundering legislative requirements as stipulated by POCA 2000 apply only to dealers and investment advisers licensed under the SIA and not to all entities in the securities industry whose business includes investing money, acting as trustee with respect to other people's funds or providing financial services involving the transfer or exchange of funds. The Commission is divided into the following sections; Market Regulation and Surveillance; Research; Disclosure, Registration and Corporate Finance; Legal and Administration. The Commission has a staff complement of forty people.

78. **The Credit Union Supervisory Unit:** This Unit is responsible for the supervision of co-operative societies and credit unions under the Co-operative Societies Act (CSA). The mandate of the unit is to develop an appropriate system of financial monitoring and surveillance for the sector. At the time of the on site visit the Commissioner's main functions consisted of the registration of co-operatives and the oversight of the development of co-operative principles. The CSA, which was enacted in 1971, does not require the Commissioner to test licensees for compliance with the POCA 2000. The present staff of the Credit Union Supervisory Unit comprises 3 persons. The legislative and administrative framework required to implement the transfer of the supervision of this Sector to the Central Bank was being finalized at the time of the on site visit.

79. **The Criminal Tax Investigation Unit (CTIU):** This Unit was launched in March 2004 to enable the Inland Revenue Division to deal with the prosecution of criminal tax violations. The mission of the CTIU is therefore to investigate suspected criminal violations of the various Tax Laws, gather and evaluate evidence in respect of the applicable laws and the standard of proof, with a view to successfully prosecuting such matters once there is reasonable probability of conviction before the Courts. Tax crimes include: Tax Fraud, Tax evasion, and related financial crimes

80. Although the CTIU is not directly involved with Anti- Money Laundering and Combating the Financing of Terrorism investigations, it may uncover motives for other serious crimes such as corruption, embezzlement, extortion or kidnapping, and money

laundering which all have tax evasion implications. The CTIU keeps close ties with other law enforcement agencies. These agencies include:

- Counter Drugs Crime Task Force (CDCTF)
- Organized Crime and Narcotics Unit (OCNU)
- Immigration Department
- Customs and Excise Division
- Police Service of Trinidad and Tobago
- Special Anti Crime Unit of Trinidad and Tobago.

(iv) Financial Sector bodies (Associations)

81. **The Bankers Association of Trinidad and Tobago:** This Association was incorporated in 1999 and represents banks as well as other institutions involved in banking and finance (Associates). Branches of foreign banks operating in Trinidad and Tobago are also members of the Association, as well as “Any distinguished person” that is describes as “Honorary Member. The association currently consists of six members, which are the major commercial banks in Trinidad and Tobago. It promotes the consideration and the discussion of all questions affecting Banking and Financial Services in Trinidad and Tobago and abroad. The Association also considers it as one of its missions to set standards, Code of Conducts and Ethics for the conduct of banking business in Trinidad and Tobago.

82. **The Association of Trinidad and Tobago Insurance Companies (ATTIC):** ATTIC was incorporated in 1966 and consists of insurance companies registered in Trinidad and Tobago (ordinary members), subsidiary members which are also registered in Trinidad and Tobago but function under a parent company which is an ordinary member and associate members being persons or firms who are not insurers. The main objective of the Association is to promote and encourage the development of the insurance industry in Trinidad and Tobago and to consult together as to problems affecting this industry. It also considers as one of its main tasks the encouragement of insurers in Trinidad and Tobago in the maintenance of proper standards of insurance practice and has developed a code of conduct to promote standards of ethical behavior among member companies. The membership consists of eleven general insurance companies, seven life insurance companies, one life insurance company and five associate members (totals twenty-four of the forty-five existing insurance companies but with approximately 95 % of the insurance market).

83. **The Co-operative Credit-Union League of Trinidad and Tobago:** This League was established in 1947 and is the national umbrella organization for credit union organizations in Trinidad and Tobago. Two types of credit unions (community based/regional credit unions and Industry based/occupational credit unions) are members of the organization and approximately eighty credit unions of the existing one hundred and thirty one Credit Unions are members of the league (approximately 97 % of the credit union savings share in Trinidad and Tobago). The League is affiliated to the Caribbean Confederation of Credit Unions (CCCU) and the World Council of Credit

Unions (WOCCU) and it promotes and protects the interests of the affiliated Credit Unions

(v) DNFBP and other matters

84. **The Law Association of Trinidad and Tobago:** The Law Association of Trinidad and Tobago consists of practitioner and non-practitioner members as well as honorary members. The main purpose of the association is to maintain and improve the standards of conduct and proficiency and to protect the interests of the legal profession in Trinidad and Tobago. The Law Association has not issued AML guidelines.

85. **The Association of Chartered Certified Accountants (ACCA):** ACCA has a Head Office in Trinidad and Tobago (ACCA Caribbean) and represents a large section of accountants in Trinidad and Tobago. The aim of the ACCA is to promote high professional, ethical and governance standards. The ACCA's Head Office in Port of Spain was at the time of the on site visit in the process of revising global ALM standards in use by ACCA International so as to introduce them for their members in Trinidad and Tobago.

86. **The Institute of Chartered Accountants of Trinidad and Tobago:** Is the local based association for accountants. It was established in 1970 and its objectives are amongst others to regulate the ethics, discipline, professional conduct and standards of its members and students and to promote and protect the welfare and interest of the Institute and the Accountancy profession in Trinidad and Tobago.

87. **The Association of Real Estate Agents (AREA):** AREA has been established to elevate the real estate industry into a more vibrant, efficient and reliable industry. Some of AREA's objectives as far as it contributes to the Anti Money Laundering Framework are as follows:

- To educate and guide the membership in improving its professionalism through continuing educational programmes
- To work with Government and private sector organizations to assist in the development of Trinidad and Tobago

88. AREA has made significant headway in proposing draft legislation to:

- Regulate the Real Estate industry. This will greatly enhance the public's perception of the profession, as certain minimum requirements will have to be met before an agent can practice real estate.
- Control money laundering and promote transparency in Real Estate business.

89. **Jewelers and Dealers in precious metals and stones:** Jewelers and dealers in Precious Metals and stones are listed in POCA 2000 as reporting entities, however there

is no Association of Jewelers or Dealers in Precious Metals and Stones in Trinidad and Tobago, neither are they specifically regulated or supervised.

90. **Private Member Clubs:** There are twenty Private Members Clubs registered with the Board of Inland Revenue which operate as Casinos. In addition there are one hundred and forty-seven recreation clubs, which entertain gambling activities on a smaller scale. There is no Association of Private Members Clubs or recreation clubs in Trinidad and Tobago. Private Members Clubs are monitored by the Miscellaneous Taxes Department of the Board of Inland Revenue through field visits and audits for the collection of gaming taxes by virtue of their registration under the Clubs Act. No AML/CFT guidelines or AML/CFT reporting system is in place for Private Members Clubs.

c. Approach concerning risk

91. The Trinidad and Tobago AML/CFT system is not based on risk assessment in the manner contemplated in the revised FATF 40 Recommendations. Draft AML regulations to implement CDD measures are being considered. There is no evidence of any risk assessment being considered in the formulation of these regulations. The AML obligations as enacted do not allow for simplified or reduced measures and no risk assessment has been done to identify and measure ML/FT vulnerability in the country. The Central Bank of Trinidad and Tobago utilizes a risk assessment approach with regard to its supervisory functions and in evaluating individual institutions. It has also advised its supervised institutions to implement risk-based systems with regard to AML/CFT issues.

d. Progress since the last mutual evaluation

92. The last Mutual Evaluation visit of Trinidad and Tobago took place from June 14-18, 2002. Since then, the following measures that partially address the identified deficiencies have been taken:

- The appointment of a Designated Authority as provided in the POCA.
- The Central Bank of Trinidad and Tobago has drafted and updated Anti-Money Laundering Guidelines in line with the POCA.
- The Seized Assets Fund has been formally established; Section 58 of the POCA refers.
- The Central Bank of Trinidad and Tobago has established mechanisms for the supervision of Insurance Companies.
- Relevant amendments to the POCA have been made to include gateway entities Real Estate Businesses, businesses which deal in the sales of motor vehicles as well as to expand the definition of financial institution to include all market

participants in the securities industry where such participants are not licensed under the FIA.

- Advanced training in the tracing of proceeds of crime has been provided for the Police, staff of the FIU, staff of the Office of the Director of Public Prosecutions as well as for members of the Judiciary.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Recommendation 1

93. Trinidad and Tobago has ratified the “Vienna Convention”. It has been implemented by the following domestic legislation:

- (1) The Proceeds of Crime Act No 55 of 2000 (hereinafter referred to as “POCA”).
- (2) Mutual Assistance in Criminal Matters Act No 39 of 1997 as amended.
- (3) Extradition Commonwealth and Foreign Territories Act, 1985(as amended by Act 20 of 1993, 27 of 1994 and 12 of 2004)
- (4) Dangerous Drugs Act 1991 as amended by Act No 27 of 1994 and No 44 of 2000.

94. Article 3 (1) (b)&(c)(i)-(ii) Vienna Convention and Article 6(1)(a) (i)-(ii) of the Palermo Convention require countries to establish as criminal offences under domestic laws, the knowing conversion or transfer of property; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, and the acquisition, possession or use of property.

95. T&T signed “The Palermo Convention” on the 26th September 2001 but it has not been ratified. There is a Transnational Organized Crime Bill in draft form but it has not been finalized and submitted to Parliament as yet.

96. Money Laundering is criminalised at Sections 43, 44, 45 & 46 of the POCA 2000 as follows:

97. Section 43 of the POCA: Suspicious Dealings with Property:

“A person is guilty of an offence who conceals, disposes, disguises, transfers, brings into Trinidad and Tobago or removes from Trinidad and Tobago any money or other property knowing or having reasonable grounds to suspect that the money or other property is derived, obtained or realized, directly or indirectly from drug trafficking”. This allows the intentional element to be inferred from objective factual circumstances.

98. Section 44 of the POCA: “Concealing or disguising *own* proceeds of crime”, indicates that a person is guilty of an offence if he does any of the following for the purposes of avoiding prosecution for a specified offence or the making or enforcement in his case of a confiscation order or a forfeiture order:

(a) “*Conceals or disguises any property which is, or which, in whole or in part directly or indirectly represents, his proceeds of a specified offence or drug trafficking*”;

(b) “*Converts, transfers or disposes of that property or removes it from the jurisdiction*”. This section indicates that self-laundering is a punishable offence in Trinidad and Tobago.

99. Section 45 of the POCA: Concealing or disguising *another’s* proceeds of crime: A person is guilty of an offence if he commits either acts as discussed in (a) and (b), under section 44 of the POCA, AND:

- He has the knowledge or “*reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person’s of a specified offence or drug trafficking*”.
- This is done “*for the purpose of assisting any person to avoid prosecution for a specified offence or the making or enforcement of a confiscation order or a forfeiture order*”.

100. Section 46 of the POCA: Receiving, etc. another’s proceeds of crime: “*A person is guilty of an offence if, knowingly or having reasonable grounds to suspect that any money or property is, or in whole or in part directly or indirectly represents another person’s proceeds of a specified offence or drug trafficking, he receives, possesses or converts that money or other property*”.

101. Section 43 of the POCA establishes the criminal offence of money laundering however this Section speaks specifically to money or other property obtained or resulting from drug trafficking. Section 44 deals with the conversion or transfer of property known to be the proceeds of a specified offence or drug trafficking. Sections 45 and 46 deal with concealing or disguising one’s own or another’s proceeds of crime. Thus, POCA does implement both Articles 3 (1) and 6(1) of the Conventions, although the Palermo Convention has yet to be ratified.

102. It is also relevant to note that under the POCA the term drug trafficking can be expanded upon to include the offering and offering for sale of illegal drugs or psychotropic substances. However, section 2(1) of the Act defines a ‘specified offence’ as “... *an indictable offence [and]...an offence under the Dangerous Drugs Act and Part 2 of this Act*” (Part 2 of the Act deals with money laundering).

103. The Money Laundering offence extends to all types of property (as defined under section 2(1) of the POCA), that directly or indirectly represents the proceeds of crime (Sections 44, 45 & 46 of the POCA).

104. “*Property*” means real or personal property, whether within or outside the territory and includes:

- (a) *A right, interest, title, claim chose in action, power, privilege*, whether present or future and whether vested or contingent, in relation to property, or which is otherwise of value;
- (b) *A conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for a lesser interest.*
- (c) *A Monetary Instrument*
- (d) *Any other instrument or Securities.* Securities include stocks, bonds, shares, debentures, funds and certificates of deposit.
- (e) *Any Business*
- (f) *A vehicle, boat, aircraft or other means of conveyance of any description*
- (g) *Any other tangible or intangible property.*

105. Part I of the POCA deals with Confiscation of the Proceeds of a Specified Offence, and section 3 (1) states “*Where a person is **convicted** of a specified offence in any proceeding...the magistrate shall, after passing sentence, send the case to the High Court for determination as to whether a confiscation order should be made;*” Section 3 (2) goes on to state “*The Court shall first determine, whether the defendant has benefited from the commission of the specified offence in respect of which **the defendant has been convicted** unless the specified offence in respect of which the defendant has been convicted is a drug trafficking offence in which case the Court shall determine if the defendant has benefited from drug trafficking*” .

106. Thus, where a money laundering offence has been committed under POCA, in order for the Court to assess/determine whether property obtained from the predicate offence is the proceeds of crime for confiscation purposes there must be a conviction of the individual for a specified offence or drug trafficking, pursuant to section 3.

107. The term money laundering is not defined in POCA, however its offences relate to specified offences, which includes all indictable offences or an offence specified in Schedule II of POCA, (section 2 (1)).

108. The offences included under Schedule II are:

- Fraud – under The Income Tax Act (section 119);
- Fraud - under The Corporation Tax Act (section 119);
- Various offences under The Value Added Tax Act, 1989; and
- Infringement of copyright – under The Copyright Act, 1997.

109. Indictable offences also include the offences that are noted in the table below:

FATF Designated Categories of offences	Section of Relevant Legislation	Punishment
Participation in an organized criminal group and racketeering	-While there is no specific legislation in place to address participation in an organized criminal group and racketeering, there exists the common law offence of conspiracy to commit a predicate offence. -Accessories and Abettors Act Chpt. 10:02: provides for trial and punishment of Accessories to and Abettors of Offences	
Terrorism, including terrorist financing		
Trafficking in human beings and migrant smuggling	The Immigration Act Chap: 18:01 Section 40 (g), (h) and (i)	On summary conviction for a first offence to a fine of \$1,000.00 and to imprisonment for 12 months, and on any subsequent conviction to a fine of \$2,000.00 and to imprisonment for 18 months.
Sexual exploitation, including sexual exploitation of children	Sexual Offences Act, Act No. 27 of 1986 (As amended) Section 19	10 years
Illicit trafficking in narcotic drugs & psychotropic substances	Dangerous Drugs Act 1991	
Illicit arms trafficking	Customs Act, Chap. 78:01. / Firearms act Chap. 16:01	
Illicit trafficking in stolen and other goods	Customs Act, Chap. 78:01. Larceny Act Chap. 11:12	
Corruption	Prevention of Corruption Act 11/1987 (Increased Penalty)	Section 3 - Fine of \$20,000 and Imprisonment for 2 years Section 6 - Imprisonment for 7 years
Bribery	Prevention of Corruption Act, 11/1987	On summary conviction - fine of \$2,000 and imprisonment for 4 months. On indictment - fine of \$20,000 and imprisonment for 2 years
Fraud	Forgery Act Chap. 11:13	
Counterfeiting currency	Forgery Act Chapter 11:13, Section 4	Imprisonment for Life
Counterfeiting and piracy of products	Trade Marks Act Chapter 82:81 (As amended by Act No. 25 of 1996), Section 66A	On Summary Conviction - Fine of \$10,000 and six months imprisonment On Indictment - Fine of \$40,000 and 10
Environmental crime	Environmental Management Act, Act No. 3 of 2000, Section 70	Fine of \$100,000 and 2 years imprisonment

Murder	Offences Against the Person Act, Chapter 11:08, Section 4	Death
Grievous bodily harm	Offences Against the Person Act, Chapter 11:08, Section 12 (Wounding With Intent), Section 14 (Malicious Wounding)	Section 12 - 15 years Section 14 - 5 years
Kidnapping illegal restraint and hostage taking	Kidnapping Act, Act No. 21 of 2003, Section 3 (Kidnapping for Ransom)	25 years
Robbery	Larceny Act, Chapter 11:12, Section 24	With Aggravation – 10 years on Summary Conviction and 15 years on Indictment Without Aggravation - 6 years on Summary Conviction and 10 years on Indictment
Theft	Larceny Act, Chap. 11:12, Section 15	10 years
Smuggling	Customs Act, Chap. 78:01 Part X.	
Extortion	Larceny Act, Chap. 11:12, Section 31, 32 and 33	Section 31 - 15 years Section 32 - 5 years Section 33 - 2 years
Forgery	Forgery Act, Chap. 11:13, Section 4(1) (Certain Documents e.g. Wills, Bank Notes, Currency) and 4(2) (Other Documents e.g. Title	Section 4(1) - Imprisonment for Life Section 4(2) - 14 years
Piracy		
Insider trading and market manipulation	Companies Act, Act No. 35 of 1995, Section 305 (Insider Trading)	On summary conviction - fine of \$10,000 and imprisonment for 6 Months

110. Terrorism, including terrorist financing and piracy are not covered under Trinidad and Tobago's legislation.

111. Section 2(1) of the POCA also defines a specified offence as an offence under the Dangerous Drugs Act, amongst other things: the cultivation and trafficking of Dangerous drugs, which are offences under Sections 5(3), 5(3A), 5(7), 7, 8, 9, 11 and 53B.

112. Trinidad and Tobago's legislative architecture in terms of predicate offences for the most part is in keeping with the range of offences in each of the designated categories of offences. Although the scope of the Act appears fairly wide in relation to capturing proceeds of all serious crimes as predicate offences, in practice the mission team was unable to assess the effectiveness of the legislation, as there were no recorded convictions under the Act.

113. The predicate offences consist of specified offences, which include all indictable offences or an offence specified in Schedule II (see above). Thus, predicate offences include all serious offences under T&T law; as such offences would be tried on Indictment.

114. The POCA does not specifically extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. In this regard the legislation should be expanded in order to ensure T&T's full compliance with Recommendation 1.

115. In the POCA the term Money Laundering is not defined. However, Section 46 of POCA sets out an offence where an individual receives etc. another person's proceeds of crime. That is, where one knows or has reasonable grounds to suspect that money or other property is wholly or partly, directly or indirectly representing other person's proceeds of crime and he receives, possesses or converts the said money or property he is guilty of the offence of receiving.

116. ML offences as provided for in the Trinidad and Tobago legislation does include the ancillary offences of conspiracy to commit, attempt, aiding and abetting, facilitating, and counseling the commission in Sections 43 to 46 of the Proceeds of Crime Act 2000.

Recommendation 2

117. Under Section 43 of POCA the offence of money laundering applies to natural persons who knowingly engage in money laundering activity, thus complying with the requirements of Recommendation 2 (please see the full text of s. 43 in the following paragraph).

118. The POCA does permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Section 43 states "*A person is guilty of an offence who conceals, disposes, disguises, transfers, brings into Trinidad and Tobago or removes from Trinidad and Tobago any money or other property knowing or having reasonable grounds to suspect that the money or other property is derived, obtained or realized, directly or indirectly from drug trafficking*".

119. Legal persons are covered in the POCA. Section 16 (1) of the Interpretation Act Ch 3:01 states that "words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, **corporations whether aggregate or sole, and unincorporated bodies of persons.**" Therefore, legal persons can be convicted for money laundering offences.

120. Legal persons can also be subject to civil proceedings with the cause of action being a common law offence but not a statutory one. There have been no instances where legal persons have been sued under parallel proceedings and this is seen as a very rare occurrence in T&T.

121. Natural and legal persons are subject to criminal sanctions but not civil sanctions. A person is defined as both a natural and legal person (definition is found in the Interpretation Act) and the sanctions set out in Section 53 of the POCA include: on summary conviction a ten million dollar (TT\$10M) fine and ten (10) years imprisonment,

and on conviction on indictment a twenty-five million dollar (TT\$25M) fine and fifteen (15) years imprisonment. Where a person contravenes Section 55 of the Act (this section deals with duties of financial institutions and relevant business activities) that person may be punished on summary conviction to a fine of five hundred thousand (TT\$500,000) dollars and imprisonment for two years; or on conviction on indictment that person is liable to a fine of three million (TT\$3M) dollars and imprisonment for seven years.

122. The Authorities have not implemented legislation to provide dissuasive criminal or administrative sanctions for money laundering against a company directly. In its current form the legislation only penalizes a director, officer or agent (POCA section 57 (2)) and the company may continue to trade. Any sanctions imposed against the director, officer or agent may not necessarily have an impact on the company's ongoing operations and thus may not serve as an effective deterrent to a company in the same way [for example] that withdrawing, restricting or suspending the company's licence would serve.

Money Laundering	2001	2002	2003	2004
Investigations	275	254	165	80
Prosecutions	-	6	-	34
Convictions	-	-	-	-

Source: Counter Drug and Crime Task Force

123. Statistics on investigations, prosecutions and convictions based on money laundering cases between 2001 and 2004 received from the Trinidad and Tobago authorities indicated no convictions. The fact that for money laundering offences the POCA only recognizes property as being the proceeds of crime where a person has been convicted of a predicate offence may be the reason for not having any convictions at the time of the on site visit. However, according to additional information received from these authorities: following extensive investigations into the award of contracts for the construction of the New Terminal Development at Piarco International Airport in Trinidad several individuals and companies were charged in 2002 with offences of fraud, corruption and money-laundering. Charges were laid against eight (8) persons and three (3) companies for offences arising out of this investigation. Some of the persons were charged with money-laundering offences, however these matters are ongoing before the Courts and no convictions were recorded up to the date of the on site visit.

124. In light of these findings the mission team is concerned with the level of implementation and effectiveness of the AML/CFT systems in place in Trinidad and Tobago and the focus on money laundering and proceeds of crime issues at the time of the on site visit. Authorities in Trinidad and Tobago on the other hand maintain comprehensive statistics on drug trafficking and other predicate offences that are conducive to ML offences. Awareness training provided to financial institutions 2001 and

onwards has encouraged the streamlining of processes which has impacted positively on the quality of SARs being submitted to the FIU. A corresponding decrease in quantity has been noted.

2.1.2 Recommendations and Comments

125. The T&T authorities may wish to consider defining the term money laundering in the POCA and also, for completeness sake, broadening the scope of section 43 beyond drug trafficking to include “or a specified offence”. Predicate offences for ML in POCA should also be extended to conduct occurring in another jurisdiction that would have constituted an offence had it occurred domestically. Terrorism, including terrorist financing, and piracy should be covered under Trinidad and Tobago legislation.

126. The T&T Authorities have indicated that they are in the process of preparing the Proceeds of Crime (Amendment) Bill 2005, which will seek to strengthen the application of the POCA. At the moment it is still in the drafting stage and has not been laid in Parliament, although this is expected to happen soon. Also, the T&T Authorities are considering Draft Financial Obligations Regulations to strengthen their AML regime; however no time frame has been given as to when such Regulations will become law. T&T authorities are recommended to amend and introduce the necessary legislation as a matter of priority in order to effectively address possible AML (CFT) offences.

127. The mission team as indicated earlier is concerned to note that despite the seeming availability of legislation there were few prosecutions and no conviction of money laundering cases at the time of the on site visit. This may be the case due to lack of the Financial Obligation Regulations, adequate FIU legislation, sufficient resources (staff) and training in the area of investigation and prosecution of money laundering offences, and a limited focus on money laundering and proceeds of crime issues by relevant authorities. Trinidad and Tobago government is recommended to address these issues swiftly in order to ensure that any perpetrators are dealt with.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	NC	<ul style="list-style-type: none"> • For money laundering offences the POCA only recognizes property as being the proceeds of crime where a person has been convicted of a predicate offence. • Terrorism, including terrorist financing and piracy is not covered under Trinidad and Tobago legislation as predicate offences. • Predicate offences for ML do not extend to conduct occurring in another jurisdiction that would have constituted an offence had it occurred domestically. • The Mission concluded that AML offences are not effectively investigated, prosecuted and convicted. There were no ML convictions to date of the on site visit. • The money laundering legislation does not appear to be effective

		as there have been no convictions in 6 years.
R.2	PC	<ul style="list-style-type: none"> • There are no dissuasive criminal or administrative sanctions for money laundering against a legal person directly. • The Mission concluded that AML offences are not effectively investigated, prosecuted and convicted. There were no ML convictions up to date of the on site visit.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.2 Description and Analysis

Special Recommendation II

128. T&T is not a party to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and has no legislation enacted criminalizing the financing of terrorist consistent with Article 2 of the Terrorist Financing Convention⁷. Thus, currently no offences exist for terrorist financing in T&T.

129. Terrorist financing is not an offence and therefore cannot be a predicate offence for money laundering⁸.

130. In a hemispheric context T&T is party to the OAS Inter-American Convention Against Terrorism 2002, which improves regional cooperation in the fight against terrorism, thereby enhancing hemispheric security; commits parties to endeavor to sign and ratify the relevant U.N. anti- terrorism instruments (a major element in U.N. Security Council Resolution 1373); commits parties to use the recommendations of the Financial Action Task Force (FATF) and other specialized entities as guidelines in taking measures to prevent, combat and eradicate the financing of terrorism; denies safe haven to suspected terrorists, both as refugees and asylum-seekers, and denies use of "political offence" exception by suspected terrorists to prevent extradition or rendering of mutual legal assistance; extends the terrorist acts covered under the relevant U.N. anti-terrorism instruments to financial crimes (e.g., money laundering) and other provisions of the U.N. Convention Against Transnational Organized Crime, just to state a few.

131. Presently, there is no domestic legislation which criminalizes terrorism but, there is a draft Anti-Terrorism Bill which was passed in the House of Representatives on Friday 18th February, 2005 and will be debated in the Senate⁹. The purpose of this Bill is to criminalize and to provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities. The Bill also provides for the confiscation, forfeiture and seizure of terrorists' assets. This Bill seeks to give effect to Trinidad and Tobago's international obligations to implement the United Nations

⁷ Idem note 1

⁸ Idem note 1

⁹ Idem note 1

Security Council Resolution 1373 (“Resolution 1373”) that was adopted in the aftermath of the terrorist attacks on the United States on September 11, 2001.

2.2.2 Recommendations and Comments

132. T&T should introduce diligently the proposed legislation criminalizing the financing of terrorism, terrorist acts and terrorist organizations, making such offences money laundering predicate offences and sign and ratify the Terrorist Financing Convention.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> There is no legislation in T&T criminalizing terrorist financing¹⁰

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

2.3.1 Description and Analysis

Recommendation 3

133. The POCA (section 3(1)) provides for the confiscation of property where a person is convicted of a specified offence (this comprises all indictable offences, including money laundering). As noted above, financing of terrorism is not an offence and thus not a predicate offence and therefore not captured by the current legislation¹¹.

Confiscation of assets / money related to crime in general:

2001	2002	2003	2004	2005
Nil	Nil	TT\$ 88,600.00	Nil	Nil

134. Section 3(1) of POCA states that Confiscation is allowed where it appears to the Magistrate or DPP that the person convicted may have benefited and has or may have realizable property. The word “benefit” in relation to specified offences which are not drug trafficking offences is defined in Section 3(3) as *property as a result of or in connection with its commission and the benefit is the value of the property so obtained; or derivation of a pecuniary advantage as a result of or in connection with its commission, and the benefit is the money value of the pecuniary advantage.*

135. Additionally, there is provision for a confiscation order to be made where there is an “aggravated benefit” totaling one million dollars or more; or one million dollars or more when taken together with any benefit assessed in respect of any previous specified

¹⁰ Idem note 1

¹¹ Idem note 1

offence other than a drug trafficking offence in the relevant period (s5 POCA). Similarly, “realizable property” is defined in the POCA as *any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by the Act*. Section 8(8) defines what constitutes a “gift” under the Act and section 8(1) states that the *realizable amount is the total values at that time of all the realizable property held by the defendant; less where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by the Act*. Thus, a confiscation order can extend to a third party to whom the defendant has directly or indirectly made a gift.

Restraint Orders	2001	2002	2003	2004	Comments
	One	Nil	Nil	Two	One on 09/07/04. Two (2) on 30/07/04.
Confiscation Orders	Nil	Nil	One	Nil	One on 19/12/03. TT\$ 88,600 Confiscated.

Source: Office of the Director of Public Prosecution.

136. The Restraint Order in 2001 was obtained restraining in excess of two million five hundred thousand (\$2,500,000.00) TT Dollars relative to a drug trafficking charge preferred against two persons in 2001. The substantive drug trafficking charge was dismissed on 9th July 2002 and consequently the Restraint Order was discharged in the High Court on 19th July 2002. The Confiscation Order made in 2003 pertained to a conviction in a drug trafficking matter. The Restraint Order in 2004 was obtained restraining the sum of one hundred ninety thousand (\$ 190,000.00) TT Dollars relative to a money laundering investigation where the predicate offence pertained to a fraud offence.

137. The POCA also makes allowance for the variation of a confiscation order to increase the amount of property or realizable property by virtue of Sections 17 and 24 respectively, where the amount the person is ordered to pay is less than the amount assessed to be the value of his proceeds of a specified offence.

138. Section 9 sets out the standard of proof applicable under the Act as to whether a person has benefited from an offence (s. 9(a)); or the amount to be recovered (s. 9(b)); is the standard applicable in civil proceedings. That is, the standard of proof is not as high as criminal proceedings (beyond a reasonable doubt); it is that it is more probable than not that it occurred, or a lower standard.

139. Section 18 of POCA provides for provisional measures detailing the circumstances in which restraint and charging orders can be made. Unlike confiscation

orders, there does not need to be a conviction; it is sufficient if proceedings have been instituted for an offence to which the POCA applies. Where proceedings have not been concluded or where an application has been made for fresh determinations via Sections 15, 16 or 17 and the court is so satisfied, then these measures are exercisable. Sections 19 and 20 provide details on restraint and charging orders respectively. These options are exclusive of each other and cannot be combined in relation to the same property (see section 19(4)).

140. Section 19 (1) of the POCA makes provision for the issuance of restraint orders.

- The High Court may by Order (hereinafter referred to as a “restraint order”) prohibit any person from dealing with any realizable property, subject to such conditions and exceptions as may be specified in the order.
- Provision as the Court thinks fit for living expenses and legal expenses
- Persons who are entitled to make a restraint order
- Application for discharge or variation by affected persons.
- Procedure for making of Orders.
- Appointment of receiver
- Where the High Court has made a restraint order, a police officer may, for the purpose of preventing any realizable property being removed from Trinidad and Tobago, seize the property.

141. Similar provisions apply for charging orders. Section 18 of the POCA provides for restraint and charging orders. Such orders are relevant where proceedings have been initiated in Trinidad & Tobago under this Act and the proceedings have not concluded; an application under the Act has not concluded; or the Court is satisfied that a person will be charged and an application may be made under this Act. Such orders give the Court the power to preserve the realizable property until the conclusion of the proceedings.

142. Applications for Restraint Orders and Charging Orders may be made *ex-parte* pursuant to sections 19(6)(b) and 20(3)(b) respectively of the POCA.

143. The POCA provides for the Designated Authority to have power to carry out the functions of identifying and tracing property that may become the subject of confiscation orders. However, the current legislation is prohibitive in that production orders (section 32) and search warrants (section 33) are limited to offences under the Dangerous Drugs Act and the Second Schedule of POCA (see the definition of specified offence under section 2(1) of the POCA).

144. A bona fide third party can apply to the court for a discharge against any property which (s)he believes is wrongly the subject of an order. In such circumstances the third party must provide evidence to substantiate such claim.

145. Currently there is no provision in T&T’s legislation that provides for taking steps to prevent or void actions, whether contractual or otherwise, where the persons involved

knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

2.3.2 *Recommendations and Comments*

146. The T&T authorities should consider expanding/widening the scope of offences that are subject to production orders and search warrants by expanding the definition of a “specified offence” contained in section 2(1) of the POCA. That is, as it currently stands under the POCA production orders and search warrants (sections 32 and 33) can only be obtained where an offence is committed under the Dangerous Drug Act or Part 2 of POCA, which deals with ML offences. In effect what this means is that investigations by the authorities into all other predicate offences that are captured by the AML legislation are severely restricted. The current limited scope of the legislation’s effect on investigations may offer some explanation as to the non-existent convictions for ML offences and confiscation orders.

2.3.3 *Compliance with Recommendations 3*

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • Provision for confiscation under the POCA is not widely used/implemented. There has been no confiscation of assets under the POCA for ML offences. • Law enforcement agencies are limited in their powers to obtain production orders and search warrants under the POCA in order to identify and trace property that may become subject to confiscation. Such orders can only be obtained for offences under the Dangerous Drug Act or Part 2 of the POCA (ML offences) [pursuant to the definition of “specified offence” contained in section 2 of the POCA].

2.4 *Freezing of funds used for terrorist financing (SR.III)*

2.4.1 *Description and Analysis*

Special Recommendation III

147. Presently there is no domestic legislation that deals with terrorist financing and freezing of funds for terrorist financing¹². The Anti-Terrorism Bill, 2004 deals with the freezing of terrorist property but does not apply to freezing of terrorist finances and in any event the said Bill was not legislated at the time of the on site visit.

2.4.2 *Recommendations and Comments*

¹² Idem note 1

148. T&T should introduce diligently the proposed legislation criminalizing the financing of terrorism, terrorist acts and terrorist organizations, making such offences money laundering predicate offences, and sign and ratify the Terrorist Financing Convention.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR. III	NC	<ul style="list-style-type: none"> • There is no legislation that deals with freezing or confiscating terrorists' funds in accordance with the relevant United Nations Resolutions¹³.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

Recommendation 26

149. The Government of Trinidad and Tobago established the CDCTF on April 7, 1997 and it falls under the purview of the Minister of National Security. Its primary function was to gather intelligence on all criminal activities and disseminate accordingly to other law enforcement authorities for immediate action.

150. The FIU is a division of the CDCTF. It was created simultaneously with the CDCTF. The functions of the Financial Intelligence Unit are as follows:

- i. Conduct criminal investigation both proactively and reactively;
- ii. Conduct money-laundering investigations;
- iii. Receives and carry out investigations of Suspicious Activity Reports (SAR's);
- iv. Deals with confiscation according to the Proceeds of Crime Act;
- v. Provides training for entities by virtue of the Proceeds of the Crime Act.
- vi. Ensures the implementation of compliance programmes by financial institutions.

151. Following an informal Agreement in 1997 by the Strategic Services Agency, the Banker's Association and the FIU, all SAR's generated by financial institutions were sent to the FIU. Some financial institutions have complied with the agreement by submitting

¹³ Idem note 1

SAR's to the FIU while other such as Credit Unions and DNFBBs have not. This is mainly due to lack of awareness and the absence of the financial Obligation Regulations.

152. In 2000, the Proceeds of Crime Act (POCA) was amended and Section 55 of the Act made provision for the appointment of the Designated Authority responsible for receiving all STR's submitted by financial institutions. In October 2003, a male Inspector of Police was appointed as the Designated Authority, via Notice 160 of 2003.

153. The functions of the Designated Authority are outlined in Section 55 of the Act. They include among other things, the inspection of any business transaction record or client information kept by a financial institution or person engaged in a relevant business activity and to ensure the implementation of the compliance programme according to the provisions of the POCA. The Designated Authority is now responsible for supervising the FIU.

154. Section 55(3) of the POCA provides for the reporting of suspicious transactions by financial institutions to the Designated Authority who in the exercise of his functions to deal with these reports must apply for and obtain an ex parte order from a Judge of the High Court and show reasonable cause in order to obtain a warrant to enter premises to inspect records and make notes thereon or copies thereof.

155. The Designated Authority under section 55(8) of the POCA shall regard and deal with all information and documents obtained in the course of his duties as secret and confidential and if he communicates or attempts to communicate such information to any person or anything contained in such documents is guilty of an offence. The state of affairs is further complicated because the Act is silent as to whom the Designated Authority can disseminate information disclosed as suspicious transactions.

156. These provisions on their face inhibit the Designated Authority from disseminating disclosures of suspicious transactions and communicating and interacting with other appropriate domestic AML/CFT authorities in order to obtain relevant information concerning suspected money laundering or financing of terrorism activities.

157. The form on which suspicious transactions should be reported to the Designated Authority is specified in the Third Schedule to the POCA and the FIU has been providing guidance to financial and other reporting parties regarding the manner of reporting /SAR's. The FIU provided training in 2004 to two (2) insurance companies and one (1) money remittance agency, on the manner of reporting. At the time of the Mutual Evaluation, a training session was scheduled with one of the above-mentioned Insurance companies. Two other Insurance Companies and a Trust Company made request to the FIU for training relating to the AML/CFT regime. They are likely to receive training in the near future.

158. The FIU does not have direct or indirect access to financial or administrative information. The lack of relevant legislative framework contributes to this deficiency. The FIU however has direct online access to the database of the Trinidad and Tobago

Police Service and by virtue of its multi-agency composition; there are administrative mechanisms in place which facilitate the unit's access to information.

159. Under Section 32 of the Proceeds of Crime Act, a Police Officer has the ability to apply to a Judge for a production order, compelling the production of financial information from reporting parties during the investigation of Drug Trafficking or Money Laundering Offences. The FIU does not have the authority to directly obtain additional information from reporting bodies.

160. Although there is no legal framework authorizing the FIU to disseminate financial information to domestic authorities for investigation or action, it is done in practice, particularly with the Organized Crime and Narcotics Unit (OCNU).

161. The FIU falls under the Director of the CDCTF on whom it is dependent for financing. The Inspector in command of the FIU must first consult with the Director before administrative decisions are taken. The FIU depends on the staff of the CDCTF to perform its administrative work. All Requests made to the FIU are first forwarded to the Director of CDCTF before they are executed. The Director of the CDCTF represents the FIU at Plenary meetings and foreign missions.

162. Information held by the FIU is kept on computers. Passwords and hardlock propriety devices securely protect the information on these computers. These computers are accessible only by FIU Officers. It is not regulated by law how the FIU should disseminate information.

163. The FIU does not prepare and publish periodic reports in relation to its operations. The CDCTF prepares a monthly report in this regard and sends it directly to the Minister of National Security. This report is kept confidential.

164. The FIU has applied for membership of the Egmont Group and has been informed that the FIU is not the Designated Authority under the Proceeds of Crime Act. Also, the absence of CTF Legislation in Trinidad and Tobago is said to make the possibility of this application receiving a favorable response very remote. The FIU is aware of the Egmont Group Statement of Purpose and its Principles for Information Exchange and takes cognisance of them in its methods of sharing information with foreign counterparts.

Recommendation 30

165. The Financial Intelligence Unit (FIU) is a sub unit of the Counter Drug Crime Task Force (CDCTF). The CDCTF is staffed with ten Police Officers, one Customs Officer, and one Immigration Officer, an Attorney at Law on Retainer, and other Administrative Staff. The Immigration Officer is the Director of the CDCTF. Five of the ten Police Officers are assigned to the Financial Intelligence Unit. The Designated Authority is responsible for the FIU. He reports directly to the Director CDCTF, who in turn reports to the Minister of National Security. The Ag Director of the FIU is a Cabinet appointed member of the National Anti Money Laundering Committee (NAMLC).

166. Staffing is a major concern for the FIU. The strength of the staff (five police officers) is highly inadequate to carry out its demanding functions. It would be difficult if not impossible for these officers to properly analyze and investigate the large number of suspicious transaction reports that are submitted by reporting entities. The physical accommodation of the FIU is insufficient to accommodate the present staff. There is urgent need for additional space to conduct interviews and for future expansion. The Financial Intelligence Unit lacks the technical resources required to perform its various functions. A Forensic Accountant and an Analyst would greatly improve the technical capabilities of the Unit. Additional needed staff includes: Police Officers, Attorneys at Law, analysts and administrative staff.

167. Funding for the FIU is derived from monies allocated to the Ministry of National Security by Parliament from the Consolidated Fund. The FIU does not have its own budget; it depends on funds allocated to the CDCTF by the Ministry of National Security. It means therefore that the FIU is not in a position to negotiate on its own behalf with the Government for financial support. The effectiveness of the FIU is restricted due to limited funding.

168. The FIU has created the following alliances:

- Internal Strategic Alliances
- External Strategic Alliances

Internal Alliances

- Attorney General Office
- Central Authority
- Customs
- Police Services (Joint Intelligence & Interdiction Strategy)
- Immigrations (Fraud Squad)
- SIA (Strategic Intelligence Agency)
- Office of the Director of Public Prosecution
- Board of Inland Revenue
- Special Anti-Crime Unit of Trinidad and Tobago
- Anti Corruption Unit
- Registrar General Department
- Local Financial Institutions carrying on relevant business
- SSA (Strategic Services Agency)

External Alliances

- Other FIU'S in the Caribbean e.g. Bahamas and Barbados
- Providing evidence regionally.
- Providing evidence in the United Kingdom

169. The Staff of the Financial Intelligence Unit was required to undergo psychological evaluation, polygraph testing and character checks before being accepted into the FIU. With the assistance of the Drug Enforcement Administration (DEA), polygraph tests were conducted on two junior members of staff in July 2004. The results

were experienced as to be constructive and positive. A similar examination is likely to be conducted in August of 2005 on senior staff. It is the policy of the FIU that if a member fails the test he would be required to leave the Unit.

170. Three Officers were accredited financial investigators having been on attachments to foreign financial investigative unit, including the British Columbia Integrated Proceeds of Crime Unit in Vancouver, Canada. The officers of the FIU have attended basic and advance financial investigations courses and other money laundering seminars organized by Caribbean Anti-Money Laundering Programme (CALP).

171. Some of the issues covered in these training courses were:

- Sources of financial information;
- Production Orders;
- Restraint Orders;
- Prosecutors Statements;
- Burden of Proof;
- Confiscation and the Proceeds of Crime;
- Money Laundering;
- Asset Tracing;
- Trend Indicators;
- Searches;
- Briefing and Presentation;
- Statement taking;
- Investigative interviewing;
- Intelligence and Informants;
- Link Charting (manual methods);
- Civil Forfeiture;
- Confiscation orders;
- Net worth analyses;
- Concealed Income Analyses;
- Forensic accounting;
- Computers & Computer Evidence;
- Base designer;
- Basic narcotic investigations;

172. The staff also participated in practical in-house training in financial investigations provided by the Hertfordshire Constabulary and UK Customs. Areas covered during those training include among other topics, preparation of prosecutors statement, confiscation and proceeds of crime, money laundering typologies, investigative interviewing, intelligence gathering, forensic accounting, link charting and processing of computer evidence.

173. Training is being sourced for the two junior members of staff so as to have them certified. The Police officers of the FIU are all experienced police investigators and two officers received AML/CFT training at the Regional Drug Law Enforcement Training

Centre (REDTRAC) in Jamaica. Prior to joining the FIU these officers were assigned to general detective duties and were exposed to all predicate offences investigations.

Recommendation 32

174. The Staff of the FIU meet annually to review the investigative techniques used and assess their effectiveness. New strategies are developed and implemented at these meetings. These meetings are usually held at the end of each year. No information was provided to the Mission to indicate whether any new strategies had been developed or implemented recently by the FIU.

175. The FIU maintains comprehensive statistics on matters relevant to the effectiveness and efficiency of its systems for combating money laundering. The Mission however is concerned with the overall level of review of effectiveness of the system for combating ML and FT. Despite the fact that most SAR's were submitted by one money remitter in the years 2002, 2003 and 2004, no actions were undertaken by supervisory authorities in Trinidad and Tobago for closer scrutiny and supervision of the money transfers sector in Trinidad and Tobago and to monitor also closer the reporting trends of all other financial institutions. Also there has been no money laundering conviction between 2001 and 2004 based on findings related to SAR's.

176. In terms of SAR's received and disseminated, the following statistics were provided to the Mission by the FIU:

SAR RECEIVED	2001	2002	2003	2004
FINANCIAL INSTITUTIONS	283	834	2,834	9,516
DNFBP	-	-	-	-
OTHER BUSINESS/OR PERSONS	-	-	-	-
TOTAL	283	834	2,384	9,516

SAR Received	2001	2002	2003	2004
One money transfer company	8	580	2219	9436

Financial Institutions & Others	275	254	165	80
Total	283	834	2384	9516

Source: Received from The Financial Investigations Unit

SAR's resulted in the following figures on investigations, prosecutions and convictions:

SAR	2001	2002	2003	2004
ANALYSED	283	834	2,384	9,516
DISSEMINATED	-	-	30	6
INVESTIGATIONS	275	254	165	80
PROSECUTIONS	-	6	-	34
CONVICTIONS	-	-	-	-

Source: Received from The Financial Investigations Unit

177. The SAR's in 2003 were disseminated as follows:

a: Three pertained to suspected drug trafficking activities and were disseminated to the operations sub unit of the Counter Drug Crime Task Force.

b: Twenty seven pertained to prostitution and were disseminated to the Trinidad and Tobago Police Service.

178. As indicated above, the Designated Authority was appointed in August of 2003 and Financial Institutions and relevant businesses were more vigorously apprised by the FIU of their obligations under the POCA to submit SAR's to the Designated Authority. As a consequence more reports were being filed during the year 2004. The authorities of Trinidad and Tobago also indicated that especially money remitters were motivated to report suspicious transactions in this period. This resulted in money remittances to and from South America being flagged as suspicious and sent to the FIU electronically. As stated earlier, around ninety percent of the reports were filed by one money remitting institution. The six SAR's in 2004 were disseminated to the operations sub unit of the

Counter Drug Crime Task Force. The FIU did not receive any request for assistance from supervisory bodies.

2.5.2 Recommendations and Comments

Recommendation 26

179. The authorities should proceed quickly to enact FIU legislation empowering the FIU to carry out its diverse functions.

180. The authorities should introduce provisions for continuous (and advanced) training for the Designated Authority, the Training Officer and other staff within the FIU. If they are adequately trained, they would be better equipped to perform their respective functions by providing training to reporting entities.

181. Periodic reports should be prepared by the FIU in relation to its operation in order to test its growth and effectiveness. This report should also serve to show ML and TF trends so that the authorities of Trinidad and Tobago would be able to react and adapt their AML/CFT strategies and assess the risk areas in their financial institutions. The FIU report should also be made available in particular to reporting entities and to the public for scrutiny in the interest of transparency and accountability.

182. The Evaluation Team is concerned with the fact that most SAR's were submitted by one money remitter up to 2004 and that, despite this, no actions were undertaken by supervisory authorities in Trinidad and Tobago for closer scrutiny and supervision of the money transfers sector and also evaluate the reporting habits of all other financial institutions.

183. The required legislative framework should be implemented with the view to gain membership to the Egmont Group of FIUs. Admission to Egmont would enhance the capability of the FIU to share information with other counterparts, which would in turn improve its efficiency.

184. The authorities should consider strengthening and restructuring the staff of the FIU so as to encourage self-sufficiency and operational independence.

Recommendation 30

185. Budgetary and staffing constraints are of significant concern to the FIU. These constraints should be urgently addressed. The physical accommodation of the FIU is inadequate to accommodate its present staff. The FIU is experiencing difficulties in performing its functions under its present conditions. Additional technical resources should also be provided to the FIU in order to improve its capabilities. Training for the present staff of the FIU came from international assistance. The FIU should consider establishing a training programme for its staff. Coordinating of workshops/ seminars in conjunction with the SSA would assist greatly in this effort.

Recommendation 32

186. There are statistics available that can speak to the efforts made in the AML/CFT and other related crime areas by the different Trinidad and Tobago authorities. However, these statistics could be in some occasions specifically directed to the AML/CFT efforts by some government (including the Magistrates) entities.

187. Review of the effectiveness of the FIU systems to combat ML and FT should be more thoroughly and should produce more tangible results also with regard to other relevant stakeholders involved. This review should for example have led to tighter supervisory measures on money remitters that according to statistics submitted are seemingly seriously confronted with transfer of illegal drugs money.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • There is no (legally established) FIU that receives, analyses and disseminates financial information (FIU legislation not introduced to clearly indicate the powers of this entity). • The FIU lacks the legal authority to obtain and disseminate financial information. • Operational independence and more autonomous structure (reconsider “designated authority structure) of the FIU is needed. • The FIU does not prepare and publish periodic reports of operations, typologies, trends and its activities for public scrutiny.
R.30 ¹⁴	PC	<ul style="list-style-type: none"> • The strength and structure of the FIU is inadequate to meet its needs. • Ongoing training is necessary.
R.32 ¹⁵	PC	<ul style="list-style-type: none"> • Review of effectiveness of AML/CFT systems should be introduced and available review systems thoroughly reevaluated.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and Analysis

Recommendation 27

¹⁴ See also factors mentioned in rating boxes: 2.6.3, and 3.10.3.

¹⁵ See also factors mentioned in rating boxes: 2.6.3, 3.13.3, 6.3.3, 6.4.3, and 6.5.3.

188. In April of 1997 the Counter Drug-Crime Task Force (CDCTF) was created via a Cabinet Minute. The Financial Investigations Unit (FIU), which serves the dual role of Financial Investigations and Financial Intelligence, was created within the CDCTF and designated as the law enforcement body mandated to investigate all cases of suspected money laundering pursuant to drug trafficking. With the enactment of the Proceeds of Crime Act 55 of 2000 the role and functions of the FIU expanded to include money laundering for all indictable offences and offences under the Second Schedule of the Act that may have any element of benefit. The effectiveness of the investigations on ML however do not seem to be there taking into account the statistics on received and analysed SAR's and the statistics on prosecutions and convictions for ML offences that were nil up to the visit of the Mission.

189. The Organized Crime and Narcotics Unit (OCNU) forms part of the Trinidad and Tobago Police Service and is principally responsible for investigating Drug Trafficking offences from which criminal proceeds are most likely to be generated. OCNU also conducts surveillance on behalf of other law enforcement agencies. It has a staff compliment of one hundred and twenty persons (120). The OCNU is headed by a Superintendent of Police who reports directly to the Commissioner of Police.

190. Information obtained in interviews indicated that the Anti-Corruption Bureau of Trinidad & Tobago also investigates money-laundering offences when linked to corruption. The Bureau appears to be very active as at the time of the mission it brought corruption charges against a number of persons.

191. T & T has not implemented any measures that would allow competent authorities investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. The FIU does not have the legal authority to employ a wide range of investigative techniques when investigating money laundering. However, the controlled delivery technique has been utilized by the OCNU when investigating drug trafficking offences especially when conducting joint operations with the US authorities. Informal data provided to the Mission has indicated that a number of these operations have been conducted with the US authorities over the past few years and have produced positive results.

192. No measures whether legislative or otherwise had been put in place to provide law enforcement or prosecution authorities with the legal basis for the use of a wide range of special investigative techniques when conducting investigations of ML or FT. However, authorities of Trinidad and Tobago indicated that inherent to the powers of the DPP under the constitution the decision to institute criminal proceedings can be postponed or deferred altogether to facilitate or enhance an investigation.

193. The Staff of the FIU has received significant training in financial investigations, particularly ML investigations. However at the time of the team's visit none of these officers have been involved with the seizure, freezing or confiscation of the proceeds of

crime, although a number of persons have been recently convicted in the magistrate court for drug trafficking offences.

194. T&T authorities do not review ML and FT methods, techniques and trends regularly. In 2005 a strategic review was done on all serious crimes. It is unclear whether such review was conducted on ML and FT.

Recommendation 28

195. A police officer has the power by virtue of Section 32 (1) of the Proceeds of Crime Act, to apply to a Judge for a Production Order to require a specific person to produce a particular material or materials of a particular description when conducting investigation into:

- (a) a specified offence
- (b) whether a person has benefited from a specified offence
- (c) the extent or whereabouts of the proceeds of a specified offence or;
- (d) Drug trafficking

196. The Order may be granted if on such an application the Judge is satisfied that there are reasonable grounds for suspecting that:

- (a) a specified person has benefited from a specified offence or drug trafficking.
- (b) The material or declaration to which the application relates is likely to be of substantial value, whether by itself or together with other material, to the investigation, for the purposes of which the application is made.
- (c) The material does not consist of or include items subject to legal privilege or excluded material.
- (d) The benefit likely to accrue to the investigation if the material is obtained or a declaration made.
- (e) The circumstances under which the person in possession of the materials hold it or the relationship or dealings the person required to make the declaration with the specified person in question.

197. Section 33 of the Proceeds of Crime Act makes provision for a Police Officer when investigating a specified offence, including money laundering offences, or drug trafficking to obtain a search warrant by the Judge, authorizing a Police Officer to enter and search specified premises and seize and retain any material other than items subject to legal privilege and excluded material. A police officer can also apply for a search warrant when a production order has not been complied with. In addition and as indicated previously, the Designated Authority (or a person authorised by him) in Section 55 of the POCA with reasonable cause and in possession of an ex parte order of a judge of the high Court, may enter into premises of any financial institution or person engaged in a relevant

business activity, to inspect any business transaction record or client information record and take any copies of these documents.

198. In relation to production orders/search warrants, the under mentioned statistics were made available to the mission by the FIU;

	2001	2002	2003	2004
Production Orders	11	73	05	18
Search Warrants	-	-	-	-

Source: The Financial Investigations Unit

199. The Trinidad and Tobago Police Service Act Chap. 15:01, gives a Police Officer the powers when investigating any offence, to question any individual from whom he thinks any useful information may be obtained. He also has the authority under this Act, to record witness statements, which may be used at any trial.

200. The Customs & Excise Division derives its legal authority by virtue of the Customs Act, Chapter 78:01. Under this Act, the Comptroller of Customs & Excise and officers acting under his control have the power to stop, search and detain any person, vessel or aircraft. Officers have the power to examine any goods and detain such goods or persons. Officers also have the power to patrol freely. The Customs Act provides for a search warrant and more importantly the grant of a "Writ of Assistance" which empowers officers to enter any premises and in the case of resistance, break down doors and remove any illegal goods. The Act also makes provision for the submission of documents when requested by the Comptroller. Customs Officers have the power under the Dangerous Drug Act to seize and detain cash at the border upon reasonable grounds for suspicions that is represents the proceeds of drug trafficking. The Proceeds of Crime Act gives a customs officer similar powers to that of police officers in relation to money laundering and forfeiture of the proceeds of crime. However, matters specifically pertaining to money laundering are handed over to the national police.

201. The Coast Guard is the division of the Defence Force with lead responsibility for maritime crime interdiction. On its officers is conferred the power to stop, board and search vessels within territorial waters. Section 6 of the Defence Force Act Chapter 14:01 provides that an Officer, Petty Officer or any man in command of a unit of the Coast Guard has the power to do so if he has cause to suspect that any vessel is engaged in any unlawful operation whatever within territorial waters. He also has the power, if he thinks it necessary, to direct such vessel to proceed to any place as he may specify, and to use such force as may be necessary to compel the vessel to comply with any directions he gives as to the vessel's movements. He is empowered too, to pursue and detain with any

assistance, any person whom he has reason to believe is engaged in or assisting in the carrying on of any unlawful operation.

202. Every Immigration Officer has the authority and powers of a Police constable to enforce the provisions of the Immigration Act.

Recommendation 30

203. The Trinidad and Tobago Police Service is responsible for investigating all predicate offences in accordance with the Police Service and Regulation Act 1501. The Police Service has a staff compliment of six thousand three hundred (6,300). The Commissioner of Police, who has over thirty-nine years of service, heads the Police Service. He reports directly to the Minister of National Security. Trinidad and Tobago has nine police divisions and sixty-eight police stations. Each station is in operation 24 hours a day and is supervised by an Inspector or a Sergeant. The Police Service is funded from allotments made to the Ministry of National Security by Parliament.

204. The responsibility of the Police Service, in the context of the Criminal Justice Process, is to identify, investigate and prosecute persons/groups involved in every aspect of crime. The mission has been advised that the crime situation in Trinidad and Tobago has escalated. The increase in serious crimes such as Homicide and Kidnapping is of grave concern to the police department. The Police Service is at present (2004/2005) struggling to combat this problem. The shortage of vehicles and other technical resources is hampering the effectiveness of the police service.

205. The Police Officials have expressed the need to restructure and reform the police service and the view that the methods and techniques used to combat crime are out-dated. More advanced technology is required. The Mission has been informed that a number of police officers are of questionable character, as they are the facilitators of crime. As a result of this, the general public has little or no confidence in the Police Service. At the time of the Mission, an experienced Criminologist from the USA was assisting the police in the reformation process. The Police Reform Bill was also presented to Parliament for debate.

206. The Government of Trinidad and Tobago indicated that its strategy recognizes that the fight against crime of all types, but especially drug related crime, which is increasingly sophisticated and transnational, requires a strong, ethical Police Service familiar with the latest investigative techniques, well-equipped with the resources to prevent and detect crime, and versed in the relevant criminal law procedures. Police reform aimed at the improved management of existing resources, development of human resources, technological advancement and the eradication of corrupt practices remains an imperative.

207. The Strategic Services Agency, according to information received from Trinidad and Tobago authorities, is providing strategic direction in crime prevention and detection to agencies engaged in the identification, investigation and prosecution of persons/groups

engaged in any aspect of drug trafficking. Throughout 2004, initiatives aimed at improving the efficiency of the Police Service in the areas of crime prevention and detection comprised, but were not limited to, the following:

- Application of computer-generated statistics in strategic and operational planning;
- Leadership training series among members of the Executive and Senior Management;
- Improved mobility;
- Collaborative efforts with other arms of security services; and
- Review and enhancement of training facilities and curriculum

208. The OCNU is principally responsible for investigating Drug Trafficking offences from which criminal proceeds are most likely to be generated. OCNU also conducts surveillance on behalf of other law enforcement agencies. It has a staff compliment of one hundred and twenty persons. It is headed by a Superintendent of Police who reports directly to the Commissioner of Police. The Head of ONCU seems to be highly energetic and efficient.

209. Technical and other resources for the OCNU are funded from allotments made to the Police Service by the Ministry of National Security with significant assistance provided by the USA and Canadian Authorities.

210. The current focus of the DPP's office is the successful prosecution of violent crimes such as homicide and kidnapping. The biggest challenge that the department faces is that it does not have a sufficient complement of attorneys to fulfil its constitutional mandate. This is in light of the volume and pace of the work, which has expanded with the increase in crime rate. The DPP's office has expressed the need to reconstruct the department into distinct units, one of which would be an Economic Crime Prosecution Unit, which will be established to prosecute money laundering and corruption offences. The department indicated that there is need for improved terms and conditions of employment to attract professionals to the department. At least five more legal officers are needed.

211. The DPP's office has indicated that they are presently seeking the assistance of two (2) experienced ML Prosecutors from abroad in order to establish a Confiscation Unit within the Department. This has proven difficult so far as there is a lack of space within the premises now occupied by the Department in which to house and equip such a Unit. However, the DPP's office is expecting to be relocated to new premises which will be able to accommodate this Unit. This project when completed would greatly advance the Office's capabilities to successfully prosecute ML.

212. The Mission has been informed that a number of magistrates at the Lower Court are over worked, as there are a substantial amount of matters coming before the Courts. More courts and magistrates are needed. Many cases are being delayed because of applications made by the Defence or prosecutions. A number of defendants cannot be

located after they are granted bail. Defence lawyers are sometimes using the law to frustrate the process. The police department has expressed concerns at the ease by which repeated drug offenders are granted bail. This has led to frustration on the part of the police as many of these offenders have absconded.

213. The Magistracy has informed the Mission that applications are being made to the judge for bail and are usually granted. The Magistrates are guided by the Bail Act of 1994 guidelines. A lot of serious crime offenders are granted bail easily by the High Court. They then go out and continue to commit crimes.

214. Information obtained in interview has revealed that several persons have been convicted in the Magistrates court for drug trafficking during the past few years, but no confiscation or forfeiture hearing followed. The Proceeds of Crime Act appears to be sufficient; enforcement is the major problem.

215. The Customs & Excise Division, which is headed by the Comptroller of Customs & Excise, derives its legal authority by virtue of the Customs Act, Chapter 78:01. The Customs and Excise Division plays a significant role in monitoring and intercepting trans-border cash flows. The Customs Declaration Form is provided to every passenger entering Trinidad and Tobago. The passenger is required to fill out this Form to indicate whether or not he or she has TTD \$20,000.00 or its foreign equivalent in his or her possession. A separate Currency Declaration Form has to be completed when funds over the threshold are declared. This Form is detailed in content and helps to determine the source of funds declared.

216. Customs Officers have the power under the Dangerous Drug Act to seize and detain cash at the border upon reasonable grounds for suspicions that it represents the proceeds of drug trafficking. The Proceeds of Crime Act gives a customs officer similar powers to that of Police Officers in relation to money laundering and forfeiture of the proceeds of crime.

217. Funding for the Customs and Excise Division is provided by the Ministry of Finance from budgetary allotments made by parliament to the Ministry of Finance, with significant contributions from the United States. The Customs Division works closely with the US Customs. The US Customs has provided technical assistance to the division geared toward enhancing its narcotics detection capabilities. Staffing is a major challenge facing the Trinidad and Tobago Customs Division. The Division requires an additional 200 staff member.

218. No figures or statistics were presented to the Mission upon request, in relation to the operations of the Customs Division. This prevented the proper assessment of the measures implemented by the Customs Division. It is the policy of the Customs Division that information with regard to seizures and arrest must not be shared without the express consent of the Ministry of Finance. Information obtained in interviews indicated that a small number of Customs Officers are alleged to have been involved in illegal smuggling

of goods, which is a serious concern to the Division. The Division is committed to investigate and prosecute any employee who is in breach of the Customs Regulations.

219. Immigration: the Immigration Act Chap. 18:01 makes provision for immigration stations which are defined as any place designated by the Minister responsible for immigration for the examination, treatment and detention of persons for any purpose under the Act and includes immigration quarters at ports of entry. Under the Act, any person arriving from a foreign country is required to report to an Immigration Officer for examination upon entering Trinidad and Tobago's territorial waters. Immigration Officers are stationed at all ports of entry, and every person seeking admission into the country must appear before such an officer and be examined.

220. The Strategic Services Agency (SSA) is an Agency within the Ministry of National Security. It is the Agency that is primarily responsible for coordinating the Government AML/CFT programmes at the national level. The Strategic Services Agency was created under the SSA Act, Act No. r 24 of 1995 and became operational on July 1, 1996. The functions of the SSA are described under Section 6 of the Act and include among other things:

- (f) To develop strategic intelligence and make recommendations to the government on policies with regard to counter narcotics matters.
- (g) To prepare a drug interdiction strategy and monitor the implementation of the agreed strategy. Also, to prepare, update, monitor and coordinate all matters related to drugs, supply-reduction program.
- (h) To provide a central point for the receipt of all disclosure made under the drugs legislation and to function as an office for centralizing information that could facilitate the detection and prevention of illicit traffic in narcotic drugs, psychotropic substances and precursor chemicals.
- (i) To contribute to the training of specialized staff and establish channels of communication with domestic and overseas services as to coordinate operations with service of other countries.

221. The Strategic Services Agency is divided into four main departments. They are Administration, Human Resources, Strategic and the Legal. Each department is staffed with highly trained and qualified professionals. The total staff complement is twenty-eight. The Director of the SSA is an Attorney at Law and is the country's leading technical expert in the AML/CFT, Compliance initiative. In October 2004, the SSA commenced a process of restructuring. In so doing the majority of the staff was relocated and a group of new professionals were hired.

222. The funds and resources of the SSA are derived from monies allocated to the Ministry of National Security by Parliament from the Consolidation Fund, as well as from gifts to the Government of Trinidad and Tobago from other governments, to assist in drug interdiction. The SSA recently developed a National Strategic Plan for 2005-

2009, which outlines fifteen objectives of the Agency. One of the Strategic objectives directly deals with the elimination of the evidence of criminal money laundering and promotion of the confiscation of criminally derived assets. The SSA did not indicate what measures are likely to be implemented to ensure that this objective is met. It is noted that the SSA has recently restructured its staff and should be given sufficient time to fully implement its strategic plan.

223. The SSA has established strategic alliance with the Police Service. The Police Service has benefited considerably from assistance provided by the SSA in areas of Strategic Planning and Human Resource Development.

224. In 2005, the SSA conducted a strategic analysis of all serious crimes committed in Trinidad and Tobago between the years 2000 to 2005. The results of these studies were published in a comprehensive document named "Quarterly Review of Serious Crime" which was prepared by the SSA and disseminated to other stakeholders. The FIU is yet to receive a copy. In this document, the SSA made certain recommendations to the Police Service that if implemented, would create an impact on the crime situation. No documentation had been produced to indicate whether such analysis was conducted on money laundering or terrorist financing.

225. The Police Training College has provided training for the Trinidad and Tobago Police Service. A training course is conducted annually for Police Prosecutors. Police personnel also attended Anti-Money Laundering and Financial Investigators Courses, coordinated by the Regional Drug Law Enforcement Training Centre (REDTRAC). The FBI and DEA provide similar training periodically.

226. With regards to the DPP's Office training have been provided in Money Laundering prosecution and confiscation proceedings by the CALP over the five years preceding June 2005. This training has included the following:

- A 2-day Seminar for prosecutors held in Trinidad in June 2003. Fifteen (15) prosecutors were nominated to attend.
- A 5-day Workshop and Seminar for prosecutors held in Trinidad in October 2003. Three (3) prosecutors were nominated to attend.
- 5-day Workshop and Seminar for prosecutors held in Trinidad in February 2004. Three (3) prosecutors were nominated to attend.

227. The Mission has been advised that due to pressing court commitments and an increased number of courts, the DPP's office has not been able to give sufficient attention to money laundering and terrorist financing matters.

228. CALP also provided training for Magistrates and Judges in 2004. The Mission was advised that a number of Magistrates are not aware of their authority under the Proceeds of Crime Act.

229. Personnel of the Customs and Excise Division have received training in financial investigations conducted locally and internationally by the US Customs Department. It is

not clear how many Customs Officers if any received training in money laundering and terrorism financing. Immigration officers have received no training on AML/CFT issues.

230. The Staff of the SSA is comprised of trained professionals in different fields of discipline such as Accounting, Business Management and Law. In November of 2004 the SSA conducted a series of in-house training sessions for its staff in areas such as Strategic Interventions Leadership Training, Team Building and Operationalizing SSA strategic objectives just to name a few. Staff members were also exposed to external developmental sessions. Areas covered include Executive Profile, Disaster Recovering Planning and Assessing Business Risks – IT perspective.

231. CALP provided training for Prosecutors, Judges and Magistrates in 2003 and 2004 in relation to ML and FT offences and the seizure, freezing and confiscation of tainted property. Additional training is needed for new judges and magistrates.

Recommendation 32

232. Trinidad and Tobago's system for combating money laundering and terrorist financing is not regularly reviewed. There is no clear policy for conducting reviews.

233. Statistics were held and provided by the FIU with respect to Money Laundering and financing of terrorism investigations; prosecutions and convictions, property frozen; seized as well as confiscated. As indicated earlier, the figures attest that there is no effective use of the confiscation and related provisions in POCA for the area of Money Laundering offences in Trinidad and Tobago. The FIU also maintain statistics on international cooperation with other FIU's and Police entities.

234. The Designated Authority conducted no on-site examinations and did not apply any sanctions related to AML/CFT issues on any of the entities indicated to submit SAR's. Consequently there were no statistics kept on these issues by the FIU. The FIU also did not receive any request for assistance from supervisory bodies that resulted in statistics on this matter.

2.6.2. Recommendations and Comments

Recommendation 27

235. More attention should be paid to pursuing Money-Laundering offences based on received and analysed SAR's, and more resources (law enforcement staff) should be dedicated to investigation of these offences. The effectiveness of the system to combat AML(/CFT) offences should be improved which may result in more ML (TF) prosecutions and possible convictions.

Recommendation 30

236. The Police Service Reform Bill should be enacted quickly in order to reform the Police Service with the view to improve efficiency and restore public trust. Public

support is crucial in the fight against money laundering, terrorist financing and crime in general.

237. There is need for increased involvement by the Customs and Excise Division in combating money laundering and terrorist financing. Training should be provided to (specific) Customs Officers for future attachment to the FIU. The current shortage of staff at the Customs Division should be addressed quickly, to enhance efficiency. The Division should consider reviewing its policy in relation to the sharing of data.

238. Immigration should also be included in AML/CFT training or awareness programmes.

239. Further training and resources should be provided to Police, Prosecutors, Magistrates and Judges to broaden their understanding of the relevant legislations so that money laundering and terrorist financing cases would be appropriately resolved. Staffing constraints faced by the Magistracy and the Office of the DPP should be given considerable attention.

240. The DPP's office should continue to implement its special project on ML prosecutions.

241. The Executive Staff of the SSA should be strengthened in order to provide assistance to the Director whose responsibilities are onerous.

Recommendation 32

242. Measures should be instituted to review the effectiveness of Trinidad and Tobago money laundering and terrorist financing systems. In so doing, weaknesses would be easily identified and brought to the attention of the Trinidad and Tobago authorities.

2.6.3. Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> The lack of resources is hampering the ability of Law enforcement authorities to properly investigate ML and FT offences.
R.28	C	<ul style="list-style-type: none"> This Recommendation is met.
R.30¹⁶	PC	<ul style="list-style-type: none"> Resources of the FIU, DPP, Customs and the Police Service are not sufficient for these agencies to perform their respective functions. More and continuous training is needed for these entities, including the Immigration service.
R.32¹⁷	PC	<ul style="list-style-type: none"> Review of effectiveness of AML/CFT systems should be

¹⁶ See also factors mentioned in rating boxes: 2.5.3, and 3.10.3.

¹⁷ See also factors mentioned in rating boxes: 2.5.3, 3.13.3, 6.3.3, 6.4.3, and 6.5.3.

		introduced and available review systems thoroughly reevaluated.
--	--	---

PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

243. In Trinidad and Tobago, the provisions of the main AML legislation the Proceeds of Crime Act, 2000 (POCA 2000) are general in nature and are applicable to all defined financial institutions and persons engaged in relevant business activity. There are no requirements for financial institutions to implement CDD or KYC measures except those in the Central Bank of Trinidad and Tobago (CBTT) AML/CFT Guidelines which are only applicable to financial institutions supervised by CBTT. Therefore, there are no reduced or simplified AML/CFT requirements in Trinidad and Tobago since most of the CDD or KYC measures have not been enacted in the first place. The authorities have not conducted any comprehensive ALM/CFT risk assessment exercise of its complete financial sector. However for institutions supervised by CBTT, AML/CFT risks are factored into their Risk Matrices and Risk Assessment Summaries. Where mitigation is assessed as inadequate (e.g. non compliance with aspects of the Guidelines) the review of these areas is included in the Planning & Scope Memorandum for the on-site and ongoing review of such institutions.

244. Given the situation with regard to the need to enact CDD measures, the authorities in Trinidad and Tobago should consider the feasibility and utility of conducting a comprehensive AML/CFT risk assessment of the economy in order to identify vulnerabilities in businesses and financial products and services. This could form the basis for introducing simplified or reduced CDD measures.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

The Proceeds of Crime Act 2000 (POCA 2000)

245. The POCA governs the anti-money laundering regime in Trinidad and Tobago and provides for consolidation of the law as it relates to confiscation of the proceeds of drug trafficking and other crimes and the criminalization of money laundering.

246. The AML provisions of the POCA are applicable to financial institutions and persons carrying on relevant business activity. According to Section 2 (1) of the POCA a “financial institution” includes:

- a bank licensed under the Banking Act;
- a financial institution licensed under the Financial Institutions Act;
- a building society registered under the Building Societies Act;
- a society registered under the Co-operative Societies Act;
- an insurance company registered under the Insurance Act;

- a person licensed under the Central Bank Act to operate an exchange bureau;
- a person licensed under the Securities Industry Act as a dealer or investment adviser;
- a person who carries on cash remitting services;
- a person who carries on a postal service

247. The above definition with regard to the securities industry is limited to dealers or investment advisers and does not cover all the entities under the Securities Industry Act whose business includes investing money, acting as trustee with respect to other people's funds or providing financial services involving the transfer or exchange of funds. With regard to the insurance sector, the above definition is limited to insurance companies and does not specifically include insurance agents and brokers.

248. Relevant business activity is defined to include; real estate business, motor vehicles sales, courier services, gaming houses, jewellers, pool betting, and national lottery on line betting games (POCA, 1st schedule).

249. Section 56 (1) of the POCA 2000 states that the Minister responsible for Finance may make Regulations prescribing measures for persons subject to POCA 2000. The Regulations (the Financial Obligation Regulation) have not been enacted so there are no legal requirements with regard to KYC and CDD for financial institutions and relevant business activity.

Terrorism or Terrorist Financing legislation

250. At the date of the mutual evaluation, there was no terrorism or terrorist- financing legislation in Trinidad and Tobago, but there was a draft Terrorism Bill¹⁸.

Supervisory Authorities of Financial Institutions

251. The CBTT, the Trinidad and Tobago Securities and Exchange Commission (TTSEC), the Commissioner for Co-operative Development and the Credit Union Supervisory Unit (CUSU) are the supervisory authorities of financial institutions.

The Central Bank of Trinidad of Tobago

252. CBTT is the supervisory authority for all institutions licensed under the Financial Institutions Act 1993 (FIA) and the Insurance Act 1980. These institutions include commercial banks, trust companies, merchant banks, finance houses, insurance companies, and pension plans. At the time of the mutual evaluation there were six banks, seven trust and merchant banks, one trust company, four merchant banks, six finance houses, twenty-nine active non life insurance companies, fifteen active life insurance companies, and four hundred and thirty-eight insurance brokers. Cambios also fall under the supervision of the CBTT. As part of its duties, the CBTT has to ensure that preventative measures are in place to combat money laundering and the financing of terrorist activities. In this regard the CBTT tests the implementation of AML/CFT procedures by the above institutions.

¹⁸ Idem note 1

253. The CBTT AML/CFT Guidelines were revised in September 2004. These guidelines incorporated the 40 FATF Recommendations and the 8 Special Recommendations on Terrorist Financing and the new and proposed legislation of Trinidad and Tobago. The Guidelines also fully endorse the provisions of the POCA and include a non-exhaustive list of examples of suspicious transactions to assist financial institutions in recognizing the same. Testing of compliance with the CBTT AML/CFT Guidelines is part of current on site examinations in order to assess the practical implementation of the Guidelines. According to the CBTT the licensed financial institutions generally follow the provisions of the POCA and the CBTT AML/CFT Guidelines and where there are shortcomings, recommendations are made to financial institutions to address the weaknesses within a given time frame and follow up is done to ensure implementation. Additionally, Subsection 31 (4) of the FIA empowers the CBTT to take measures it considers necessary to rectify a situation where an examination of a licensee reveals that the institution is conducting its business in a unlawful or unsound manner.

254. It should be noted that the guidelines while stipulating requirements for financial institutions under the supervision of the CBTT do not have sanctions for non-compliance and are not mandatory. Breaches of the guidelines are dealt with through the moral suasion of the Central Bank. Additionally, there has been no instance where the Central Bank has taken measures under Subsection 31 (4) of the FIA to deal with any breach of the guidelines. Given the above, the guidelines are considered in the terms of the methodology, non-binding guidance.

255. As mentioned before Cambios fall under the supervision of the CBTT. The Foreign Exchange Department of the CBTT is responsible for the licensing and supervision of Cambios. In August, 1993 the CBTT issued Anti-Money Laundering Guidelines for the Cambios. These Guidelines were revised in September 2004 and sent to all Cambios. They are also aware of the Guidelines being available on CBTT's website. CBTT conducts risk based on-site inspections of the Cambios, but the Mission was informed that these are triggered where risks (including AML/CFT) are inadequately mitigated.

The Securities and Exchange Commission

256. The TTSEC operates under the Securities Industry Act 1995, (SIA), which came into force in 1997. The TTSEC is responsible for the supervision and regulation of the securities market. The supervisory functions as outlined in the SIA include maintenance of surveillance over the securities market, and the registration, authorization, and regulation of self-regulatory organizations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers. The TTSEC had registered one hundred and thirty-nine market participants including twelve brokers, twelve traders, three dealers, twenty-one investment advisers, eighteen securities companies, sixty-three reporting issuers, of which thirty (33) are registered on the Exchange and eleven underwriters. The Commission is divided into the following sections; Market Regulation and Surveillance; Research; Disclosure, Registration and Corporate Finance; Legal and Administration. The Commission has a staff complement of forty people.

257. There are minimal fit and proper criteria, apart from professional qualifications, established under the SIA and minimal procedures in respect of market participants. The Commission advised that, since the Act does not specify that on-site inspections can be done, they have experienced difficulties in carrying out on-site inspections.

Credit Union Supervisory Unit

258. The Commissioner for Co-operative Development is responsible for the supervision of co-operative societies and credit unions under the Co-operative Societies Act. The Commissioner's main functions consist of the registration of co-operatives and credit unions, administrative compliance with the Act and the oversight of the development of co-operative principles and promotion of the industry. In addition to the Commissioner, the CUSU has been established within the Ministry of Finance. This Unit has been trained to implement a supervisory regime for credit unions combining off-site surveillance and on-site examination techniques similar to bank supervision. While the unit does not have legislative authority to conduct on-site examinations of credit unions at present, it has commenced inspections with the co-operation of the credit unions. The onsite examination however doesn't include the testing of compliance with AML/CFT issues. At the time of the mutual evaluation there were one hundred and thirty-four (134) credit unions in Trinidad and Tobago.

Recommendation 5

259. There is no provision in the POCA prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. Section 56 (1c) of the POCA 2000 states that the Minister responsible for Finance may make Regulations prescribing measures that persons subject to the POCA must apply to ascertain the identity of persons with whom they are dealing where the transaction is one in respect of which the POCA applies. The Mission was informed that the Regulations were still in draft at the time of the mutual evaluation. Effectively; financial institutions are not prohibited by law to keep anonymous accounts or accounts in fictitious names.

260. While the CBTT AML/CFT Guidelines are non-binding guidance, this mutual evaluation report will still note the requirements stipulated in these guidelines under the relevant criteria.

261. Appendix 1 Section A (d) of the CBTT AML/CFT Guidelines requires financial institutions not to keep anonymous accounts or accounts in fictitious names. It is a requirement to identify on the basis of an official document and record the identity of clients (either occasional or usual), when establishing business relations or conducting transactions such as opening of accounts or passbooks, entering into fiduciary transactions, renting of safe-deposit boxes and the use of safe custody facilities.

262. There are no mandatory customer due diligence requirements for financial institutions or persons conducting relevant business activity at present in Trinidad and Tobago. Section 42 of the CBTT AML/Guidelines deals with personal customer due

diligence measures. On initiating a business relationship, financial institutions are required to obtain relevant identification records of a customer. Information including full name, permanent address, date and place of birth, nationality, nature and place of business/occupation, where applicable occupational income, purpose of proposed business relationship or transaction, source of funds and signature should be obtained. At a minimum a valid photo-bearing identification should be obtained and examined e.g. passport, national identification card or driver's licence.

263. For foreign customers a reference should be sought from the customer's bank. In instances where original documents are not available, copies should only be acceptable if certified by a notary public as being a true copy of the original. Identification documents which are easily obtainable (e.g. birth certificates) should not be accepted as the sole means of identification. The financial institution is ultimately responsible for verifying the information presented while temporary addresses and post office addresses are not acceptable.

264. The CBTT AML Guidelines also state in the section 4.3 dealing with business customer due diligence that the requirements outlined in the personal customer due diligence section may also be relevant to key functionaries in a business customer and that financial institutions should verify the identity of the directors, partners, sole traders, officers, account signatories and beneficial owners. Documentary evidence should be provided by the customer or obtained from other reliable sources.

265. Additionally, financial institutions should obtain, to the extent relevant to the proposed business relationship or transaction; articles of incorporation or continuance, certificate of incorporation, by-laws, at a minimum management accounts for the last three years for self employed persons and businesses; and information on shareholders holding more than 5% of the paid up share capital of the company (verified through registers of the company).

266. With regard to trust, nominee and fiduciary customers the CBTT AML/CFT Guidelines state that in addition to the requirements outlined in the personal customer due diligence section above, financial institutions should obtain evidence of the appointment of trustees (e.g. extracts from deed of trust), nature and purpose of the trust, and verification of the identity of the trustee, settler, protector, person providing the funds, controller or similar person holding power to appoint or remove the trustee.

267. Appendix 1 Section A (e) of the CBTT AML/CFT Guidelines states that where new accounts are opened or services provided by a financial institution and the financial institution suspects that the customers are not acting on their own behalf, the financial institution shall verify the true identity of the beneficial owner. If the financial institution is not satisfied with the response of the customer it should terminate all relations with the customer forthwith.

268. Section 4.1.2 of the CBTT AML/CFT Guidelines requires that customer identification records should be verified and updated periodically to ensure that

identification information remains current. Any changes in the information given when the business relationship was first established should be recorded during this process.

269. Section 4.1.4 of the CBTT AML/CFT Guidelines states that where a financial institution is unable to verify customer information, it should not commence business relations or perform the transaction, or it should terminate the business relationship and should consider making a suspicious activity report in relation to the customer.

270. Section 4.1.5 states that general due diligence requirements should apply to all new and existing customers on the basis of materiality and risk. Section 4.1.5 also requires institutions to conduct regular reviews of existing records. An appropriate time to do so is when a significant transaction occurs, when customer documentation requirements change substantially, or when there is a material change in the way the customer transacts business with the institution.

271. The CBTT AML/CFT Guidelines do not allow for simplified or reduced CDD measures. Additionally, only some of the criteria concerning when CDD is required and required CDD measures, timing of verification, failure to satisfactorily complete CDD and existing customers are stipulated in the guidelines and are adhered to in practice.

Recommendation 6

272. There are no mandatory requirements dealing with Politically Exposed Persons (PEPs for financial institutions and persons engaged in relevant business activity). The only requirements concerning PEPs are in Sections 4.5.1 and 4.5.2 of the CBTT Guidelines. These sections require financial institutions in addition to performing normal due diligence, to have appropriate procedures to determine whether a customer is a politically exposed person. Senior management approval is required for establishing business relationships with PEPs and reasonable measures should be taken to establish the sources of wealth and funds and the ongoing monitoring of these business relationships.

273. In the CBTT AML/CFT Guidelines PEPs are defined as individuals who are or have been entrusted with prominent public functions such as Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials. This definition covers both international and domestic PEPs, and should also clearly cover beneficial owners who are PEPs.

274. Some financial institution mentioned that international PEPs are automatically identified in their database, while other financial institutions are seeking to enhance their database to also cover PEPs.

275. The 2003 United Nations Convention against Corruption was signed by Trinidad and Tobago on the 11th of December, 2003; however it has not been ratified to date¹⁹.

¹⁹ Source: UN website

Recommendation 7

276. There are no mandatory requirements concerning cross-border correspondent banking and other similar relationships for financial institutions and persons engaged in relevant business activity.

277. Correspondent banking is defined in the CBTT AML/CFT Guidelines as the provision of banking services by the bank (the “correspondent bank”) to another bank (the “respondent bank”). In Appendix I Section A of the CBTT AML/CFT Guidelines financial institutions are required to gather sufficient information about their respondent banks to fully understand the nature of the respondent’s business. Furthermore the financial institutions are required to only do business with foreign banks that are effectively supervised by relevant authorities and which have effective KYC policies.

278. Interviewed financial institutions indicated that while there was no requirement for senior management approval of new correspondent relationships, approval of such new relationships normally took place at board level.

Recommendation 8

279. There are no mandatory requirements for financial institutions and persons engaged in relevant business activity concerning measures to prevent the misuse of technological developments and address risks associated with non-face to face business relationships or transactions. However, Section 3.2.1 of the Guideline state “Financial institutions should pay special attention to any money laundering or terrorist financing treats that may arise from new or developing technologies that might favour anonymity and take appropriate measures to deal with such treats. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions”.

3.2.2 Recommendations and Comments

280. Since none of the requirements of Recommendations 5 to 8 are either in legislation or enforceable regulations the following is recommended:

281. The authorities should consider the feasibility and utility of a comprehensive risk assessment of the economy to ascertain AML/CFT vulnerabilities in businesses and financial products and services with a view to introducing CDD measures.

282. POCA should be amended to extend the definition of financial institutions to include all entities licensed by the SIA whose business includes investing money, acting as trustee with respect to other people’s funds or providing financial services involving the transfer or exchange of funds and insurance agents and brokers.

Recommendation 5

283. The following measures are required under the CBTT's Guideline and practised in varying degrees by financial institutions but they need to be set out either in laws or implementing regulations with sanctions for non-compliance;

284. Financial institutions should not be permitted to keep anonymous accounts or accounts in fictitious names.

285. Financial institutions should be required to undertake customer due diligence measures when establishing business relations, carrying out occasional or linked transactions above US 15,000, carrying out occasional wire transfers as covered in Special Recommendation VII, when there is suspicion of ML or FT regardless of exemptions or amounts, and when there is doubt about the veracity or adequacy of previously obtained customer identification data.

286. Financial institutions should be required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information.

287. Financial institutions should be required to verify that any person purporting to act on behalf of a legal person or legal arrangement is so authorised, and identify and verify the identity of that person.

288. Financial institutions should be required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data.

289. Financial institutions should be required to determine the natural persons who ultimately own or control customers that are legal persons or legal arrangements.

290. Financial institutions should be required to conduct due diligence on the business relationship

291. The following measures can be set out in laws, regulations or enforceable guidelines with sanctions for non-compliance;

292. Financial institutions should be required to implement the other criteria of Recommendation 5 concerning remaining CDD measures, risk, timing of verification, failure to satisfactorily complete CDD and existing customers.

Recommendation 6

293. Financial institutions should be required to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.

294. Financial institutions should be required to obtain senior management approval for establishing or continuing business relationships with a PEP.

295. Financial institutions should be required to take reasonable measures to establish the source of wealth and funds of PEPs

296. Financial institutions should be required to conduct enhanced ongoing monitoring of business relationships with PEPs.

Recommendation 7

297. Financial institutions should be required to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business and to determine the reputation of the institution and the quality of the supervision, including whether it has been subject to a ML or TF investigation or regulatory action.

298. Financial institutions should assess the respondent institution’s AML/CFT controls, and ascertain that they are adequate and effective.

299. Financial institutions should obtain approval from senior management for establishing new correspondent relationships.

300. Financial should document the respective AML/CFT responsibilities of each institution in the correspondent relationship.

301. In the case of “payable-through accounts”, financial institutions should be satisfied that the respondent institution has performed all the normal CDD measures set out in Rec. 5 on customers using the accounts of the correspondent and the respondent institution is able to provide relevant customer identification data upon request to the correspondent.

Recommendation 8

302. Financial institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes.

303. Financial institutions should be required to have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and conducting ongoing due diligence. Financial institutions should also be required to have measures for managing risks including specific and effective CDD procedures that apply to non-face to face customers.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none">▪ None of the CDD requirements are included in legislation, regulations or other enforceable means and existing requirements

		are only applicable to financial institutions supervised by the CBTT.
R.6	NC	<ul style="list-style-type: none"> ▪ None of the requirements are included in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised by the CBTT.
R.7	NC	<ul style="list-style-type: none"> ▪ None of the requirements are include in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised by the CBTT.
R.8	NC	<ul style="list-style-type: none"> ▪ None of the requirements are included in legislation, regulations or other enforceable regulations and existing requirements are only applicable to financial institutions supervised by the CBTT.

3.3 *Third parties and introduced business (R.9)*

3.3.1 *Description and Analysis*

Recommendation 9

304. No legal requirements are imposed on financial institutions relying on intermediaries or other third parties to perform some of the elements of the CDD process. The only requirements that deal with third parties and introduced business is in Section 4.7.1 of the CBTT AML/CFT Guidelines which states that the financial institution should ensure that the introducers are fit and proper and exercise the necessary due diligence procedures and that the ultimate responsibility for knowing the customer rests with the financial institution.

3.3.2 *Recommendations and Comments*

305. Since the only requirements dealing with third parties and introduced business are not mandatory and apply only to financial institutions that are supervised by the Central Bank, the following is recommended:

306. Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process in criteria 5.3 to 5.6.

307. Financial institutions should be required to take adequate steps to satisfy themselves that copy of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay.

308. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised and had measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.

309. Competent authorities should determine in which countries third parties meet the conditions by taking into account information available on whether these countries adequately apply the FATF Recommendations.

310. The ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

3.3.3 *Compliance with Recommendation 9*

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> ▪ The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank

3.4 *Financial institution secrecy or confidentiality (R.4)*

3.4.1 *Description and Analysis*

311. Under Section 55(7) of the POCA - the Designated Authority can via an ex parte court order access the premises of any financial institution to inspect any business transaction record or client information record kept by the institution and ask any relevant questions and make any notes or take any copies of such records. The designated authority/FIU indicated that further information/documentation can be obtained from financial institutions on the basis of a production order. Any information and documents obtained by the designated authority in the course of his duties is deemed to be secret and confidential under Subsection 55(8).

312. According to Subsection 55(9) the designated authority can only share information with persons to whom he is authorized to communicate. There is no schedule or list of persons to whom the designated authority can communicate in POCA 2000. This situation appears to leave the designated authority in uncertain legal territory with regard to the ability to share information with other local and international competent authorities and directly affects the FIU which operates under the aegis of the powers granted to the designated authority who heads the FIU.

313. Section 31(3) of the Financial Institutions Act, 1993 gives the Central Bank and the Inspector of Financial Institutions access to all books, records, accounts, and any other documents of any licensee necessary for due performance of their duties. The duties

of the Inspector of Financial Institutions as specified in Subsection 31(1) include verifying that the provisions of the FIA are being observed. There is no indication in the FIA in the listed duties of the Inspector of Financial Institutions about compliance with POCA 2000.

314. Section 35 of the FIA allows the Inspector of Financial Institutions to share information regarding the operation of a licensee or a customer of a licensee only with the Governor of the Central Bank or a person designated by the Governor. This sharing can only occur with the knowledge of the person on whom the information is given except in cases of criminal charges and matters of national security. The above provisions would appear to limit the ability of the Central Bank and the Inspector of Financial Institutions to access information relating to AML under POCA 2000 and then to share such information with local and foreign competent authorities.

315. Under the proposed amendments to the FIA, one of the matters for consideration is the sharing of information with financial regulators locally and with other jurisdictions. These amendments were submitted in November 2004 as a matter of urgency to Cabinet. A multilateral memorandum of understanding dated May 2004 was signed among the regional regulatory authorities for the exchange of information, cooperation and consultation.

316. With regard to insurance companies, the Insurance Act 1980 in Section 64 gives the Supervisor of Insurance, a role which the Central Bank has now assumed, the power to require a licensed insurance company to furnish such information and produce books and papers in connection with its insurance business as the Supervisor of Insurance may specify. However, the Insurance Act 1980 has no provisions allowing for the sharing of information of licensed insurance companies with other local or foreign competent authorities.

317. Under section 14 of the SIA, persons employed with the TTSEC can only share information obtained as a result of their relationship with the TTSEC with government officials or employees or the duly authorized representative of a foreign government in connection with the enforcement of the SIA or similar legislation. There appears to be no legal means for the TTSEC to share AML/CFT information with local or international competent authorities.

318. With regard to Credit Unions, the Supervisory Authority, the Commissioner for Co-operative Development under Section 5 of the Co-operative Societies Act has access at all times to the books, accounts, records and securities of a society. However, there is no provision allowing for the sharing of AML/CFT information with other local or foreign competent authorities. The CUSU in the Ministry of Finance operates without legal authority and therefore has no legal means to share any information.

319. Since the requirements of Recommendations 7 and 9 and Special Recommendation VII have not been imposed on financial institutions and persons engaged in relevant business activity, there are no measures for financial institutions to share information between themselves as required by these Recommendations.

3.4.2 Recommendations and Comments

320. The mission recommends that the relevant competent authorities in Trinidad and Tobago be given the ability to share locally and internationally, information they require to properly perform their functions.

321. Furthermore it is recommended that legislation be enacted to specifically require that no financial institution secrecy law will inhibit the implementation of the FATF Recommendations (or a similar requirement).

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"> ▪ While most of the competent authorities have access to information, there are no measures allowing for the sharing of information locally and internationally. ▪ There are no measures for the sharing of information between financial institutions as required by Recommendations 7 and 9 and Special Recommendation VII.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

322. Section 55 (1) of the POCA 2000, requires every financial institution and persons engaged in a relevant business activity to keep and retain records relating to financial activities in accordance with the Regulations under Section 56(1). Section 56 (1) of the POCA 2000 empowers the Minister of Finance to make Regulations prescribing the types of records, the information to be included in those records, the period for which, and the methods by which, records are to be retained by financial institutions and others required to do so.

323. The Regulations as mentioned in this section are the proposed Financial Obligations Regulations which have not been enacted as yet. Part II-of these Regulations namely Regulations 4 - 6 refers to the identification procedures and record keeping procedures for institutions.

324. Under Section 5.1.1. of the CBTT AML/CFT Guidelines financial institutions are required to retain all necessary records on transactions, both domestic and international, for at minimum of six (6) years to enable them to comply with lawful information requirements from law enforcement authorities.

325. Section 5.1.2 of the CBB AML/CFT Guidelines requires business transaction records to be kept in sufficient detail and appropriate form to permit reconstruction of individual transactions and these records should be available to law enforcement authorities in the context of relevant criminal investigations and prosecutions.

326. Section 5.1.3. of the CBTT AML/CFT Guidelines requires financial institutions to keep records of the identification data, account files and business correspondence for at least six (6) years following the termination of an account or business relationship.

327. Most of the interviewed financial institutions indicated that they comply with the record keeping requirements of the CBTT AML/CFT Guidelines. The SEC did indicate that brokers do not keep client records as required by FATF standards. The SEC has not issued any guidelines dealing with AML and CFT.

Special Recommendation VII

328. There are no mandatory requirements dealing with wire transfers for financial institutions and persons engaged in relevant business activity in the POCA. The only requirements concerning wire transfers are in Appendix A (b) and (c) of the CBTT AML/CFT Guidelines which state that the name and address of the ordering and beneficiary customers should be included on all domestic and international transfers. Financial institutions that participate in a business transaction via wire transfer should relay this “identifying” information about the transfer to any other financial institution participating in the transmittal. Financial institutions should also conduct enhanced scrutiny of wire transfers; particularly those which do not contain complete originator information (name, address and account number). Compliance with these requirements is checked by the Central Bank during on site examinations. Financial institutions that were interviewed indicated that they have difficulty in getting all the necessary information for wire transfers.

3.5.2 Recommendations and Comments

Recommendation 10

329. It is recommended that the proposed Financial Obligation Regulations be enacted as soon as possible and include the following;

330. Financial institutions should be required to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.

331. Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

332. Financial institutions should be required to maintain records of the identification data, account files and business correspondence for at least five (5) years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).

333. Financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

Special Recommendation VII

334. The authorities should impose mandatory requirements on financial institutions dealing with the measures of SR VII covering domestic, cross-border and non-routine wire transfers, intermediary and beneficial financial institutions handling wire transfers and the monitoring of compliance with stipulated requirements.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	NC	<ul style="list-style-type: none">▪ The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank.
SR.VII	NC	<ul style="list-style-type: none">▪ The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

335. Section 55 (2) of the POCA, requires all financial institutions and persons engaged in relevant business activity to pay special attention to all complex, unusual, or large transactions, whether completed or not, to all unusual patterns of transactions, and to all insignificant but periodic transactions, which have no apparent economic lawful purpose.

336. The only requirement with regard to financial institutions examining and recording their findings concerning the above transactions is in Section 5.2.1 of the CBTT AML/CFT Guidelines which requires financial institutions to review and properly

document the background and purpose of all complex, unusual, or large transactions and all unusual patterns of transactions, which have no apparent economic purpose.

337. There is no specific requirement for financial institutions to keep the findings of the examinations of the background and purpose of the above-mentioned transactions. The CBTT AML/CFT Guidelines only has a general requirement for the retention of all necessary records on transactions, both domestic and international, to enable financial institutions to comply with lawful information requests from law enforcement authorities.

338. All interviewed institutions appear to keep records of large and unusual transactions, whether a Declaration of Source of Funds Form or other information. Since there is no specified retention period in the law, each institution has developed its own retention period based on business policy.

Recommendation 21

339. There is no requirement in law for financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. The CBTT AML/CFT Guidelines advises financial institutions to exercise caution in their business relations with persons, companies and financial institutions from other countries. Additionally, as part of a risk based approach to monitoring, the guidelines state that financial institutions should maintain a list of countries, which do not comply with international standards on combating money laundering and terrorist financing. This list is sent by the CBTT (which normally receives it from the USA Embassy) or by the USA Embassy. Furthermore the institutions have the address of the FATF website where this list is published. The institutions did indicate that they have a copy of the NCCT list and that they conduct enhance scrutiny in these matters.

340. Besides the Central Bank of Trinidad and Tobago sending the NCTT list to the financial institutions it supervises, there are no other effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

341. There is no legal requirement for the background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations to be examined and written findings made available to assist competent authorities and auditors. The requirement for review and proper documentation in Section 5.2.1 of the CBTT AML/CFT Guidelines deals with all complex, unusual, or large transactions and all unusual patterns of transactions, which have no apparent economic purpose and does not refer specifically to transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

342. The only instance of a counter measure with regard to countries not applying or insufficiently applying the FATF Recommendations is the CBTT AML/CFT Guidelines advising financial institutions to implement a risk based approach to monitoring which would include information on high-risk activities/businesses and countries which do not comply with international standards on AML/CFT.

3.6.2 *Recommendations and Comments*

343. Only one of the criteria of Recommendation 11 is stipulated in law for financial institutions and persons carrying on relevant businesses. Other criteria while stated in the CBTT AML/CFT Guidelines are not enforceable and only applicable to the financial institutions supervised by the Central Bank. As such the Mission recommends that:

344. The POCA should be amended to require financial institutions to examine and record their findings in writing on the background and purpose of all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, and to keep such findings available for competent authorities and auditors for at least five years.

345. The POCA should be amended to require financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

346. Effective measures should be put in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

347. The background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations should be examined and written findings made available to assist competent authorities and auditors.

348. The Government Trinidad and Tobago should have in place arrangements to take the necessary countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.6.3 *Compliance with Recommendations 11 & 21*

Rating	Summary of factors underlying rating
--------	--------------------------------------

R.11	PC	<ul style="list-style-type: none"> ▪ There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to set forth their findings in writing, and to keep such findings for competent authorities and auditors for at least five years.
R.21	NC	<ul style="list-style-type: none"> ▪ Financial institutions are not required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the FATF Recommendations. ▪ There is no legal requirement for the background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations to be examined and written findings made available to assist competent authorities and auditors. ▪ Only the Central Bank circulates the NCCT list to the financial institutions it supervises.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13/Special Recommendation IV

349. Section 55 (2) of the POCA states that “Every financial institution or person engaged in a relevant business activity shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose”.

350. Section 55 (3) of the POCA states that “Upon suspicion that the transactions described could constitute or be related to illicit activities, a financial institution or person engaged in a relevant business activity shall report the suspicious transactions to the designated authority in the form specified in the Third Schedule, within fourteen days of the date the transaction was deemed to be suspicious as relating to illicit activities”.

351. The above provisions detail a reporting requirement to a designated authority who is defined in the POCA as a person with at least ten years of experience as an attorney-at-law or an accountant or a police officer not below the rank of inspector. While the criterion in the Methodology requires reporting to the FIU, the mission was advised that the designated authority is head of the FIU. The FIU does not have enabling legislation. It can only function as a result of its staff comprising of police officers having certain powers and authorities under the Police Act.

352. The reporting requirement also applies to transactions that could constitute or be related to illicit activity rather than the proceeds of all predicate offences listed under Recommendation 1. Additionally, there is no definition of the term illicit activity in the POCA. The requirements stipulate the reporting of complete or incomplete and insignificant suspicious transactions which comply with criterion 13.3.

353. Most of the financial institutions interviewed by the Mission were reporting SAR's to the designated authority/FIU. A breakdown of the number of SAR's submitted to the FIU follows;

SAR Received	2001	2002	2003	2004
Money Remitter	8	580	2219	9436
Financial Institutions	275	254	165	80
Total	283	834	2384	9516

354. Analysis of the SAR's submitted by one money remitter provided intelligence for drug trafficking activities. This information was made available to the drug trafficking interdiction arm of the CDCTF. A total of 36 SAR's were found to have substance and disseminated.

355. There is no legal requirement for financial institutions to make a SAR to the FIU with regard to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism²⁰. There is also no requirement for all transactions suspected of or being linked to terrorist financing, regardless of the amount or whether they involve tax matters and including attempted transactions to be reported.

356. There is a draft Anti-Terrorism Bill. Section 32(1) of the proposed Anti-Terrorism Bill, 2004 imposes a duty on persons to disclose information relating to terrorist acts or that may prevent a terrorist act. Section 33(1) also imposes a duty on persons to disclose information relating to property used for commission of terrorism or terrorist acts. Criminal sanctions are to be applied to persons failing to comply with the provisions of the Sections outlined above.

357. Section 6.2.3 of the CBTT AML/CFT Guidelines states that where financial institutions suspect or have a reasonable ground to suspect that funds are linked to, or to be used for terrorism, terrorist acts or by terrorist organisations, they should promptly report these suspicious transactions to the designated authority. The CBTT AML/CFT Guidelines include a non-exhaustive list of examples of suspicious transactions (in the regard of CFT) to assist financial institutions in recognizing same. The mission notes again that these CBTT AML/CFT Guidelines are not mandatory since they don't have a

²⁰ Idem note 1

legal basis. According to the records of the designated authority/FIU no SAR's linked to terrorism or terrorist acts have been found.

358. It's not clear whether tax matters would fall under the term "illicit activities" as specified in relation to reporting suspicious transactions. It should be noted however that the offence of money laundering includes proceeds of a specified offence which as defined in POCA 2000 include violation of certain tax statutes. No SAR's have been received by the designated authority/FIU pertaining to or involving tax matters.

359. The POCA does not place a burden on financial institutions to report to the FIU when they suspect that funds are the proceeds of criminal acts that would constitute a predicate offence for money laundering. The legislated burden is only in relation to the suspicion of illicit activity.

Recommendation 14

360. Section 55 (4) of the POCA states that when a report is made to the designated authority in good faith, the financial institutions or persons engaged in relevant business activities and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil and administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication. As already noted the designated authority heads the FIU.

361. Sections 51 (1), (2) and (3) of the POCA creates tipping off offences in relation to disclosing information regarding money laundering investigations, disclosures of suspicions to a police officer or the designated authority, intended disclosures to a police officer or disclosures and/or intended disclosures by an employee in accordance with procedures established by his employer to effect disclosure to a police officer. These provisions are quite specific as to referenced sections of the POCA 2000 dealing with various reporting circumstances. None of the provisions refer to Section 55 (3) of POCA 2000 which deals specifically with financial institutions and persons engaged in relevant business activity reporting suspicious transactions to the designated authority. This would suggest that the tipping off offence does not include reporting of SAR's to the designated authority by financial institutions and persons engaged in relevant business activity.

362. The "tipping off" provision of Section 51 of the POCA is documented in all Production Orders that are served. This is done to ensure that employees who comply or assist in complying with these orders are made aware of the provision. Further, the Designated Authority/FIU is aware that the financial institutions have incorporated Section 51 of the POCA in documented procedures and highlighted it in their training

programmes. To date no evidence of any offence under this section has come to the attention of the designated authority/ FIU.

363. Section 55 (8) of the POCA states that” The Designated Authority shall regard and deal with all information and documents which he has obtained in the course of duties as designated authority as secret and confidential”. Furthermore Section 55 (9) of the POCA states that “If the designated authority communicates or attempts to communicate such information to any person or anything contained in such document or copies to any person he is guilty of an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.”

364. The obligations mentioned in (Subsections 55 (8) and (9) of the POCA 2000 are specific to the designated authority and not to all FIU personnel.

Recommendation 19

365. When entering T&T all passengers are issued Customs Declaration Forms and are required to declare funds in excess of TT\$20,000 and/or US\$5,000 in currency and bearer instruments. . A separate form has to be completed for funds in excess of the threshold. False declarations are offences under the Customs Act punishable by fines, forfeiture of currency or bearer instruments and/or imprisonment. Information from these forms, some 200,000 yearly, is stored in a computer database. This database is accessible to the designated authority/FIU for AML/CFT matters. Travelers leaving the country are advised to make a declaration to customs if they are taking out sums over the threshold stated above.

366. There is no system in Trinidad and Tobago requiring financial institutions to report all currency transactions above a fixed threshold to a national central agency. Section 5.2.2 of the CBTT AML/CFT Guidelines requires financial institutions to retain a large transaction record for receipts of cash, bank cheques, drafts, money orders or travellers’ cheques in excess of TT\$60,000. The Guidelines state that this requirement will be superseded when a threshold is established in law. Various financial institutions in interviews indicated that they retain records (usually it’s just a form) of all cash transactions above a certain amount, but the threshold varied per financial institution since there is no threshold designated in law. The information about transactions above a certain amount or threshold is not reported to a national central agency. However, the above measures already in place improve the feasibility of implementing such a reporting system.

367. In Trinidad and Tobago the Customs Division is responsible for inspecting all packages entering T&T. Any shipment of currency, monetary instruments, precious metals, or gems, etc would be detained and investigated to determine its origin, but no information was provided as to whether the country from which the shipment originated and or to which the shipment is destined is notified and if Customs co-operates with a

view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.

368. The mission did not receive information as to whether the computerized database of Customs Declaration Forms maintained by the Custom Division is subject to strict safeguards to ensure proper use of the information or data that is recorded.

Recommendation 25

369. The interviewed financial institutions indicated that they do not get feedback from the designated authority/FIU when they report SARs. The designated authority/FIU stated that it doesn't have a structure or mechanism in place for providing adequate and appropriate feedback to financial institutions. In case of a transaction that needs to be monitored by the financial institution the designated authority/FIU does provide guidance to that institution.

Special Recommendation IV

370. Anti-Terrorism Bill 2004 was not endorsed at the time of the visit of the Mission.²¹

3.7.2 Recommendations and Comments

Recommendation 13/Special Recommendation IV

371. The POCA should be amended to require reporting to the FIU rather than the designated authority of suspicious transactions related to the proceeds of all ML predicate offences as defined in FATF Recommendation 1.

372. The requirement to report should be applied regardless of the amount of the transaction and if it involves tax matters.

373. The Anti Terrorism Bill should be enacted as soon as possible to require financial institutions to report to the designated authority/FIU when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations, regardless of the amount of the transaction and including attempted transactions or if tax matters are involved²².

Recommendation 14

374. POCA 2000 should be amended to prohibit the disclosure of reporting to the designated authority/FIU as stipulated in Section 55 (3) of the POCA.

²¹ Idem note 1

²² Idem note 1

375. The POCA should be amended to ensure that the confidentiality requirement in Subsections 55(8) and (9) also applies to the personnel of the FIU.

Recommendation 19

376. The authorities should consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national agency with a computerized database.

377. When the Customs Division discovers an unusual international shipment of currency, monetary instruments, precious metals or gems etc, it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which the shipment originated and/or to which it is destined, and should co-operate with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.

378. The Customs Division’s computerized database of Customs Declaration Forms should be subject to strict safeguards to ensure proper use of the information that is recorded.

Recommendation 25

379. The designated authority/FIU should have a structure in place to provide financial institutions that are required to report suspicious transactions, with adequate and appropriate feedback.

Special Recommendation IV:

380. Endorse Anti-Terrorism Bill 2004

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> • The reporting agency is the designated authority rather than the FIU and suspicion is based on illicit activities rather than all predicate offences • No requirement to report suspicious transactions related to terrorist financing • No requirement to report suspicious transactions regardless of whether they involve tax matters.
R.14	PC	<ul style="list-style-type: none"> • No prohibition of disclosure of the reporting of a suspicious transaction to the designated authority/FIU.

R.19	PC	<ul style="list-style-type: none"> • No indication that the authorities considered implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerized database. • No indication that when the Customs Division discovers an unusual international shipment of currency, monetary instruments, precious metals or gems etc, it considers notifying, as appropriate, the Customs Service or other competent authorities of the countries from which the shipment originated and/or to which it is destined, and co-operates with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.
R.25²³	NC	<ul style="list-style-type: none"> • The designated authority/FIU does not provide feedback to financial institutions that are required to report suspicious transactions.
SR.IV	NC	<ul style="list-style-type: none"> • There are no requirements for financial institutions to report to the designated authority/FIU when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations, regardless of the amount of the transaction and including attempted transactions or if tax matters are involved²⁴.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

381. The only provisions concerning internal controls and other measures in the POCA are in Subsections 55(5) and (6). These require every financial institution or person engaged in a relevant business activity to develop and implement a written compliance programme. The programme must include:

- a system of internal controls to ensure ongoing compliance
- internal or external independent testing for compliance
- training of personnel in the identification of suspicious transactions
- appointment of a staff member responsible for continual compliance with the Act and the Regulations

382. The above requirement refers to a system of internal controls and does not include procedures and policies as stipulated in the FATF Recommendations . Additionally,

²³ See also factors mentioned in rating boxes: 3.12.3, and 4.5.3.

²⁴ Idem note 1

since the POCA 2000 only deals with money laundering, there is no legal requirement that covers FT²⁵.

383. The CBTT AML/CFT Guidelines in Section 3.1 do require compliance programs to include adequate internal policies, procedures and controls including procedures governing customer identification, documentation and verification of customer information and the reporting of suspicious activity.

384. The provision for the appointment of a staff member responsible for continual compliance with the Act and the Regulations does not fully comply with the relevant FATF Recommendation which requires at a minimum the designation of an AML/CFT officer at the management level. The CBTT AML/CFT Guidelines in Section 7.1 does require financial institutions to designate a senior official within their organization to carry out the function of compliance officer.

385. Based on the interviews conducted by the mission it appears that the banks and insurance companies in T&T have designated compliance officers but not all are at management level. With regard to the securities sector and credit unions, the indications are that no compliance officers have been appointed. The one money transfer company that was interviewed advised that it had appointed a compliance officer but not at the management level. No information was available on whether any of the cambios had appointed compliance officers.

386. There is no provision in the POCA for the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information. However, Section 7.5 of the CBTT AML/CFT Guidelines requires the compliance officer to be responsible for maintaining the records of unusual or suspicious transactions.

387. Elaborating on the requirement in the POCA for internal or external independent testing for compliance, Section 3.1.1.4 of the CBTT AML/CFT Guidelines requires financial institutions to implement an effective risk-based audit function to evaluate the compliance program. The audit should review a sample of accounts and files for both occasional and usual transactions to the extent necessary to enable a proper evaluation of compliance with due diligence and risk management procedures and record keeping, and reporting requirements.

388. Section 9.3 of the CBTT AML/CFT Guidelines states that the internal and external auditors of financial institutions should ensure that policies, procedures and

²⁵ Idem note 1

systems are in compliance with the requirements set out in the Guidelines. The level of transaction testing should be in line with the risk profile of the institution. Reports by both auditors should be submitted to the Board of Directors of the financial institution. The report of the external auditors should be submitted to the Central Bank on an annual basis. The role of the external auditor is to check compliance with relevant legislation and guidelines.

389. The institutions interviewed by the Mission indicated that they are in the process of upgrading or enhancing their audit systems and programs to meet the requirements. The provision for training in the POCA is limited to the identification of suspicious transactions while the criterion requires training to keep employees informed of new developments, including information on current ML and FT techniques, methods and trends and a clear explanation of all aspects of AML/CFT laws and obligations, and in particular requirements concerning CDD and suspicious transaction reporting.

390. Sections 8.2.1 and 8.2.2 of the CBTT AML/CFT Guidelines require financial institutions to maintain on an on-going basis, training programs which make their staff aware of their obligations in relation to matters of money laundering and terrorist financing. Training programs should cover matters dealt with in the CBTT AML/CFT Guidelines, relevant legislation, the identification of possible types of suspicious activities in each department, case studies of traditional schemes and new money laundering typologies. Training should be tailored to new employees, general staff and management and should be provided at regular intervals, no less than once per year.

391. With regard to training, the interviewed financial institutions indicated that their compliance officers and most of their other personnel had received basic AML training. Training continues mostly in AML issues and in detecting suspicious transactions. The securities sector and the Cambios have not been trained.

392. There is no legal requirement (in the POCA 2000) for financial institutions and persons engaged in relevant business activity to put in place screening procedures to ensure high standards when hiring employees. There are provisions in the proposed Financial Obligation Regulations to comply with this requirement. Section 3.1.1.1 of the CBTT AML/CFT Guidelines requires financial institutions to implement programs, which are appropriate for the size and nature of their operations and which includes screening procedures for new employees and procedures for monitoring existing employees. In Section 9.1 of the CBTT AML/CFT Guidelines financial institutions are required to make every effort to ensure that they hire and retain staff of the highest levels of integrity and competence and to update staff records periodically. The Mission found that some of the financial institutions, as part of their internal policy, have screening procedures in place for hiring employees.

393. Compliance officers of interviewed financial institutions advised the mission that they can and have acted independently in reporting SAR's to the designated authority/FIU and to senior management.

Recommendation 22

394. There are no legal requirements for financial institutions to pay particular attention that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT requirements, or to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures. However, Section 9.2 of the CBTT AML/CFT Guidelines states that financial institutions should ensure, to the extent permitted by the locally applicable laws and regulations, that the CBTT AML/CFT Guideline is upheld by their branches, subsidiaries and associate companies abroad, especially in those countries where there are no or insufficient legal provisions to counter the incidence of money laundering and terrorist financing. Where local laws prohibit the full implementation of these guidelines by such branches, subsidiaries or associate companies, financial institutions are required to inform the Office of the Inspector of Financial Institutions, Central Bank of Trinidad and Tobago.

395. There are no legal requirements for financial institutions subject to the Core Principles to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide, but the Central Bank of Trinidad and Tobago indicated that in practice some financial institutions do apply consistent CDD measures at a group level because they have group compliance units or group compliance officers.

3.8.2 Recommendations and Comments

Recommendation 15

396. Legislative provisions for internal controls and other measures should be amended to include the following;

397. Internal procedures, policies and controls to prevent ML and FT covering inter alia CDD, record retention, detection of unusual and suspicious transactions and the reporting obligation.

398. Appropriate compliance management arrangements should be develop to include at a minimum the designation of an AML/CFT compliance officer at management level.

399. The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

400. Employee training should include information on new developments including current ML and FT techniques, methods and trends, clear explanations of all aspects of AML/CFT laws and obligations and requirements concerning CDD and suspicious transaction reporting.

401. Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

402. Introduce legislation to include the requirements for financial institutions to:

403. Pay particular attention that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe the AML/CFT requirements consistent with home country requirements and the FATF Recommendations;

404. Apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit, where the minimum AML/CFT requirements of the home and host countries differ;

405. Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • Internal controls requirements are too general and do not include FT. • No requirement for the designation of a compliance officer at management level • No requirement for AML/CFT compliance officer and other appropriate staff to have access to relevant information • Employee training is limited to the identification of suspicious transactions • No requirement for financial institutions to place screening

		procedures when hiring employees.
R.22	NC	<ul style="list-style-type: none"> No legal requirements for financial institution to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF standards.

3.9 *Shell banks (R.18)*

3.9.1 *Description and Analysis*

Recommendation 18

406. Although there is no legal requirement that prohibits the establishment or the continued operation of shell banks there are no shell banks in Trinidad and Tobago. Licensing requirements for banks in Section 7 of the FIA require the address of the registered office of the applicant in Trinidad and Tobago, details on the management personnel and management arrangements of the applicant.

407. Although there is no legal requirement that prohibits the financial institutions from entering into, or continue, correspondent banking relationships with shell banks, section A of Appendix I (concerning correspondent banking) of the CBTT AML/CFT Guidelines states that banks should refuse to enter or continue a correspondent banking relationship with a bank in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group.

408. The Central Bank indicated that they are unaware of any bank which has a banking relationship with a shell bank. The financial institutions that were interviewed indicated that their policies prohibit business with shell banks.

409. There is no legal requirement for financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 *Recommendations and Comments*

410. Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks;

411. Financial institutions should be required to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 *Compliance with Recommendation 18*

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> There are no provisions to prevent financial institutions to enter, or

		<p>continue, correspondent banking relationships with shell banks.</p> <ul style="list-style-type: none"> • There are no provisions to require that financial institutions should satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
--	--	---

Regulation, supervision, monitoring and sanctions

3.10 *The supervisory and oversight system - competent authorities and SROs*
Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)

3.10.1 Description and Analysis

Recommendation 17

412. Section 53 of the POCA provides penalties for money laundering and tipping off offences specified in POCA 2000. Penalties include a fine of TT\$10 million and imprisonment for ten years on summary conviction or a fine of TT\$25 million and imprisonment for fifteen years on conviction on indictment.

413. Section 57 (1) of the POCA provides penalties for non-compliance with record keeping and retention duties stipulated in regulations, suspicious transaction reporting and compliance program requirements and obligations of the designated authority. The penalties include a fine of TT\$500,000 and imprisonment for two years on summary conviction or a fine of TT\$3 million and imprisonment for seven years on conviction on indictment.

414. Section 57 (2) of the POCA states that where a company commits an offence under this Act any officer, director or agent of the company who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to, and guilty of, the offence and liable on conviction to the punishment provided for the offence, whether or not the company has been prosecuted or convicted. The sanctions in the POCA are criminal and can only be applied by the courts. There are no provisions for imposition of disciplinary sanctions or the power to withdraw, restrict or suspend the financial institution’s licence for non-compliance with AML obligations.

415. The above provisions would suggest that legal persons are also subject to sanctions for non-compliance. However the penalties listed are simultaneous fines and imprisonment which would be impossible in the case of legal persons. There is need to accordingly amend POCA 2000 for appropriate sanctions for legal persons.

Recommendation 23

416. The CBTT, the TTSEC and the Commissioner of Co-operative Development/CUSU are the designated competent authorities responsible for the supervision of the different financial institutions in Trinidad and Tobago. These

authorities have not been formally designated as responsible for ensuring AML compliance of the financial institutions they supervise. Only the CBTT has assumed responsibility for AML compliance for the financial institutions it oversees as part of its supervisory function.

The Central Bank of Trinidad and Tobago

417. The Bank Inspection Department (of the CBTT), under the Inspector of Banks, carries out the regulatory functions stipulated in the FIA by implementing a supervisory regime utilizing international banking supervision standards issued by the Basel Committee on Banking Supervision. The CBTT is also responsible for the supervision of insurance companies which are governed by the Insurance Act 1980. The Central Bank of Trinidad and Tobago also applies the requirements under the Core Principles of the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors for the supervision of the banking and insurance sector with regard to AML/CFT.

418. The supervision program uses risk management modules in planning and carrying out on-site examinations and off-site surveillance of all licensees and incorporates testing for compliance with statutory AML requirements outlined in the POCA and the CBTT AML/CFT Guidelines issued in 2004. The risk-based supervision entails an ongoing assessment of the key risk exposures of supervised entities and the adequacy of risk mitigation. It also entails on-going off-site assessments and on-site reviews, which focus on the areas of highest risk exposures. Areas of concerns are discussed with the Board and Senior Management and a corrective plan of action with timelines is normally agreed upon. The CBTT indicated that it is the responsibility of the Board of the financial institution to ensure adherence to the corrective action plan and the Central Bank follows-up with the supervised entities to ensure the achievement of agreed milestones. The Mission noted that the CBTT has not imposed any sanctions for not compliance with AML/CFT guidelines. This may have to do with the absence of proper legal basis for these guidelines (Financial Obligation Regulation). However, the authorities of Trinidad and Tobago supplied the Mission with the information below on conducted On-Site visits with AML components and results of corrective measures imposed on financial institutions supervised by the CBTT. The milestones were achieved within the agreed period about 70% of the time and timelines were changed with the remaining 30%. The timelines were changed after discussion and appreciation of the obstacles, which prevented achievement within the initial timelines. Deferred corrective actions were achieved within revised timelines according to information received by the Trinidad and Tobago authorities.

	NO. ON SITE VISITS	IMPLEMENTED CORRECTIONS
2000	5	30% within 4 months 20% within 7 months

		20% within 10 months 30% within 15 months
2001	9	25% within 3 months 20% within 6 months 15% within 9 months 20% within 12 months 20% within 15 months
2002	9	20% within 3 months 30% within 6 months 20% within 9 months 15% within 12 months 15% within 15 months
2003	7	30% within 3 months 25% within 6 months 20% within 9 months 20% within 12 months 5% within 15 months
2004	8	30% within 3 months 30% within 6 months 25% within 9 months 15% within 12 months
2005 (As at May)	4	100% corrected by December 2005

419. Pending the issuance of regulations under the POCA (Financial Obligation Regulations) detailing reporting and recording keeping obligations, the CBTT requires all licensees to continue complying with the CBTT AML/CFT Guidelines. While the guidelines are not mandatory, the CBTT has advised that the financial institutions have adhered to them. Cambios are licensed and supervised by the Foreign Exchange Department of the CBTT. This supervision does not include AML/CFT.

Securities and Exchange Commission

420. Under the SIA the TTSEC is responsible for the supervision and regulation of the securities market. The supervisory function as outlined in the SIA includes maintenance of surveillance over the securities market, and the registration, authorization, and regulation of self-regulatory organizations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers. Where the Commission is of the view that a registrant may be in breach of the Act, it may appoint a person to examine a registrant's records and financial affairs including bank accounts and other data. AML requirements as stipulated by the POCA apply only to dealers and investment advisers licensed under the SIA and not to all entities in the securities industry whose business includes investing money, acting as trustee with respect to other people's funds or providing financial services involving the transfer or exchange of funds. However, in the case of non-registrants, the Commission can apply ex parte to the High Court for an

order authorizing the Commission to examine that person's records and financial affairs. The TTSEC is not required to ensure compliance by licensees with POCA 2000. At present there are no specific AML guidelines for the securities industry and no testing for compliance with the provisions of the POCA 2000.

The Commissioner for Co-operative Development

421. The Commissioner for Co-operative Development is responsible for the supervision of co-operative societies and credit unions under the Co-operative Societies Act (CSA). At present the Commissioner's main functions consist of the registration of co-operatives and the oversight of the development of co-operative principles. The CSA, which was enacted in 1971, does not require the Commissioner to test licensees for compliance with the POCA. At present there are no specific anti-money laundering guidelines for credit unions and no testing for compliance with the anti-money laundering provisions of the POCA.

422. Money transfer companies and cash couriers in Trinidad and Tobago are not subject to an effective system for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing. Cash couriers and money transfer companies are not licensed, registered and appropriately regulated. As such, credit unions, , money transfer companies and cash couriers are not subject to supervision or oversight for AML/CFT purposes.

Recommendation 29

Central Bank of Trinidad and Tobago

423. As already noted, while the Central Bank has not been designated as responsible for ensuring compliance of its supervised financial institutions with the AML obligations of POCA 2000, it has assumed this function as part of its supervisory role. As such, the Central Bank and the Inspector of Financial Institutions use the powers granted under the FIA to effect AML/CFT supervision. Subsection 31(3) of the FIA gives the Central Bank and the Inspector of Financial Institutions access to all books, records, accounts, vouchers, and minutes of meetings, securities and any other documents of any licensee necessary for the performance of their duties under the FIA. Furthermore, Sections 43 and 65 of the FIA gives the Central Bank the power to request such information as it may consider necessary from a licensee to ensure that it is complying with the FIA. Subsection 31 (1) (b) of the FIA gives the Inspector of Financial Institutions the power to conduct on-site examinations of licensees in order to ensure compliance with the FIA and that the licensee is in a sound financial condition.

424. The supervision program of the CBTT uses risk management modules in planning and carrying out on-site examinations and off-site surveillance of all licensees and incorporates testing for compliance with AML/CFT requirements outlined in the POCA 2000 and guidelines issued by the CBTT in 2004. Subsection 31 (4) of the FIA empowers the Central Bank to take measures it considers necessary, including issuing cease and desist orders, to rectify the situation if an examination of a licensee reveals that the institution is conducting its business in an unlawful or unsound manner. The phrase

“in an unlawful or unsound manner” implies that the CBTT can impose measures stipulated in the FIA for non-compliance with the POCA.

425. In the Guidelines there are no sanctions against financial institutions, and their directors or senior management for failure to comply with the AML/CFT Guidelines.

Securities and Exchange Commission

426. The TTSEC is not required to ensure compliance by licensees with the POCA. At present there are no specific AML/CFT Guidelines for the securities industry and no testing for compliance with the provisions of the POCA.

427. The TTSEC does not have authority under the SIA or the POCA to conduct inspections or to compel production of information by the securities sector with regard to requirements of the POCA. Since the TTSEC doesn't have adequate powers of enforcement under the SIA or the POCA there are no sanctions against financial institutions, and their directors or senior management for failure to comply.

Credit Union Supervisory Unit

428. The CUSU has been established within the Ministry of Finance. This unit has been trained to implement a supervisory regime for credit unions combining off-site surveillance and on-site examination techniques similar to bank supervision. While the Unit does not have legislative authority to conduct on-site examinations of credit unions at present, it has commenced inspections with the co-operation of the credit unions. The onsite examination, however don't include the testing of compliance with AML/CFT issues. To date the CUSU has not issued AML/CFT Guidelines for the credit unions.

429. The CUSU doesn't have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance because the Unit does not have legislative authority to conduct on-site examinations of credit unions. As a result there are no sanctions against financial institutions, and their directors or senior management for failure to comply with AML/CFT issues.

Recommendation 30

Central Bank of Trinidad and Tobago

430. The Inspector of Financial Institutions is supported by a staff complement of 102 persons in the Inspection Department. This comprises managerial and supervisory personnel consisting of the Inspector of Financial Institutions with a Deputy Inspector, four managers, four specialist positions, ten senior examiners, fifty-eight (58) examiners (I and II levels), five (5) graduate trainees and associate staff, covering information technology and economic analysis. Managerial and examination staffs are suitably qualified with minimum graduate degrees in finance, accounting, management and economics. The CBTT advised that resources are sufficient. Most of the training for the

Supervision Department is in-house and on the job during on-site examinations. A number of the AML/CFT examiners have attended external formal training programmes.

Securities and Exchange Commission

431. The staffs of the TTSEC consists of forty persons and according to the Acting General Manager is not sufficient to perform all of the present functions of the TTSEC. Given the fact that the TTSEC does not currently carry out any AML/CFT supervision of its relevant licensed entities, assumption of this function by the TTSEC will require it to evaluate the need to engage necessary staff for such a role. Furthermore the TTSEC is dependent on government for its resources and the approval process for such is normally protracted. Two officers of the Legal Department had received general AML training organized by IOSCO in Toronto, Canada in 2004.

432. The present staff of the CUSU comprises three persons. Since there are one hundred and thirty-four credit unions in Trinidad and Tobago, this number of staff appears inadequate to provide any effective coverage of the industry with regard to carrying out on-site examinations. If the Unit assumes the responsibility for AML/CFT supervision, additional staff will have to be hired. Additional information with regard to qualification and training of staff was not available.

3.10.2 Recommendations and Comments

Recommendation 17

433. The authorities should consider amending the provisions for sanctions in POCA 2000 to allow for penalties to be applied jointly or separately.

434. The authorities should consider increasing the range of sanctions for AML/CFT non-compliance to include disciplinary sanctions and the power to withdraw, restrict or suspend the financial institution's licence, where applicable.

Recommendation 23

435. Authorities should formally designate the relevant supervisory agencies with the responsibility for ensuring compliance by their licensees with AML/CFT obligations.

436. The TTSEC should apply the requirements of the IOSCO Core Principles for the supervision of the securities sector with regard to AML/CFT.

437. The securities sector and credit unions should be subject to AML/CFT supervision. Money transfer companies and cash couriers should be licensed, registered, appropriately regulated and subject to AML/CFT supervision.

Recommendation 29

438. The CUSU should have the power to compel production or to obtain access to all records, documents or information relevant to monitoring compliance.

439. The CUSU should have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance.

440. All supervisors should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with the AML/CFT requirements.

Recommendation 30

441. The TTSEC and CUSU should review their staffing requirements and consider appropriate AML/CFT training in the event of being designated the AML/CFT authority for their licensees

3.10.3 Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29 & 30

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	NC	<ul style="list-style-type: none"> No provisions in legislation to withdraw, restrict or suspend the licence of the financial institution for non-compliance with AML/CFT requirements.
R.23²⁶	NC	<ul style="list-style-type: none"> Relevant supervisory agencies have not been designated as responsible for ensuring the compliance of their supervised financial institutions with AML/CFT requirements. The TTSEC does not apply the requirements of the IOSCO Principles for the supervision of the securities sector with regard to AML/CFT The securities sector, credit unions, money transfer companies and cash couriers are not subject to AML/CFT supervision. Money transfer companies and cash couriers are not licensed, registered or appropriately regulated.
R.29²⁷	NC	<ul style="list-style-type: none"> The CUSU do not have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. The CUSU do not have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance. Supervisors do not have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.
R.30²⁸	PC	<ul style="list-style-type: none"> Staff resources of the TTSEC and CUSU are insufficient for their task.

²⁶ See also factors mentioned in rating boxes: 3.11.3, and 3.13.3.

²⁷ See also factors mentioned in rating box: 3.13.3

²⁸ See also factors mentioned in rating boxes: 2.5.3, and 2.6.3.

- | | | |
|--|--|---|
| | | <ul style="list-style-type: none">• AML/CFT training available for supervisory staff is insufficient. |
|--|--|---|

3.11 Financial institutions - market entry and ownership/control (R.23)

3.11.1 Description and Analysis

442. The only financial institutions that are subject to AML/CFT regulation and supervision are those supervised by the CBTT under the FIA and the Insurance Act 1980. While the CBTT has not been formally assigned the responsibility for ensuring AML compliance by the financial institutions it supervises, it has incorporated this function in its legislated supervision and monitoring process. The CBTT has also issued AML/CFT Guidelines. These guidelines are not mandatory and have no sanctions for non-compliance. The CBTT has incorporated testing for AML/CFT compliance including the AML/CFT Guidelines in its on-site examinations of its supervised institutions. However, at the date of the mutual evaluation, the CBTT had not yet conducted any AML/CFT examinations of insurance companies since assuming supervisory responsibility for the insurance industry in May 2004.

443. Under Section 20 of the FIA, the CBTT has approval over the appointment or in the case of license applicants continuing appointment of any director, controller or manager of a financial institution licensed under the FIA. Controller is defined in the FIA to include managing director of the licensee or of another licensee of which it is a subsidiary or chief executive of the licensee or of another company of which it is a subsidiary. Section 39 of the FIA requires all persons to first obtain a permit from the CBTT before becoming a controlling shareholder of a licensee. Persons who are controlling shareholders are also required to obtain permits. Controlling shareholder is defined in the FIA as a person who either alone or with an affiliate or relative or connected person controls 25 percent (25%) of the voting power at any general meeting of the licensed institution or another company of which it is a subsidiary. One of the conditions for CBTT approval under both sections of the FIA is the satisfaction of “fit and proper” criteria. These criteria incorporate requirements regarding expertise, integrity, competence, criminal history and past employment experience.

444. Section 17 of the Insurance Act 1980 requires the Supervisor of Insurance (the Inspector of Financial Institutions since May 2005) to be satisfied that the managing director or controller of the insurance company is a fit and proper person as a condition for registering an insurance company. Section 19 of the Insurance Act 1980 gives the Supervisor of Insurance approval over the appointment of the chief executive or controller of an insurance company. One of the conditions for approval of the appointment is that the applicant is fit and proper. Similar provisions are applicable for agents, brokers, salesmen and adjusters under the Insurance Act 1980. There are no specific criteria for defining fit and proper in the Insurance Act 1980. Controller is defined in the Insurance Act to mean a director or a chief executive officer of a company or any person who is entitled to control at least one-third of the voting power at any

general meeting of the company. A controller of a company which has an insurance company as a subsidiary is also deemed to be a controller of the insurance company.

445. The registration process as outlined in the SIA requires individual applicants to be of good character or in the case of companies, not have an un-discharged bankruptcy order, an appointed receiver manager, interests which may conflict with the conduct and integrity of the proposed business or a past history of suspension or expulsion from any other securities exchange. There is no definition of “good character” or criteria for assessing individuals in the SIA. There is no statutory requirement to identify the beneficial owners of shares in applicant companies.

446. With regard to changes in management and ownership there are no specific requirements for the TTSEC to exercise oversight in these matters. However, conviction of an offence involving fraud or dishonesty is one of the criteria for the suspension or revocation of registration and does provide some protection from criminal elements. Therefore, while the registration process does mandate for the exclusion of participants of dubious integrity, the SIA does not have specific provisions for the identification of beneficial shareholders or oversight in changes in management and ownership.

447. In addition as part of the application process for registration of individuals, as securities markets actors, applicants must declare convictions for all offences except traffic offences that have been pardoned. This assists the Commission in determining the fitness of the applicant for registration. However, there are no legal provisions prohibiting criminals from being the beneficial owner of a significant or controlling interest in or discharging a management function in a financial institution that is an investment adviser or a dealer.

448. There are no provisions in the Cooperative Societies Act which give the Commissioner for Co-operative Development powers to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in credit unions.

449. Cambios (providing a money or currency changing service) are licensed and registered by the CBTT while cash couriers and money remitters (providing a money or value transfer service) are not licensed or registered by any authority.

3.11.2 Recommendations and Comments

450. The securities sector and credit unions should be subject to AML/CFT supervision.

451. The measures in the FIA to prevent criminals or their associates from gaining control or significant ownership of financial institutions should be duplicated in the relevant legislation governing the supervision of other financial institutions under the POCA.

452. Money transfer companies and cash couriers should be licensed or registered.

3.11.3 Compliance with Recommendation 23 (criteria 23.1, 23.3-23.5)

	Rating	Summary of factors underlying rating
R.23²⁹	NC	<ul style="list-style-type: none"> • Only the financial institutions supervised by the CBTT are subject to AML/CFT regulation and supervision. • Only financial institutions under the FIA are subject to all measures necessary to prevent criminals and their associates from gaining control or significant ownership of financial institutions. • Money transfer companies and cash couriers are not licensed or registered.

3.12 AML/CFT Guidelines (R.25)

3.12.1 Description and Analysis

Recommendation 25

453. The only AML/CFT Guidelines that have been issued in Trinidad and Tobago are the CBTT AML/CFT Guidelines. These guidelines were first issued in the 1990s and have been revised and updated, the latest revision being September 2004. The guidelines are applicable only to those financial institutions that are supervised by the Central Bank i.e. banks and insurance companies. The guidelines are not legally binding and do not have sanctions for non-compliance. However, it appears that the banks and insurance companies have been adhering to the guidelines.

454. The CBTT AML/CFT Guidelines cover most of the FATF Recommendations, defines money laundering and terrorist financing, discusses the stages of money laundering, give details on the legislative framework, provide the minimum requirements for compliance programmes, discuss in detail “know your customer” issues, outlines reporting requirements, designation of the compliance officer and training of relevant staff. The guidelines also include appendices, which provide information on suspicious transactions and general “know your customer” issues related to banks, insurance companies and intermediaries.

²⁹ See also factors mentioned in rating boxes: 3.10.3, and 3.13.3.

3.12.2 Recommendations and Comments

Recommendation 25

455. The following is recommended; The CBTT AML/CFT Guidelines should be enforceable and have sanctions for non-compliance.

456. Guidelines similar to the CBTT AML/CFT Guidelines should be issued by the relevant authorities for all financial institutions and persons engaged in relevant business activity stipulated in the POCA.

3.12.3 Compliance with Recommendation 25 (criteria 25.1, financial institutions)

	Rating	Summary of factors underlying rating
R.25 ³⁰	NC	<ul style="list-style-type: none">The CBTT AML/CFT Guidelines are applicable only to banks and insurance companies.

3.13 Ongoing supervision and monitoring (R.23, 29 & 32)

3.13.1 Description and Analysis

Recommendation 23

457. The Central Bank of Trinidad and Tobago applies the requirements for ongoing supervision under the Core Principles of the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors for the supervision of the banking and insurance sector with regard to AML/CFT. The TTSEC has not been designated as the AML/CFT authority responsible for ensuring the compliance of its supervised financial institutions with the POCA and does not carry out AML/CFT supervision.

458. Money transfer companies and cash couriers in Trinidad and Tobago are not subject to an effective system for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing. Cash couriers and money transfer companies are not licensed, registered and appropriately regulated. As such, credit unions, money transfer companies and cash couriers are not subject to supervision or oversight for AML/CFT purposes.

Recommendation 29

Central Bank of Trinidad and Tobago

459. As already noted, while the Central Bank has not been designated as responsible for ensuring compliance of its supervised financial institutions with the AML obligations of the POCA, it has assume this function as part of its supervisory role. As such, the Central Bank and the Inspector of Financial Institutions use the powers granted under the

³⁰ See also factors mentioned in rating boxes: 3.7.3, and 4.5.3.

FIA to effect AML/CFT supervision. Subsection 31(3) of the FIA gives the Central Bank and the Inspector of Financial Institutions access to all books, records, accounts, vouchers, and minutes of meetings, securities and any other documents of any licensee necessary for the performance of their duties under the FIA. Furthermore, Sections 43 and 65 of the FIA gives the Central Bank the power to request such information as it may consider necessary from a licensee to ensure that it is complying with the FIA.

460. Subsection 31 (1) (b) of the FIA gives the Inspector of Financial Institutions the power to conduct on-site examinations of licensees in order to ensure compliance with the FIA and that the licensee is in a sound financial condition.

461. The supervision program of the CBTT uses risk management modules in planning and carrying out on-site examinations and off-site surveillance of all licensees and incorporates testing for compliance with AML/CFT requirements outlined in the POCA and guidelines issued by the CBTT in 2004. Subsection 31 (4) of the FIA empowers the Central Bank to take measures it considers necessary, including issuing cease and desist orders, to rectify the situation if an examination of a licensee reveals that the institution is conducting its business in an unlawful or unsound manner. The phrase “in an unlawful or unsound manner” implies that the CBTT can impose measures stipulated in the FIA for non-compliance with the POCA.

462. In the Guidelines there are no sanctions against financial institutions, and their directors or senior management for failure to comply with the AML/CFT Guidelines (EC 29.4).

Securities and Exchange Commission

463. The TTSEC is not required to ensure compliance by licensees with the POCA. The TTSEC has authority under the Securities Industry Act to conduct inspections or to compel production of information by the securities sector where the Commission is of the view that the registrant may be in breach of the Act. Under the POCA the SEC may conduct similar inspections or compel the production of information from dealers and investment advisors. However, at the time of the on site visit there were no specific AML/CFT Guidelines for the securities industry and no testing for compliance with provisions of the POCA.

Credit Union Supervisory Unit

464. The CUSU has been established within the Ministry of Finance. This unit has been trained to implement a supervisory regime for credit unions combining off-site surveillance and on-site examination techniques similar to bank supervision. While the Unit does not have legislative authority to conduct on-site examinations of credit unions at present, it has commenced inspections with the co-operation of the credit unions. The onsite examination, however don't include the testing of compliance with AML/CFT issues. To date the CUSU has not issued AML/CFT Guidelines for the credit unions.

465. The CUSU doesn't have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance because the

Unit does not have legislative authority to conduct on-site examinations of credit unions. As a result there are no sanctions against financial institutions, and their directors or senior management for failure to comply with AML/CFT issues.

Recommendation 32

466. The only supervisory authority that does any review of the effectiveness of the system to combat ML and TF is the CBTT with regard to its own AML/CTF Guidelines. The guidelines were first issued in the 1990s and have been reviewed periodically for effectiveness and compliance with international AML/CFT standards. The last revision to the guidelines was in September 2004. While the CBTT advised that it maintains annual statistics on all on-site examinations and formal AML/CFT assistance requests made or received, no information was provided in this area. Since the other financial institutions are not subject to AML/CFT supervision, there are no similar statistics.

3.13.2 Recommendations and Comments

467. The TTSEC should apply the requirements of the IOSCO Core Principles for the supervision of the securities sector with regard to AML/CFT.

468. The securities sector and credit unions should be subject to AML/CFT supervision. Money transfer companies and cash couriers should be licensed and registered, appropriately regulated and subject to AML/CFT supervision.

469. The CUSU should have the power to compel production or to obtain access to all records, documents or information relevant to monitoring compliance.

470. The CUSU should have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance.

471. All supervisors should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with the AML/CFT requirements.

472. All supervisory authorities of financial institutions need to have systems in place for combating ML and FT and should review the effectiveness of these systems.

473. Once all other supervisory authorities of financial institutions have implemented AML/CFT supervision, they should maintain comprehensive statistics on on-site examinations and requests for assistance

3.13.3 Compliance with Recommendations 23 (criteria 23.4, 23.6-23.7), 29 & 32 (rating & factors underlying rating)

	Rating	Summary of factors relevant to s.3.13 underlying overall rating
--	---------------	--

R.23³¹	NC	<ul style="list-style-type: none"> • The TTSEC does not apply the requirements of the IOSCO Principles for the supervision of the securities sector with regard to AML/CFT • The securities sector, credit unions, money transfer companies and cash couriers are not subject to AML/CFT supervision. • Money transfer companies and cash couriers are not licensed, registered or appropriately regulated.
R.29³²	NC	<ul style="list-style-type: none"> • The CUSU do not have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. • The CUSU do not have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance. • Supervisors do not have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.
R.32³³	PC	<ul style="list-style-type: none"> ▪ Only CBTT reviews the effectiveness of the AML/CFT Guidelines on a regular basis and maintains statistics on on-site examinations and requests for assistance made or received.

3.14 Money or value transfer services (SR.VI)

3.14.1 Description and Analysis (summary)

Special Recommendation VI

474. Money value transfer service providers are neither registered nor licensed by any competent authority in Trinidad and Tobago. There is no requirement for MVT service providers to maintain a current list of their agents to be made available to the designated authority. While they are subject to the POCA, there is no system in place to monitor them and ensure that they comply with the POCA. It should be noted that one money remitter company is responsible for the majority of SAR's submitted to the FIU.

475. Deficiencies in the POCA with regard to the FATF Recommendations have been identified in relevant sections of this report and are applicable to money value transfer service providers. There was no information about whether any of the measures set out in the Best Practices Paper for Special Recommendation VI except for sanctions applicable in POCA 2000 which are solely criminal.

³¹ See also factors mentioned in rating boxes: 3.10.3, and 3.11.3.

³² See also factors mentioned in rating box: 3.10.3

³³ See also factors mentioned in rating boxes: 2.5.3, 2.6.3, 6.3.3, 6.4.3, and 6.5.3.

3.14.2 Recommendations and Comments

476. The Mission recommends the following: A competent authority should be designated to register and/or licence money transfer companies and maintain a current list of their names and addresses and be responsible for ensuring compliance with licensing and/or registration requirements.

477. All MVT service operators should be subject to the applicable FATF 40 Recommendations and FATF 8 Special Recommendations.

478. A system for monitoring money transfer companies and ensuring that they comply with the FATF Recommendations should be implemented. The mission also recommends that the CBTT issued the AML/CFT Guidelines to the Cambios and test compliance during on site inspections.

479. Money transfer companies should be required to maintain a current list of its agents, which must be made available to the designated competent authority.

480. The measures set out in the Best Practices Paper for SR.VI should be implemented and Trinidad and Tobago authorities should take FATF R. 17 into account when introducing system for monitoring money transfer companies.

3.14.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none">• None of the requirements are included in legislation, regulations or other enforceable means.

PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12) (Applying R.5 to 10)

4.1.1 Description and Analysis

Recommendation12

481. In POCA 2000, financial institutions and persons engaged in relevant business activities are subject to AML provisions. Relevant business activity is defined to include real estate business, motor vehicle sales, courier services, gaming houses, jewelers, pool betting and national lottery on line betting games.

482. Real estate business in Trinidad and Tobago is not regulated, but there is an Association of Real Estate Agents (AREA), that represents approximately 50% of all real

estate agents in Trinidad and Tobago. When interviewed, AREA indicated that there is need for legislation (including AML regulations) to regulate the real estate industry. As a result, AREA submitted a draft bill to the Minister of Trade & Industry in March, 2005. The proposed legislation deals with the criteria and process of licensing for real estate agents, education and training, and due diligence and record keeping requirements. AREA has introduced standardized exclusive listing agreement forms, a commission rate structure, a computerized multiple listing service, rules and regulations governing transactions handled by its members and a strict Code of Ethics.

483. There is an Association of Car Dealers of T&T which consists of nine members. The Association was formally advised in September 2003 about their obligations under the POCA. The Mission was advised that members of the Association seldom receive any cash, since the majority of their sales are financed through the commercial banks.

484. No member of the Association had submitted any SAR to the Designated Authority /FIU. The Association does not include foreign used car dealers, a section of the industry that apparently has competed successfully with the more established dealers.

485. Gaming houses, pool betting, and national lottery on line betting are not regulated. Trinidad and Tobago does not have licensed casinos but private members clubs (there are seventy two registered clubs) which operate like casinos. In addition there are one hundred and forty-seven recreation clubs which have gambling activity on a smaller scale. The Board of Inland Revenue oversees gaming houses, pool betting and private member clubs for tax purposes only. Other than the Board of Inland Revenue's tax inspections there is no supervision.

486. Cash couriers are not regulated and have not been formally advised by the government about their responsibilities under the POCA. No information was available on jewelers in Trinidad and Tobago.

487. None of the above relevant business activities are supervised for AML compliance with the requirements of the POCA. Effective implementation of the POCA is therefore severely hampered. Additionally, it was observed from interviews with persons engaged in relevant business activity that there was limited knowledge about the AMLCFT situation in the country and their legislative obligations. It appears that the government conducted limited efforts to inform or educate persons engaged in relevant business activities about their responsibilities and other AML/CFT issues.

488. Lawyers, notaries, other independent legal professionals, accountants and trust and company service providers are not included in the definition of relevant business activity in the POCA and are therefore not subject to AML obligations. It should also be noted that the provisions in the POCA do not include FT.

489. There are no mandatory obligations detailing the requirements of Recommendations 5 to 10 for the DNFBPs defined as relevant business activity in the POCA.

4.1.2 Recommendations and Comments

490. It is recommended that: Lawyers, notaries, other independent legal professions, accountants and trust and company service providers should be subject to AML/CFT FATF requirements.

491. DNFBPs and persons engaged in relevant business activities should be supervised for AML/CFT compliance.

492. The requirements of Recommendations 5 to 10 should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 12.

493. The Government should put more effort in educating and informing the DNFBPs and persons engaged in relevant business activities about their responsibilities under the legislation and about other relevant AML/CFT issues and developments.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none">• The DNFBP's are not supervised or regulated for AML compliance.• Lawyers, notaries, other independent legal professionals, accountants and trust and company service providers are not subject to AML/CFT obligations.• Casino's, real estate agents, and jewellers have been designated under the law, but none of the requirements set out in Recommendations 5 – 10 have been implemented.

4.2 Monitoring of transactions and relationships (R.12 & 16) (applying R.11 & 21)

4.2.1 Description and Analysis

Recommendations 12 & 16

494. Under Section 55 (2) of the POCA every person engaged in a relevant business activity³⁴ is required to pay special attention to all complex, unusual large transactions and to all patterns of transactions and to insignificant but periodic transaction, which have no apparent or visible economic or lawful purpose. It seems that the DNFBP's do not adhere to this requirement. No other criterion of Recommendation 11 is specified as a mandatory requirement in the POCA. The requirements of Recommendation 21 are not included in the POCA.

³⁴ Idem note 2

495. Violation of the above provision is dealt with in Section 57(1) of the POCA 2000 which states that everyone who knowingly contravenes or fails to comply with the provisions of section 55 is guilty of an offence and liable-

- a. on summary conviction to a fine of five hundred thousand dollars and to imprisonment for a term of two years; or
- b. on conviction on indictment, to a fine of three million dollars and to imprisonment for a term of seven years

496. Section 57(2) of the POCA also states that where a company commits an offence under the POCA, any officer, director or agent of the company who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence whether or not the company has been prosecuted or convicted.

4.2.2 Recommendations and Comments

497. The requirements of Recommendations 11 and 21 should be imposed on all DNFBBPs as stipulated in the circumstances detailed in Recommendations 12 and 16.

4.2.3 Compliance with Recommendation 12 and 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.12	NC ³⁵	<ul style="list-style-type: none"> • No requirement to examine the background and purpose of the transactions and no requirement to keep the findings for DNFBBP's. • No requirement to pay special attention to complex – unusual large transactions or unusual patterns of transactions for DNFBBP's.
R.16 ³⁶	NC	<ul style="list-style-type: none"> • No SAR's from DNFBBP's have been submitted to the Designated Authority/FIU.

4.3 Suspicious transaction reporting (R.16) (applying R.13 & 14)

4.3.1 Description and Analysis

Recommendation 16

498. The provisions of the POCA dealing with the requirements of Recommendations 13 and 14 and which are applicable to persons engaged in relevant business activity have already been discussed in section 3.7.1 of this report.

³⁵ See also factors mentioned in rating box: 4.1.3

³⁶ See also factors mentioned in rating boxes: 4.3.3, and 4.4.3.

499. As at the date of the mutual evaluation, none of the DNFBPs had submitted an SAR to the designated authority/FIU nor has there been any case of tipping off concerning a DNFBP. However, as already noted the DNFBPs do not seem to be fully aware of their responsibilities under the POCA.

4.3.2 Recommendations and Comments

500. The requirements of Recommendations 13 and 14 as detailed in section 3.7.2 of this Report should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 16.

4.3.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.16	NC³⁷	<ul style="list-style-type: none"> • The DNFBP's are not supervised or regulated for AML compliance. • See section 3.7.3 for factors relevant to Recs. 13 and 14.

4.4 Internal controls, compliance & audit (R.16) (applying R.15)

4.4.1 Description and Analysis

Recommendation 16

501. The provisions of the POCA dealing with the requirements of Recommendation 15 which are applicable to persons engaged in relevant business activity have already been discussed in section 3.8.1 of this report. Based on interviews, the mission is of the view that persons engaged in relevant business activity do not comply with the requirements in the POCA.

4.4.2 Recommendations and Comments

502. The requirements of Recommendations 15 as detailed in section 3.8.2 of this report should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 16.

4.4.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.16	NC³⁸	<ul style="list-style-type: none"> • No evidence that the DNFBP's are complying with legislated

³⁷ See also factors mentioned in rating box 4.2.3, and 4.4.3.

³⁸ See also factors mentioned in rating box: 4.2.3

		requirements of Rec. 15. <ul style="list-style-type: none"> • See section 3.8.3 for factors relevant to Rec. 15
--	--	--

4.5 Regulation, supervision and monitoring (R.17, 24-25)

4.5.1 Description and Analysis

Recommendation 17

503. The provisions of the POCA dealing with the requirements of Recommendation 17 and which are applicable to persons engaged in relevant business activity have already been discussed in section 3.10.1 of this report.

Recommendation 24

504. Casinos are not legal in Trinidad and Tobago however the Registration of Clubs Act as amended by the Finance Act of 1997 provides for casino type gambling in “members clubs”. A gaming tax on gambling activities in members’ clubs is required to be paid to the Board of Inland Revenue. At the time of the mutual evaluation there were seventy-two (72) private members clubs carrying out casino-type operations registered with the Board of Inland Revenue. In addition there were one hundred and forty-seven (147) recreation clubs which had gambling activity on a smaller scale. The Board of Inland Revenue conducts inspections for tax purposes only.

505. There is no legal requirement to ensure that the gaming houses (or private member clubs), pool betting and the national lottery on line betting games listed as relevant business activity in the First Schedule to the POCA, are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.

506. The gaming houses (or private member clubs), pool betting and the national lottery on line betting games are licensed by the Minister of Finance, but there are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a gaming house (or private member club), pool betting and the national lottery on line betting games.

507. There is no designated competent authority or SRO for the other categories of relevant business activity designated in the POCA i.e. real estate business, motor vehicles sales, courier services and jewelers, responsible for monitoring and ensuring compliance with AML/CFT requirements.

Recommendation 25

508. The requirement for competent authorities to establish guidelines that will assist DNFBP’s to implement and comply with their respective AML/CFT requirements is not included in the POCA. Apart from that and as mentioned before none of the DNFBP’s is

regulated and there are therefore also no regulators that could have issued guidelines to assist these DNFBP's in implementing the legal requirements with regard to AML/CFT.

4.5.2 Recommendations and Comments

509. The Mission recommends that; Gaming houses (or private member clubs), pool betting and the national lottery on line betting games should be subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.

510. Legal or regulatory measures should be taken to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a gaming house (or private member club), pool betting and the national lottery on line betting games.

511. A competent authority or SRO should be designated as responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.

512. Competent authorities should establish guidelines that will assist DNFBP's to implement and comply with their respective AML/CFT requirements

4.5.3 Compliance with Recommendations 17 (DNFBP), 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	NC³⁹	<ul style="list-style-type: none"> The requirement set out in Rec. 17 are included in the POCA 2000, but there are no provisions in the legislation to withdraw, restrict or suspend the license of the DNFBP.
R.24	NC	<ul style="list-style-type: none"> There is no legal requirement to ensure that the gaming houses (or private member clubs), pool betting and the national lottery on line betting games are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations. There are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a Gaming House (or Private Member Club), Pool Betting and the National Lottery on line Betting Games. There is no designated competent authority or SRO responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.

³⁹ See also factors mentioned in rating box: 3.10.3

R.25 40	NC	<ul style="list-style-type: none"> • There are no guidelines to assist DNFBPs to implement and comply with their respective AML/CFT requirements”.
-------------------	-----------	---

4.6 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.6.1 Description and Analysis

513. The Government of T&T has considered applying the FATF Recommendations to non-financial businesses and professions (other than DNFBP’s) for investment advisers under the SIA, for motor vehicle sellers, courier service, pool betting and online national lottery under the POCA that may be at risk of being misused for ML or TF. The largest denomination banknote issued in Trinidad and Tobago is a \$100. Other than this, the Government of T&T has not taken measures which encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. Private sector initiatives mainly by the commercial banks have encouraged the use of credit cards. There is a well-developed network of ATMs across the country and widespread use of point of sale card swiping machines to facilitate purchases. However, businesses themselves are taking initiatives in order to develop and encourage use of modern and secure techniques for conducting financial transactions less vulnerable to ML.

4.6.2 Recommendations and Comments

514. The mission recommends that; Authorities consider applying the relevant FATF Recommendation to non-financial businesses and professions (other than DBFBP) that are at the risk of being misused for ML or TF.

515. Measures should be taken encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML

4.6.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	LC	<ul style="list-style-type: none"> ▪ The only measure taken by the Government of Trinidad and Tobago to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML has been not issuing large denomination banknotes.

⁴⁰ See also factors mentioned in rating boxes: 3.7.3, and 3.12.3.

LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 *Legal Persons – Access to beneficial ownership and control information* (R.33)

5.1.1 *Description and Analysis*

Recommendation 33

516. In preventing the use of legal persons for illicit purposes, the Trinidad and Tobago government relies on a combination of legal, administrative and investigative mechanism in place of which the Companies Act No 35 of 1995 (which came into force on 15th April, 1997) is the most important tool. Trinidad and Tobago in so doing uses Corporate registration requirements and general purpose compulsory powers available to the regulatory supervisor (Registrar of Companies) and judicial authorities during an inquiry (investigation) to comply with Recommendation 33.

517. Pursuant to the Companies Act, legal persons are required to notify the Registrar of Companies, using the relevant prescribed forms, of the following:

- Appointments/ changes with respect to directors/company secretaries
- Address of registered office or any changes in this.
- Details of shareholders to be submitted via annual returns.

518. The Registrar of Companies also has a register of Business names, that is, non-incorporated entities which is governed by the Registration of Business Names Act. There are currently between fifty and sixty thousand (50,000-60,000) businesses registered under this Act.

519. Sections 181-184 of the Companies Act requires a person holding shares in a company which entitle him to cast at least ten percent of the total votes at any general meeting to be deemed a “substantial shareholder”. A substantial shareholder must notify the company that he is such a person within 14 days of becoming one and in the notice he must state his name and address giving particulars of the shares held by him. If he ceases to be a substantial shareholder, he must also notify the company within 14 days. All legal persons that register under the Companies Act (“public company”) are required to keep a Register of its “substantial shareholders” together with all relevant information and a list of all its shareholders (Section 177) The Companies Act additionally requires the notification of data relative to:

- Classes of shares
- Numbers of issued and outstanding shares
- Transfer of shares, shareholders
- Addition to, or reduction of, share capital accounts
- Company indebtedness

520. All of the above information is submitted via annual returns. The above documents are available for inspection by the public. Requests of law enforcement and other state or state-connected officials with respect to the viewing of public documents kept in the Registry and/or the production of copies of same, are treated with priority and

urgency. During the period 2001-2005 the databases at the Registrar General's Department were queried relative to company records in the conduct of investigations by the FIU as per the following table:

2001	2002	2003	2004	2005
nil	4	39	42	49

521. The statistics contained in the aforementioned table are specific to the FIU only. The Anti-Corruption Bureau (ACB) has indicated that up to June 2005 there were 234 requests made by them to the Registrar General's Department for information regarding persons behind companies or trusts. The Registrar General's Department is not in possession of statistics nor are they in possession of figures regarding requests made by law enforcement officers for information as to the beneficial ownership and control of companies. However, it indicated that the normal turn around time for providing the requested information is two to three weeks. There is a good working relationship between the ACB and the Registrar General's Department so that urgent requests are met immediately.

522. Subsection 33 (2) of the Companies Act prohibits bearer shares or bearer share certificates. However, prior to the passing of this Act bearer Securities were issued. The Trinidad and Tobago authorities indicated however that, despite more flexible legislation in this regard, prior to the enactment of the Companies Act 1995 Trinidad and Tobago did not have a history of bearer shares being used. It has always had registered shares (that is, the owner of a share has to be recorded in the books of the company who issued the shares). The afore mentioned annual returns are required to be submitted by all companies that wish to remain on the register and this information to be noted is in respect of a change in directors, change of address etc but there is no requirement where of company to submit in the returns particulars as to a substantial shareholder and change of shareholders to the Registrar unless the Registrar requests it. The company is required to maintain the register containing this information and it must be made available to the Registrar of Companies if he so desires it. Failure to maintain the register is an offence (sections 177, 179, 184 (2), and 189). The Registrar of Companies may require the Company to furnish him with a copy of the register containing details of a list of shareholders and substantial shareholders at any time and it must be furnished within 14 days of the Registrar's request. Failure to supply the Registrar of Companies with a copy of the register is an offence on the part of the company and every officer of the company and is punishable by a fine of \$10,000.00 (section 513).

523. Additionally, it is an offence under section 510 of the Companies Act to submit false or inaccurate information to the Registrar of Companies in a report, notice, return or other document. This is punishable by a fine of \$10,000.00 and six months imprisonment. It is also an offence to fail to keep accurate records required to be kept under the Companies Act. This is punishable by a fine of \$10,000.00 and six months imprisonment (section 511(1)(a)). The Registrar is also invested with compulsory powers to verify that

the information on the application forms are accurate (sections 484 and 487) and may share this information with law enforcement authorities. Note must also be taken of section 504 of the Companies Act that allows the Registrar of Companies to conduct inquiries where there is reason to enquire into the ownership and control of a share or debenture of a company or any of its affiliates. This is to be read in accordance with the extensive powers of the Court at section 499 of the Companies Act to investigate persons behind companies.

524. In furtherance of the goal of improved service to all clients, the Registrar of Companies is currently undergoing an upgrade of its automation system, as well as an intensive data capture exercise, which should assist in facilitating greater and more effective access to information.

525. It follows that Trinidad and Tobago has implemented legislative measures to ensure that registry information on public companies is kept accurate and up to date with the Registrar of Companies. There are also legislative measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership (“substantial shareholders”) and control of legal persons (public companies) that can be obtained or accessed in a timely fashion by competent authorities. However, the Mission was not able to verify the implementation of registry requirements of (substantial) shareholders by existing companies as to determine if there was a general implementation of the requirements of the Companies Act and if records maintained by individual companies were up to date and accurate. The mission received information (statistics) on law enforcement inquiries on registered companies from the Registrar of Companies but received no information on the effectiveness of regulatory and law enforcement / judicial inquiries to the registers of individual companies as to the ultimate beneficial owners (substantial shareholders). The Mission was therefore unable to verify if the information held by companies were accurate and up to date and received no information if the Registrar of Companies was testing this.

5.1.2 Recommendations and Comments

526. Competent authorities have access to information stored by the Registrar of Companies and the documents are also available for inspection by the public. However, it is recommended that Trinidad and Tobago authorities undertake a comprehensive review to determine ways in which it can ensure itself that adequate and accurate information on beneficial ownership may be available on a timely basis. The authorities may want to introduce a system of central registration (or up front disclosure system) where a national registry records details on legal arrangements and data concerning beneficial ownership registered in Trinidad and Tobago

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> Competent authorities have access to information stored by the Registrar of Companies, however it could not be ascertained if

		adequate, accurate and current information on beneficial ownership and control of legal persons is maintained in Trinidad and Tobago.
--	--	---

5.2 *Legal Arrangements – Access to beneficial ownership and control information (R.34)*

5.2.1 *Description and Analysis*

Recommendation 34

527. Trusts in Trinidad and Tobago are registered as deeds in the Land Registry of the Registrar General’s Department. These are public documents and are available for inspection. The main activity of trust companies, as their names implies, is the provision of trust services. In most cases express trusts. All trust companies in Trinidad and Tobago are under the control of the commercial banks. Financial institutions are required to satisfy themselves that trusts have the requisite authorization to carry out transactions. This is necessary in order to protect the financial institution’s own interests and not risk liability issues.

528. Section 32 (Production Orders) and Section 33 (Search Warrants) of POCA 2000 provide competent authorities with the investigative tools to obtain and access information relative to “trusts”. However, according to information received from these authorities, to date of the on site visit no investigation involving “trusts” had been conducted. Consequently, no production orders were obtained in these matters. CBTT also indicated that where entities are licensed under the FIA to conduct the business of a Trust Company, the Central Bank under Section 43 of the FIA “may require a licensee to furnish within such time and in such form as the Central Bank may determine, such information as it may consider necessary.....”. The TTSEC can also obtain information in respect of trusts from supervised entities or subsidiaries of these entities

529. However, based on the interviews conducted, there does not appear to be a mechanism in place in Trinidad & Tobago that is responsible for insuring adequate transparency and to prevent the unlawful use of legal arrangements, namely trusts, and ensuring that such entities register, at a designated authority, their information regarding the beneficial ownership and control of legal arrangements and notify such authority of any changes to the registered information.

5.2.2 *Recommendations and Comments*

530. The T&T authorities should take steps to implement a mechanism to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate

transparency concerning the beneficial ownership and control of trusts and other legal arrangements ⁴¹.

5.2.3 *Compliance with Recommendations 34*

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none"> • There is no mechanism to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

5.3 *Non-profit organisations (SR.VIII)*

5.3.1 *Description and Analysis*

Special Recommendation VIII

531. As noted above, Trinidad & Tobago does not have any terrorism legislation. There is also no regulatory authority in place to supervise non-profit organizations, and no review of the adequacy of laws and regulations that relate to non-profit entities that can be abused has been carried out. Additionally there are no measures to ensure that terrorist organizations cannot pose as legitimate non-profit organizations or that funds or other assets collected by or transferred through non-profit organizations are not diverted to support terrorists. The responsibility of the Registrar of Companies is to check that the non-profit organisations file whatever documents they need to file. Also, the nature of work of the non-profit organisation may determine where the organisation registers, although most register under the Companies Act.

5.3.2 *Recommendations and Comments*

532. Authorities should review the adequacy of laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.

533. Measures should be put in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations.

534. Measures should be put in place to ensure that funds or other assets collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organizations.

5.3.3 *Compliance with Special Recommendation VIII*

⁴¹ Idem note 1

	Rating	Summary of factors underlying rating
SR. VIII	NC	<ul style="list-style-type: none"> • There are no requirements in legislation, regulations or other enforceable means to comply with this recommendation⁴².

NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 *National co-operation and coordination (R.31)*

6.1.1 *Description and Analysis*

Recommendation 31

535. Trinidad and Tobago has no legal provisions for information sharing amongst the domestic regulators in Trinidad and Tobago. There are also no MOU's between the CBTT, the TTSEC and the Designated Authority FIU of Trinidad and Tobago, which enable them to cooperate, and were appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. The absence legal provisions/MOUs affects the level of co-operation amongst those agencies.

536. The SSA, as T&T's coordinating body for AML/CFT measures, maintains regular contact with the Police Department concerning the development and implementation of strategies to combat money laundering and other serious crimes. The SSA also held discussions with other stakeholders pertaining to their obligations under the Proceeds of Crime Act 2000. It is not clear whether the SSA maintains regular contact with the FIU, Customs and the OCNU. The SSA was instrumental in establishing the National Anti-Money Laundering Committee (NAMLC).

537. The NAMLC had its informal launching in November 2004. Its composition includes representatives of various stakeholders, such as the Police Service, Customs and Excise Department, OCNU and SSA. The Mission was not provided with an official list of all stakeholders. The functions of the NAMLC are not yet known and no formal structures have been created to govern the committee.

538. Although the NAMLC is not quite active, the SSA being the Committee's lead player consults regularly with other committee members concerning the implementation of policies and other systems to prevent money laundering. In this regard cooperation between the SSA and other agencies that make up the NAMLC is strengthened. Based on information gathered in the interviews there was however still need for improved dialogue between the SSA and the FIU.

539. The FIU maintains close working relationship with OCNU. They have both conducted a number of successful joint operations in the past. OCNU is also responsible

⁴² Idem note 1

for recruiting prospective officers for enlistment to the FIU, which helps to strengthen ties between both agencies.

540. The Central Authority maintains regular contact with the OCNU and the FIU. Upon receipt of a foreign request for assistance by the Central Authority, OCNU or the FIU would usually assist in its execution. This of course encourages good collaboration between parties involved.

541. Co-operation between the Custom Division and the FIU is limited. However, the Customs Division usually co-operate and co-ordinate with the Coast Guard by conducting joint operations. Some level of contact also exists between the OCNU and the Customs Division. Based on information gathered in interview it was clear that there is need for improved relationship between Customs and the OCNU.

6.1.2 Recommendations and Comments

542. The T&T authorities should consider instituting the legal framework necessary to formalise the National Anti- Money Laundering Committee. This Committee should be given legal responsibility to gather competent authorities regularly in order to develop and implement policies and strategies to combat ML and FT. The Committee should also be given responsibility for sensitising the general public about T&T ML measures and encourage compliance with the relevant legislations.

543. Trinidad and Tobago should consider introducing MOU's between the CBTT, the TTSEC and the Designated Authority / FIU of Trinidad and Tobago, which would enable them to cooperate, and were appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

544. Co-operation amongst law enforcement and other competent authorities could be improved. Competent authorities need to be more proactive in their approach as contact is presently maintained in a haphazard manner, in particular when a need arises.

545. The composition of the FIU could be expanded to include personnel from different relevant entities, which would not only strengthen cooperation but also enhance the human resource capability of the FIU.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> • NAMLC is not yet fully operational. • No MOU's for cooperation between supervisors and other competent authorities, which affects the level of cooperation.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

546. Trinidad & Tobago is a party to the Vienna Convention with the relevant implementing legislation. Knowledge, intent or purpose required as an element of money laundering may be inferred from objective factual circumstances (POCA s. 43). Other legislation in place that implements the Articles of the Vienna Convention includes the Dangerous Drug Act No. 38 of 1991, the Mutual Assistance in Criminal Matters Act No. 39 of 1997 (as amended 2004) and the Extradition (Commonwealth and Foreign Territories) Act 1985. It should be noted however that there is no legislation in place in Trinidad & Tobago that deals specifically with controlled delivery pursuant to Article 11 of the Vienna Convention. Legislation to allow controlled deliveries of narcotics has not yet been introduced. However, Section 35 of the Firearms Act 16:01 as amended by Act 3 of 2004 facilitates controlled deliveries of firearms. With regard to illicit drugs, joint operations with foreign law enforcement agencies have been facilitated by administrative decisions to allow such deliveries, but on the basis of suspicion only, and under the provision that there is no confirmed existence of illegal substances or items.

547. However, Trinidad and Tobago is not a party to the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (The Terrorist Financing Convention). Trinidad and Tobago has also not signed the 2002 Inter-American Convention against Terrorism.

548. Trinidad & Tobago has not signed, ratified or otherwise implemented the Terrorist Financing Convention.

549. Trinidad and Tobago has not implemented the United Nations Security Council Resolutions 1267 and 1373 relating to the prevention and suppression of Financing of Terrorism.

6.2.2 Recommendations and Comments

550. Trinidad and Tobago should continue taking steps towards enacting an Anti-Terrorism Bill and sign and ratify the United Nations International Convention for the Suppression of the Financing of Terrorism⁴³.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
--	---------------	---

⁴³ Idem note 1

R.35	NC	<ul style="list-style-type: none"> The relevant international conventions have not been implemented extensively.
SR.I	NC	<ul style="list-style-type: none"> The essential criteria have not been adhered to, as Trinidad & Tobago do not have the relevant legislation in place in order to comply with SR.I.

6.3 Mutual Legal Assistance (R.32, 36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 32

551. Trinidad & Tobago does not have terrorist financing legislation. The systems in place for combating money laundering need to be updated, such as the POCA and as indicated previously financial obligations with appropriate legal sanctions need to be put in place.

552. The Central Authority Unit in the Ministry of the Attorney General is established under the Mutual Assistance in Criminal Matters Act 1997 as amended by Act No. 7 of 2001, and as amended by Act No. 14 of 2004 that was enacted to deal with the increasing levels of transnational crime. The Central Authority maintains statistics on the systems they have in place to combat money laundering. It should be noted that the Central Authority only maintains its own statistics with regard to mutual assistance and extradition. The Central Bank and the FIU would maintain separate records. Counsel in the Central Authority Unit, assists the Attorney General in carrying out his functions under Sections 3(1) and 3(2) of the Act.

553. The Central Authority Unit receives request for assistance in any criminal matter from international, Central and Judicial Authorities. Examples of the types for quests received would include:

- Assistance in obtaining evidence or statements from persons;
- Assistance in effecting service of documents;
- Assistance in executing searches and seizures;
- Assistance in arranging the transfer of persons to expedite proceedings;
- Assistance in tracing and confiscating of certain assets.

Requests received and made regarding Money Laundering and Mutual Assistance:

The following are the Mutual Legal Assistance statistics, which are separated into different years and requesting State categories

1999:

Country	Requests Received	Request Made
USA	2	

2000

Country	Requests Received	Requests Made
USA	1	
United Kingdom	7	
Germany	1	

2001:

Country / Organization	Requests Received	Requests made
USA	4	4
United Kingdom	4	
Germany	2	
Canada	1	

2002:

Country	Requests Received	Requests made
USA	1	17
United Kingdom	2 (1 refused)	20
Netherlands	1	
Bahamas		1

2003:

Country / Organization	Requests Received	Requests made
USA	6 (2 refused)	47
United Kingdom	8	16
Poland	1	
Japan	1	
Cayman Islands		1
Switzerland	1	3
Serbia and Montenegro		
Panama		1 (no response recd.)
Bahamas		6

2004:

Country / Organization	Requests Received	Requests Made
USA		53
United Kingdom	4	11
Canada	1	
Guyana		1 (no response recd.)
Bahamas		5
Liechtenstein		4

2005:

Country	Requests Received	Requests Made
USA	2	
United Kingdom		5
Canada	1	
Bahamas	1	

Special Note:

Other than those requests specially denoted, all requests received and made have been responded to.

Financial Intelligence Unit Requests

554. The Mutual and Legal Assistance Treaty in Criminal Matters Act No 39 of 1997 legislates the process for mutual legal assistance. The FIU of the CDCTF is in receipt of these requests through the Central Authority of the Attorney General's Department. Other formal requests are received directly from foreign FIUs. The following are the statistics from the FIU.

MLAT's (Central Authority)	2001	2002	2003	2004
Total	-	1	2	1

MLAT's	2001	2002	2003	2004
Property Frozen	-	-	-	-
Seized	-	-	-	-
Confiscated	-	-	-	-

MLATs Predicate Offences	2001	2002	2003	2004
Property Frozen	-	-	-	-
Seized	-	-	-	-
Confiscated	-	-	-	-

Formal Request	2001	2002	2003	2004
Total	7	3	8	11

Recommendation 36

555. The Government of Trinidad and Tobago continues to register its commitment alongside the efforts of the wider global community, in monitoring and in taking all necessary initiatives to eliminate the drug trade and ancillary illicit activities supportive of this trade.

556. At the international level, this country is a signatory to the following United Nations instruments and agreements dealing with terrorism illicit drugs, precursor chemicals, firearms and transnational organised crime:

- Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention, agreed 9/63 – safety of aviation)
- Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, agreed 12/70 – aircraft hijackings)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention, agreed 9/71 – applies to acts of aviation sabotage such as bombings aboard aircraft in flight)
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (agreed 12/73 – protects senior government officials and diplomats)
- International Convention Against the Taking Hostages (Hostages Convention, agreed 12/79)
- Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation, (agreed 3/88 – applies to terrorist activities on ships)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (agreed 3/88 – applies to terrorist activities on fixed offshore platforms)
- The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- International Convention on the Suppression of Terrorist Bombings (1998)
- The United Nations Convention Against Transnational Organised Crime was signed by Trinidad and Tobago on 26th September 2001 and a Transnational Organised Crime Bill to implement this Convention exists in draft format.

557. At the hemispheric level, the Republic of Trinidad and Tobago is a signatory to

the following Organisation of American States (OAS) instruments:

- The Inter-American Convention Against Corruption Caracas, 29 March 1996 was signed and ratified on 15th April 1998 and aims to promote and strengthen the development by and cooperation among each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.
- The Inter American Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes Against Persons and Related Extortion that are of International Significance Washington 2 February 1971 was signed on 2nd February 1971.
- The Inter-American Convention Against the Illicit Manufacture of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials Washington D.C. 14 November 1997 signed by Trinidad and Tobago in May 1998 and ratified in February 2004, with recommended changes being implemented by the now proclaimed Firearms (Amendment) Act, 2004.
- The Inter-American Convention on Terrorism Bridgetown, 3 June 2002 was signed on 2nd October 2002. The purpose of this Convention is to prevent, punish, and eliminate terrorism. To that end, the States Parties agreed to adopt the necessary measures and to strengthen cooperation among them, in accordance with the terms of this Convention.

558. In addition to the foregoing, the Government of Trinidad and Tobago has also pursued bilateral and multilateral arrangements designed to promote greater collaboration and cooperation. The most notable of these are:

559. **Canada:**

- Agreement Regarding the Sharing of Confiscated or Forfeited Assets and Equivalent Funds
- Agreement on Mutual Legal Assistance (MLAT). By these means, mutual cooperation is engaged in the areas of searches, seizures, arranging for the transfer of persons to expedite legal proceedings and tracing the proceeds derived from criminal activity.

560. **Cuba:**

- Cooperation Agreement to Combat Drug Trafficking (1999)

United Kingdom:

- Mutual Legal Assistance Treaty (MLAT)

United States of America:

- Mutual Legal Assistance Treaty (MLAT)

- Maritime Law Enforcement Agreement (MLEA)
- Extradition Treaty
- Narcotics Control and Law Enforcement Letter of Agreement

561. **Mexico :**

Agreement on Cooperation in Combating Illicit Traffic in and Abuse of Narcotic Drugs, Psychotropic Substances and Related Crimes

Venezuela:

- Agreement on Counter Narcotics (1987)
- Draft Agreement on Extradition, Mutual Legal Assistance and Money Laundering (soon to be exchanged)
- Agreement to negotiate a Memorandum of Understanding between the maritime surveillance and control authorities, outlining programmes for exchange of visits and establishing information exchange mechanisms for facilitating joint action (2000)
- Trinidad and Tobago/Venezuela Bilateral Commission on Drugs

562. **St. Kitts and Nevis**

- A Joint Commission has been established with St Kitts and Nevis.

563. Within CARICOM, there is Agreement Concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean area.

564. The country's commitment to the principle of cooperation is further demonstrated in the commitments made to a number of international and hemispheric and regional Plans of Action, among them being the:

- Summit of the Americas – Plan of Action (OAS)
- Summit of the Americas – Plan of Action II
- Anti Drug Strategy in the Hemisphere (CICAD)
- Summit of the Americas–Ministerial Communiqué on Money Laundering
- Caribbean Forum (CARIFORUM) of African Caribbean and Pacific (ACP) States
- European Union Latin America Caribbean Drug Co-ordination Mechanism

565. **Regional Commitments :**

- Barbados Plan of Action (Plan of Action for Drug Control, Co-ordination and Co-

operation in the Caribbean, UNDCP)

- Bridgetown Declaration of Principles (Caribbean/US Summit, 1997)
- CFATF Memorandum of Understanding
- Inter-Governmental Task Force on Drugs
- Regional Justice Protection Programme
- Caribbean Court of Justice (CCJ)

566. The Mutual Assistance in Criminal Matters Act is taken seriously in Trinidad and Tobago. The T&T authorities are of the view that the international criminal knows no boundaries and for Caribbean member states to have a realistic chance to curb organized crime they must disregard the traditional notion of sovereignty and cooperate with other countries to prevent the trans-national criminal securing amnesty in a member country.

567. The Government of Trinidad and Tobago recognised the country's geographical location as a main transshipment point for drug traffickers and other illegal activities, such as money laundering, illegal trafficking in firearms and ammunition and offences related to corruption, and therefore introduced the Mutual Assistance in Criminal Matters Act. Counsel in the Central Authority Unit assists the Attorney General in carrying out his functions pursuant to Sections 3(1) and 3(2) of the said Act.

568. Section 3(1) and 3(2) states: 3(1) *“Subject to subsection (2), the Attorney General shall be the Central Authority.”* 3(2) *“The Attorney General may delegate any of his functions under this Act to any public officer or legal officer employed in the Ministry of the Attorney General and Legal Affairs.”* It is also relevant to note Section 5 of the Act which states: *“Nothing in this Act derogates from existing forms of co-operation or prevents the development of other forms of co-operation, whether formal or informal, in respect of criminal matters between Trinidad and Tobago or any enforcement agencies or prosecuting authorities in Trinidad and Tobago and the International Criminal Police Organisation or any such agencies or authorities outside of Trinidad and Tobago.”*

569. In carrying out its duties under the Act, the following provisions of the Act apply in relation to the Central Authority assisting a Commonwealth country with a request, provided the request is accepted:

- Section 25 provides the Attorney General with the power to ‘authorise in writing the Commissioner of Police to apply to a magistrate for a search warrant in respect of the article or thing’ and execute the search warrant accordingly.
- Section 26 provides the Central Authority with the power to assist a Commonwealth country in arranging the attendance of a person (in Trinidad & Tobago) to the requesting country to give or provide evidence or assistance relevant to any criminal proceedings in that country and facilitating such attendance.
- Section 28 provides the Central Authority with the power to give assistance to a Commonwealth country in the service of documents on a

person or an authority in Trinidad and Tobago, in connection with any criminal proceedings in such country and the request is accepted.

- Section 29 gives power to the Central Authority to trace property where its owner has been charged with or convicted of a specified serious offence, and the property obtained from such offence is believed to be in Trinidad & Tobago.
- Section 30 allows the Central Authority to provide assistance to a country to register an Order obtained in the requesting country. This section applies to orders such as confiscating or forfeiting property orders and orders that restrain dealings with property that is or is suspected on reasonable grounds of being property derived or obtained, directly or indirectly from the commission of a specified serious offence. In addition, section 31 provides the Central Authority with the power to assist the requesting country in obtaining restraining orders where the conditions are satisfied.
- Section 33D allows the Central Authority to apply to the Chief Justice on behalf of the requesting authority to obtain evidence in Trinidad and Tobago to be used in the requesting country. Section 33E sets out the format in which evidence can be taken or recorded.

570. The Central Authority indicated that there is no clear-cut turn around time frames for mutual legal assistance. It should be noted that the time involved in fulfilling a request depends on the nature of the requests.

Treaties and Draft Treaties for Mutual Legal Assistance

571. In order to facilitate the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relations to criminal offences, the Government of Trinidad and Tobago has signed agreements with the following Governments:

- United States of America in 1996,
- Canada in 1997, came into force in 2003
- United Kingdom in 2003.

Draft treaties have also been proposed and sent to the proper authorities for a number of countries such as: Argentina, Costa Rica, United States of Mexico, the Ukraine Republic and Columbia.

Alliances or Partnerships

572. In Trinidad and Tobago the CDCTF conducts investigations where requests have been made by Central Authorities of other jurisdictions. The majority of requests have come from the United Kingdom, United States of America, Canada, Germany, and several Caribbean Countries. The powers listed under R 28 are available when a direct request from a foreign law agency is made, e.g. INTERPOL.

573. The Government of Trinidad & Tobago appear committed to providing mutual legal assistance to Commonwealth countries and also where possible to other countries as well. This is evidenced by the agreements that the Trinidad & Tobago Government has

signed treaties with the USA, UK and Canada and has draft treaties under negotiation with countries such as Argentina, Costa Rica, United States of Mexico, the Ukraine Republic and Columbia.

574. The First Schedule of the Mutual Assistance in Criminal Matters Act sets out the conditions under which assistance can be given where requests are made by a Commonwealth country. Section 1(b) of the First Schedule states that a request for assistance can be initiated by a judge, magistrate, the Director of Public Prosecutions or a law enforcement agency. Thus assistance can be given at the investigative stage. However, it should be noted that a request for assistance may be refused by the Central Authority and section 22(3)(a) to (h) sets out the conditions upon which they can refuse a refuse.

575. Reasons include where the offence in question would not have constituted an offence had it occurred in Trinidad & Tobago (a); if the offence in question occurred outside the Commonwealth country making the request and similar conduct occurring outside Trinidad & Tobago would not constitute an offence against the laws of Trinidad & Tobago (b); there has been a lapse of time and under the laws of Trinidad & Tobago the person under investigation could no longer be prosecuted because of such lapse (c); where the request is made by a special/ad hoc tribunal (d); such assistance would impose an excessive burden on the resources of Trinidad & Tobago (e) & (f); where the request does not meet the criteria set out in the First Schedule (g); and where there are other reasonable grounds for refusing the request (h); grounds for refusal are also set out in section 22(2).

576. Part II of the Mutual Assistance in Criminal Matters Act provides for the Authorities in Trinidad & Tobago to request legal assistance from other Commonwealth countries for assistance in: obtaining evidence (section 7); locating or identifying persons (section 8); obtaining articles or things by search and seizure (section 9); arranging attendance of person (section 10); securing the transfer of prisoners to and from Trinidad & Tobago (sections 12 and 13); serving documents (sections 14 and 15); tracing property (section 18); and assistance in relation to certain orders and obtaining restraining orders (sections 19 and 20).

577. Part III of the said Act sets out the provisions through which Commonwealth countries request assistance from Trinidad & Tobago (see comments above).

578. The Central Authority (CA) does its best to ensure that requests are not prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions. In Trinidad and Tobago assistance would be obtained if there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained in Trinidad and Tobago.

579. The First Schedule of the Mutual Assistance in Criminal Matters Act states as follows:

“1. A request for assistance under this Act made by a Commonwealth country shall:

- (a) specify the assistance requested;
- (b) be initiated by a judge, magistrate, the Director of Public Prosecutions or a law enforcement agency;
- (c) identify the person, agency or authority that initiated the request;
- (d) state any wishes of the country concerning the confidentiality of the request and the reasons for those wishes;
- (e) state any period within which the country wishes the request to be complied with;
- (f) if the request would involve travel by any person from Trinidad and Tobago to the country, give details of allowances and accommodation to which the person would be entitled; and
- (g) contain such information as is available to the central authority for the country as will facilitate compliance with the request.”

580. The First Schedule goes into further detail with respect to specific procedures to be followed and information to be provided. As soon as a request arrives in Trinidad and Tobago at the Central Authority it is vetted to ensure that it complies with the laws of Trinidad and Tobago and can be legally executed. It is then sent for execution at the relevant agency. There is no clear turn around time for request, as the time taken depends on the nature of the individual request and may therefore vary.

581. A request would not be refused on grounds that the offence is of a fiscal nature. Section 22(2)(k) of the Mutual Assistance in Criminal Matters Act 1997 concerning assistance to Commonwealth Countries states that assistance may be granted for a request relating to a criminal offence under the tax laws, if the offence is committed by way of an intentional incorrect statement, whether oral or written, or by way of an intentional failure to declare income derived from any other offence covered by the Inter-American Convention on Mutual Assistance in Criminal matters.

582. Where a Non-Commonwealth country seeks assistance from Trinidad & Tobago, this act will not necessarily be prohibitive (see text of section 5 above). As noted previously the Government of Trinidad & Tobago has entered into treaties with Non-Commonwealth countries and where possible will also assist countries where informal co-operation arrangements are in place or established.

583. A request would not be refused on the grounds of secrecy or confidentiality requirements of financial institutions or DNFBP's except where the information was obtained in circumstances where legal or professional privilege applied.

584. The Central Authority is not directly involved in Detecting and prevention of Money Laundering or Financing of Terrorism. However there is indirect support on the basis that the Central Authority is considered as a coordinating body, which is relied upon, by various domestic and international bodies outlined above. The indirect support is two (2) Fold:

- Obtaining specific evidence as it applies to a Money Laundering suspect.
- Prosecution of such individuals.

585. Mutual Assistance in Criminal Matters 1997 satisfies Recommendation 28. The powers listed under **R 28** are available when a direct request from a foreign law agency is made, e.g. INTERPOL.

Form of Request

586. Form of the request must comply with specific criteria as set out in the First Schedule of Mutual Assistance in Criminal Maters 1997.

Assistance provided.

587. By virtue of the Mutual Assistance in Criminal Mattes Act 1997 (sections 24 to 31), the Central Authority are empowered to provide the following assistance to a Commonwealth country in:

- Obtaining evidence
- Locating or identifying person
- Obtaining article or thing, by search or seizure
- Arranging attendance of person
- Securing transfer of prisoner
- Serving documents
- Tracing property
- Obtaining restraining orders

588. Trinidad & Tobago does not have mechanisms in place that deals with conflicts of jurisdictions. Section 22(2)(f) states that a request can be refused on the basis that “the request relates to conduct by a person that constitutes an offence in respect of which the person has already been convicted or acquitted by a Court or tribunal in Trinidad and Tobago”. The Central Authority also has power to refuse a request for assistance where “there are other reasonable grounds for doing so” (section 22(3)(h)). This section could arguably be used where the Central Authority received a request and the individual or suspect on whom the request was made was under investigation or the subject of criminal proceedings in Trinidad & Tobago. However there was no evidence to suggest that any request had been refused on such grounds. However, dual criminality is required in order to render mutual legal assistance as indicated in the First Schedule of the Mutual Assistance in Criminal Matters Act section 22(3)(a). This would make mutual legal assistance on TF almost impossible

589. The competent authorities may offer assistance to foreign judicial or law enforcement counterparts where an informal request is made and/or where they may have

treaties in place or where they have in place a memorandum of understanding (section 5 of the Act deals with other forms of co-operation).

Recommendation 37

590. While “Dual Criminality” is not specifically dealt with in the legislation of Trinidad and Tobago, generally mutual assistance would not be rendered in the absence of dual criminality. However, if a voluntary statement was taken and the offence alleged in the requesting state is not an offence in Trinidad and Tobago, said statement would be allowed. When dual criminality is taken into account it is the conduct that is considered and not the description of the offence.

591. When vetting mutual legal assistance requests the CA require dual criminality, however, as noted above, it is the conduct that is considered and not the description or technical framework of the law.

Recommendation 38

592. Sections 18 up to 31 of the Mutual Assistance in Criminal Matters Act 1997 deal with requests to and from Commonwealth Countries for restraining orders. However, T&T has limitations in that their freezing, seizure and confiscation processes would benefit from greater legal enforcement or authority.

593. The Mission has not been provided with any information from the T&T authorities with respect to any mutual legal assistance requests relating to property of corresponding value. Section 36 of the Proceeds of Crime Act deals with the enforcement of external confiscation orders and section 36 (2) (A) (II) of POCA deals with the confiscation of property of corresponding value.

594. Trinidad & Tobago currently do not have legislation in place in order to affect mechanisms such as controlled deliveries. However, in practice the T&T authorities maintain an excellent relationship with authorities in the United States of America and the United Kingdom and have coordinated seizure and confiscation efforts with their respective authorities.

595. Trinidad & Tobago has provisions for an asset forfeiture fund however the fund is not established and used. Section 58 of the POCA establishes a Seized Assets Fund and states that “...Any moneys paid in satisfaction of a confiscation or cash or property seized pursuant to a forfeiture order under this Act shall be placed with the Seized Assets Committee to be dealt with in accordance with subsection (3) (s. 58(2)). Section (3) also provides that any funds from the seized assets fund shall be used for community development, drug abuse reduction, law enforcement and rehabilitation projects.

596. The Minister also has the power to make regulations to put this section into effect, appoint the said Committee and make rules regarding the procedure to be followed (sections 58(4) and 59).

597. Trinidad & Tobago has shared confiscated assets with countries where assets have been seized as a result of coordinated law enforcement initiatives.

598. Section 37 of POCA enables a foreign Government to make application to register an external confiscation order. This section does not expressly prohibit the registration of non-criminal confiscation orders, thus they should be able to be registered provided they fulfill the requirements. The requirements include that the order be in force at the time of registration (s. 37(1)(a)); that the court is satisfied (where the individual did not appear) that the person received sufficient notice of the hearing (s. 37(1)(b)); and the enforcement of the order would not be contrary to the interest of justice in Trinidad & Tobago (s. 37(1)(c)).

Special Recommendation V

599. It should be noted that Trinidad & Tobago is unable to assist countries with mutual legal assistance in the absence of dual criminality and it does not have Terrorist Financing legislation at this time.

6.3.2 Recommendations and Comments

600. Trinidad & Tobago should strongly consider implementing legislation that would give greater effect to confiscation, seizing and freezing ability with regard to requests for assistance from foreign countries. In addition, Terrorist-Financing legislation should be implemented⁴⁴.

601. T&T Should introduce legislation that deals with conflicts of jurisdiction. Also, dual criminality is required in order to render mutual legal assistance in TF cases.

602. T&T should introduce legislation that enables the authorities to affect mechanisms such as controlled deliveries.

603. The asset forfeiture fund should be clearly established and utilized in T&T.

604. T&T should consider implementing legislation to offer mutual legal assistance with respect to civil enforcement (see SR V text).

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.32 45	PC	<ul style="list-style-type: none"> The competent authorities do maintain comprehensive statistics for STR's, mutual legal assistance and money laundering investigations, however review of the effectiveness of the system on

⁴⁴ Idem note 1

⁴⁵ See also factors mentioned in rating boxes, 2.5.3, 2.6.3, 3.13.3, 6.4.3, and 6.5.3.

		regular basis is absent.
R.36	LC	<ul style="list-style-type: none"> • There is no mechanism currently in place that deals with conflicts of jurisdiction. • Also, dual criminality is required in order to render mutual legal assistance. This would make mutual legal assistance on TF almost impossible
R.37	LC	<ul style="list-style-type: none"> • Mutual legal assistance is not generally rendered in the absence of dual criminality. However the authorities try and assist if they are able to obtain a voluntary statement.
R.38	LC	<ul style="list-style-type: none"> • Financing of terrorism is not an offence and therefore not a predicate offence⁴⁶.
SR.V	NC⁴⁷	<ul style="list-style-type: none"> • T&T does not have legislation in place to offer mutual legal assistance (MLA) in the absence of dual criminality. • Financing of Terrorism is not an offence in T&T^{48,49}, thus MLA would not be available for this offence.

6.4 Extradition (R.32, 37 & 39, & SR.V)

6.4.1 Description and Analysis

Recommendation 39

605. In Trinidad & Tobago the procedure for extradition is governed by the Extradition (Foreign Territories and Commonwealth) Act 1985.

606. Counsel in the Central Authority Unit, also prepares Extradition packages for fugitives pursuant to the *Extradition (Foreign Territories and Commonwealth) Act 1985*. A fugitive can be extradited based on conduct and penalty as opposed to a list of offences. Extradition is available for any conduct, which is punishable by death or imprisonment for not less than twelve months if committed in Trinidad and Tobago or within its jurisdiction. Counsel in the Central Authority has on many occasions represented the State when a formal request for Extradition was sent through the Diplomatic channel.

607. All requests for extradition made to and by Trinidad and Tobago are coordinated by the Central Authority Unit. The Central Authority Unit assists foreign and domestic authorities obtain person/persons sought for prosecution or to serve a sentence.

⁴⁶ Idem note 1

⁴⁷ See also factors mentioned in rating boxes: 6.4.3, and 6.5.3.

⁴⁸ Idem note 1

⁴⁹ Idem note 1

608. In order to proceed with an extradition;
1. The person must be accused of an extraditable offence or is alleged to be at large after conviction of an extraditable offence.
 2. The offence must be an offence against the law of the declared commonwealth territory and is punishable under that law with death or imprisonment for a term of no less than twelve months.
 3. The facts constituting the offence must be an offence against the law of Trinidad and Tobago.
 4. Fugitives will not be extradited for offences of a political character; however a person can be extradited for offences of tax or of a fiscal nature.
 5. The accused will not be extradited for the purpose of prosecuting or punishing him on an account of his race, religion, nationality or political opinions.
 6. The accused will not be extradited if he will be prejudiced at his trial or punished detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion.
 7. The accused will not be returned if it appears that if charged with an offence in Trinidad and Tobago, he would be entitled to be discharged under any rule of law relating to previous acquittals or convictions.
 8. A person will not be extradited to any territory unless provisions is made by the law of that territory or by an arrangement with that territory, that he will not, until he has left or been freed from that territory to be dealt with only for that offence being extraditable which the Attorney General has consented to being dealt with.

609. The Central Authority Department is also responsible for the sharing of confiscated, forfeited or seized assets with other countries, and the negotiation of mutual legal assistance agreements, international co-operation agreements and treaties with other countries.

610. The Attorney General is further assisted by the Central Authority Unit in carrying out their responsibilities under the following treaties:

- International War Crimes Tribunal Act 1998
- International Criminal Courts Act
- Inter- American Convention against Corruption
- The United Nations Convention Against Transnational Organized Crime
- The Extradition (Commonwealth and Foreign Territories) act, 1985
- And Orders together with Bi-Lateral Agreements with certain countries including the United States of America and the Netherlands.

611. Money Laundering is an extraditable offence, and the legal procedure for such extradition is noted above.

612. Trinidad & Tobago extradites its own nationals. Section 5(1) provides that:
“A person found in Trinidad and Tobago-
(a) who is accused of an extraditable offence; or
(b) who is alleged to be unlawfully at large after conviction of an extraditable offence,
in a declared Commonwealth territory, or in a declared foreign territory, may subject to and in accordance with the provisions of this Act, be arrested and returned to the declared Commonwealth territory or the declared foreign territory, as the case may be.”

613. The Act does not distinguish between individuals who are foreign nationals or nationals of Trinidad & Tobago, and it appear to apply to both, provided the offence in question is an extraditable offence.

614. As noted previously, T&T does not have legislation in respect of criminalisation of terrorist financing (SR II) and as such the T&T Authorities would be unable to comply or assist with an extradition request for such an offence in the absence of dual criminality. Also participation in an organized criminal group and racketeering, trafficking in human beings and migrant smuggling; and piracy are not covered under Trinidad and Tobago’s legislation rendering extradition for these cases not possible since dual criminality is required.

615. Trinidad & Tobago cooperate with foreign countries where the request meets the criteria of their respective legislation (sections 5 and 6 of the Act).

616. Trinidad and Tobago has amended existing extradition law to make the process of extradition more efficient.

617. Requests can go between the Attorney General’s Office in Trinidad and Tobago and the Department of Justice in the USA. A person should be extradited on the extradition package that shows a prima facie case. A draft Bill on the Backing of Warrants, based on warrants of arrest only, has been circulated to the English speaking countries in the Caribbean. It should also be noted that individuals might consent to being extradited.

Recommendation 37

618. With regard to extradition there must be dual criminality for the request to be carried out. However, it should be noted that it is the conduct and not the description of the offence that is considered.

Recommendation 32

619. The Mission has been informed that extradition matters related to Money Laundering are being dealt with expeditiously and that all matters (other than denoted in the statistics below) have been properly executed. The Mission noted that there was no review of the effectiveness of the ALM (CFT) system with regard to extradition cases on a regular basis using these statistics.

Extradition statistics:

1999

Country	Requests Received	Requests Made
USA	2	

2000

Country	Requests Received	Requests Made
USA	3 (2) refused	3
Venezuela		1
Canada		1 (pending)

2001

Country	Requests Received	Requests Made
USA		2
United Kingdom	1	1

2002

Country	Requests Received	Requests Made
USA		1 (pending)
St. Vincent & The Grenadines	1 (withdrawn)	

2003

Country/Organization	Requests Received	Requests Made
USA	7 (1 pending/1 withdrawn)	
Canada	1 (withdrawn)	

2004

Country/Organization	Requests Received	Requests Made
USA	1 (pending)	

6.4.2 Recommendations and Comments

620. T&T is recommended to put legislation in place to offer mutual legal assistance for extradition with respect to civil enforcement.

621. Financing of terrorism and Piracy should be made offences in T&T and therefore extraditable offences⁵⁰. T&T should also review the effectiveness of its system with regard to AML (CFT) extradition cases based on statistics and on a regular basis.

6.4.3 Compliance with Recommendations 32, 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.32 ⁵¹	PC	<ul style="list-style-type: none"> T&T has provided information and statistics reflecting their figures for extradition however review of the effectiveness of the system is unavailable.
R.37 ⁵²	LC	<ul style="list-style-type: none"> Mutual legal assistance is not generally rendered in the absence of dual criminality. However the authorities try and assist if they are able to obtain a voluntary statement.
R.39	LC	<ul style="list-style-type: none"> T&T would be unable to extradite a fugitive for an offence relating to terrorist financing and piracy as such offences don't exist in T&T legislation.
SR. ⁵³ V	NC	<ul style="list-style-type: none"> Financing of terrorism is not an offence in T&T and therefore not an extraditable offence⁵⁴.

6.5 Other Forms of International Co-operation (R.32 & 40, & SR.V)

6.5.1 Description and Analysis

Recommendation 40

⁵⁰ Idem note 1

⁵¹ See also factors mentioned in rating boxes: 2.5.3, 2.6.3, 3.13.3, 6.3.3., and 6.5.3.

⁵² See also factors mentioned in rating box: 6.3.3.

⁵³ See also factors mentioned in rating boxes: 6.3.3, and 6.5.3.

⁵⁴ Idem note 1

622. As indicated previously: no specific provision for the ability of the CBTT to exchange information with other local regulatory bodies has been introduced since the second round mutual evaluation of Trinidad and Tobago. The Mission has also not received any information on possible existing MOU's with foreign financial supervisory bodies (foreign counterparts) by the CBTT, the TTSEC or other T&T supervisory body for information exchange. The FIU does not have the legal authority to provide the widest range of international cooperation to their foreign counterparts. Such cooperation would be provided if and when the relevant legislation framework is implemented.

623. Law Enforcement Agencies can only render international cooperation to their foreign counterparts with which some form of legal arrangement exists.

624. The FIU has not developed any effective gateways with its foreign counterparts that would allow it to exchange information directly. Information shared with its foreign counterparts is done informally and can only be used for intelligence purposes.

625. Other Law Enforcement Agencies are sharing information with their foreign counterparts through Interpol, DEA and the World Customs Organization.

626. In 1996 Trinidad and Tobago endorsed the Anti-Drug Strategy in the hemisphere and the Barbados plan of action for drug cooperation in the Caribbean. In 1997 the country joined the "Ship rider" Agreement with the US. In April 1998, Trinidad & Tobago became signatory to the Inter-American Convention against corruption and the inter American Convention against the illicit manufacturing in firearms, ammunition, explosives and other materials.

627. Trinidad and Tobago is a member of the Organization of American States Inter-American Drug Abuse Control Commission Expert Group to Control Money Laundering.

628. The Financial Intelligence Unit and other Law Enforcement Agencies, exchange information spontaneously with their foreign counterparts and upon request in relation to both money laundering and the underlying predicate offences.

629. Law Enforcement and Prosecutorial authorities are authorized to conduct enquiries on behalf of their foreign counterparts with whom there is a legal agreement or Memorandum of Understanding.

630. The FIU does not have the legal authority to make enquiries on behalf of its foreign counterparts, but it is done in practice. This includes sharing its database, law enforcement database and those that are commercially available. The FIU does not have access to administrative databases.

631. Law Enforcement Agencies of Trinidad & Tobago have the authority to conduct investigations on behalf of their foreign counterparts through Interpol. The mission has

been informed that there are not restrictive conditions that would hinder exchange of information directly between competent authorities and their foreign counterparts.

632. Although financial institutions are subject to secrecy and confidentiality requirements, these requirements by themselves do not prevent competent authorities from cooperating with their foreign counterparts. The mission was advised that Request for assistance would not be refused on these grounds; a Request has never been refused under these circumstances.

633. Information received by the FIU is kept on computers. These computers are accessible only by FIU staff. Passwords and other protective devices are installed on these computers as safeguards against unauthorized usages.

Special recommendation V

634. Terrorist financing is not enshrined in the laws of Trinidad & Tobago therefore SRV does not apply⁵⁵. However, the Anti-terrorism bill 2004 has been drafted and presented to Parliament for discussion. It was brought to the attention of this mission that the opposition party has indicated that they will not support the Bill because it is too draconian. Section 28 of the bill makes provision for Trinidad & Tobago to cooperate with foreign authorities on matters relating to terrorist act.

6.5.2 *Recommendations and Comments*

RECOMMENDATION 40

635. Legislations should be implemented to enable Law Enforcement Agencies and other competent authorities to provide the widest range of international cooperation to their foreign counterparts in a timely and effective manner.

Special recommendation V

636. Implement the relevant legislative framework to govern terrorism financing at the earliest opportunity⁵⁶.

6.5.3 *Compliance with Recommendations 32 & 40, and Special Recommendation V*

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.32⁵⁷	PC	<ul style="list-style-type: none"> • There is no Review of effectiveness of AML/CFT systems on a regular basis.

⁵⁵ Idem note 1

⁵⁶ Idem note 1

⁵⁷ See also factors mentioned in rating boxes: 2.5.3, 2.6.3, 6.3.3, and 6.4.3.

R.40	PC	<ul style="list-style-type: none"> • The FIU has not established any effective gateways to facilitate the prompt and constructive exchange of information directly with its foreign counterparts. • T&T has not established any MOU's or other mechanism to allow financial supervisory bodies to cooperate with their foreign counterparts.
SR.V 58	NC	<ul style="list-style-type: none"> • Financing of Terrorism is not enshrined in the legislation⁵⁹.

7. OTHER ISSUES

7.1 *Other relevant AML/CFT measures or issues*

7.2 *General framework for AML/CFT system (see also section 1.1)*

⁵⁸ See also factors mentioned in rating boxes: 6.3.3, and 6.4.3.

⁵⁹ Idem note 1

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations⁶⁰

Forty Recommendations	Rating	Summary of factors underlying rating ⁶¹
Legal systems		
1. ML offence	NC	<ul style="list-style-type: none"> • For money laundering offences the POCA only recognizes property as being the proceeds of crime where a person has been convicted of a predicate offence. • Terrorism, including terrorist financing and piracy is not covered under Trinidad and Tobago legislation as predicate offences; • Predicate offences for ML do not extend to conduct occurring in another jurisdiction that would have constituted an offence had it occurred domestically. • The Mission concluded that AML offences are not effectively investigated, prosecuted and convicted. There were no ML convictions to date of the on site visit. • The money laundering legislation does not appear to be effective as there have been no convictions in 6 years.
2. ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> • There is no dissuasive criminal or administrative sanctions for money laundering against a company directly • The Mission concluded that AML offences are not effectively investigated, prosecuted and convicted. There were no ML convictions up to date of the on site visit.

⁶⁰ It should be noted that where it is stated that Trinidad and Tobago needs to introduce CFT legislation in Table 1, legislation has been introduced: “The Anti Terrorism Act No 26 of 2005” of Trinidad and Tobago was enacted on the 13th of September 2005

⁶¹ These factors are only required to be set out when the rating is less than Compliant.

3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Confiscation is limited to persons convicted of predicate offence. Therefore, the courts cannot make a confiscation order where the property in question is found to be the proceeds of crime unless there is a conviction with respect to such property (s. 3 of POCA). • Provision for confiscation under the POCA is not widely used/implemented. There has been no confiscation of assets under POCA for ML offences. • Law enforcement agencies are limited in their powers to obtain production orders and search warrants under POCA in order to identify and trace property that may become subject to confiscation. Such orders can only be obtained for offences under the Dangerous Drug Act or Part 2 of POCA (ML offences) [pursuant to the definition of “specified offence” contained in section 2 of the POCA].
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> ▪ While most of the competent authorities have access to information, there are no measures allowing for the sharing of information locally and internationally. ▪ There are no measures for the sharing of information between financial institutions as required by Recommendations 7 and 9 and Special Recommendation VII.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • None of the CDD requirements are included in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised by the CBTT.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • None of the requirements are included in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised by the CBTT.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • None of the requirements are included in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised by the CBTT.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • None of the requirements are included in legislation, regulations or other enforceable means and existing requirements are only applicable to financial institutions supervised

		by the CBTT.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank.
10. Record keeping	NC	<ul style="list-style-type: none"> The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank.
11. Unusual transactions	PC	<ul style="list-style-type: none"> There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to set forth their findings in writing, and to keep such findings for competent authorities and auditors for at least five years.
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> The DNFBP's are not supervised or regulated for AML compliance. Lawyers, notaries, other independent legal professionals, accountants and trust and company service providers are not subject to AML/CFT obligations. Casino's, real estate agents, and jewellers have been designated under the law, but none of the requirements set out in Recommendations 5 – 10 have been implemented. No requirement to examine the background and purpose of the transactions and no requirement to keep the findings for DNFBP's. No requirement to pay special attention to complex – unusual large transactions or unusual patterns of transactions for DNFBP's.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> The reporting agency is the designated authority rather than the FIU and suspicion is based on illicit activities rather than all predicate offences No requirement to report suspicious transactions related to terrorist financing No requirement to report suspicious transactions regardless of whether they involve tax matters.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> No prohibition of disclosure of the reporting of a suspicious transaction to the designated authority/FIU.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> Internal controls requirements are too general and do not include FT.

		<ul style="list-style-type: none"> • No requirement for the designation of a compliance officer at management level • No requirement for AML/CFT compliance officer and other appropriate staff to have access to relevant information • Employee training is limited to the identification of suspicious transactions • No requirement for financial institutions to place screening procedures when hiring employees.
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> • No SAR's from DNFBP's have been submitted to the Designated Authority/FIU. • No evidence that the DNFBP's are complying with legislated requirements of Rec. 15. • See section 3.7.3 for factors relevant to Recs. 13 and 14. • See section 3.8.3 for factors relevant to Rec. 15.
17. Sanctions	NC	<ul style="list-style-type: none"> • No provisions in legislation to withdraw, restrict or suspend the licence of the financial institution for non-compliance with AML/CFT requirements. • The requirements set out in Rec. 17 are included in the POCA 2000, but there are no provisions in the legislation to withdraw, restrict or suspend the license of the DNFBP.
18. Shell banks	PC	<ul style="list-style-type: none"> • There are no provisions to prevent financial institutions to enter, or continue, correspondent banking relationships with shell banks. • There are no provisions to require that financial institutions should satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	PC	<ul style="list-style-type: none"> • No indication that the authorities considered implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerized database. • No indication that when the Customs Division discovers an unusual international shipment of currency, monetary instruments, precious metals or gems etc, it considers notifying, as appropriate, the Customs Service or other

		competent authorities of the countries from which the shipment originated and/or to which it is destined, and co-operates with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.
20. Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> ▪ The only measure taken by the Government of Trinidad and Tobago to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML has been not issuing large denomination banknotes.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> ▪ Financial institutions are not required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the FATF Recommendations. ▪ There is no legal requirement for the background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations to be examined and written findings made available to assist competent authorities and auditors. ▪ Only the Central Bank circulates the NCCT list to the financial institutions it supervises.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • No legal requirements for financial institution to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF standards.
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • Relevant supervisory agencies have not been designated as responsible for ensuring the compliance of their supervised financial institutions with AML/CFT requirements. • The TTSEC does not apply the requirements of the IOSCO Principles for the supervision of the securities sector with regard to AML/CFT. • Only the financial institutions supervised by the CBTT are subject to AML/CFT regulation and supervision. • Only financial institution under the FIA are subject to all measures necessary to prevent criminals and their associates

		<p>from gaining control or significant ownership of financial institutions.</p> <ul style="list-style-type: none"> • The securities sector, credit unions, money transfer companies and cash couriers are not subject to AML/CFT supervision. • Money transfer companies and cash couriers are not licensed, registered or appropriately regulated
24. DNF-P – regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • There is no legal requirement to ensure that the gaming houses (or private member clubs), pool betting and the national lottery on line betting games are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations. • There are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a Gaming House (or Private Member Club), Pool Betting and the National Lottery on line Betting Games. • There is no designated competent authority or SRO responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> • The Designated Authority/FIU does not provide feedback to financial institutions that are required to report suspicious transactions. • The CBTT AML/CFT Guidelines are applicable only to banks and insurance companies. • There are no guidelines to assist DNFBPs to implement and comply with their respective AML/CFT requirements”.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • There is no (legally established) FIU that receives, analyses and disseminates financial information (FIU legislation not introduced to clearly indicate the powers of this entity).

		<ul style="list-style-type: none"> • The FIU lacks the legal authority to obtain and disseminate financial information. • Operational independence and more autonomous structure (reconsider “designated authority structure) of the FIU is needed • The FIU does not prepare and publish periodic reports of operations, typologies, trends and its activities for public scrutiny.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • The lack of resources is hampering the ability of Law enforcement authorities to properly investigate ML and FT offences.
28. Powers of competent authorities	C	<ul style="list-style-type: none"> • This Recommendation is met.
29. Supervisors	NC	<ul style="list-style-type: none"> • The CUSU do not have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance. • The CUSU do not have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance. • Supervisors do not have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • Resources of the FIU, DPP, Customs and the Police Service are not sufficient for these agencies to perform their respective functions. More and continuous training is needed for these entities, including the Immigration service. • Staff resources of the TTSEC and CUSU are insufficient for their task. • AML/CFT training available for supervisory staff is insufficient. • The strength and structure of the FIU is inadequate to meet its needs. • Ongoing training is necessary.
31. National co-operation	PC	<ul style="list-style-type: none"> • NAMLC is not yet fully operational. • No MOU’s for cooperation between supervisors and other competent authorities, which affects the level of cooperation.
32. Statistics	PC	<ul style="list-style-type: none"> • There is no Review of effectiveness of AML/CFT systems on a regular basis.
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • Competent authorities have access to information stored by the Registrar of Companies, however it could not be ascertained if adequate, accurate and

		current information on beneficial ownership and control of legal persons is maintained in Trinidad and Tobago.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> There is no mechanism to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.
International Co-operation		
35. Conventions	NC	<ul style="list-style-type: none"> The relevant international conventions have not been implemented extensively.
36. Mutual Legal Assistance (MLA)	LC	<ul style="list-style-type: none"> There is no mechanisms currently in place that deals with conflicts of jurisdiction. Also, dual criminality is required in order to render mutual legal assistance. This would make mutual legal assistance on TF almost impossible
37. Dual criminality	LC	<ul style="list-style-type: none"> Mutual legal assistance is not generally rendered in the absence dual criminality. However the authorities try and assist if they are able to obtain a voluntary statement.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> Financing of terrorism is not an offence and therefore not a predicate offence⁶².
39. Extradition	LC	<ul style="list-style-type: none"> T&T would be unable to extradite a fugitive for an offence relating to terrorist financing and piracy as such offences don't exist in T&T legislation.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> The FIU has not established any effective gateways to facilitate the prompt and constructive exchange of information directly with its foreign counterparts. T&T has not established any MOU's or other mechanism to allow financial supervisory bodies to cooperate with their foreign counterparts.
Eight Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> The essential criteria have not been adhered to as Trinidad & Tobago do not have the relevant legislation in place in order to comply with SR.I.
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> There is no legislation in T&T criminalising terrorist financing

⁶² Idem note 1

SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> There is no legislation that deals with freezing or confiscating terrorists' funds in accordance with the relevant United Nations Resolutions
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> There are no requirements for financial institutions to report to the designated authority/FIU when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations, regardless of the amount of the transaction and including attempted transactions or if tax matters are involved.
SR.V International co-operation	NC	<ul style="list-style-type: none"> Financing of Terrorism is not an offence in T&T and therefore not an extraditable offence⁶³.
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> None of the requirements are included in legislation, regulations or other enforceable means.
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> The requirements in place are not mandatory and are applicable only to the financial institutions supervised by the Central Bank.
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> There are no requirements in legislation, regulations or other enforceable means to comply with this recommendation.

⁶³ Idem note 1

Table 2: Recommended Action Plan to Improve the AML/CFT System⁶⁴

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	<p>The T&T authorities may wish to:</p> <ul style="list-style-type: none"> • Consider defining the term money laundering in the POCA and also, for completeness sake, broadening the scope of section 43 beyond drug trafficking to include “or a specified offence”. • Participation in an organized criminal group and racketeering; terrorism, including terrorist financing, trafficking in human beings and migrant smuggling; and piracy should be covered under Trinidad and Tobago legislation. • Predicate offences for ML in the POCA should also be extended to conduct occurring in another jurisdiction that would have constituted an offence had it occurred domestically. • Include in the POCA that where it is proven that property is obtained from the proceeds of crime it should not be necessary that a person be convicted of a predicate offence in order for the court to make a confiscation order in relation to such property. • Fast track the Proceeds of Crime (Amendment) Bill 2005, which will seek to strengthen the application of the POCA. • Introduce the Financial Obligations Regulations to strengthen their AML regime.
Criminalisation of Terrorist Financing (SR.II)	<p>The T&T authorities may wish to:</p> <ul style="list-style-type: none"> • Introduce diligently the proposed legislation criminalising the financing of terrorism, terrorist acts and terrorist organizations and make such offences money laundering predicate offences. • Sign and ratify the Terrorist Financing Convention.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • The T&T authorities should consider expanding/widening the scope of offences that are subject to production orders and search warrants by expanding the definition of a “specified offence” contained in section 2(1) of the POCA.
Freezing of funds used for	The T&T authorities may wish to:

⁶⁴ It should be noted that where it is stated that Trinidad and Tobago needs to introduce CFT legislation in Table 2, legislation has been introduced: “The Anti Terrorism Act No 26 of 2005” of Trinidad and Tobago was enacted on the 13th of September 2005

terrorist financing (SR.III)	<ul style="list-style-type: none"> • Introduce diligently the proposed legislation criminalising the financing of terrorism, terrorist acts, terrorist organizations and make such offences money laundering predicate offences. • Sign and ratify the Terrorist Financing Convention.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<p>The T&T authorities may wish to:</p> <ul style="list-style-type: none"> • Proceed quickly to enact FIU legislation. The required Legislative framework should be implemented with the view to gain membership to the Egmont Group of FIUs. • Introduce provisions for continuous training for the Designated Authority, the Training Officer and other staff within the FIU. • Consider establishing a training program for staff of the FIU. Coordinating of workshops/ seminars in conjunction with the SSA would assist greatly in this effort. • Introduce Periodic reports prepared by the FIU in relation to its operation in order to test its growth and effectiveness. This report should also serve to show ML and TF trends. • Consider strengthening and restructuring the staff of the FIU so as to encourage self-sufficiency and operational independence. • Improve budgetary, staffing and physical accommodation of the FIU in order to improve its capabilities. • Review of the effectiveness of the FIU systems to combat ML and FT should be more thorough and should produce more tangible results also with regard to other relevant stakeholders involved. • The FIU should consider publicizing periodic reports for the wider public.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<p>The T&T authorities may wish to:</p> <ul style="list-style-type: none"> • Pay more attention to pursuing Money-Laundering offences based on received and analysed SAR's, and more resources (law enforcement staff) should be dedicated to investigation of these offences. The effectiveness of the system to combat AML(/CFT) offences should be improved. • Enact the Police Service Reform Bill quickly in order to reform the Police Service with the view to improve efficiency and restore public trust. • Increase involvement of the Customs and Excise Division in combating money laundering and terrorist financing. • Immigration should also be included in AML/CFT training or awareness programs. • Provide training to specific Customs Officers for future attachment to the FIU. • Address quickly the current shortage of staff at the Customs Division to enhance efficiency. • Provide further training to Prosecutors, Magistrates

	<p>and Judges to broaden their understating of the relevant legislations.</p> <ul style="list-style-type: none"> • Give considerable attention to Staffing constraints faced by the Magistracy and the Office of the DPP. • Strengthen the Executive Staff of the SSA in order to provide assistance to the Director. • The Customs and Excise Division should consider reviewing its policy in relation to the sharing of data. • The DPP office should continue to implement its special project on ML prosecutions. • Measures should be instituted to review the effectiveness of T&T’s money laundering and terrorist financing systems. In so doing weaknesses would be easily identified and brought to the attention of the T&T authorities.
<p>3. Preventive Measures – Financial Institutions</p>	
<p>Risk of money laundering or terrorist financing</p>	<p>The T&T authorities may wish to consider:</p> <ul style="list-style-type: none"> • The feasibility and utility of a comprehensive risk assessment of the economy to ascertain AML/CFT vulnerabilities in businesses and financial products and services with a view to introducing CDD measures. • To amend the POCA to extend the definition of financial institutions to include all entities licensed by the SIA whose business includes investing money, acting as trustee with respect to other people’s funds or providing financial services involving the transfer or exchange of funds and insurance agents and brokers.
<p>Customer due diligence, including enhanced or reduced measures (R.5 to 8)</p>	<p>The T&T authorities may wish to consider to set out measures in laws or implementing regulations with sanctions for non-compliance for the following:</p> <p><u>Recommendation 5:</u></p> <ul style="list-style-type: none"> • Financial institutions should not be permitted to keep anonymous accounts or accounts in fictitious names. • Financial institutions should be required to undertake customer due diligence measures when establishing business relations, carrying out occasional or linked transactions above US 15,000, carrying out occasional wire transfers as covered in Special Recommendation VII, when there is suspicion of ML or FT regardless of exemptions or amounts, and when there is doubt about the veracity or adequacy of previously obtained customer identification data. • Financial institutions should be required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer’s identity using reliable, independent source documents, data or information. • Financial institutions should be required to verify that

	<p>any person purporting to act on behalf of a legal person or legal arrangement is so authorised, and identify and verify the identity of that person.</p> <ul style="list-style-type: none"> • Financial institutions should be required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data. • Financial institutions should be required to determine the natural persons who ultimately own or control customers that are legal persons or legal arrangements. • Financial institutions should be required to conduct due diligence on the business relationship. <p>The T&T authorities may set out the following measures in laws, regulations or enforceable guidelines with sanctions for non-compliance:</p> <ul style="list-style-type: none"> • Financial institutions should be required to implement the other criteria of Recommendation 5 concerning remaining CDD measures, risk, timing of verification, failure to satisfactorily complete CDD and existing customers <p><u>Recommendation 6:</u></p> <ul style="list-style-type: none"> • Financial institutions should be required to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • Financial institutions should be required to obtain senior management approval for establishing or continuing business relationships with a PEP. • Financial institutions should be required to take reasonable measures to establish the source of wealth and funds of PEPs • Financial institutions should be required to conduct enhanced ongoing monitoring of business relationships with PEPs. <p><u>Recommendation 7:</u></p> <ul style="list-style-type: none"> • Financial institutions should be required to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business and to determine the reputation of the institution and the quality of the supervision, including whether it has been subject to a ML or TF investigation or regulatory action. • Financial institutions should assess the respondent institution’s AML/CFT controls, and ascertain that they are adequate and effective. • Financial institutions should obtain approval from senior management for establishing new correspondent relationships. • Financial should document the respective AML/CFT responsibilities of each institution in the correspondent relationship.
--	--

	<ul style="list-style-type: none"> • In the case of “payable-through accounts”, financial institutions should be satisfied that the respondent institution has performed all the normal CDD measures set out in Rec. 5 on customers using the accounts of the correspondent and the respondent institution is able to provide relevant customer identification data upon request to the correspondent. <p><u>Recommendation 8:</u></p> <ul style="list-style-type: none"> • Financial institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes. • Financial institutions should be required to have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and conducting ongoing due diligence. • Financial institutions should be required to have measures for managing risks including specific and effective CDD procedures that apply to non-face to face customers.
Third parties and introduced business (R.9)	<p>The T&T authorities may set out the following measures in laws, regulations or enforceable guidelines with sanctions for non-compliance:</p> <ul style="list-style-type: none"> • Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process in criteria 5.3 to 5.6. • Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. • Financial institutions should be required to satisfy themselves that the third party is regulated and supervised and had measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. • Competent authorities should determine in which countries third parties meet the conditions by taking into account information available on whether these countries adequately apply the FATF Recommendations. • The ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • The mission recommends that the relevant competent authorities in Trinidad and Tobago be given the ability to share locally and internationally, information they require to properly perform their functions. • It is recommended to amend the legislation to

	<p>specifically require that no financial institution secrecy law will inhibit the implementation of the FATF Recommendations (or a similar requirement).</p>
<p>Record keeping and wire transfer rules (R.10 & SR.VII)</p>	<p><u>Recommendation 10:</u></p> <ul style="list-style-type: none"> ▪ The T&T authorities may wish to introduce the proposed Financial Obligation Regulations as soon as possible and include the following; • Financial institutions should be required to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated. • Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • Financial institutions should be required to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority). • Financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. <p><u>Special recommendation VII:</u></p> <ul style="list-style-type: none"> • The T&T authorities may wish to impose mandatory requirements on financial institutions dealing with the measures of SR VII covering domestic, cross-border and non-routine wire transfers, intermediary and beneficial financial institutions handling wire transfers and the monitoring of compliance with stipulated requirements.
<p>Monitoring of transactions and relationships (R.11 & 21)</p>	<p>The Mission recommends that:</p> <ul style="list-style-type: none"> • The POCA should be amended to require financial institutions to examine and record their findings in writing on the background and purpose of all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, and to keep such findings available for competent authorities and auditors for at least five years. • The POCA should be amended to require financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations

	<ul style="list-style-type: none"> • Effective measures should be put in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. • The background and purpose of transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations should be examined and written findings made available to assist competent authorities and auditors. • That the Government Trinidad and Tobago have in place arrangements to take the necessary countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.
<p>Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)</p>	<p><u>Recommendation 13/Special Recommendation IV:</u></p> <ul style="list-style-type: none"> • The POCA should be amended to require reporting to the FIU rather than the designated authority of suspicious transactions related to the proceeds of all ML predicate offences as defined in FATF Recommendation 1. • The requirement to report should be applied regardless of the amount of the transaction and if it involves tax matters. • The Anti Terrorism Bill should be enacted as soon as possible to require financial institutions to report to the designated authority/FIU when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations, regardless of the amount of the transaction and including attempted transactions or if tax matters are involved <p><u>Recommendation 14:</u></p> <ul style="list-style-type: none"> • The POCA should be amended to prohibit the disclosure of reporting to the designated authority/FIU as stipulated in Section 55 (3) of the POCA. • The POCA should be amended to ensure that the confidentiality requirement in Subsections 55(8) and (9) also applies to the personnel of the FIU. <p><u>Recommendation 19:</u></p> <ul style="list-style-type: none"> • The authorities should consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national agency with a computerized data base. • When the Customs Division discovers an unusual international shipment of currency, monetary instruments, precious metals or gems etc, it should consider notifying, as appropriate, the Customs Division or other competent authorities of the countries from which the shipment originated and/or

	<p>to which it is destined, and should co-operate with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.</p> <ul style="list-style-type: none"> • The Customs Division's computerized database of Customs Declaration Forms should be subject to strict safeguards to ensure proper use of the information that is recorded. <p><u>Recommendation 25:</u></p> <ul style="list-style-type: none"> • The designated authority/FIU should have a structure in place to provide financial institutions that are required to report suspicious transactions, with adequate and appropriate feedback. <p><u>Special Recommendation IV:</u></p> <ul style="list-style-type: none"> • Endorse Anti-Terrorism Bill 2004
<p>Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p><u>Recommendation 15:</u></p> <p>The T&T authorities may wish to amend legislative provisions for internal controls and other measures to include the following:</p> <ul style="list-style-type: none"> • Internal procedures, policies and controls to prevent ML and FT covering inter alia CDD, record retention, detection of unusual and suspicious transactions and the reporting obligation. • Appropriate compliance management arrangements should be develop to include at a minimum the designation of an AML/CFT compliance officer at management level. • The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Employee training should include information on new developments including current ML and FT techniques, methods and trends, clear explanations of all aspects of AML/CFT laws and obligations and requirements concerning CDD and suspicious transaction reporting. • Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees <p><u>Recommendation 22:</u></p> <p>The T&T authorities may wish to introduce legislation or enforceable regulations to include the requirements for financial institutions to:</p> <ul style="list-style-type: none"> • pay particular attention that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe the AML/CFT requirements consistent with home country requirements and the FATF Recommendations; • apply the higher standard, to the extent that local (i.e.

	<p>host country) laws and regulations permit, where the minimum AML/CFT requirements of the home and host countries differ;</p> <ul style="list-style-type: none"> • inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.
Shell banks (R.18)	<p>The T&T authorities may wish to introduce the following:</p> <ul style="list-style-type: none"> • Shell banks should be prohibited by law. • Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks; • Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs (R. 17, 23, 29 & 30).	<p><u>Recommendation 17:</u></p> <ul style="list-style-type: none"> • The authorities should consider amending the provisions for sanctions in the POCA to allow for penalties to be applied jointly or separately. • The authorities should consider increasing the range of sanctions for AML/CFT non-compliance to include disciplinary sanctions and the power to withdraw, restrict or suspend the financial institution's license, where applicable. <p><u>Recommendation 23:</u></p> <ul style="list-style-type: none"> • Authorities should formally designate the relevant supervisory agencies with the responsibility for ensuring compliance by their licensees with AML/CFT obligations. • The TTSEC should apply the requirements of the IOSCO Core Principles for the supervision of the securities sector with regard to AML/CFT. • The securities sector and credit unions should be subject to AML/CFT supervision. Money transfer companies and cash couriers should be licensed, registered, appropriately regulated and subject to AML/CFT supervision. <p><u>Recommendation 29:</u></p> <ul style="list-style-type: none"> • The CUSU should have the power to compel production or to obtain access to all records, documents or information relevant to monitoring compliance • The CUSU should have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance. • All supervisors should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with the AML/CFT requirements. <p><u>Recommendation 30:</u></p> <ul style="list-style-type: none"> • The TTSEC and CUSU should review their staffing requirements and consider appropriate AML/CFT

	training in the event of being designated the AML/CFT authority for their licensees
Financial institutions - market entry and ownership/control (R.23)	<ul style="list-style-type: none"> • The securities sector and credit unions should be subject to AML/CFT supervision, • The measures in the FIA to prevent criminals or their associates from gaining control or significant ownership of financial institutions should be duplicated in the relevant legislation governing the supervision of other financial institutions under the POCA. • Money transfer companies and cash couriers should be licensed or registered.
AML/CFT Guidelines (R.25)	<p>The following is recommended;</p> <ul style="list-style-type: none"> • The CBTT AML/CFT Guidelines should be enforceable and have sanctions for non-compliance. • Guidelines similar to the CBTT AML/CFT Guidelines should be issued by the relevant authorities for all financial institutions and persons engaged in relevant business activity stipulated in the POCA.
Ongoing supervision and monitoring (R.23, 29 & 32)	<p><u>Recommendation 23</u></p> <ul style="list-style-type: none"> • The TTSEC should apply the requirements of the IOSCO Core Principles for the supervision of the securities sector with regard to AML/CFT. • The securities sector and credit unions should be subject to AML/CFT supervision. • Money transfer companies and cash couriers should be licensed, registered, appropriately regulated and subject to AML/CFT supervision. <p><u>Recommendation 29</u></p> <ul style="list-style-type: none"> • The CUSU should have the power to compel production or to obtain access to all records, documents or information relevant to monitoring compliance • The CUSU should have the authority to conduct inspections of relevant financial institutions including on-site inspection to ensure compliance. • All supervisors should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with the AML/CFT requirements. • All supervisory authorities of financial institutions need to have systems in place for combating ML and FT and should review the effectiveness of these systems. <p><u>Recommendation 32</u></p> <ul style="list-style-type: none"> • Once all other supervisory authorities of financial institutions have implemented AML/CFT supervision, they should maintain comprehensive statistics on on-site examinations and requests for assistance
Money value transfer services (SR.VI)	<p>The Mission recommends the following:</p> <ul style="list-style-type: none"> • A competent authority should be designated to register and/or licence money transfer companies and maintain a current list of their names and addresses and be

	<p>responsible for ensuring compliance with licensing and/or registration requirements.</p> <ul style="list-style-type: none"> • All MVT service operators should be subject to the applicable FATF Forty Recommendations and FATF Eight Special Recommendations. • A system for monitoring money transfer companies and ensuring that they comply with the FATF Recommendations should be implemented. The mission also recommends that the CBTT issue the AML/CFT Guidelines to the cambios and test compliance during on site inspections. • Money transfer companies should be required to maintain a current list of its agents, which must be made available to the designated competent authority. • The measures set out in the Best Practices Paper for SR.VI should be implemented and Trinidad and Tobago authorities should take FATF R. 17 into account when introducing system for monitoring money transfer companies.
4. Preventive Measures – Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p>It is recommended that:</p> <ul style="list-style-type: none"> • Lawyers, notaries, other independent legal professions, accountants and trust and company service providers should be subject to AML/CFT FATF requirements. • DNFBPs and persons engaged in relevant business activities should be supervised for AML/CFT compliance • The requirements of Recommendations 5 to 10 should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 12. • Government should put more effort in educating and informing the DNFBPs and persons engaged in relevant business activities about their responsibilities under the legislation and about other relevant AML/CFT issues and developments.
Monitoring of transactions and relationships (R.12 & 16)	<ul style="list-style-type: none"> • The requirements of Recommendations 11 and 21 should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendations 12 and 16.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The requirements of Recommendations 13 and 14 as detailed in section 3.7.2 of this report should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 16.
Internal controls, compliance & audit (R.16)	<ul style="list-style-type: none"> • The requirements of Recommendations 15 as detailed in section 3.8.2 of this report should be imposed on all DNFBPs as stipulated in the circumstances detailed in Recommendation 16
Regulation, supervision and monitoring (R.17, 24-25)	<p>The Mission recommends that;</p> <ul style="list-style-type: none"> • Gaming houses (or private member clubs), pool betting and the national lottery on line betting games

	<p>should be subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.</p> <ul style="list-style-type: none"> • Legal or regulatory measures should be taken to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a gaming house (or private member club), pool betting and the national lottery on line betting games. • A competent authority or SRO should be designated as responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. • Competent authorities should establish guidelines that will assist DNFBP's to implement and comply with their respective AML/CFT requirements
Other designated non-financial businesses and professions (R.20)	<p>The Mission recommends that:</p> <ul style="list-style-type: none"> • Authorities consider applying the relevant FATF Recommendation to non-financial businesses and professions (other than DBFBP's) that are at the risk of being misused for ML or TF. • Measures should be taken encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • It is recommended that Trinidad and Tobago authorities undertake a comprehensive review to determine ways in which it can ensure itself that adequate and accurate information on beneficial ownership may be available on a timely basis.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • The T&T authorities should take steps to implement a mechanism to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • Authorities should review the adequacy of laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism. • Measures should be put in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations. • Measures should be put in place to ensure that funds or other assets collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organizations.
6. National and International	

Co-operation	
National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • The T&T authorities should consider instituting the legal framework necessary to formalise the National Anti- Money Laundering Committee. This Committee should be given legal responsibility to gather competent authorities regularly in order to develop and implement policies and strategies to combat ML and FT. The Committee should also be given responsibility for sensitising the general public about T&T ML measures and encourage compliance with the relevant legislations. • Trinidad and Tobago should consider introducing MOU's between the CBTT, the TTSEC and the Designated Authority / FIU of Trinidad and Tobago, which would enable them to cooperate, and were appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. • Co-operation amongst law enforcement and other competent authorities could be improved. Competent authorities need to be more proactive in their approach as contact is presently maintained in a haphazard manner, in particular when a need arises. • The composition of the FIU could be expanded to include personnel from different relevant entities, which would not only strengthen cooperation but also enhance the human resource capability of the FIU.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • The T&T authorities may wish to continue taking steps towards enacting an Anti-Terrorism Bill and sign and ratify the United Nations International Convention for the Suppression of the Financing of Terrorism.
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • Trinidad & Tobago should strongly consider implementing legislation that would give greater effect to confiscation, seizing and freezing ability with regard to requests for assistance from foreign countries. • In addition, assistance to foreign countries for civil matters should be considered and • Terrorist-Financing legislation should be implemented⁶⁵. • T&T Should introduce legislation that deals with conflicts of jurisdiction. Also, dual criminality is required in order to render mutual legal assistance. • T&T should introduce legislation that enables the authorities to affect mechanisms such as controlled deliveries. • The asset forfeiture fund should be clearly established and utilized in T&T. • T&T should put legislation in place to offer mutual

⁶⁵ Idem note 1

	legal assistance with respect to civil enforcement.
Extradition (R.32, 37 & 39, & SR.V)	<ul style="list-style-type: none"> • T&T is recommended to put legislation in place to offer mutual legal assistance for extradition with respect to civil enforcement. • Financing of terrorism and Piracy should be made offences in T&T and therefore extraditable offences⁶⁶. Financing of terrorism and Piracy should be made an offence in T&T and therefore an extraditable offence⁶⁷. T&T should also review the effectiveness of its system with regard to AML (CFT) extradition cases based on statistics and on a regular basis.
Other Forms of Co-operation (R.32 & 40, & SR.V)	<p><u>Recommendation 40:</u></p> <ul style="list-style-type: none"> • The T&T authorities may wish to implement Legislations to enable Law Enforcement Agencies and other competent authorities to provide the widest range of international cooperation to their foreign counterparts in a timely and effective manner. <p><u>Special Recommendation V:</u></p> <ul style="list-style-type: none"> • The T&T authorities may wish to implement the relevant legislative framework to govern terrorism financing at the earliest opportunity.
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

⁶⁶ Idem note 1

⁶⁷ Idem note 1

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations

Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.

Annex 3: List of all laws, regulations and other material received

Annex 4: List of Predicate Offences for ML used in T&T

Annex 1: List of Abbreviations

ACCA:	Association of Certified Chartered Accountants
ACB:	Anti Corruption Bureau
AML:	Anti Money Laundering
ATP:	Authority to Proceed
ATTIC:	Association of Trinidad and Tobago Insurance Companies
AREA:	Association of Real Estate Agents
BID:	Bank (Central Bank of Trinidad and Tobago) Inspection Department
CA:	Central Authority
CARICOM:	Caribbean Common Market and Community
CARIFORUM:	Caribbean Forum of African Caribbean Pacific States
CAU:	Central Authority Unit
ACP:	African Caribbean and Pacific States
CALP:	Caribbean Anti Money Laundering Program
CBTT:	Central Bank of Trinidad and Tobago
CCCU	Caribbean Confederation of Credit Unions
CCJ:	Caribbean Court of Justice
CFATF:	Caribbean Financial Action Task Force
CDCTF:	Counter Drug and Crime Task Force
CDD:	Customer Due Diligence
CFT:	Combating Financing of Terrorism
CICAD:	Inter-American Drug Abuse Control Commission
CSA:	Co-Operative Societies Act
DEA:	Drug Enforcement Administration
DNFBP:	Designated Non-Financial Businesses and Professions
DPP:	Director of Public Prosecution
EEZ:	Exclusive Economic Zone
FATF:	Financial Action Task Force
FBI:	Federal Bureau of Investigations
FIA:	Financial Institutions Act, 1993
FIU:	Financial Intelligence Unit
FT:	Financing of Terrorism
GEG:	Governmental Experts Group
GDP:	Gross Domestic Product
ICATT:	Institute of Certified Chartered Accountants of Trinidad and Tobago
IOSCO:	International Organization of Securities Commissions
IPOC:	(British Columbia's) Integrated Proceeds of Crime Unit
KYC:	Know Your Customer
MEQ:	Mutual Evaluation Questionnaire
MLAT:	Mutual Legal Assistance Treaty
MLEA:	Maritime Law Enforcement Agreement
NADAPP:	National Alcohol and Drug Abuse Prevention Program
NAMLC:	National Anti Money Laundering Committee

NCCT:	Non-Cooperating Countries and Territories
NIPDEC:	National Property Development Company Limited
MVT:	Money Value Transfer companies
OCNU:	Organize Crime and Narcotics Unit
OAS:	Organization of American States
OAS – CICTE:	Committee Against Terrorism of the Organization of American States
PEP:	Politically Exposed Person
PLIPDECO:	Point Lisas Industrial Port Development Corporation
POCA:	Proceeds of Crime Act, 2000
REDTRAC:	Regional Drug Law Enforcement Training Centre
SAR:	Suspicious Activity Report
SIA:	Securities Industry Act, 1995
SR:	(FATF) Special Recommendation
SRO:	Self-Regulatory Organization
SSA:	Strategic Services Agency
STR:	Suspicious Transaction Report
TF:	Terrorist Financing
T&T:	Trinidad and Tobago
TTSE:	Trinidad and Tobago Stock Exchange
TTSEC:	Trinidad and Tobago Securities Commission
UK:	United Kingdom
UN:	United Nations
UNDCP:	United Nations Drug Control Program
UNCLOS:	United Nations Convention on the Law of the Sea
US:	United States
USA:	United States of America
UTC:	Unit Trust Corporation
RBTT:	Royal Bank of Trinidad and Tobago Ltd.
WOCCU:	World Council of Credit Unions

Annex 2

Details of all bodies met on the on site mission – Ministries, other government authorities or bodies, private sector representatives and others.

I MINISTRIES

- Ministry of National Security
- Ministry of Finance:
 - Board of Inland Revenue
 - Minister in Ministry of Finance
- Office of the Attorney General
 - Central Authority
 - Parliamentary Council

II CRIMINAL JUSTICE AND OPERATIONAL AGENCIES

- Strategic Services Agency (SSA)
- Financial Intelligence Unit
- Organized Crime and Narcotics Unit (OCNU)
- Counter Drug and Crime Task Force (CDCTF)
- Police Service of Trinidad and Tobago (Commissioner)
- Public Prosecution Office (DPP)
- Court of Justice
 - Court Administrator
 - Office of the Chief Magistrate
- Customs Service (Comptroller of Customs)

III BODIES OVERSEEING LEGAL PERSONS

- Trinidad and Tobago Registrar of Companies

IV FINANCIAL SECTOR – GOVERNMENT

- Central Bank of Trinidad and Tobago
- Securities and Exchange Commission (SEC)

V FINANCIAL SECTOR – ASSOCIATIONS AND PRIVATE SECTOR ENTITIES

- Trinidad and Tobago Insurance Fraud Committee
- 2 private banks, 2 insurance companies, 1 money remitter, and 1 credit union

VI DNFBP'S – AND SRO'S

- Association of Certified Chartered Accountants (ACCA Caribbean)
- Association of Real Estate Agents (AREA)

- Car dealer

Annex 3

List of laws, regulations and other material received / used for the purpose of conducting the mutual evaluation

Acts

- Proceeds of Crime Act No. 55 of 2000
- Central Bank Act No. 23 of 1964
- Cooperative Societies Act No. 22 of 1971
- Insurance Act No. 6 of 1980
- Dangerous Drug Act No. 38 of 1991
- Dangerous Drug Amendment Act No. 44 of 2000
- Evidence Act CHP 702 as amended
- Extradition (Commonwealth and Foreign Territories) Act No. 36 of 1985
- Electronic Transfer of Funds Crime Act, 2000
- Financial Institutions Act No. 18 of 1993
- Securities Industry Act No. 32 of 1995
- Companies Act No. 35 of 1995
- Mutual Assistance in Criminal Matters Act No. 39 of 1997
- Mutual Assistance in Criminal Matters Act No. 55 of 2000
- Mutual Assistance in Criminal Matters Amendment Act No. 7 of 2001
- Mutual Assistance in Criminal Matters Amendment Act, No. 14 of 2004
- Anti-Terrorism Bill (Act No. 26 of 2005: enacted on 13th of September, 2005)
- Insurance Amendment Act No. 15 of 2004
- Companies Amendment Act No. 6 of 1999
- Computer Misuse Act, 2000
- Criminal Procedure Act No. 11 of 1999
- Criminal Procedure Amendment Act No. 1 of 2000
- Integrity in Public Life Amendment Act No. 88 of 2000

Guidelines

- Money Laundering and Terrorist Financing CBTT Guidelines, September 2004

Other Material

- Bank Inspection manual –Risk Based Supervision, CBTT January 2003
- The National Strategy to Eliminate Illicit Production and Trafficking of Drugs Produced Naturally or Synthetically and to Promote Related Control Measures (2005-2009)

