CFATF

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CARIBBEAN FINANCIAL
ACTION TASK FORCE

Seventh Follow-Up Report

Antigua and Barbuda

May 29, 2015

Contents

I. INTRODUCTION

1. The 3rd round Mutual Evaluation Report of Antigua and Barbuda was adopted by the CFATF Council of Ministers in June 2008, in Haiti. Antigua and Barbuda's first follow-up report was tabled in November 2008 at the St. Kitts and Nevis Plenary at which time Antigua and Barbuda was placed in enhanced follow-up and required to report back to the May 2009 Plenary[1] at which time Antigua and Barbuda were kept in enhanced follow-up and asked to report to the October 2009 Plenary in the Netherlands Antilles at which time they were placed in expedited follow-up. Antigua and Barbuda then reported to the May 2010 Plenary[2] (2nd FUR) and Plenary agreed to place Antigua and Barbuda in regular (one year) follow-up and to report back in May 2011 Plenary (3rd FUR). Antigua and Barbuda remained in regular (one year) follow-up and reported in May 2012 (4th FUR), May 2013 (5th FUR) and May 2014 (6th FUR). Antigua and Barbuda also reported in November 2013 on the status of their Core and Key Recommendations[3]. The 6th FUR recommended that Antigua and Barbuda remain in regular (one year) follow-up and report to the May 2015 Plenary. It was noted however that given the start of the 4th round of mutual evaluations, and the need to have Members exit the 3rd round process that Antigua and Barbuda should consider making an application to exit the follow-up process. Antigua and Barbuda applied to exit the process at the November 2014 Plenary by letter dated August 28, 2014. However, due to the late submission of relevant documents and other applications that were ahead, the application is being executed at this Plenary.

2. This report is based on the follow-up removal procedure as stated in the CFATF Mutual Evaluation Procedures (amended to 2012) and as further explained by the decision of the Miami Plenary (May 2014)[4]. The report contains a detailed description of the measures taken by Antigua and Barbuda to address deficiencies in their Core and Key Recommendations that were rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation report (MER). A brief description and analysis of the non-Core and Key recommendations rated PC/NC is also being presented.

3. Antigua and Barbuda was rated PC or NC on the following Recommendations:

Core Recommendations[5] rated partially compliant (PC)
R.1 (Criminalisation of money laundering)

[1] Named the first follow-up report although the first was actually presented at the St. Kitts and Nevis November 2008, Plenary pursuant to the revised Follow-Up Procedures endorsed by Members on May 2nd 2007, which meant that for Antigua and Barbuda, the 'NC and 'PC" ratings for the Key FATF Recommendations (Recs. 1, 5, 10, 13, SR II and SR IV) required Enhanced Follow Up, which included the submission of Progress Reports to all Plenary Meetings.
[2] However, since Antigua and Barbuda had an outstanding issue with regard to the implementation of R. 33 re the transition of bearer shares, they were asked to and did make an update report on that issue in November 2009.
[3] Based on Plenary decision, Member countries who were in Regular and Expedited follow-up were asked to have full compliance with their Core and Key Recommendations and substantial progress in their other Recommendations for the November 2013 Plenary.
[4] See. CFATF-plen-XXXIX-aiii-annex-i-updated.
[5] The FATF Core Recommendations are: R.1, R.5, R. 10, R. 13 and SR. II and SR. IV.

R. 5 (Customer due diligence) R.13 (Suspicious transaction reports) SR.II (Criminalisation of terrorist financing)
Key Recommendations[6] rated PC
R. 4 (Secrecy laws) R. 26 (The FIU) SR. I (Implementation of UN Instruments)
Core Recommendations rated NC
R. 10 (Recordkeeping) SR. IV (Suspicious transaction reporting – TF)
Key Recommendations rated NC
R. 23 (Regulation, supervision and monitoring) SR. III (Freeze and confiscate terrorist assets)
Other Recommendations rated PC
R. 14 (Protection and no Tipping-off) R. 17 (Sanctions) R. 24 (DNFBPs regulation, supervision and monitoring) R. 25 (Guidelines and feedback) R. 29 (Supervisors) R. 30 (Resources, integrity and training) R. 32 (Statistics) R. 34 (Legal Arrangements-beneficial owners) SR. IX (Cross-border declaration and disclosure)
Other Recommendations rated non-compliant (NC)
R. 6 (Politically exposed persons) R. 7 (Correspondent banking) R. 8 (New technologies and non-face-to-face business R. 9 (Third parties and introducers) R. 11 (Unusual transactions) R. 12 (DNFBPs – R. 6, 8-11) R. 15 (Internal controls, compliance and audit) R. 16 (DNFBPs – R. 13-15 and 21) R. 18 (Shell banks) R. 21 (Special attention for higher risk countries) R. 22 (Foreign branches and subsidiaries) R. 33 (Legal persons-beneficial owners) SR. VI (AML requirements for money value transfer services) SR. VII (Wire transfer rules) SR. VIII (Non-profit organisations)

[6] The FATF Key Recommendations are R. 3, R. 4, R. 23, R. 26, R.35, R.36, R. 40, SR. I, SR. III and SR. V.

4. The review of Antigua and Barbuda's progress towards exiting the follow-up process is a desk-based review and as such is not as detailed and thorough as a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC and as such only part of the AML/CFT system is being reviewed. The analysis consists of looking at the main laws, regulations, guidelines and other materials to verify technical compliance with the FATF Recommendations. The level of effectiveness is taken into account through consideration of data provided by Antigua and Barbuda. The conclusions in this report do not prejudge the results of any future assessments as they are based on information that was not verified through an onsite process.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

Core Recommendations:

5. ***Recommendation 1:*** With regard to the deficiencies for this Recommendation, the Antigua and Barbuda Authorities subsequently passed and enacted several pieces of legislation as follows: the Proceeds of Crime (Amendment) Act, 2008; the Proceeds of Crime (Amendment of Schedule) Order, 2009; the Proceeds of Crime (Amendment) Act, 2014; the Money Laundering (Prevention) (Amendment) Act, 2008; the Money Laundering (Prevention) (Amendment) Act, 2009; the Precursor Chemicals Act, 2010; the Trafficking in Persons (Prevention) Act, 2010; the Migrant Smuggling (Prevention) Act, 2010 and the Maritime Piracy Act, 2013 and the Maritime Piracy (Amendment) Act, 2014. R.1 has been addressed and has been brought to a level comparable at a minimum to an LC.

6. ***Recommendation 5***: Amendments to the Money Laundering (Prevention) Act (MLPA), the Money Laundering (Prevention) Regulations (MLPR) and the International Business Corporations Act (IBCA) addressed the Examiners' deficiencies so that R. 5 has been brought to a level that is comparable at a minimum to an LC.

7. ***Recommendation 10***: The deficiencies were addressed by amendments to the MLPA and the MLPR, which brought the Recommendation up to a level comparable at a minimum to an LC.

8. ***Recommendation 13***: The MLPA and the Prevention of Terrorism Act (PTA) were amended to address the shortcomings noted by the Examiners and has raised the Recommendation to a level comparable at a minimum to an LC.

9. ***Special Recommendation II***: The deficiencies that affected the proper criminalization of terrorist financing (TF) were addressed by amendments to the PTA and the MLPA. Accordingly, the level of compliance was raised to one comparable to LC at a minimum.

10. ***Special Recommendation IV***: The deficiencies with regard to this SR related to the requirements for reporting STRs not including suspicion of terrorist organisations or those who finance terrorism and no requirement for attempted transactions. The 2010 amendment of the PTA addressed the deficiencies and raised the level of compliance with SR. IV to one comparable to LC at a minimum.

Key Recommendations:

11. ***Recommendation 4***: The deficiency which relates to the ability to share information amongst domestic competent authorities was addressed through amendments to the IBCA and the entering into confidentiality agreements and MOUs with the relevant authorities. The Recommendation has been brought to a level that is comparable to at least an LC.

12. ***Recommendation 23***: In order to address the deficiencies noted by the Examiners with regard to the designation of supervisory authorities and the powers of the ECCB, the Registrar of Insurance and the Registrar of Cooperatives, a Supervisory Authority was appointed and amendments were made to the Banking Act, the Insurance Act and the Cooperative Societies Act. The Financial Services Regulatory Commission (FSRC) also began implementing the Money Services Business Act, 2007. As a result of these measures, R. 23 has been brought to a level comparable at a minimum to an LC.

13. ***Recommendation 26***: The majority of the deficiencies were addressed by the appointment of a Supervisory Authority; the amendment to the IBC Regulations, the International Gaming and International Wagering Guidelines and the MLPA. The Authorities also provided training with regard to the reporting of Suspicious Activity Reports (SARs) and designed a standardized SAR form that provided instructions on how to complete the form. The Office of National Drug and Money Laundering Control Policy (ONDCP) began and continue with the publication of Annual Reports on the ONDCP website. There has also been an implementation of a systematic review on the efficiency of the systems that provide for combatting ML and TF. These deficiencies have been addressed and raised the Recommendation to a level comparable at a minimum to an LC.

14. ***Special Recommendation I***: The amendment to the PTA addressed the deficiency to this Recommendation and has brought compliance to a level comparable at a minimum to an LC.

15. ***Special Recommendation III***: Amendments to the PTA, the Money Laundering and Financing of Terrorism Guidelines (MLFTG) and brought this Recommendation to a level comparable at a minimum to an LC.

Other Recommendations:

16. Antigua and Barbuda has also made progress in addressing the deficiencies in its non-core and key Recommendations that were rated PC/NC. There are three Other Recommendations that are not at a substantial level of compliance; R. 33 and SR. VIII have only been partially met with some implementation issues still outstanding, while R. 34 has not been met. However, it should be noted that Antigua and Barbuda's application for removal from the follow-up process is based on its compliance with the Core and Key Recommendations that were rated PC/NC. Accordingly, this report will not provide a detailed analysis of the other Recommendations. A brief overview of the progress made with these other Recommendations is included in section VI of this report for information purposes only.

CONCLUSIONS:

17. This report provides an analysis of Antigua and Barbuda's Core and Key Recommendations that were rated PC/NC in its 2008 Mutual Evaluation Report. The analysis indicates that Antigua and Barbuda has addressed the deficiencies noted in the Core and Key Recommendations rated PC/NC (R. 1, 5, 10, 13, SR. II, SR. IV and 4, 23, 26, SR. I and SR.III) to a level that is comparable to at least an LC. It is therefore recommended to Plenary that Antigua and Barbuda should be allowed to exit the third round follow-up process.

III. OVERVIEW OF ANTIGUA AND BARBUDA'S PROGRESS

Overview of the main changes since the adoption of the Mutual Evaluation Report (MER)

18. Since the adoption of the MER in 2008, Antigua and Barbuda has focused on enacting, amending and implementing legislation that would strengthen its AML/CFT framework and also providing training to person's involved in AML/CFT work in both the public and private sectors. These activities have allowed Antigua and Barbuda to address the deficiencies noted by the Examiners in the MER. The Police Proceeds of Crime Unit (PCU) was established in 2011 to exercise powers with regard to applications for production and restraint orders pursuant to the POCA. The work of the ONDCP has yielded ML convictions, use of the civil forfeiture measures and the introduction of standard operating procedures that facilitate the use of controlled delivery for drugs and other contraband and the postponement of arrests or seizures for the purpose of intelligence gathering. Since the 2007 evaluation, the FSRC has levied administrative penalties in excess of US$350,000. The ONDCP has also imposed administrative penalties amounting to US$10,000. Antigua and Barbuda was subjected to a targeted review and successfully exited the process in 2013. Antigua and Barbuda has since its Evaluation continuously worked to upgrade and implement its AML/CFT regime.

The Legal and Regulatory Framework

19. Antigua and Barbuda's AML/CFT legal and regulatory framework is based on several pieces of legislation (including regulations) that have been enacted by its Parliament. Guidelines have also been issued by the relevant supervisory authorities. These laws and guidance will be discussed in detail in section IV of the report to show how Antigua and Barbuda has addressed the deficiencies noted in its 3rd Round MER.

IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE RECOMMENDATIONS

RECOMMENDATION 1 – PC

R.1 (Deficiency 1): Key definitions are inconsistently defined in the Statutes and these definitions are not in terms provided under the Palermo and Vienna Conventions.

20. The Examiners at paragraph 70 of the MER found that the definition of 'property' under the MLPA and POCA were inconsistent. More specifically, the Examiners found that the definition of 'property' under the MLPA did not specifically include legal documents or instruments evidencing title, and while the Examiners felt that the current definitions of 'property' in both the POCA and MLPA were broad enough to cover these documents, they felt that a consistency of definitions would be the best option. The Examiners also found a similar inconsistency with the word 'person'. Accordingly, the Proceeds of Crime (Amendment) Act, 2008 amended the definitions of 'person' and 'property' in the MLPA and POCA in keeping with the definition of those words in the Palermo and Vienna Conventions. The deficiency has been addressed.

R.1 (Deficiency 2): The list of precursor chemicals does not accord with the list under the Vienna Convention.

21. In order to address this deficiency, Antigua and Barbuda enacted the Precursor Chemicals Act, 2010. The Act provides a regime for all precursors listed at Tables 1 and 2 of the Vienna Convention. The deficiency has been addressed.

R.1 (Deficiency 3): The list of money laundering predicate offences under the POCA is too limited.

22. In dealing with this deficiency, the Schedule (containing the list of predicates) to the POCA was amended by the Proceeds of Crime (Amendment of Schedule) Order, 2009. The amendment expanded the list of predicates under the POCA to include all offences carrying a penalty of at least one (1) year imprisonment. An additional amendment to the Schedule was made at section 14 of the Proceeds of Crime (Amendment) Act, 2014. The latest amendment further expanded the list of predicates by the insertion of the following clause: '[any] indictable or triable either way offence in Antigua and Barbuda, from which a person has benefited, as defined in section 19, of the Act.' This amendment takes offences which may be triable either summarily or on indictment into account. The deficiency has been addressed.

R.1 (Deficiency 4): The predicate offences for money laundering do not cover three (3) out of the twenty (20) FATF's Designated Category of Offences, specifically Participation in an Organized Criminal Group, Trafficking in human beings and Migrant Smuggling and Piracy.

23. Participation in an Organized Criminal Group was criminalized by section 4 of the MLPA as amended 2009. Section 4 makes it an offence for a person 'who by act or omission, aids, abets, counsels, procures or facilitates a criminal organisation to commit a serious offence under any Act or to attempt the commission of a serious offence under any Act…' Section 2 of the MLPA was also amended to define a 'criminal organization,' which is in keeping with the concepts contained in Article 5 of the Palermo Convention. The offence of trafficking in human beings was criminalized by the enactment of the Trafficking in Persons (Prevention) Act, 2010 (TPPA). The Act amongst other things, makes provision for a Trafficking in Persons Prevention Committee and creates not only the primary offence but also makes it an offence where a person incites, instigates, commands, directs, aids, advises,

recruits, encourages or procures another person to traffic in persons. Conspiracy with another person to conduct trafficking in persons is also covered.

24. The offence of migrant smuggling and associated offences was criminalized by the Migrant Smuggling (Prevention) Act, 2010 (MSPA). Section 7 of the MSPA creates the offence and provides a penalty not exceeding EC$400,000, or imprisonment for a term not exceeding twenty (20) years or both. Section 9 provides much higher penalties where the offence occurs under aggravated circumstances such as where the smuggled person is subject to torture or intended for exploitation. Piracy was criminalized by the Maritime Piracy Act, 2013, (MPA) which was amended by the Maritime Piracy (Amendment) Act, 2014 to include piracy on the high seas. Further, the MLPA, as amended 2013 provides that offences under the MPA are predicate offences for ML. The deficiencies have been addressed.

RECOMMENDATION 1 - OVERALL CONCLUSION

25. Antigua and Barbuda has through the enactment of the pieces of legislation noted above addressed the deficiencies that were found by the Examiners. There has also been implementation of R. 1 through ML convictions (See. Annex) and the confiscation of property and cash. Recommendation 1 now meets a level of compliance that is comparable at a minimum to an LC.

RECOMMENDATION 5 – PC

R.5 (Deficiency 1): Legislative requirements for CDD measures where there is suspicion of money laundering or the financing of terrorism is limited to occasional transactions.

26. Money Laundering (Prevention) (Amendment) Regulations, 2009 amended Regulation 4 of the MLPR so that CDD measures are applicable to all transactions. Specifically, Regulation 4(e) applies to any transaction where a person who carries on relevant business knows or suspects that the transaction involves ML or TF, regardless of any thresholds or exemptions stated in law. The deficiency has been fully addressed.

R.5 (Deficiency 2): The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date is not enforceable.

27. The issue of enforceability of the guidelines issued by the ECCB and the FSRC and the ML/FTG which was issued by the ONDCP was discussed at paragraphs 371 and 372 of the MER. The Examiners found that none of these guidelines were ‘other enforceable means’ (OEM). Accordingly, the measures in them to address the requirements of essential criteria 5.7.2 were not enforceable at the time of the onsite. In order to address this deficiency, the MLPR was amended at Regulation 5(1)(b) to require that a person who carries on a relevant business must ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records. Based on the aforementioned the deficiency has been fully addressed.

R.5 (Deficiency 3): The requirements concerning the time frame and measures to be adopted prior to verification are not enforceable.

28. Regulation 4(3)(c) of the MLPR 2007 requires that where satisfactory evidence of identity is not obtained, the business relationship or one-off transaction must not proceed any further, or shall proceed only in accordance with any direction of the Supervisory Authority." The MLFTG, para. 2.1.14A as amended by the MLFTG Update of 11 May 2010 provides a direction from the Supervisory Authority in relation to "where a business relationship or one-off transaction has commenced but satisfactory evidence of identity has not been obtained, then if a situation is involved where it is essential not to disrupt the normal conduct of business**,** the financial institution may permit the customer to utilize the business relationship prior to the identification of the customer or beneficial owner" under certain conditions. The conditions, risk management measures and examples of situations where it may be essential not to interrupt the normal conduct of business are also presented at para. 2.1.14A of the ML/FTG. It should also be noted that the enforceability of the ML/FTG has been addressed by an amendment to regulation 4(4) of the Money Laundering (Prevention)(Amendment) Regulations, which increased the penalties under the Regulations and the Guidelines to amounts that can be considered dissuasive. The deficiency has been addressed. .

R.5 (Deficiency 4): The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction is not enforceable.

29. This deficiency was addressed by an amendment to regulation 4(3)(c) of the MLPR. The amendment repealed regulation 4(3)(c) and replaced it with measures requiring that where satisfactory evidence of identity is not obtained that the account or business relations or one-off transaction shall not begin, but if it had already commenced then it shall proceed on further or only under a direction from the Supervisory Authority and if the relationship is an existing relationship, then it must be terminated. In all these instances pursuant to the amendment at regulation 4(3)(C)(iv) the person carrying on the relevant business must consider making a suspicious activity report (SAR). The amendment covers new customers, one off transactions and existing customers. The deficiency has been addressed.

R.5 (Deficiency 5): The requirements for financial institutions to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship is not enforceable.

30. As noted immediately above, the amendment to regulation 4 of the MLPR at regulation 4(c)(iii) provides that 'an existing or established business relationship must be terminated' where satisfactory evidence of identity is not obtained. The deficiency has been addressed by the amendment to regulation 4 of the MLPR.

R.5 (Deficiency 6): The requirement to apply CDD requirements to all existing customers is limited to IBCs and is not enforceable.

31. In order to address this deficiency regulation 5 of the MLPR was amended through the Money Laundering (Prevention)(Amendment) Act, 2009. Regulation 5(1)(b) now provides that persons involved in a relevant business must ensure that the documents, data and other information collected under the CDD process are kept up-to-date and relevant. Where reviews of the data shows that information is lacking on an existing customer then financial institutions must take steps to ensure that all relevant information is obtained as soon as possible. The deficiency identified by the Examiners has been addressed.

RECOMMENDATION 5 - OVERALL CONCLUSION

32. At the time of the onsite, the measures for R. 5 were contained in the Money Laundering, Financing of Terrorism Guidelines (ML/FTG), which were not considered by the Examiners to be 'other enforceable means'. Consequently, amendments were made to the MLPR. Based on the amendment to the MLPR, the outstanding deficiencies noted by the Examiners have been addressed at least to a level comparable at a minimum with an LC.

RECOMMENDATION 10 – PC

R.10 (Deficiency 1): Single transactions under EC$1,000 are exempted from record keeping requirements.

33. The Money Laundering (Prevention)(Amendment) Act, 2008 provided an amendment to section 12(3) of the MLPA to delete the exemption from record keeping for transactions under EC$1,000. The deficiency has been fully addressed.

R.10 (Deficiency 2): Only IBCs are required to maintain records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity.

34. Section 6(1) of the Money Laundering (Prevention)(Amendment) Regulations amended regulation 5 of the MLPR to provide that persons involved in relevant business activities must keep records in a manner that would 'permit reconstruction of individual transactions so as to provide, if necessary, evidence for the prosecution of criminal activity. Records must include the amounts and types of currency involved and sufficient and beneficiary identification information'. The deficiency has been fully addressed.

R.10 (Deficiency 3): There is no requirement for financial institutions to retain business correspondence for at least five years following the termination of an account or business relationship.

35. In order to address this deficiency, regulation 5 of the MLPR was amended so that regulation 5(aa) provides that records of business correspondence following the termination of an account for business

must be kept. The retention period for keeping such transactions is six (6) years (after the account is closed) pursuant to section 12B(1) of the MLPA. The deficiency has been addressed.

R.10 (Deficiency 4): There is no enforceable requirement for financial institutions to ensure that customer and transaction records are available to the Supervisory Authority or other competent authorities on a timely basis.

36. Regulation 5 of the MLPR was amended to address this deficiency. Specifically, regulation 5(1) requires persons involved in relevant business activities to maintain procedures which require the retention of records, which can be provided upon request to the Supervisory Authority or other competent and domestic authorities on a timely basis. The deficiency has been addressed.

RECOMMENDATION 10 - OVERALL CONCLUSION

37. Amendments to the MLPR dealt with the record keeping deficiencies by specifically addressing the issues that were identified by the Examines. Accordingly, the recommendations made by the Examiners have been addressed at least to a level comparable with an LC.

RECOMMENDATION 13 – PC

R.13 (Deficiency 1): The requirement for FIs to report suspicious transactions is linked only to transactions that are large, unusual, complex etc.

38. Section 13(2) of the MLPA was amended (by section 8 of the Money Laundering (Prevention)(Amendment) Act, 2009) to require the reporting of suspicious transactions that could involve the proceeds of crime. This amendment removed the limitations found by the Examiners, which resulted in the reporting of transactions that were only found to be 'complex, unusual or large business transactions...' The deficiency has been fully addressed.

R.13 (Deficiency 2): The obligation to make a STR related to money laundering does not apply to all offences required to be included as predicate offences under Recommendation 1.

39. As noted above in the discussion on R. 1, Antigua and Barbuda had not criminalized participation in an organized criminal group and racketeering and piracy. Additionally, trafficking in human beings and migrant smuggling as configured at section 40(20(a) of the Immigration Act was deemed by the Examiners to be limited in scope. (Para. 76, MER). The criminalization of these offences were accomplished as noted in R. 1 above. The deficiency has been fully addressed.

R.13 (Deficiency 3): The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.

40. Section 6 of the Prevention of Terrorism (Amendment) Act, 2010 amends section 34 of the principal Act to require that all financial institutions report every transaction, attempted or proposed transaction, which occurs within the course of its activities and where there are reasonable grounds to believe that

the transaction, attempted or proposed transaction is '(b) conducted by or on behalf of a terrorist group or a member of a terrorist group; (c) conducted by or on behalf of a person who finances terrorism or the commission of a terrorists act.' The amendment fully addressed the noted deficiency.

RECOMMENDATION 13 - OVERALL CONCLUSION

41. The amendments to the MLPA and the PTA along with the enactment of legislation to criminalize piracy (Maritime Piracy Act, 2013), human trafficking (Trafficking in Persons (Prevention) Act, 2010) and migrant smuggling (Migrant Smuggling (Prevention) Act, 2010) have adequately dealt with the deficiencies noted by the Examiners. Accordingly, R. 13 has been addressed at least to a level comparable with an LC.

SPECIAL RECOMMENDATION II – PC

SR.II (Deficiency 1): The deemed money laundering terrorism offences under the PTA and their reference to limited sections of the MLPA introduce an element of uncertainty into the financing of terrorism framework with respect to the extent to which either Act is applicable, and hence the extent to which the elements of Special Recommendation II are covered.

42. The issue resulting in this deficiency is noted at paragraphs 125 and 126 of the MER. Essentially, section 9(3) of the PTA deemed two offences to be ML offences and further provided that sections 19A and 19B of the MPLA would be applicable to the property and other assets used in connection with the commission of terrorist acts. The Examiners' were of the view that the deeming provision in section 9(3) was unnecessary since terrorist offences were indictable offences and as such already predicates to ML. Further, the PTA also had its own freezing and seizing mechanisms and so the need to reference freezing and seizing of the two section 9(3) offences back to the MLPA was unclear. In an effort to address this deficiency, Antigua and Barbuda first amended section 3 of the PTA (through section 3 of the Prevention of Terrorism (Amendment) Act, 2008) which repealed section 9(3) and replaced it with a reference to the offences in sections 9(1) and 9(2) being ML offences and the making of any ancillary or freezing orders to be made subject to section 9(4) of the PTA. Subsection 9(4) authorizes the Supervisory Authority to direct financial institution to freeze property for a period up to fourteen (14) days while the Supervisory Authority makes an application in Court to freeze. This dealt with the crossover of freezing mechanisms between the PTA and the MLPA. Additionally, the definition of ML in the MLPA (Money Laundering (Prevention)(Amendment) Act, 2013) was amended to include offences under sections 5-10 and 12 of the PTA and conspiracy to commit those offences. It should be noted that this amendment classifies the ML offences in several other pieces of predicate offences legislation. The deficiency noted by the Examiners has been adequately addressed.

SR.1I (Deficiency 2): Sanctions should include fines to be dissuasive.

43. Given the gravity of terrorism offences, the Examiners were of the view that the sanctions for TF should be more prohibitive. In order to deal with this, the PTA was amended in 2008 to increase the fine to EC$500,000 for offences under the Act. This amount was further increased by the 2010 amendment to the PTA, which imposed fines of EC$1M. The fines are considered to be dissuasive

and are applicable to offences such as terrorist act and terrorist financing. Deficiency 2 has been adequately dealt with.

SR.1I (Deficiency 3): Under the PTA, the intentional element of the offence cannot be inferred from objective factual circumstances.

44. The PTA was amended in 2008 at section 2 (insertion of a new section 2(2)) to provide that the knowledge, intent or purpose required as an element of an offence under the Act may be inferred from objective as well as factual circumstances. The measure is also applicable to the relationship of any proceeds or instrumentalities to a terrorist activity. The deficiency has been fully addressed.

SPECIAL RECOMMENDATION II - OVERALL CONCLUSION

45. Antigua and Barbuda made the necessary amendments to both the PTA and the MLPA to address the deficiencies identified by the Examiners. In addition to those mentioned above, the Authorities also made significant amendments to the PTA to provide for a definition of the word 'funds' in keeping with the Terrorism Financing Convention and to the definition of 'person' to include 'group' so that terrorist groups could be covered by the PTA. Based on the aforementioned, the deficiencies have been sufficiently addressed at least to a level comparable with an LC.

SPECIAL RECOMMENDATION IV – PC

SR.IV (Deficiency 1): The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.

46. This deficiency is identical to the R. 13-Deficiency 3, which is considered to be addressed by the amendments to the PTA. Accordingly, SR. IV – Deficiency 1 has been sufficiently addressed.

SR.1V (Deficiency 2): The obligation to make a STR related to terrorism does not include attempted transactions.

47. The amendment of section 34(4) of the PTA requires the reporting of attempted transactions and attempted transactions suspected of being related to ML. See. Discussion on amendment of section 34 at R. 13 deficiency 3 above. Deficiency 2 has been sufficiently addressed.

SPECIAL RECOMMENDATION IV - OVERALL CONCLUSION

48. As noted above the first deficiency was identical to deficiency 3 of R. 13 and was sufficiently addressed. The second deficiency was incorporated in the amendment of section 34 of the MLPA which also addressed elements of the first deficiency. SR. IV has been addressed at least to a level that is comparable with LC.

V. DETAILED ANALYSIS OF COMPLIANCE WITH THE KEY RECOMMENDATIONS

RECOMMENDATION 4 – PC

R. 4 (Deficiency 1): The ECCB and the FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without an MOU.

49. In addressing this deficiency, the International Business Companies Act (IBCA) was amended in 2008 at section 373 to remove the reference to 'foreign' regulatory institution' and just made the provision applicable to 'a regulatory institution' Accordingly, section 373 allows the FSRC to disclose information on the ownership, management, operations and financial returns of a financial institution to assist a regulatory institution to exercise its regulatory function. This information can be disclosed by the FSRC subject to a (a) confidentiality agreement; (b) Memorandum of Understanding and (3) Court order for customer information. This amendment enabled the FSRC to share information with both domestic and foreign regulators. At the time of the onsite, the ECCB could not share information with domestic regulators and could only share with foreign regulators on a reciprocal basis; subject to a confidentiality agreement and an MOU between the ECCB and the foreign authority. The ECCB and the FSRC (in its capacity as a self-regulating unit (SRU)) signed a MOU on April 28, 2010. A review of the MOU left uncertainties about whether the ECCB's is required to share information, since the specific laws of each of the OECS jurisdictions superseded the MOU. (See. Paragraph 13 of the 3rd Follow-up report (FUR). The Antigua and Barbuda Authorities however indicated that the MOU has resulted in the satisfactory sharing of information (including a case of consolidated supervision) between the ECCB and the FSRC. The MOU has also been used by the ECCB to obtain information from the FSRC with regard to the sharing of data to assess the credit union industry within Antigua and Barbuda, which was followed up by an ECCB request to have an onsite visit of the two largest the credit unions. Requests made pursuant to the MOU are also documented. (See. Discussion on R. 4 in the 4th FUR). The deficiency has been adequately addressed.

R. 4 (Deficiency 2): There are no legislative provisions allowing the Registrar of Co-operative Societies and the Registrar of Insurance to share information with other competent authorities.

50. Pursuant to section 316(3)(b) of the IBCA, the FSRC is responsible for regulating businesses operated or carried on under the Cooperatives Societies Act and the Insurance Act. This coupled with the amendment of section 373 of the IBCA noted above allows the FSRC to share information from both the Superintendent of Insurance and the Registrar of Cooperatives. The Authorities indicated that the FSRC did share information with regard to cooperative societies in 2012. Additionally, section 196 of the Insurance Act, provides that the Superintendent of Insurance can share information received with any local or foreign authority responsible for the regulation of a company or association of underwriters subject to an agreement of confidentiality and an MOU. The deficiency has been adequately addressed.

RECOMMENDATION 4 - OVERALL CONCLUSION

51. The Authorities have used the amendment to the IBCA to allow for the sharing of information by the FSRC in its own capacity and as the entity responsible for regulating businesses under the Insurance Act and the Cooperative Societies Act. With regard to the ECCB, they can share information with the FSRC domestically and with foreign counterparts on the basis of reciprocity and a MOU. Based on the aforementioned, the deficiencies have been addressed at least to a level comparable with an LC.

RECOMMENDATION 23 – NC

R. 23 (Deficiency 1): The supervisory authorities have not been designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements.

52. Antigua and Barbuda appointed the Supervisory Authority on November 1, 2007. The deficiency has been fully addressed.

R. 23 (Deficiency 2): No provisions in the BA for the ECCB to approve changes in directors, management or significant shareholders of a licensed financial institution.

53. The Banking (Amendment) Act, 2012 at section 3 inserted a new section 21A, which requires local licensed financial institutions to notify the ECCB in writing of changes in directors, significant shareholders or management of the financial institution within fourteen (14) days of the change. Pursuant to section 22A of the Banking Act (BA), where the ECCB is not satisfied with the director, significant shareholder or senior manager is qualified to hold the position, the ECCB will then give written notice to the financial institution of the breach and a time frame within which to rectify the breach and the penalty for failure to do so. Satisfaction with a director, significant shareholder or senior manager is reviewed against the fit and proper requirements set out in section 26 of the BA. With regard to penalties, the ECCB can recommend to the Minister of Finance that the financial institution's licence be varied or revoked. The deficiency has been fully met.

R. 23 (Deficiency 3): No provision for the Registrar of Insurance to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business.

54. Pursuant to section 198(1) of the Insurance Act, 2007, every person who is likely to be a director, officer or manager of a registered local company, the principal representative of a registered foreign company or a person authorized under subsection 78(2) (Registration of association of Underwriters) must be a fit and proper person to hold a particular position that he holds or is likely to hold. The fit and proper considerations are contained in subsections (2) and (3). The deficiency has been fully met.

R. 23 (Deficiency 4): No provision for a registered insurer to obtain the approval of the Registrar of Insurance for changes in its shareholding, directorship or management.

55. The amendment of section 17 of the Insurance Act, 2007 through the Insurance (Amendment) Act, 2011 addressed the deficiency by requiring the prior approval of the Superintendent of Insurance[7] for changes to an insurance company's registration particulars, directors, management, shareholders, shareholdings or classes of insurance business offered. The deficiency has been fully met.

R. 23 (Deficiency 5): No provision for the Registrar of Co-operative Societies to use fit and proper criteria in assessing applications for registration.

56. The deficiency was addressed by the Cooperative Societies (Amendment) Act, 2013, (CSA) which amended section 12(3) to provide for the information that must be included with regard to an application to registration as a cooperative society. Section 53 of the CSA, which deals with 'Board of Directors and Committees' was amended by an insertion after subsection (5) a new subsection (6), which states that a 'cooperative society' shall, upon receipt of an application for registration of a cooperative society, consider the application along with accompanying information required under section 12(3) and satisfy himself that every proposed director, committee member or officer of the cooperative society is, in accordance with subsection (4), a fit and proper person to hold office to which he has been nominated.' This amendment therefore requires a fit and proper assessment at the time of an application for registration. A review of section 53(4) reflects items (a) - (n), which covers all the issues that should be covered when considering whether a person is fit and proper to perform certain functions in a financial institution (e.g. whether the person has been: sentenced for an offence in any country, been a director of a failed cooperative, is of unsound mind etc.). There however seems to be an error in section 53(6), which references a 'cooperative society' in the first instance where it would seem to be correct to reference the Supervisor of Cooperative Societies (note the later reference in the subsection to 'himself'). While the intent is clear, the Authorities should correct this typographical error. It should also be noted that pursuant to section 5(4)(a) of the CSA 2010, the Supervisor of Cooperative Societies shall register all viable cooperative societies. The deficiency has been adequately addressed.

R. 23 (Deficiency 6): The Registrar of Cooperative Societies has no power of approval over the management of a society.

57. Section 72(1)(d) of the CSA 2010 was amended by section 7 of the Cooperative Societies (Amendment) Act, 2013 to require that the list of nominees of proposed directors or proposed members of a committee to be submitted to the Supervisor of Cooperatives for approval within seven (7) days after the close of the nomination. There is also a requirement that nominees must meet the fit and proper requirements of section 53(4). The deficiency has been fully met.

R. 23 (Deficiency 7): Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

58. This deficiency essentially focused on a lack of implementation of the measures to monitor MSBs. In 2011 Antigua and Barbuda repealed and replaced the 2007 Act with the Money Services Business Act No. 7 of 2011. The FSRC conducted offsite examinations with regard to the CDD licensing process

[7] Prior legislation designated the Superintendent of Insurance as the successor to the Registrar of Insurance.

with regard to AML/CFT for six (6) institutions. Currently, the FSRC's records reflect seven (7) licensed MSBs and one (1) pending application; revocation of the licence of one (1) MSB; the suspension of one (1) MSB licence and the denial of a licence of one prospective MSB. The FSRC has also conducted one (1) onsite examination of a MSB. Further, the ECCB in collaboration with the FSRC have designed reporting forms to identify suspicious activities showing cash inflows and outflows to and from foreign countries and for MSB operators to identify the ten (10) largest transactions. MSB Operators are also subject to the MLPA and are required to file SARs. The deficiency has been adequately met.

RECOMMENDATION 23 - OVERALL CONCLUSION

59. The amendment to the Banking, Insurance and Cooperative Societies Acts along with the appointment of the Supervisory Authority have resulted in the deficiencies being addressed at least to a level that is comparable with LC.

RECOMMENDATION 26 – PC

R. 26 (Deficiency 1): The Supervisory Authority has not been appointed.

60. As noted in Deficiency #1 at R. 23 above, the Supervisory Authority was appointed on November 1, 2007. Accordingly, the deficiency has been fully addressed.

R. 26 (Deficiency 2): SARs are being copied to the FSRC by the entities that they regulate.

61. In order to deal with the practice of copying SARs to the FSRC, Antigua and Barbuda amended regulation 19 of the International Business Corporations Regulations (IBCR) by section 2 of the IBCR 2010 and regulation 223 of the Interactive Gaming and Interactive Wagering Regulations (IGIWR) by section 2 of the IGIWR 2010. The amendment to regulation 19 of the IBCR specifies that reports should be filed with the 'Supervisory Authority appointed under the Money Laundering (Prevention) Act', while the amendment to regulation 223 of the IGIWR requires reporting to the 'Supervisory Authority, or other appropriate officer as designated by the Money Laundering (Prevention) Act.' The MLPA however only references the Supervisory Authority and not a designated officer. This ambiguity has been fully clarified through the amendment to section 13 of the MLPA through section 5 of the Money Laundering (Prevention) (Amendment) Act, 2013, which provides that ' Notwithstanding any provision in any other Act or legal instrument, a financial institution in complying with this subsection shall make suspicious activity report to the Supervisory Authority only'. The deficiency has been adequately addressed.

R. 26 (Deficiency 3): A number of reporting bodies have not received training with regard to the manner of reporting SARs.

62. In an effort to address this deficiency, the ONDCP developed a standardized reporting form for SARs that includes detailed instructions on how to complete and file the form. The FIU has also conducted training sessions to advise financial institutions on the reporting of SARs through a rolling schedule

of training. Additionally, MSBs are required to receive AML/CFT training as part of the requirement to receive a licence. The reporting patterns of financial institutions are also under continuous review by the FIU so that advice can be given on remedial action for substandard reporting patterns. The deficiency has been adequately met.

R. 26 (Deficiency 4): There is no systematic review of the efficiency of ML and FT systems.

63. A systematic review of ML and FT systems is done by the National Oversight AML/CFT Committee and other Bodies. The Oversight Committee usually meets once a quarter, with a sub-committee meeting more frequently. The other Bodies involved in the review of Antigua and Barbuda's ML and FT efficiency include the ECCB and the FSRC. The deficiency has been fully met

R. 26 (Deficiency 5): The ONDCPs operational independence and autonomy can be unduly influenced by its inability to hire appropriate staff without approval of Cabinet.

64. The ONDCP, is not an organization that has the means to generate its own financial resources, since it is a criminal law enforcement agency and therefore its funding has to come directly from the Treasury. In Antigua and Barbuda, all appointments which are directly funded from the Treasury require the Minister of Finance on instruction from the Cabinet, (who is the only person with power to authorize the Treasury) to commence paying the salary of a non-established worker and issue the appropriate instructions. Once money is assigned in the budget for payment of salaries of the ONDCP then the Treasury is empowered to act. The Cabinet has to date given effect to all selections for employment made by the Director of the ONDCP. The fact that the selections for employment are made by the Director, ONDCP and ratified for payment purposes by the Cabinet, does not at this time affect or undermine the operational independence of the ONDCP. The deficiency has been adequately addressed.

R. 26 (Deficiency 6): The ONDCP does not prepare and publish periodic report of its operations, ML trends and typologies for public scrutiny.

65. The ONDCP has since 2011 began the publication of Annual Reports which cover the period 2009-2014. The reports are available on the ONDCP website. The Annual Reports contain information on financial intelligence (training of financial institutions, terrorist property reports, SARs etc.), financial investigations (criminalization of ML, cash seizures, cash forfeiture, MLA requests etc.), Supervisory Authority (AML/CFT Compliance, AML/CFT Compliance examination, annual AML/CFT audit etc.) and typologies. The deficiency has been fully met

RECOMMENDATION 26 - OVERALL CONCLUSION

66. The deficiencies noted for R. 26 have been addressed through amendments to legislation as noted above and the implementation of mechanisms, such as the operations of the Oversight Committee, the implementation of training with regard to the filing of SARs, the production and publication of Annual Reports on the operation of the FIU. Many of these measures are required to be ongoing to ensure that an effective level of compliance with R. 26 is being maintained and the Authorities continue to ensure that they are. Accordingly, R. 26 has been addressed at least to a level that is comparable with LC.

SPECIAL RECOMMENDATION I – PC

SR. I (Deficiency 1): The definitions of 'person' and 'entity' are not consistent, and this may affect whether terrorist groups are captured for some offences.

67. The Prevention of Terrorism Act, 2005 (PTA) was amended by the Prevention of Terrorism (Amendment) Act, 2008 at section 2 to insert a definition of 'person' to mean 'any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations.' This definition is consistent with the definition of 'person' in the MLPA and the POCA and removes the inconsistency noted by the Examiners. The deficiency has been fully addressed.

SR. I (Deficiency 2): No provision has been made under the terrorism legislation for access to frozen funds as required by the UNSCRs 1373 and 1452.

68. Section 7 of the Prevention of Terrorism (Amendment) Act, makes provision for a new section 35A, which at subsection 4(c) allows the Court to make an Order that excludes some of the seized property or varies the restraint order for the purpose of meeting reasonable living, legal or business expenses. Clause 1(a) of UNSCR 1452 provides the types of basic expenses that should be covered (e.g. foodstuffs, rent, mortgage, medicines, taxes etc.). The language of section 35A(4)(c) is sufficient to cover the expenses that are considered to be basic expenses. This measure is in keeping with the requirements of UNSCR 1452. The deficiency has been fully met.

SPECIAL RECOMMENDATION I - OVERALL CONCLUSION

69. The amendments to the PTA cured the inconsistency between the MLPA and the PTA with regard to 'person' and 'entity' and also made provisions for access to frozen funds pursuant to UNSCR 1452. As a result, SR. I has been addressed at least to a level that is comparable with LC.

SPECIAL RECOMMENDATION III – NC

SR. III (Deficiency 1): It is difficult to ascertain the extent of the application of the freezing mechanism under the MLPA and the PTA to deemed PTA money laundering terrorism offences.

70. The difficulty noted by the Examiners is noted at paragraphs 208-210 of the MER. More specifically, para. 210 stated that 'since the deeming provisions of section 9(3) of the PTA expressly apply to sections 19A and 19B of the MLPA, a curious result obtains. Unless sections 19A and 19B make a specific reference to other sections of the MLPA, the applicability of other provisions of the MLPA to terrorist offences, particularly in relation to freezing and seizing and confiscation of assets would not apply.' This deficiency while restated slightly differently here was dealt with above at SR. II

deficiency #1 through the amendment of both the PTA and the MLPA. As noted above at paragraph 42, the deficiency has been adequately addressed.

SR. III (Deficiency 2): There is no provision for access to funds for basic expenses and certain fees as required by UNSCR 1452 .

71. As noted at SR. I, Deficiency #2 above, the PTA was amended to insert section 35A(4)(c) which allows for the Court to provide some of the frozen assets or vary a restraint order so that funds for basic expenses can be available in accordance with UNSCR 1452. The deficiency has been fully met.

SR. III (Deficiency 3): The term 'funds' is undefined in the PTA.

72. Section 2 of the PTA was amended by the Prevention of Terrorism (Amendment) Act, 2008 to insert a definition of 'funds'. The definition is fully consistent with the definition in the Terrorist Financing Convention. The deficiency has been fully met.

SR. III (Deficiency 4): Guidance to financial institutions that may be holding targeted terrorist funds is not sufficient.

73. This deficiency was addressed by the amendment of the Money Laundering and Terrorist Financing Guidelines (MLFTG) to include Part II, which are guidelines to financial institutions with regard to the implementation of the PTA. The Guidelines address the issue of targeted terrorist funds. See. Part II, section 4.8 of the MLFTG – Handling Terrorist Related Property. The deficiency has been fully met.

SR. III (Deficiency 5): The type of property which may constitute other assets is not explicit.

74. The deficiency has been solved by the amendment to section 2 of the PTA, which repeals the definition of 'property' and replaces it with a new definition, which clearly states in relevant part that property means 'assets of every kind….' This new definition means that anything that is considered to be an asset will qualify as 'property'. The deficiency has been fully met.

SR. III (Deficiency 6): De-listing procedures are not publicly known.

75. The procedures for de-listing are contained at section 3(4) and subsection 4(A) of the PTA as amended 2010. Specifically, subsection 4 allows a specified entity (listed pursuant to section 3(2) of the PTA) to make an application to the Commissioner of Police or the Director, ONDCP to be de-listed. Once the application has been received, the Attorney General has to be immediately notified. Where the Attorney General considers the application and is of the view that there are no reasonable grounds to refuse the request for revocation of the listing, the Order shall be revoked and every applicant and every financial institution which had received a direction to freeze (pursuant to section 3(2)(b) of the PTA) shall receive a written notice of the revocation. Additionally, the revocation must be published within seven (7) days in the Gazette (section 3(5A)(a)(iii) of the PTA). It should also be noted that if the Attorney General decides that there are no reasonable grounds to revoke the freeze order the

applicant can apply to a Judge of the High Court for a revocation on the Order. Section 4 of the PTA provides or the carrying out of any decisions made by the United Nations Security Council pursuant to Article 41 of the UN Charter and includes the publication of those decisions by the Minister of Foreign Affairs in the Gazette. Based on the aforementioned, it is clear that the 2010 amendments to section 3 of the PTA provide a clear de-listing procedure that is publically known. The deficiency has been fully met.

SR. III (Deficiency 7): There is no specific provision for specified entities to have funds unfrozen.

76. The measures for specified entities to have funds unfrozen are the same as noted above in Deficiency # 6 with regard to the revocation of an Order that was made pursuant to section 3(2) of the PTA. Further, the Director, ONDCP pursuant to section 3(9) can review the Orders made from time-to-time and make an application to the Attorney General for the revocation of an Order. The Attorney General can then decide to revoke the Order where there are no reasonable grounds to maintain it. In that case, the Order will be immediately revoked and notice of revocation shall be published in the Gazette and all parties shall be notified in writing that the Order has been revoked. (See. Section 3(10) of the PTA as amended). Written notification is to the applicant of specified entity, the financial institutions that received the direction to freeze assets and other property and the Commissioner of Police or the Director, ONDCP. The deficiency has been fully met.

SR. III (Deficiency 8): The PTA does not provide third party protection consistent with Article 8 of the Terrorist Financing Convention.

77. Section 7 of the Prevention of Terrorism (Amendment) Act, 2008 provides for the insertion of section 35A to deal with the review of orders for restraint and seizure of property and in that regard with the rights of third parties to make an order to the Court to examine the property or to have the Order revoked as it pertains to their interest in the restrained or frozen property or to vary the Order to exclude their interest. Additionally, section 4 of the Prevention of Terrorism (Amendment) Act, 2008 amends section 28 of the PTA to provide for the Court on application of the Attorney General to make an order for payment out of property forfeited, for compensation for the benefit of persons that have suffered loss as a result of any direct or indirect consequence of terrorist offences. Both these measures are in keeping with the protection of third party rights as stated in Article 8 of the Terrorist Financing Convention. The deficiency has been fully met.

SPECIAL RECOMMENDATION III - OVERALL CONCLUSION

78. Through amendments to the Prevention of Terrorism Act, Antigua and Barbuda the deficiencies for SR. III have been addressed at least to a level that is comparable with LC.

VI. OVERVIEW OF MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED PC/NC

79. Antigua and Barbuda has taken the following measures to address the other Recommendations that were rated PC/NC. The information in this section is presented for information purposes only and is not to be taken into consideration for Antigua and Barbuda's application to exit the follow-up process.

PREVENTATIVE MEASURES - FINANCIAL INSTITUTIONS

Recommendations 14 was rated PC, while Recommendations 6, 7, 8, 9, 11, 15, 21, 22, and SR. VII were all rated NC.

80. Antigua and Barbuda achieved compliance with R. 14 through an amendment to section 2 of the MLPA to provide that tipping-off can take place where a financial institution 'has submitted or is about to submit suspicious activity report.' The Money Laundering (Prevention)(Amendment) Regulations, 2009 addressed the deficiencies in R. 6-9. With regard to R. 6, the amendment to regulation 4 addressed the establishment of appropriate risk management systems to determine who is a PEP; the requirement that senior management approval be obtained for establishing and continuing a business relationship. The amendment also included an increase in sanctions for a breach of the requirements. For R. 7, regulation 4(6) was repealed and replaced with requirements for correspondents in relation to cross-border correspondent banking that covered amongst other things the gathering of sufficient information about respondent banks, assessing the respondent's bank AML/CFT controls with regard to payable through accounts making sure that the respondent banks has verified the identity of and performed normal CDD on the respondent's customers. In order to address R.8 deficiencies, regulation 3(1)(b) of the MLPA was repealed and replaced with measures for example to require financial institutions to establish procedures: to address specific risks associated with non-face-to-face business relationships and transactions, evaluate any new or developing technology. The amendment to the MLPR with regard to R. 9 addressed the issues of obtaining CDD elements from 3rd parties, making available copies of ID data and relevant CDD documents to 3rd parties and ensuring that the 3rd party is regulated and supervised to FATF Standards (R. 23, 24 and 29).

81. Recommendation 11 deficiencies were also dealt with by amendments to the MLPA, with requirements being put in place to allow for the examination of the background and purpose of all complex, unusual large transactions or unusual patterns of transactions and to keep the findings of those examinations. The issues with R. 15 were addressed by amendments to the MLPA and the MLFTG. As a result, financial institutions were required to develop, implement and maintain written internal controls, appoint a compliance officer at the managerial level, maintenance of adequately resourced and independent audit function, etc. Recommendation 21 was dealt with by amendments to the MLPR and established measures to inform financial institutions about concerns of AML/CFT weaknesses in other countries; written findings of transactions that have no apparent or economic lawful purpose and the requirement for countermeasures against jurisdictions that do not or insufficiently apply the FATF Recommendations. Amendments to the MLPR also addressed the deficiencies that were noted in R. 22 as it relates in general to ensuring that branches and majority owned subsidiaries observe the provisions of the MLPR.

DNFBPs AND OTHER NON-FINANCIAL BUSINESSES

Recommendations 24 and 25 were rated PC, while Recommendations 12 and 16, were rated NC. `

82. At the time of the onsite, the Examiners found that casinos, real estate agents, dealers in precious metals and dealers in precious stones were not subject to comprehensive AML/CFT supervision. The Authorities dealt with the issue by amending the First Schedule of the MLPA to include those entities as financial institutions; thereby making them subject to Antigua and Barbuda's AML/CFT regime. Onsite examinations have been undertaken for real estate agents and AML/CFT training for casinos is scheduled for June 2015. The FSRC was established as a Single Regulatory Unit and is responsible for enforcing the regulatory regime on these DNFBPs. With regard to R. 25, this is an ongoing implementation recommendation which is being undertaken by the ONDCP. For R. 12 and 16, the deficiencies noted in R. 5, 6 and 8-11 were cured in relation to R. 12 as noted above, while R. 16 was addressed as noted for R. 24 above by the amendment to the First Schedule of the MLPA.

ANNEX

Recommendation 1 – ML Offense
IMPLEMENTATION:
(2012 – 2014)
Production orders: 47
Freeze orders: 27
Cash detention orders: 22
Forfeiture orders: 11

Recommendation 2 –ML offense – mental element and corporate liability
IMPLEMENTATION: The Police Proceeds of Crime Unit (PCU) has been established. That unit, which exercises powers under the Proceeds of Crime Act 1993, has to date obtained two restraint orders and is awaiting the completion of criminal proceedings in order to move forward upon conviction with confiscation proceedings. The PCU has also acted pursuant to the MLPA to seize cash and has obtained four cash forfeitures.
The ONDCP has between December 2011 and September 2012 brought four money laundering charges, the four of which have resulted in convictions and forfeiture of the money involved. Between November and December 2012, the ONDCP charged three persons with a total of 9 counts of money laundering and 6 counts of facilitation of money laundering in relation to the activities of an organized criminal group. The case is ongoing.
There is now close coordination between the Supervisory Authority and the Office of the DPP which has resulted in four standalone money laundering convictions.

Recommendation 4 – Secrecy laws consistent with the recommendation
IMPLEMENTATION: the FSRC has shared information in respect of Cooperative Societies in September – October 2012

Recommendation 5 – Customer due diligence
IMPLEMENTATION: Since the 2007 evaluation the FSRC has levied administrative penalties in excess of US$350,000. The Supervisory Authority (ONDCP) has imposed administrative financial sanctions amounting to $10,000 US.

Recommendation 12 – DNFBP R.5, 6, 8 – 11
IMPLEMENTATION: In November 2012, Nineteen (19) companies and individuals received licences to operate under the Corporate Management and Trust Service Providers Act since the Act was passed in Parliament. There is now one (1) pending application for a corporate management and trust service provider's licence.

Recommendation 21 – Special attention for higher risk countries
IMPLEMENTATION: The Supervisory Authority issues advisories on countries/jurisdictions that have weaknesses in their AML/CFT systems. These advisories include notice of FATF and CFATF advisories. The advisory contains guidance to financial institutions to pay special attention to current and potential business relationships or transactions with the listed countries.

Recommendation 24 – Regulation, supervision and monitoring

IMPLEMENTATION:— Since May 2013 the FCU has conducted 65 examinations of financial institutions and DNFBPs, 21 in 2013 and 44 to date in 2014. They include:

Money lending & pawning	– 4;
Insurance	– 4;
Money service businesses	– 5;
Travel agents	– 7;
Dealers in precious metals	– 6;
Domestic banks	– 7;
Credit unions	– 6;
Company service providers	– 3;
Car dealerships	– 4;
International banks	– 6;
Real property business	– 10.

Recommendation 25 – Guidelines and feedback
IMPLEMENTATION: The ONDCP ensures that all financial institutions are in possession of relevant regulations, guidelines and directives. To this end the ONDCP has its own website which provides relevant regulatory and guideline information.

Recommendation 31 – National cooperation
IMPLEMENTATION: The Director of ONDCP is in communication with the Comptroller of Customs in order to coordinate ML and FT matters.
ONDCP and FSRC have scheduled quarterly meetings to discuss implementation of AML/CFT policies and to assess the effectiveness of implementation of the new MOU.

Recommendation 33 – Legal persons – beneficial owners
IMPLEMENTATION: The FSRC has nineteen **(19)** pending licenses for corporate management and trust service providers. The licensing period for corporate management and trust service providers ended March 31, 2011. The FSRC's licensing process takes into consideration licensing of custodians of bearer shares which will address all the matters herein.

The FSRC is conducting an internal review to prepare a report in which it will identity the corporate management and trust services providers who have incorporated companies which have been authorised to issue bearer shares to ensure that that they comply with the IBCA and the CMTSPA.

Recommendation 38 – MLA on confiscation and freezing
IMPLEMENTATION: — Between 2011 – 2014, execution of MLAT Requests resulted in the forfeiture of $2,673,908 US; $401,000 CAD; $435,000 EC

Recommendation 40 – Other forms of cooperation
IMPLEMENTATION: The MOU between the FSRC and the ECCB has received the signatures of the Parties.

SR.III – Freeze and confiscate terrorist assets
IMPEMENTATION: — Antigua and Barbuda now gives effect to UN declarations of specified entities in a timely manner that is within hours **or** within a day or two.

SR.VI – AML requirements for money and value transmission services
IMPLEMENTATION: — The FSRC has refused to grant permission to renew the licence for two (2) money services businesses. The FSRC has also initiated legal action by filing a report to the DPP for the laying of information to be granted a search warrant for a person who the FSRC has reasonable cause to suspect is operating an MSB without a licence pursuant to section 4 of the MSB. The MSBA will be amended to include a dissuasive administrative penalty for failure to comply with any guidelines, rules and orders.

SR.VI – Cash couriers

IMPLEMENTATION:— Cross border operations have resulted in the following:

ML investigations: 14

ML prosecutions: 11

ML convictions relating to seized cash: 6

Cash seizures: 35

Cash forfeitures: 15

Value of cash forfeited:

USD	$114,771,
EC	$9,407.43,
GBP	$35, 500,
EURO	$20,530,
CAD	$150,
BDS	$5

Matrix of Actions Taken in Response to CFATF Recommendations
By Antigua and Barbuda — 6 May 2015

FATF 40+9	Rat-ing	Recommended Actions	Actions Undertaken	Remaining Actions to be Undertaken	Response
Legal systems					

1. ML offense	PC	• The list of predicate offences under the POCA needs to be expanded. An all-crimes approach similar to what obtains under the MLPA could be explored. • The list of precursor chemicals under the MDA should be amended to include the chemicals stated in Tables I and II of the Vienna Convention. • The equivalent Antigua and Barbuda legislation which corresponds to the FATF list of Designated Category of Offences should be revised to ensure that the Acts capture all the offences contemplated by the FAFT recommended categories. Legislation should be enacted to address participation in an organised criminal group and racketeering, trafficking in human beings and migrant smuggling and piracy. • Facilitation of a money laundering offence should be stated as a separate crime. • Caution should be exercised in the drafting of legislation. There is inconsistency in the definition of key terms, and these definitions are left to judicial interpretation, for example, the definitions of "property" and "person". Terms should be defined in accordance with the definitions provided under the Vienna Convention and the Palermo Convention. Accordingly, amendments should be made to the MLPA and the MDA and to the POCA if it is not repealed.	✹ The list of predicate offences under the POCA has been expanded to include all offences which carry a penalty of at least 1 year imprisonment by the amendment made to the Schedule by **The Proceeds of Crime (Amendment of Schedule) Order 2009** brought into force on 5 August 2010. Further, the Schedule was renamed "Schedule I" and was further amended to include any indictable or either way offence from which a person has benefited. See section 14 of the POCA 2014. ✹ The **Precursor Chemicals Act 2010** was passed and came **into** effect on 11th November 2010. The Act puts in place the legislative controls of precursor chemicals listed in Tables I and II of the Vienna Convention 1988. ✹ All FATF Designated Category of Offences are captured by the laws in force. The outstanding category of offences have been criminalized as follows: (a) Participation in an organized criminal group has been criminalized by **section 4 of the Money Laundering (Prevention) (Amendment) Act 2009** which inserts section 5B into the MLPA and came into force on 24 December 2009. (b) Trafficking in human beings was criminalized by **The Trafficking in**		

Matrix of Actions Taken in Response to CFATF Recommendations
By Antigua and Barbuda — 6 May 2015

FATF 40+9	Rat-ing	Recommended Actions	Actions Undertaken	Remaining Actions to be Undertaken	Response
			Persons (Prevention**) Act 2010** which came into force on 25 October 2010. (c) Migrant smuggling and associated offences was criminalized by **The Migrant Smuggling (Prevention) Act 2010** which came into effect on 11 November 2010. (d) Piracy was criminalized by **The Maritime Piracy Act 2013** which came into force on 23 January 2014 and was amended by the Maritime Piracy (Amendment) Act 2014 to include piracy on the high seas. Facilitation of money laundering has been criminalized by **section 3 of the Money Laundering (Prevention) (Amendment) Act 2009** which inserts section 5A into the MLPA and brought into force on 24 December 2009. ✹ Definition of "persons" and "property" in accord with the Vienna Convention 1988 have been inserted into the POCA by **The Proceeds of Crime (Amendment) Act 2008** (in force 28 December 2008).		

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2. ML offense–mental element and corporate liability	LC	• (See Summary of Factors for Rating in the 2007 Report): The number of money laundering prosecutions is remarkably low given the wide measures and the absence of thresholds available under the MLPA.	Since the last CFATF Report, **it** is to be **noted** that the Royal Police Force of (RPFAB) brought a money laundering charge subsequent to **sensitization of** the *RPFAB of* the need to pursue money laundering charges and confiscation proceedings. However, that charge did not result in a conviction for insufficiency of evidence. The Police Proceeds of Crime Unit (PCU) has been established. That unit, which exercises powers under the Proceeds of Crime Act 1993, has to date obtained two restraint orders and is awaiting the completion of criminal proceedings in order to move forward upon conviction with confiscation proceedings. The PCU has also acted pursuant to the MLPA to seize cash and has obtained four cash forfeitures. The ONDCP has between December 2011 and September 2012 brought four money laundering charges, four of which have resulted in convictions and forfeiture of the money involved, Between November and December 2012, the ONDCP charged three persons with a total of 9 charges of money laundering and 6 charges of facilitation of money laundering in relation to the activities of an organized criminal group. The case is ongoing.	❑	❑

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3. Confiscation and provisional measures	LC	• The Antigua and Barbuda Authorities should seek to prosecute money laundering offences as stand-alone offences pursuant to the MLPA. • Greater emphasis should be placed on the investigation of offences with a view to securing convictions. • The PTA should make express provision for bona fide third parties to have their interest in property excluded from seized property.	✹ There have been twelve standalone money laundering charges brought by the ONDCP. ✹ ML convictions obtained: there have been three standalone ML convictions under section 3 of the MLPA obtained with consequent forfeiture. Other ML prosecutions are ongoing. ✹ Under the PTA, express provision for a person with an interest in property seized by warrant or subject to a restraint order to apply to have the property excluded from the restraint is provided for under section 7 of the **Prevention of Terrorism (Amendment) Act 2008** which inserts section 35A into the PTA. ✹ In addition: The Proceeds of Crime (Amendment) Act 2014 (in force 22 May 2014), introduced provisions for civil recovery of the proceeds of crime. Section 66 changed the standard of proof to the civil standard for applications made under the Act, including criminal confiscation applications. This will affect confiscation proceedings following conviction for a scheduled offence.		
Preventive measures					

4. Secrecy laws consistent with the Recommendations	PC	• The Antigua and Barbuda Authorities should enact provisions allowing the ECCB, FSRC, the Registrar of Co-operatives and the Registrar of Insurance to share information with other competent authorities.	**The FSRC** is authorized to share information with other competent authorities subject to an agreement of confidentiality and an MOU by section 5 of the IBC (Amendment) Act 2008 which amends section 373 of the IBC Act. **The Superintendent of Insurance** is authorized to share information received or report prepared with any local or foreign authority responsible for the supervision or regulation of a company or association of underwriters subject to an agreement of confidentiality and an MOU pursuant to Section 196 of the Insurance Act 2007. In addition, as the Superintendent of Insurance comes under the scope of responsibility of the FSRC by section 316(3)(b) of the IBC Act, Cap.222 as amended by section 2 of the IBC (Amendment) Act 2002, the sharing provisions affecting the FSRC under section 5 of the IBC (Amendment) Act 2008 which amends section 373 of the IBC Act, would be applicable to the Registrar of Insurance. **The Registrar of Cooperatives** is able to share information with other competent authorities subject to an agreement of confidentiality and an MOU, because the amendment to section 316(3)(b) of the IBC Act, Cap.222 by section 2 of the IBC (Amendment) Act 2002 gives responsibility to the FSRC to regulate businesses operated or carried on under the Cooperative Societies Act and the Insurance Act (in effect as of 1st January 2011), and the amendment to section 5 of the IBC (Amendment) Act 2008 which amends section 373 of the IBC Act allowing sharing of information by the		

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			FSRC would be applicable to cooperatives. In respect of implementation, the FSRC has shared information in respect of Cooperative Societies in September – October 2012 The issue of the ECCB sharing AML information with the ONDCP has been superceded by the establishment of the ONDCP's Financial Compliance Unit (FCU). That unit is now conducting onsite examinations of financial institutions, which for the first time includes examinations of unregulated DNFBPs. In relation to secret banking information, there is presently before Parliament a bill titled the Banking Act 2015. Section 89(5)(a)(i) of the Bill states that in relation to any other information obtained under this Act regarding the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a licensed financial institution, "the Central Bank may provide international financial institutions, foreign banking supervisors and any other local or foreign authorities responsible for the supervision or regulation of a licensed financial institution, or for maintaining the integrity of the financial system with such statements, returns, data and information;		

5. Customer due diligence	PC	• Legislative requirement for CDD measures where there is suspicion of money laundering or the financing of terrorism should cover all transactions. • The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable in accordance with FATF requirements. • The requirements concerning the time frame and measures to be adopted prior to verification should be enforceable in accordance with FATF requirements. • The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction should be enforceable. • The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship should be enforceable. • The requirement to apply CDD requirements to all existing customers should be imposed on all financial institutions and be enforceable in accordance with FATF standards.	Requirement for CDD measures to cover all transactions where there is suspicion of money laundering or financing of terrorism:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5, amended regulation 4 of the MLPR to require CDD measures to apply to all transactions including: formation of a business relationship; one-off transactions of $25,000 or more wire transfers; existing relationships on the basis of risk and materiality and at appropriate times; where there is suspicion of money laundering or terrorism financing. The enforceability to FATF standards of legislative and regulatory AML/CFT law is in accordance with the following Notes 1 to 3 — <u>NOTE 1 – Enforceability of IBCA</u>: The International Business Corporations (Amendment) Act 2008, section 3 amended section 316 (4) of the IBC Act to include "rules", "orders" and guidelines in the sanctions provisions, making all provisions subject to them enforceable to FATF requirements. <u>NOTE 2 – Enforceability of MLPR</u>: Section 4(4) of The Money Laundering (Prevention) (Amendment) Regulations 2009 inserted criminal penalties for breach of the Regulations with fines of $500,000 and imprisonment of 2 years, and section 4(5) inserted administrative penalties for breach		

			of the Regulations of $100,000 and for continued breach $15,000 per day. These penalties are consistent with FATF requirements. NOTE 3 – Enforceability of MLPA: The Money Laundering (Prevention) (Amendment) Act 2009 increased sanctions for breaches in relation to the following: (1) s.5 – opening account in a false name, fine: $500,000; (2) s.6 – retention of financial records and failure to comply with the guidelines and instructions of the Supervisory Authority, fine: up to $1,000,000; (3) s. 7 – retention of documents, fine: $1,000,000; (4) s.8 - Suspicious activity reporting – fine: up to $1,000,000. Enforceability of requirement to keep CDD information up-to-date: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 6 inserts regulation 5(1b) into the MLPR which requires that documents, data and information collected under the CDD be kept up-to-date. [See also NOTE 2 above] Enforceability of timeframe and measures to be adopted prior to verification: The MLPR 2007, regulation 4(3)(c) "requires that where satisfactory evidence of identity is not obtained, the business relationship or one-off transaction must not proceed any further, or shall proceed		

			only in accordance with any direction of the Supervisory Authority." The MLFTG, para. 2.1.14A as amended by the MLFTG Update of 11 May 2010 provides a direction from the Supervisory Authority in relation to "where a business relationship or one-off transaction has commenced but satisfactory evidence of identity has not been obtained, then if a situation is involved where it is **essential not to disrupt the normal conduct of business,** the financial institution may permit the customer to utilize the business relationship prior to the identification of the customer or beneficial owner" under certain conditions as set out therein which includes management of money laundering risks. [See also NOTE 2 above] Enforceability of requirement to consider making a SAR when unable to comply with criteria 5.3 to 5.6 for a new customer or occasional transaction: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(3) repeals regulation 4(3)(c) and substitutes regulation 4(3)(c)(i) and (iv) of the MLPR which requires financial institutions to consider making a SAR where satisfactory evidence of identity is not obtained in relation to a new customer or a one-off transaction. [See also NOTE 2 above] Requirement to consider making a SAR when unable to comply with criteria 5.3 to 5.6 when a business relationship is already commenced: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(3) repeals regulation 4(3)(c) and substitutes regulation 4(3)(c)(ii) to (iv) of the MLPR which requires financial institutions to consider making a SAR where satisfactory evidence of identity is not obtained in		

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			relation to an existing customer. [See also NOTE 2 above] Enforceability of requirement to apply CDD to all existing customers of all financial institutions: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 6(1) inserts regulation 5(1b) into the MLPR which requires financial institutions to keep customer records up-to-date and obtain all relevant customer information if at any time it lacks sufficient information. [See also NOTE 2 above]		

6. Politically exposed persons	NC	• The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP should be enforceable in accordance with FATF requirements. • The requirement for banks to obtain senior management approval for establishing business relationships with a PEP should be enforceable in accordance with FATF requirements. • Financial institutions should be required to obtain senior management approval to continue the business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.	Enforceability of requirement to gather sufficient information to establish whether a new customer is a PEP: The Money Laundering (Prevention) (Amendment**)** Regulations 2009, section 5(4) inserts regulations 4(3)(d)(i) which requires appropriate risk management systems to determine whether a potential customer is a PEP. [See also NOTE 2 above **(under 5. Customer due diligence)**]. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC]. Enforceability of requirement to obtain senior management approval to establish a business relationship with a PEP: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(4) inserts regulations 4(3)(d)(ii) which requires senior management approval to establish a relationship with a customer who is a PEP. [See also NOTE 2 above]. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC's power to sanction breaches of PEP provisions.] Enforceability of requirement to obtain senior management approval to continue a relationship with a customer or beneficiary discovered to be or who becomes a PEP: The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(4) inserts regulations 4(3)(d)(iii) which requires senior management approval to continue a relationship with a customer who is found to be or becomes a PEP. [See also NOTE 2 above **(under 5. Customer due diligence)**]. The CDD Guidelines, paragraph 39 requires banks to obtain	❑	❑

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			senior management approval to continue a relationship with a customer who is found to be a PEP. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC's power to sanction for breach of PEP provisions in the CDD.]		

7. Correspondent banking	NC	• Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing customer acceptance and KYC policies and whether it is effectively supervised should be enforceable in accordance with FATF requirements. • Financial institutions should be required to assess all the AML/CFT controls of respondents and whether they have been subjected to money laundering or terrorist financing investigation or regulatory action. • Financial institutions should be required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship. • Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships • Financial institutions should be required to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilizing payable through accounts or are able to provide relevant customer identification upon request for these customers.	Enforceability of requirement to document respondent bank's management, customer acceptance and supervision:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(10) repeals and replaces regulation 4(6)(1)(a) of the MLPR, which requires information to be gathered about a respondent bank to understand the nature of its business and the quality of its supervision. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to assess AML/CFT controls of respondent banks and whether they have been subject to ML/FT investigation or regulatory action:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(10) repeals regulation 4(6) of the MLPR and inserts regulation 4(6)(1)(b), which requires assessment of a respondent's AML/CFT controls; regulations 4(6)(1)(a) requires gathering information on whether the respondent has been subject to ML/FT investigation or regulatory action. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to document the respective AML/CFT responsibilities of each institution in a correspondent relationship: — The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(10) repeals regulation 4(6) of the MLPR and inserts regulation 4(6)(1)(d), which requires documentation of respective AML/CFT responsibilities of each institution in a correspondent relationship. [See also NOTE 2 above **(under 5. Customer due diligence)**].		

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			Requirement to obtain approval from senior management before establishing new correspondent relationships: — The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(10) repeals regulation 4(6) of the MLPR and inserts regulation 4(6)(1)(c), which requires senior management approval before establishing new correspondent relationships. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to ensure respondent institutions have performed normal CDD measures set out in Rec. 5 for utilizing payable through accounts or able to provide customer ID upon request for these customers: — The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(10) repeals regulation 4(6) of the MLPR and inserts regulation 4(6)(1)(e)(i), which requires with respect to payable through accounts satisfaction that the respondent conducts normal CDD and is able to provide customer identification data on request. [See also NOTE 2 above **(under 5. Customer due diligence)**]. [See also NOTE 3 **(**under 5. Customer due diligence) in relation to sanction under the MLPA].		

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8. New technologies & non face-to-face business	NC	• Financial institutions should be required to have measures aimed at preventing the misuse of technology in ML and FT schemes. • Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers should be enforceable in accordance with FATF standards.	Requirement to have measures aimed at preventing misuse of technology in ML and FT schemes:—The Money Laundering (Prevention) (Amendment) Regulations 2009, section 4(2) repeals and substitutes regulation 3(1)(b) of the MLPR and regulation 3(1)(b)(ii) requires procedures to evaluate new or developing technologies and risks that may arise from them, and 3(1)(b)(iii) requires implementation of measures to prevent their use in connection with ML and FT. Requirement to have polices and procedures in place to address specific risks associated with non-face-to-face customers:—The Money Laundering (Prevention) (Amendment) Regulations 2009, section 4(2) repeals and substitutes regulation 3(1)(b) of the MLPR and regulation 3(1)(b)(i) requires procedures to address specific risks associated with non-face-to-face relations and transactions. [See also NOTE 2 above **(under 5. Customer due diligence)** on enforceability of MLPR]. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC's sanction powers for breaches of CDD Guidelines.]	❑	❑

9. Third parties and introducers	NC	• Financial institutions relying upon third parties should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process in criteria 5.3 to 5.6. • Financial institutions should be required to take adequate measures to insure that copies of the identification data and other relevant CDD documentation form third parties will be made available upon request and without delay. • Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in R.5 and R.10. • Competent authorities should take into account information available on countries which adequately apply the FATF Recommendations in determining in which countries third parties can be based.	Requirement to be able to immediately obtain from a third party necessary information about elements of CDD:— The CDD Guidelines, paragraph 31 was amended in April 2009 to address recommendation 9.2 which relates to an introducer submitting customer identification data to a bank and providing the information without delay. The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(9) repeals and substitutes regulation 4(5) of the MLPR and regulation 4(5)(a) now requires a financial institution to immediately obtain from a third party information concerning CDD elements. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to take measures to ensure that copies of ID data and relevant CDD documents will be made available by third party on request without delay: — The CDD Guidelines, paragraph 31 was amended in April 2009 to address recommendation 9.2 which relates to an introducer submitting customer identification data to a bank and providing the information without delay. The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(9) repeals and substitutes regulation 4(5) of the MLPR and regulation 4(5)(b) requires a financial institution to satisfy itself that ID data and other relevant documents will be made available on request without delay by the third party. [See also NOTE 2 above **(under 5. Customer due diligence)**].		

			Requirement for a financial institution to satisfy itself that the third party is regulated and supervised to FATF standards (Rec. 23, 24 and 29) and has measures in place to comply with CDD requirements of R.5 and R.10:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(9) repeals and substitutes regulation 4(5) of the MLPR and regulation 4(5)(c) requires a financial institution to satisfy itself that a third party is regulated and supervised to standards established in this jurisdiction or in the foreign jurisdiction if standards are higher. Regulation 4(5)(d) requires that the third party have measures in place to comply with the requirements of CDD. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement that competent authorities take into account information on countries that adequately apply FATF standards in determining in which countries a third party can be based: — The Money Laundering (Prevention) (Amendment) Regulations 2009, section 5(9) repeals and substitutes regulation 4(5) of the MLPR and regulation 4(5)(e) requires a financial institution not to rely on a third party based in a country named by the Supervisory Authority as inadequately applying FATF requirements. [See also NOTE 2 above **(under 5. Customer due diligence)**]. [See also NOTE 1 above **(under 5. Customer due diligence)**]. in relation to FSRC's sanction powers for breaches of CDD Guidelines.].		

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			IMPLEMENATION:— The Supervisory Authority publishes advisories on the ONDCP website which cover: (1) Jurisdictions that have ongoing substantial money laundering and terrorist financing risks; (2) Jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan to address these deficiencies; (3) Jurisdictions previously identified by FATF as having strategic AML/CFT deficiencies which deficiencies still remain outstanding.		

10. Record keeping	NC	• The exemption of single transactions under EC $1,000 from record keeping requirements should be removed. • Legal provision for financial institutions to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity should be extended from IBCs to all financial institutions. • The MLPA or the MLPR should be amended to require financial institutions to retain records of business correspondence for at least five (5) years following the termination of an account or business relationship. • Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.	The exemption of single transactions under EC$1,000 from record keeping requirements was removed by The Money Laundering (Prevention) (Amendment) Act 2008, section 3 of which deleted section 12(3) of the MLPA which contained the exemption. Requirement to maintain transaction records in a manner that would permit reconstruction of individual transactions:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 6(1) repeals and substitutes regulation 5(1) of the MLPR and regulation 5(1a) requires that records must be sufficient to permit reconstruction of individual transactions to provide evidence for the prosecution of criminal activity. This provision is applicable to all financial institutions. Requirement to retain business correspondence for at least 5 years following termination of business relationship: — The Money Laundering (Prevention) (Amendment) Regulations 2009, section 6(2) amends regulation 5(2)(a) of the MLPR to insert 5(2)(aa) which requires financial institutions to retain records of business correspondence following the termination of an account or business relationship. Under the MLPA, section 12B(1), records are required to be held for 6 years. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Legislative requirement that customer and transaction records and information be available on timely basis to domestic competent authorities:— The Money		

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			Laundering (Prevention) (Amendment) Regulations 2009, section 6(1) repeals and substitutes regulation 5(1) of the MLPR and the new regulation 5(1) requires a financial institution to maintain procedures requiring the retention of records to enable production in a timely manner to domestic competent authorities.		

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11. Unusual transactions	NC	• Financial institutions should be required 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 and put their findings in writing. • Financial institutions should be required to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.	Requirement to examine the background and purpose of complex, unusual large transactions or patterns of transaction that have no apparent economic purpose and put their findings in writing:— The Money Laundering (Prevention) (Amendment) Act 2008, section 5 inserts section 13(1A) into the MLPA which provides for a financial institution to examine the background and purpose of transactions that are complex, unusual large which have no apparent or visible economic or lawful purpose, and to put their findings in writing and as amended by section 8 of the MLPA 2009, treat the findings as part of the financial transaction documents. Requirement to keep findings on all complex, unusual large transactions and patterns of transactions for competent authorities and auditors for at least 5 years: — Under section 12B(1) of the MLPA, section 5 of the MLPA 2008 and section 8(a) of the MLPA 2009 documents relating to complex, unusual large transactions and patterns of transactions with no apparent or visible economic or lawful purpose must be retained for six years after completion of the transaction.		

12. DNFBP–R.5, 6, 8-11	NC	• Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this report are also applicable to listed DNFBPs. Implementation of the specific recommendations in the relevant sections of this Report will also apply to listed DNFBPs. • Lawyers and notaries, other independent legal professionals, accountants and company service providers should be brought under the ambit of the AML/CFT regime.	DNFBPs: The Corporate Management Trust Service Providers Act 2008 came into force on 12 February 2009. [See NOTE 1, 2 and 3 above **(under 5. Customer due diligence)** in relation to enforceability of the provisions]. The CMTSPA captures lawyers and accountants under the AML/CFT regime. The International Limited Liability Companies Act 2007, the International Trust Act 2007 are two additional statutes which corporate management and trust services providers can perform services. Requirement for lawyers, notaries, independent legal professionals, accounts and company service providers to be brought under the ambit of the AML/CFT regimes:— The Money Laundering (Prevention) (Amendment to First Schedule) Order 2009 amended the First Schedule to the MLPA to list as financial institutions: (1) Company service providers; (2) Attorneys-at-law (who conduct financial activity as a business); (3) Notaries (who conduct financial activity as a business); and (4) Accountants (who conduct financial activity as a business). The Corporate Management and Trust Service Providers Act 2008, section 14 (in		

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			force 12 February 2009) provides for the FSRC to maintain a general review of corporate management and trust service providers and to examine licensees to ensure they are complying with the Act, the IBC Act, the International Foundations Act, the Companies Act, the International Limited Liability Act, the MLPA, the PTA and any other Act that confers jurisdiction on the FSRC.		

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13. Suspicious transaction reporting	PC	• The requirement for FIs to report suspicious transactions should be applicable to all transactions. • The obligation to make a STR related to money laundering should apply to all offences required to be included as predicate offences under Recommendation 1. • The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism.	Requirement for STR reporting to be applicable to all transactions: — The Money Laundering (Prevention) (Amendment) Act 2008, section 5(b) amended by section 8 of the Money Laundering (Prevention) (Amendment) Act 2009 requires, without exception, the reporting of a transaction that could constitute or be related to the proceeds of crime. Requirements for making of STR to apply to all offences required to be included as predicate offences under Recommendation 1:— All category of offences listed in FATF Recommendation 1 have been criminalized. This in cludes: (i) facilitation of ML (ii) participation in an organized criminal group (iii) human trafficking (iv) migrant smuggling (v) piracy. (See response to Recommendation 1 above (under 1. ML Offense). Requirements for reporting of STR relating to terrorism and the financing of terrorism to include suspicion of terrorist organizations or those who finance terrorism: — Section 6 of the Prevention of Terrorism (Amendment) Act 2010 (in force on 15th April 2010), requires financial institutions to report transactions for which there are reasonable grounds to suspect that they are conducted by or on behalf of a terrorist group, or by and on behalf of a person who finances terrorism.		

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14. Protection & no tipping-off	PC	• The tipping off offence with regard to directors, officers and employees of financial institutions should be extended to include the submission of STRs or related information to the FIU.	The Requirement for the tipping off prohibition to include the submission of STR or related information to the FIU:— The Money Laundering (Prevention) (Amendment) Act 2008, section 2, was amended so that the tipping off prohibition relates to where a financial institution "has submitted or is about to submit a suspicious activity report".		

15. Internal controls, compliance & audit	NC	• Requirement for financial institutions to develop internal procedures and controls to prevent ML should include FT. • Requirement for financial institutions to appoint a compliance officer at management level should be enforceable in accordance with FATF standards. • Requirement for financial institutions to provide compliance officers with necessary access to systems and records should be enforceable in accordance with FATF standards. • Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls. • Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees should be enforceable in accordance with FATF standards.	Requirement to develop internal procedures and controls to prevent FT: — Paragraph 2 of the Money Laundering & Financing of Terrorism Guidelines (updated 20 July 2009) requires financial institutions to develop implement and maintain written internal controls, policies and procedures for recognizing and dealing with transactions and proposed transactions related to the financing of terrorism. Requirement to appoint a compliance officer at management level should be enforceable to FATF standards:— The Money Laundering (Prevention) Regulations 2007, regulation 6(1)(a) as amended by section 7(1) of the MLPR 2009 requires the appointment of a compliance officer at management level. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to provide the compliance officer with necessary access to systems and records should be enforceable: — The Money Laundering (Prevention) Regulations 2009, section 7(2) which inserts regulation 6(1)(aa) of the MLPR requires the compliance officer to have access to CDD information and transaction records and relevant systems and information. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to maintain an adequately resourced and independent audit function to test compliance with AML/CFT requirements: — The Money Laundering (Prevention) Regulations 2009, section 10 which inserts regulation 15(3) of the MLPR requires an adequately resourced and independent audit function to test compliance with AML/CFT procedures		

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			and policies. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to put in place screening procedures to ensure high standards when hiring employees should be enforceable: — The Money Laundering (Prevention) Regulations 2009, section 8 inserts regulation 6A of the MLPR which requires screening procedures to ensure high standards when hiring employees. [See also NOTE 2 above **(under 5. Customer due diligence)**].		

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16. DNFBP–R.13-15 & 21	NC	• The requirements for DNFBPs are the same as for all other financial institutions. The deficiencies identified with regard to specific recommendations are also applicable to DNFBPs. Implementation of specific recommendations in the relevant sections of this report will also include DNFBPs.	Requirement for DNFBPs same as for all other financial institutions:— The Money Laundering (Prevention) (Amendment of First Schedule) Order 2009 amended the First Schedule to the MLPA to bring the business activities of the following additional designated non-financial businesses and professions under the AML/CFT framework of the MLPA: (1) Car dealerships (2) Travel agents (3) Dealerships in high value and luxury goods (4) Company service providers (5) Attorneys-al-law (who conduct financial activity as a business) (6) Notaries (who conduct financial activity as a business) (7) Accountants (who conduct financial activity as a business). [See also NOTES 1, 2 and 3 above **(under 5. Customer due diligence)** in relation to enforceability].		

17. Sanctions	PC	• The sanction applicable for non- compliance of the MLFTG should be amended to be dissuasive • Sanctions under the PTA and the MLPA that are applicable to financial institutions should also be applicable to their directors and senior management. • The range of AML/CFT sanctions should be broad and proportionate in accordance with FATF requirements.	Requirement for sanctions in the MLPA for breaches of the ML/FTG to be dissuasive: — [See NOTE 3 item (2) above **under 5. Customer due diligence**]. Requirement for PTA sanctions to be applicable to senior management:— The Prevention of Terrorism (Amendment) Act 2010, section 8, inserts section 41B into the PTA as follows: "Where a body corporate commits an offence under this Act, every director or other officer concerned in the management of the body corporate commits that offence unless he proves that (a) the offence was committed without his consent or connivance: and (b) he exercised reasonable diligence to prevent the commission of the offence Requirement for MLPA sanctions applicable to financial institutions to be also applicable to their directors and senior management— Section 17E of the MLPA inserted by section 7 of the Money Laundering (Prevention) (Amendment) Act 2013 provides general sanctions against a financial institution or a director, manager or employee of a financial institution for failure to comply with the provisions under Part III of the Act which are the anti-money laundering provisions relating to customer due diligence, record keeping etc. (unless provided for elsewhere). Requirement for the range of AML/CFT sanctions to be broad and proportionate to FATF standards: — [See particularly NOTE 2 and NOTE 3 as well as NOTE 1 above **under 5. Customer due diligence**].		
18. Shell banks	NC	• Financial institutions should not be permitted to enter into, or continue,	Requirement for financial institutions not to enter into or continue correspondent banking relationships with shell banks and		

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		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.	for the provision to be enforceable:— CDD Guidelines for International Banks, updated April 2009, paragraph 49 prohibits financial institutions to enter or continue correspondent banking relations with a bank that has no physical presence. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC's sanction powers for breaches of CDD Guidelines.] Domestically, the ML/FTG (updated 20 July 2009), paragraph 7 inserts paragraph 2.1.48(a) which requires that financial institutions "should not enter into or continue correspondent banking relationship with shell banks." [See also NOTE 3 item (2) above **under 5. Customer due diligence**], in relation to sanctions for breach of Guidelines]. Requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks: — CDD Guidelines for International Banks, updated April 2009, paragraph 51 requires financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. [See also NOTE 1 above **(under 5. Customer due diligence)** in relation to FSRC's		

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			sanction powers for breaches of CDD Guidelines.] Domestically, the ML/FTG (updated 20 July 2009), paragraph 7 inserts paragraph 2.1.48(b) which requires that financial institutions "should satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their accounts to be used by shell banks." [See also NOTE 3 item (2) above [under 5. Customer due diligence) in relation to sanctions for breach of Guidelines.]		
19. Other forms of reporting	C				
20. Other NFBP & secure transaction techniques	C	The Authorities should consider conducting an assessment of non-financial businesses and professions other than DNFBPs to ascertain those at risk of being misused for money laundering or terrorist financing in Antigua and Barbuda with a view to including them under the AML/CFT regime. This recommendation does not affect the rating of Recommendation 20.	A National Risk Assessment is in process of being carried out. Out of this should come the data necessary to ascertain those non-financial businesses and professions other than DNFBPs at risk of being misused for ML or FT.		

21. Special attention for higher risk countries	NC	• Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries. • Written findings of the examinations of transactions that have no apparent economic or visible lawful purpose with persons from or in countries, which do not or insufficiently apply the FATF Recommendations should be available to assist competent authorities. • There should be provisions to allow for the application of counter measures to countries that do not or insufficiently apply the FATF Recommendations.	Requirement to establish measures to ensure financial institutions are advised of concerns about AML/CFT weaknesses in other countries:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 7(6) inserts regulations 6(1a)(1) which provides for the Supervisory Authority to advise financial institutions of countries with weaknesses in their AML/CFT systems and requires financial institutions to pay special attention to business relationships with and transactions from those country. Requirement for written findings of transactions that have no apparent economic or visible lawful purpose with persons from or in countries which insufficiently apply FATF Recommendations to be available to assist competent authorities:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 7(6) inserts regulations 6(1b) which provides that where transactions have no apparent economic or visible lawful purpose, a financial institution should examine the background and purpose of such transactions and written findings should be kept as financial transaction documents. Requirement for application of countermeasures to countries that insufficiently apply FATF Recommendations:— The Money Laundering (Prevention) (Amendment) Regulations 2009, section 7(6) inserts regulations 6(1c) which requires financial institutions to adhere to any countermeasures which the Supervisory Authority or regulator may advise should be implemented.		

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			IMPLEMENTATION The Supervisory Authority issues advisories on countries/jurisdictions that have weaknesses in their AML/CFT systems. These advisories include notice of FATF and CFATF advisories. The advisory contains guidance to financial institutions to pay special attention to current and potential business relationships or transactions with the listed countries.		

22. Foreign branches & subsidiaries	NC	• Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries should be enforceable in accordance with FATF standards • Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF recommendations should be enforceable in accordance with FATF standards. • Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines should be enforceable in accordance with FATF standards. • Branches and subsidiaries of financial institutions in host countries should be required to apply the higher of AML/CFT standards of host and home countries to the extent that local laws and regulations permit.	Requirement to ensure that principles in guidelines are applied to branches and subsidiaries and are enforceable: — The Money Laundering (Prevention) Regulations 2009, section 4 inserts regulation 3(1)(d)(i) of the MLPR which requires branches and majority owned subsidiaries to observe provisions of the regulations and the Act, which includes guidelines. [See also NOTE 2 above **(under 5. Customer due diligence)**]. Requirement to ensure that guideline principles are applied to branches and subsidiaries operating in countries which insufficiently apply FATF recommendations should be enforceable: — The Money Laundering (Prevention) Regulations 2009, section 4 inserts regulation 3(1)(d)(ii) of the MLPR which requires foreign branches and majority owned subsidiaries to observe provisions of the regulations and the Act, which includes guidelines to the extent permitted by the laws of the foreign jurisdiction. [See also NOTES 2 and 3 above **(under 5. Customer due diligence)** in relation to enforceability]. Requirement to inform the regulator and the Supervisory Authority when local applicable laws and guidelines prohibit implementation of guidelines should be enforceable: — The Money Laundering (Prevention) Regulations 2009, section 4 inserts regulation 3(1)(d)(iv) of the MLPR which requires that where laws of a foreign jurisdiction do not permit the application of measures in the regulations or the Act, which includes the guidelines, the regulator and Supervisory Authority should be informed. [See also NOTES 2		

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			and 3 above **(under 5. Customer due diligence)** in relation to enforceability]. Requirement for branches and subsidiaries in host countries to apply the higher AML/CFT standard of the host or home country to the extent that local laws and regulations permit: — The Money Laundering (Prevention) Regulations 2009, section 4 inserts regulation 3(1)(d)(iii) of the MLPR which requires that where the standard of a foreign jurisdiction differ to those in the regulations and Act then the higher standard should be applied as permitted by the law of the foreign jurisdiction. [See also NOTES 2 and 3 above **(under 5. Customer due diligence)** in relation to enforceability].		

23. Regulation, supervision and monitoring	NC	• The supervisory authorities should be designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements. • The BA should be amended to give the ECCB the power to approve changes in directors, management or significant shareholder of a licensed financial institution. • The Registrar of Insurance should be required to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business. • Registered insurers should be required to obtain the approval of the Registrar of Insurance for changes in shareholding, directorship or management. • The Registrar of Co-operative Societies should be required to use fit and proper criteria in assessing applications for registration. • The Registrar of Co-operative Societies should have power of approval over the management of a society. • Money value transfer service operators should be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.	Recommendation for designation of Supervisory Authority:— The Supervisory Authority was appointed on 1 November 2007 Recommendation to amend the Banking Act to give ECCB power to approve changes in directors, management or significant shareholder: — The Banking Act 2005 **was amended by the Banking (Amendment) Act 2012** to give the ECCB the power to approve changes in directors, management and significant shareholders of a licensed financial domestic institution. The amendment came into force on 13 September 2012. Recommendation that Registrar of Insurance be required to apply fit and proper criteria in assessing directors, manager and shareholders:— Section 198(1) of the Insurance Act, 2007 requires that a person likely to be a director, officer or manager of a local company be a fit and proper person to hold that position. In determining whether a person is a fit and proper person, section 198(2) sets out the fit and proper criteria. Recommendation that registered insurers be required to obtain approval of the Registrar for changes in shareholding, directorship or management:— Section 17 of the **Insurance (Amendment) Act 2011** amends section 202 of the Insurance Act and requires that "Unless the approval of the Superintendent of Insurance if first obtained, a company shall not — (a) change its particulars of registration; (b) change its directors; (c) change its management; (d) change its shareholders; or (f) change the classes of insurance business offered."		

			Recommendation that the Registrar of Co-operative Societies be required to use fit and proper criteria in assessing applications for registration:— Section 72(1)(e) of the Co-operative Societies Act 2010 (amended by section 7 of the Co-operative Societies (Amendment) Act 2013), requires that a person nominated a director or member of a committee of a cooperative society be a fit and proper person in accordance with criteria set out in section 53(4) of the Act, and section 91(1) of the Act (amended by section 9 of the Co-operative Societies (Amendment) Act 2013 requires the Supervisor of Co-operatives to conduct an investigation on the proposed nominees to determine whether each is qualified in accordance with the criteria set out in section 53(4). Recommendation that the Registrar of Co-operative Societies should have power of approval over the management of a society:— Section 72(1)(d) of the Co-operative Societies Act 2010 (amended by section 7 of the Co-operative Societies (Amendment) Act 2013), requires the list of nominees of proposed directors or proposed members of a committee to be submitted to the Supervisor for approval within seven days after the close of nomination. Recommendation that money value transfer service operators be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements:— The FSRC is implementing the Money Services Business Act 2011, section 52 of which repealed the MSBA 2007.. Money services offsite examinations have been conducted during the due diligence and licensing process in regard to AML/CFT		

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			for six (6) institutions. The FSRC is in the process of conducting other offsite examinations. The ECCB in collaboration with CARTAC and the FSRC have designed reporting forms to monitor the inflows and outflows to and from foreign countries. The forms are utilized to capture activities of the MSB operators and any activity considered suspicious will be reported to the ONDCP under whose responsibility the receiving and analyzing of such activities reside. The inflows and outflows in question are of cash.		
24. DNFBP - regulation, supervision and monitoring	PC	• Casinos, real estate agents, dealers in precious metals and stones should be subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.	Recommendation relating to casinos, real estate agents, dealers in precious metals and stones:— Casinos, real estate agents, dealers in precious metals and stones are listed in the First Schedule of the MLPA as financial institutions and are now subject to the AML/CFT regime. The AML/CFT requirements for these sectors are supervised by the Supervisory Authority. Some real estate agents and jewelers have already had onsite examinations of their AML/CFT systems conducted by the FCU. Casinos are scheduled for training in June 2015, to be followed up by examinations starting in September 2015.	❑ Casinos are scheduled for AML/CFT training in June 2015, to be followed up by examinations starting in September 2015.	

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25. Guidelines & Feedback	PC	• The Supervisory Authority should ensure that respective guidelines and directives are issued to all persons and companies in the sectors.	Recommendation that the Supervisory Authority ensure respective guidelines and directives are issued to all persons and companies in the sector:— The Supervisory Authority has initiated a program to provide feedback on the substance of **SAR's** and annual AML/CFT reports and on the quality of those reports. The *ONDCP* is gradually building a body of typologies and is analyzing reports to establish money laundering and financing of terrorism trends for publication. The ONDCP ensures that all financial institutions are in possession of relevant regulations, guidelines and directives. To this end the ONDCP has its own website which provides relevant regulatory and guideline information.	❑	❑
Institutional and other measures					

26. The FIU	PC	• Antigua and Barbuda should move quickly to appoint the Supervisory Authority taking into account the essential role this person plays in coordinating and implementing the country's AML/CFT framework. • The practice of copying SARs to the FSRC should be revised, in order to avoid duplication of work and to avoid exposing the information contained in the SARs to contamination and abuse. • The ONDCP should consider establishing a structured training schedule, in the short term, to target those entities that have not yet received training in the manner of reporting. Thereafter, continuous dialogue should be maintained with reporting bodies with a view to evaluating their reporting patterns so that weaknesses could be identified and addressed accordingly. • The Antigua and Barbuda Authorities should consider establishing a process that would allow for a systematic review of the efficiency of the systems that provide for the combating of ML and FT. • The ONDCP should prepare periodic reports in terms of its operation, which would facilitate the analysis of its growth and productivity. These reports should reflect ML and FT trends and typologies so that the authorities could adapt appropriate measures and strategies. In addition these reports should be made available to all stakeholders and the general public on the whole for	Recommendation that the Supervisory Authority be appointed: — Edward Croft was appointed Supervisory Authority on 1 November 2007. **Recommendation to revise the practice of copying of SARs to the FSRC:—** On December 30, 2010 the IBC Regulations, Regulation 19 was amended providing that compliance officer**s** should only report suspicious activity reports to the Supervisory Authority under the Money Laundering (Prevention) Act. On December 30, 2010 the IGIWR, Regulation 223 was amended providing that compliance officer**s** **sh**ould only report suspicious activity reports to the Supervisory Authority under the Money Laundering (Prevention) Act. Section 5 of The Money Laundering (Prevention) (Amendment) Act 2013, states in relation to the making of suspicious activity reports under section 13: "Notwithstanding any provision in any other Act or legal instrument, a financial institution in complying with this subsection shall make suspicious activity reports to the Supervisory Authority only." Recommendation for the ONDCP to establish a structured training schedule for entities in the manner of reporting and continued evaluation of reporting patterns:— the standardized reporting forms for SAR all come with detailed instructions on how to complete the form and when and how to properly report a suspicious transaction. Supplementing this is a rolling schedule of training sessions by the FIU to further advise financial institutions each 1 – 2 years on what is	❑	❑

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		scrutiny in the interest of transparency and accountability. • The Antigua and Barbuda Authorities should review the practice of having Cabinet give the final approval with regard to the hiring of the ONDCP staff.	required for the reporting of suspicious transactions. Money service providers as part of the requirement to receive their license have had to receive AML/CFT training. The reporting patterns of financial institutions are now continually under review by the FIU in order to advise on remedial action for ineffective reporting patterns where necessary. Recommendation for the systematic review of the efficiency of the systems that provide for combatting ML and FT:— The efficiency of the AML/CFT system is continuously under review by the National AML/CFT Oversight Committee and other bodies. Recommendation that the ONDCP prepare periodic reports in terms of its operation:— Since December 2011 the ONDCP has been publishing its annual report starting with 2009 - 2010, which includes details of the performance of the FIU and the FID and their productive output. **The ONDCP Annual Reports are published on the ONDCP website.** Recommendation that Antigua and Barbuda Authorities review the practice of having Cabinet give the final approval with regard to the hiring of the ONDCP staff:— The government continues to take this recommendation under consideration.		

27. Law enforcement authorities	LC	• Antigua and Barbuda should consider establishing measures that would allow law enforcement authorities when investigating ML cases to postpone or waive the arrest of suspected person and/or the seizure of cash so as to identify other persons involved in the commission of the offence. • Law Enforcement Authorities should consider reviewing there strategy in combating ML with the view to adapting a more aggressive approach which may generate more ML prosecutions and possibly convictions.	Recommendation to establish measures that would allow law enforcement authorities when investigating ML to postpone or waive arrest of suspected persons and/or the seizure of cash so as to identify other persons involved in the commission of the offence:— On 28 August 2012, the Director of the ONDCP put into effect standard operating procedures titled "Controlled Delivery and Delivery Under Surveillance of Illegal Drugs and Any Kind of Good or Commodity" for the implementation of the controlled delivery of illegal drugs and contraband by ONDCP Officers. The SOP authorizes postponement of arrest or seizure for purposes of gathering information on persons such as co-conspirators who are not presently identifiable as being involved in the transfer of illegal items. Recommendation for law enforcement authorities to review their strategy in combating ML so as to adapt a more aggressive approach to generate more ML prosecutions and convictions: — The Director of ONDCP is in frequent contact with the Commissioner of Police and the Comptroller of Customs in an effort to enhance the effectiveness of cooperation between the three law enforcement authorities with a view to securing more ML prosecutions which could lead to increased ML convictions. As a result of the closer contact between the ONDCP, the Police and Customs, there has been a jump in the number of cash seizures, particularly at the airport. The Police instituted a money laundering prosecution. Within the space of 10 months (from December 2011 to September 2012) the ONDCP successfully charged three	❑	❑

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			persons with money laundering all of whom were convicted. The ONDCP is now investigating a serious organized criminal group for money laundering also facilitation of money laundering.		
28. Powers of competent authorities	C				

29. Supervisors	PC	• The Registrar of Insurance and the Registrar of Co-operative Societies should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirement.	Requirement that the Registrar of Insurance and the Registrar of Co-operative Societies have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirement:— It is important to distinguish ensuring compliance to AML/CFT as opposed to enforcement and sanctions which falls within the ONDCP's mandate to prosecute AML/CFT matters pursuant to the Money Laundering and the Prevention of Terrorism Acts. The Superintendent of Insurance has conducted several on-site examinations in 2012 of insurance companies. In that regard, an AML/CFT assessment forms part of the overall examination procedures as a means of practical implementation In September, 2012 the Superintendent of Insurance disclosed that FSRC in its assessment of the companies uses a risk based approach centered on a particular international framework. The compliance with AML/CFT was also addressed in terms of the on-site examinations. Pursuant to Section 23 of the Co-operatives Societies Act, No. 9 of 2010, the Supervisor of Co-operatives may suspend the registration of a co-operative for failing the requirements of the Money Laundering (Prevention) Act 1996 and the Prevention of Terrorism Act, 2005 and the Proceeds of Crime Act, 1993. The enforcement powers and sanctions with respect to AML/CFT requirements are prescribed in the MLPA and the PTA and rest with the Director of the ONDCP and the Supervisory Authority and can be		

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			applied to insurance companies and cooperatives. Section 3 of the MLPA 2010 also amends Section 11 of the principle Act to give the SA powers to apply administrative sanctions for breach of the Act, Regulations, Guidelines and or Directives.		

30. Resources, integrity and training	PC	• Antigua and Barbuda should consider filling the vacant positions within the ONDCP in order to strengthen its human resource capabilities. There is also need to increase the number of Investigators to complement the work of the staff of the Financial Investigations Unit. • The budgetary resources of the ONDCP should be increased to adequately cover training and the hiring of qualified staff. • The resources allocated to the Police, Customs, Immigration and Prosecutors should be reviewed so as to provide amounts that would enable them to perform their various functions. • The ONDCP should consider implementing a systematic training programme for its staff, particularly in the areas of ML investigations and Court procedures. This could be achieved by coordinating ML Workshops/Seminars on a regular basis. Customs, Immigration, Police and Coast Guard should be included in such training.	Recommendation to consider filling vacant positions within the ONDCP to s strengthen its human resources capabilities and increase the number of investigators to complement work of the FIU:— At December 2012, the ONDCP legal department was fully staffed with the addition of a second legal counsel. Additional personnel have successfully been recruited for the Financial Compliance Unit for supervision of financial institutions, and the Financial Investigations Unit. However, there have been both additions and departures from the organization. Therefore, the Director of the ONDCP is engaged in a continuous interview process to fill the vacancies in the ONDCP FIU as needed or as they open up, subject to budgetary constraints. Recommendation for budgetary resources of the ONDCP to be increased to adequately cover training and hiring of qualified staff:— The ONDCP has conducted several local training sessions and have participated in several overseas programmes to continue to build capacity within the institution The ONDCP relies heavily on international assistance in training and has been receiving training from UK SAT. There is already noticeable improvement in the performance of the FIU. Recommendation to review the budgetary resources for Police, Customs, Immigration and Prosecutors:— Resources allocated to the Police, Customs and Immigration and Prosecution are being reviewed. Confiscated assets deposited into the Forfeiture Fund will be used towards supplementing these resources.		

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			Recommendation that the ONDCP consider implementing a systematic training programme for its staff, particularly in the areas of ML investigations and Court procedures:— The ONDCP has initiated ~~a~~ systematic training programme for new recruits and continues to implement further developmental training for all officers of the FIU.		

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31. National cooperation	LC	• The level of co-operation amongst law enforcement could be improved. A more proactive approach should be adapted when sharing information. The Examiners found that contact is maintained in an ad hoc manner. • Antigua and Barbuda should consider establishing measures to allow Policy makers, the ONDCP, the FRSC and other competent authorities to meet continuously to discuss, develop and implement policies and activities to combat money laundering.	Recommendation that the level of co-operation amongst law enforcement be improved and a more proactive approach adapted when sharing information:— There is a National AML/CFT Oversight Committee headed by the Attorney General to review and coordinate AML/CFT efforts of the jurisdiction. The attendance at SIP training by ONDCP and FSRC members has contributed to create an enhanced working relationship in AML/CFT matters. Subsequent to this training a briefing was presented to the AML/CFT Oversight committee on the way forward Recommendation to establish measures to allow policy makers, the ONDCP, the FSRC and other competent authorities to meet continuously to discuss, develop and implement policies and activities to combat ML:— The Director of ONDCP is in frequent communication with the Commissioner of Police in order to coordinate ML and FT matters. The Director of ONDCP is in communication with the Comptroller of Customs in order to coordinate ML and FT matters. ONDCP and FSRC have scheduled quarterly meetings to discuss implementation of AML/CFT policies and to assess the effectiveness of implementation of the new MOU.	❑	❑

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32. Statistics	PC	• Antigua and Barbuda should consider instituting measures to review the effectiveness of their system for combating ML and FT. In the process of reviewing shortcomings would be highlighted and brought to the attention of the Authorities for appropriate action. • Law enforcement Authorities should take particular steps to ensure that their statistics in relation to their operations are comprehensive and review friendly. These statistics should be able to clearly indicate the effectiveness of the whole preventive and repressive AML/CFT systems and reflect the impact of STR in investigations, prosecutions and convictions.	Recommendation to consider having measures to review the effectiveness of the system for combatting the ML and FT :— Individual law enforcement agencies as well as the National AML/CFT Oversight Committee are reviewing the ML/FT statistics to determine the effectiveness of the regime, with a view to advising the Government on the appropriate measures for improvement The ONDCP presently has in place statistics designed to reflect the impact of STR's on investigations, prosecutions and convictions. The FSRC now keeps statistics on money value transmission services. Recommendation:— that law enforcement authorities should take particular steps to ensure that their statistics in relation to their operations are comprehensive and review friendly:— Action is underway to generate and collate the statistics of the principal law enforcement agencies, to make them review friendly and to organize them so as to best reflect the effectiveness of the AML/CFT system and the impact of actions taken. The ONDCP annual reports should provide necessary statistics to demonstrate the effectiveness of the measures it has taken.	❑	❑

33. Legal persons–beneficial owners	NC	• Appropriate measures should be taken to ensure that bearer shares are not misused for money laundering and the principles set out in criteria 33.1 and 33.2 apply equally to legal persons that use bearer shares. • Statutory obligation to provide information as to the ownership and management of partnerships should be put in place.	Recommendation that appropriate measures be taken to ensure that bearer shares are not misused for ML and the principles set out in criteria 33.1 and 33.2 apply equally to legal persons that use bearer shares:— The International Business Corporations (Amendment) Act 2010 (in force 27 January 2010): (1) prohibits transfer of bearer shares otherwise than in accordance with the Act (2) voids the transfer of disabled bearer shares and removes their entitlement to vote or share assets (3) deposits bearer shares with a custodian (4) makes existing bearer shares not deposited with a recognized custodian subject to mandatory redemption (5) empowers the FSRC to apply for a winding up where after the transition date bearer shares have not been deposited with a recognized custodian. (6) sets out the procedure for depositing bearer shares with a custodian (7) sets out the procedure for transfer of bearer shares (8) sets out the procedural requirement where there is a change of beneficial ownership (9) addresses the situation and sets out the procedure where a recognized custodian no longer wishes to hold a bearer share	❑ Relevant provisions are to be drafted for AML/CFT obligations for partnerships.	

			IMPLEMENTATION:— The FSRC has nineteen **(19)** pending licences for corporate management and trust service providers. The licensing period for corporate management and trust service providers ended March 31, 2011. The FSRC's licensing process takes into consideration licensing of custodians of bearer shares which will address all the matters herein. The FSRC is conducting an internal review to prepare a report in which it will identity the corporate management and trust services providers who have incorporated companies which have been authorised to issue bearer shares to ensure that that they comply with the IBCA and the CMTSPA. The Corporate Management and Trust Service Providers Act, 2008 (CMTSPA) provided for the FSRC to maintain a general review of corporate management and trust service providers and to examiner licensees to ensure that they are complying with the IBC Act, the International Foundations Act, the Companies Act, the MLPA and the PTA. Most recently, the Authorities have indicated that the CMTSPA also captures lawyers and accountants under the AML/CFT regime and noted that the International Limited Liability Companies Act, 2007 (ILLCA) and the International Trust Act, 2001 are two additional statutes under which corporate management and trust services providers can perform services. **Under the provisions of Section 139A of the International Business Corporations (Amendment) Act, Cap. 222, any bearer share currently held by**		

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			anyone other than a licensed custodian is deemed to be disabled. Requirement for statutory obligation to provide information as to the ownership and management of partnerships be put in place:— Relevant provisions are to be drafted for AML/CFT obligations for partnerships.		
34. Legal arrangements – beneficial owners	PC	• Measures should be put in place for either registration or effective monitoring of local trusts in accordance with FATF information requirements. • The Authorities should consider including adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trusts.	Requirement to put in place either registration or effective monitoring of local trusts in accordance with FATF information requirements:— Legislation governing domestic trusts is being developed which will address the beneficial ownership and control of legal arrangements. Requirement to include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trusts:—	❑ Legislation governing domestic trusts is being developed which will address the beneficial ownership and control of legal arrangements. .	
International Cooperation					

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35. Conventions	LC	• Antigua and Barbuda has ratified the Vienna, Palermo and Terrorist Financing Conventions and there is enacted legislation that implements substantial portions of these Conventions. There are however some provisions that are not covered adequately as stated in discussions on Rec. 1 and SR. II in section 2 of this Report. For example, with regard to the Vienna Convention, the MDA must address all the precursor chemicals mentioned in the Tables of the Convention. Additionally, with respect to the Palermo Convention, the POCA in particular should be revisited with a view to either amending it to capture predicate offences to money laundering and financing of terrorism offences, or repealing it. Provision should also be made for the transfer of proceedings pursuant to Article 8 of the Vienna Convention.	Requirement with respect to the Vienna Convention for the MDA to address all the precursor chemicals mentioned in the Tables to the Convention:— See response above to Recommendation 1 – ML offense, at bullet 2. Recommendation with respect to the Palermo Convention for the POCA in particular to capture predicate offences to ML and FT offences:— See response above to Recommendation 1 – ML offense, at bullets 1 and 3. Provisions to be drafted for transfer of proceedings according to Art. 8 of the Vienna Convention.	❑	❑
36. Mutual legal assistance (MLA)	C			❑	❑
37. Dual criminality	C				

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38. MLA on confiscation and freezing	LC	• Antigua and Barbuda has a robust mutual legal assistance regime. However, there is need for the establishment of a forfeiture fund into which the confiscated proceeds of terrorism activity can be deposited. • Provision should be made for the sharing of assets confiscated in relation to terrorism offences.	Requirement for the establishment of a forfeiture fund into which the confiscated proceeds of terrorism activity can be deposited:— The Prevention of Terrorism (Amendment) Act 2010 (in force 15 April 2010) provides for the creation of a forfeiture fund for confiscated terrorism assets. **A forfeiture fund for confiscated terrorism assets has been established.** Recommendation for provision to be made for the sharing of assets confiscated in relation to terrorism offences:— As Antigua and Barbuda has a successful history of asset sharing in ML cases, it is expected that it will be able to do so for FT cases should one arise. Meanwhile, precedents for sharing confiscated assets are being studied.		
39. Extradition	C	• There appears to be a high level of cooperation between Antigua and Barbuda and foreign States with regard to extradition matters. However, the Authorities should seek ways to limit the delay in extradition procedures. The latter commend does not affect the rating of this Recommendation.			

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40. Other forms of co-operation	LC	• Antigua and Barbuda should consider introducing the relevant legislative framework that would allow the FSRC to exchange information directly with its foreign counterparts.	Recommendation for the introduction of a relevant legislative framework that would allow the FSRC to exchange information directly with its foreign counterparts:— The International Business Corporations (Amendment) Act 2008, section 5 replaced section 373, which provides for the FSRC to disclose information concerning the ownership, management, operations and financial returns of a licensed institution to enable a regulatory authority to exercise its regulatory functions.		
9 Special Recommendations					
SR.I Implement UN instruments	PC	• All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452.	Recommendation that provisions of the UN Security Council Resolutions be fully implemented, for example authorizing access to funds for meeting the defendant's basic expenses and certain fees in accord with UNSCR 1452— The Prevention of Terrorism (Amendment) Act 2008, section 2, (in force 8 January 2008) clarifies the meaning of "person" and "entity" in accordance with the UN Convention. The Prevention of Terrorism (Amendment) Act 2008, section 7 makes provisions for access to frozen funds by third parties.	❑	❑

SR.II Criminalize terrorist financing	PC	• In accordance with Article (1), the term "funds" under the PTA should be defined, and it should include the wide range of assets contained in the definition under the Convention. • The PTA should be amended so that the mental elements of knowledge and intent should extend to both individual terrorists and terrorist groups. • The deemed money laundering offences under section 9 of the PTA should be revisited with a view to determining whether the creation of specific money laundering terrorism offences is necessary. The Antigua and Barbuda Authorities should also consider whether the creation of these offences in any way limits the effectiveness of the financing of terrorism mechanism under the PTA. • While the terms of imprisonment are for relatively long periods, given the gravity of terrorist offences, the Government of Antigua and Barbuda should consider making the sanctions more prohibitive by including large fines and an obligation to compensate victims.	Recommendation for the term "funds" under the PTA to be defined, and include the wide range of assets contained in the definition under the Convention:— The Prevention of Terrorism (Amendment) Act 2008, section 2 was passed and contains a definition of "funds" fully consistent with the UN Convention. Recommendation to amend the PTA so that the mental elements of knowledge and intent should extend to both individual terrorists and terrorist groups:— The Prevention of Terrorism (Amendment) Act 2008, section 2(2) provides for the intentional element to be inferred from objective factual circumstances. The Prevention of Terrorism (Amendment) Act 2008, section 2 defines "person" to include "group" and as a result all the PTA offences making reference to person now cover groups as well as individual terrorists. Recommendation that the deemed ML offences under the PTA should be revisited to determine whether the creation of specific ML terrorism offences is necessary. The Authorities should also consider whether the creation of these offences in any way limits the effectiveness of the FT mechanism under the PTA:— **In the Money Laundering (Prevention) (Amendment) Act No. 1 of 2013 (in force 21 March 2013), section 1(c) defines money laundering offence to include: offences under sections 5 – 10, 12 of the PTA and conspiracy to commit or participation in those offences.** Recommendation that given the gravity of terrorism offences the Government should	❑	❑

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			consider making the sanctions more prohibitive by including large fines and an obligation to compensate victims:— In the Prevention of Terrorism (Amendment) Act 2008 (in force 8 January 2009), section 8 provides for fines of $500,000 for offences under the Act. In the Prevention of Terrorism (Amendment) Act 2010 (in force 15 April 2010), section 10 provides for fines of $1,000,000 for offences under the Act.		

SR.III Freeze and confiscate terrorist assets	NC	• The PTA should be amended to include a definition of "funds" in the terms provided under the Financing of Terrorism Convention. Additionally, the funds or other assets should extend to those wholly or jointly owned or controlled directly or indirectly by terrorists, and they should cover funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by terrorists, in keeping with the requirements of UNSCRs 1267 and 1373. • Procedures for de-listing should be publicly known. At a minimum, the order declaring a person a specified entity should be accompanied by a statement as to the recourses available to him in respect of de-listing. • The Guidelines for reporting suspicious transactions with regard to terrorist financing should be reviewed so as to create a uniform reporting structure. • Specific provision should be made whereby a specified entity can apply to have funds unfrozen. Similar provision should also be made for persons who have been affected inadvertently by a freezing mechanism. • While it is possible that access to terrorist funds for the purpose of meeting basic expenses and certain costs may be authorised in the case of deemed terrorist money laundering offences, there is no express provision under the PTA in this regard. Accordingly, the PTA should be amended to	Recommendation that the PTA be amended to include a definition of "funds" in the terms of the Financing of Terrorism Convention, that the funds or other assets should extend to those wholly or jointly owned or controlled directly or indirectly by terrorists, and cover funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by terrorists in keeping with UNSCRS 1267 and 1373:— The Prevention of Terrorism (Amendment) Act 2008, section 2 contains a definition of "funds" fully consistent with the UN Convention. Requirement for de-listing to be publicly known:— Section 4 of the PTA makes provision for a specified entity to apply to the Commissioner of Police or Director of the ONDCP for revocation of the order listing him, and The Prevention of Terrorism (Amendment) Act 2010 (in force 15 April 2010) section 4 inserts Section 4A which makes transmission of application for de-listing to the Attorney General, section 5A for adjudication by the Attorney General, and section 5B providing right to apply to the High Court to be de-listed. Requirement for guidelines for reporting suspicious transaction regarding FT be reviewed to create a uniform reporting structure:— The Prevention of Terrorism (Amendment) Act 2010, section 43 provides for the Director of ONDCP to issue Guidelines to financial institutions for the effective implementation of the Act and Regulations. The Money Laundering & Financing of Terrorism Guidelines (MLFTG) has been amended to insert 'Part **II** – The Financing	❑	❑

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		allow access to funds in accordance with UNSCR 1452. • The seizure mechanism under the PTA should include like provisions. • Specific measures should be put in place to ensure that the communication of the Attorney General's order in relation to the freezing of terrorist funds to the Director of the ONDCP does not result in delay in the communication of the directive to the financial institution. The measures should also ensure that the element of secrecy of the communication is not compromised. • Express mention should be made under the PTA for the prevention or voiding of actions or contracts where the property is the subject of terrorist activity. • The Antigua and Barbuda Authorities should review the deeming money laundering provision under section 9(3) of the PTA. Greater clarity is needed as to the application of the MLPA with regard to terrorist offences. Ideally, special consideration must be given to whether it is necessary to deem these offences as money laundering terrorist offences. • Given the gravity of terrorist offences and the likely extent of harm to innocent third parties, administrative or legislative provisions should	of Terrorism', which are Guidelines to financial institutions for the better implementation of the requirements under the Prevention of Terrorism Act. Part II, "Chapter IV – Reporting Suspicious Activity and Possession of Terrorist Property" sets out guidance for a uniform reporting structure. Requirement for provision whereby a specified entity or a person inadvertently affected by a freezing mechanism can apply to have funds unfrozen:— The Prevention of Terrorism (Amendment) Act 2008, section 7 was passed and makes provisions for funds to be unfrozen on application of third parties. Requirement for express provision under the PTA for access to terrorist funds to meet basic expenses and certain costs in accord with UNSCR 1452:— The Prevention of Terrorism (Amendment) Act 2008, section 7 makes provisions for access to restrained funds for meeting basic expenses and costs by persons with an interest in the property. Requirement that the seizure mechanism include like provisions:— The Prevention of Terrorism (Amendment) Act 2008, section 7 makes provisions for access to restrained funds for meeting basic expenses and costs by persons with an interest in the property. Requirement that communication of the Attorney General's order freezing terrorist		

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		consider providing for the compensation of victims.	funds to the Director of the ONDCP does not result in delay in communication of the directive to financial institutions. The measure should also ensure the element of secrecy of communication is not compromised:— The Prevention of Terrorism (Amendment) Act 2010, section 4 inserts section 2B into the PTA which provides for the immediate communication of an Order to a financial institution by the Attorney General. The Attorney General's Order includes a requirement for confidentiality to be maintained. The Prevention of Terrorism (Amendment) Act 2010, section 43 provides for the Director of ONDCP to issue Guidelines to financial institutions for the effective implementation of the Act and Regulations. The Money Laundering & Financing of Terrorism Guidelines (MLFTG) has been amended to insert 'Part **II** – The Financing of Terrorism', which are Guidelines to financial institutions for the better implementation of the requirements under the Prevention of Terrorism Act. Requirement for express mention in the PTA for the prevention or voiding of actions or contracts where the property is the subject of terrorist activity:— The Prevention of Terrorism (Amendment) Act 2010, section 7 inserts section 37A		

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			which prohibits the disposing of or dealing with forfeited property. The Prevention of Terrorism (Amendment) Act 2010, section 45 inserts section 4A into the PTA which renders transfers of terrorist property after the declaration of a specified entity to be null and void. Recommendation to review the deeming ML provision under section 9(3) of the PTA and for greater clarity as to the application of the MLPA with regard to terrorist offences, and to whether it is necessary to deem these offences as ML terrorist offences:— **(See response above to R. 29 – SR.II – Criminalize terrorist financing, bullet 3).** Recommendation that given the gravity of terrorist offences and likely extent of harm to innocent third parties, administrative or legislative provisions should consider providing compensation for victims:— The Prevention of Terrorism (Amendment) Act 2008, section 4 provides for compensation out of forfeited funds to persons who have suffered loss as a result of the commission of a PTA offence.		

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SR.IV Suspicious transaction reporting	NC	• The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism. • The obligation to make a STR related to terrorism should include attempted transactions.	Requirement that reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organizations or those who finance terrorism:— The Prevention of Terrorism (Amendment) Act 2010, section 6 amends section 34(4), which provides for reporting of transactions and attempted transactions suspected of being related to terrorism and conducted by or on behalf of a terrorist group or financier of terrorism. Requirement that the obligation to make an STR related to terrorism should include attempted transactions:— The Prevention of Terrorism (Amendment) Act 2010, section 6 amends section 34(4), which provides for reporting of attempted transactions and attempted transactions suspected of being related to terrorism.	❑	❑
SR.V International cooperation	LC	(See Summary of Factors for Rating): The provisions of Rec. 38 have not been met with regard to the establishment of a Forfeiture Fund and the sharing of confiscated assets.	Requirement for establishment of Forfeiture Fund and the sharing of confiscated assets:— **(See above response to 38. MLA on confiscation and freezing.)**	❑	❑

SR.VI AML requirements for money and value transfer services	NC	• Registered MVT service operators should be required to maintain a current list of agents which must be available to the designated competent authority. • Sanctions should be applicable to all of the criteria of SRVI.	Recommendation for registered MVT service operators to be required to maintain a current list of agents which must be available to the designated competent authority:— In The Money Services Business Act No. 7 of 2011 (in force 16 June 2011), section 41(1)(a) provides: "It is the duty of the Commission to ensure the proper administration of the Act and without limiting the generality of the foregoing shall — (a) maintain a current register of the names and addresses of licensed money services and their directors and beneficial shareholders their locations and their sub-licensees, and be responsible for ensuring compliance with licensing requirements. Requirement that sanctions should be applicable to all of the criteria of SRVI:— Under the Money Services Business Act 2011, Section 34 provides for criminal prosecution of a person carrying on business without a licence; Section 35 provides for suspension of a licence; section 36 provides for revocation of a licence; Section 39(1) provides that if a licensee: is unable to meet its obligations; contravenes the Act; fails to satisfy the criteria of prudent management, refuses to cooperate with the Commission, etc., the Commission under subsection 39(2) may impose conditions with which the licensee must comply and may revoke the licence. Section 39(3) provides that "a person who fails to comply with a requirement of the Commission in the exercise of a function under subsection (2) commits and offence and is liable on summary conviction to a fine of $100,000 or to imprisonment for a term of two years or both. .	❑	❑

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SR.VII Wire transfer rules	NC	• Requirements for wire transfers in the MLFTG should be made enforceable in accordance with the FATF Methodology.	Requirement for wire transfers provision in the MLFTG to be enforceable in accordance with the FATF methodology:— The Money Laundering (Amendment) Regulations 2009, section 5(7) inserts regulation 4(3)(m) into the MLPR which requires accurate and meaningful originator information in relation to wire transfers. [See NOTE 1 above **(under 5. Customer due diligence)** in relation to enforceability of the regulations]. [See also NOTE 3 item (2) above **(under 5. Customer due diligence)** in relation to enforceability of the provisions under the ML/FTG, paragraphs 3.4 to 3.13 inserted by the Update of 31 July 2006 and amended by paragraph 3 of the Update of 20 July 2009].		

SR.VIII Nonprofit organizations	NC	• The Authorities should review the adequacy of domestic laws and regulations that relate to non-profit organisations. • Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented. • Periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted. • A regulatory framework governing friendly societies must be implemented. • The Antigua and Barbuda Authorities should monitor more closely the NPO sector's international activities. • Programmes should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse. • Measures should be instituted to protect NPOs from terrorist abuse. • There should be adequate provisions for record keeping in the NPO sector. • The period for which records must be maintained by NPOs must be prescribed. • Sanctions for violation of oversight measures or rules in the NPO sector should be dissuasive.	Recommendation that Authorities review the adequacy of domestic laws and regulations that relate to non-profit organisations:— A review of the domestic legislation on NPOs was undertaken, and a decision taken to amend the Friendly Societies Act. Requirement that measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of the no-profit sectors for identifying NPOs at risk of being misused for terrorist financing should be implemented:— Requirement for periodic reassessment of new information on the sector's potential vulnerabilities to terrorist activities should be conducted:— Antigua and Barbuda is in the process of undergoing a National Risk Assessment, after which, it will be in a better position to deal with periodic reassessments of the sector's potential vulnerabilities to terrorist activities. Meanwhile, the ONDCP upon receipt of the Annual Returns of societies under section 4 of the Friendly Societies Act, Cap. 184 (amended by section 4 of the Friendly Societies (Amendment) Act 2104 will use those resources to conduct its own periodic risk assessment of the sector. Requirement that a regulatory framework governing friendly societies must be implemented:— A regulatory framework was created by The Friendly Societies (Amendment(Act 2014 (in force 8 January 2015). Requirement to monitor closely the NPO sector's international activities:— Section 8 of the Friendly Societies (Amendment) Act 2014 amends section 25 of the	❑ Sensitization programs for the NPO sector are scheduled to commence in June 2015.	

			Friendly Societies Act, Cap. 184 by inserting subparagraph ©(iii) which requires financial records to be kept which explain transactions within or outside Antigua and Barbuda. Section 4 of the 2014 Act amends section 4 of the principal Act to require a copy of the Annual Return of societies to be provided to the Director of the ONDCP. Recommendation that programmes should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse:— Sensitization programs for the NPO sector are scheduled to commence in June 2015. Requirement that measures be implemented to protect NPOs from terrorist abuse:— Section 3 of the Friendly Societies (Amendment) Act 2014 amends section 3 of the Friendly Societies Act, Cap. 184 Act making the Registrar of Intellectual Property and Commerce Office the Registrar of Friendly Societies. Requirement that there be adequate provisions for record keeping in the NPO sector:— Section 8 of the Friendly Societies (Amendment) Act 2014 amends section 25 of the Friendly Societies Act, Cap. 184 and requires a society to keep a record of its purpose, objectives and activities, the identity of the persons who control or direct its activities, and keep financial records showing the sources of its gross income and showing and explaining its transactions within and outside Antigua and Barbuda. Requirement that the period for which records must be maintained by NPOs must be prescribed:— Section 8 of the Friendly Societies (Amendment) Act 2014 amends		

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			section 25 of the Friendly Societies Act, Cap. 184 which requires records to be kept for 5 years. Requirement that sanctions for violation of oversight measures or rules in the NPO sector should be dissuasive:— Section 71(1)(b) of the Friendly Societies Act, Cap. 184 empowers the Registrar with the approval of a Judge of the High Court to cancel the registry of a society on proof that registry has been obtained by fraud or mistake or that the society exists for an illegal purpose or has wilfuly and after notice from the Registrar violated any of the provisions of this Act or has ceased to exist, or under section 71(2) of the Act suspend the registration of a society for nor more than three months, renewable. Offences under section 77 of the Act, include failure to give notice, send a return or document, do or allow anything which the Act requires to be given, sent, done or allowed to be done Section 84 of the Act provides a penalty of one thousand dollars for an offence under the Act for which an express penalty is not provided. Under section 85 of the Act, the penalty for amalgamation, transfer or dissolution of a society other than as provided by the Act is three months imprisonment.		

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SR.IX Cash Couriers	PC	• Customs, the ONDCP and other law enforcement agencies should work closely together to investigate cases of cross border transportation of currency or bearer negotiable instruments in order to determine its country of origin. Bearing in mind that such currency may be the proceeds of criminal conduct committed in the said country. • The Examiners are of the view that the ONDCP should be more involved and if possible take control of the investigation with respect to cash seized at the ports of entry and where appropriate initiate money laundering proceedings against the culprits.	Recommendation that the ONDCP and other law enforcement agencies should work closely together ti investigate cases of cross border transportation of currency or bearer negotiable instruments in order to determine its country of origin:— The ONDCP has enhanced and continues to enhance cooperation with Customs as well as airport security services in relation to the transportation of cross border currency and bearer negotiable instruments. Recommendation that the ONDCP should be more involved and if possible take control of the investigation with respect to cash seized at the ports of entry and where appropriate initiate money laundering proceedings against the culprits:— The ONDCP now takes the lead role in matters of cross border cash seizures.		