



# Ninth Follow-Up Report

## Barbados

### May 30, 2013

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## BARBADOS – NINTH FOLLOW-UP REPORT

### I. Introduction

1. This report is the ninth follow-up report by Barbados to the Caribbean Financial Action Task Force (CFATF) Plenary on the measures taken to implement the recommended action listed in the third mutual evaluation report (MER) of Barbados which was adopted in May 2008. Barbados has submitted eight previous follow-up reports in May and October 2009, May and November 2010, May and November 2011 and May 2012 and November 2012, respectively. In accordance with present procedures the following is a report on measures taken by Barbados to deal with the recommended actions in those Financial Action Task Force (FATF) Recommendations rated partially compliant (PC) or non compliant (NC). Details on the actions are outlined in Annex 1 of this report

2. Barbados received ratings of PC or NC on nine (9) of the sixteen (16) Core and Key Recommendations and largely compliant (LC) or compliant (C) on the remaining seven (7) Core and Key Recommendations as follows:

**Table 1: Ratings of Core and Key Recommendations**

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	LC	PC	PC	PC	NC	LC	PC	LC	LC	PC	LC	PC	C	PC	LC	PC

3. With regard to the other non-core or key Recommendations, Barbados was rated partially compliant or non-compliant on eighteen (18), as indicated below.

**Table 2: Non Core and Key Recommendations rated Partially Compliant and Non-Compliant**

Partially Compliant (PC)	Non-Compliant (NC)
R. 6 (Politically exposed persons)	R. 12 (DNFBP – R.5,6,8-11)
R. 8 (New technologies & non face-to-face business)	R. 16 (DNFBP – R.13-15 & 21)
R. 9 (Third parties and introducers)	R. 21 (Special attention for higher risk countries)
R. 11 (Unusual transactions)	R. 24 (DNFBP – regulation, supervision and monitoring)
R. 14 (Protection & no tipping off)	SR. VI (AML requirements for money value transfer services)
R. 15 (Internal controls, compliance & audit)	
R. 22 (Foreign branches & subsidiaries)	
R. 25 (Guidelines & Feedback)	
R. 30 (Resources, integrity and training)	
R. 33 (Legal persons – beneficial owners)	
R. 34 (Legal arrangements – beneficial	

owners)	
R. 38 ( MLA on confiscation and freezing)	
SR. VII (Wire transfer rules)	

4. The following table is intended to provide insight into the size and risk of the main financial sectors in Barbados.

**Table 3: Size and integration of Barbados' financial sector  
As at September, 2012**

		<b>Banks (Commercial)</b>  US\$000's	<b>Other Credit Institutions (Deposit Taking)</b>  US\$000's	<b>Securities  (Mutual Funds including sub- funds)  As at Dec 2012  US\$000's</b>	<b>Insurance*</b>  US\$000's	<b>TOTAL</b>  US\$'000's
<b>Number of institutions</b>	Total #	6#	<sup>1</sup> 41	23	79 -Local	149
<b>Assets</b>	US\$000's	6,004,249	790,221,521	1,106,502,214	1,233,317,330	3,136,045,314
<b>Deposits</b>	Total: US\$000's	4,085,600	531,706,662	N/A	N/A	535,792,262
	% Non- resident	6.78% of deposits	Unavailable	N/A	N/A	
<b>Internation al Links</b>	<sup>2</sup> % Foreign- owned:	100% of assets	88.3% of assets	% of assets	7 Foreign Companies are required to hold assets in B'dos	% of assets
	#Subsidiari es abroad	3	0			3

# Since March 2012, two commercial banks were amalgamated

\* Information as at December 31, 2011

<sup>1</sup> Since March 2012, one of the other deposit taking creditamalgamated with one of the comercial banks

<sup>2</sup> Foreign owned refers to the complete or majority (>50%) ownership by companies whose headquarters are not in Barbados.

## **Summary of progress made by Barbados**

5. Since the MER, the authorities in Barbados began to assess the various means to achieve compliance. Some measures included legislative amendments to specific laws and proposals for new legislation. Arising from these measures, it was reported in May 2011 that the International Corporate and Trust Service Providers Act (ICTSPA), the Transnational Organized Crime (Prevention and Control) Act (TOCPCA), the Companies (Amendment) Act (CAA) and the Financial Services Commission Act (FSCA) had been enacted. As a result of the passage of the FSCA, the Financial Services Commission (FSC) came into effect on April 1, 2011. The Money Laundering and Financing of Terrorism (Preventions and Control) Act (MLFTA 2011) became enforceable in November 2011 and contains amendments to the relevant sections of the Securities Act (SA), the Mutual Assistance in Criminal Matters Act (MACMA), the Insurance Act, the Exempt Insurance Act, the Cooperative Societies Act (CSA), the Proceeds of Crime Act (POCA), the International Business Companies Act, the Drugs (Prevention and Control) Act, the Charities Act, the International Trusts Act, the Societies with Restricted Liability Act and the Mutual Funds Act.

6. The enactment of the MLFTA 2011 resulted in substantial improvement in the level of compliance with the examiners' recommendations i.e. Recs. 3, 4, 5, 10, 12, 14, 15, 16, 23, 33, 36, 38, SR I, SR V which includes eight (8) key and core Recommendations. Recs. 6, 8, 9, 11, 21, 22, 24, 34 and SR. III remained outstanding including one key Recommendation. Given the above, Barbados was removed from enhanced to expedited follow-up within the regular follow-up process.

7. The Follow-Up Report of May 2012 noted the improved level of compliance of Recs. 4, 23, and 38. With regard to other Recommendations, the main means of achieving compliance consisted of proposed revision of AML guidelines, developing amendments to relevant laws, and discussions among the appropriate competent authorities with regard to the monitoring regime for international trusts and the regulatory framework for money value transfer service providers.

8. The Follow-Up Report of November 2012 noted that the level of compliance of Recs. 6, 8, 9, 11, 21, 22, and 30 had improved. The FSC issued in October 2012 the Anti-Money Laundering/Combating Terrorist Financing Guideline for financial institutions regulated by the FSC (FSC AML/CFT Guideline). The FSC AML/CFT Guideline was issued pursuant to subsections 53 (1) (d) and (e) of the FSCA. With regard to other Recommendations, measures were implemented to formulate proposals for the establishment and supervision of the DNFBP regime and draft guidelines. Proposed legislation including a Prevention of Corruption Bill was in Parliament and a Cabinet Paper concerning regulations to the ICTSPA was before Cabinet.

9. Since the Follow-Up Report of November 2012, the Prevention of Corruption Act (PCA) was enacted in December 2012. The Act becomes enforceable once it is proclaimed which is due shortly. Additionally, draft Regulations to the ICTSPA are currently under review by the Chief Parliamentary Counsel.

10. Parliament was dissolved on February 12, 2013 for general elections which were held in Barbados on February 21, 2013.

11. The Plenary in November 2012 in the Virgin Islands decided that countries in the expedited follow-up process would be required to achieve substantial progress on outstanding recommendations and report back to the Plenary in May 2013 and must ensure full compliance with all outstanding key and core recommendations by November 2013. Given the above, this report will focus on the status and any progress made in all outstanding recommendations. Additionally, in view of the November 2013 deadline, recommended measures which are still outstanding in the Key and Core recommendations will be identified so Barbados is aware of what needs to be completed by the deadline. As already indicated, Barbados received ratings of PC or NC on nine (9) of the sixteen (16) Core and Key Recommendations. As a result of measures implemented by the authorities, all the examiners' recommendations of three (3) of these Recommendations (Recs. 3, 4, 10) were fully met. The outstanding Core and Key Recommendations are Recs. 5, 23, 36, SR. I, SR. III, SR. IV.

## **Core Recommendations**

### **Recommendation 5**

12. As noted in Follow-Up Report of November 2011, the majority of the examiners' recommended actions were implemented via provisions in the MLFTA 2011. One outstanding recommendation includes a legislative requirement for financial institutions to determine who are the natural persons that ultimately control the customer, and defining the term "beneficial ownership" in the MLTFA with regard to the level of ownership. The authorities have referenced the interpretative note to Recommendation 10 of the revised FATF Recommendations as justification for no longer pursuing a legislative amendment to address the examiners' recommendation. Reference to the revised FATF Recommendations is not acceptable since the follow-up process is part of the Third Round of Mutual Evaluations and compliance is assessed using the Methodology utilized in the Third Round based on the previous Forty Recommendations and the Nine Special Recommendations, Consequently, this recommendation remains outstanding.

13. The other outstanding recommendation requires the extension of the enforceability of specific customer due diligence (CDD) requirements from the licensees of the Central Bank of Barbados (CBB) and the Supervisor of Insurance (SOI) to all financial institutions. These CDD requirements include the updating of data or documents collected under the CDD process, measures for high and low risk categories of customers, and timing of verification and failure to complete CDD and application of CDD requirements to existing customers. The authorities have referenced the consolidated enforceable AML/CFT Guideline issued by the FSC in October 2012. Regarding the first citation, section 6 of the FSC Guideline requires financial institutions to:

- Update identification records, on a risk-focussed basis, to ensure that all existing customer records are current and valid and conform to any new requirements (Section 6.7);
- Monitor account activity throughout the life of the business relationship in accordance with section 16 of the MLFTA; and
- Review the existing records if there is a material change in how the account is operated or if there are doubts about previously obtained customer identification data.

14. Section 5.1 requires every financial institution to develop and implement a risk rating framework which is approved by its Board of Directors as being appropriate for the type of products offered by the financial institution, and capable of assessing the level of potential risk each client relationship poses to the financial institution. The risk rating framework should include:

- i. The differentiation of client relationships by risk categories (such as high, moderate or low);
- ii. The differentiation of client relationships by risk factors, such as products, client type/profession, country of domicile, complexity of ownership and legal structure, source of business, type of assets, size and volume of transactions;
- iii. The type of transactions (e.g. cash transactions, adherence to client activity profile);
- iv. The KYC documentation and due diligence information requirements appropriate for each risk category and risk factor; and
- v. A process for the approval of the downgrading/upgrading of risk ratings.

15. Detailed guidance on enhanced and reduced due diligence is captured in sections 6.4 (e.g. trust accounts, NPOs, non-face-to-face business, introduced business, professional service providers, PEPs) and section 6.8, respectively. The latter provides examples of reduced due diligence as:

- Verifying the identity of the customer (e.g. if account transactions rise above a defined monetary threshold, or if it is largely impractical to do so);
- Reducing the frequency of customer identification updates;
- Reducing the degree of on-going monitoring and scrutinising transactions, based on a reasonable monetary threshold.

16. Under section 6, financial institutions must use reasonable measures to verify and adequately document the identity of the customer or account holder at the outset of a business relationship. Generally, financial institutions must not accept funds from prospective customers unless the necessary verification has been completed. In exceptional circumstances, where it would be essential not to interrupt the normal conduct of business (e.g. non face-to-face business and securities transactions), verification may be completed after establishment of the business relationship. Should financial institutions determine this to be an acceptable risk, they must retain control of any funds received until verification requirements have been met. If the requirements are not met, and the financial institution determines that the circumstances give rise to suspicion, it must make a report to the Authority.

17. Specific sector guidance regarding timing of verification includes:

- a. A relevant insurance business must verify the identity of the beneficial owner prior to opening the account or establishing the business relationship; verify and adequately document the identity of the customer or account holder at the outset of a business relationship (section 12).
- b. In the case of mutual funds, situations may arise in which satisfactory identification procedures have not been completed prior to the receipt of subscription funds or redemption settlement requests. Whether or not it is appropriate to transfer funds to a brokerage or similar account in the name of the Fund may depend on the nature of the investment. Mutual funds and administrators should ensure that they have implemented a tightly-controlled procedural framework to ensure that shares/units/interests are not applied to investors and that redemption proceeds are not settled without senior management approval, the basis for such approval to be recorded and such records retained. (section 12.2)
- c. For market actors (section 12.3), if verification is not achieved at the outset or within a reasonable time, the relationship should be re-evaluated and transactions should not proceed.

18. Section 6.7 deals with CDD requirements on existing customers and mandates financial institutions to establish policies for coping with an inability to obtain information and documentation, including terminating the relationship and making a suspicious report. Where customer documentation information is not forthcoming at the outset in the disclosure of the relationship, financial institutions should discontinue the transaction.

19. As indicated in the previous Follow-Up Report the FSC AML/CFT Guideline was deemed enforceable in accordance with FATF requirements and is applicable to the following financial institutions

- i. Persons engaged in relevant insurance business
- ii. A market actor, self-regulatory organization, participant and issuer of securities within the meaning of the Securities Act
- iii. A mutual fund and mutual fund administrator within the meaning of the Mutual Funds Act or any person who manages a mutual fund, and
- iv. A credit union within the meaning of the FSCA.

20. The FSC AML/CFT Guideline is modeled on the CBB AML/CFT Guideline and includes all the same AML/CFT requirements. As such the CDD requirements stipulated in the examiners' recommendations are included in the FSC AML/CFT Guideline. Further it was noted in the last Follow-Up Report that while the FSC Guideline extends the requirements to the financial institutions listed above, entities under the supervision of the International Business Unit of the Ministry of International Business and International Transport were not included. As such



the above measure only partially complies with the examiners' recommendation. Given the above this recommendation remains partially outstanding.

## **Key Recommendations**

### **Recommendation 23**

21. As a result of measures implemented by the authorities two of the four examiners' recommendations were met. The two remaining recommendations are for the Securities Commission to have the power to approve ownership of significant or controlling interests of the registrants under the SA and the development and implementation of a framework for regulating and supervising money value transfer (MVT) services that are not licensees of the Central Bank. The authorities advised in a previous report that the first recommendation was to be implemented by an amendment to the FSCA and the second was being discussed by the relevant authorities. The delay has been occasioned by a comprehensive review by the FSC of the regulatory framework in preparation for a Financial Sector Assessment Program in the 3<sup>rd</sup> quarter of 2013. Fifteen (15) consultative documents/Guidelines were issued since December 2012 and are in the process of finalization

### **Recommendation 36**

22. As noted in a previous report only two of the six examiners' recommended actions remain outstanding. These include recommendations that the authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflicts and negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT's with a broader range of countries. The authorities advised that they were in the process of reviewing the measures in light of existing regimes and the requirements of the recommendations. As a result, the two recommendations remain outstanding.

## **Special Recommendation I**

23. The outstanding recommendations include updating of corruption/bribery laws and implementing UN Resolution S/RES/1373(2001) by enacting legislation to establish a mechanism to freeze assets of UN designated entities. With regard to the updating of corruption/bribery laws, the authorities advise that the PCA was enacted in December 2012 and will shortly be proclaimed. Articles 8 and 9 of the Palermo Convention deal with corruption and are required to be implemented by FATF Special Recommendation I. The requirements of Article 8 of the Palermo Convention are set out in Part VI of the PCA which details solicitation, bribery and other corruption offences. The requirements of Article 9 of the Palermo Convention are stipulated in section 24 of the PCA mandating compliance with a Code of Conduct attached in a Schedule to the PCA and Part II of the PCA outlining the establishment of a Prevention of Corruption Commission and its independent functions. While the above provisions comply with the examiners' recommendation the PCA is not enforceable until it is proclaimed. Consequently, until the proclamation of the PCA, the recommendation remains outstanding. Additionally, there is no legislative provision implementing UN Resolution S/RES/1373(2001). Given the above the examiners' recommendations referred to above remain outstanding.

### **Special Recommendation III**

24. As indicated in a previous report three of the four examiners' recommendations are still outstanding. These recommendations include:

- incorporating into legislative requirements a special mechanism to enable the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee in keeping with the UN Security Resolution 1267 of 1999,
- critically reviewing the freezing/restraint and forfeiture regimes under the ATA and POCA with a view to amending the legislation to provide for a uniform approach, and
- reviewing the grounds needed to support an application for a freezing order under section 8(1) of the ATA, so as to ensure consistency between local cases and those arising from mutual legal assistance requests.

### **Special Recommendation V**

25. The examiners' recommendations stipulated with regard to Recommendations 36 and 37 are applicable along with the current compliance status. As such, as already indicated in the section dealing with Recommendation 36, two examiners' recommendations are outstanding and with regard to Recommendation 38, the outstanding examiners' recommendation is for consideration of the extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes.

### **Other Recommendations**

#### **Recommendation 6**

26. With regard to the only recommendation that the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance's AML/CFT Guidelines be enforceable on all financial institutions, as indicated in the previous Follow-Up Report the FSC issued in October 2012, a consolidated Guideline modeled on the CBB AML/CFT Guideline. The FSC AML/CFT Guideline was deemed enforceable in accordance with FATF requirements.

27. Section 6.4.6 of the FSC AML/CFT Guideline incorporates all the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance's AML/CFT Guidelines. It was noted that while the FSC Guideline extends the requirements to the financial institutions listed above in the section of this report dealing with Recommendation 5, entities under the supervision of the International Business Unit of the Ministry of International Business and International Transport were not included. As such the above measure largely complies with the examiners' recommendation. At present, the authorities advise that the FSC has commenced onsite examinations which address CDD and politically exposed persons.

#### **Recommendations 8**

28. The only recommendation is for the authorities to make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions. As noted before the FSC issued in October 2012 a consolidated enforceable Guideline modeled on the CBB AML/CFT Guideline. Section 6.4.3 of the FSC AML/CFT Guideline includes the exact requirements for non-face to face customers as stated in the CBB AML/CFT Guidelines. As previously noted while the FSC AML/CFT Guideline extends the requirements to the financial institutions listed above, entities under the supervision of the International Business Unit of the Ministry of International Business and International Transport are not included. While the FSC has commenced onsite examinations which address CDD, the risk based approach and non face to face the examiners' recommendation remains partially outstanding..

### **Recommendation 9**

29. The first recommendation requires the authorities to consider making the requirements for third party and introduced business as stipulated in the CBB AML/CFT Guidelines enforceable on all other financial institution. Section 6.4.4 of the FSC AML/CFT Guideline has the same requirements for third party and introduced business as the CBB AML/CFT Guidelines. As previously noted while the FSC AML/CFT Guideline extends the requirements to the financial institutions under the supervision of the FSC, entities under the supervision of the International Business Unit of the Ministry of International Business and International Transport are not included. As such the above measure only partially complies with the examiners' recommendation.

30. With regard to the recommendation for the authorities to consider advising financial institutions on countries from which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based, the authorities cite section 6.8 of the FSC Guideline as referring to the FATF's high risk and non-cooperative jurisdictions. However, section 6.8 deals with reduced customer due diligence rather than the requirements of the examiners' recommendation. Consequently, this recommendation remains outstanding. No information has been submitted with regard to the other recommendation for financial institutions to be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29 which also remains outstanding. .

### **Recommendation 11**

31. With regard to the recommendation that the requirements in the AML/CFT Guidelines should be enforceable on all financial institutions, section 7 of the FSC AML/CFT Guideline has the same monitoring requirements specified in section 8 of the CBB AML/CFT Guideline. As previously noted while the FSC Guideline extends the requirements to the financial institutions under the supervision of the FSC, entities under the supervision of the International Business Unit of the Ministry of International Business and International Transport are not included. The FSC onsite examinations address unusual and suspicious transactions. As such the above measure only partially complies with the examiners' recommendation.

32. The second recommendation requires the AML/CFT guidelines to specifically mandate the retention of the findings of the internal examinations of all transactions for at least five years. This requirement is specified in section 10.1 of the CBB AML/CFT Guidelines and sections 9.0 and 9.1 of the FSC AML/CFT Guideline. Consequently this recommendation has been met for those AML/CFT guidelines which have been issued. As already noted entities under the supervision of the International Business Unit of the Ministry of International Business and

International Transport are not included since revised AML/CFT Guidelines for these entities are still to be issued. As such, this recommendation remains partially outstanding.

### **Recommendation 33**

33. The recommendations require that the authorities should consider improving the present system for access to beneficial ownership information by establishing a complementing national registry and enact legislative requirements for legal persons to disclose beneficial ownership information. With regard to the first recommendation it was noted in a previous report that while international service providers were required under the ICTSPA to keep records on clients for at least 5 years from the date on which an international entity ceases to be the client of the international service provider, these records are not defined with specific reference to beneficial ownership information. The authorities indicated that the above requirement would be addressed in the format and content of forms prescribed under the ICTSPA for international service providers.

34. Additionally, it was noted while international service providers along with other financial institutions and DNFBPs under the MLFTA 2011 will be required to maintain beneficial ownership, this requirement does not include information on control. In a previous report, the authorities advised that the International Corporate and Trust Service Providers Regulations with prescribed forms had been drafted and were in the process of finalization. These regulations should comply with the outstanding recommendations. At present, the authorities have advised that a Cabinet Paper concerning the Regulations to the ICTSPA has been approved and draft legislation is with the Chief Parliamentary Counsel for review. . As such, the situation remains unchanged from the previous report.

### **Conclusion**

35. While Rec. 5 has reported an improved level of compliance since November 2012, this was due to a previously unacknowledged section of the FSC AML/CFT Guideline which was issued in October 2012. While the PCA has been enacted, it still has to be proclaimed to be considered enforceable and therefore valid for meeting the FATF requirements. The other reported measures such as the draft regulations to the ICTSPA and the onsite examination activity of the FSC while demonstrating Barbados' continuing efforts to comply with outstanding recommendations have no effect on compliance at this time. Plenary had decided that countries in the expedited follow-up process should achieve substantial progress on outstanding recommendations by May 2013. It is noted that Barbados had already achieved significant progress before November 2012. As such, it is recommended that the Plenary consider whether Barbados should be placed in the first stage of the enhanced process and a letter from the CFATF Chairman sent to Barbados drawing attention to the non-compliance with the FATF Recommendations. Barbados should report back to the Plenary in November 2013.



**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation  
Barbados**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>	Recommended Actions	Undertaken Actions
<b>Legal systems</b>				
1.ML offence	LC	<ul style="list-style-type: none"> <li>The crimes of human trafficking, corruption and bribery provisions falling within the designated categories of offences have not been adequately addressed in legislation.</li> <li>Extraterritoriality of predicate offences is not clearly defined.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should review the adequacy of the legislative coverage of human trafficking, corruption and bribery to ensure coverage of all designated categories of offences. .</li> <li>The different <i>mens rea</i> elements of money laundering offences under the MLFTA and section 19 of DAPCA should be harmonized.</li> <li>The language of section 4 of the MLFTA should be reviewed with a view to removing the current limitation which requires that there be an intention for the extraterritorial act to be also committed in Barbados</li> </ul>	<ul style="list-style-type: none"> <li>Section 8 of the Transnational Organised Crime (Prevention and Control) Act creates the offence of trafficking in persons. Section 9 creates the offence of smuggling of persons. The Transnational Organised Crime (Prevention and Control) Act was passed in Parliament as No. 3 of 2011.</li> </ul> <p>Part VI of the Prevention of Corruption Bill 2010 provides for the offences of bribery, solicitation and related offences. The Bill is under review by a Joint Select Committee of Parliament after having received feedback from several stakeholders.</p> <p>The Prevention of Corruption Act, 2012-31 was recently enacted and will shortly be proclaimed.</p> <p>An amendment to the DAPCA has been provided for in the MLFTA 2011 in the Fourth Schedule of the latter Act. . In section 19, delete subsection (1) and substitute the following:          "(1) Subject to subsection (2), if a person enters into or is otherwise concerned in an arrangement whereby (a) the retention or control by or on behalf of another "X", of X's benefits of drug trafficking is facilitated (whether by</p>

<sup>3</sup> These factors are only required to be set out when the rating is less than Compliant.

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation  
Barbados**

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>3</sup></b>	<b>Recommended Actions</b>	<b>Undertaken Actions</b>
				<p>concealment, removal from the jurisdiction, transfer to nominees or otherwise);</p> <p>or (b) X's benefits of drug trafficking are used to secure that funds are placed at X's disposal or are used for X's benefit to acquire property by way of investment,. Either</p> <p>(i) knowing or having reasonable grounds to suspect that X is a person who carries on or has carried on drug trafficking;</p> <p>(ii) being an individual, failing without reasonable excuse to take reasonable steps to ascertain whether X is a person who carries on or has carried on drug trafficking; or</p> <p>(iii) being a financial institution or a non-financial business entity or professional within the meaning of the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011, failing to take reasonable steps to implement or apply procedures to control or combat money laundering, the person is guilty of an indictable offence under this Act."</p> <p>Section 7 of the MLFTA 2011 states "any act done by a person outside of Barbados, which would be an offence if done within Barbados, is an offence for the purposes of this Act."</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation  
Barbados**

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>3</sup></b>	<b>Recommended Actions</b>	<b>Undertaken Actions</b>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>Ineffective use of ML provisions.</li> </ul>		The defect has been remedied in the MLFTA 2011.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>Forfeiture/restraint orders only limited to proceeds of money laundering, predicate offence of drug-trafficking, terrorist acts and financing of terrorism.</li> <li>No specific provision for forfeiture of instrumentalities under the MLFTA.</li> <li>No provision for ex parte application for freezing or seizing property subject to confiscation under the MLFTA</li> <li>No provision for production/inspection orders under MLFTA.</li> <li>Lack of integrated approach to forfeiture/restraint detracts from effectiveness.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should consider reviewing the forfeiture/confiscation regime to ensure that all serious offences are covered; the various statutes are rationalized as far as possible to provide greater certainty in application. Specific attention should be given to adjusting the MLFTA forfeiture scheme so as to incorporate appropriate balancing features in keeping with recent case law. Further there should be greater particularity on various aspects of any approach, including factors to be taken into account by the court before issuing orders; coverage of instrumentalities; bona fide third party rights; variation/discharge of orders.</li> <li>The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offence is caught.</li> <li>The definition of “scheduled offence” under POCA should be extended to incorporate the serious offences contemplated by the FATF’s “designated categories of offences”</li> <li>A specific provision should be enacted for</li> </ul>	<ul style="list-style-type: none"> <li>This has been achieved by the passage of the MLFTA 2011 and the amendments to the POCA as stated in the Fourth Schedule of the MLFTA 2011. The forfeiture regime is now harmonized under the POCA.</li> <li>The Fourth Schedule of the MLFTA 2011 refers to the amendments to the POCA. Section 2 (b) of POCA has been amended to read “The principal objects of this Act are to provide for the forfeiture of property including instrumentalities, used in or intended to be used in, or in connection with, or for the purpose of facilitating, the commission of scheduled offences.”</li> </ul> <p>Additionally, the Fourth Schedule of the MLFTA 2011 amends the definition of</p>



**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation  
Barbados**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>	Recommended Actions	Undertaken Actions
			<p>the forfeiture of instrumentalities in MLFTA</p> <ul style="list-style-type: none"> <li>• Appropriate powers of production and inspection should be introduced in the MLFTA. For those offences under DAPCA falling outside the scope of the POCA “scheduled offences”, similar powers should also be incorporated.</li> <li>• The definitions of “financial institutions” under POCA and the MLFTA should be harmonized.</li> <li>• Section 60 of POCA should be amended to enable government departments/entities, on appropriate grounds, to lodge objections to the disclosure of information. The scheme under section 57 in respect of the Commissioner of Inland Revenue may provide a useful precedent.</li> </ul> <p>Section 6A (4) of the MLFTA should be amended to enable Government Departments to object to the release of information to the FIU Director on appropriate grounds. Section 57 of POCA as a guide requires the FIU Director to access data from Government departments only on the authority of a court order, as under sections 55 and 60 of POCA in relation to the DPP.</p>	<p>“tainted property” in the POCA to include instrumentalities, used in or intended to be used, or in connection with, or for the purpose of facilitating the commission of scheduled offences”.</p> <ul style="list-style-type: none"> <li>• The Fourth Schedule of the MLFTA 2011 amends the definition of “scheduled offence” under POCA to include the FATF” designated categories of offences”. This list includes statutory offences &amp; common law offences.</li> <li>• With respect to the powers of production &amp; inspection, this is now dealt with under the POCA and its amendments as stated in the Fourth Schedule of the MLFTA. As mentioned above, the scheduled offences under the POCA have been widened.</li> <li>• The definition of “financial institutions” in the POCA and MLFTA has been harmonized. The Fourth Schedule of the MLFTA 2011 reflects that the current sections 53 &amp; 54 of POCA have been deleted and section 54 of the latter Act now states that with respect to section 48 to 52, the definition of financial institution under POCA now has the meaning given to it as under the MLFTA.</li> <li>• The Fourth Schedule of the MLFTA 2011 has amended section 60 of POCA to insert section 60 (1) to read, “ Section 57 shall,</li> </ul>

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			<ul style="list-style-type: none"> <li>The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard.</li> <li>The civil forfeiture scheme under section 47 of the DAPCA should be amplified to address such matters as the procedures to be followed and standard of proof.</li> </ul>	<p>with such modifications and adaptations as the circumstances may require, apply in respect of an order made under subsection (1).”</p> <ul style="list-style-type: none"> <li>Section 49 of the MLFTA 2011 makes provision for the objection to disclosure of information to the FIU on specific grounds.</li> <li>With respect the standard of proof, the Fourth Schedule of the MLFTA 2011 amends Section 17 of the POCA, to read,”(3) any question of fact to be decided by the Court in proceedings pursuant to section 9 and this section shall be decided on a balance of probabilities.”</li> <li>Section 47 DAPCA has been deleted. This is stated in the Fourth Schedule of MLFTA. As already stated, the standard of proof is dealt with in the new section 17(3) of POCA.</li> <li>The procedures to be followed are those in POCA- sections 10-17. The new POCA schedule refers to drug and drug-trafficking offences. This is laid out in the Fourth Schedule.</li> </ul>
<b>Preventive measures</b>				
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> <li>The CBB cannot share information with other domestic financial sector supervisory agencies.</li> </ul>	<ul style="list-style-type: none"> <li>The MLFTA should be amended to specify the reason for inspections by the AMLA i.e. review of compliance with MLFTA and AML/CFT guidelines</li> </ul>	<ul style="list-style-type: none"> <li>With respect to the underlined outstanding issue in the Recommended Actions column relating to the rationale for inspections, the guidelines</li> </ul>

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		<ul style="list-style-type: none"> <li>Under the CSA, the Registrar of Cooperatives can only share information pursuant to a court order;</li> <li>The Ministry of Economic Affairs and Development does not have the authority to compel information from licensees or to disclose information to domestic or foreign counterparts.</li> </ul>	<p>generally</p> <ul style="list-style-type: none"> <li>The FIA should be amended to allow the CBB to share information with domestic regulators</li> <li>The CSA should be amended to permit the Registrar of Cooperative Societies to share information with domestic and foreign regulators without having to obtain a Court Order</li> <li>An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted.</li> <li>The Ministry of Economic Affairs and Development should be authorized to access information from its licensees and be able to share information appropriately with other competent authorities.</li> </ul>	<p>lend clarity to the obligations placed on financial institutions in the MLFTA. They “set out the expectations of the Bank and the Authority in relation to the minimum standards for anti-money laundering and the combating of the financing of terrorism (AML/CFT) practices by all licensees and, together with the MLFTA, “form an integral part of the framework used by the Bank in assessing how licensees implement their AML/CFT policies.” Section 22 MLFTA states that financial institution shall comply with Guidelines.</p> <ul style="list-style-type: none"> <li>Section 31 of the MLFTA, 2011 specifies that inspections to be conducted are to determine whether a financial institution is in compliance with the Act.</li> <li>Section 44 (2) of the Financial Institutions Act CAP344A has been amended to allow the Central Bank, without the permission of a licensee, to share information with any other supervisory or regulatory authority of financial institutions in Barbados.</li> <li>The Fourth Schedule of the MLFTA, 2011 amends section 71 of the CSA, by inserting a new subsection (3A) permitting the Registrar to share</li> </ul>

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				<p>information with the AMLA and other domestic and foreign supervisory or regulatory authorities without a court order.</p> <ul style="list-style-type: none"> <li>• The Fourth Schedule of the MLFTA, 2011 amends section 54 of the Insurance Act by inserting a new provision (2A), permitting the Supervisor to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities. Section 35 of the Exempt Insurance Act is similarly amended.</li> <li>• The Fourth Schedule of the MLFTA, 2011 amends section 24 of International Business Companies Act by inserting Section 24A, requiring a licensee to deliver any books, records, documents that are required to be kept, to the Minister at such time as required; and provide the Minister with such information as the Minister may require for the proper administration and enforcement of the Act.</li> <li>• Sections 25(3) of the IBC Act; section 49(3) of the SRL Act; and section 28 of the ITA were also amended to permit the disclosure of information.</li> <li>• In addition, the Fourth Schedule of the MLFTA, 2011 amends section 8 of the</li> </ul>

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				<p>Securities Act adding subsection (2A) to permit the Commission to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities.</p> <p>Section 50(3) of the Mutual Funds Act Cap.320B is also similarly amended.</p>
5.Customer due diligence	PC	<ul style="list-style-type: none"> <li>There are no legislative requirements for financial institutions to <ul style="list-style-type: none"> <li>❖ undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;</li> <li>❖ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</li> <li>❖ determine who are the natural persons that ultimately own or control the customer;</li> <li>❖ conduct on-going due diligence on business relationships;</li> <li>❖ verify individual customer</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Financial institutions should be legislatively required to; <ul style="list-style-type: none"> <li>○ undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;</li> <li>○ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</li> <li>○ determine who are the natural persons that ultimately own or control the customer;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>With respect to the underlined outstanding issue of control in the Recommended Actions column, the authorities are considering an appropriate amendment to the MLFTA.</li> </ul> <p>Recommendation 10 of the revised FATF Recommendations states “The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means. Such flexibility is further supported in the Interpretative Note to Recommendation 10 where there is no explicit requirement for the legislation to address the issue of control. As such, no legislative amendment will be pursued.</p> <p>A consolidated enforceable AML/CFT Guideline was issued by the FSC in October 2012. The FSC Guideline was issued in accordance with subsections 53 (1)(d) and (e) of the FSCA. Section 22 of the MLFTA obligates</p>

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		<p>identity using reliable, independent source documents, data or information (identification data);</p> <ul style="list-style-type: none"> <li>No express prohibition against reduced CDD measures where there is a risk of ML and FT</li> <li>The following requirements are only enforceable on the licensees of the CBB and the Supervisor of Insurance; <ul style="list-style-type: none"> <li>Scrutiny of transactions and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>conduct on-going due diligence on business relationships;</li> <li>verify individual customer identity using reliable, independent source documents, data or information (identification data);</li> <li>Simplified CDD measures should not be acceptable whenever there is a suspicion of ML or TF.</li> <li>The enforceability of the following requirements should be extended from the licensees of the CBB and the Supervisor of insurance to all other financial</li> </ul>	<p>all financial institutions to comply with the guideline. Administrative sanctions for non-compliance with the guideline can be imposed pursuant to section 34 of the MLFTA.</p> <ul style="list-style-type: none"> <li>With respect to the underlined outstanding issue relating to updating data collected during the CDD process, this matter is being dealt with in the revised AML guidelines</li> <li>MLFTA 2011 defines “business transaction” to include a business arrangement and an occasional transaction. An occasional transaction is defined as a financial or other relevant transaction other than one conducted or to be conducted in the course of an existing business arrangement and includes a wire transfer.</li> </ul> <p>Section 15 (1)(b) of the MLFTA, 2011 requires a financial institution to verify the identity of a customer by means of reliable documents data or information from an independent source where</p> <p>(i) the customer requests the institution to enter into a business arrangement or conduct an occasional transaction with the customer; (ii) doubt exists about the veracity or adequacy of customer identification</p>

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		<p>updating of data or documents collected under the CDD process</p> <ul style="list-style-type: none"> <li>Measures for high and low risk categories of customers</li> <li>Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.</li> </ul>	<p>institution;</p> <ul style="list-style-type: none"> <li>Scrutiny of transactions and updating of data or documents collected under the CDD process</li> <li>Measures for high and low risk categories of customers</li> <li>Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.</li> </ul>	<p>data previously obtained in respect of the customer; or (iii) there is a suspicion of money laundering or financing of terrorism in connection with the customer.</p> <ul style="list-style-type: none"> <li>Section 15 states at subsection: (2) A financial institution shall take reasonable measures to establish whether a customer is acting on behalf of another person. (3) Where it appears to a financial institution that a customer is acting on behalf of another person, the institution shall take reasonable measures to <ul style="list-style-type: none"> <li>(a) establish the true identity not only of the customer but also of the person on whose behalf or for whose ultimate benefit the customer may be acting;</li> <li>(b) verify the identity of both the customer and the person on whose behalf or for whose ultimate benefit the customer may be acting by means of reliable documents, data or information from an independent source; and</li> <li>(c) establish whether the customer is authorised to act on behalf of the person in the capacity and in the proposed business arrangement or occasional transaction, in which he acts or seeks to act.</li> </ul> </li> </ul>

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				<ul style="list-style-type: none"> <li>• Section 16 of the MLFTA, 2011 states: “A financial institution shall exercise ongoing due diligence with respect to every business arrangement and closely examine the transactions conducted in the course of such an arrangement to determine whether the transactions are consistent with its knowledge of the relevant customer, his commercial activities, if any and risk profile and, where required, the source of his funds.”</li> <li>• Section 17(2) of the MLFTA, 2011 states: “Where a suspicion of money laundering or financing of terrorism exists in connection with a customer, a financial institution shall not reduce or simplify its procedures for identification and verification of the identity of the customer nor its procedures for ongoing due diligence in respect of the customer pursuant to sections 15 and 16, respectively.”</li> <li>• Section 17 (1) of the MLFTA, 2011 states: “The Authority may, subject to subsection (2), issue in accordance with section 26, guidelines as to the circumstances in which procedures for identification and verification of the identity of customers or for ongoing</li> </ul>



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				<p>due diligence pursuant to sections 15 and 16, respectively (a) may be reduced or simplified by a financial institution; and (b) shall be enhanced.</p> <ul style="list-style-type: none"> <li>Section 5 of the SA is amended to grant the Commission powers to conduct inspections and examinations of registrants under that Act to include self-regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers as may be necessary for giving effect to that Act.</li> </ul> <p>Section 54 of the SA has been amended to provide the Commission with powers of enforcement regarding market actors for reasons including failure to comply with a condition of registration, or engaging in an unsound financial practice.</p> <p>Section 133 of the SA has been amended to allow the Commission to, by instrument in writing, appoint a person to conduct such investigations as may be necessary for the proper administration of this Act and in particular to determine the validity of any allegation that (a) a person has contravened,</p>

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				<p>is contravening or is about to contravene this Act; or (b) any of the circumstances set out in section 54 exist in respect of a registrant.”</p> <p>Section 135 of the SA is amended to provide that “where an examination reveals that any of the circumstances set out in section 54 exists in respect of a registrant, the Commission may, where it considers it appropriate to do so, order the registrant, within such period as the Commission may specify, to take such remedial measures or action as the Commission directs.”</p> <ul style="list-style-type: none"> <li>Section 37 of the MLFTA, 2011 states at subsections:</li> </ul> <p>(2)“Without prejudice to the powers and functions of a regulatory authority under any other law, for the purpose of discharging its responsibility under subsection (1) in respect of persons that the regulatory authority regulates, sections 29, 31 and 33 to 36 apply to the regulatory authority, with such modifications and adaptations as may be necessary, as those sections apply to the Authority.</p> <p>(3) Where a person is regulated by more than one regulatory authority, the regulatory authorities shall consult and identify from among them, the regulatory authority to assume the primary responsibility under subsection (1).</p>

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				<p>(4) For the avoidance of doubt, notwithstanding (a) any other enactment and in particular, any primary enabling enactment; and (b) any power or function of a regulatory authority under any primary enabling enactment, where it is suspected that a financial institution is contravening or has contravened this Act, any action to be taken by a regulatory authority in respect of the financial institution shall be so taken under this Act.</p> <p>The FSC Guideline is enforceable. The FSC has commenced onsite AML/CFT examinations all of which cover CDD, the risk based approach and the timing of verification.</p>
6. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>Requirements for politically exposed persons are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should make the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance's AML/CFT Guidelines enforceable on all financial institutions.</li> </ul>	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <p>The Financial Services Commission (FSC) has issued a consolidated Guideline (modeled on the Central Bank Guideline) for its stakeholders, namely:</p> <ul style="list-style-type: none"> <li>(i) a person who engages in relevant insurance business;</li> <li>(ii) a market actor, self-regulatory organisation, participant and issuer of securities within the meaning of the Securities Act;</li> <li>(iii) a mutual fund and mutual fund</li> </ul>

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				<p>administrator within the meaning of the Mutual Funds Act or any person who manages a mutual fund; and</p> <p>(iv) a credit union within the meaning of the FSC Act.</p> <p>Section 6.4.6 of the Guideline requires financial institutions, in relation to foreign politically exposed persons (PEPs) (whether as customer or beneficial owner), in addition to performing normal customer due diligence measures, to:</p> <ul style="list-style-type: none"> <li>i. Have appropriate risk managements systems to determine whether the customer or the beneficial owner is a politically exposed person;</li> <li>ii. Obtain senior management approval for the establishing (or continuing, for existing customers) such business relationships;</li> <li>iii. Take reasonable measures to establish the source of wealth and source of funds; and</li> <li>iv. Conduct enhanced ongoing monitoring of the business relationship.</li> </ul> <p>Financial institutions are further required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with such persons, financial</p>

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				<p>institutions are required to apply the measures referred to in paragraphs (b), (c) and (d). Importantly, the requirements for all types of PEP should also apply to family members or close associates of such PEPs.</p> <p>The FSC Guideline is enforceable. The FSC has commenced onsite examinations which address CDD and PEPs.</p>
7. Correspondent banking	LC	<ul style="list-style-type: none"> <li>No specific requirement for financial institutions to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.</li> </ul>	<ul style="list-style-type: none"> <li>Financial institutions in gathering information about the quality of a respondent's supervision should ascertain whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.</li> </ul>	<p>This has been addressed at Section 7.4.8 of the revised Central Bank Guideline which will come into effect with the proclamation of the MLFTA.</p>
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> <li>The requirements for non-face to face customers are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions.</li> </ul>	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <p>This is addressed in the FSC Guideline which is enforceable. The FSC has commenced onsite examinations which address CDD, the risk based approach and non face to face business.</p>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> <li>Requirements for third parties and introduced business are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> <li>No requirement for financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with</li> </ul>	<p>The authorities should consider making the requirements for third party and introduced business as stipulated in the CBB AML/CFT Guidelines enforceable on all other financial institutions.</p> <p>Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance</p>	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <p>This is addressed in the revised FSC Guideline. The FSC's AML/CFT Guideline now refers to the FATF's high risk and non-cooperative jurisdictions list and the UN Security Council's sanctions list. E.g. see section 6.8.</p>

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		<p>Recommendations 23, 24 and 29.</p> <ul style="list-style-type: none"> <li>No indication of authorities determining in which countries third parties that satisfy the conditions of being regulated and supervised and comply with CDD requirements can be based.</li> </ul>	<p>with Recommendation 23, 24 and 29.</p> <p>Authorities should consider advising financial institutions about countries from which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based.</p>	<p>The FIU circulates information on FATF listed countries to financial institutions.</p>
10.Record keeping	NC	<ul style="list-style-type: none"> <li>Only records of business transactions exceeding \$10 000 are legislatively required to be retained for five years after termination of a transaction;</li> <li>No requirement in law or regulations for account files and business correspondence to be retained for at least five years after the termination of the business relationship;</li> <li>No direct legal requirement for financial institutions to ensure that records available on a timely basis to domestic competent authorities.</li> </ul>	<ul style="list-style-type: none"> <li>The MLFTA should be amended to require the retention of all necessary records on all transactions for a period of five years after termination of the transaction;</li> <li>Financial institutions should be legislatively required to maintain records of account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested by a competent authority.</li> <li>Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis.</li> </ul>	<ul style="list-style-type: none"> <li>Section 18 of the MLFTA, 2011 requires financial institutions to establish and maintain business transaction records of all business transactions for at least 5 years from termination of the business arrangement or the transaction, where the transaction is an occasional transaction; or such longer period as the Authority may, in any specific case, direct.</li> </ul> <p>Section 2 of the MLFTA, 2011 defines “business transaction record” to include inter alia account files and business correspondence files in respect of the transaction.</p> <ul style="list-style-type: none"> <li>Section 30 of the MLFTA, 2011 states that the FIU Director may: <ul style="list-style-type: none"> <li>(b) instruct financial institutions to take such steps within such time as may be appropriate to facilitate any investigation by the Director;</li> </ul> </li> </ul>

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				<p>(c) require from a financial institution the production of any information, except information subject to legal professional privilege, that the Director considers relevant to fulfil its functions;</p> <p>Further, subsection 4 states “For the avoidance of doubt, a financial institution shall, within such time as may be specified by the Director, or in the absence of a specified time, within a reasonable time, comply with any instruction issued or request made to the institution by the Director under this section.</p>
11.Unusual transactions	PC	<ul style="list-style-type: none"> <li>Monitoring requirements specified in the AML/CFT guidelines are only enforceable on the licensees of the Central Bank and the Supervisor of Insurance</li> <li>The retention of the written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</li> </ul>	<p>The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions;</p> <ul style="list-style-type: none"> <li>The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years</li> </ul>	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation See actions undertaken regarding enforcement as listed at Recommendation 5.</p> <p>Further, section 18(4) of the MLFTA, 2011 states “Where a financial institution does not maintain business transaction records as required under subsections (1), (2) or (3) as the case may be, the directors of the institution are guilty of an offence and are liable on conviction on indictment to a fine of \$100 000.</p> <p>The revised Central Bank Guideline is in effect and the other Guidelines are in the revision process.</p> <p>Section 9.0 of the FSC’s AML/CFT Guideline</p>

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				<p>states that financial institutions must establish a document retention policy that provides for the maintenance of a broad spectrum of records, including those related to customer identification, business transactions, internal and external reporting and training.</p> <p>Financial institutions must maintain these records for a minimum of <b>five years</b>, in accordance with Section 18 (2) (a) of the MLFTA, after the termination of the business transaction, or the business relationship, whichever is applicable.</p> <p>However, it may be necessary for financial institutions to retain records, until such time as advised by the FIU or High Court, for a period exceeding the date of termination of the last business transaction where:</p> <ul style="list-style-type: none"> <li>i. There has been a report of a suspicious activity; or</li> <li>ii. There is an on-going investigation relating to a transaction or client.</li> </ul> <p>The FSC has also commenced onsite examinations which address unusual and suspicious transactions.</p>
12.DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>The requirements of Rec. 5, 6, 8 to 11, and 17 are not adequately enforced on DNFBPs not licensed by the CBB.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that the authorities enact measures to apply the requirements of Recommendations 5, 6, 8 to 11, and 17 to DNFBPs not licensed by the CBB.</li> </ul>	Section 4 of the MLFTA, 2011 explicitly states that the Act applies to non-financial business entities and professions as set out in the Third Schedule. Part IV establishes duties of financial institutions and non-financial business entities



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				<p>and professionals as it relates to the specified Recommendations.</p> <p>Additionally, the International Corporate and Trust Service Providers Act, 2011 (ICTSPA) establishes a regime for registration and licensing of international service providers. The ICTSPA was passed as No. 5 of 2011.</p> <p>Among the objectives stated at Section 4(c) are to provide for the establishment of procedures and policies to be followed by international service providers to enable international service providers to</p> <ul style="list-style-type: none"> <li>(i) know and be able to identify their clients; and</li> <li>(ii) exercise due diligence in the provision of international services; their clients;</li> </ul> <p>Section 21 of the ICTSPA states “An international service provider shall comply with the Code of Practice set out in the Second Schedule. The Code includes mandatory provisions relating inter alia to customer due diligence.</p> <p>Part IV of the ICTSPA, 2011 grants the Director a range of powers of enforcement, including pecuniary penalties, suspension and revocation of a license.</p> <p>Further, as explained in the comments at Recommendations 5, the Director of International Business is among the regulatory</p>

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				<p>authorities in the Second Schedule of the MLFTA, 2011 and therefore can exercise powers by virtue of 35(1) of the MLFTA, 2011.</p> <p>There is also a reference in the Code of Practice for International Service Providers in the Second Schedule of the ICTSPA. The Code refers to the fact that the international service provider shall know and be able to identify &amp; verify its clients. The ICTSPA was passed as No. 5 of 2011.</p> <p>A DNFBPs sub-working group of the Anti-Money Laundering Authority has been recently created to make proposals to government for the formulation and supervision of the DNFBP regime generally and the drafting of guidelines.</p>
13.Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>No requirement in law or regulations to report attempted or aborted suspicious transactions.</li> <li>Human trafficking, corruption and bribery are not adequately addressed in legislation as predicate offences.</li> </ul>	The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT.	<p>The MLFTA, 2011 defines “transaction” to include an attempted or aborted transaction.</p> <p>A "business arrangement" (a) means an arrangement, between 2 or more parties, the purpose of which is to facilitate a financial or other relevant transaction between the parties; and (b) includes (i) any related transaction between any of the parties and another person; (ii) the making of a gift; and (iii) the opening of an account;</p> <p>"business transaction" includes a business arrangement and an occasional transaction;</p>

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				<p>Section 23 (1)(a) states “ A financial institution shall monitor and report to the Director</p> <p>(a) any business transaction where the identity of the person involved, the transaction or any other circumstance concerning the transaction gives the institution or any officer or employee of the institution reasonable grounds to suspect that the transaction</p> <p>(i) involves proceeds of crime; (ii) involves the financing of terrorism; or (iii) is of a suspicious or an unusual nature;”</p> <p>See response at Recommendation 1 dealing with human trafficking, corruption and bribery.</p>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>MLFTA establishes inconsistent mandatory and voluntary reporting provisions; immunity provision under MLFTA is not referable to mandatory reporting provisions.</li> </ul>	Section 22A(5) of the MLFTA should be amended to remove the reference to voluntary reporting by financial institutions, and section 22A(6) should be revised to make it clear that immunity against liability applies to the financial institutions reporting under sections 8(1)(b) and (h) of the Act.	Section 48(5) of the MLFTA, 2011 has been amended to establish mandatory reporting requirements on financial institutions to give information to the FIU; and provide for immunity for financial institutions that share said information with the FIU and report suspicious and unusual activity to the FIU, as per Section 23(2).
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> <li>The legislative provisions for internal controls, compliance and audit do not include the imposition of penalties and sanctions for failure to comply with</li> </ul>	All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply.	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <ul style="list-style-type: none"> <li>With respect to internal policies, audit</li> </ul>

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		<p>the provisions.</p> <ul style="list-style-type: none"> <li>No enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention.</li> <li>Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> </ul>	<p>All financial institutions should be required to designate an AML/CFT compliance officer at management level and develop policies and procedures for record retention.</p> <p>Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</p>	<p>and compliance requirements, Section 19 (2) states that “Where a financial institution contravenes subsection (1), the Authority may impose on the institution a pecuniary penalty in accordance with section 36”, which deals with pecuniary penalties.</p> <ul style="list-style-type: none"> <li>Section 19(1) places a requirement on a financial institution to develop and implement internal policies, procedures and controls to combat money laundering and financing of terrorism. Policies and procedures relate to all aspects of the AML/CFT program, including record retention.</li> </ul> <p>Powers of onsite inspection to determine compliance with the MLFTA are found at section 31.</p> <p>See actions undertaken regarding enforcement as listed at Recommendation 5.</p>
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>The requirements of Recommendations 13 to 15, 17 and 21 are not adequately applied to DNFBPS not licensed by the CBB.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should take measures to ensure that the requirements of Recommendations 13 to 15, 17 and 21 are applied to DNFBPS not licensed by the CBB.</li> </ul>	<ul style="list-style-type: none"> <li>Section 4 of the MLFTA, 2011 explicitly states that the Act applies to non-financial business entities and professions as set out in the Third Schedule. Part IV establishes duties of financial institutions and non-financial business entities and professionals as it relates to Recommendations 13, 14, 15 and</li> </ul>

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				<p>17.</p> <p>Also, see response to Recommendation 12, regarding international corporate and trust service providers. The ICTSPA was passed as No. 5 of 2011.</p> <p>A DNFBPs sub-working group of the Anti-Money Laundering Authority has been recently created to make proposals to government for the formulation and supervision of the DNFBP regime generally and the drafting of guidelines.</p>
17.Sanctions	LC	<ul style="list-style-type: none"> <li>The Securities Commission and the Registrar of Co-operative Societies have no administrative power to institute sanctions for AML/CFT breaches.</li> <li>The Securities Commission and the Registrar of Co-operative Societies have no general powers of sanctions to effectively address breaches by licensees.</li> </ul>	<ul style="list-style-type: none"> <li>The Securities Commission and the Registrar of Co-operative Societies should be given the administrative power to institute sanctions for AML/CFT breaches.</li> <li>All regulators except for the CBB and the Supervisor of Insurance should have general powers of sanctions to effectively address breaches by licensees</li> </ul>	<ul style="list-style-type: none"> <li>Section 37 of the MLFTA, 2011 states at subsections: <ul style="list-style-type: none"> <li>(2)“Without prejudice to the powers and functions of a regulatory authority under any other law, for the purpose of discharging its responsibility under subsection (1) in respect of persons that the regulatory authority regulates, sections 29, 31 and 33 to 36 apply to the regulatory authority, with such modifications and adaptations as may be necessary, as those sections apply to the Authority.</li> <li>(3) Where a person is regulated by more than one regulatory authority, the regulatory authorities shall consult and identify from among them, the regulatory authority to assume the primary responsibility under subsection (1).</li> <li>(4) For the avoidance of doubt, notwithstanding <ul style="list-style-type: none"> <li>(a) any other enactment and in particular, any primary enabling</li> </ul> </li> </ul> </li> </ul>

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				<p>enactment; and (b) any power or function of a regulatory authority under any primary enabling enactment, where it is suspected that a financial institution is contravening or has contravened this Act, any action to be taken by a regulatory authority in respect of the financial institution shall be so taken under this Act.</p> <ul style="list-style-type: none"> <li>Section 5 of the SA is amended to grant the Commission powers to conduct inspections and examinations of registrants under that Act to include self-regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers as may be necessary for giving effect to that Act.</li> </ul> <p>Section 53(4) states "In addition to the reasons set out in section 54, the Commission may suspend or revoke the registration of a securities company where the Commission is satisfied that (a) the company has defaulted in any obligation undertaken in its capacity as a securities company; or (b) a receiving order has been made against the company."</p> <p>Section 54 of the SA has been amended to provide the Commission</p>

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				<p>with powers of enforcement regarding market actors for reasons including failure to comply with a condition of registration, or engaging in an unsound financial practice.</p> <p>Section 133 of the SA has been amended to allow the Commission to, by instrument in writing, appoint a person to conduct such investigations as may be necessary for the proper administration of this Act and in particular to determine the validity of any allegation that</p> <ul style="list-style-type: none"> <li>(a) a person has contravened, is contravening or is about to contravene this Act; or</li> <li>(b) any of the circumstances set out in section 54 exist in respect of a registrant.”</li> </ul> <p>Section 135 of the SA is amended to provide that “where an examination reveals that any of the circumstances set out in section 54 exists in respect of a registrant, the Commission may, where it considers it appropriate to do so, order the registrant, within such period as the Commission may specify, to take such remedial measures or action as the Commission directs.”</p> <p>Section 138 (2A) reads</p>

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				<p>“Notwithstanding subsection (1) (a) a person who contravenes this Act or any rule solely by reason of his failure to file a document or instrument with the Commission within the time prescribed shall be liable to a penalty of \$1 000 for every month or part thereof that the document or instrument remains outstanding after the expiration of the time prescribed; and (b) the Commission may, without conducting a hearing, make an order imposing a penalty pursuant to paragraph (a) for the period beginning on the day following the expiration of the prescribed period and ending on the day that the document or instrument is filed.”</p> <ul style="list-style-type: none"> <li>• Section 192B of the CSA was amended to make provision for making directives and issuing cease and desist orders, where (a) after an examination of an credit union or the receipt of any other information, the Registrar is of the opinion that the funds of the credit union are not being properly managed or protected and (b) the Registrar has reason to believe that a credit union is likely to take any action that would affect the financial soundness of the credit union.</li> </ul> <p>Section 266 of the CSA makes</p>



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				<p>provision for suspension and cancellation of registration. Subsection (e) includes failure to comply with any direction given by the Registrar under section 192B, as a reason for suspension of registration.</p> <p>The Act also makes provision for the appointment of a receiver-manager (section 136) or an Advisor (section 192B).</p> <p>Part IV of the ICTSPA, 2011 grants the Director a range of powers of sanction, including pecuniary penalties, suspension and revocation of a license. The ICTSPA was passed as No. 5 of 2011.</p> <ul style="list-style-type: none"> <li>•</li> </ul>
21.	NC	<ul style="list-style-type: none"> <li>• Financial institutions are not required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</li> <li>• No effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li> </ul>	The AML/CFT guidelines should provide specific guidance with regard to requiring special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <ul style="list-style-type: none"> <li>• The AML/CFT Guideline issued by the Financial Services Commission now refers to the FATF's high risk and non-cooperative jurisdictions list and the UN Security Council's sanctions list. E.g. section 6.8 and 12.2.3. Further, "red flag" scenarios include references to such</li> </ul>

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		<ul style="list-style-type: none"> <li>Written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</li> <li>No countermeasures issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>	<p>Written findings of all transactions with no apparent economic or lawful purpose from countries that do not or insufficiently apply the FATF Recommendations should be available for competent authorities;</p> <p>Authorities should put in place measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries;</p> <p>Authorities should consider issuing instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</p>	<p>countries e.g. section 12.3.2.</p> <ul style="list-style-type: none"> <li>The BDS 10,000 threshold has been removed from the new Act. See Recommendation 10. Additionally, the revised FIU website will seek to keep financial institutions advised of developing issues.</li> <li>Further, section 7 of the FSC AML/CFT Guideline goes on to state - a pre-requisite to identifying unusual and suspicious activity is the profiling of customers and determination of consistent transaction limits. Unusual transactions are not necessarily suspicious, but they should give rise to further enquiry and analysis. In this regard, financial institutions must examine, to the extent possible, the background and purpose of transactions that appear to have no apparent economic or visible lawful purpose, <u>irrespective of where they originate</u>. Financial institutions are required to document their internal enquiries (section 7.1) and report forthwith to the FIU (section 7.2). Financial institutions are required to maintain records of internal and external reporting (section 9.0), which include internal written findings of transactions investigated irrespective of whether a suspicious report was made.</li> </ul>

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22.Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> <li>The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> <li>No requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations</li> <li>No requirement for branches and subsidiaries in host countries to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.</li> <li>The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by</li> </ul>	<p>The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados and the FATF should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</p> <p>Financial institutions should be required to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations.</p> <p>Branches and subsidiaries in host countries should apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.</p> <p>The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</p>	<p>The relevant regulators have commenced discussions of the proposed guidelines in order to ensure compliance with the Recommendation</p> <p>Refer to earlier comments regarding Recommendations 5 and 17 on enhanced enforcement powers of regulators.</p> <ul style="list-style-type: none"> <li>The FSC's AML/CFT Guideline now refers to the FATF's high risk and non-cooperative jurisdictions list and the UN Security Council's sanctions list. E.g. section 6.8 and 12.2.3. Further, "red flag" scenarios include references to such countries e.g. section 12.3.2.</li> <li>Section 2 of the FSC's AML/CFT Guideline obligates financial institutions to ensure that, at a minimum, the guideline is also implemented in their branches and subsidiaries abroad and where permitted in the host country, ensure that these operations apply the higher of local and host standards. As is the case with the CBB Guideline, the aforementioned is without exception and therefore applies in both cases where the country sufficiently or insufficiently applies the FATF Recommendations.</li> <li>This section further states - In accordance with section 37 of the MLFTA the regulator</li> </ul>

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		local laws, regulations or other measures is only enforceable on the licensees of the CBB and the Supervisor of Insurance.		holds primary responsibility for ensuring compliance with the Act and financial institutions must inform the FSC if the local applicable laws and regulations prohibit the implementation of this Guideline.
23.Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>• The Securities Commission has no power of approval over ownership of significant or controlling interests of its registrants.</li> <li>• The Registrar of Co-operatives has no power of approval over senior management of its licensees.</li> <li>• The Securities Commission is not required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.</li> <li>• Stand alone MVT service providers are not subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• The Securities Commission should have power to approve ownership of significant or controlling interests of their registrants.</li> <li>• The Registrar of Co-operatives should have power to approve senior management of their licensees.</li> <li>• The Securities Commission should be required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.</li> <li>• There is need for the development and implementation of a framework for regulating and supervising MVT services that are not licensees of the Central Bank.</li> </ul>	<p>With respect to the outstanding issue relating to approving ownership of the controlling interests, an appropriate amendment is being considered to the Financial Services Commission Act.</p> <ul style="list-style-type: none"> <li>• With respect to the Registrar of Cooperatives and the approval of senior management, The FSC has confirmed that for cooperatives, the fit and proper process is executed at the time of appointment of the officers and the approval for senior management will occur at that time. The fit and proper form is included.</li> <li>• With respect to the outstanding issue relating to Securities Commission and the fit and proper criteria, Section 6(3) of the Financial Services Commission Act states that <i>“Where an application is made to the Commission under subsection (1), the Commission shall issue a certificate of registration or a licence, as the case may be, if it is satisfied that the requirements for the registration or the grant of a licence under any of the specified enactments are fulfilled and that the person is a fit and proper person to operate a financial</i></li> </ul>

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				<p><i>services business.” The fit and proper form is enclosed.</i></p> <ul style="list-style-type: none"> <li>• With respect to MVTs, the Barbadian authorities are engaged in on-going discussions with respect to the regulation framework for this sector.</li> <li>• The Fourth Schedule of the MLFTA 2011 amends section 126 (1) of the Securities Act by making provision for “prescribing the format and content of filings and applications and the filing of copies of documents filed with any government agency, including with respect to electronic filing of matters;”</li> </ul> <p>Section 54 makes the following grounds for suspension and revocation of registration –</p> <p>(k) the market actor is otherwise financially unsound;</p> <p>(l) the market actor has been convicted of an offence involving fraud or dishonesty;</p> <p>(m) the market actor has been guilty of any other type of misconduct;</p> <p>It is also now an offence to knowingly or recklessly make:</p> <p>“(i) a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Act;</p>

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				<p>or (ii) any other misrepresentation in contravention of this Act or any regulation;"</p> <p>Revision to 142(1) of the SA.</p> <ul style="list-style-type: none"> <li>• The Fourth Schedule of the MLFTA 2011 amends section 7 of the Cooperatives Act to make it a condition of a license that the directors and other officers of the society are fit and proper to hold their respective office.</li> <li>• Further, the Fourth Schedule of the MLFTA 2011 amends section 4 of the EIA and section 12(1) of the IA to insert a similar provision relating to fitness and propriety.</li> <li>• Further, section 7. (1) of the ICTSPA, 2011 states: "A person may, in the prescribed form, apply to the Director for a licence to provide (a) an international corporate service; or (b) an international trust service.</li> </ul> <p>(2) An applicant shall submit with the application such information and documents as the Director may require to determine whether a license should be issued to the applicant.</p> <p>(3) Where the Director is satisfied that an applicant</p>

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				<p>(a) is a fit and proper person to provide an international service; (b) has the financial standing necessary to operate the business;..”</p> <p>The authorities are in discussions with respect to the framework for the MVTs.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>No measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements except those licensed by the CBB.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that the authorities take measures to ensure that the requirements of Recommendations 24 and 25 should apply to DNFBPs not licensed by the CBB.</li> </ul>	<p>Section 4 of the MLFTA, 2011 explicitly states that the Act applies to non-financial business entities and professions as set out in the Third Schedule. Part IV establishes duties of financial institutions and non-financial business entities and professionals as it relates to Recommendations 24 and 25.</p> <p>Additionally, the ICTSPA, 2011 establishes a regime for registration and licensing of international service providers. The ICTSPA was passed as No. 5 of 2011.</p> <p>Among the objectives stated at Section 4(c) are to provide for the establishment of procedures and policies to be followed by international service providers to enable international service providers to</p> <ul style="list-style-type: none"> <li>(iii) know and be able to identify and verify their clients; and</li> <li>(iv) exercise due diligence in the provision of international services; their clients;</li> </ul> <p>Section 21 of the ICTSPA states “An international service provider shall comply with</p>

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				<p>the Code of Practice set out in the Second Schedule. The Code includes mandatory provisions relating inter alia to customer due diligence.</p> <p>Part IV of the ICTSPA, 2011 grants the Director a range of powers of sanction, including pecuniary penalties, suspension and revocation of a license.</p> <p>A DNFBP sub-working group of the Anti-Money Laundering Authority has been recently created to make proposals to government for the formulation and supervision of the DNFBP regime generally.</p>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>The FIU does not provide feedback on STRs to financial institutions.</li> <li>No specific guidelines have been issued for DNFBPS to implement and comply with AML/CFT requirements except those regulated by the CBB.</li> </ul>	The FIU should provide feedback to financial institutions with regard to suspicious transaction reports.	<p>The FIU currently provides specific feedback to financial institutions with respect to ongoing STRs. This is done in a manner that will not compromise the investigation process. As matters are completed or closed, the financial institutions will be given a short summary of basic findings.</p> <p>A DNFBP sub-working group of the Anti-Money Laundering Authority has been recently created to make proposals to government for the formulation and supervision of the DNFBP regime generally.</p>
<b>Institutional and other measures</b>				
26.The FIU	LC	<ul style="list-style-type: none"> <li>No annual report released by the FIU since the 2000/2001 report. There was</li> </ul>	<ul style="list-style-type: none"> <li>The FIU should publicly release all outstanding annual reports and include in</li> </ul>	The outstanding annual reports have been completed and sent to Parliament.



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		no information on typologies and trends with regard to SUTRs in the report.	<p>such reports, statistics, typologies and trends as well as information regarding its activities.</p> <ul style="list-style-type: none"> <li>The FIU should seek to enhance the level of AML/CTF awareness within the local financial services sector with a view to providing more detailed guidance to reporting institutions as to their reporting obligations under Section 8 (b) of the MLFTA. This would seek to address concerns of possible under-reporting by financial institutions.</li> <li>The FIU should seek to follow through on its plans to further upgrade its IT capabilities. This would diminish its reliance on manual processes and the older and less reliable electronic storage systems (Microsoft access) currently being utilized to handle and store information.</li> <li>While the FIU was able to produce adequate statistics relating to SUTRs, it should seek to broaden these statistics so as to include prescribed predicate offences linked to SUTRs filed by reporting institutions</li> </ul>	<p>The FIU provides more detailed guidance to financial institutions via discussions and meetings with compliance officers as well as detailed training for the staff. This training includes the analysis of key factors that will trigger the reporting obligation.</p> <p>The FIU has upgraded its IT system through the acquisition of additional research tools and a more robust database system. Security has been increased with the installation of additional firewalls.</p>
29.Supervisors	LC	<ul style="list-style-type: none"> <li>The Securities Commission does not have the authority to conduct</li> </ul>	<ul style="list-style-type: none"> <li>The Securities Commission should have the authority to conduct inspections of</li> </ul>	<ul style="list-style-type: none"> <li>Section 5 of the SA is amended to</li> </ul>

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		inspections of financial institutions, including on-site inspections to ensure compliance.	financial institutions, including on-site inspections to ensure compliance.	<p>grant the Commission powers to conduct inspections and examinations of registrants under that Act to include self-regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers as may be necessary for giving effect to that Act.</p> <p>As mentioned previously, amendments at sections 133 and 135 also speak to the Commission's powers in this regard.</p>
30.Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>• The FIU lacks sufficient resources (human and technological) to allow it to properly carry out all its functions in its mandate.</li> <li>• Law enforcement and prosecutorial authorities are inadequately resourced.</li> <li>• The Registrar of Co-operative Societies has inadequate number of staff</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities should consider giving the FIU greater access or control of its finances so as to enhance its current structure. This would allow the FIU to maintain and where possible increase its current level of staffing and further develop its IT capabilities so as to conduct more detailed analysis and investigation of SUTRs.</li> </ul>	<ul style="list-style-type: none"> <li>• The FIU has upgraded its IT system through the acquisition of a more robust database system and increased protection through the installation of additional firewalls and research tools.</li> </ul> <p>Between 2006 until present, the Royal Barbados Police Force has recruited approximately 200 additional persons.</p> <p>Staffing is being strengthened with the establishment of the Financial Services Commission, under whose umbrella will sit the regulation and supervision of cooperatives. The Financial Services Commission Act was passed as No. 21 of 2010 and the Commission came into effect on April 1, 2011.</p> <p>The FIU recruited another Senior Analyst in 2012.</p>

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				The FSC is now also responsible for credit unions and the staff complement currently stands at 60.
32.Statistics	LC	<ul style="list-style-type: none"> <li>No statistics on the following; <ul style="list-style-type: none"> <li>Cross-border declaration reports</li> <li>Spontaneous referrals made by the FIU to foreign authorities</li> </ul> </li> <li>Insufficient details on mutual legal assistance requests.</li> </ul>	<ul style="list-style-type: none"> <li>The competent authorities should seek to broaden the type of statistical data maintained in relation to the cross-border declaration system. Apart from assisting the authorities in measuring the effectiveness of the cross-border declaration system, it will also assist in identifying existing weaknesses thus allowing the competent authorities to enhance the system where necessary so as to facilitate and ensure stricter compliance.</li> <li>The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities.</li> </ul>	<p>The Customs Department now maintains statistics with respect to cross-border declarations.</p> <p>The FIU now maintains statistics on spontaneous referrals of information to foreign authorities.</p>
33.Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>There is no legislative requirement for legal persons to disclose beneficial ownership information.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry.</li> <li>The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information.</li> </ul>	<p>The onus has been placed on the service providers to capture this information as under the International Corporate and Trust Service Providers legislation.</p> <p>A Cabinet Paper has been drafted by the Ministry of International Business and International Transport (International Business Unit) to progress the Regulations to the International Corporate and Trust Service Providers legislation and is currently before Cabinet.</p>

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				<b>The Cabinet Paper has been approved and the draft legislation is with the Chief Parliamentary Counsel for review.</b>
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> <li>International trusts supervised by the Ministry of Economic Affairs and development, lawyers and accountants are not subject to measures for monitoring and ensuring compliance with AML/CFT requirements i.e. retention of beneficial ownership and control information.</li> </ul>	<ul style="list-style-type: none"> <li>It is recommended that the authorities should implement measures for monitoring and ensuring compliance of international trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants with AML/CFT requirements i.e. retention of beneficial ownership and control information.</li> </ul>	<p>The onus is placed on the service provider to obtain and maintain beneficial ownership information in accordance with ICTSPA. The FSC and the International Business Unit are negotiating an arrangement with respect to the monitoring regime for international trusts.</p> <p>Supervision will be strengthened with the establishment of the Financial Services Commission–The Financial Services Commission Act was passed as No. 21 of 2010 and the Commission came into effect on April 1, 2011.</p> <p>The International Business Unit and the FSC are discussing a monitoring regime. Section 4 (1) (e) of the Financial Services Commission Act states that one of the purposes of the Commission is to provide technical assistance and advice to the International Business Unit or to any other government agency in relation to its responsibilities under any law to supervise, regulate or monitor any business operating in Barbados.</p>
<b>International Co-operation</b>				
35. Conventions	LC	<ul style="list-style-type: none"> <li>All designated categories of offences are not adequately addressed in the range of predicate offences</li> <li>Instrumentalities intended for use in</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human trafficking and updating the</li> </ul>	The Transnational Organised Crime (Prevention and Control) Act was passed in Parliament as No. 3 of 2011

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		<p>the commission of an offence are not subject to restraint/forfeiture measures.</p> <ul style="list-style-type: none"> <li>The custodial definition of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention</li> </ul>	<p>corruption/bribery laws; (ii) UN Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities.</p>	<p>Part VI of the Prevention of Corruption Bill 2010 provides for the offences of bribery, solicitation and related offences. The Bill is under review by a Joint Select Committee of Parliament after having received feedback from several stakeholders.</p> <p>The Prevention of Corruption Act, 2012-31 was recently enacted and will shortly be proclaimed.</p>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>Range of mutual legal assistance does not include the instrumentalities of ML and FT.</li> <li>Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority.</li> <li>The custodial element of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention.</li> <li>No mechanism to deal with dual jurisdictional conflict.</li> <li>Not possible to assess effectiveness of mutual legal assistance measures due to limited number of MLAT's.</li> </ul>	<ul style="list-style-type: none"> <li>The definition of "serious offences" under MACMA should be revised to make it applicable to offences attracting at least a 4-year custodial penalty, in accordance with the Palermo Convention.</li> <li>The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure instrumentalities of, or intended for use in, the relevant offences are covered.</li> <li>The range of evidence-gathering powers available for the satisfaction of mutual assistance requests should be reviewed. In particular, monitoring order and other powers under POCA should be examined with a view to extending their application to serious offences committed locally or abroad.</li> <li>The authorities should consider devising and applying mechanisms for dealing</li> </ul>	<p>With respect to the underlined outstanding aspects of this Recommendation, the local authorities are in the process of reviewing the measures in light of existing regimes and the requirements of this Recommendation.</p> <p>The Fourth Schedule of the MLFTA amends section 2 of the MACMA to reduce the definition of "serious offences" to 4 years. The new Section 2(6) also refers to instrumentalities.</p> <p>MACMA has also been amended to include section 16A and section 27A relating to assistance in obtaining a forfeiture or confiscation order.</p> <p>The new Section 31A of the MACMA states that sections 42-46 (production and inspection orders); section 47(search warrants) and Section 48-9 (monitoring orders) of the POCA apply to MACMA.</p>

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			<p>with dual jurisdictional conflict,</p> <ul style="list-style-type: none"> <li>The authorities should consider increasing their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU's with foreign states.</li> <li>The authorities should consider negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT's with a broader range of countries.</li> </ul>	<p>The FIU is in the process of negotiating several MOUs and has signed MOUs with St. Vincent and the Grenadines, Bermuda and Nigeria.</p>
38.MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>No provision for foreign states to request local authority to apply for forfeiture/confiscation orders or vice versa except in limited circumstances under section 16 of the ATA.</li> <li>No provision for the freezing, seizure or confiscation of instrumentalities of ML and FT.</li> <li>No arrangements for co-coordinating seizure and confiscation actions with other countries.</li> <li>No evidence of consideration of establishing an asset forfeiture fund</li> </ul>	<ul style="list-style-type: none"> <li>MACMA should be amended to enable Barbados or foreign states to seek reciprocal assistance in obtaining forfeiture/confiscation orders in the jurisdiction of the other country, where the suspect has been convicted of a serious offence in the requesting state. In particular, where Barbados's assistance is being sought, the forfeiture/confiscation powers under POCA should be made available.</li> <li>The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered.</li> </ul>	<p>Part V of the Transnational Organised Crime (Prevention and Control) Act, 2011 establishes the Fund. The authorities are reviewing the assets sharing capacity in order to accord with the requirements of this Recommendation.</p> <p>MACMA has also been amended to include section 16A and section 27A relating to assistance in obtaining a forfeiture or confiscation order. The new Section 31A of the MACMA states that sections 42-46 (production and inspection orders); section 47 (search warrants) and Section 48-9 (monitoring orders) of the POCA apply to MACMA.</p>

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			<ul style="list-style-type: none"> <li>Extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes should be considered.</li> </ul>	
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>The Ministry of Economic Affairs and Development cannot share information with foreign counterparts</li> <li>The Registrar of Co-operative Societies can only share information by Court Order.</li> </ul>	<ul style="list-style-type: none"> <li>The Ministry of Economic Affairs and Development should be authorized to share information with foreign counterparts.</li> <li>The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order</li> </ul>	<p>The Fourth Schedule of the MLFTA 2011 amends section 25(3) of the IBC Act to permit the disclosure of information under the MLFTA 2010.</p> <p>The Fourth Schedule of the MLFTA 2011 amends section 71 of the CSA by making provision for the sharing of information with foreign counterparts. See comments at Recommendation 5.</p>
<b>Nine Special Recommendations</b>		<b>Summary of factors underlying rating</b>		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> <li>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.</li> <li>Overlap between ATA and POCA respecting freezing/forfeiture and</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human trafficking and updating the corruption/bribery laws; (ii) UN Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to</li> </ul>	As mentioned at Recommendations 1 and 3, The Transnational Organised Crime (Prevention and Control) Act was passed in Parliament as No. 3 of 2011. The Prevention of Corruption Bill has been discussed and approved by Cabinet. The ATA Cap. 158 is absolute in that it does not provide any restriction whatsoever relating to

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		ambiguous aspects to ATA forfeiture power, both detracting from effectiveness	freeze assets of UN designated entities.	<p>the freezing of assets.</p> <p>The Prevention of Corruption Bill is presently before a Joint Select Committee of Parliament. Stakeholders from the public and private sectors have provided their comments on the Bill to the Select Committee. The Committee will shortly review these comments and indicate its course of action.</p> <p><b>The Prevention of Corruption Act, 2012-31 was recently enacted and will shortly be proclaimed.</b></p>
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> <li>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.</li> <li>Divergent policy re forfeiture/restraint under ATA and POCA.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities incorporate into legislation requirements, a special mechanism to enable the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee, in keeping with UN Security Council Resolution 1267 of 1999. The requirements should also confer power to authorise the release of funds required to be frozen, for the purpose of meeting basic expenses associated with, e.g., the accused's reasonable subsistence or defence of criminal proceedings. The 2002 Commonwealth Model Legislative Provisions on the "specified (listed) entity" regime provide a useful guide.</li> <li>The authorities should critically review</li> </ul>	The POCA schedule has been amended to include sections 3 to 6 of the ATA. The MLFTA 2011 refers to both ML & TF.



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			<p>the freezing/restraint and forfeiture regimes under the ATA and POCA, with a view to amending the legislation to provide for a uniform approach to these measures.</p> <ul style="list-style-type: none"> <li>• The authorities should review the grounds needed to support an application for a freezing order under section 8(1) of the ATA, so as to ensure consistency between local cases and those arising from mutual legal assistance requests.</li> <li>• Expand the scope of the MLFTA to incorporate FT in sections 9-11.</li> </ul>	<p>The equivalent sections 9-11 in the previous Act are section 20-21 and 39 of the MLFTA 2011.</p>
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>• No requirement in law or regulations to report attempted or aborted suspicious transactions.</li> </ul>	<p>The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT.</p>	<p>Refer to previous comments relating to Recommendation 13.</p>
SR.V International co-operation	PC	<ul style="list-style-type: none"> <li>• Factors in Recs. 36 and 38 are also applicable.</li> </ul>	<ul style="list-style-type: none"> <li>• The definition of “serious offences” under MACMA should be revised to make it applicable to offences attracting at least a 4-year custodial penalty, in accordance with the Palermo Convention.</li> <li>• The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure instrumentalities of, or intended for use in, the relevant offences are covered.</li> </ul>	<p>This has been dealt with in Recommendation 36 and 38.</p>

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			<ul style="list-style-type: none"> <li>• The range of evidence-gathering powers available for the satisfaction of mutual assistance requests should be reviewed. In particular, monitoring order and other powers under POCA should be examined with a view to extending their application to serious offences committed locally or abroad.</li> <li>• The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict.</li> <li>• The authorities should consider increasing their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU's with foreign states.</li> <li>• The authorities should consider negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT's with a broader range of countries.</li> <li>• MACMA should be amended to enable Barbados or foreign states to seek reciprocal assistance in obtaining forfeiture/confiscation orders in the jurisdiction of the other country, where the suspect has been convicted of a serious offence in the requesting state. In</li> </ul>	

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			<p>particular, where Barbados's assistance is being sought, the forfeiture/confiscation powers under POCA should be made available.</p> <ul style="list-style-type: none"> <li>• The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered.</li> <li>• Extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes should be considered.</li> </ul>	
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• Stand alone MVT providers are not regulated or supervised for compliance with AML/CFT requirements</li> <li>• No requirement for MVT service operators to maintain a current list of agents.</li> </ul>	<ul style="list-style-type: none"> <li>• It is recommended that the authorities proceed in developing a framework for the regulation and supervision of MVT services not provided by licensees of the CBB.</li> </ul>	<p>The authorities are in discussions with respect to the framework for the MVTs.</p> <p>The Barbadian authorities are engaged in on-going discussions with respect to the regulation framework for this sector.</p>
SR VII Wire transfer rules	PC	<ul style="list-style-type: none"> <li>• Stand-alone money-remitters are not subject to any regulatory oversight except for exchange control purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• Stand-alone money remitters should be monitored for compliance with the requirements of SR VII.</li> </ul>	<p>The authorities are in discussions with respect to the framework for the MVTs.</p> <p>The Barbadian authorities are engaged in on-going discussions with respect to the regulation framework for this sector.</p>
SR.VIII Non-profit organisations	LC	<ul style="list-style-type: none"> <li>• Sanctions for breaches of Charities Act are not dissuasive.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should carefully consider the FATF's 2002 Best Practices Paper on</li> </ul>	<p>The Fourth Schedule of the MLFTA amends the Section 41(1) Charities Act as follows:</p>

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			<p>Special Recommendation VIII, which advocates a number of measures for tightening the regime for NPO's, including the incorporation of mechanisms to verify the actual allocation of charitable funds to the intended beneficiaries.</p> <ul style="list-style-type: none"> <li>• Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect.</li> </ul>	<ul style="list-style-type: none"> <li>• "(6A) Where there is a change in the composition of trustees of a charity registered under this section, the trustees shall, within 15 days of the date of the change, file with the Registrar a notice containing particulars of the change.</li> </ul> <p>(6B) Where charity trustees fail to comply with subsection (6A), the Registrar may impose on the charity trustees a penalty of \$100.</p> <p>(6C) Where a penalty imposed pursuant to subsection (6B) is not paid, the Registrar may recover the amount as a debt due to the Crown in civil proceedings before the Magistrate's Court for District "A".</p> <ul style="list-style-type: none"> <li>• Delete section 6 and substitute the following:</li> </ul> <p>6. (1) A charity trustee of a charity who without reasonable excuse fails to register the charity in accordance with section 5 is guilty of an offence and is liable on summary conviction to a fine of \$ 5 000 or to imprisonment for 6 months or to both and to an additional fine of \$500 for everyday or part thereof that the offence continues after a conviction is first obtained.</p> <p>(2) Without prejudice to subsection (1), where a charity trustee of a charity fails to register the charity in accordance with section 5, the charity trustee shall not be entitled to claim any tax exemptions under any enactment in respect</p>

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				<p>of the charity for the income year during which the charity remained unregistered."</p> <ul style="list-style-type: none"> <li>• In section 8, delete the words "Income Tax Commissioner" and substitute the words "Commissioner of Inland Revenue".</li> <li>• In section 19(4), delete the words "\$250" and "\$25" and substitute the words "\$5 000" and "\$500", respectively.</li> <li>• In section 38(4), (a) delete the word "\$500" and substitute the word "\$5 000"; (b) delete the word "3" and substitute the word "6"; and (c) delete the word "\$50" and substitute the word "\$500".</li> <li>• In section 41(1), delete the word "15" and substitute the word "12".</li> <li>• In section 42, delete subsection (6) and substitute the following: "(6) Any person who fails to (a) transmit to the Registrar any statement of account required by subsection (1); (b) afford an auditor any facility to which he is entitled under subsection (4); or (c) make full disclosure to the Registrar of all material facts required to be disclosed under this Act or knowingly makes a false statement of a material fact or makes a statement containing information that is misleading in light of the</li> </ul>

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				<p>circumstances in which it was made, is guilty of an offence and is liable on summary conviction to a fine of \$5000 or to imprisonment for 6 months or to both and to a further fine of \$500 for every day or part thereof that the offence continues after a conviction is first obtained."</p> <ul style="list-style-type: none"> <li>In section 47(2), insert after the word "received", the words "and penalties imposed and collected".</li> </ul> <p>The Companies (Amendment) Act was passed as No. 8 of 2011 and further strengthens the regulation of NPOs.</p>
SR.IX Cross Border Declaration & Disclosure	LC	<ul style="list-style-type: none"> <li>Suspicion of money laundering or terrorist financing or making a false declaration do not provide basis for stopping and seizure of currency and negotiable instruments.</li> <li>Effectiveness of system to detect cross-border transfer of currency and negotiable instruments cannot be evaluated due to lack of statistics.</li> </ul>	<ul style="list-style-type: none"> <li>Suspicion of money laundering or terrorist financing or making a false declaration should provide grounds for stopping and seizure of currency and negotiable instruments.</li> <li>The competent authorities should consider including penalties for the making of false declarations in accordance with the relevant section of the Customs Act on the Passenger Embarkation/Disembarkation card.</li> </ul>	The Customs Department currently maintains statistics with respect to cross-border declarations.