



CARIBBEAN FINANCIAL
ACTION TASK FORCE

Fourth Follow-Up Report

Barbados

October 27, 2010

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BARBADOS – FOURTH FOLLOW-UP REPORT

I. Introduction

1. This report is the fourth follow-up report by Barbados to the Caribbean Financial Action Task Force (CFATF) Plenary on the action 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 three previous follow-up reports in May and October 2009 and May 2010 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-Complaint (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 the jurisdiction's financial sector
As at Dec 31, 2009-Barbados**

		Banks (Commercial) US\$000's Please note all figures are provisional	Other Credit Institutions* (Deposit Taking) US\$000's	Securities	Insurance	TOTAL
Number of institutions	Total #	6	45	1	28	80
Assets	US\$	5,583,288	656,773,234	391,156,557.45*	787,891.231.86+	7,419,109,023.31
Deposits	Total: US\$	4,391,824	580,658,854			585,050,678
	% Non-resident	% of deposits 13.45%		N/A	N/A	
International Links	% Foreign-owned:	100% of assets	80.7 % of assets	% of assets	% of assets	% of assets
	#Subsidiaries abroad	3	0			

*Relates to Mutual Funds

+Represents 2008 figures

II. Summary of progress made by Barbados

5. *1st FUR summary of findings:* The authorities in Barbados advised that measures had been identified with regard to legislative amendments to specific laws and proposals for new legislation. These measures included amendments to the Money Laundering and Financing of Terrorism Act (MLFTA) and the Regulatory Guidelines to deal with relevant recommendations (R. 5,10,11,14,15,22 and 23). Additionally, the Registrar of Co-operatives, the Securities Commission and the Ministry of Economic Affairs and Development were pursuing necessary legislative amendments needed to statutes under administration and Guidelines regarding recommendations covering their operations (R. 5,6,8,9,11,15,22 and 23). A draft Corporate and Trust Service Providers Bill was under review and definitive action in relation to recommended action under R. 3,36,38, SR.I,SR.III,SR.V was still to be taken. At the same time, the Anti-Money Laundering Authority and the FIU were in discussions to formalize the DNFBP

framework and a regulatory framework for MVT providers who were not licensees of the Central Bank of Barbados (CBB) was being considered.

6. Given the above it was concluded that the majority of recommendations had not been addressed by the authorities at the time and Barbados was required to report back in October 2009.

7. **2nd FUR summary of findings:** The authorities advised that amendments to the MLFTA had been drafted and were to be forwarded to the Cabinet, the Trust Service Provider Bill was being finalized and first drafts of a Transnational Organised Crime (Prevention and Control) Bill and Prevention of Corruption Bill had been prepared. Revised CBB Guidelines were being implemented. Additionally, relevant sections of Securities legislation were being amended and the Securities Commission and the Registrar of Co-operatives were due to adopt the revised CBB Guidelines. The confiscation/forfeiture regime had been reviewed and requisite legislation/amendments were being drafted to address the examiners' recommendations. Provisions for DNFBPs were included in the proposed amendments to the MLFTA.

8. While the above gave specifics about individual proposed legislation and guidelines, the conclusion of the report was similar to the first follow-up report with the majority of recommendations outstanding pending the enactment of proposed legislation. Barbados was therefore required to report back in May 2010.

9. **3rd FUR summary of findings:** The authorities advised that the MLFTA, the Mutual Assistance in Criminal Matters Act (MACMA), a Corporate and Trust Service Providers Bill, the Transnational Organised Crime (Prevention and Control) Bill and the Prevention of Corruption Bill were finalized and approved by Cabinet. Further proposed amendments to relevant sections of the Securities Act (SA) had been prepared. These pieces of legislation were due to be placed in Parliament for debate in June 2010 and addressed most of the examiners' recommended actions set out in Rs.3,4,5,6,8,9,11,12,14,15,16,21,22,23,24,34,36,38,SR.I,SR.III and SR.IV. A general framework for the regulation of stand-alone money value transfer providers was being considered in the proposed Financial Services Commission Bill. The Commission was due to be established by July 2010.

10. As noted above, the authorities in Barbados were in the process of preparing for the submission of amended or new legislation to Parliament for debate in June. Given that the majority of recommendations had been incorporated in the amended or new legislation it was recommended that Barbados remain on expedited follow-up and report back to the Plenary in November 2010.

11. **Summary of progress since the last follow-up report:** The authorities have advised that debate on the legislative package which had been due in June 2010 was postponed to the next Parliamentary session beginning in October 2010. As such, there has been no substantive change in the situation reported in May 2010 with implementation of the majority of the examiners' recommendations awaiting enactment of relevant legislation. The matrix from the last follow-up report is attached for information.

CONCLUSION

12. Since the last follow-up report Barbados has not made any substantive progress in enacting legislative measure which address the majority of the examiners' recommendations. As such, it is recommended that Barbados be placed on enhanced follow-up and a letter by the

CFATF Chairman be sent to the Attorney General in Barbados to encourage Barbados' progress in relation to the enactment of relevant legislation.

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

Forty Recommendations	Rating	Summary of factors underlying rating ¹	Recommended Actions	Undertaken Actions
Legal systems				
1.ML offence	LC	<ul style="list-style-type: none"> The crimes of human trafficking, corruption and bribery provisions falling within the designated categories of offences have not been adequately addressed in legislation. Extraterritoriality of predicate offences is not clearly defined. 	<ul style="list-style-type: none"> 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. . The different <i>mens rea</i> elements of money laundering offences under the MLFTA and section 19 of DAPCA should be harmonized. 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 	<ul style="list-style-type: none"> Section 8 of the Transnational Organised Crime (Prevention and Control) Bill 2010 creates the offence of trafficking in persons; Section 9 creates the offence of smuggling of persons. <p>Part VI of the Prevention of Corruption Bill 2010 provides for the offences of bribery, solicitation and related offences.</p> <p>An amendment to the DAPCA has been provided for in the MLFTA 2010 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 concealment, removal from the jurisdiction, transfer to nominees or otherwise); 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,.</p>

¹ These factors are only required to be set out when the rating is less than Compliant.

				<p>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 <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2010</i>, 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 2010 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>
2.ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> • Ineffective use of ML provisions. 		The defect has been remedied in the MLFTA 2010.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Forfeiture/restraint orders only limited to proceeds of money laundering, predicate offence of drug-trafficking, terrorist acts and financing of terrorism. • No specific provision for forfeiture of instrumentalities under the MLFTA. • No provision for ex parte application 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • This has been achieved by the passage of the MLFTA 2010 and the amendments to the POCA as stated in the Fourth Schedule of the MLFTA 2010. The forfeiture regime is now dealt with under the POCA.

		<p>for freezing or seizing property subject to confiscation under the MLFTA</p> <ul style="list-style-type: none"> • No provision for production/inspection orders under MLFTA. • Lack of integrated approach to forfeiture/restraint detracts from effectiveness. 	<p>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.</p> <ul style="list-style-type: none"> • The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offence is caught. • The definition of “scheduled offence” under POCA should be extended to incorporate the serious offences contemplated by the FATF’s “designated categories of offences” • A specific provision should be enacted for the forfeiture of instrumentalities in MLFTA • 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. • The definitions of “financial institutions” under POCA and the MLFTA should be harmonized. • Section 60 of POCA should be amended to enable government 	<ul style="list-style-type: none"> • The Fourth Schedule of the MLFTA 2010 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.” <p>Additionally, the Fourth Schedule of the MLFTA 2010 amends the definition of “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"> • The Fourth Schedule of the MLFTA 2010 amends the definition of “scheduled offence” under POCA to include the FATF” designated categories of offences”. This list includes statutory offences & common law offences. • With respect to the powers of production & inspection, this is now dealt with under the POCA and its amendments as stated in the
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			<p>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.</p> <ul style="list-style-type: none"> • 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. • The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard. • 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. 	<p>Fourth Schedule of the MLFTA. As mentioned above, the scheduled offences under the POCA have been widened.</p> <ul style="list-style-type: none"> • The definition of “financial institutions” in the POCA and MLFTA has been harmonized. The Fourth Schedule of the MLFTA 2010 reflects that the current sections 53 & 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. • The Fourth Schedule of the MLFTA 2010 has amended section 60 of POCA to insert section 60 (2) to read, “Section 57 shall, with such modifications and adaptations as the circumstances may require, apply in respect of an order made under subsection (1).” • Section 49 of the MLFTA 2010 makes provision for the objection to disclosure of information to the FIU on specific grounds. • With respect the standard of proof, the Fourth Schedule of the MLFTA 2010 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.” • Section 47 DAPCA has been deleted. This is stated in the Fourth Schedule of MLFTA.
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				<p>As already stated, the standard of proof is dealt with in the new section 17(3) of POCA.</p> <ul style="list-style-type: none"> 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.
Preventive measures				
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> The CBB cannot share information with other domestic financial sector supervisory agencies. Under the CSA, the Registrar of Cooperatives can only share information pursuant to a court order; 	<ul style="list-style-type: none"> 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 generally The FIA should be amended to allow the CBB to share information with domestic regulators 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 An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted. 	<ul style="list-style-type: none"> Section 31 of the MLFTA, 2010 specifies that inspections to be conducted are to determine whether a financial institution is in compliance with the Act. 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. The Fourth Schedule of the MLFTA, 2010 amends section 71 of the CSA, by inserting a new subsection (3A) permitting the Registrar to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities without a court order. The Fourth Schedule of the MLFTA, 2010 amends section 54 of the IA by inserting a new provision (2A),

		<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<p>permitting the Supervisor to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities. Section 35 of the EIA is similarly amended.</p> <ul style="list-style-type: none"> The Fourth Schedule of the MLFTA, 2010 amends section 24 of IBC 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. 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. In addition, the Fourth Schedule of the MLFTA, 2010 amends section 8 of the SA by adding subsection (2A) to permit the Commission to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities. <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"> There are no legislative requirements for financial institutions to <ul style="list-style-type: none"> ❖ undertake CDD measures for occasional transactions that are 	<ul style="list-style-type: none"> Financial institutions should be legislatively required to; <ul style="list-style-type: none"> ○ undertake CDD measures for occasional transactions that are wire 	<ul style="list-style-type: none"> The MLFTA 2010 defines “business transaction to include a business arrangement and an occasional transaction. An occasional transaction is defined as a financial or other

		<p>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;</p> <ul style="list-style-type: none"> ❖ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person; ❖ determine who are the natural persons that ultimately own or control the customer; ❖ conduct on-going due diligence on business relationships; ❖ verify individual customer identity using reliable, independent source documents, data or information (identification data); <ul style="list-style-type: none"> • No express prohibition against reduced CDD measures where there is a risk of ML and FT 	<p>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;</p> <ul style="list-style-type: none"> ○ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person; ○ determine who are the natural persons that ultimately own or control the customer; ○ conduct on-going due diligence on business relationships; ○ verify individual customer identity using reliable, independent source documents, data or information (identification data); <ul style="list-style-type: none"> • Simplified CDD measures should not be acceptable whenever there is a suspicion 	<p>relevant transaction other than one conducted or to be conducted in the course of an existing business arrangement and includes a wire transfer.</p> <p>Section 15 (1)(b) of the MLFTA, 2010 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;</p> <p>(ii) doubt exists about the veracity or adequacy of customer identification data previously obtained in respect of the customer; or</p> <p>(iii) there is a suspicion of money laundering or financing of terrorism in connection with the customer.</p> <ul style="list-style-type: none"> • Section 15 states at subsection: <p>(2) A financial institution shall take reasonable measures to establish whether a customer is acting on behalf of another person.</p> <p>(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</p> <p>(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;</p>
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		<ul style="list-style-type: none"> • The following requirements are only enforceable on the licensees of the CBB and the Supervisor of Insurance; <ul style="list-style-type: none"> • Scrutiny of transactions and updating of data or documents collected under the CDD process • Measures for high and low risk categories of customers • Timing of verification and failure to complete CDD and application of CDD requirements to existing customers. 	<p>of ML or TF.</p> <ul style="list-style-type: none"> • The enforceability of the following requirements should be extended from the licensees of the CBB and the Supervisor of insurance to all other financial institution; <ul style="list-style-type: none"> ▪ Scrutiny of transactions and updating of data or documents collected under the CDD process ▪ Measures for high and low risk categories of customers ▪ Timing of verification and failure to complete CDD and application of CDD requirements to existing customers. 	<p>(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</p> <p>(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.</p> <ul style="list-style-type: none"> • Section 16 of the MLFTA, 2010 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.” • Section 17(2) of the MLFTA, 2010 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
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				<p>procedures for ongoing due diligence in respect of the customer pursuant to sections 15 and 16, respectively.”</p> <ul style="list-style-type: none"> • Section 17 (1) of the MLFTA, 2010 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 due diligence pursuant to sections 15 and 16, respectively (a) may be reduced or simplified by a financial institution; and (b) shall be enhanced. • 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. <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>
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				<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> <p style="padding-left: 40px;">(a) a person has contravened, is contravening or is about to contravene this Act; or</p> <p style="padding-left: 40px;">(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"> • Section 37 of the MLFTA, 2010 states at subsections: <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>
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				<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> <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>Revisions to the regulatory Guidelines are in the process of being finalized.</p>
6. Politically exposed persons	PC	<ul style="list-style-type: none"> Requirements for politically exposed persons are only enforceable on the licensees of the CBB and the Supervisor of Insurance. 	<ul style="list-style-type: none"> 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. 	Revisions to the regulatory Guidelines are in the process of being finalized.
7. Correspondent banking	LC	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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 	Revisions to the regulatory Guidelines are in the process of being finalized.

		action.	investigation or regulatory action.	
8.New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> The requirements for non-face to face customers are only enforceable on the licensees of the CBB and the Supervisor of Insurance. 	<ul style="list-style-type: none"> The authorities should make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions. 	<p>See actions undertaken regarding enforcement as listed at Recommendation 5.</p> <p>Revisions to the regulatory Guidelines are in the process of being finalized.</p>
9.Third parties and introducers	PC	<ul style="list-style-type: none"> Requirements for third parties and introduced business are only enforceable on the licensees of the CBB and the Supervisor of Insurance. No requirement for financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29. 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. 	<ul style="list-style-type: none"> 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. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29. 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. 	<ul style="list-style-type: none"> See actions undertaken regarding enforcement as listed at Recommendation 5. Revisions to the regulatory Guidelines are in the process of being finalized.
10.Record keeping	NC	<ul style="list-style-type: none"> Only records of business transactions exceeding \$10 000 are legislatively required to be retained for five years after termination of a transaction; No requirement in law or regulations for account files and business 	<ul style="list-style-type: none"> 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; Financial institutions should be legislatively required to maintain records 	<ul style="list-style-type: none"> Section 18 of the MLFTA, 2010 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,

		<p>correspondence to be retained for at least five years after the termination of the business relationship;</p> <ul style="list-style-type: none"> No direct legal requirement for financial institutions to ensure that records available on a timely basis to domestic competent authorities. 	<p>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.</p> <ul style="list-style-type: none"> Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis. 	<p>direct.</p> <p>Section 2 of the MLFTA, 2010 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"> Section 30 of the MLFTA, 2010 states that the FIU Director may: <ul style="list-style-type: none"> (b) instruct financial institutions to take such steps within such time as may be appropriate to facilitate any investigation by the Director; (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>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"> Monitoring requirements specified in the AML/CFT guidelines are only enforceable on the licensees of the Central Bank and the Supervisor of Insurance The retention of the written findings of internal examinations of transactions 	<ul style="list-style-type: none"> The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions; 	<ul style="list-style-type: none"> See actions undertaken regarding enforcement as listed at Recommendation 5. <p>Further, section 18(4) of the MLFTA, 2010 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</p>

		is limited to transactions exceeding BD\$10,000.	<ul style="list-style-type: none"> The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years 	<p>institution are guilty of an offence and are liable on conviction on indictment to a fine of \$100 000.</p> <p>Revisions to the regulatory Guidelines are in the process of being finalized.</p>
12.DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> The requirements of Rec. 5, 6, 8 to 11, and 17 are not adequately enforced on DNFBPs not licensed by the CBB. 	<ul style="list-style-type: none"> 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. 	<p>Section 4 of the MLFTA, 2010 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 the specified Recommendations.</p> <p>Additionally, the International Corporate and Trust Service Providers Act, 2010 (ICTSP Act) establishes a regime for registration and licensing of international service providers. 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"> (i) know and be able to identify their clients; and (ii) exercise due diligence in the provision of international services; their clients; <p>Section 21 of the ICTSP Act states “An international service provider shall comply with the Code of Practice set out in the <i>Second Schedule</i>. The Code includes mandatory provisions relating inter alia to customer due diligence.</p>

				<p>Part IV of the ICTSP Act, 2010 grants the Director a range of powers of enforcement, including pecuniary penalties, suspension and revocation of a licence.</p> <p>Further, as explained in the comments at Recommendations 5, the Director of International Business is among the regulatory authorities in the Second Schedule of the MLFTA, 2010 and therefore can exercise powers by virtue of 35(1) of the MLFTA, 2010.</p> <p>There is also a reference in the Code of Practice for International Service Providers in the Second Schedule of that Act. The Code refers to the fact that the international service provider shall know and be able to identify & verify its clients.</p>
13.Suspicious transaction reporting	LC	<ul style="list-style-type: none"> No requirement in law or regulations to report attempted or aborted suspicious transactions. Human trafficking, corruption and bribery are not adequately addressed in legislation as predicate offences. 	<ul style="list-style-type: none"> 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, 2010 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>

				<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"> MLFTA establishes inconsistent mandatory and voluntary reporting provisions; immunity provision under MLFTA is not referable to mandatory reporting provisions. 	<ul style="list-style-type: none"> 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. 	<p>Section 48(5) of the MLFTA, 2010 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).</p>
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> The legislative provisions for internal controls, compliance and audit do not include the imposition of penalties and sanctions for failure to comply with the provisions. No enforceable requirement for the designation of an AML/CFT 	<ul style="list-style-type: none"> All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply. All financial institutions should be required to designate an AML/CFT 	<ul style="list-style-type: none"> With respect to internal policies, audit 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>compliance office at management level or development of policies and procedures for record retention.</p> <ul style="list-style-type: none"> 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. 	<p>compliance officer at management level and develop policies and procedures for record retention.</p> <ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. <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> <ul style="list-style-type: none"> Revisions to the regulatory Guidelines are in the process of being finalized.
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> The requirements of Recommendations 13 to 15, 17 and 21 are not adequately applied to DNFBPS not licensed by the CBB. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Section 4 of the MLFTA, 2010 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 17. <p>Also, see response to Recommendation 12, regarding international corporate and trust service providers.</p>
17.Sanctions	LC	<ul style="list-style-type: none"> The Securities Commission and the Registrar of Co-operative Societies have no administrative power to institute sanctions for AML/CFT breaches. 	<ul style="list-style-type: none"> The Securities Commission and the Registrar of Co-operative Societies should be given the administrative power to institute sanctions for AML/CFT breaches. 	<ul style="list-style-type: none"> Section 37 of the MLFTA, 2010 states at subsections: <p>(2)“Without prejudice to the powers and functions of a regulatory authority under any</p>

		<ul style="list-style-type: none"> The Securities Commission and the Registrar of Co-operative Societies have no general powers of sanctions to effectively address breaches by licensees. 	<ul style="list-style-type: none"> All regulators except for the CBB and the Supervisor of Insurance should have general powers of sanctions to effectively address breaches by licensees 	<p>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> <p>(4) For the avoidance of doubt, notwithstanding</p> <p>(a) any other enactment and in particular, any primary enabling enactment; and</p> <p>(b) any power or function of a regulatory authority under any primary enabling enactment,</p> <p>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"> 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.
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				<p>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 "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"> • 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
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				<p>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.</p> <p>Section 266 of the CSA makes 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> <ul style="list-style-type: none"> • Part IV of the ICTSP Act, 2010 grants the Director a range of powers of sanction, including pecuniary penalties, suspension and revocation of a licence.
	NC	<ul style="list-style-type: none"> • 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. • No effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other 	<ul style="list-style-type: none"> • 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; • Written findings of all transactions with no apparent economic or lawful purpose from countries that do not or 	<ul style="list-style-type: none"> • Section 18 of the MLFTA 2010 on the duty to keep records was amended. See details at comments to

		<p>countries.</p> <ul style="list-style-type: none"> • Written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000. • No countermeasures issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations. 	<p>insufficiently apply the FATF Recommendations should be available for competent authorities;</p> <ul style="list-style-type: none"> • 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; • 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>Recommendation 10.</p>
22.Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> • 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. • 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 	<ul style="list-style-type: none"> • 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. • 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. • Branches and subsidiaries in host 	<ul style="list-style-type: none"> • Refer to earlier comments regarding Recommendations 5 and 17 on enhanced enforcement powers of regulators. • Revisions to the regulatory Guidelines are in the process of being finalized.

		<ul style="list-style-type: none"> • 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. • 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 is only enforceable on the licensees of the CBB and the Supervisor of Insurance. 	<p>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> <ul style="list-style-type: none"> • 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. 	
23.Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • The Securities Commission has no power of approval over ownership of significant or controlling interests of its registrants. • The Registrar of Co-operatives has no power of approval over senior management of its licensees. • 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. • Stand alone MVT service providers are not subject to effective systems for monitoring and ensuring compliance 	<ul style="list-style-type: none"> • The Securities Commission should have power to approve ownership of significant or controlling interests of their registrants. • The Registrar of Co-operatives should have power to approve senior management of their licensees. • 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. • 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. 	<ul style="list-style-type: none"> • The Fourth Schedule of the MLFTA 2010 amends section 126 (1) 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;” <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>

		with national AML/CFT requirements. .		<p>It is also now an offence to knowingly or recklessly make: “(i) a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Act; 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"> • The Fourth Schedule of the MLFTA 2010 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. • Further, the Fourth schedule of the MLFTA 2010 amends section 4 of the EIA and section 12(1) of the IA to insert a similar provision relating to fitness and propriety. • Further, section 7. (1) of the ICTSP Act, 2010 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. <p>(2) An applicant shall submit with the application such information and documents as the Director may require to determine</p>
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				<p>whether a licence should be issued to the applicant.</p> <p>(3) Where the Director is satisfied that an applicant</p> <p style="padding-left: 40px;">(a) is a fit and proper person to provide an international service;</p> <p style="padding-left: 40px;">(b) has the financial standing necessary to operate the business;..”</p> <p>A general framework for regulation of MVTs is being considered in the new Financial Services Commission Bill. The Commission is to be established by July 2010.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> No measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements except those licensed by the CBB. 	<ul style="list-style-type: none"> 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. 	<p>Section 4 of the MLFTA, 2010 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 ICTSP Act, 2010 establishes a regime for registration and licensing of international service providers. 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> <p style="padding-left: 40px;">(iii) know and be able to identify and verify their clients; and</p> <p style="padding-left: 40px;">(iv) exercise due diligence in the provision of international services; their clients;</p> <p>Section 21 of the ICTSP Act states “An</p>

				<p>international service provider shall comply with the Code of Practice set out in the <i>Second Schedule</i>. The Code includes mandatory provisions relating inter alia to customer due diligence.</p> <p>Part IV of the ICTSP Act, 2010 grants the Director a range of powers of sanction, including pecuniary penalties, suspension and revocation of a licence.</p>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> The FIU does not provide feedback on STRs to financial institutions. No specific guidelines have been issued for DNFBPS to implement and comply with AML/CFT requirements except those regulated by the CBB. 	<ul style="list-style-type: none"> The FIU should provide feedback to financial institutions with regard to suspicious transaction reports. 	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.
Institutional and other measures				
26.The FIU	LC	<ul style="list-style-type: none"> No annual report released by the FIU since the 2000/2001 report. There was no information on typologies and trends with regard to SUTRs in the report. 	<ul style="list-style-type: none"> The FIU should publicly release all outstanding annual reports and include in such reports, statistics, typologies and trends as well as information regarding its activities. 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 	<p>The outstanding annual reports have been completed and sent to Parliament.</p> <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>financial institutions.</p> <ul style="list-style-type: none"> • 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. • 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 	<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"> • The Securities Commission does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance. 	<ul style="list-style-type: none"> • The Securities Commission should have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance. 	<ul style="list-style-type: none"> • 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. <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	PC	<ul style="list-style-type: none"> • The FIU lacks sufficient resources 	<ul style="list-style-type: none"> • Authorities should consider giving the 	<ul style="list-style-type: none"> • The FIU has upgraded its IT system

training		<p>(human and technological) to allow it to properly carry out all its functions in its mandate.</p> <ul style="list-style-type: none"> • Law enforcement and prosecutorial authorities are inadequately resourced. • The Registrar of Co-operative Societies has inadequate number of staff 	<p>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.</p>	<p>through the acquisition of a more robust database system and increased protection through the installation of additional firewalls and research tools.</p> <p>Between 2006 until present, the Royal Barbados Police Force has recruited approximately 200 additional persons.</p> <ul style="list-style-type: none"> • Staffing is being strengthened with the establishment of the Financial Services Commission, under whose umbrella will sit the regulation and supervision of cooperatives.
32.Statistics	LC	<ul style="list-style-type: none"> • No statistics on the following; <ul style="list-style-type: none"> • Cross-border declaration reports • Spontaneous referrals made by the FIU to foreign authorities • Insufficient details on mutual legal assistance requests. 	<ul style="list-style-type: none"> • 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. • The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities. 	<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"> • There is no legislative requirement for legal persons to disclose beneficial ownership information. 	<ul style="list-style-type: none"> • The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry. 	<p>The Companies' Amendment Act, 2010 makes provision for the creation of a confidential register of beneficial ownership, which is not open for public inspection. Disclosure is only permitted as necessary for the proper administration and enforcement of the MLFTA,</p>

			<ul style="list-style-type: none"> The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information. 	2010.
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<p>See previous comments regarding the International Corporate and Trust Service Providers Act, 2010.</p> <p>Supervision will be strengthened with the establishment of the Financial Services Commission, under whose umbrella will sit the regulation and supervision of registrants with the International Business Unit.</p>
International Co-operation				
35. Conventions	LC	<ul style="list-style-type: none"> All designated categories of offences are not adequately addressed in the range of predicate offences Instrumentalities intended for use in the commission of an offence are not subject to restraint/forfeiture measures. The custodial definition of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention 	<ul style="list-style-type: none"> 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 freeze assets of UN designated entities. 	As mentioned in the comments to Recommendations 1 and 3, the Transnational Organised Crime (Prevention and Control) Bill and the Prevention of Corruption Bill have been discussed and approved by Cabinet.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> Range of mutual legal assistance does not include the instrumentalities of ML and FT. Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority. The custodial element of serious crime under the restraint/forfeiture regime is 	<ul style="list-style-type: none"> 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. The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure 	<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</p>

		<p>narrower than the Palermo Convention.</p> <ul style="list-style-type: none"> • No mechanism to deal with dual jurisdictional conflict. • Not possible to assess effectiveness of mutual legal assistance measures due to limited number of MLAT's. 	<p>instrumentalities of, or intended for use in, the relevant offences are covered.</p> <ul style="list-style-type: none"> • 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. • The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict. • 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. • 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. 	<p>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> <p>The FIU is in the process of negotiating several MOUs and has signed an MOU with the Netherlands Antilles.</p>
38.MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> • No provision for foreign states to request local authority to apply for forfeiture/confiscation orders or vice versa except in limited circumstances under section 16 of the ATA. • No provision for the freezing, seizure 	<ul style="list-style-type: none"> • 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 	<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</p>

		<p>or confiscation of instrumentalities of ML and FT.</p> <ul style="list-style-type: none"> • No arrangements for co-coordinating seizure and confiscation actions with other countries. • No evidence of consideration of establishing an asset forfeiture fund 	<p>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.</p> <ul style="list-style-type: none"> • The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered. • 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. 	<p>warrants) and Section 48-9 (monitoring orders) of the POCA apply to MACMA.</p>
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> • The Ministry of Economic Affairs and Development cannot share information with foreign counterparts • The Registrar of Co-operative Societies can only share information by Court Order. 	<ul style="list-style-type: none"> • The Ministry of Economic Affairs and Development should be authorized to share information with foreign counterparts. • The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order 	<p>The Fourth Schedule of the MLFTA 2010 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 2010 amends section 71 of the CSA by making provision for the sharing of information with foreign counterparts. See comments at Recommendation 5.</p>
Nine Special Recommendations		Summary of factors underlying rating		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and 	<ul style="list-style-type: none"> • The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human 	<p>As mentioned at Recommendations 1 and 3, the Transnational Organised Crime (Prevention and Control) Bill and the Prevention of Corruption</p>

		<p>Taliban Sanctions Committee.</p> <ul style="list-style-type: none"> • Overlap between ATA and POCA respecting freezing/forfeiture and ambiguous aspects to ATA forfeiture power, both detracting from effectiveness 	<p>trafficking and updating the corruption/bribery laws; (ii) UN Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities.</p>	<p>Bill have been discussed and approved by Cabinet. The ATA Cap. 158 is absolute in that it does not provide any restriction whatsoever relating to the freezing of assets.</p>
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee. • Divergent policy re forfeiture/restraint under ATA and POCA. 	<ul style="list-style-type: none"> • 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. • The authorities should critically review 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. • 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 	<p>The POCA schedule has been amended to include sections 3 to 6 of the ATA. The MLFTA 2010 refers to both ML & TF.</p>

			<p>legal assistance requests.</p> <ul style="list-style-type: none"> Expand the scope of the MLFTA to incorporate FT in sections 9-11. 	The equivalent sections 9-11 in the previous Act are section 20-21 and 39 of the MLFTA 2010.
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> No requirement in law or regulations to report attempted or aborted suspicious transactions. 	<ul style="list-style-type: none"> The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT. 	Refer to previous comments relating to Recommendation 13.
SR.V International co-operation	PC	<ul style="list-style-type: none"> Factors in Recs. 36 and 38 are also applicable. 	<ul style="list-style-type: none"> 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. 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. 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. The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict. The authorities should consider increasing 	This has been dealt with in Recommendation 36 and 38.

			<p>their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU's with foreign states.</p> <ul style="list-style-type: none"> • 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. • 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. • The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered. • 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. 	
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SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> Stand alone MVT providers are not regulated or supervised for compliance with AML/CFT requirements No requirement for MVT service operators to maintain a current list of agents. 	<ul style="list-style-type: none"> 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. 	A general framework for regulation of stand-alone MVTs is being considered in the new Financial Services Commission Bill. The Commission is to be established by July 2010.
SR VII Wire transfer rules	PC	<ul style="list-style-type: none"> Stand-alone money-remitters are not subject to any regulatory oversight except for exchange control purposes. 	<ul style="list-style-type: none"> Stand-alone money remitters should be monitored for compliance with the requirements of SR VII. 	A general framework for regulation of stand-alone MVTs is being considered in the new Financial Services Commission Bill. The Commission is to be established by July 2010.
SR.VIII Non-profit organisations	LC	<ul style="list-style-type: none"> Sanctions for breaches of Charities Act are not dissuasive. 	<ul style="list-style-type: none"> The authorities should carefully consider the FATF's 2002 Best Practices Paper on 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. Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect. 	<p>The Fourth Schedule of the MLFTA amends the Section 41(1) Charities Act as follows:</p> <ul style="list-style-type: none"> "(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. <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"> Delete section 6 and substitute the following: <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</p>

				<p>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 of the charity for the income year during which the charity remained unregistered."</p> <ul style="list-style-type: none"> • In section 8, delete the words "Income Tax Commissioner" and substitute the words "Commissioner of Inland Revenue". • In section 19(4), delete the words "\$250" and "\$25" and substitute the words "\$5 000" and "\$500", respectively. • 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". • In section 41(1), delete the word "15" and substitute the word "12". • In section 42, delete subsection (6) and substitute the following: "(6) Any person who fails to (a) transmit to the Registrar any statement of
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				<p>account required by subsection (1); <i>(b)</i> afford an auditor any facility to which he is entitled under subsection (4); or <i>(c)</i> 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 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"> • In section 47(2), insert after the word "received", the words "and penalties imposed and collected".
SR.IX Cross Border Declaration & Disclosure	LC	<ul style="list-style-type: none"> • 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. • Effectiveness of system to detect cross-border transfer of currency and negotiable instruments cannot be evaluated due to lack of statistics. 	<ul style="list-style-type: none"> • Suspicion of money laundering or terrorist financing or making a false declaration should provide grounds for stopping and seizure of currency and negotiable instruments. • 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. 	The Customs Department currently maintains statistics with respect to cross-border declarations.