



# Sixth Follow-Up Report

## Barbados

### 22 November 2011

© 2011 CFATF. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission. Requests for permission to further disseminate reproduce or translate all or part of this publication should be obtained from the CFATF Secretariat at [\*\*CFATF@cfatf.org\*\*](mailto:CFATF@cfatf.org)



## BARBADOS – SIXTH FOLLOW-UP REPORT

### I. Introduction

1. This report is the sixth 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 five previous follow-up reports in May and October 2009 and May and November 2010 and May 2011, 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 March, 2011**

		<b>Banks (Commercial)</b>  <b>US\$000's</b>	<b>Other Credit Institutions*</b> (Deposit Taking)  <b>US\$000's</b>	<b>Securities</b>	<b>Insurance**</b>	<b>TOTAL</b>
<b>Number of institutions</b>	Total #	6	43 <sup>≠</sup>	50	26	125
<b>Assets</b>	US\$	5,727,066	731,022,792	16,336,596,882	1,200,242,857	3,570,852,403
<b>Deposits</b>	Total: US\$	4,536,389	611,718,113			616,254,502
	% Non-resident	% of deposits  15.59%		N/A	N/A	
<b>International Links</b>	% Foreign-owned <sup>^</sup> :	100% of assets	93.6 % of assets	% of assets	% of assets	% of assets
	#Subsidiaries abroad	3	0			

<sup>≠</sup> Since Sept 2010, one of the deposit taking non-banking institutions wound up

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

\* Other credit institutions refer to finance companies

\*\*The data for the insurance sector is as at December 31, 2010.

## II. 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. A new Money Laundering and Financing of Terrorism (MLFT) Bill, a Corporate and Trust Service Providers Bill, the Transnational Organized Crime (Prevention and Control) Bill and the Prevention of Corruption Bill were finalized and approved by Cabinet. The new MLFT Bill amended 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. These pieces of legislation were due to be placed in Parliament for debate in June 2010. Most of the examiners'

recommendations set out under 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 were addressed by these statutes. 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

6. In the Follow-Up Report for November 2010 the authorities 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 had 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. As a result of the above, it was recommended and agreed by the November 2010 Plenary 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. The recommended letter was sent on November 11, 2010 to the Attorney General of Barbados.

7. **Summary of progress since the last follow-up report:** In the last Follow-Up Report the authorities advised that debate on the legislative package had been ongoing and had resulted in the enactment of 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). The new MLFT Bill and the Prevention of Corruption Bill were still being debated. As a result of the passage of the FSCA, the Financial Services Commission (FSC) came into effect on April 1, 2011.

8. **Summary of progress since the last follow-up report:** The Money Laundering and Financing of Terrorism (Preventions and Control) Act (MLFTA 2011) became enforceable in November 2011 and as noted above contains amendments to several statutes. This report will focus on those Recommendations which have been affected by the enactment of the MLFTA 2011 and the attendant amendments. The authorities have advised that the ICTSPA is awaiting proclamation.

## Core Recommendations

### Recommendation 5

**Examiners' Rec - Financial institutions should be legislatively required to;**

- undertake customer due diligence (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;
- 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).

9. With regard to the above recommendation relating to the application of customer due diligence (CDD) measures, section 2 of the MLFTA 2011 defines “business transaction” to include a business arrangement and an occasional transaction. An occasional transaction is also 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.

10. Subsections 15(1)(a) and (b) of the MLFTA, 2011 require a financial institution to establish and verify the true identity of a customer by means of reliable documents, data or information from an independent source where

- (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 data previously obtained in respect of the customer or
- (iii) there is suspicion of money laundering or financing of terrorism in connection with the customer

11. Subsection 15(3) of the MLFTA 2011 states that where it appears to a financial institution that a customer is acting on behalf of another person, the institution should establish and verify the true identity of the customer and the person on whose behalf the customer may be acting by means of reliable documents, data or information from an independent source. Additionally, the financial institution is required to establish that the customer is authorized to act on behalf of the person in the capacity and in the proposed business arrangement or occasional transaction.

12. In relation to the requirement to determine the natural persons that ultimately own or control the customer subsection 15(4) of the MLFTA 2011, requires financial institution in the case of a customer who is not an individual to establish the true identity of the individual who is the beneficial owner of the customer and to verify the identity of the individual. This provision does not include control of a customer and there is no definition in the MLFTA 2011 of beneficial ownership with regard to the level of ownership.

13. The requirement for ongoing due diligence by financial institutions is stipulated in section 16 of the MLFTA 2011 with respect to every business arrangement and mandates the close examination of transactions conducted in the course of such arrangements. Except for partially complying with the recommendation to determine the natural person that ultimately owns or control the customer, the above provisions meet the examiners’ recommendations.

***Examiners’ Rec – Simplified CDD measures should not be acceptable whenever there is a suspicion of ML or TF***

14. Subsection 17(2) of the MLFTA fully complies with the examiners’ recommendations by prohibiting a financial institution from applying simplified or reduced identification, verification of identity and ongoing due diligence procedures where there is suspicion of money laundering or financing of terrorism in connection with a customer.

***Examiners’ Rec - The enforceability of the following requirements should be extended from the licensees of the Central Bank of Barbados (CBB) and the Supervisor of Insurance to all other***

*financial institution;*

- *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*

15. The above recommendations were a result of the fact that the reference requirements were enforceable only on the licensees of the CBB and the Supervisor of Insurance through their respective AML/CFT Guidelines which were considered other enforceable means by the examiners. As such, the examiners recommended the extension of the above requirements to all other financial institutions i.e. those under the supervision of the Securities Commission, the Registrar of Co-operatives and Friendly Societies, the International Business Unit of the Ministry of Economic Affairs and Development and the Office of the Director of International Business.

16. With regard to the requirement for the scrutiny of transactions and updating of data or documents collected under the CDD process section 16 of the MLFTA 2011 requires financial institutions to closely examine transactions in the course of a business arrangement to determine whether the transactions are consistent with their knowledge of the relevant customer, his commercial activities, risk profile and source of funds where required. This provision while requiring scrutiny of transactions does not require the updating of data or documents collected under the CDD process.

17. The authorities advise that revisions to regulatory guidelines are in the process of being finalized. As such these recommendations remain outstanding. Overall, there has been substantial compliance with some recommendations, with the minority still in the process of being addressed.

#### **Recommendation 10**

***Examiners' Rec** – 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.*

18. 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 Anti-Money Laundering Authority (AMLA) may direct.

***Examiners' Rec** – 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*

19. 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. This definition together with the provision in section 18 complies with the examiners' recommendation.

***Examiners' Rec** – Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis.*

20. Section 30 of the MLFTA 2011 provides for the Director of the FIU to require from a financial institution the production of any information, except that subject to legal profession privilege, that the Director considers relevant to fulfill his functions. Furthermore, a financial institution must within such time as may be specified by the Director, or within a reasonable time comply with any instruction issued or request made by the Director. This provision should ensure that financial institutions make available information or records on a timely basis.

## **Key Recommendations**

### **Recommendation 3**

***Examiners' Rec** - The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offence is caught.*

21. The Fourth Schedule of the MLFTA 2011 amends paragraph (a) of the definition of "tainted property" in section 3 of 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". This amendment in extending the definition of tainted property which is subject to forfeiture and confiscation complies with the examiners' recommendation.

***Examiners' Rec** - The definition of "scheduled offence" under POCA should be extended to incorporate the serious offences contemplated by the FATF's "designated categories of offences"*

22. The Fourth Schedule of the MLFTA 2011 amends the definition of "scheduled offence" in section 3 of POCA by revising the Schedule listing specified offences under POCA to include the FATF "designated categories of offences". This list includes statutory offences & common law offences. This provision complies fully with the examiners' recommendation.

***Examiners' Rec** - A specific provision should be enacted for the forfeiture of instrumentalities in MLFTA*

23. The above recommendation is no longer applicable since the forfeiture and confiscation regime established under the previous MLFTA has been eliminated with the enactment of MLFTA 2011 which has no provision for forfeiture and confiscation of criminal proceeds and repeals the former MLFTA.

***Examiners' Rec** - 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.*

24. The above recommendation is no longer applicable for the same reason already mentioned i.e the forfeiture and confiscation regime under the previous MLFTA has been eliminated. With regard to those offences falling outside the scope of the former POCA "scheduled offences", these have been incorporated in the amendment of section 3 of POCA in the Fourth Schedule of the MLFTA 2011. As such this provision complies with the examiners' recommendation.

***Examiners' Rec** - The definitions of "financial institutions" under POCA and the MLFTA should be harmonized.*



25. The above recommendation was a result of the definition of “financial institution” in section 54 of the POCA being at variance with that of the MLFTA. The definition of “financial institution” in the POCA and MLFTA has been harmonized. The Fourth Schedule of the MLFTA 2011 stipulates 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 under the MLFTA 2011. Sections 48 to 52 of POCA deal with the obligations of financial institutions in relation to monitoring orders, retention of records and communication of information to law enforcement authorities. This provision complies with the examiners’ recommendation.

***Examiners’ Rec*** - 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.

26. The Fourth Schedule of the MLFTA 2011 has amended section 60 of POCA to insert section 60 (1) 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 57 allows for an objection to the disclosure of requested information on specific grounds subject to determination by a judge in chambers. This provision complies with the examiners’ recommendation.

***Examiners’ Rec*** – 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.

27. Section 49 of the MLFTA 2011 makes provision similar to those of section 57 of POCA for the objection to disclosure of information to the FIU on specific grounds subject to determination by a judge in chambers. This provision complies with the examiners’ recommendation.

***Examiners’ Rec*** - The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard.

28. With respect to 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.

***Examiners’ Rec*** - 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.

29. Section 47 of DAPCA has been deleted in the Fourth Schedule of MLFTA 2011. As such the only civil forfeiture applicable is that under sections 9 and 17 of POCA. As already stated, the standard of proof is the civil standard pursuant to the new section 17(3) of POCA. The procedures to be followed are those in POCA in sections 10-17.

**Examiners' Rec** - *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.*

30. The above recommendation has been achieved by the enactment of the MLFTA 2011 and the amendments to the POCA as stated in the Fourth Schedule of the MLFTA 2011. As noted above the forfeiture and confiscation regime established under the previous MLFTA has been eliminated with the enactment of MLFTA 2011 which has no provision for forfeiture and confiscation of criminal proceeds and repeals the former MLFTA. The forfeiture regime is now harmonized under POCA and includes as indicated above all serious offences in the definition of scheduled offence as amended in the Fourth Schedule. As such, the examiners' recommendation for a rationalized system has been met. Based on the above all the examiners' recommendations have been satisfied.

#### **Recommendation 4**

**Examiners' Rec** - *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.*

31. Subsection 31 of the MLFTA, 2011 specifies that inspections to be conducted by staff of the AMLA or such other trained persons are to determine whether a financial institution is in compliance with the aforementioned Act. The above provision is limited to the MLFTA and does not include AML/CFT guidelines.

**Examiners' Rec** - *The FIA should be amended to allow the CBB to share information with domestic regulators.*

32. As indicated in the first Follow-Up Report, 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.

**Examiners' Rec** - *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.*

33. The Fourth Schedule of the MLFTA, 2011 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.

**Examiners' Rec** - *An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted.*

34. The Fourth Schedule of the MLFTA, 2011 amends section 54 of the Insurance Act by inserting a new provision (2A) permitting the Supervisor of Insurance to share information with the AMLA and other domestic and foreign regulatory authorities. Section 35 of the Exempt Insurance Act is similarly amended.

***Examiners' Rec*** – *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.*

35. The Fourth Schedule of the MLFTA, 2011 amends section 24 of the International Business Companies Act (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. Additionally, sections 25(3) of the IBC Act; section 49(3) of the Societies With Restricted Liabilities Act (SRL Act ;) and section 28 of the International Trusts Act (ITA) were also amended to permit the disclosure of information for the purposes of the MLFTA.

36. In tandem with the above measures, the Fourth Schedule of the MLFTA also amends sections 8 of the Securities Act and section 50(3) of the Mutual funds Act Cap 320B to permit the Securities Commission to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities. The above measures complies significantly with all the examiners' recommendations.

### **Recommendation 23**

***Examiners' Rec*** - *The Securities Commission should have power to approve ownership of significant or controlling interests of their registrants.*

***Examiners' Rec*** - *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.*

37. The authorities have indicated that provision is made under section 126(1) of the SA for the Securities Commission to prescribe the format and content of application/filings which would allow for information on fit and proper criteria of significant and controlling interests of registrants which form one of the basis for decisions of approval or denial under the SA. No documentation has been submitted to verify this measure for this report. As such, the above recommendations remain outstanding. .

***Examiners' Rec*** - *The Registrar of Co-operatives should have power to approve senior management of their licensees*

38. The Fourth Schedule of the MLFTA 2011 amends section 7 of the Cooperatives Societies Act to make it a condition of initial or continuing registration that the directors and other officers of the society are fit and proper to hold their respective office. The above provision would suggest that successive directors and officers of a society will be assessed on the basis of fit and proper criteria at the renewal of registration and not at the time of appointment to their position. While the provision does meet the examiners' recommendation it is not clear that consideration is also done at the time of appointment. .

***Examiners' Rec*** - *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*

39. The authorities advised in the Follow-Up Report of May 2010 that a general framework for the regulation of stand-alone money value transfer providers was being considered in the FSCA. The FSCA has been enacted and the FSC was established on April 1, 2011. A review of the FSCA at present indicates that there is no provision for the FSC to regulate and supervise stand-alone money value transfer providers. Given the above, this Recommendation remains outstanding.

### **Recommendation 36**

***Examiners' Rec*** - *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.*

40. The Fourth Schedule of the MLFTA 2011 amends section 2 of the MACMA to revise the definition of "serious offence" to include offences with at least 4 year custodial penalties, thereby complying with the recommendation.

***Examiners' Rec*** - *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.*

41. The Fourth Schedule of the MLFTA 2011 amends section 2(6) of the MACMA to revise reference to property or benefits derived or obtained from an offence to include property, instrumentalities, used in or intended for use or in connection with the commission of an offence. The definition is applicable to section 15 of MACMA which deals with requests for restraint, forfeiture and confiscation of property or benefits derived or obtained from offences.

***Examiners' Rec*** - *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*

42. The Fourth Schedule of the MLFTA inserts a new section 31A of MACMA which states that sections 42-46 (production and inspection orders); section 47 (search warrants) and sections 48-49 (monitoring orders) of the POCA will apply to serious offences under MACMA.

***Examiners' Rec*** - *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.*

43. The situation remains as was reported in the previous Follow-Up Report with the FIU negotiating several MOUs. The FIU has signed MOUs with St. Vincent and the Grenadines, Bermuda and Nigeria.

***Examiners' Rec*** - The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict.

***Examiners' Rec*** - 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.

44. The two above recommendations have not been addressed by the authorities in Barbados. All the examiners' recommended measures have been met except for the two above, thereby significantly improving the level of compliance of this Recommendation..

### **Special Recommendation I**

***Examiners' Rec*** - The authorities should fully implement:

- a) *the Palermo Convention by specifically legislating for human trafficking and updating the corruption/bribery laws*
- b) *UN Resolution S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities.*

45. As already noted the TOCPCA has been enacted. Section 8 of TOCPCA criminalizes a range of offences as human trafficking, including the organizing and facilitating of the entry or exit from Barbados of a person for the purpose of exploitation such as the provision of sexual services, forced labour, slavery, servitude or similar service or removal of any human organs or human tissue etc. Section 9 of TOCPCA criminalises the offence of smuggling of persons.

46. Under section 13 of the TOCPCA a person guilty of the offence of trafficking in persons and the victim is a child, is liable on conviction on indictment to imprisonment for life. When the victim is not a child, that person is liable on conviction on indictment to a fine of BDS\$1,500,000 or to imprisonment for 15 years or to both. A person guilty of the offence of smuggling of persons into Barbados without complying with the requirements for legal entry is liable on conviction on indictment to a fine of BDS\$1,500,000 or to imprisonment for 15 years. A person guilty of the offence of smuggling of persons which endanger or is likely to endanger the lives of the persons concerned is liable on conviction on indictment to a fine of BDS\$2,000,000 or to imprisonment for 25 years or to both.

47. The above penalties are in accordance with the requirements of article 2 of the Palermo Convention for serious offences. Additionally, the penalties meet Barbados's threshold for determining predicate offences for money laundering which is all offences punishable by death or at least 12 months imprisonment.

48. The recommendation with regard to the updating of the corruption/ bribery laws remains outstanding pending the enactment of the Prevention of Corruption Bill. Additionally, there is no legislative provision implementing UN Resolution S/RES/1373(2001). Given the above this recommendation has only been partially met..

### Special Recommendation III

***Examiners' Rec** - 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.*

49. The authorities advised that sections 3 to 6 of the ATA criminalizing terrorism and the financing of terrorism has been included as a "scheduled offence" in the POCA Schedule as amended in the Fourth Schedule of the MLFTA 2011. While this inclusion makes terrorism and terrorist financing offences subject to the restraint, forfeiture and confiscation requirements of POCA, there is no provision for 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.

***Examiners' Rec** - 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.*

***Examiners' Rec** - 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.*

50. The above recommendations have not been addressed by the authorities.

***Examiners' Rec** - Expand the scope of the MLFTA to incorporate FT in sections 9-11*

51. The equivalent sections 9-11 in the previous MLFTA have been transposed in sections 20-21 and 39 of the MLFTA 2011 incorporating financing of terrorism as required by the examiners' recommendation. Given the above, all the examiners' recommendations except for one remain outstanding.

### Special Recommendation V

52. The examiners' recommendations have been dealt in the sections under Recommendations 36 and 38 and the analysis and conclusions are also applicable. The forfeiture and confiscation regime of the POCA has been extended to incorporate terrorism and terrorist financing.

## Other Recommendations

### Recommendation 6

*Examiners' Rec - 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*

53. The situation remains a work in progress and the authorities advise that relevant regulatory guidelines making the requirement for politically exposed persons similar to those of the Central Bank Guidelines enforceable on all financial institutions are in the process of being finalized. This Recommendation remains outstanding.

### Recommendation 8

*Examiners' Rec - The authorities should make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions.*

54. The situation remains a work in progress and the authorities advise that relevant regulatory guidelines making the requirements for non-face to face customers enforceable on all financial institutions are in the process of being finalized. This Recommendation remains outstanding.

### Recommendation 9

*Examiners' Rec - 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.*

*Examiners' Rec - Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with recommendations 23, 24 and 29.*

*Examiners' Rec - 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.*

55. The situation remains a work in progress and the authorities advise that the requirements for third party and introduced business as stipulated by the examiners' recommendations are being addressed by revisions to the regulatory Guidelines which are being finalized. While the updated FIU website has the capacity to issue advisories, none are presently listed. This Recommendation remains outstanding.

### Recommendation 11

*Examiners' Rec – The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions.*

56. The examiners' recommendation is a result of monitoring requirements dealing with unusual and suspicious transactions specified in the AML/CFT Guidelines being only enforceable on the licensees of the Central Bank and the Supervisor of Insurance. The authorities' response refers to the enhancement of the enforcement powers of the regulatory agencies. There is no indication of the imposition of enforceable monitoring requirements on unusual and suspicious transactions for those financial institutions under the supervision of the Securities Commission, the Registrar of Co-operatives and Friendly Societies, the International Business Unit of the Ministry of Economic Affairs and Development and the Office of the Director of International Business.

***Examiners' Rec** – The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years.*

57. The situation remains work in progress that is being addressed by revisions to the regulatory Guidelines other than those issued by the CBB which have already been revised..

## **Recommendation 12**

***Examiners' Rec** – 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*

58. 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. The list of non-financial business entities and professionals in the Third Schedule includes all categories of the FATF DNFBPs except for notaries and other independent legal professionals. The activities of the relevant DNFBPs subject to the MLFTA 2011 also comply with FATF standards.

59. It is noted that in the cases of dealers in precious metals or precious stones and a person who operates a gaming institute, the Act applies when they engage in financial transactions equal to or above the value set out in guidelines of the AMLA. These guidelines have not been issued to date. As such, the CDD requirements as set out in section 15 of the MLTPA 2011 are applicable. These requirements have no threshold limit and are therefore applicable to all occasional transactions and business relationships. All non-financial business entities and professions as set out in the Third schedule of the MLFTA 2011 are subject to the other requirements of Recs. 5, 6, 8 to 11 and 17 as enacted by the MLFTA 2011 and the deficiencies identified under the relevant Recommendations in this report are also applicable. It should also be noted that the requirements of Recs. 5, 6, 8 to 11 and 17 which are addressed in the CBB Guidelines would also have to be imposed on the DNFBPs for full compliance.

60. In addition to the above, the enactment of the ICTSPA provides a framework for the establishment of a registration and licensing regime for international service providers pursuant to Part II of the Act. International service providers are defined as persons engaging in the business of international corporate service or international trust service. Section 5 of the ICTSPA stipulates the functions of the Director of International Business to include administration of the Act and monitoring and examination of the businesses of international service providers to determine compliance with the Act. Section 25 of the ICTSPA sets out enforcement powers that the Director of International Business can apply for a variety of situations including breaches of the ICTSPA.

61. Section 8(3) of the ICTSPA requires the Director of International Business to satisfy himself that international service providers comply with the AML/CFT obligations of the



MLFTA 2011 as a condition for the annual renewal of their licences. This clearly places an obligation on service providers to observe the AML/CFT requirements facilitated under the annual renewal process. Further, as indicated above, registrants under the ICTSPA fall in the Third Schedule of the MLFTA 2011 and as such are subject to the provisions of that Act. .

#### **Recommendation 14**

***Examiners’ Rec** – 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.*

62. Section 48(5) of the MLFTA, 2011 has been amended to establish mandatory reporting requirements on financial institutions to give information which may be relevant to an investigation of, or prosecution of a matter or be of assistance to the enforcement of the Act 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. This provision complies with the examiners’ recommendation.

#### **Recommendation 15**

***Examiners’ Rec** - All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply.*

63. With respect to internal policies, audit and compliance requirements, Section 19 (2) of the MLFTA, 2011 stipulates that where a financial institution contravenes subsection (1), which requires the development and implementation of internal policies, procedures and controls to combat money laundering and the financing of terrorism, audit functions to evaluate such policies, procedures and controls and procedures to audit compliance, the AMLA may impose on the institution a pecuniary penalty in accordance with section 36, which deals with pecuniary penalties. Section 36 of the MLFTA, 2011 provides for the AMLA to impose a fine of \$5,000 on a financial institution for contravening the MLFTA.

***Examiners’ Rec** – All financial institutions should be required to designate an AML/CFT compliance officer at management level and develop policies and procedures for record retention*

64. 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. It is the intention of the authorities that the requirement for financial institutions to be required to designate an AML/CFT compliance officer at management level will be addressed upon conclusion of the revision to all Guidelines. While policies and procedures would relate to all aspects of the AML/CFT program, the examiners’ recommendation specifically requires the development of policies and procedures for record retention. It was already noted in the mutual evaluation report that the CBB AML/CFT Guidelines met the above recommendation. The examiners’ recommendation sought to extend this requirement to all financial institutions. Given the above , the examiners’ recommendation remains outstanding.

***Examiners’ Rec** - 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.*

65. The above recommendation was a result of the fact that the reference requirements were enforceable only on the licensees of the Central Bank of Barbados and the Supervisor of Insurance through their respective AML/CFT Guidelines. As such, the examiners recommended the extension of the above requirements to all other financial institutions i.e. those under the supervision of the Securities Commission, the Registrar of Co-operatives and Friendly Societies, the International Business Unit of the Ministry of Economic Affairs and Development and the Office of the Director of International Business. The situation remains a work in progress as the authorities advise that relevant regulatory guidelines to make the requirements enforceable on all financial institutions are in the process of being finalized.

#### **Recommendation 16**

***Examiners' Rec** - 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.*

66. All non-financial business entities and professions as set out in the Third Schedule of the MLFTA 2011 are subject to the requirements of Recs. 13 to 15, 17 and 21 as enacted by the MLFTA 2011 and the deficiencies identified under the relevant Recommendations in this report are also applicable. Similar to what was noted under Recommendation 12, the requirements of Recs. 13 to 15, 17 and 21 which are addressed in the CBB Guidelines would also have to be imposed on the DNFBPs for full compliance. .

#### **Recommendation 21**

***Examiners' Rec** - 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;*

67. The authorities advise that section 7.4 of the CBB Guidelines address the above issue and that it will be dealt with accordingly in other regulatory Guidelines. Section 7.4 states that a "licensee should be wary of doing business with persons from countries where, for example, it is believed that there is a high level of drug trafficking or corruption and greater care may be needed in establishing and maintaining the relationship or accepting documentation from such countries." The countries are selected on the basis of the type of crime rather than the examiners' requirement of countries which do not or insufficiently apply the FATF Recommendations. As such, this recommendation remains outstanding.

***Examiners' Rec** – Written findings of all transactions with no apparent or lawful purpose from countries that do not or insufficiently apply the FATF Recommendations should be available for competent authorities.*

***Examiners' Rec** - Authorities should consider issuing instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.*

68. The above recommendations have not been addressed and therefore remain outstanding.

***Examiners' Rec** - 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;*

69. The authorities advise that the revised FIU website will seek to keep financial institutions informed about developing issues.

## **Recommendation 22**

***Examiners' Rec** – 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.*

***Examiners' Rec** – 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.*

70. The above recommendation requires the extension of the above requirements to all other financial institutions i.e. those under the supervision of the Securities Commission, the Registrar of Co-operatives and Friendly Societies, the International Business Unit of the Ministry of Economic Affairs and Development and the Office of the Director of International Business. The situation remains a work in progress as the authorities advise that relevant regulatory guidelines to make the requirements enforceable on all financial institutions are in the process of being finalized.

***Examiners' Rec** – 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.*

***Examiners' Rec** – 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.*

71. The above recommendations have not been addressed so they remain outstanding.

## **Recommendation 24**

***Examiners' Rec** - 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*

72. The MLFTA 2011 extends the application of AML/CFT obligations to non-financial business entities and professionals. There is no direct designation of a supervisory agency with appropriate authority to implement an effective system of monitoring and ensuring compliance by the DNFBPs with AML/CFT obligations in the MLFTA 2011. It is noted that section 31 of the MLFTA 2011 empowers the AMLA to conduct inspections of financial institutions to determine compliance with the Act. The enactment of the ICTSPA establishes a registrations and licensing regime for international service providers and pursuant to section 8(3) of the ICTSPA the

Director of International Business is responsible for ensuring that service providers observe AML/CFT requirements of the MLFTA 2011 as a condition for the annual renewal process. As such the requirements of Recommendation 24 have been partially met.

73. With regard to recommendation 25 concerning competent authorities issuing guidelines to DNFBPs, section 26 of the MLFTA 2011 allows for the AMLA to issue guidelines to financial institutions which in accordance with section 4(1) would also be applicable to DNFBPs. Given the recent enactment of the MLFTA 2011, guidelines are still to be issued. Given the above this Recommendation has been partially met.

### **Recommendation 33**

***Examiners' Rec** - The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry.*

74. The authorities advise that the onus for the capture and maintenance of beneficial ownership information has been placed on the service providers under the International Corporate and Trust Service Providers Act, 2011 (ICTSPA, 2011). While the sections 14(1) and 14(3) of the ICTSPA, 2011, requires that an international service provider 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 indicate that the above requirement will be addressed in the format and content of forms prescribed under the ICTSPA for international service providers. However, no documentation verifying this measure has been submitted with this report.

75. It is noted that subsection 15(4) of the MLFTA 2011, requires financial institution in the case of a customer who is not an individual to establish the true identity of the individual who is the beneficial owner of the customer and to verify the identity of the individual. This provision does not include control of a customer and there is no definition in the MLFTA 2011 of beneficial ownership with regard to the level of ownership. Given that section 4 of the MLFTA 2011 specifically applies the requirements of the Act to DNFBPs, international service providers along with other financial institutions and DNFBPs will be required to maintain beneficial ownership information with the limitation indicated above.

***Examiners' Rec** - The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information*

76. The above recommendation has not been addressed and so remains outstanding. As such only one of the examiners' recommendations has been partially met.

### **Recommendation 34**

***Examiners' Rec** - 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.*

77. At present, the enactment of the ICTSPA, 2011 provides a framework for the establishment of a registration and licensing regime for international service providers pursuant to Part II of the Act. International service providers are defined as persons engaging in the business of international corporate service or international trust service. Section 5 of the ICTSPA

stipulates the functions of the Director of International Business to include administration of the Act and monitoring and examination of the businesses of international service providers to determine compliance with the Act. Section 25 of the ICTSPA sets out enforcement powers that the Director of International Business can apply for a variety of situations including breaches of the ICTSPA.

78. Section 8(3) of the ICTSPA requires the Director of International Business to satisfy himself that international service providers comply with the AML/CFT obligations of the MLFTA 2011 as a condition for the annual renewal of their licences. This clearly places an obligation on service providers to observe the AML/CFT requirements facilitated under the annual renewal process. Further,, it is noted that section 4 of the MLFTA 2011 extends the AML/CFT requirements of the Act to DNFBPs which includes international service providers along with other financial institutions and DNFBPs will be required to maintain beneficial ownership information with the limitation indicated above..

79. While the authorities advise that the establishment of the FSC under the FSCA will strengthen supervision, there is no provision in the FSCA for the FSC to ensure compliance of international trusts with AML/CFT requirements. Given the above, this Recommendation remains outstanding.

### **Recommendation 38**

***Examiners' Rec** - 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*

80. The Fourth Schedule of the MLFTA 2011 amends MACMA by inserting section 16A and section 27A which provide for Barbados or a foreign country respectively to seek reciprocal assistance in obtaining a forfeiture or confiscation order in relation to a serious offence. As already noted the new section 31A of MACMA also provides for sections 42-46(production and inspection orders); section 47(search warrants) and sections 48-49(monitors orders) of the POCA to apply to serious offences under MACMA. These provisions comply with the examiners' recommendations.

***Examiners' Rec** - The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered.*

***Examiners' Rec** - 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.*

81. The above recommendations have not been addressed by the authorities. As such, two of the examiners' recommendations remain outstanding.

## Special Recommendation VI

**Examiners' Rec** - *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.*

82. The authorities advised in the Follow-Up Report of May 2010 that a general framework for the regulation of stand-alone money value transfer providers was being considered in the FSCA. The FSCA has been enacted and the FSC was established on April 1, 2011. A review of the FSCA at present indicates that the FSC is responsible for the supervisions and regulation of financial institutions in section 4(1) of the Act. Financial institutions as defined in section 2 of the FSCA includes credit unions and institutions under the Exempt Insurance Act, Insurance Act, Occupational Pensions Benefits Act, Securities Act and the Mutual Funds Act. There is no provision for the FSC to regulate and supervise stand-alone money value transfer providers. Given the above, this Recommendation remains outstanding.

## Special Recommendation VII

**Examiners' Rec** - *Stand-alone money remitters should be monitored for compliance with the requirements of SR VII.*

83. As reported in the Follow-Up Report of May 2010 the recommendation that stand-alone money remitters be monitored for compliance with the requirements of SR VII was to be incorporated into the general regulatory framework being considered in the FSCA. While the FSCA has been enacted, as indicated above, there is no provision for the FSC to regulate and supervise or monitor stand-alone money remitters for compliance with the requirements of SR VII. Given the above, this Recommendation remains outstanding.

## Conclusion

84. The enactment and recent proclamation of the MLFTA 2011 has 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. It is noted that Recs. 6, 8, 9, 11, 21, 22, 24, 34 and SR. III remain outstanding including one key Recommendation.. Given the above, Barbados has taken sufficient action to be considered for removal from enhanced to expedited follow-up within the regular follow-up process and should report back to the Plenary in May 2012. .

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

up\_Report

Forty Recommendations	Rating	Summary of factors underlying rating <sup>1</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 in the process of review by Cabinet.</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 concealment, removal from the jurisdiction, transfer to nominees or otherwise);</p>

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

				<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>
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> </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</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</li> </ul>



		<ul style="list-style-type: none"> <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>	<p>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.</p> <ul style="list-style-type: none"> <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 the forfeiture of instrumentalities in MLFTA</li> <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</li> </ul>	<p>harmonized under the POCA.</p> <ul style="list-style-type: none"> <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 “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> </ul>
--	--	--	--	---

			<p>harmonized.</p> <ul style="list-style-type: none"> <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> <li>• 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.</li> <li>•</li> <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>	<ul style="list-style-type: none"> <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, with such modifications and adaptations as the circumstances may require, apply in respect of an order made under subsection (1).”</li> <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</li> </ul>
--	--	--	--	--

				<p>on a balance of probabilities.”</p> <ul style="list-style-type: none"> <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> <li>Under the CSA, the Registrar of Cooperatives can only share information pursuant to a court order;</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 generally</li> <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> </ul>	<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 information with the AMLA and other domestic and foreign supervisory or regulatory authorities without a court order.</li> </ul>

- 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.

- 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.

- 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.
  - 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.
  - 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, 2011 amends section 8 of the Securities Act adding subsection (2A) to permit the Commission to share information with the AMLA and other domestic and foreign supervisory or regulatory authorities.
- Section 50(3) of the Mutual Funds Act

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 identity using reliable, independent source documents, data or information (identification data);</li> </ul> </li> <li>• No express prohibition against reduced CDD measures where there is a risk of ML and FT</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> <li>○ conduct on-going due diligence on business relationships;</li> <li>○ verify individual customer identity using reliable, independent source</li> </ul> </li> </ul>	<p>Cap.320B is also similarly amended.</p> <ul style="list-style-type: none"> <li>• The 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> <ul style="list-style-type: none"> <li>(i) the customer requests the institution to enter into a business arrangement or conduct an occasional transaction with the customer;</li> <li>(ii) doubt exists about the veracity or adequacy of customer identification data previously obtained in respect of the customer; or</li> <li>(iii) there is a suspicion of money laundering or financing of terrorism in connection with the customer.</li> </ul> <ul style="list-style-type: none"> <li>• Section 15 states at subsection:               <ul style="list-style-type: none"> <li>(2) A financial institution shall take reasonable measures to establish whether a customer is acting on behalf of another person.</li> <li>(3) Where it appears to a financial institution that a customer is acting on behalf of another</li> </ul> </li> </ul>
--------------------------	----	--	--	--

		<ul style="list-style-type: none"> <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 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> </li> </ul>	<p>documents, data or information (identification data);</p> <ul style="list-style-type: none"> <li>Simplified CDD measures should not be acceptable whenever there is a suspicion of ML or TF.</li> </ul>	<p>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> <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"> <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</li> </ul>
--	--	---	--	---

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.”

- 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 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.

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.

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, 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.”

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.”

- Section 37 of the MLFTA, 2011 states at subsections:

(2)“Without prejudice to the powers and functions of a regulatory authority under any other law, for the purpose of discharging its



				<p>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  (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 Guidelines are in the revision process.</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>	The Guidelines are in the revision process.-

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>	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.
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>	The Guidelines are in the revision process.
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 Recommendations 23, 24 and 29.</li> <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>	<ul style="list-style-type: none"> <li>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.</li> <li>Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>The Guidelines are currently in the revision process.</li> </ul>
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> </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> </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</li> </ul>

		<ul style="list-style-type: none"> <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>• 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>	<p>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.</p> <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> <li>(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;</li> </ul> </li> </ul> <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</li> </ul>	<ul style="list-style-type: none"> <li>• The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions;</li> </ul>	<ul style="list-style-type: none"> <li>• See actions undertaken regarding enforcement as listed at Recommendation 5.</li> </ul>

		<p>Central Bank and the Supervisor of Insurance</p> <ul style="list-style-type: none"> <li>The retention of the written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</li> </ul>	<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>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>
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>	<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 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. 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</p>

				<p>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 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>
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</li> </ul>	<ul style="list-style-type: none"> <li>The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT.</li> </ul>	<p>The MLFTA, 2011 defines “transaction” to include an attempted or aborted transaction.</p> <p>A "business arrangement"</p> <p>(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</p> <p>(b) includes</p> <p>(i) any related transaction between any of the parties and another person;</p>

		bribery are not adequately addressed in legislation as predicate offences.		<p>(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 (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 (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>	<ul style="list-style-type: none"> <li>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.</li> </ul>	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</li> </ul>	<ul style="list-style-type: none"> <li>All legislative requirements for internal controls, compliance and audit should</li> </ul>	<ul style="list-style-type: none"> <li>With respect to internal policies, audit and compliance requirements, Section</li> </ul>

		<p>include the imposition of penalties and sanctions for failure to comply with 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>include the imposition of penalties and sanctions for failure to comply.</p> <ul style="list-style-type: none"> <li>• All financial institutions should be required to designate an AML/CFT compliance officer at management level and develop 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 should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> </ul>	<p>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> <p>The Guidelines are in the revision process.</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 17.</li> </ul> <p>Also, see response to Recommendation 12, regarding international corporate and trust</p>

				service providers. The ICTSPA was passed as No. 5 of 2011.
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:  (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.  (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).  (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.</li> <li>• Section 5 of the SA is amended to grant the Commission powers to</li> </ul>



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.

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."

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.

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,

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.”

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.”

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.”

				<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 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</li> </ul>	<ul style="list-style-type: none"> <li>The AML/CFT guidelines should provide specific guidance with regard to requiring</li> </ul>	<p>This is addressed in Section 7.4 of the CBB Guideline and will also be addressed in the other</p>

		<p>to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</p> <ul style="list-style-type: none"> <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> <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>special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• Authorities should consider issuing instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>	<p>Guidelines.</p> <p>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.</p>
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</li> </ul>	<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 and the FATF should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> <li>• Financial institutions should be required</li> </ul>	<ul style="list-style-type: none"> <li>• Refer to earlier comments regarding Recommendations 5 and 17 on enhanced enforcement powers of regulators.</li> </ul> <p>The Guidelines are currently in the revision process.</p>

		<p>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</p> <ul style="list-style-type: none"> <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 local laws, regulations or other measures is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</li> </ul>	<p>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> <ul style="list-style-type: none"> <li>• 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.</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 local laws, regulations or other measures should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> </ul>	
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</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</li> </ul>	<ul style="list-style-type: none"> <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</p>

		<p>in approving directors, senior management and ownership of significant or controlling interests of their licensees.</p> <ul style="list-style-type: none"> <li>• Stand alone MVT service providers are not subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.</li> </ul>	<p>approving directors, senior management and ownership of significant or controlling interests of their licensees.</p> <ul style="list-style-type: none"> <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>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> <p>or</p> <p>(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</li> </ul>
--	--	--	---	---

				<p>prescribed form, apply to the Director for a licence to provide</p> <p>(a) an international corporate service; or</p> <p>(b) an international trust service.</p> <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> <p>(a) is a fit and proper person to provide an international service;</p> <p>(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</p>

				<p>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 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>
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>	<ul style="list-style-type: none"> <li>The FIU should provide feedback to financial institutions with regard to suspicious transaction reports.</li> </ul>	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.
<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 no information on typologies and trends with regard to SUTRs in the</li> </ul>	<ul style="list-style-type: none"> <li>The FIU should publicly release all outstanding annual reports and include in such reports, statistics, typologies and trends as well as information regarding its</li> </ul>	The outstanding annual reports have been completed and sent to Parliament.



		report.	<p>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 inspections of financial institutions, including on-site inspections to ensure compliance.</li> </ul>	<ul style="list-style-type: none"> <li>• The Securities Commission should have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance.</li> </ul>	<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,</li> </ul>

				<p>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> <ul style="list-style-type: none"> <li>•</li> </ul>
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</li> </ul>	<ul style="list-style-type: none"> <li>• The Customs Department now maintains statistics with respect to cross-border declarations.</li> </ul>

			<p>to facilitate and ensure stricter compliance.</p> <ul style="list-style-type: none"> <li>The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities.</li> </ul>	<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>
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>See previous comments regarding the International Corporate and Trust Service Providers Act, 2011. The ICTSPA was passed as No. 5 of 2011.</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>
<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 corruption/bribery laws; (ii) UN</li> </ul>	<p>The Transnational Organised Crime (Prevention and Control) Act was passed in Parliament as No. 3 of 2011</p> <p>The draft Prevention of Corruption Bill is in the</p>

		<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>Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities.</p>	<p>process of review by the Cabinet.</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 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</li> </ul>	<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> <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>

			<p>or MOU's with foreign states.</p> <ul style="list-style-type: none"> <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>	
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> <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>	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.
40.Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>The Ministry of Economic Affairs and Development cannot share information</li> </ul>	<ul style="list-style-type: none"> <li>The Ministry of Economic Affairs and Development should be authorized to share information with foreign</li> </ul>	The Fourth Schedule of the MLFTA 2011 amends section 25(3) of the IBC Act to permit the disclosure of information under the MLFTA

		<p>with foreign counterparts</p> <ul style="list-style-type: none"> <li>The Registrar of Co-operative Societies can only share information by Court Order.</li> </ul>	<p>counterparts.</p> <ul style="list-style-type: none"> <li>The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order</li> </ul>	<p>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 ambiguous aspects to ATA forfeiture power, both detracting from effectiveness</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 freeze assets of UN designated entities.</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 the freezing of assets.
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</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.

			<p>2002 Commonwealth Model Legislative Provisions on the “specified (listed) entity” regime provide a useful guide.</p> <ul style="list-style-type: none"> <li>• 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.</li> <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>	The equivalent sections 9-11 in the previous Act are section 20-21 and 39 of the MLFTA 2011.
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>	<ul style="list-style-type: none"> <li>• The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT.</li> </ul>	Refer to previous comments relating to Recommendation 13.
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</li> </ul>	This has been dealt with in Recommendation 36 and 38.

			<p>in, the relevant offences are covered.</p> <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 particular, where Barbados's assistance is</li> </ul>	
--	--	--	---	--



			<p>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>	The authorities are in discussions with respect to the framework for the MVTs.
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>	The authorities are in discussions with respect to the framework for the MVTs.
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 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.</li> </ul>	<p>The Fourth Schedule of the MLFTA amends the Section 41(1) Charities Act as follows:</p> <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>

			<ul style="list-style-type: none"> <li>Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect.</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 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> </ul>
--	--	--	---	--

- |  |  |  |   |
|--|--|--|---|
|  |  |  | <ul style="list-style-type: none"> <li>• In section 38(4),<br/>(a) delete the word "\$500" and substitute the word "\$5 000";<br/>(b) delete the word "3" and substitute the word "6"; and<br/>(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:<br/>"(6) Any person who fails to<br/>(a) transmit to the Registrar any statement of account required by subsection (1);<br/>(b) afford an auditor any facility to which he is entitled under subsection (4); or<br/>(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 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."</li> <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</p> |
|--|--|--|---|

				strengthens the regulation of NPOs.
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.