Mutual Evaluation/Detailed Assessment Report
Anti-Money Laundering and Combating the
Financing of Terrorism

ANTIGUA & BARBUDA

MINISTERIAL REPORT

June 23rd 2008

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PREFACE - information and methodology used for the evaluation of Antigua & Barbuda

1. The Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Antigua & Barbuda was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Antigua & Barbuda, and information obtained by the Evaluation Team during its on-site visit to Antigua & Barbuda from May 28th to June 8th 2007, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant Antiguan & Barbudan government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. Antigua & Barbuda had its first CFATF Mutual Evaluation in November 1997 and the second round Mutual Evaluation in September 2002. This Report is the result of the third Round Mutual Evaluation of Antigua & Barbuda as conducted in the period stated herein above. The Examination Team consisted of Ms. Anna Durante, Legal expert (British Virgin Islands), Mr. Neville Cadogan, Financial Expert (Turks & Caicos) Ms. Ismania Richardson, Financial Expert, (Anguilla), Mr. Clauston Francis, Law Enforcement Expert, (St. Vincent & the Grenadines) and Mr. Bernardo Antonio Machado Mota, Law Enforcement expert (Brazil – FATF Member). The Team was led by Ms. Dawne Spicer, Legal Advisor, CFATF Secretariat. Following the onsite visit, Mr. Roger Hernandez, Financial Advisor, CFATF Secretariat (Trinidad and Tobago) undertook a further review of the financial sector. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of Antigua & Barbuda.

3. This Report provides a summary of the AML/CFT measures in place in Antigua & Barbuda as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Antigua & Barbuda's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

[1] As updated in June 2006.

EXECUTIVE SUMMARY

1. Background Information

1. The Mutual Evaluation Report of Antigua and Barbuda summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in Antigua and Barbuda at the time of the on-site visit (May 28-June 8, 2007). The Report also sets out Antigua and Barbuda's level of compliance with the FATF 40 + 9 Recommendations, which are contained in Table 1 of the Report.

2. Antigua and Barbuda is a twin-island State with a population of 82, 786. Tourism is the most important economic activity in Antigua and Barbuda directly employing approximately 18% of the labour force. Tourism accounts for 85% of foreign exchange earnings and 70% of Gross Domestic Product (European Community, 2002). The financial services sector has been a critical resource for economic diversification and job creation in the areas of banking & trust, insurance, international business corporations and internet gaming. To maintain international best practices necessary legislation and regulations have been put in place and are constantly being strengthened. With regard to ML, the deposit taking institutions continue to appear to be the most vulnerable vehicles. The most noted money laundering problems in the jurisdiction have appeared to be generated by schemes that involve investment and advance fee fraud, and drug trafficking. At present there is no indication that there is any FT taking place within the financial system. It would be expected that banks and money value transmission services are likely to be the vehicles seen as most vulnerable to FT.

3. The institutional framework for AML/CFT in Antigua and Barbuda comprises several Ministries. The Attorney General is the competent authority for mutual legal assistance requests under the Mutual Assistance in Criminal Matters Act, 1993. The Supervisory Authority as the Head of the FIU which is housed in the Office of National Drug and Money Laundering Control Policy (ONDCP) has responsibility under the Money Laundering (Prevention) Act for issuing guidelines and training financial institutions in relation to their obligations under the Act. The ECCB as the regulator of domestic banks and a specific category of non-bank financial institutions has over the past four years examined all financial institutions that it regulates with special attention to ensuring that the required internal policies, procedures and controls to counter ML and FT are in place. The offshore sector is regulated for AML/CFT by the Financial Services Regulatory Commission (FSRC). The broad intention and design of the Government of Antigua and Barbuda is to constitute the FSRC as the overall regulator for most of the financial institutions. The Registrar of Insurance and the Registrar of Cooperatives respectively supervise domestic insurance companies and cooperatives. The Supervisory Authority monitors casinos and money remitters.

2. Legal System and Related Institutional Measures

4. Antigua and Barbuda has ratified the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organized Crime (Palermo Convention). Money laundering has been criminalized under section 3 of the Money Laundering (Prevention) Act (MLPA) and section 61 of the Proceeds of Crime Act (POCA). The offences in the latter are however more narrowly defined. There are also certain offences under the Misuse of Drugs Act (MDA) that constitute money laundering offences under the MLPA. The ML offences extend to any type of property that represents the proceeds of crime. Notably, the definition of 'property' under the MLPA does not specifically include legal documents or instruments evidencing title to assets as provided in the Vienna and Palermo Conventions. While a conviction for a predicate offence is not necessary for the institution of money laundering proceedings, the majority of prosecutions are for predicate offences only and relatively few prosecutions have been brought under the MLPA. The reason for the latter may lie in the tripartite prosecutorial regime which

permits prosecutions to be brought by the Director of Public Prosecutions (DPP), the Police Prosecuting Unit and the Supervisory Authority.

5. With regard to the FATF Designated Category of predicate offences there is no equivalent in Antigua and Barbuda which covers participation in an organised criminal group, racketeering and piracy. Additionally, with regard to the offence of trafficking in human beings and migrant smuggling, the provisions of the Immigration and Passport Act are limited in scope. There is no minimum threshold with regard to penalties to which a predicate offence must correspond in order for it to constitute a ML offence. The only requirement is that the property must be the proceeds of some unlawful activity or an instrumentality of that activity. ML offences extend to conduct that occurred in another country. Ancillary offences to ML include aiding, abetting, counselling or procuring the commission of or conspiring to commit the offence. Facilitation is not covered. However; the Authorities are of the view that the offence may be subsumed under one of the other ancillary offences. Tipping-off is also an offence under the MLPA. The ML offences are applicable to both natural and legal persons. The mental element for the offence requires knowledge or reasonable knowledge that the money or other property is connected to unlawful activity.

6. Antigua and Barbuda has ratified the UN Convention for the Suppression of the Financing of Terrorism (Financing of Terrorism Convention) and the Inter-American Convention against Terrorism. The Prevention of Terrorism Act, 2005 (PTA) criminalises terrorist acts and the financing of terrorist acts. It is also an offence to promote or facilitate the commission of terrorist acts in a foreign state. The word 'funds' is undefined in the PTA and there is no judicial interpretation of the term. The Antigua and Barbuda Authorities are of the view, however, that the term extends to any funds and covers all the elements of the term as defined in Article 1 of the Financing of Terrorism Convention.. All terrorist financing offences are indictable offences under the PTA and are therefore predicates to ML. Offences under the PTA are applicable to both natural and legal persons. There have been no investigations, prosecutions or convictions in relation to terrorist activity and so the effectiveness of the financing of terrorism regime cannot be assessed.

7. Both the MLPA and the POCA provide for the forfeiture, freezing and seizing of the proceeds of crime. Legislative provision in relation to the freezing of funds used for terrorist financing is to be found mainly in the PTA. The MLPA also provides specifically for civil forfeiture procedures. The definition of 'property' in the MLPA does not expressly include income, profits or other benefits from the proceeds of crime. In the POCA, the definition of 'property' is more limited. However, the definition of 'proceeds of crime' includes benefits derived from unlawful activity and in this context the term can be said to cover income, profits and benefits. The term 'property' is even more narrowly defined in the PTA. Given the number of varying definitions, it is recommended that the definitions be standardized.

8. The PTA at section 4(1) provides a general mechanism for the implementation of the UN Security Council Resolution (UNSCR) 1267. The Minister of Foreign Affairs is permitted to obtain an order designating an entity as a specified entity and based on that order, the Attorney General may exercise his power to direct financial institutions to freeze any account or property that is held on behalf of the specified entity. To the date of this Evaluation, no entities had been specified and so these measures are untested. UNSCR 1373 is dealt with by section 3(2) of the PTA which allows the designation of 'specified entity' to an entity suspected of committing, attempting to commit, participating in or facilitating a terrorist act, or having acted on behalf of, at the direction of or in association with such entity. Law enforcement authorities also have the power to freeze and seize in this regard and there is no requirement for notification to the specified entity.

9. The FIU in Antigua and Barbuda is a unit of the ONDCP, which was formally established as a separate government agency by the creation of the ONDCP Act, 2003 (ONDCPA). The

ONDCP also comprises the Financial Investigations Unit, the Drugs Intelligence Unit, the Targeting and Strike Team and the National Joint Coordination Centre. The functions of the FIU within the ONDCP include the receipt analysis and dissemination of STRs/SARs. Dissemination occurs through the Supervisory Authority. Suspicious Activity Reports (SARs) are also required to be filed with the Commissioner of Police or the Director of the ONDCP where there is a suspicion of FT. Sixty percent (60%) of the financial institutions that were interviewed stated that they had submitted SARs; the remaining 40% stated that they had had no reason to file an SAR. As at the time of the onsite visit, the ONDCP had not prepared or published any periodic reports on its operations and trends and typologies for public scrutiny. The Director of the ONDCP in his capacity as the Supervisory Authority has access to financial, administrative and law enforcement information. Information kept by the ONDCP is held in a computerised password protected database. The ONDCP is a member of the Egmont Group.

10. The ONDCP is the agency responsible for money laundering, terrorist financing and illegal drugs intelligence and investigations. The biggest challenge faced by the Financial Investigations Unit is that the subjects of their money laundering investigations reside outside the jurisdiction and therefore there is a difficulty with regard to conducting interviews. There have been no investigations involving FT. The Supervisory Authority or a law enforcement agency/ police officer has the authority to obtain production orders, search and seizure warrants and restraint orders. Some members of the Police Force, Customs and the Coast Guard have received ML and FT training from REDTRAC. Immigration Officers and members of the Office of the DPP need more detailed ML and FT training.

11. With regard to detecting and deterring the cross border movement of cash or other negotiable instruments related to ML and the FT, Antigua and Barbuda has a declaration system under the MLPA that makes it an offence to transfer currency valued at US$10,000 or more into or out of the country unless a report is filed with regard to the transfer. Similar provisions are contained in the Customs (Currency and Goods Declaration) Regulations, 1999 (CCGDR). Additionally, a Customs or Police Officer or officer of the Antigua and Barbuda Defence Force (ABDF) may seize and detain currency if they have reason to suspect that it is the instrumentalities of an offence.

3 Preventive Measures - Financial Institutions

12. The financial regulatory structure of Antigua and Barbuda includes laws, regulations and guidelines. The guidelines (issued by the ONDCP and the FSRC) are however, not 'other enforceable means'. The ONDCP guidelines while they do impose a direct sanction for their contravention, the penalty of a maximum fine of EC$20,000 (approx. US$7,500) is not dissuasive particularly when applied to a financial institution. Additionally, the sanction has never been imposed and there is therefore no means of assessing its effectiveness. With regard to the FSRC guidelines, the provision specifying the penalty makes reference only to breach of 'directions given by the FSRC' and not to guidelines. Accordingly, all of the AML/CFT provisions that are contained in these guidelines have been deemed not enforceable.

13. As a result of the status of the guidelines there is not a high level of compliance with the detailed requirements of the FATF 40 + 9 Recommendations. This situation can be easily rectified when the Antigua and Barbuda Authorities make the necessary adjustments to their guidelines. As noted, there is significant compliance by the financial institutions; particularly banks. As of the date of the on-site evaluation, Antigua and Barbuda had not done a formal risk assessment of the financial system as contemplated by the FATF standards.

14. There are comprehensive CDD measures for financial institutions. However, there are some limitations in CDD measures that are required to be in law or regulation such as where there is a suspicion of money laundering or the financing of terrorism; those measures are limited to occasional transactions. There is also no requirement for senior management approval to be obtained when a customer or beneficial owner is subsequently found to be or subsequently becomes a PEP. Further, financial institutions are not required to obtain approval from senior management before establishing new correspondent relationships. Other limitations exist where measures are provided for in the guidelines which lack enforceability. The requirements for introduced businesses are also limited by the deficiency in the guidelines and also because there is no requirement for financial institutions to satisfy themselves that third parties are regulated and supervised in accordance with Recs. 23, 24 and 25 and have measures in place to comply with the CDD requirements of Recs. 5 and 10. While legislative measures generally allow disclosure of information, the ECCB and the FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without a MOU.

15. Record keeping requirements are addressed by section 12 of the MLPA, the Money Laundering (Prevention) Regulations (MLPR) and the guidelines. There are however, major shortcomings which include the exemption from recordkeeping of single transactions under EC$1,000; no requirements for financial institutions to retain business correspondence for at least five (5) years following the end of an account or business relationship; and only IBCs are required to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence to facilitate criminal prosecution. Due to the status of the guidelines, there is also no enforceable requirement for financial institutions to ensure that customer and transaction records are available to the Supervisory Authority on a timely basis. The wire transfer requirements contained in the Money Laundering and Financing of Terrorism Guidelines (ML/FTG) are not enforceable in accordance with the FATF Methodology.

16. There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Accordingly, there is no requirement to keep findings of such transactions for competent authorities and auditors for the required time period. With regard to paying attention to transactions from high risk countries, there are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries that do not or insufficiently apply the FATF Recommendations and make those findings available to competent authorities or auditors. There are also no provisions for countermeasures against countries that insufficiently apply the Recommendations.

17. In Antigua and Barbuda financial institutions are required to report transactions that are complex, unusual or large business transactions whether completed or not, where there are unusual patterns of transactions, where transactions are insignificant but periodic and have no apparent economic or lawful purpose, and transactions from countries that have not adopted a comprehensive anti-money laundering programme and there is suspicion that these transactions are related to money laundering. This provision limits the type of transactions that can be considered suspicious. Additionally, the requirement to report does not include all the predicate offences required under Rec. 1. With regard to the reporting of STRs as they pertain to terrorism and the financing of terrorism, the measure does not include suspicion of terrorist organisations or those who finance terrorism. There is also no obligation to make a STR with regard to terrorism when an attempted transaction is involved. The offence of tipping-off is limited to information concerning money laundering investigations and therefore does not cover information that falls outside the confines of a money laundering investigation.

18. Antigua and Barbuda has considered threshold reporting by all financial institutions but has concluded that such reporting is unfeasible. The jurisdiction has however subsequently mandated that Internet gaming and Internet wagering companies report all payouts exceeding US$25,000 to the Supervisory Authority.

19. The requirement for financial institutions to develop internal AML/CFT controls is limited to money laundering and does not include the financing of terrorism. There is also no requirement for financial institutions to maintain an adequately resourced and independent audit function. Other requirements such as the appointment of a compliance officer at management level and the provision of the compliance officer with necessary access and the requirement for screening procedures for employees is not enforceable due to the status of the guidelines. With regard to the application of AML/CFT standards to branches and subsidiaries, these measures are provided for in the ML/FTG and are therefore not enforceable. Financial institutions that were members of groups advised that they operated in most instances in accordance with global AML/CFT policies and procedures.

20. There is no law in Antigua and Barbuda directly prohibiting the establishment or continued operation of shell banks. However, licensing requirements in the Banking Act (BA) and the International Banking Corporation Act (IBCA) are designed to ensure that shell banks are not permitted to operate. There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

21. The ECCB is the regulator and supervisor of domestic banks in Antigua and Barbuda under the BA. While the ECCB has not been formally designated with the responsibility for ensuring compliance of its licensees with AML/CFT obligations this has been incorporated as part of its supervisory regime. Other regulators include the FSRC, which regulates the offshore sector, the Registrar of Insurance and the Registrar of Cooperative Societies. There are no provisions for either the Registrars of Insurance or Cooperative Societies to approve changes in the management of their respective licensees or to apply fit and proper measures with regard to their assessment of applicants. Neither the Registrar of Insurance nor the Registrar of Cooperative Societies has adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.

22. Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. For example, there is no requirement for registered MVT service operators to maintain a current list of agents and there are no sanctions applicable for failure to register or be licensed as an MVT service provider.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

23. In Antigua and Barbuda, casinos, Internet gaming, sports betting, dealers in jewellery, precious metals and art, real property business and trust businesses are considered to be financial institutions and as such come under the ambit of the AML/CFT provisions of the MLPA. Lawyers and notaries, other independent legal professionals and accountants are not listed as financial institutions and therefore do not fall under the AML/CFT regime. It should also be noted that trust business does not include the full range of activities contemplated by the FATF.

24. The DNFBPs as financial institutions are subject to the same CDD deficiencies (Recs. 5, 6, 8-11) as noted for financial institutions above. Similarly, the deficiencies noted with regard to the filing of SARs, the limitations of the tipping-off offence, internal polices and controls and

higher risk countries are pertinent to the DNFBPs that are scheduled as financial institutions by Antigua and Barbuda.

25. Casinos, real estate agents, dealers in precious metals and stones are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.

26. The only non-financial business and profession other than DNFBPs that Antigua and Barbuda has included in the list of financial institutions activities that are subject to AML/CFT obligations is pawning. There are however no known pawning services in the country.

5. Legal Persons and Arrangements & Non-Profit Organisations

27. The laws of Antigua and Barbuda recognise a number of legal persons. The main entities that enjoy legal personality are limited liability companies, international business companies, partnerships and cooperatives. These legal entities must all be registered.

28. However, statutory obligation to provide information as to the ownership and management of partnerships is lacking and there are no measures to ensure that bearer shares under the IBCA are not misused for money laundering.

29. The only specific legislation dealing with legal arrangements in Antigua and Barbuda is the International Trust Act (ITA). Under this Act, an international trust is one in respect of which at least one of the trustees is either a corporation incorporated under the IBCA or is a licensed trust company doing business in Antigua and Barbuda. The settlor and beneficiary must be non-resident at all times and the trust property must not include any property located in Antigua and Barbuda. There are no registration requirements for local trusts. These trusts are in most instances drafted by an attorney and lawyers are not included in the AML/CFT regime.

30. NPOs may be established in Antigua and Barbuda either as incorporated companies pursuant to the Companies Act (CA), or as societies pursuant to the Friendly Societies Act, (FSA). As at the time of the on-site visit, the NPO sector had many deficiencies. Namely, there was no review of the adequacy of the domestic laws and regulations that pertain to this sector and consequently of the risk of this sector being misused for terrorist financing. Although, the regulatory framework comes under the ambit of the FSRC it appears not to be adequately monitored. The recordkeeping provisions under the FSA are inadequate and no programmes have been implemented to raise the awareness of this sector to terrorist abuse. There is also no regulatory framework for friendly societies.

6. National and International Co-operation

31. The Government of Antigua and Barbuda recognises the need for Law Enforcement Authorities to cooperate and coordinate with each other. Accordingly, the ONDCP has a MOU with the FSRC and a Multilateral Agency MOU with the Police, Customs, Immigration and the Antigua and Barbuda Defence Force. The majority of law enforcement agencies interviewed acknowledged that there was harmony amongst them as it relates to combating ML and other predicate offences. However, it was found that contact among law enforcement authorities is maintained in an ad hoc manner as there were no systems in place that would allow them to interface in a structured and systematic way. Information obtained from the ONDCP indicates that Multilateral Agency MOU has been utilized and found to be effective. There are no effective mechanisms that would allow policy makers and the relevant law enforcement and regulatory agencies to coordinate domestically on matters dealing with combating ML and FT.

32. Antigua and Barbuda has ratified the Vienna, Palermo and Terrorist Financing Conventions and there is enacted legislation that implements substantial portions of these Conventions. There are however some provisions that are not covered adequately. With regard to the Vienna Convention, the MDA must address all the precursor chemicals mentioned in the Tables of the Convention. Additionally, with respect to the Palermo Convention, the POCA in particular should be revisited with a view to either amending it to capture predicate offences to money laundering and financing of terrorism offences, or repealing it. Provision should also be made for the transfer of proceedings pursuant to Article 8 of the Vienna Convention. With regard to the United Nations Security Council Resolutions (UNSCRs) no provision has been made for access to frozen funds as required by UNSCR 1452.

33. Antigua and Barbuda has a robust mutual legal assistance regime. Mutual legal assistance in anti-money laundering and financing of terrorism matters is provided for under the Mutual Assistance in Criminal Matters Act (MACMA). The MACMA provides for mutual assistance for all countries that are members of the British Commonwealth and for other countries with which Antigua and Barbuda has signed mutual legal assistance treaties (MLATs). There is no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying an offence. In the case of money laundering and its predicate offences, it would be unusual to have a request which cannot be based on some offence which is punishable under the laws of Antigua and Barbuda given the wide definition of money laundering under the MLPA.

34. The MLPA is the principal Act used for identifying, freezing and confiscating the laundered property and instrumentalities used or intended for use in money laundering offences. The PTA may also be used to seize, freeze and confiscate property used or intended to be used in the commission of a financing of terrorism offence. No provision has been made however for confiscated proceeds of terrorism or terrorism assets to be deposited in a Forfeiture Fund. There is also no provision for the sharing of assets confiscated as a result of coordinated law enforcement actions.

35. Extradition is governed primarily by the Extradition Act (EA). Money laundering offences are extraditable offences for the purposes of the EA. With regard to extradition proceedings related to terrorist acts and the financing of terrorism, provision is made under Part VI of the PTA. The Government of Antigua and Barbuda extradites its nationals.

36. With regard to other forms of international cooperation, the FSRC is not authorised to exchange information with its foreign counterparts and the level of cooperation between the ECCB and the FSRC is unclear.

7. Resources and Statistics

37. The resources of law enforcement agencies particularly the Police Force are insufficient for their tasks. Additionally, a number of these entities have not received training in ML and FT matters.

38. Based on the statistics provided, the number of investigations which result in money laundering prosecutions is low. The generous restraint and confiscation provisions under the MLPA are under-utilised and no statistics have been provided to show whether the restraint and confiscation mechanisms under the POCA are effective. With regard to the financing of terrorism, there are no investigations or prosecutions whereby the effectiveness of these systems can be measured. Finally, no measures have been instituted to review the effectiveness of Antigua and Barbuda's AML/CFT system.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Antigua and Barbuda

1. Antigua and Barbuda is a twin-island State with a combined landmass of 443sq.km. Antigua, the larger of the two islands, is 280 sq. km (108) sq. miles) while its sister isle, Barbuda, located to the north of Antigua, is 161sq.km (68 sq. miles). The mid-year population of the country is 82,786, with females comprising 53.04%.

2. The official language spoken is English. Antigua and Barbuda holds membership with several regional organizations namely, the Organization of Eastern Caribbean States (OECS),[2] Caribbean Community (CARICOM)[3], and the Eastern Caribbean Central Bank (ECCB). As a member of the ECCB, the State operates a fixed exchange rate system of its currency, the EC Dollar. Since July 1976 the EC Dollar has been pegged to the US Dollar at a rate of US$1 = EC$2.70.

3. According to the UNDP Human Development Reports 2003-2006, Antigua and Barbuda was ranked between medium and high among 177 countries on the basis of adult literacy, school enrolment, life expectancy at birth, and per capita Gross Domestic Product (GDP). GDP per capita increased from US$ 8,417 in 1997 to US$10,512 in 2005 at an annual average rate of approximately 3.11%.

Tourism Sector

4. Tourism is the most important economic activity in Antigua and Barbuda, directly employing approximately 18% of the labour force. In addition to employing an estimated 3,650 persons directly in the hotel sub-sector, another 3,850 are indirectly employed in activities providing services for tourists. These include local transport, retail sales, leisure, restaurants and entertainment, together amounting to 25% of the active labour force. Tourism accounts for 85% of foreign exchange earnings and 70% of Gross Domestic Product (European Community, 2002).

5. Over the past sixteen (16) years the country witnessed about six (6) major hurricanes[4] that had a negative impact on the sector. There was also a decline in this sector between 2001 and 2002, which was attributed for the most part to the 911 terrorist attacks on the US which also affected air transportation. However, between 2002 and 2005, the sector grew from US$55 Million to US$65 Million at an average annual rate of 8.5%. Air transport also increased by 4.4% for the same period. Cruise passenger arrivals in 2006 showed a 19% increase over 2003, while visitor expenditure for 2006 was projected at a 2% increase over 2005 and 14% over 2003.

[2] The OECS comprises Antigua and Barbuda, Dominica, Grenada, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, and the British Virgin, Islands, Anguilla, and Montserrat.

[3] CARICOM comprises the OECS countries, Barbados, Belize, Guyana, Haiti Jamaica, Suriname, the Bahamas, and Trinidad and Tobago.

[4] Hurricanes Hugo in 1989, Luis and Marilyn in 1995, George in 1998, Jose and Lenny in 1999.

Construction Sector

6. Although the hurricanes between 1995 and 1999 had a negative impact on the economy, on the other hand, the construction sector boomed with the reconstruction of infrastructure by Government and the private sector. The sector continued to show significant growth between 2000 and 2005, growing from US$62 Million to US$87 Million. During the period 2004-2005 there was a significant increase of 19.5%. This caused a 3.24% increase in wholesale & retail trade. In addition the mining & quarrying sector doubled from a rate of 12.5% in 2004 to 26.8% in 2005. As a result of specific projects undertaken in 2006, growth is estimated at 35% and is 'set to be the main driver of the economy, supported by a 45% expansion of the mining and quarrying sector'.

Financial Services

7. The financial services sector has been a critical resource for economic diversification and job creation in the areas of banking & trust, insurance, international business corporations and internet gaming. To maintain international best practices necessary legislation and regulations have been put in place and are constantly being strengthened.

8. In Antigua and Barbuda economic and social development are viewed as a coherent whole, complementing each other. A programme has been embarked upon to strengthen the country's fiscal and macro-economic management, which includes a focus on economic and social policy formulation, strategic planning, project and programme management, agency coordination and statistical development. Enhancing individual economic opportunities with regard to empowerment for ownership, investment and small business development is also being addressed.

9. A series of economic and structural reform initiatives were introduced in 2004 in a concerted effort to repair fiscal imbalances. Some of the initiatives have already been implemented while others are in their developmental stages. These include: Debt Management Programme; Public Sector Investment Programme; National Strategic Development Plan (NSDP); and Tax Reform.

10. A number of institutional reforms have also been introduced namely: Customs Renewal Programme; Public Sector Transformation**;** Information Communication Technology Services; and the Antigua and Barbuda Investment Authority (ABIA), which was established to provide a 'One Stop Shop" for investors thereby providing a focused and coordinated mechanism for the promotion and facilitation of investment.

11. This together with the new Investment Code will 'ensure greater transparency in the granting of concessions to investors, and provide full protection and security to investors in accordance with international standards.' Antigua and Barbuda was ranked 33rd out of 175 developing and developed nations in the World Bank report "Doing Business 2007", which assessed the regulations that impact business activity in a country.

12. The Government has also embarked on a fiscal machinery exercise that focuses on three fiscal reform initiatives, namely the Reform of the Finance and Audit Act and Regulations, which will be replaced by the Finance Administration Act; a new cash management system; and the implementation of an Integrated Financial Management and Accounting System (Free balance) - all of which are intended to increase the overall transparency of Government operations, through improvements in its ability to manage its commitments, procurement measures, cash flow system, and overall budgetary process.

13. Although growth has varied at times, overall Antigua and Barbuda has had fairly good economic growth, which was in most part due to a buoyant tourism industry, an impressive construction sector, and an increasingly significant services sector that resulted in considerable private sector led growth. In September 2006, both the IMF Article IV

Consultative mission and the ECCB team projected between 8% to 12% real economic growth for 2006.

1.2 General Situation of Money Laundering and Financing of Terrorism

Present money laundering situation

14. Over the past four (4) years crime was dominated by offences of breaking, larceny and robbery. Of the categories of crime that could be labelled crimes of profit, the offences mentioned above constituted on average 80.1% of all crimes reported.

15. In the past four (4) years the FIU of the ONDCP has had to investigate seventy-five (75) money laundering cases arising out of both foreign and local circumstances. There has been one (1) local prosecution for money laundering. However, there have been twelve (12) convictions in foreign jurisdictions directly related to investigations and assistance rendered by competent authorities in this jurisdiction.

16. Banks were predominantly the vehicles whose customer transactions were investigated. Today, more than ever, banks are regulated with a greater degree of scrutiny and their customers subject to more stringent due diligence requirements. It is also true that the internet gaming companies are being subject to unprecedented regulation. In sum, deposit taking financial institutions continue to appear to be the most vulnerable vehicles for money laundering.

17. Some of the most noted money laundering problems in the jurisdiction have appeared to be generated by schemes involving investment fraud and advance fee fraud, and in relation to drug trafficking. Drug related matters have concerned not only narcotics but other controlled pharmacological substances being illicitly distributed over the Internet.

18. Concerted efforts by the ONDCP to combat ML as well as advanced and increasingly sophisticated scrutiny of SARs by the FIU may prompt money launderers to search for more vulnerable areas in the financial system to insert their illegal proceeds. There are no changes in the threat of money laundering particularly anticipated, but the area of emerging technologies is being studied, especially where it takes advantage of digital and computer technology. E-commerce businesses in the jurisdiction have suffered denial of service attacks. The development of special programs by the computer industry is expected to help businesses significantly address this dangerous potential.

19. With the growing concern that the efforts to implement stricter standards to restrict the movement of value through the financial system (banks and other financial institutions), as well as to curb the physical movement of illicit money (cross border currency through cash couriers) there has emerged a realisation that these efforts "may have the unintended effect of increasing the attractions to criminals of the international trade system for ML and FT." The vulnerabilities of the international trade system to things such as over- and under-invoicing of goods and services, over- and under-shipment of goods and services and multiple invoicing of goods and services are of real concern to the Supervisory Authority. An early attempt to monitor the situation in the country has been initiated with the reporting by the Comptroller of Customs on cases of false invoicing, which were fifty-six (56) cases over the past four (4) years, and on administrative sanctions imposed, which was EC$442,2668.

Present financing of terrorism situation

20. There is almost no indication that the financing of terrorism (FT) is taking place through the facilities of the jurisdiction's financial institutions. However, scrutiny by financial institutions and analysis by the FIU does leave open the possibility of such conduct, and gives reason to be alert that subtle attempts could be made to take advantage of the financial

system for purposes of FT. There is presently no reason to anticipate changes in the situation. It would be expected that banks and money value transmission services are likely to be the vehicles seen as most vulnerable, but the suspected techniques of FT are so close in resemblance to ordinary ML that it is a concern that this could tend to mask FT activity.

21. The decision of Caribbean countries to host the ICC Cricket World Cup started a concerted effort to take pre-emptive measures to deter not only terrorism but FT. The Head of the country's FIU had the honour of heading a CFATF subcommittee concerned with preparations for combating terrorist financing relating to the games. His efforts were greatly applauded, and it was particularly sad that he passed away prior to the completion of his work and at the height of his very skilled efforts to bring the task to the intended result.

1.3 Overview of the Financial Sector and DNFBP

22. The domestic financial sector is presently characterized as set out in the table below:

Table 1: Number of domestic financial institutions

Types of financial Institutions	No.
Banks	8
Insurance	20
Credit Unions	7
Money Transfer Services	8
Real Estate	33
Casinos	7
Jewellers	14

23. The offshore financial sector is summarized in the tables below:

Table 2: Number of incorporated and active IBC's

Year	No. IBC's incorporated	Total No. of active IBC's
2003	269	2069
2004	358	2427
2005	304	2731
2006	269	3000

Table 3: Number of licensed financial institutions in the offshore sector at the end of 2001 to 2006

Types of financial institution	2001	2002	2003	2004	2005	2006
Banks	**23**	**15**	**16**	**16**	**16**	**19**
Trusts	**5**	**4**	**4**	**1**	**1**	**3**
Insurance	**0**	**0**	**0**	**0**	**1**	**2**
Sports book	**13**	**14**	**14**	**18**	**16**	**15**
Virtual casinos	**35**	**3**	**3**	**3**	**3**	**2**
Sport book/virtual casinos	**11**	**21**	**22**	**26**	**25**	**24**
Gaming companies	**59**	**38**	**39**	**47**	**44**	**41**

Table 4: Individuals Conducting Financial Activities Outlined in the Glossary of the FATF 40 Recommendations

-TYPES OF FINANCIAL INSTITUTITIONS AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	**Type of financial institution that is authorized to perform this activity**
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Credit Unions, Domestic Banks, International Banks, Trust Corporations, Gaming Companies
2. Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)	Domestic Banks, Non Bank Financial Institutions
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Not Applicable
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Domestic Banks, International Banks, Trust Corporations, International Insurance, Credit Unions, Money Transfer Businesses, Gaming Companies
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Domestic Banks, International Banks, Credit Unions, Gaming Companies
6. Financial guarantees and commitments	Domestic Banks, International Banks
7. Trading in: a) money market instruments (cheques, bills, CDs, derivatives, etc.); b) foreign exchange; c) exchange, interest rate and index instruments; d) transferable securities; e) commodity futures trading	Domestic Banks, International Banks
8. Participation in securities issues and the provision of financial services related to such issues	Domestic Banks, International Banks
9. Individual and collective portfolio management	International Banks
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Domestic Banks
11. Otherwise investing, administering or managing funds or money on behalf of other persons	International Banks
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers).	Insurance (International & Domestic)
13 Money and currency changing	Domestic Banks, Credit Unions

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

24. '*Legal persons*' are collective organizations considered by the law as having a legal personality distinct from the natural individuals who make them up. They are subject to the law with the attribution of legal capacity and may possess both rights and duties. Recognized associations, recognized committees, companies with share capital and public bodies are all legal persons.

25. The main types of legal persons and arrangements used in Antigua and Barbuda to own property, hold bank accounts, own shares or to conduct financial transactions are:
    - Companies
    - International Business Corporations
    - Trusts
    - Condominium Corporations
    - Trust Corporations
    - Incorporated Associations formed under Act of Parliament
    - Partnerships

Companies

26. *The Companies Act 1995* (as amended) governs incorporation of domestic companies and contains provisions that deal with corporate capacity and powers, ownership, management and administration and winding up and dissolution.

27. Incorporation requires one or more persons signing and sending Articles of Incorporation to the Registrar. The Articles of Incorporation must set out the proposed name of the company, the classes and any maximum number of shares authorized to issue, the number of directors and maximum allowed, the right to transfer shares and any restrictions on the business of the company.[5]

28. The Articles of Incorporation must be accompanied, *inter alia,* by a notice of directors and a notice of address of the registered office.[6]

29. Ownership is governed by the amount of shares owned in the company. A shareholder may be a natural or another legal person. Companies are registered upon issuance of a certificate of incorporation and a company search may be carried out at the Company Registry.[7]

30. A company is required to prepare and maintain at its registered office a register of members showing each member's contact details and a statement of shares held by each.

31. Companies are the main vehicle used for conducting commerce and carrying out commercial activities.

International Business Corporations (IBC's)

[5] Section 5 of the Companies Act 1995.

[6] Memorandum of Association and Bylaws optional.

[7] Although details concerning shareholders are sometimes not available.

32. IBC's are governed by the International Business Corporations Act (Cap. 222) (as amended). (IBCA) The provisions of the IBCA set out the requirements for incorporation of an IBC. It establishes rules on corporate governance and contains specific provisions relating to corporate capabilities, financial reporting, fundamental changes, civil remedies, creditor protection, licensing requirements, investigations, offences and penalties and winding up provisions.

33. Incorporation requires two citizens ordinarily resident in Antigua and Barbuda to act as incorporators. The incorporators are required to file Articles of Incorporation, Notice of Directors and Notice of Address to the Administrator, among other things. The Articles of Incorporation must set out the classes and maximum number of shares, and the minimum and maximum number of directors allowed.

34. Ownership is governed by share holdings and shareholders may be natural or other legal persons. IBC's cannot conduct or engage in local business (or within the CARICOM Region) and must have an international element. IBC's are useful for carrying out specific investment activities and attract substantial tax advantages under the IBC Act.[8]

35. IBC's are used primarily in the offshore financial sector (e.g. international banks, trusts) and are regulated by the Financial Services Regulatory Commission (FSRC).

Trusts

36. Trusts can be either local or international.[9] Trusts can be set up using a trust document drafted by an attorney at law. Property of any sort can be held in trust. The uses of trusts are many and varied. Trusts can be created during a person's life (usually by a trust instrument) or after death in a Will.

37. Trusts can be created by written document (express trusts) or they can be created by implication (implied trusts). Typically, a trust is created by one of the following:

    - a written trust document created by the settlor and signed by both the settlor and the trustees
    - an oral declaration
    - the Will of the settlor
    - a court order (for example in family proceedings)

    The trustee can be either a person or a legal entity such as a company.

38. Local trusts need not be registered. However, there is a Registrar of International Trusts who is responsible for maintaining a register of international trusts. The Register is not open for inspection except that a trustee of a trust may authorize a person to inspect the entry of that trust on the register.

39. An international trust must have a registered office, which is the office of the trust company or corporation that is a trustee.

Condominium Corporations

[8] See Section 272 of the IBCA.

[9] International Trusts are governed by the International Trust Act. IBC's that engage in international trusts business are governed by the IBCA.

40. The Registration of Condominium Titles Act governs condominium corporations, which upon incorporation become a body corporate made up of the individual condominium proprietors (owners).

41. Under the Act, a condominium plan must be submitted and approved by the Registrar.[10] The rules for condominium government or management are established in the by-laws. The owners and occupiers of condominiums are subject to rules in the by-laws.

42. Condominium corporations can be registered as owning land in Antigua and Barbuda. The common property is held by the proprietors as tenants in common in shares proportionate to the unit entitlements of their respective condominium lots. The Corporation controls, manages, and administers the common property for the benefit of all the proprietors.

43. Condominium Corporations can sue and be sued in their own name.

Trust Corporations

44. (See under IBC's and Trusts (above)).

Incorporated Associations formed under Act of Parliament

45. Unlike unincorporated associations, incorporated associations[11] have a separate legal personality distinct from its members and can sue and be sued in their own name.

Partnerships

46. Partnership arrangements are still common in Antigua and Barbuda and are governed by the Partnership Act.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

47. An emphasis on suppression of drug trafficking is evident from the creation of the ONDCP Targeting and Strike Team and the significant resources dedicated to the Unit. Much emphasis has been put on the concept of "seamless integration" with the FIU: Drug operations are automatically pursued at the appropriate juncture in parallel with concerted financial investigations by the ONDCP's FIU into the financial background of alleged drug traffickers. The suppression of drug trafficking is a high objective of the Government in consideration of the devastating effects such activity can have socially, and because of the increased concern that the laundered proceeds of drug trafficking are re-invested into more drug trafficking, creating if given the chance, a self-perpetuating cycle of proliferation of the deadly narcotic and psychotropic substances.

48. The ONDCP continues to expand its staff level to more efficiently fight drug trafficking, money laundering and the financing of terrorism. The ONDCP presently is a 100% vetted Unit.

[10] See Section 7 Registration of Condominium Titles Act.

[11] An example of an incorporated association formed under an Act of Parliament in Antigua and Barbuda is the Antigua and Barbuda Cotton Growers Association Act.

49. Internet gaming companies are a significant employer, particularly in the level of salaries and in the technical and computer-based know-how they bring to the work force they employ locally and thus to the jurisdiction as a whole. The Government in seeking to secure this industry has taken a new initiative and has introduced important upgrades to the law regulating internet gaming companies, repealing and replacing the former Internet Gaming and Internet Wagering Regulations. These amendments will serve to strengthen the Regulator ("the Commission") and sustain the jurisdiction on the leading edge in respect of the online gaming industry, and in creating and demonstrating best practices in combating ML and FT. Highlights of the new provisions include the following:

(a) Mergers and acquisitions guidelines: Licensing controls and the definition associated with "who should be licensed" have been strengthened to remove any ambiguity relating to beneficial owners and controlling interests. Additionally, licence holders must notify the Commission before the completion of a merger or acquisition, whereas previously an interpretation may have been made that post-merger notification was adequate.

(b) Physical presence: The amendments strengthen the meaning of physical presence and mandate that a majority of key persons in management roles must reside in Antigua. It is considered this will similarly flow on to a majority of all employees residing in Antigua. Also, the Commission may direct that a person or persons is classified as a "key person", thus reducing the risk of licensees bypassing the residential requirements. Thus ensuring regulatory access to accountable persons.

(c) Primary server (non-effective): The previous requirement for a "primary server" to be in Antigua has become ineffective. This has been strengthened to the capture and retention of information, reserve payment, access to extra-territorial information by the Commission, and control over movement of financial assets. The amendments ensure the Regulations now provide effective control over contemporary interactive gambling operations.

(d) Sanctions: Previously, there was an all-or-nothing approach to sanctions. The amendments introduce penalties for various breaches. In practice this will be a more effective deterrent.

(e) Financial reporting: The amendments introduce bi-annual financial reporting, allowing the Commission to remain apprised of the financial position of licensees, particularly with the introduction of capital adequacy and reserves based on risk assessment performed by the Commission.

(f) Capital adequacy & reserve requirements: For the first time the Regulations address the risks associated with capital adequacy of licensees. There's a US$100,000 minimum reserve identified in the Regulations and the Commission is authorised to establish higher thresholds based on its assessment of risk.

(g) Gaming and wagering definition: Minor amendments in the definitions section ensures these Regulations relate to peer-to-peer gambling such as games of skill where wagers and prizes are at stake.

(h) Service providers: The Commission now has expanded roles in considering systems of business associates of licensees providing key services, such as payment providers and aggregators (game room operators often located in other jurisdictions). This is a new and emerging area of risk, which is now addressed by the Regulations.

(i) The enhanced monitoring and examinations powers in the Regulations allow the Commission to continuously monitor that licensees are adequately reporting in accordance with Antigua and Barbuda's AML requirements. Furthermore, pre-approval and annual certification has been enhanced to determine the effectiveness of control systems in complying with all statutory obligations.

(j) Responsible gaming: The enhanced monitoring and examination powers in the

Regulations allow the Commission to continuously monitor that licensees are adequately restricting the incidence of problematic gambling. Furthermore, pre-approval and annual certification has been enhanced to determine the effectiveness of control systems in enforcing responsible gaming.

(k) Advertising: The regulations now specifically address the issues of inappropriate advertising catering to minors, the vulnerable and problem gamblers.

50. Meanwhile, towards achieving a sound regulation of the domestic casino industry, the Government in 2006 helped organise a regional workshop in casino regulation which was conducted by international experts with the help of donor governments and organisations. The outcome of the workshop was the drafting of casino regulations from models. Those are being reviewed by the Government.

51. The review and assessment of statistics kept in accordance with FATF Recommendations has allowed a first data-driven appraisal of the effectiveness of the implementation of the AML/CFT regime. Most significantly, after years of lag, the reporting of suspicious transactions has shot up, clearly because of more effective training and sensitization that has been better communicated to financial institutions. The necessity, obligation, purpose and filing of SARs are emphasized and the results bear that out.

52. Consistent with CFATF Recommendation 5 relating to the transfer of criminal property in relation to public officials, Parliament, in a major initiative, passed anti-corruption legislation in what has been called the landmark trilogy of legislation: The Freedom of Information Act 2004, The Integrity in Public Life Act 2004, and The Prevention of Corruption Act 2004. These statutes are designed to bring greater transparency and accountability to those holding public office or public positions. The Integrity in Public Life Act in addition to outlining the code of conduct for public workers, including statutory boards, also allows for the investigation of their assets and liabilities. In this connection an Integrity Commission has been established.

53. There is before Parliament the Money Services Act, designed to bring a strong regulatory regime to license and supervise money remitters. Presently, money remitters are required to be registered with the Ministry of Finance. Also, the following Bills are due to go before Parliament: The International Business Corporations (Amendment) Act 2007, The International Foundations Regulations 2007, The International Limited Liability Companies Act 2007, and the Company Management and Financial Service Providers Act 2007.

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

54. The Attorney General is the competent authority for mutual legal assistance requests under the Mutual Assistance in Criminal Matters Act 1993. Virtually all requests for assistance in relation to ML and FT are submitted to the Supervisory Authority to exercise his powers under the Money Laundering (Prevention) Act 1996 to obtain production orders for service on financial institution, to immobilize the proceeds of crime by administrative directive or court order, and to institute proceedings for the confiscation of laundered property. In a narrower range of offences, particularly those relating to drug trafficking and official corruption, the Police can compel production of documents and the DPP can restrain property under the Proceeds of Crime Act 1993.

55. The Supervisory Authority is the Head of the FIU housed at the ONDCP. Under the Money Laundering (Prevention) Act the Supervisory Authority has responsibility for issuing guidelines and training financial institutions in relation to their obligations under the Act, the Regulations and the Guidelines. The outcome of that training should be and has been a more intelligent assessment by financial institutions of what constitutes a suspicious transaction. This is already noticeable in the increased filing of suspicious transaction reports over the

period of the last four (4) years.

56. The regulator of domestic banks and a specific category of non-bank financial institutions is the Eastern Caribbean Central Bank (ECCB). The ECCB has over the past four (4) years examined all financial institutions it regulates with special attention to ensuring that there is in place the required internal policies, procedures and controls to counter ML and FT. Out of this the ECCB found the need to impose remedial measures on a number of banks and has actively followed-up on those compliance issues.

57. In the offshore sector and the area of non-bank financial institutions, the regulator is the Financial Services Regulatory Commission (FSRC). The broad intention and design of the government is to constitute the FSRC as the overall regulator for most of the financial institutions listed in the First Schedule to the Money Laundering (Prevention) Act. This would bring consistency to the style of regulation and create a one-stop shop for most regulatory matters, which should increase efficiency markedly. It is the intention that many of the domestic financial institutions should be overseen by the FSRC. The effect of this would be that FSRC would no longer be designated as the offshore regulator but would be, and presently is, the *de facto* regulator of most financial institutions.

58. Presently, domestic insurance and cooperatives, which are subject to Core Principles, are regulated respectively by the Registrar of Insurance and the Registrar of Cooperatives. They supervise their regulated institutions utilising those regulatory and supervisory measures that apply for prudential purposes and are relevant to money laundering in similar manner for AML/CFT purposes.

59. The Supervisory Authority visits casinos and money remitters to assess compliance with the requirements of the Money Laundering & Financing of Terrorism Guidelines which are issued and amended from time to time.

60. Great emphasis is being placed, as far as practicable, on optimizing the liaison between key local competent authorities in order to have more efficient and timely exchange of AML/CFT information. This will help to collectively generate more accurate and realistic models and typologies of money launderers in the local environment, and it will also help to devise counter-measures to these tactics. The relationship between the ONDCP from law enforcement and the Financial Services Regulatory Commission from the regulatory side has always been and continues to be crucial and successful. They are the twin enforcement pillars for anti-money laundering in the jurisdiction, with the ECCB overseeing the domestic banks in conformity with the ONDCP.

61. The relationship between the ONDCP and the Police, and the ONDCP and Customs is being strongly cultivated. This includes attending joint training seminars where money laundering issues are tackled directly, and discussions on the aspect of the AML/CFT threats that each authority is exposed to.

c. Approach concerning risk

62. Overview of policies and procedures: The Supervisory Authority has indicated the intention for a more robust shift to a risk-based approach in AML/CFT as advocated by the FATF and the IMF/World Bank, with the intention of creating adequate provisions adopted to address new areas of uncertainty that arise out of the increase in complexity that such an approach brings to the system. With most of the funds detected to be laundered through local financial institutions originating not from institutions in NCCT jurisdictions (when jurisdictions were still on the list) but rather from well-regulated jurisdictions, it has become essential that a more efficient means of discriminating potential money launderers be instituted. The Supervisory Authority is seeking to develop detailed guidance on how financial institutions should deal with risk-assessment. Brief statements giving generalized indicators of a systematic approach seem unlikely to be adequate to the demands of the task. It is expected that there will be a lag time before financial institutions would fully au fait with such requirements.

63. The offshore regulator, the FSRC, has already made significant advances in this direction as reflected in its various guidelines. It is now for domestic regulation to place increased emphasis on risk assessment by finding a solid basis on which to pursue this strategy. There is no intention for the Supervisory Authority to introduce reduced standards of customer due diligence, but rather, there will be emphasis and discretion in applying enhanced due diligence based on risk assessment. In going forward, as Antigua and Barbuda moves to one regulatory space, the FSRC would have the mandate to manage and mitigate risk, be it offshore or onshore.

d. Progress since the last mutual evaluation

64. In response to the primary recommendations of CFATF in 2002 a number of steps were taken: Section 32(2) of the Banking Act 2005 was made law, which provides for the Central Bank to share information with any local or foreign authority responsible for supervision or regulations. The ONDCP Act 2003 was introduced as a freestanding statute. In order to introduce greater efficiencies into the integration process, banking institutions have been instructed by the Supervisory Authority to have their internal and external auditors annually review their anti-money laundering systems and submit a report to the Supervisory Authority. Selective non-banking financial Institutions would shortly be doing the same thing, in order to achieve a suitable demarcation of boundaries in order to maintain good cooperation, prevent duplication of work and maintain open channels between stakeholders. In 2004 an Interagency Memorandum of Understanding was signed between Customs, the Police, Immigration, the Antigua Barbuda Defence Force and the ONDCP. Presently, consideration is being given to a proposal to amend the Money Laundering (Prevention) Regulations and subsequently align it with the provisions of the Money Laundering & Financing of Terrorism Guidelines. There is also presently a review of the Proceeds of Crime Act to bring it in line with the Money Laundering (Prevention) Act 1996.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis[12]

Recommendation 1

65. Antigua and Barbuda ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on March 8 1993. The 2000 UN Convention against Transnational Organised Crime (the Palermo Convention) was ratified by Antigua and Barbuda on April 24 2002.

66. Money laundering is defined in section 2(1) of the MLPA and criminalised by section 3 of the MLPA. See. Annex 3 of the Report. In the definition of money laundering, the conduct described relates to "some form of unlawful activity". Money laundering includes the possession of instrumentalities of unlawful activities. An "unlawful activity" is defined as "*any act or omission that constitutes an offence against a law in force in Antigua and Barbuda or against a law in force in a foreign country that would, if it was committed in Antigua and Barbuda, be an offence against a law of Antigua and Barbuda"*.

67. Section 61(2) of the Proceeds of Crime Act, 1993 (the POCA) also creates the offence of money laundering. Money laundering under the POCA is more narrowly defined. See. Annex 3 of the Report. Further, it is doubtful whether the definition of money laundering under the POCA is widened by reference in the definition of money laundering under the Money Laundering Prevention Act (MLPA). The money laundering offence under section 61(3) of the POCA is not referable to property which is an instrumentality nor is it referable to conduct where a person manages, invests or disguises money or other property that is the proceeds of crime. Arguably, the managing, investing, disguising of money or other property that is the proceeds of crime may be held not to be money laundering offences under the POCA given the closed definitions of money laundering under both the POCA and the MLPA.

68. Certain offences under the Misuse of Drugs Act (MDA) also constitute money laundering offences under the MLPA. These are (i) the unlawful importation and exportation of a controlled drug; (ii) the unlawful production and supply (including an offer to supply) of a controlled drug; (iii) the unlawful possession of a controlled drug with the intent to supply it to another; (iv) failure to report the loss or theft of a controlled drug; and (v) cultivation of any plant of the genus *cannabis*. In addition to these offences, the MDA also criminalises the mere possession of controlled drugs and the transport and storing of the drugs, subject to a lawful defence or authorisation to possess, transport or store them.

69. A money laundering offence extends to any type of property that represents the proceeds of crime. The law does not set out any limitation on the value of property that can be the subject of the offence of money laundering. Money laundering under section 2(1) of the MLPA refers to property that is '*derived, obtained or realised, directly or indirectly, from some form of unlawful activity or is an instrumentality.*" Property is defined as including "*money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate (whether in Antigua and Barbuda or elsewhere) and includes any*

[12] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

interest in such property." Under the POCA, 'property' relates to tainted property and it means "*money and all other property, real or personal, including things in action and other intangible or incorporeal property"*.

70. Notably, the definition of 'property' under the MLPA does not specifically include legal documents or instruments evidencing title to assets as provided in the UN Convention against Transnational Organised Crime. However, it is felt that the definitions of 'property' under the MLPA and the POCA are wide enough to cover such documents and instruments. Notwithstanding, it would be ideal if the definitions under the laws of Antigua and Barbuda were standardised in order to avoid difficulties with respect to the interpretation of the definitions.

71. The laws of Antigua and Barbuda do not require that there be a conviction for a predicate offence in order to institute proceedings for the offence of money laundering. However, the majority of the prosecutions are instituted in respect of predicate offences only. Relatively few prosecutions are instituted under the MLPA despite its wide provisions, particularly with regard to automatic forfeiture upon conviction and civil forfeiture.0

72. The low incidence of prosecutions brought under the MLPA (See. Table 6) may be attributable to the tripartite prosecutorial regime which exists in Antigua and Barbuda. Prosecutions may be brought by the Director of Public Prosecutions, the Police Prosecuting Unit and the Supervisory Authority of the ONDCP, and they can institute proceedings independently of each other. The Police Prosecution Unit has not prosecuted money laundering offences under the MLPA, though a large number of predicate offences are dealt with by that Unit.

73. Section 27 of the MLPA expressly confers on the Supervisory Authority prosecutorial powers. Although in practice this may be considered ideal, taking into consideration that the ONDCP has at its disposal wide investigatory powers, the Supervisory Authority's competence to institute prosecutions gives rise to a constitutional issue. The Constitution of Antigua and Barbuda confers prosecutorial power on the Director of Public Prosecutions only, and the Director of Public Prosecutions may authorise persons to prosecute on his behalf. In the absence of a high level of cooperation between the Supervisory Authority and the Director of Public Prosecutions, there may be instances where prosecutions which ought to be brought under the MLPA will not be instituted.

74. The Examiners were advised that there are plans underway to establish a Crown Prosecution Unit which will bring the Police Prosecution Unit within the Office of the Director of Public Prosecutions. Greater coordination between the Supervisory Authority and the Office of the Director of Public Prosecutions is also envisaged. This is to be lauded as the prosecutorial regime should be unified with regard to the investigation and prosecution of offences.

75. While under the MLPA any conduct which relates to some form of unlawful activity or to an instrumentality may constitute a money laundering predicate offence, under the POCA predicate offences for money laundering are restricted to those offences listed in the Schedule to the POCA. These are possession of controlled drugs for the purpose of supply, trafficking in controlled drugs, assisting another to retain the benefit of drug trafficking, engaging in organised fraud and the possession of property derived from unlawful activity. This is a very limited category of predicate offences, which severely hinders the effectiveness of the POCA to address wider money laundering concerns. It is therefore difficult to grasp the usefulness of the POCA to the anti money laundering framework and perhaps, thought should be given to its repeal.

76. With regard to the FATF Designated Categories of Offences, there is no equivalent Antigua and Barbuda legislation which governs participation in an organised criminal group and racketeering, and piracy. With respect to trafficking in human beings and migrant smuggling, section 40(2)(a) of the Immigration and Passport Act, which creates the offence of wilfully assisting a person to land in Antigua and Barbuda contrary to the provisions of the Act, is limited in scope. The provision does not capture the elements of recruitment,

transfer, harbouring or receipt of persons by means of threat or use of force as stated in Article 3 of the Protocol to the Palermo Convention to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Section 40(2)(a) also does not deal with the offence of smuggling as defined in Article 3 of the Protocol to the Palermo Convention against the Smuggling of Migrants by Land, Sea and Air; that is, "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

77. The equivalent legislation for those categories of offences for which legislative provision has been made is by and large dated. The extent to which complex criminal activity and developments in combating money laundering are addressed under the less recent legislation is debatable.

Table 5: Designated Categories of Offences

FATF 20 DESIGNATED CATEGORIES OF OFFENCES	ANTIGUA & BARBUDA'S EQUIVALENT LEGISLATION
Participation in an organized criminal group and Racketeering	
Terrorism including Terrorist Financing	Prevention of Terrorism Act, 2005
Trafficking in human beings and Migrant smuggling.	Immigration and Passport Act, Cap. 208
Sexual exploitation including sexual exploitation of children	Sexual Offences Act, 1995
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	Misuse of Drugs Act, Cap. 283; Misuse of Drugs (Amendment) Act, 1993
Illicit Arms Trafficking	Firearms Act, Cap. 171, (section 32 – restraint on import and export; section 8 – prohibition on carrying firearms).
Illicit trafficking in stolen and other goods	Larceny Act, Cap. 241(section 37 – Receiving)
Corruption and Bribery	Integrity in Public Life Act, 2004; The Prevention of Corruption Act, 2004, The Freedom of Information Act, 2004; Misbehaviour in Public Office: Common Law.
Fraud	Common Law; Larceny Act, Cap. 241 (section 24 – fraud of directors).
Counterfeiting currency	Forgery Act, Cap. 180 (section 8 – forgery of seals, dyes; section 9 – Uttering; section 13 – Making or having in possession paper or implements for forgery.)
Counterfeiting and Piracy of products	Intellectual Property Act
Environmental crime	Town and Country Planning Act; Fisheries Act.

Murder, Grievous bodily injury	Murder: Common law; Offences Against the Person Act, Cap. 300 (Part IV – Acts causing or Tending to cause Damage to Life or Bodily Harm, sections 19-35).
Kidnapping, Illegal restraint and Hostage taking	Offences Against the Person Act, Cap. 300 (section 65 – Kidnapping).
Robbery or theft	Larceny Act, Cap. 241 (section 33 – Robbery; sections 4-20 Larceny).
Smuggling	Customs (Control and Management) Act, 1993; (Part IV – Importation, Part V – Exportation, section 32 – Goods improperly imported.
Extortion	Larceny Act, Cap. 241 (section 35 – Demanding with menaces, with intent to steal; section 36 – Threatening to publish with intent to extort)
Forgery	Forgery Act, Cap. 181 (sections 4-16)
Piracy	
Insider trading, Market manipulation	Securities Act 2001 (Part X) (Offences created by sections 115 and 118)

78. The MLPA uses an all-crimes approach with respect to money laundering offences. There is no minimum threshold with regard to penalties to which a predicate offence must correspond in order for it to constitute a money laundering offence. The only requirement is that it be shown that the money or property is the proceeds of some form of unlawful activity or that it is an instrumentality.

79. Express provision is made in section 2(1) of the MLPA for money laundering predicate offences to extend to conduct that occurred in another country. It is generally the case, however, that prosecutions in relation to conduct that occurred in another country will be brought in the foreign country. The Antigua and Barbuda Authorities assist the foreign jurisdiction in such matters when assistance is requested.

80. The Antigua and Barbuda Authorities maintain that there is no known jurisprudential restriction to charging a person with the commission of both a predicate offence and a money laundering offence derived from it. No express provision has been made for prosecuting a person who has committed both the laundering and the predicate offence. This issue of self-laundering has not arisen judicially, and the theoretical position has therefore not been tested. In practice, charges are usually brought in respect of either the predicate offence or the money laundering offence. Given the wide terms in which the offence of money laundering is couched under the MLPA, that is, that it applies to any form of unlawful activity or is an instrumentality, and the fact that the offence is referable to any person who commits the money laundering offence, it appears more likely than not that self-laundering is covered under the laws of Antigua and Barbuda. Under the POCA the money laundering offence is in relation to specified predicate offences listed in the Schedule. In this regard, it is arguable that a person may be charged with both the money laundering offence pursuant to section 61 of the POCA and its predicate scheduled offence. Nevertheless, the issue could be addressed directly by express provision being made to cover self-laundering.

81. Ancillary offences to the offence of money laundering are set out in section 5 of the MLPA. A person may be guilty of an offence where that person attempts, aids, abets, counsels or procures the commission of or conspires to commit the offence of money laundering. No separate offence has been created with respect to facilitating the offence of money laundering. The Antigua and Barbuda Authorities are of the view that facilitation of the offence may be subsumed under one of the other ancillary offences, though this is not in accordance with the United Nations Convention against Transnational Organised Crime which requires that facilitation should be a separate offence.

82. Scheduled offences under the POCA extend to the ancillary offences of conspiring, attempting, inciting, aiding, abetting, counselling, procuring or being in any way knowingly concerned in the commission of a scheduled offence. It is posited that being in any way knowingly concerned in the commission of the scheduled offence would include the offence of facilitating the commission of an offence.

83. Tipping-off is an offence under the MLPA. Similarly, the falsification, concealment, destruction and disposal of a document or material which is relevant to an investigation into money laundering are covered.

Additional Element

84. Where the proceeds of crime are derived from conduct that occurred in another country and that conduct is not an offence in that other country but would have constituted a predicate offence had it occurred in Antigua and Barbuda, this does not constitute a money laundering offence under the laws of Antigua and Barbuda. The definition of money laundering under section 2(1) of the MLPA requires that there must be a breach of a foreign law. In effect, there must be dual criminality as concerns the predicate offence.

Recommendation 2

85. The money laundering offence under the MLPA applies to any person and includes a natural or juridical entity, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations. A money laundering offence under the MLPA is perpetrated if the person knows or has reasonable grounds to suspect that the money or other property relates to an unlawful activity or is an instrumentality.

86. "Person" is not defined under the POCA. Section 64 of the POCA deems conduct to have been engaged in by a body corporate where the director, servant or agent of the body corporate or some other person at the direction or with the consent or agreement of the director, servant or agent engages in the unlawful conduct. The inference is that 'person' refers only to a natural person and a body corporate. It is unclear whether an unincorporated entity comes within the meaning of "person". The legislation should provide a clear, expanded definition which includes a wide range of legal persons.

87. The mental element under the POCA requires knowledge or reasonable knowledge that the money or other property is connected to the unlawful activity.

88. Express mention is made in section 2(3) of the MLPA for inferring knowledge, intent or purpose from objective factual circumstances. A similar provision is absent from the POCA.

89. Section 4 of the MLPA extends liability for money laundering offences to legal persons. Every person who at the time of the commission of the money laundering offence acts in an official capacity for or on behalf of the legal entity or purports to act in that capacity is guilty of the offence. The penalty under the MLPA includes imprisonment, as it is a natural person who represents the legal entity that is charged. In the case of the POCA, the penalty imposed on a body corporate is a fine. The registration of a legal entity may also be cancelled.

90. The laws of Antigua and Barbuda do not restrict parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available in respect of legal persons.

91. Persons, including corporate and unincorporated bodies, found guilty of money laundering under the MLPA are liable on summary conviction to a fine of $200,000 or to imprisonment for three (3) years or to both; on conviction on indictment to a fine of $1,000,000 or to imprisonment for seven (7) years or to both. If a person is convicted of attempting, aiding, abetting, counselling, procuring or conspiring to commit money laundering offences, the penalties are the same as those imposed in respect of the money laundering offence. Pursuant to section 17 of the MLPA, a person who has been convicted of an offence for which he may be sentenced to a term exceeding twelve (12) months may not be eligible or licensed to carry on the business of a financial institution.

92. Commission of the offence of tipping-off carries a penalty on conviction of a fine of $100,000 and imprisonment for three (3) years. Where a person is found guilty of the offence of falsifying, concealing, destroying or disposing of relevant documents or material, he can be liable to a fine of $250,000 and to imprisonment for five (5) years.

93. Persons found guilty of the offence of failing to declare currency of US$10,000 or more on entering or leaving the country can under section 18 of the MLPA be fined $50,000 and/or be imprisoned for two (2) years. The undeclared funds may be confiscated and, in the case of a financial institution, its licence may be suspended or revoked by the Regulatory Authority. Provision is also made under section 18B of the MLPA for civil forfeiture of currency seized upon reasonable suspicion that it is the proceeds of crime.

94. Laundered property can be forfeited automatically upon criminal conviction under section 20 of the MLPA. A civil proceeds assessment order may be made requiring a person to pay to the Crown an amount assessed by the Court as the value of the person's benefits derived from money laundering, provided that the money laundering took place within six (6) years of the application for the order.

95. The money laundering offence under section 61 of the POCA is an indictable offence. In relation to a natural person the penalty is a fine of $200,000 or imprisonment for a period of twenty (20) years or both. With regard to a body corporate, a fine of $500,000 can be imposed. A person who receives, possesses, conceals, disposes of or brings into Antigua and Barbuda property derived from unlawful activity commits an indictable offence. Where a natural person is convicted he is liable to a fine of $100,000 or imprisonment for a period of five (5) years or both. If a body corporate is convicted a fine of $250,000 is imposed.

96. The sanctions under the MLPA are clearly more dissuasive and far-reaching than those imposed under the POCA. However, the statistics do not bear out the effectiveness of the sanctions, particularly under the MLPA. Cognisance is taken of the fact that this may be on account that few prosecutions are brought under the MLPA. Again, the utility of the POCA is raised.

Statistics[13]

97. For the period 2003 to 2006, investigations into money laundering activity varied from a high of thirty-two (32) in 2003 to a low of eleven (11) in 2005. There was a marked increase in 2006 in investigations. In the opinion of the Antigua and Barbuda Authorities, the figure for 2003 appears to be an anomaly. It has been suggested that this number correlates to the fact that the largest number of suspicious transaction reports (STRs) on record received by the Supervisory Authority was reported that year. While there is no clear explanation as to the reason for the dramatic increase in STRs in 2003, it is believed that the onsite visit of the CFATF Mutual Evaluation Team in the last quarter of 2002 contributed to a greater awareness and readiness on the part of financial institutions and authorities to file STRs. It could also have contributed to a large number of false positives, so that the numbers in the subsequent years represent figures that are closer to the norm.

98. Notwithstanding, the investigations have resulted in only one (1) prosecution locally for the period 2003 to 2006, out of seventy-five (75) investigations. There were twelve (12) foreign prosecutions. These figures are abysmally low given the wide measures and the absence of minimum thresholds available under the MLPA.

99. With regard to the sanctions, there have been no local convictions. The foreign prosecutions met with greater success. In analysing the statistics, it is to be noted that the figures represent prosecutions that were commenced in the year in question and which may have been carried over into another year with regard to convictions. No indication has been given as to the reason for the failure on the part of the Antigua and Barbuda Authorities to prosecute.

100. With respect to the breakdown of the sanctions, $10,000, 000 in fines and nine (9) years imprisonment was imposed in one case prosecuted overseas. (See. Table 8). While the particular offence to which the sanction corresponds is unknown, the sanction appears to be somewhat stiff in comparison to the penalty prescribed by the local legislation. An equivalent penalty under the laws of Antigua and Barbuda would arguably be very prohibitive.

101. With regard to Tables 6 and 7, the Examiners were informed by the Office of the Director of Public Prosecutions that the cases were all dealt with summarily and the prosecutions were conducted in the United States of America and Antigua & Barbuda. All the prosecutions were conducted with the assistance of the ONDCP and the majority of the prosecutions were in respect of money laundering offences. There were however two (2) matters that involved breaches of the Customs Act.

Table 6: Money laundering investigations, prosecutions and convictions

Investigations		Prosecutions		Convictions	
		Local	Foreign	Local	Foreign
2003	32	0	0	0	0
2004	13	0	5	0	3
2005	11	1	1	0	4
2006	19	0	6	0	3
Total	75	1	12	0	10

[13] Statistics compiled by the ONDCP and the Office of the Director of Public Prosecution (Money laundering offences pursuant to the MLPA).

Table 7: Sanctions on convictions for money laundering

	Convictions		Imprisonment (years)		Fines ($EC)	
	Local	Foreign	Local	Foreign	Local	Foreign
2003	0	0	0	0	0	0
2004	0	3	0	33	0	0
2005	0	4	0	0	0	0
2006	0	3	0	0	0	0
Total	0	10	0	33	0	0

Table 8: Sanctions Imposed Per Case on Conviction

Case #		Sanctions			
		Imprisonment		Fines (US$)	Confiscation* (US$)
		Years	Months		
2003	-	-	-	-	-
2004	1	9	0	10,000,000	?
	2	24	0	-	?
2005	1	?	?	?	451,028
2006	1	0	5	-	1,530,040
	2	?		?	416, 559
Total		33	5	10,000,000	1,946,599

Statistics compiled by the Antigua and Barbuda Customs and Excise Division

102. The number of seizures recorded by the Antigua and Barbuda Customs and Excise Division has been on the decrease since 2003. No explanation has been given as to the reason for the trend. There were thirty-three (33) seizures in 2002 and only eight (8) reported in 2006. Cannabis was by far the main drug seized.

103. The Customs and Excise Division enjoyed a large measure of success in securing convictions for the seizures.

104. With regard to drug offences generally, almost all of the prosecutions have resulted in convictions, with only two (2) persons being acquitted in any given year. However, at the end of each year at least half the number of cases are pending. This may speak to an inadequate number of investigators, prosecutors and court staff.

105. Given the total number of drug cases and seizures each year and the convictions secured; the fines do not appear to be proportionate. When one compares the weight of the drugs seized and the fines imposed, there does not appear to be consistency in the sanctions applied. Additionally, while the legislation prescribes fixed figures with regard to the amount of the fine, it appears that the Courts may be imposing a much lower fine in particular cases than that prescribed.

Table 9: Data on Drug Seizures

Year	No. Of Seizures	Description Of Drugs	Weight	Result
2002	33	Cocaine Cannabis	137 lbs. 707 lbs.	26 Convictions
2003	36	Cocaine Cannabis	190 lbs. 885 lbs.	25 Convictions
2004	26	Cocaine Cannabis Hashish	170 lbs. 199 lbs. 7.2 grams	17 Convictions
2005	20	Cocaine Cannabis	49 lbs. 4725 lbs.	11 Convictions
2006	08	Cocaine Cannabis	25 lbs. 68 lbs.	5 Convictions

Table 10: Drug Statistics from 2000 to 2006

Year	2000	2001	2002	2003	2004	2005	2006
No. of Cases	173	121	105	110	157	132	147
Cases Prosecuted	83	55	41	40	41	32	32
Persons Convicted	81	55	41	40	39	32	30
Persons	2	0	0	0	2	0	2

Acquitted							
Cases Withdrawn	0	0	0	0	0	0	0
Cases Pending Court	90	66	64	69	116	100	115

Table 11: Fines (In Eastern Caribbean Currency)

Year	2000	2001	2002	2003	2004	2005	2006
Cocaine	$559,000.00	$87,500.00	$1,825,800.00	$3,131,000.00	$1,885,000.00	$1,103,500.00	$1,550,000.00
Cannabis	$623,000.00	$399,740.00	$3,076,750.00	$1,386,350.00	$1,231,950.00	$1,785,050.00	$849,050.00

Statistics for Tables 10 and 11 compiled by the Police Prosecution Department

106. The Police Prosecution Department provided comprehensive statistics on a number of predicate offences. The Examiners were informed that in some cases defendants would have been charged with more than one offence. However, the records reflect the number of arrests made as opposed to the number of actual offences charged.

107. The majority of the cases prosecuted resulted in the imposition of fines. Imprisonment, although available was rarely imposed.

2.1.2 Recommendations and Comments

108. The requirements under Recommendations 1 and 2 are met to a large extent. However, there are a number of elements which hinder the effectiveness of the scheme, for combating money laundering namely:

109. The list of predicate offences under the POCA needs to be expanded. An all-crimes approach similar to what obtains under the MLPA could be explored.

110. The list of precursor chemicals under the MDA should be amended to include the chemicals stated in Tables I and II of the Vienna Convention.

111. The equivalent Antigua and Barbuda legislation which corresponds to the FATF list of Designated Category of Offences should be revised to ensure that the Acts capture all the offences contemplated by the FAFT recommended categories. Legislation should be enacted to address participation in an organised criminal group and racketeering, trafficking in human beings and migrant smuggling and piracy.

112. Facilitation of a money laundering offence should be stated as a separate crime.

113. Caution should be exercised in the drafting of legislation. There is inconsistency in the definition of key terms, and these definitions are left to judicial interpretation, for example, the definitions of “property” and “person”. Terms should be defined in accordance with the definitions provided under the Vienna Convention and the Palermo Convention.

Accordingly, amendments should be made to the MLPA and the MDA, and to the POCA if it is not repealed.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[14]
R.1	**PC**	• **Key definitions are inconsistently defined in the Statutes and these definitions are not in the terms provided under the Palermo and Vienna Conventions.** • **The list of precursor chemicals does not accord with the list under the Vienna Convention.** • **The list of money laundering predicate offences under the POCA is too limited.** • **The predicate offences for money laundering do not cover three (3) out of the twenty (20) FATF's Designated Category of Offences, specifically Participation in an Organised Criminal Group, Trafficking in human beings and migrant smuggling and Piracy.**
R.2	**LC**	• **The number of money laundering prosecutions is remarkably low given the wide measures and the absence of thresholds available under the MLPA.**

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

114. Antigua and Barbuda ratified the UN Convention for the Suppression of the Financing of Terrorism (the Financing of Terrorism Convention) on 29 March, 2003. The Prevention of Terrorism Act 2001 has been repealed and replaced by the Prevention of Terrorism Act 2005 (the PTA). The Suppression of Terrorism Act 1993 is still in force, however, and was enacted to make provision for terrorist related offences to be made extradictable, and for excluding those offences which are defined as crimes of a political character.

115. Antigua and Barbuda has also ratified the Inter-American Convention against Terrorism.

116. The PTA criminalises terrorist acts and the financing of terrorist acts. The financing of terrorism is criminalised under section 6 of the PTA. This section makes it an offence for a person to provide or collect directly or indirectly any funds, intending, knowing or having reasonable grounds to believe that the funds will be used to carry out a terrorist act. The definition of 'terrorist act' refers to an act or threat of action which by its nature and context may reasonably be regarded as being intended to intimidate the public, compel a government or international organisation to do or refrain from doing any act, or advance a political, ideological or religious cause. The definition specifies the types of acts or threats which may constitute terrorist acts. These are acts or threats which involve serious bodily harm to a person or damage to property, the endangering of a person's life, the creation of serious

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

risk to the health or safety of the public, and the use of firearms or explosives. Acts or threats designed to cause environmental hazards through the use of toxic, radioactive or biological agents, the disruption of computer systems and communications, banking and financial services, infrastructure and essential emergency services also constitute terrorist acts. The person convicted of the offence on indictment is liable to a term of imprisonment not exceeding twenty-five (25) years.

117. Section 15 of the PTA makes it an offence for a person in Antigua and Barbuda to knowingly promote or facilitate the commission of terrorist acts in a foreign state. The offence is committed where the person gives money or goods or performs services or receives or solicits money or goods for the purpose of promoting or supporting terrorist acts in the foreign state. The person is liable on conviction on indictment to imprisonment for a term not exceeding fifteen (15) years.

118. Section 7(a) of the PTA states that a person who directly or indirectly provides or makes available financial or other related services, intending that they be used in the commission or facilitation of terrorist acts for the purpose of benefiting a person who commits or facilitates a terrorist act commits an offence. In section 7(b) the crime is perpetrated where a person knows that the financial or other related services will benefit a terrorist group. Arguably, the entity who receives the benefit of the terrorist financing should in both subsections extend to individual terrorists and terrorist groups. The language in which this section is couched should therefore be made clearer with regard to the extension of the offence to individual terrorists and terrorist organisations. The mental elements of intention and knowledge should also be applicable to both individuals and terrorist groups.

119. "Funds" is undefined in the PTA. The Antigua and Barbuda Authorities are of the view that the term extends to any funds and covers all the elements of the term as defined in Article 1(1) of the UN Terrorist Financing Convention, including its extension to both legitimate and illegitimate sources. There is no judicial interpretation of the term. It is recommended that it should be defined in the language provided in the UN Terrorist Financing Convention.

120. Section 6 of the PTA imposes no requirement that the funds be actually used to carry out or attempt a terrorist act, or that they be linked to a specific terrorist act. Having the intent, knowledge or reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act is sufficient.

121. Section 20 of the PTA makes it an offence to aid, abet, attempt, conspire to commit, counsel or procure an offence under the Act, which includes financing of terrorism offences under sections 6, 7 and 15 of the PTA. The penalty for complicity is imprisonment on conviction on indictment for a term not exceeding fifteen (15) years.

122. A person who knowingly recruits or agrees to recruit another person to be a member of a terrorist group or to participate in terrorist acts is guilty of an offence and is liable on conviction on indictment to imprisonment for twenty-five (25) years. Similarly, a person who provides training and instruction to terrorist groups and persons committing terrorist acts is liable on conviction on indictment to imprisonment for fifteen (15) years. Where a person arranges, manages or assists in arranging or managing a meeting to support or further the activities of a terrorist group, he commits an offence, the penalty for which is imprisonment for fifteen (15) years.

123. While the terms of imprisonment may be considered proportionate, they could be made more dissuasive if they were accompanied by stiff fines. Additionally, a compensation scheme could be established for the payment out of terrorist funds of compensation to the victims of terrorism.

124. Section 7 of the PTA makes it an offence to provide or make available financial or other related services intending or knowing that they will be used for purposes of terrorism. Section 10(1)(b) of the PTA makes it an offence to knowingly solicit or give support to the

commission of a terrorist act. However, the difficulty noted above in relation to section 7 refers.

125. All terrorist financing offences under the PTA are indictable offences, and therefore they will prima facie constitute "some form of unlawful activity" for the purposes of money laundering. However, section 9(3) of the PTA deems two offences to be money laundering offences, namely, (i) being knowingly concerned in an arrangement to facilitate the acquisition, retention or control of terrorist property by concealment, removal from the jurisdiction or transfer to a nominee; and (ii) dealing in, acquiring or possessing, facilitating any transaction, converting, concealing or disguising terrorist property, or providing financial or other services in relation to terrorist property. Section 9(3) also provides that the provisions of sections 19A and 19B of the MLPA shall apply to the property and other assets used in connection with the commission of terrorist acts.

126. It is submitted, however, that the deeming provision section 9(3) is unnecessary. Section 9(3) has created specific money laundering terrorism offences, despite the fact that terrorist offences being indictable offences *ipso facto* constitute predicate offences to money laundering. Furthermore, the deemed offences and their reference to the provisions under the MLPA in respect of freezing and seizing bring into question the applicability of the freezing and seizing provisions under the PTA to these offences. The freezing and seizing mechanism under Part VII of the PTA is independent of other freezing and seizing mechanisms, and it is intended to apply to all offences under the PTA.

127. Under the POCA the schedule of predicate offences for money laundering does not include the financing of terrorism or other terrorist related offences. This limitation underscores the need for the Antigua and Barbuda authorities to consider whether the POCA is necessary to the jurisdiction's anti money laundering and financing of terrorism framework.

128. Terrorist financing offences under the PTA apply regardless of where the crime was committed. The High Court's jurisdiction to try offences under the PTA is stated in section 26 of the PTA. Pursuant to section 26(2), the Court has jurisdiction to try the offence if it is committed in Antigua and Barbuda. For the purposes of section 26(2), a PTA offence committed outside Antigua and Barbuda, and which would if committed in Antigua and Barbuda constitute an offence under the PTA, is deemed to have been committed in Antigua and Barbuda. This applies provided that (i) the person committing the offence is a citizen or resident of Antigua and Barbuda, (ii) the offence is committed to compel the Government of Antigua and Barbuda to do or refrain from doing any act, (iii) the offence is committed against a citizen of Antigua and Barbuda, (iv) the offence is committed against property belonging to the Government of Antigua and Barbuda outside Antigua and Barbuda, or (iv) the person who commits the offence is present in the jurisdiction. Where the person is not within the jurisdiction, extradition or mutual legal assistance procedures may be relied upon to have the person prosecuted either in Antigua and Barbuda or in the foreign country.

129. Section 17(1) of the PTA makes it an offence to conspire in Antigua and Barbuda to commit a PTA offence outside Antigua and Barbuda. An offence is also committed if a person conspires outside Antigua and Barbuda to commit a PTA offence in Antigua and Barbuda. PTA offences include financing of terrorism offences.

130. PTA offences created under section 9(1), facilitating the acquisition of terrorist property, and section 9(2), knowingly dealing in, acquiring, facilitating, concealing or providing financial or other services in respect of terrorist property are deemed money laundering offences. That the deeming provision of section 9(3) of the PTA specifically relates to sections 19A and 19B of the MLPA, it is uncertain whether section 2(3) of the MLPA can be said for the purposes of the PTA to be an express assertion that knowledge, intent, purpose, belief and suspicion required as an element of the money laundering offence may be inferred from objective, factual circumstances.

131. The term "entity" under the PTA means "a person, group, trust, partnership, fund or an unincorporated association or organisation". "Person" appears to have a wide meaning to include individuals and corporate entities. Offences may therefore be committed by natural and legal persons.

132. There is no provision of law which precludes parallel criminal, civil or administrative proceedings in another country because legal persons are made criminally liable in Antigua and Barbuda. It is usually the practice, however, that the Antigua and Barbuda authorities will render mutual assistance when requested to do so.

133. The collection of property or the provision of financial services for facilitating terrorist acts under section 7 of the PTA carries a sentence of twenty-five (25) years. The money laundering offences under section 9 of the PTA carry a term of imprisonment for fifteen (15) years.

Recommendation 32 (terrorist financing investigation/prosecution data)

134. The statistics provided indicated that there have been no investigations, prosecutions or convictions in relation to terrorist activity. The effectiveness of the financing of terrorism regime therefore cannot be ascertained.

2.2.2 Recommendations and Comments

135. The PTA covers most of the requirements laid down in the Financing of Terrorism Convention. However, there are some deficiencies which affect Antigua and Barbuda's full compliance with the terms of the Convention. In accordance with Article (1), the term "funds" under the PTA should be defined, and it should include the wide range of assets contained in the definition under the Convention.

136. The PTA should be amended so that the mental elements of knowledge and intent should extend to both individual terrorists and terrorist groups.

137. The deemed money laundering offences under section 9 of the PTA should be revisited with a view to determining whether the creation of specific money laundering terrorism offences is necessary. The Antigua and Barbuda Authorities should also consider whether the creation of these offences in any way limits the effectiveness of the financing of terrorism mechanism under the PTA.

138. While the terms of imprisonment are for relatively long periods, given the gravity of terrorist offences, the Government of Antigua and Barbuda should consider making the sanctions more prohibitive by including large fines and an obligation to compensate victims.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• **The deemed money laundering terrorism offences under the PTA and their reference to limited sections of the MLPA introduce an element of uncertainty into the financing of terrorism framework with respect to the extent to which either Act is applicable, and hence, the extent to which the elements of Special Recommendation II are covered.** • **Sanctions should include fines to be dissuasive.** • **Under the PTA, the intentional element of the offence cannot be inferred from objective factual circumstances.**

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

2.3.1 Description and Analysis

Recommendation 3

139. The forfeiture, freezing and seizing of the proceeds of crime are governed primarily by the MLPA and the POCA. Provision for conviction and civil forfeiture procedures is made under the MLPA. Of note is the automatic forfeiture upon conviction. The POCA covers conviction- based forfeiture only.

140. Property that has been laundered can be confiscated. Section 20 of the MLPA provides for automatic forfeiture of property upon conviction for a money laundering offence. The property that can be confiscated must first be frozen pursuant to section 19(1) of the MLPA, which is any property in which a defendant has an interest. Under section 2D of the MLPA, property in which a defendant has an interest includes property which is subject to the effective control of the defendant.

141. Property as defined in section 2 of the MLPA includes money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Antigua & Barbuda or elsewhere. The definition does not expressly include income, profits or other benefits from the proceeds of crime.

142. Under the POCA, "property" includes money and all other property, real or personal, including things in action and other intangible or incorporeal property. However, the definition "proceeds of crime" includes benefits derived from the unlawful activity, and in this context, the term may be said to cover income, profits and benefits. "Property" is even more narrowly defined under the PTA to include money, securities and any movable or immovable property wherever located.

143. A difficulty could arise where, given the various definitions in the legislation, the Courts may restrict the meaning of the term to the literal meaning of the words in the definition. The Examiners were advised that an issue as to what constitutes property in relation to money laundering has not arisen in the Courts, and that the term is given a wide interpretation. Nevertheless, provision could be made to expand the term to include expressly income, profits or other benefits from the proceeds of crime. The definition should be standardized in the Acts in relation to money laundering offences.

144. Gifts acquired by third parties in relation to an unlawful activity are caught by the MLPA and the POCA, provided that the gifts are made after the commission of the unlawful act. If the property in ownership or possession of a third party unrelated to the unlawful activity is included in a freeze or confiscation application, the third party may apply to the Court to have the property excluded on the basis that he acquired the property without knowledge or in circumstances such as not to arouse a reasonable suspicion that the property was an instrumentality of an offence.

145. Automatic forfeiture of property is available under Part IVA of the MLPA. The property is forfeited to the Crown upon the expiry of ninety (90) days after the later of the making of the freeze order or the conviction of the defendant. The property is forfeited if within the period of ninety (90) days an application for the discharge of a freeze order is refused, dismissed, withdrawn or struck out. Automatic forfeiture gives rise to a rebuttable presumption that the relevant property is the proceeds of crime, and the onus is on the defendant to show that the property has been acquired by lawful means.

146. Section 20A of the MLPA is a civil forfeiture provision that provides for forfeiture of property upon a Court finding that it is more probable than not that the defendant has within

six (6) years of the application for the forfeiture order engaged in money laundering activity (defined in section 2H of the MLPA). The forfeiture order attaches to property frozen under section 19(1)(c) of the MLPA. When a civil forfeiture order is made, it must be made in respect of specified interests in property. The quashing or setting aside of a conviction for a money laundering offence will not affect the validity of a civil forfeiture order based on the same conduct that was made before or after the conviction was quashed or set aside.

147. Property which constitutes the proceeds of crime can be confiscated under the MLPA. This can be any property that is derived or realised directly or indirectly by any person from unlawful acts or omissions. Likewise, property which is an instrumentality of an offence can be confiscated.

148. Upon conviction for scheduled offences of the POCA section 10 provides for the forfeiture of tainted property. If the Court is satisfied that the person convicted of a scheduled offence has benefited from its commission it may under section 18 of the POCA make an order that the convicted person pay to the Crown an amount equal to the value of his benefits or such lesser amount as the Court may determine.

149. With regard to drug cases, section 12(5) of the MDA makes provision for the forfeiture of any conveyance used to transport controlled drugs. Section 27 of the MDA provides that on conviction for a drug offence under the MDA, which includes importation, exportation and possession of drugs with intent to supply, which are money laundering offences, the Court may order anything shown to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the Court may order.

150. In the case of the financing of terrorism, section 28(1) of the PTA provides for the forfeiture of any property used for or in connection with or received as payment or reward for the commission of any offence under the Act. This includes offences directly related to the financing of terrorism, namely:

- section 6 – provision or collection of funds to commit terrorist acts;
- section 7 – provision of property or financial services to facilitate terrorist acts;
- section 8 – use or possession of property to facilitate terrorist acts, and
- section 9 – money laundering: concealing, transferring, converting, etc terrorist property.

151. However, it is unclear whether section 28(1) applies to the deemed money laundering terrorism offences under section 9, given the specific reference of these offences to the freezing and seizing provisions under sections 19A and 19B of the MLPA.

152. Section 35 of the PTA provides for the seizure and restraint of property that has been, is being or may be used to commit an offence under the Act. Again, for the reason cited in respect of section 28(1), it is unclear whether section 35 applies to the deemed offences under section 9.

153. The Attorney General may apply to the Court under section 37(1) of the PTA to forfeit property owned or controlled by, or on behalf of, a terrorist group, or property that has been or will be used, in whole or in part, to commit, or facilitate the commission of a terrorist act.

154. Property that has been laundered, or that is the proceeds or an instrumentality of crime can be frozen under section 19(1) of the MLPA, and can therefore be the subject of a confiscation order under section 20 or 20A of the MLPA. Such property is described in section 19(2) and includes all the property of a defendant and specified property of a person other than the defendant, and this encompasses investments and intangible property. Property as defined in section 2(1) of the MLPA includes an interest in property, and

property in which the defendant has an interest is specified in section 2D of the MLPA to include property subject to the effective control of the defendant. The definition of property therefore covers property, proceeds and instrumentalities relating to the commission of a money laundering offence.

155. Property which is the subject of a money laundering offence under the MLPA includes all the property of or in the name of a defendant and specified property of a person other than the defendant.

156. Section 19(1) of the MLPA provides for freezing of property in which there is reasonable suspicion that a defendant has an interest, where he has been convicted, charged or about to be charged with money laundering or is suspected of engaging in money laundering activity. Section 18A of the MLPA provides for the seizure of currency suspected of being the proceeds of crime. The Supervisory Authority may pursuant to section 19(9) of the MLPA direct a financial institution to freeze property for seven (7) days pending an application for a court ordered freeze under section 19(1).

157. Section 31 of the POCA provides for the Director of Public Prosecutions (the DPP) to apply for a restraining order in relation to property of a person charged with or convicted of a scheduled offence under the POCA, and includes money laundering. The application is made in respect of any realisable property held by the defendant or specified realisable property held by a person other than the defendant. The Court may make the order prohibiting the defendant or any other person from disposing of or otherwise dealing with the property. Alternatively, at the request of the DPP, the Court may direct the Public Trustee or other person to manage or otherwise deal with the property.

158. A person who knowingly contravenes a restraining order commits an indictable offence punishable upon conviction, in the case of a natural person, by a fine of $100,000 or imprisonment for a period of five (5) years or both; in the case of a body corporate to a fine of $500,000. A restraining order remains in force for six (6) months and may be extended. The order will also remain in force until it is revoked or varied or until a forfeiture order is made in respect of the property or the property is forfeited to the Crown.

159. The Court will order payment instead of a forfeiture order in respect of property that cannot be made the subject of an order. This may be on account that the property cannot be located or that it has been diminished substantially in value or rendered worthless, for example. The amount payable is treated as a fine and in the case of default is enforced by imprisonment as set out in the list of penalties under section 16 of the POCA.

160. With regard to financing of terrorism, the Attorney General may direct any financial institution to restrain or freeze any account or property held by the financial institution on behalf of a specified entity. Sections 25(1) and 35(1) of the PTA give power to the Commissioner of Police and to the Director of the ONDCP to seize property where there are reasonable grounds to suspect that the property has been or is being used to commit an offence under the Act.

161. Application by the Supervisory Authority for a freeze order on an *ex parte* basis is required by section 19(1A) of the MLPA. Under section 31(2) of the POCA, the DPP has the option of making the application for a restraining order against property ex *parte*. In relation to the financing of terrorism, section 25(3) of the PTA provides for the Commissioner of Police or the Director of the ONDCP to make an *ex parte* application for a detention order for seized property. In accordance with section 35(3) of the PTA, this should be done within ten (10) days of the seizure.

162. Law enforcement agencies and other authorities are empowered by the MLPA, the POCA and the PTA to identify and trace property in relation to offences under these Acts. Under the MLPA the Supervisory Authority can apply to the Court for a production order to obtain documents related to identifying, locating and quantifying property of the defendant, any property related to the offence or documents related to the transfer of such property. A

production order can also be sought to have a financial institution produce all information obtained about any business transaction conducted by or on behalf of the defendant. Similar investigatory powers are given under section 42 of the POCA to police officers.

163. The MLPA provides for bona fide third parties claiming an interest in property to apply to the Court to have the property excluded from a forfeiture or freeze order. Under section 13 of the POCA, third parties may seek a declaration from the Court of the interest in forfeited property. The PTA does not provide for bona fide third parties to have their interest in property excluded from seized property. Though, the **C**ourt is required to give every person appearing to have an interest in the property an opportunity to be heard.

164. Provision has been made under section 19(5) of the MLPA for items such as reasonable living expenses for dependents to be paid out of seized, frozen or forfeited property. Similar provision is made under section 32(3) of the POCA in respect of restraining orders.

165. Disposition of or dealing with property subject to forfeiture under sections 20 and 20A of the MLPA is prohibited. The applicable penalty is a fine of $100,000 and two (2) years imprisonment on summary conviction. The disposition or dealing is void if it was not for sufficient consideration or not in favour of a person at arms length, acting in good faith.

166. Section 12 of the POCA authorises the Court to set aside any conveyance or transfer of property that occurred after the seizure of the property or the service of the restraining order unless the conveyance or transfer was made for valuable consideration to a person acting in good faith. There has been no instance where a transaction or conveyance was set aside.

Additional Elements

167. The laws of Antigua and Barbuda do not provide for the confiscation of the property of organisations that are found to be primarily criminal in nature.

168. Sections 20A and 20B of the MLPA provide for the confiscation of property without first securing a criminal conviction. Section 20A(2) states that the High Court shall make a civil forfeiture order if the Court finds that it is more probable than not that the person in respect of whom a freeze order was made, had at any time not more than six (6) years before the making of the application for civil forfeiture, engaged in money laundering activity. The finding of the High Court for the purposes of subsection 20A(2) MLPA need not be based on a finding as to the commission of a particular offence, and can be based on a finding that "some offence or other" constituting a money laundering activity was committed. The quashing or setting aside of any parallel conviction related to the same money laundering activity does not affect the validity of the findings of the court in the civil forfeiture application hearing.

169. Where a person has engaged in ML activity from which a benefit has been derived, the Court may make a civil proceeds assessment order under section 20B(2) MLPA, which pursuant to section 20B(10), is a debt payable by the defendant to the Crown and is recoverable as such. Under section 20F(1) of the MLPA, if the Court is satisfied that an interest in property is subject to the effective control of a person in relation to whom the Court has made a civil proceeds assessment order, the Court can make an order declaring the interest available to satisfy the order.

170. Section 18B(1) of the MLPA provides for application for civil forfeiture of currency seized upon reasonable suspicion that it is the proceeds of crime.

171. Property which is subject to automatic forfeiture requiring criminal conviction may be excluded upon the application of the defendant. It must be shown that the property was not used in or derived from any unlawful activity and that it was not related to any money laundering scheme. Section 19B(6) of the MLPA states that the onus of proof lies upon the person seeking to have the property excluded.

Statistics

172. All freezing was done pursuant to section 19(1) of the MLPA. The Authorities indicated that there is no known money laundering freezing or confiscations under the POCA for the period 2003 to 2006.

173. All property seized from 2003 to 2006 was subsequently frozen. The statistics reflect the seized property embedded in the figures for freezing.

174. In 2004 there were two (2) confiscations. These were ordered in foreign **C**ourts. The figure in respect of the confiscations represents confiscated assets shared with Antigua and Barbuda.

175. If one compares the statistics in respect of the property restrained and those showing prosecutions, it seems that the restraint of property did not necessarily result in the prosecution of offences.

176. No confiscations were made in 2003 and 2005. The Antigua and Barbuda Authorities have indicated that this is because confiscation is dependent upon a successful prosecution and that proceedings are often lengthy, the result is that statistics showing restraint of property do not always correspond to the confiscation of that property. Further, regarding civil forfeiture, the Examiners have been informed that it is the practice that the criminal process be completed on the understanding that a section 20 MLPA criminal forfeiture would take effect before invoking civil proceedings under section 20A. The Examiners have been informed that no restraints were made in 2006.

177. The MLPA contains numerous provisions under sections 18A(8)(a), 19(1B), for example, which implicitly put the onus on the defendant to show that property in his possession or control is not the proceeds of illicit activity. Yet there have been relatively few restraints orders pursuant to the Act.

Table 12: Total Value of Property Restrained Relating To ML (US$)

	No. of Cases		Frozen		Seized		Confiscated	
	Local	Foreign	Local	Foreign	Local	Foreign	Local	Foreign
2003	2	2	80,675.94	501,582.39	35,600.00	0.00	0.00	0.00
2004	1	1	3,905,589.04	443,997.24	0.00	0.00	0.00	1,065,670.72
2005	2	5	178,479.05	2,423,167.57	178,230.72	0.00	0.00	0.00
2006	0	0	0.00	0.00	0.00	0.00	0.00	0.00
Total	5	8	4,164,744.03	3,368,747.20	213,830.72	0.00	0.00	1,065,670.72

Table 13: Antigua and Barbuda Customs and Excise Division Data on Drug Seizures

Year	No. Of Seizures	Description Of Drugs	Weight	Result
2002	33	Cocaine Cannabis	137 lbs. 707 lbs.	26 Convictions
2003	36	Cocaine Cannabis	190 lbs. 885 lbs.	25 Convictions
2004	26	Cocaine Cannabis Hashish	170 lbs. 199 lbs. 7.2 grams	17 Convictions
2005	20	Cocaine Cannabis	49 lbs. 4725 lbs.	11 Convictions
2006	08	Cocaine Cannabis	25 lbs. 68 lbs.	5 Convictions

Table 14: Value of drugs seized where arrest were made

Year	2000	2001	2002	2003	2004	2005	2006
Cocaine	$524,800.	$131,328.	$1,293,840.	$1,345,680.	$568,080.	$518,400.	$183,600.
Cannabis	$130,284	$1,147,608.	$3,481,940.	$191,576.00	$21,729,092.	$8,338,484.	$125,664.

Table 15: Value of drugs seized where no arrest were made

Year	2000	2001	2002	2003	2004	2005	2006
Cocaine	$770.60	$259.20	$43,200.	$302.40	$697.68	$172.80	$218,116.
Cannabis	$74,840	$1,180,872.	$391,160.	$320,628.	$322,476.	$207,592.	$165,088.

2.3.2 Recommendations and Comments

178. There is an under-utilisation of the far-reaching automatic forfeiture upon conviction and civil forfeiture mechanisms.

179. The Antigua and Barbuda Authorities should seek to prosecute money laundering offences as stand-alone offences pursuant to the MLPA.

180. Greater emphasis should be placed on the investigation of offences with a view to securing convictions.

181. The PTA should make express provision for bona fide third parties to have their interest in property excluded from seized property.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• **Ineffective implementation of the freezing and forfeiture regime.** • **No express provision in the PTA for third parties to have their interest in property excluded from seized property.**

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

2.4.1 Description and Analysis

Special Recommendation III

182. Legislative provision in relation to the freezing of funds used for terrorist financing is to be found mainly in the PTA. Antigua and Barbuda has under section 4(1) of the PTA provided a general mechanism for the implementation of UN Security Council Resolution measures. The Minister of Foreign Affairs may by order published in the Gazette make such provision as appears to the Minister to be necessary or expedient to effectively apply those measures.

183. Lists of terrorists gazetted under the repealed PTA 2001 continue in effect until revoked. This list includes the consolidated list issued by the United Nations Security Council.

184. Where the Minister of Foreign Affairs makes an order under section 4(1) to the effect that there are reasonable grounds to suspect that an entity specified in the order is engaged in terrorist activity, upon the order being made, the entity is deemed to be a specified entity. Section 4(2) provides that, based on such an order, the Attorney General may exercise his power to direct financial institutions to freeze any account or other property held by the financial institutions on behalf of the specified entity.

185. The Minister's powers under sections 4(1) and 4(2) of the PTA may apply to give effect to United Nations Security Council Resolution 1267 (1999) in respect of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee.

186. The Antigua and Barbuda Authorities informed the Examiners that no entity to date has been declared a specified entity, and the procedures employed in relation to measures taken in respect of a specified entity are at this stage untested.

187. Specifically as concerns satisfying the requirement of the UNSCR 1267 (1999) obligating a country to implement without delay measures to freeze and seize terrorist related funds and other assets in accordance with UN Al Qaida and Taliban Sanctions, there is no specific reference in the PTA to freezing and seizure being done without delay. However, it is

instructive that intermediate steps such as first applying to the Court for a declaration that an order be made before funds or other property can be seized or frozen are not stipulated under the PTA. In relation to seizures, the Commissioner of Police and the Director of the ONDCP may exercise their powers whether or not proceedings have been instituted for an offence in respect of the funds or other assets. These latter authorities though must as soon as practicable after the seizure, apply to the Court for a detention order.

188. The Attorney General is the person authorised by the PTA to declare persons or groups to be terrorists. Upon being informed by the Commissioner of Police or the Director of the ONDCP that there are reasonable grounds to suspect that an entity has engaged in terrorist acts, the Attorney General may by order pursuant to section 3(2) of the PTA declare the entity to be a "specified entity". Section 3(2) also provides for the Attorney General to direct financial institutions to freeze any account or other property held by the financial institution by or on behalf of the specified entity. There is no requirement for notification to the specified entity at that point. The order has to be gazetted within seven (7) days.

189. United Nations Security Council Resolution 1373 addresses the implementation of measures to freeze and seize terrorist related funds and other assets of persons (including other persons acting on their behalf) who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. Section 3(2) of the PTA extends the designation of "specified entity" to an entity suspected of committing, attempting to commit, participating in or facilitating a terrorist act, or having acted on behalf of, at the direction of or in association with such entity. The powers of freezing and seizure conferred on the law enforcement authorities above also apply in this regard.

190. It is submitted that although there must first be reasonable grounds upon which the Attorney General can act before he issues the directive to have the funds or other assets frozen, or the Commissioner of Police or the Director of the ONDCP seize property pursuant to sections 25 and 35 of the PTA, the determination of there being reasonable grounds does not negatively affect the issue whether or not the authorities have acted without delay in actually freezing the funds or other assets.

191. Antigua and Barbuda can give effect to the actions initiated under the freezing mechanisms of other jurisdictions. If the request is made pursuant to the MLPA, section 23 provides that the Court or the Supervisory Authority in consultation with the Central Authority for Antigua and Barbuda under any mutual legal assistance arrangement shall cooperate with the Court or other competent authority of another State. The appropriate measures to provide assistance must be in accordance with the MLPA and within the limits of the legal systems of both States. There is a requirement under section 19A(1A)(b) that the Court will in determining whether to grant a freeze order consider whether reasonable grounds exist to justify freezing the property. While there is no express requirement that the initiation of the freeze action be done without delay, given the nature of such requests, time is usually of the essence.

192. Where requests concerning terrorist offences not involving money laundering are made to a relevant authority in Antigua and Barbuda, it is likely that assistance will be rendered pursuant to section 31(1) or 31(2) of the PTA on the basis of a counter terrorism convention.

193. Part VI of the PTA is dedicated to information sharing, extradition and mutual assistance in criminal matters related to terrorist acts. Where Antigua and Barbuda becomes a party to a Counter Terrorism Convention and has an arrangement with another State Party for extradition and mutual assistance in criminal matters, the Convention is to be used as the basis for extradition and mutual assistance for the purposes of the MACMA. Section 27 of the MACMA provides for the registration of restraint orders made in Commonwealth or other registered jurisdictions. Even where there is no arrangement between Antigua and Barbuda and another State Party, the Minister of Foreign Affairs may treat the counter terrorism convention as such an arrangement.

194. The PTA is silent as to what may constitute "funds" or "assets" for the purposes of UNSCRs 1267 and 1373. A definition of "property" is given, and the term "includes money, securities and any movable or immovable property wherever located". "Terrorist property" is also defined, and it refers to property which has been, is being, or is likely to be used by a terrorist group and to property which is owned or controlled by or on behalf of a terrorist group. The argument is made that financial institutions and the competent authorities will freeze or seize any property that can be linked to the terrorist activity. While the Court may be inclined to construe all of the terms widely to bring perpetrators of offences under the Act, the freezing and seizure do not expressly extend to "funds or other assets wholly or jointly owned or controlled directly or indirectly by terrorists", nor do they expressly cover "funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by terrorists" as required by the UNSCRs. Full compliance with these Resolutions as it concerns what may constitute "funds" or "assets" is therefore left to judicial interpretation.

195. The Attorney General is mandated by section 3(2)(b) of the PTA to communicate freezing actions to financial institutions. There are no detailed guidelines governing the procedure which the Attorney General should follow and the measures which will be taken to safeguard that information of the decision to freeze a specified entity's account is not prematurely disclosed. As there have been no instances where it was necessary for the Attorney General to direct institutions to freeze accounts, the Examiners could not determine the effectiveness of the systems for communicating freeze actions as between the Attorney General and the financial institutions.

196. Nevertheless, the 2006 updated Money Laundering & Financing of Terrorism Guidelines for Financial Institutions (ML/FTG) provides under paragraph 4.22 that communication of the Attorney General's order in relation to the freezing of funds will ordinarily be made to the financial institution by the Director of the ONDCP. It is noted that care must be taken to ensure that the submission of the order to the Director of the ONDCP does not cause undue delay in the communication of the directive to the financial institution or that the element of secrecy of the communication is compromised.

197. The updated 2006 ML/FTG outlines the responsibilities of financial institutions with regard to terrorist activity and the procedures to be followed by them. Financial institutions should designate an officer to be responsible for communicating to and being the point of contact with the ONDCP on matters relating to the financing of terrorism and the provisions of the PTA. The ML/FTG suggests that the financial institution's compliance officer for money laundering may be the appropriate person to assume this task.

198. Every financial institution is required to make a report every three (3) months as to whether or not it is in possession of property owned or controlled by or on behalf of a specified entity. The financial institution is required to report to the Director of the ONDCP transactions for which there are reasonable grounds to suspect that the transactions are related to the commission of terrorist acts. Reports on terrorist property for submission to the Director of the ONDCP are to be made on the form provided in Schedule D of the PTA. Failure to comply with the duty to report is an offence and is punishable by imprisonment for a term not exceeding five (5) years. This penalty would not be dissuasive in a case where it is found that a financial institution or an officer intentionally sets out to make secret the existence of terrorist property.

199. A financial institution is also obligated to monitor the Gazette for changes to the list of declared specified entities and to maintain copies of this list. Upon the declaration or publication in the Gazette of the name of a specified entity, a financial institution should immediately make a check of its records to establish whether or not the specified entity has an account or holds property with the institution. If a match is found, this should be communicated immediately to the Director of the ONDCP by the quickest, and arguably

most secure, means possible. Transactions in relation to the account or property should not proceed before contact is made and the matter is discussed with the Director of the ONDCP.

200. The Guidelines are brief. They could, for example, set out acceptable standards of channels of reporting within the financial institution. The reporting of STRs for terrorist activity would be comparable to the reporting regime which exists for money laundering. However, the interviews revealed that the manner in which financial institutions report STRs in respect of money laundering differs amongst the financial institutions. In some cases, the channel of reporting involved a chain of managers, which it is felt could compromise the secrecy and confidentiality required for the reporting process to be effective. The reporting mechanism for terrorism activities should therefore be scrutinised to avoid this deficiency in the reporting process.

201. Concerning the financial institution's obligation in taking action under a freezing mechanism specifically, no guidance has been provided in the Guidelines as to the steps the financial institution should take once the STR is reported to the ONDCP. However, it is felt that the ONDCP will in its response to the financial institution provide the financial institution with instructions which are tailored to the circumstances of the particular case.

202. Provision is made under section 3(4) of the PTA for a specified entity to apply within ninety (90) days to the Commissioner of Police or the Director of the ONDCP, requesting either authority to recommend to the Attorney General the revocation of the order listing it as a specified entity. If the recommendation is made, the Attorney General will be requested to revoke the order. Where the recommendation is not made, the listed entity may apply to a Judge for a review of the decision. The Judge may direct that the Commissioner of Police or the Director of the ONDCP recommend to the Attorney General that the Order for de-listing be made. However, it is unclear whether the Attorney General is mandated to carry out the Judge's directive, even where the Attorney General believes that the entity should be specified.

203. The Director of the ONDCP may from time to time review all orders declaring specified entities. If he determines that there are no longer reasonable grounds for the order to continue, he is required to recommend to the Attorney General that the order be revoked.

204. If the UN Security Council removes an entity from its list, the Minister of Foreign Affairs pursuant to his powers under section 4(1) of the PTA, may by order published in the Gazette de-list the entity.

205. With the exception of the requirement that the listing and the de-listing of specified entities be gazetted, there is no specific provision which compels authorities to ensure that the procedures for de-listing are publicly known. However, it is recommended that the order declaring a person a specified entity should specify the recourses available to him or be accompanied by a statement which sets out the recourses.

206. On account that an order declaring a person a specified entity may also direct a financial institution to freeze funds or other assets held by or on behalf of the specified entity, the specified entity may apply to have the funds unfrozen in the same manner provided for de-listing. However, in practice it is likely that the provisions of the entire order would be revoked where it is determined that the person should no longer be designated a specified entity. There is no similar provision relating to persons who have been affected inadvertently by a freezing mechanism.

207. Where property is seized under section 35(1) of the PTA, the Attorney General may apply to a Judge to cancel or vary a warrant or order in respect of the seized property. In the case of a detention order, prior to a destruction order being made, the Judge must require notice to be

given to any person who appears to have an interest in the property and may provide the person with a reasonable opportunity to be heard.

208. There are no explicit provisions under the PTA for authorising the payment of basic expenses, certain types of fees or extraordinary expenses from funds or other assets that are frozen as required by UNSCR 1452. To the extent that a terrorist financing offence is deemed under section 9(3) of the PTA to be a money laundering offence under the MLPA, and that the freezing procedure under section 19A of the MLPA refers to a freezing order made under section 19(1) of the MLPA, the provisions for access to funds under section 19(5) of the MLPA should apply by inference. On this very wide interpretation, the reasonable living expenses of the defendant and his dependants, the defendant's reasonable business expenses and legal fees in defending the criminal charge could be met out of the seized property provided that these cannot be met out of the defendant's unfrozen property. However, given the difficulty in ascertaining whether any provision of the MLPA apart from those under sections 19A and 19B apply to the deemed terrorist money laundering offences, it would be ideal if access to funds for these expenses is made explicit under the PTA.

209. Any order of the Attorney General freezing any account or other property of a specified entity can be challenged by application of the specified entity for the revocation of the order or by application to a Judge for review of the order. Property frozen in connection with deemed money laundering offences under the PTA is subject to the regime set out in section 19B(4) of the MLPA. A person having an interest in the frozen property may apply for a variation of the order to have his interest excluded from the freeze order. Under section 35(8) of the PTA, a Judge, before making a destruction order, must require notice to be given to any person who appears to have an interest in the property. He must also provide the person with a reasonable opportunity to be heard.

210. Since the deeming provisions of section 9(3) of the PTA expressly apply to sections 19A and 19B of the MLPA, a curious result obtains. Unless sections 19A and 19B make specific reference to other sections of the MLPA, the applicability of other provisions of the MLPA to terrorist offences, particularly in relation to freezing, seizing and confiscation would not apply. In the circumstances, it is unclear to what extent it can be said that the elements of E.C. 3.1 to 3.4 and 3.6 apply. Greater clarity is needed as to the application of the MLPA to terrorist offences.

211. The initial application for the freezing of terrorist funds or other assets may be made *ex parte*. Provisional measures available under the PTA to prevent dealing with terrorist property include restraint and detention orders. Law enforcement authorities are given wide and varied investigatory powers to identify and trace property, notably the interception of communications. However, no specific mention is made under the PTA for the prevention or voiding of actions where the property is the subject of terrorist activity.

212. Apart from the provision enabling a third party to assert his interest in terrorist property, the PTA does not afford the third party protection consistent with Article 8 of the Terrorist Financing Convention. Mechanisms have not been provided whereby funds derived from seized property can be used to compensate the victims of terrorist offences.

213. Examination of financial institutions by regulators would require the regulators, as part of their assessment of the risk exposure of the financial institution, to assess whether the terrorist financing measures are being complied with. Noteworthy is the requirement under section 34(3) of the PTA for financial institutions to file quarterly reports indicating whether or not they are in possession of terrorist property. A provision in similar terms is made under the 2006 ML/FTG, and the requirement for filing is referable to the form provided in Schedule D of the PTA.

214. To the extent that financing of terrorism offences pursuant to section 9 of the PTA are money laundering offences, the Supervisory Authority is empowered to enter the premises of a financial institution and inspect its records. The Supervisory Authority may instruct the financial institution to take steps as may be appropriate to facilitate any anticipated investigation.

Additional Elements

215. As indicated above, the access provisions under section 19(5) of the MLPA to general living expenses and prosecution fees out of frozen funds are relevant by reference. No provision has been made for the addition to accounts of interest or other earnings due on those accounts or payments due under agreements.

Recommendation 32 (terrorist financing data)

216. Since there have been no seizures or confiscations, the effectiveness of the seizure and confiscation mechanism has not been tested.

2.4.2 Recommendations and Comments

217. The PTA should be amended to include a definition of "funds" in the terms provided under the Financing of Terrorism Convention. Additionally, the funds or other assets should extend to those wholly or jointly owned or controlled directly or indirectly by terrorists, and they should cover funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by terrorists, in keeping with the requirements of UNSCRs 1267 and 1373.

218. Procedures for de-listing should be publicly known. At a minimum, the order declaring a person a specified entity should be accompanied by a statement as to the recourses available to him in respect of de-listing.

219. The Guidelines for reporting suspicious transactions with regard to terrorist financing should be reviewed so as to create a uniform reporting structure.

220. Specific provision should be made whereby a specified entity can apply to have funds unfrozen. Similar provision should also be made for persons who have been affected inadvertently by a freezing mechanism.

221. While it is possible that access to terrorist funds for the purpose of meeting basic expenses and certain costs may be authorised in the case of deemed terrorist money laundering offences, there is no express provision under the PTA in this regard. Accordingly, the PTA should be amended to allow access to funds in accordance with UNSCR 1452.

222. The seizure mechanism under the PTA should include like provisions.

223. Specific measures should be put in place to ensure that the communication of the Attorney General's order in relation to the freezing of terrorist funds to the Director of the ONDCP does not result in delay in the communication of the directive to the financial institution. The measures should also ensure that the element of secrecy of the communication is not compromised.

224. Express mention should be made under the PTA for the prevention or voiding of actions or contracts where the property is the subject of terrorist activity.

225. The Antigua and Barbuda authorities should review the deeming money laundering provision under section 9(3) of the PTA. Greater clarity is needed as to the application of the MLPA with regard to terrorist offences. Ideally, special consideration must be given to whether it is necessary to deem these offences as money laundering terrorist offences.

226. Given the gravity of terrorist offences and the likely extent of harm to innocent third parties, administrative or legislative provisions should be made requiring the compensation of victims.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• **It is difficult to ascertain the extent of the application of the freezing mechanism under the MLPA and the PTA to deemed PTA money laundering terrorism offences.** • **There is no provision for access to funds for basic expenses and certain fees as required by UNSCR 1452.** • **The term "funds" is undefined in the PTA.** • **Guidance to financial institutions that may be holding targeted terrorist funds is not sufficient.** • **The type of property which may constitute other assets is not explicit.** • **De-listing procedures are not publicly known.** • **There is no specific provision for specified entities to have funds unfrozen.** • **The PTA does not provide third party protection consistent with Article 8 of the Terrorist Financing Convention.**

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Recommendation 26

227. The FIU in Antigua and Barbuda is a unit of the Office of the National Drug and Money Laundering Control Policy (the ONDCP). The ONDCP is made up of several distinct Units, namely, the Financial Intelligence Unit, the Financial Investigations Unit, the Drugs Intelligence Unit (DIU), the Targeting and Strike Team (TAST) and the National Joint Coordination Centre (NJCC). The ONDCP was established as a separate government agency by the creation of the ONDCP Act of 2003. The functions of the ONDCP as described under section 10 of the Act are as follows:

- to collect, receive, collate, analyse and act upon suspicious transaction reports and reports of suspicious activity;

- to investigate reports of suspicious activity concerning special offences and the proceeds of crime;
- to liaise with other Law Enforcement Agencies and Financial Intelligence Units outside Antigua and Barbuda concerning drug trafficking, money laundering and specified offences whether committed in Antigua and Barbuda or elsewhere;
- to disseminate information concerning suspicious transactions or other activities suspected of being criminal in nature with the Commissioner of Police, the Comptroller of Customs, the Financial Sector Regulatory Commission or the heads of other government departments or agencies;
- to co-ordinate the implementation of policies for the reduction of demand for illicit drugs;
- to provide training for the public service and financial institutions within Antigua and Barbuda as to their duties and responsibilities to prevent, detect report and deter the commission of specified offences and to facilitate the tracing and confiscation of the proceeds of crime;
- to enforce the provisions of the Money Laundering (Prevention) Act 1996.

228. Pursuant to section 10 of the Money Laundering (Prevention) Act (MLPA) of 1996, the Director of the ONDCP was appointed the Supervisory Authority in Antigua and Barbuda. This appointment was made by the Prime Minister, having consulted with Cabinet. According to the ONDCP, the functions of the Financial Intelligence Unit are synonymous to those of the Supervisory Authority, characterised under section 11 of the MLPA. These functions include among others:

> (1) Receiving the reports issued by financial institutions pursuant of section 13 (2) of the MLPA.
>
> (2) Sending any report to the Law Enforcement Authorities if, having considered the report, the Supervisory Authority has reasonable grounds to believe that a money laundering offence is being committed.
>
> (3) Entering into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution and asking any questions relevant to such record and to make any notes or take copies of the whole or any part of any such record.
>
> (4) Instructing any financial institution or seeking the assistance of any government department, statutory body, or other public body to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under the said Act.
>
> (5) Consulting with any person, institution or organization within or outside Antigua and Barbuda for the purposes of the exercise of its powers or duties under the Act.

229. The ONDCP indicated that most financial institutions have been complying with these provisions by submitting suspicious transactions/activity reports to the Supervisory Authority. The ONDCP further stated that there is room for improvement, particularly with respect to money remitters and DNFBPs.

230. Suspicious Activity Reports (SARs) are submitted on a standardized form prepared by the Supervisory Authority and issued to financial institutions. SARs are submitted directly to the Director of the ONDCP either by hand delivery or fax.

231. Upon receipt of a SAR by the Director, the Director would pass it to the Supervisor of the Financial Intelligence Unit who would either analyse it, or refer it to another Analyst within the Unit. The Supervisor of the Financial Intelligence Unit is also an Analyst. If during the process of analysing the SAR further investigation is warranted, it would be forwarded to the Senior Financial Investigator, who is the Supervisor of the Financial Investigations Unit, within the ONDCP.

232. About sixty percent (60%) of the financial institutions interviewed indicated that they have been submitting SARs to the ONDCP. The remaining forty percent (40%) stated that they have not had a transaction deemed suspicious; hence no reports had been filed.

233. The Examiners noted that at the time of the onsite visit the position of the Supervisory Authority had not been filled. It has been vacant since January 2007, following the sudden death of the former Supervisory Authority. The person who presently heads the ONDCP was appointed three (3) months prior to the Team's visit, in an acting capacity, and he has a military background having served in the Antigua and Barbuda Defence Force for over twenty-five (25) years. The Examiners were advised that he does not have the legal powers vested in the Supervisory Authority and was appointed to manage the ONDCP until the Prime Minister, in consultation with Cabinet, appoints another Supervisory Authority.[15] This situation is affecting the ONDCP in performing its functions in relation to AML/CFT, as the absence of the Supervisory Authority renders the ONDCP powerless with regard to the receipt and analysis of SARs, the obtaining of financial information and the application of sanctions to the relevant sectors for which they have oversight among other things.

234. This issue was discussed with the Authorities of Antigua and Barbuda as the Team considered the appointment of the Supervisory Authority crucial to the implementation and effectiveness of the country's AML/CFT framework. The Team has been given the assurance by the authorities that this position would be filled by the end of July 2007.

235. The Team would also like to note that financial institutions that are regulated by the Financial Services Regulatory Commission (FSRC) are required to copy SARs to the FSRC. The ONDCP was aware of it but was unable to provide an explanation as to this practice. However, the FSRC informed the Examiners that section 19 (1) of the International Business Corporations Act, Cap. 222, as amended 1999-2005 requires financial institutions to copy SARs to the FSRC. This practice is of concern to the Examiners because it is seen as a duplication of work and additionally, the information contained in the SAR may be exposed to contamination and abuse. The main reason put forward by the FSRC is that they need to know, as part of their supervisory policy, at an early stage, whether institutions they regulate are complying with the AML/CFT regulations, so if necessary, corrective measures could be implemented instantaneously.

236. The Examiners further engaged officials of the FSRC and held discussions on this issue. On the conclusion of those discussions the FSRC recognised the risk this practice poses and indicated that the way forward is to consult the ONDCP to formalise an arrangement whereby relevant information could be provided through other channels. The Head of the FSRC advised that they are prepared to take any steps necessary to ensure that this practice is quickly amended. It was further reiterated that the FSRC considers the sanitization of Antigua and Barbuda's system for combating AML/CFT a priority.

[15] The Government of Antigua and Barbuda appointed a Supervisory Authority on November 1, 2007.

237. With regard to FT, section 34(1)(b) of the PTA states that 'every person shall forthwith disclose to the Commissioner of Police or the Director of the ONDCP or an officer designated by the Commissioner of Police or the Director of the ONDCP, the existence of any property in his or her possession or control, which is to his or her knowledge, owned or controlled by or on behalf of a terrorist group; also any information regarding a transaction or proposed transaction in respect of any report referred to in subsection (a)'.

238. Subsection (3) of the said section of the PTA makes provisions for every financial institution to report, every three (3) months, to the Director of the ONDCP and any person authorised by law to supervise and regulate that financial institution, whether or not it is in the possession or control of any property, owned or controlled by or on behalf of a terrorist group. In addition, subsection (4) of the PTA makes it a requirement for every financial institution to report to the Director of the ONDCP every transaction which occurs within the course of its activities in respect of which there is reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.

239. All of the financial institutions interviewed stated that they have not submitted any suspicious transaction related to terrorist financing. As a result no SARs had been filed with the ONDCP in this regard. A large percentage of those institutions advised that they have been submitting the quarterly reports to the ONDCP. This was confirmed by the ONDCP.

240. Section 11(vii) of the MLPA authorises the Supervisory Authority to create training requirements and provide such training for any financial institution in respect of the business transaction, record-keeping and reporting obligations. Section 12(IV) of the MLPA states that "a financial institution shall comply with the guidelines and training requirements issued by the Supervisory Authority". Based on information obtained during interviews the Examiners are satisfied that the Supervisory Authority did in fact issue AML/CFT Guidelines to most financial institutions. Part 4 of the Money Laundering Guidelines provides guidance on the recognition and reporting of suspicious transactions. Reporting procedures relating to SARs are set out in paragraphs 4.6 to 4.19 of the said Guidelines.

241. The ONDCP mentioned that accountants, lawyers and other DNFBPS have not been exposed to any training with regard to the manner of reporting. Arrangements are however being made to have those entities trained as well as other Government departments. The Examiners found that there is no systematic AML/CFT training programme in place at the ONDCP. A large number of institutions interviewed advised that they have had little or no training in this regard. Some institutions initiated their own training and invited the ONDCP to do presentations. About thirty percent (30%) of institutions interviewed indicated that they have participated in training sessions facilitated by the ONDCP. The Designated Training Officer is the Supervisor of the Financial Investigations Unit, who also has other demanding functions to perform.

242. In 2003, the ONDCP facilitated training to real estate agents and jewellers on the manner of reporting suspicious transactions. During the period 2004-2006, the ONDCP also facilitated eleven (11) courses on money laundering, the reporting of suspicious activity reports and combating the financing of terrorism to bank staff, insurance professionals, four (4) credit unions and the Registrar of Cooperatives.

243. The Director of the ONDCP in his capacity as Supervisory Authority has access to financial, administrative and law enforcement information. Please note however the limitations discussed above with regard to the current status of the Director, ONDCP. With regard to financial information, section 11(iii) of the MLPA authorises the Supervisory Authority or any person authorised by him to enter any financial institution during normal working hours to inspect any business transaction record kept by that financial institution and ask any

questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record.

244. With regard to administrative information, the ONDCP has a MOU with the FSRC, which was established on September 20th 2000. This Agreement provides for the exchange of information of mutual interest in a prompt and timely fashion, regarding any person or organisation suspected of being involved in the illegal importation or exportation of monies and the act of money laundering and related activities. The ONDCP is presently seeking to enter into a MOU with the ECCB to facilitate the accessibility of necessary complementary administrative information. Under section 11(vi) of the MLPA the Supervisory Authority may instruct any financial institution or seek the assistance of any government department, statutory or other public bodies to take such steps as may be appropriate to facilitate an investigation.

245. With regard to law enforcement information, a Multilateral Interagency MOU exists between the Police, Customs, Immigration, the Antigua and Barbuda Defence Force (the ABDF) and the ONDCP. This MOU was signed in July of 2004. It provides for all Parties to co-operate and exchange information on matters related to money laundering and other crimes. The Examiners were advised that the ONDCP has access to the data bases of other government departments, such as Immigration, Income Tax Department, Transport Board and the Land Registry. The Examiners are satisfied that the ONDCP has adequate access to relevant information.

246. The ONDCP can seek additional information from financial institutions through the Supervisory Authority pursuant to section 11(iii) of the MLPA as discussed above. The Supervisory Authority can also compel production of information by Court order under section 15 of the MLPA. The existing MOU with the FSRC also provides for sharing relevant information in relation to financial institutions regulated by the FSRC. A number of institutions interviewed confirmed that the ONDCP had made written requests for additional information related to SARs reported.

247. As stated previously, one of the functions of the Supervisory Authority is to disseminate information concerning suspicious transactions or other activities suspected of being criminal in nature to the Commissioner of Police, the Comptroller of Customs, the FSRC or the heads of other government departments or agencies. This covers both ML and FT, which are both specified offences under the ONDCPA. The ONDCP is also specially mandated by the National Security Council to deal with matters relating to terrorism.

248. The National Security Council is a Committee that is chaired by the Prime Minister. Although requested, no other information was provided with regard to the establishment and functions of this Committee. Section 11 of the MLPA authorizes the Supervisory Authority to disseminate financial information received in SARs to other relevant law enforcement authorities upon reasonable grounds to believe that a money laundering offence is being, has been, or is about to be committed.

249. Under section 11(c) of the ONDCPA, the ONDCP may, in the performance of its functions, submit a report referring the matter to the Commissioner of Police or the Comptroller of Customs or any other Government department for investigation. Pursuant to section 3 (1) of the PTA, the Director of the ONDCP, where he has reasonable grounds to suspect that an entity is involved in terrorist acts, may recommend to the Attorney General that an order be made in respect of that entity. If the Attorney General is satisfied that there is material to support a recommendation, he may, by Order, declare the entity to be a specified entity. According to section 2(1) of PTA, entity means a person, group, trust, partnership, fund, an unincorporated association or organisation.

250. The PTA does not indicate whether the Director of the ONDCP or the Commissioner of Police is authorised to disseminate information to other law enforcement agencies. The Examiners noted that the ONDCP is mandated to deal with all matters related to terrorist financing.

251. The ONDCP was established in December 2003 as a separate governmental authority by section 3 ONDCPA. Under the Act, the Director and Deputy Director of the ONDCP enjoy security of tenure. They can be removed from office "*only for inability to exercise the functions of [their] office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour."* The Director reports directly to the Prime Minister. In carrying out their duties and acting in good faith, the Director, Deputy Director and members of the ONDCP have protection from personal liability under section 36 of this Act.

252. Section 15 (1) of the ONDCPA empowers the Director to appoint a person to be a member of the ONDCP for the purpose of exercising the powers provided under the ONDCPA. In relation to remuneration for prospective employees, the Director has to make recommendations to Cabinet for approval. If the Cabinet considers the remuneration to be unreasonable, it may disapprove. This is a policy that was adopted by Cabinet, as the ONDCPA is silent in terms of what policy or procedures the Director should follow when hiring staff. The Examiners consider that this policy affects the authority of the Director to hire suitable staff and infringes on the independence of the Director. Apart from this issue the operational independence of the ONDCP is considered reasonable.

253. ONDCP's building is located on the compound of the ABDF. This compound is barricaded with fencing wire. There is one entrance to the building. This entrance has a checkpoint that is controlled twenty-four (24) hours per day by uniformed personnel of the ABDF. The exit of the compound is also controlled by uniformed personnel of the ABDF. The offices of the ONDCP are secured with Closed-Circuit TV, monitored internally by members of the ONDCP. Upon entering the offices of the ONDCP, a visitor has to first identify himself/herself through the intercom before access is gained. The Director of the ONDCP is responsible for securing the offices of the ONDCP at the end of the day.

254. Confidential records obtained by the FIU are housed at the ONDCP Headquarters. Records are kept in locked cabinets to which limited key holders have access. Information is also kept on a computerised database, which has a password, and is firewall protected. This database is not connected to any other external databases. The ONDCP has an in house Computer Engineer who is responsible for managing the computer information system. Five (5) members of the ONDCP staff have passwords to the computer system. Dissemination of information is done in accordance with section 11(ii) of the MLPA, as previously discussed. According to the ONDCP, information is disseminated spontaneously or upon request to other law enforcement agencies.

255. Section 32 of the ONDCPA states: any person who is a member of the ONDCP who divulges information that has come into his possession as a result of his employment in the ONDCP to another person other than in the proper exercise of their duties commits an offence. Section 35(3) of the said Act makes improper disclosure of information by a member of the ONDCP an offence with a penalty for breach of up to $100,000 and five (5) years imprisonment. The Examiners have concluded that the information obtained by the ONDCP is sufficiently secured.

256. Section 4(3) of the ONDCPA requires the Director of the ONDCP from time to time to make written reports to the Prime Minister and to the Standing Committee, established pursuant to section 3(3) of the ONDCPA, on the performance of the functions of the ONDCP. The Committee may make recommendations on those reports. Section 14 of the said Act requires the submission of annual reports, accounts and audits in relation to

estimates of income and expenditure. The Team has discovered that no reports have been prepared or published in relation to statistics, typologies and trends regarding its activities for the past few years.

257. The ONDCP was admitted to membership of the Egmont Group at its plenary in July 2003.

258. As a member of the Egmont Group, the ONDCP takes cognisance of the Egmont Group Statement of Purpose and Principles of Information Exchange. The ONDCP makes use of the Egmont secure web for exchange of intelligence.

Recommendation 30

Resources

259. As mentioned earlier, the Financial Intelligence Unit is a Division of the ONDCP. The total staff complement of the ONDCP is forty-one (41), three (3) of which are assigned to the Financial Intelligence Unit. All three (3) members are Analysts. One (1) of these Analysts has supervisory responsibilities for the Unit. Based on the organisational structure of the ONDCP, the position of the manager of the Financial Intelligence Unit is presently vacant. No indication was given as to when this position would be filled.

260. The Financial Intelligence Unit indicated that there is need for an additional two (2) Analysts to complement the work of the present staff. They also mentioned that the computer hardware and software have been improved over the past few years. However, there is need to upgrade the quality of the software and in particular to introduce an Analytical System for Investigation Support (ASIS). This software, if introduced, would allow the Analyst to log all information pertinent to the subject of an investigation. It is an i2 friendly programme, thus providing detailed charts that depict basic link analysis with accounts and much more analytical capabilities. The Examiners endorsed this project and would like to encourage the unit to aggressively implement it.

261. According to the Financial Intelligence Unit, the way forward is to have financial institutions report SARs electronically, which would enhance the security of the information and also allow for a more timely analysis of the SARs.

262. Funding for the ONDCP is derived from allotments made to the Ministry of National Security by Parliament from the Consolidated Fund. The Director of the ONDCP, in consultation with administrative staff, would prepare and manage the yearly budget of the Department. The budget for the past four (4) years is as follows:

Table 15: ONDCP Budget

Year	2004	2005	2006	2007
Budget	1,746,990.00 EC	2,023,891.00EC	2,597,024.00EC	3,063,900.00EC

Source: ONDCP

263. The Financial Intelligence Unit does not have its own budget. Funding is also derived from allotments made to the ONDCP from the Consolidated Fund. The ONDCP is unable to indicate what fraction of its budget is assigned to the Financial Intelligence Unit. The Examiners were informed that the resources of the Financial Intelligence Unit are provided

on a needs basis. Requests for resources would be made directly to the Director who will decide whether or not to approve the request.

264. The Financial Intelligence Unit did not express any significant constraints in terms of resources. The Examiners observed that the resources of the Financial Intelligence Unit are fairly reasonable. However, the operational space of the Unit is limited. There is little or no room for expansion and for the storage of files and other hard copy material.

265. The Examiners found that the ONDCP has a fairly good organisational structure. Having examined this structure, the Team noticed that a number of key positions were left vacant. For instance, the manager of both the Financial Intelligence and Investigation Units and most importantly the Deputy Director of the ONDCP. The Examiners are of the view that the filling of these positions would strengthen the ONDCP staff and may facilitate the establishment of a much needed succession plan.

266. The maintenance of high professional standards of members of the ONDCP are in part established and instilled by the following: Upon being recruited, all applicants for membership of the ONDCP have a minimum of three (3) interviews and are required to undergo a polygraph test, security screening, complete a skills and competency questionnaire and complete a job related exercise. These interviews are conducted by the Director of the ONDCP. During this phase candidates are required to submit a police report from their country of residence and origin. Interviews must be conducted in a fair and professional manner using the ONDCP's selection material.

267. It is a policy of the ONDCP that security vetting is conducted every two (2) years on all members of staff, including the Director. This process is supervised by representatives of the Regional Security Service (RSS) based in Antigua and Barbuda.

268. Officers and Members of the ONDCP are required to sign a confidentiality agreement as part of their employment. Portions of that Agreement state as follows: "You will not during your employment or at any time following its termination, reveal, disclose, divulge, or publish to any person, firm or organization, (and will use your best endeavours to prevent disclosure or publication of) any information in whatever form which is private, secret or confidential and which relates to the ONDCP, its operations, business, informers, detainees, suspects, employees, contractors, or suppliers…."

269. The Agreement states further that "You will not, either on behalf of the ONDCP or in your personal capacity or anonymously, make contact or communicate with any person connected with any member of the press or media with a view to discussing or disclosing any (and) confidential information about the business and operation on any matters relating to or in connection with your employment or otherwise, unless you have obtained the prior written permission of the Director."

270. Additionally, the Agreement provides that "If you are requested to disclose any confidential or proprietary information in a civil, criminal or regulatory proceeding, you must give the ONDCP prompt written notification of such requests so that the agency may respond appropriately either by legally sanctioned refusal to grant disclosure, or waiving of your compliance to this policy in respect of this request or other action as is appropriate."

271. During the period 2003 to 2006, Investigators and Analysts of the ONDCP's Financial Intelligence Unit and Financial Investigation Unit received thirty-seven (37) training courses on AML/CFT and other related matters such as Intelligence Gathering and Analysis, Financial Investigations, Law Enforcement Best Practices for Financial Investigators and Prosecutors to name a few. The courses were provided by REDTRAC, CICAD, the United States Embassy, the FSRC, Egmont and FinCEN, the DEA, Money Laundering Alert, the

U.S. Justice Department, World Intellectual Property Organisation, CIFAD, Government of Antigua & Barbuda, the CFATF, ACAMS, the Turkish Police and the U.S. Department of the Treasury.

Recommendation 32 (FIU)

Statistics

272. According to the ONDCP, there is no systematic policy in place in relation to reviewing their systems for combating money laundering and terrorist financing to ensure efficiency. However, the Legal Counsel of the ONDCP meets regularly with the Financial Intelligence Unit to review, among other things, the quality of SARs reported and trends and methods used by individuals in Antigua and Barbuda to launder criminal proceeds. No information was provided to the Examiners to indicate whether any new trends or typologies have been developed as a result of those discussions. The Examiners were not satisfied that the ONDCP adequately reviews its systems for combating ML/FT.

273. The FIU of the ONDCP maintains statistics on matters relevant to the effectiveness and efficiency of its system for combating ML and FT. In terms of SARs received, analysed and disseminated, the following statistics were provided to the Examiners:

Table 16: SARs received from the financial sector

Year	All Banks	Domestic Banks	Offshore Banks	Insurance companies	Money Remitters	
					Spontaneous SAR	From Inspection
2003	42	21	21	0	3 9	6
2004	29	18	11	1	0 29	27
2005	26	7	19	1	0 97	0
2006	32	23	9	0	22 98	3
Total	129	69	60	02	25 233	36

Year	Internet Gaming Significant Payment	Casinos	MLA
20003	0	0	0
2004	67	0	0
2005	53	0	0
2006	448	0	1
Total	568	00	01

Source: ONDCP

274. The ONDCP stated that "there is no clear explanation as to why the SARs figures spiked in 2003. The reported suspicious transactions represent either an increase in such transactions or an increase in their detection by banks. A tentative guess is that the 2002 CFATF Mutual Evaluation resulted in the banks becoming sensitised by the evaluation process of the need to file SARs. This could possibly have lead to a greater readiness to file SARs (including a higher number of false positive reports). It is possible (but this is not stated as a fact) that the number in the subsequent years of 2004-2006 tapered off as the sensitisation effect waned. It would therefore be more likely that these figures are closer to the norm."

275. SARs and other reports analysed and disseminated by the ONDCP are as follows:

Table 17: SARs analysed and disseminated

Year	Total Reports Received	SAR received and analysed	SAR dissemin ated	Disseminated to			SAR opened	SAR closed
				ONDC P	Police	Customs		
2003	60	60	32	32	0	0	0	32
2004	86	86	13	13	0	0	4	9
2005	124	124	11	11	0	0	4	7
2006	156	156	19	19	0	0	13	6
Total	426	426	75	75	0	0	21	54

Table 18: Reports of Suspicious International Wire Transfers

Year	All	Domestic Banks	Offshore Banks	Insurance companies
2003	9	3	6	0
2004	4	4	0	1
2005	5	3	2	0
2006	2	1	1	0
Total	20	11	09	01

Source: ONDCP

276. Information obtained in the MEQ indicated that statistics on international wire transfers are maintained as a subset of the records on SARs and that there is no legal requirement for reporting wire transfers based solely on the threshold of the transaction.

Additional Elements

277. With regard to SARs resulting in investigations, prosecutions or convictions for ML, FT or an underlying offence, the following figures were provided by the ONDCP:

Table 19: SARs resulting in investigations

Year	Investigations	Prosecutions		Convictions	
		Local	Foreign	Local	Foreign
2003	32	0	0	0	0
2004	13	0	5	0	3
2005	11	1	1	0	4
2006	19	0	6	0	3
Total	75	1	12	0	10

Source: ONDCP

2.5.2 Recommendations and Comments

278. Antigua and Barbuda should move quickly to appoint the Supervisory Authority taking into account the essential role this person plays in coordinating and implementing the country's AML/CFT framework.

279. The practice of copying SARs to the FSRC should be revised, in order to avoid duplication of work and to avoid exposing the information contained in the SARs to contamination and abuse.

280. The ONDCP should consider establishing a structured training schedule, in the short term, to target those entities that have not yet received training in the manner of reporting. Thereafter, continuous dialogue should be maintained with reporting bodies with a view to evaluating their reporting patterns so that weaknesses could be identified and addressed accordingly.

281. The Antigua and Barbuda Authorities should consider establishing a process that would allow for a systematic review of the efficiency of the systems that provide for the combating of ML and FT.

282. The ONDCP should prepare periodic reports in terms of its operation, which would facilitate the analysis of its growth and productivity. These reports should reflect ML and FT trends and typologies so that the authorities could adapt appropriate measures and strategies. In addition these reports should be made available to all stakeholders and the general public on the whole for scrutiny in the interest of transparency and accountability.

283. The Antigua and Barbuda Authorities should review the practice of having Cabinet give the final approval with regard to the hiring of the ONDCP staff.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• **The Supervisory Authority has not been appointed.** • **SARs are being copied to the FSRC by the entities they regulate.** • **A number of reporting bodies have not received training with regard to the manner of reporting SARs.** • **There is no systematic review of the efficiency of ML and FT systems.** • **The ONDCP's operational independence and autonomy can be**

		unduly influenced by its inability to hire appropriate staff without the approval of Cabinet. • **The ONDCP does not prepare and publish periodic reports of its operations, ML trends and typologies for public scrutiny.**

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

2.6.1 Description and Analysis

Recommendation 27

284. The ONDCP is the agency responsible for money laundering, terrorist financing and illegal drugs intelligence and investigations. The ONDCP informed that the Financial Investigations Unit is primarily responsible for investigating money laundering and terrorist financing offences. The Financial Investigations Unit has a staff complement of four (4) investigators. The staff comprises a Senior Financial Investigator who is an Inspector of Police, one (1) former Police Officer and two (2) civilians. One of the investigators is also an analyst. The Inspector of Police is responsible for supervising the Unit, supervising investigations, providing training to reporting bodies, and executing both local and foreign requests for assistance. He reports directly to the Director of the ONDCP.

285. The Financial Investigations Unit informed the Examiners that the biggest challenge they face is that the subjects of their money laundering investigations are residing outside the jurisdiction and they are encountering difficulty reaching them for interviews. Extradition requests had been made to foreign countries, however after many years, no responses have been received. Also, it was mentioned that Antiguans have not been the subjects of any current money laundering investigations. According to the Financial Investigations Unit, there are no investigations concerning FT.

286. No legislative or other measures have been put in place to allow the ONDCP, when investigating money laundering, to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. Those measures do not apply to other law enforcement entities because they are not directly involved in the investigations of money laundering or terrorist financing. The ONDCP did not indicate whether these measures will be implemented in the near future.

Additional Elements

287. There is no specific provision concerning matters of special investigative techniques, such as controlled delivery and undercover agents. At the same time, there is nothing in the law which prevents law enforcement officers from utilizing these techniques. A number of controlled delivery operations have been successfully conducted in the past with Canadian and US Law Enforcement Authorities in relation to drug trafficking.

288. With regard to wiretapping, section 24 of the PTA provides for an application to be made to a Judge by a Police or the ONDCP Officer for an Interception of Communications Order for purposes of obtaining evidence relating to offences under the PTA. No such order has ever been made.

289. As the need arises, special investigative techniques could be employed by law enforcement agencies in the form of surveillance and registered human sources during the investigation of

drug trafficking and other predicate offences. However, according to the ONDCP, they have not conducted any money laundering investigations in which those techniques have been used.

290. Antigua and Barbuda does not have any permanent or temporary groups specialised in investigating the proceeds of crime. Specialised groups are formed on an *ad hoc* basis as the need arises. The ONDCP stated that the Legal Department is responsible for seizure, freezing and confiscation of the proceeds of crime.

291. Co-operative investigation of ML and FT is provided for under section 12(1) of the PTA, which gives the Director of the ONDCP the power to liaise with other law enforcement agencies.

292. No information was provided by the ONDCP to indicate that money laundering and terrorist financing methods, techniques and trends are reviewed regularly by law enforcement or other competent authorities. Information obtained from the MEQ however indicated that the ONDCP and the FSRC are supposed to meet quarterly to discuss matters relevant to ML and FT.

Recommendation 28

293. With respect to production orders, a Judge, upon application by the Supervisory Authority, being satisfied that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence or has engaged or is about to engage in any money laundering activity, may make an order requiring any person believed to be in possession or control of any document relevant to identifying, locating or quantifying any property of the person or any document necessary for the transfer of the person's property, to produce such document, or requiring a financial institution to produce all information obtained by the financial institution about any business transacted by or for the person with the financial institution.

294. Similarly, a police officer can apply for a production order under section 42 of the POCA where a defendant has been convicted of a scheduled drug offence under the POCA and there are reasonable grounds to suspect that a person has possession or control of property relevant to identifying, locating or quantifying property of the person who committed the offence or documents related to the transfer of such property.

295. Where a Police or the ONDCP officer is investigating a terrorist offence, he may, with the authorisation of the Attorney General, apply to a Judge under section 23(1) of the PTA for an order for the gathering of information. The Judge may make an order under section 23(4) of the PTA ordering a person to attend at a place designated by the Judge to be examined, and to bring any document or thing in his possession or control.

296. With regard to searches and seizures, section 14 of the MLPA gives the Supervisory Authority or a law enforcement agency power to apply to a Judge and upon satisfying him that there are reasonable grounds for believing that a financial institution has failed to keep a business transaction record, or failed to report any business transaction or that an officer or employee of a financial institution is committing, has committed, or is about to commit a money laundering offence, the Judge may make an order. The order authorises the Supervisory Authority to enter any premises belonging to, or in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other things therein for the purposes of the Supervisory Authority or law enforcement agency as ordered by the Judge and specified in the warrant.

297. An ONDCP or Police officer may apply under section 28 of the ONDCPA to a Magistrate for a warrant to search a building, vehicle, receptacle or place where there are grounds to

believe that there may be therein evidence of a specified offence, which includes ML and FT offences, and seize it to be dealt with according to law.

298. Section 17(2) of the ONDCPA provides in relation to specified offences (including ML and FT) that upon arrest of a person on suspicion of committing or having committed such an offence, an ONDCP officer may search that person and any vehicle or premises occupied or controlled by that person or upon which that person was located at the time of or immediately prior to arrest and seize any document or thing that appears to be evidence.

299. Similarly, where a person has committed or is suspected of having committed a drug or ML Schedule offence under the POCA, a police officer can apply under section 47 of the POCA for a search warrant to search premises for documents related to identifying, locating or quantifying property of the person or a document necessary for the transfer of such property.

300. Section 18A of the MLPA gives a Customs Officer, a Police Officer, or a member of the ABDF engaged in maritime duties, the authority to seize and detain currency if he or she has reason to suspect that it is an instrumentality of an offence or is the proceeds of crime.

301. The Police Act Chapter 330 of Revised Edition of the Laws of Antigua and Barbuda 1992 authorises Police Officers to take witness statements, which could be used in the prosecution of any offence. Customs officers have investigative powers under Part IX of the Customs Management Act (CMA), and the ONDCP officers have investigative powers under section 18 of the ONDCPA. Implicit in these powers is the authority to take witness statements.

302. About thirty percent (30%) of the institutions interviewed indicated that they have been issued with production and other Court orders initiated by the ONDCP. The under-mentioned tables were provided to the Examiners by the ONDCP and reflect the number of production orders and search warrants granted by the Court on application by the ONDCP.

Table 20: Production Orders and Search Warrants granted by the Court

Production Orders

Year	2003	2004	2005	2006
	7	5	23	2

Search Warrants

Year	2003	2004	2005	2006
	0	6	3	0

Source: ONDCP

Recommendation 30 (Law enforcement and prosecution authorities only)

Financial Investigations Unit of the ONDCP

303. According to the Unit, resources are not a fundamental concern, but there is need for improvements in the areas of staffing, in particular in forensic accounting and additional investigators.

304. With regard to the maintenance of high professional standards and integrity, the vetting and screening policy of the ONDCP as described in section 2.5 of the report also applies to the staff of the Financial Investigations Unit.

305. Training for the financial investigators of the ONDCP is considered insufficient. The Financial Investigation Unit indicated that training is required in the areas of Court procedures and the processing of exhibits. The main reason for this is that most of its investigators are civilians and may not have had the opportunity to take cases before the Court.

Police Force

306. The Police Force is funded from allotments made to the Ministry of National Security by Parliament. Police officials have expressed that there are shortages of resources in all aspects. They also stated that the increase in population has made the work of the Police more demanding. More resources are required in proportion to this increase, in particular more police officers. Further, the physical accommodation, vehicles, communication and technological equipment, computer hardware and software are inadequate. According to Police Officials, twenty (20) vehicles, one (1) tow truck, one (1) "scenes of crime" vehicle, and about 200 more officers would be required in the short term. The availability of these resources would adequately enhance the capabilities of the Police Force in its crime fighting efforts.

307. The Table below represents the budgetary allocations for the Police Force for the years 2004 to 2007.

Table 21: Budgetary allocations for the police force

	2004	2005	2006	2007
Police	31,048,624.00	31,417,478.00	33,570,075.00	34,223,104.00
Training (local)	38,000.00	511,000.00	416,586.00	280,000.00
Training (overseas)	300,000.00	370,800.00	450,800.00	593,000.00
Police Training School	202,312.00	205,588.00	292,891.00	313,632.00
Fire Brigade	3,663,696.00	5,364,413.00	8,751,182.00	8,533,609.00
Training (local)	20,000.00	18,000.00	18,400.00	593,000.00
Training (overseas)	50,000.00	63,000.00	101,200.00	134,001.00

Source: The Antigua and Barbuda Police Force

308. The Police mentioned during the interview that polygraph testing is done on selected officers for future secondment to the ONDCP. This process is usually supervised by the ONDCP. The Police Force has not established any specific measures to ensure its officers maintain high professional standards and integrity. The Examiners were informed that the Antigua and Barbuda Police Force is relatively small therefore; the Commissioner of Police is familiar with all subordinates. Those of questionable character would be easily identified and disciplined accordingly.

309. The Antigua and Barbuda Police Training School provides initial training for members of the Police Force. Police personnel attend yearly training courses in Prosecutions, Intelligence Gathering and other related subjects at the Regional Drug Law Enforcement

Training Centre (REDTRAC) in Jamaica. They also participate in training courses coordinated by the Regional Police Training Centre in Barbados. Periodic training is often facilitated by the FBI and DEA. Police Officials indicated that there is presently one (1) member of staff that has received significant training in money laundering investigations. This officer was seconded to the ONDCP but has recently moved back to the Police Force.

Customs and Excise Department

310. The Customs and Excise Department (CED) mentioned that Customs Officers, especially those of the Intelligence Unit are subjected to polygraph testing every two (2) years. This process is facilitated by the Regional Security Services based in Antigua and Barbuda. Customs Officials informed the Examiners that corruption is not pronounced and it is therefore not a major issue. Further, the Department has not disciplined any member recently in this regard.

311. The funds and resources for the CED are provided by Parliament from the Consolidated Fund with assistance from the British and Canadian Authorities. In 2007 the Canadian Government donated an Itemiser and the British Authorities provided two (2) more recently. The CED notified the Examiners that their vehicles and other resources are sufficient. Their current focus is to enhance the staff and equipment of the Intelligence Unit, as they see the need to expand the scope of this Unit by increasing its responsibilities.

312. CED Officers have received training both locally and internationally in relation to drug interdiction and investigation. REDTRAC as well as the Regional Police Training Centre in Barbados facilitated such training. Areas covered included Narcotics Investigation, Intelligence Gathering, Maritime Counter Drugs Operation and Border Security. CED employees have not been exposed to any significant training in ML/FT investigations.

Coast Guard

313. Funding for the Coast Guard is derived from allotments made to the Ministry of National Security by Parliament from the Consolidated Fund. As stated previously the Coast Guard is under the control of the ABDF and therefore is included in its budgetary provisions. The Team was made aware during the interview that the resources of this Agency are insufficient. Improvements are needed in the area of human resource and the availability of new vessels, as those on hand are aged.

314. Four (4) members of the Intelligence Unit within the Coast Guard have attended training courses in 2005 and 2006 at REDTRAC in relation to ML and FT issues. Senior members of staff have also benefited from similar awareness courses.

315. Immigration Officers have not received any detailed training in ML/FT. Sixty (60) members of staff have so far, accessed awareness information on the Internet, based on the United Nations training module. Immigration advised the Examiners that this programme is ongoing.

Director of Public Prosecution's Office

316. The Office of the Director of Public Prosecutions currently has three (3) legal Counsel including the Director of Public Prosecutions. There are two (2) Crown Counsel. The administrative staff consists of an Executive Officer/Executive Secretary, a Senior Secretary and two (2) Junior Clerks. Crown Counsel have conduct of all prosecutions, and the DPP has overall supervision of matters and prosecutes in the more complex cases. A system has been implemented whereby there is a clear demarcation as to the types of matters handled by each Counsel, and that Counsel deals with particular areas on a rotation basis for a period of two (2) years. Given the limited staff however, it is not possible for Counsel to specialise, and there are presently no Counsel who deal with money laundering and financing of terrorism

matters only. Where such matter have arisen (money laundering) there is a tendency for Counsel to prosecute money laundering offences under predicate offences legislation. Further, the increase in crime noted during interviews with the police can only pose an additional strain on already limited human resources within in the Office of the DPP.

317. The budgetary needs of the Office of the DPP are decided by the Government. All requests for funds are made to the Permanent Secretary in the Ministry of Legal Affairs. The request is submitted to the Attorney General, who then submits it to the Minister of Finance. The Minister of Finance then takes the matter to the Cabinet. The Office of the DPP does not control its own budget. This, arguably, does not allow for a sufficiently independent and autonomous prosecution unit.

318. The Police Prosecution Unit is staffed by eight (8) police prosecutors and four (4) administrative staff. The Police Prosecution Unit is headed by a Superintendent, who is legally trained and who previously worked for three (3) years in the Office of the DPP. Two (2) other prosecutors have had some limited legal training and are currently pursuing studies in law. The Police Prosecution Unit has conduct of a wide range of summary matters and hybrid matters in the Magistrate's Court. With regard to indictable matters, the Police Prosecutors are only involved in preliminary inquiries.

319. Notwithstanding that the Police Force has not established any specific measures to ensure its officers maintain high professional standards and integrity, the Head of the Police Prosecution Unit upholds the ethical standards required of the legal profession. The need to maintain confidentiality is impressed upon the Unit. The Head of the Unit conducts regular meetings with his staff, aimed at developing appropriate levels of skill and knowledge. Newly enacted legislation and policy decisions which impact the work of the staff are brought to their attention. In-house discussions on the legislation and policies are often facilitated by the Head of the Unit. The rapport which exists amongst the members of the Unit is commendable, and the prosecutors are motivated to perform their duties with zeal.

320. Scant resources are allocated for the training of staff in the Office of the DPP on account of financial constraints. More training is clearly needed, particularly in respect of money laundering and financing of terrorism offences and financial crimes generally. Limited assistance is rendered by overseas institutions such as the Organisation of Eastern Caribbean States (OECS). Some offers for assistance are submitted directly to the Office of the DPP. However, given the organisational structure of the legal system, a number of the offers for assistance are channelled through the Attorney General's Office.

Additional Elements

321. Judges have had training in St. Lucia at a special workshop given by the Eastern Caribbean Supreme Court. However, it is felt that there is a further need for sensitising the judiciary to money laundering and financing of terrorism issues. A number of Judges, Magistrates and Masters have not received extensive training in dealing with money laundering and financing of terrorism offences. The lack of training within the Judiciary makes the Courts less ready to deal with money laundering and financing of terrorism matters. The High Court appears to approach very cautiously the draconian nature of civil forfeiture, increasing the challenge to the prosecution.

Additional Materials

322. The ABDF Coastguard possesses the following assets which are available for use in the interdiction of drugs at sea and in relation to human trafficking:

SR#	Vessels	Size	Type
1	061	27’	Whaler (inshore patrol boat)
2	071	22’	Whaler (inshore patrol boat)
3	072	22’	Whaler (inshore patrol boat)
4	081	27’	Rhib (inshore patrol boat)
5	H920	30’	Rhib (inshore patrol boat)
6	UB Palmetto	40’	Utility Boat (Medium endurance)
7	CGC Liberta	65’	Cutter (Medium endurance)

2.6.2 Recommendations and Comments

Recommendation 27

323. Antigua and Barbuda should consider establishing measures that would allow law enforcement authorities when investigating ML cases to postpone or waive the arrest of suspected person and/or the seizure of cash so as to identify other persons involved in the commission of the offence.

324. Law Enforcement Authorities should consider reviewing their strategy in combating ML with the view to adapting a more aggressive approach which may generate more ML prosecutions and possibly convictions.

Recommendation 30

325. Antigua and Barbuda should consider filling the vacant positions within the ONDCP in order to strengthen its human resource capabilities. There is also need to increase the number of investigators to complement the work of the staff of the Financial Investigations Unit.

326. The budgetary resources of the ONDCP should be increased to adequately cover training and the hiring of qualified staff.

327. The resources allocated to the Police, Customs, Immigration and Prosecutors should be reviewed so as to provide amounts that would enable them to perform their various functions.

328. The ONDCP should consider implementing a systematic training programme for its staff, particularly in the areas of ML investigations and Court procedures. This could be achieved by coordinating ML workshops/seminars on a regular basis. Customs, Immigration, Police and Coast Guard should be included in such training.

329. Adequate training should be sourced for Magistrates and Judges to widen their understanding of the relevant legislation so that ML and FT cases would be appropriately concluded.

Recommendation 32

330. Antigua and Barbuda should consider instituting measures to review the effectiveness of their system for combating ML and FT. In the process of reviewing shortcomings would be highlighted and brought to the attention of the Authorities for appropriate action.

331. Law enforcement authorities should take particular steps to ensure that their statistics in relation to their operations are comprehensive and review-friendly. These statistics should be able to clearly indicate the effectiveness of the whole preventive and repressive AML/CFT systems and reflect the impact of STRs in investigations, prosecutions and convictions.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**LC**	• **No legislative or other measures have been put in place to allow the ONDCP when investigating ML to postpone or waive the arrest of suspected persons or the seizure of cash so as to identify other persons involved in such activities.**
R.28	**C**	**This recommendation is fully observed.**

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

332. Under section 18(1)(a) of the MLPA a person commits an offence if he/she transfers currency valued at US$10,000 or more into or out of Antigua and Barbuda unless a report is filed in respect of the transfer. Pursuant to section 18C of the said Act, currency means cash or bearer negotiable financial instruments[16]. Section 18(2)(a) makes it an offence for a person to receive currency valued at US$10,000 or more transferred to the person from outside Antigua and Barbuda unless a report is filed either in respect of the transfer or in respect of the receipt. Such report shall be filed on a form specified in the First Schedule of the Money Laundering (Prevention) Regulations (MLPR) 2007.

333. This form is detailed in content and facilitates the determination of the origin of the currency being transferred. The person making the report shall give it to the Customs Officer assigned for duty at the point of entry or departure.

334. The penalties under the MLPR for failure to make a report to a Customs Officer assigned for duty at the point of arrival or departure or to supply full and correct information are: imprisonment for a period not exceeding two (2) years; a fine of up to EC$50,000.00; and the confiscation of the cash or negotiable instruments being imported.

335. Pursuant to section 2(1) of the Customs (Currency and Goods Declaration) Regulations of 1999 (CCGDR), a person who leaves or enters Antigua and Barbuda with more than US$10,000 or its equivalent in other currency shall make a declaration on the prescribed form and submit it to the proper officer on duty at the port of embarkation or disembarkation as the case may be. Any person who fails to comply with this provision commits an offence

[16] While there is no specific definition of bearer negotiable instruments, the schedule to the Customs (Currency and Goods Declaration) Regulations, 1999 gives examples of bearer instruments as follows: money orders, personal or cashier's cheques, stocks or bonds. Additionally, Schedule 1, Form 1 of the MLPR 2007 provides that 'negotiable instruments include traveller's cheques and other monetary instruments'.

and is liable on conviction to a fine not exceeding five thousand Eastern Caribbean dollars ($5,000) and in addition, the Court may order that the currency be forfeited to the Crown.

336. Under section 12(1) of the MLPR, upon discovery that a report with respect to the transfer of currency is not fully or accurately completed, or upon discovery of a failure to make such a report, a Customs Officer, Police Officer or an Officer of the ONDCP may, as deemed appropriate, require that the report be corrected or filled out and may request further information from the person transporting, transferring or receiving the currency regarding the origin and intended use of the currency.

337. Pursuant to section 18A (1) of the MLPA a Customs Officer, Police Officer or member of the ABDF may seize and detain currency if he or she has reason to suspect that it is instrumentalities of an offence .

338. The currency may be detained for a period of seven (7) days (section 18A(2) of the MLPA). Thereafter, an order for its continued detention must be obtained from a Magistrate, which can be for periods of up to six (6) months at a time, while its origin or derivation is determined. This order can only be made on application by the Supervisory Authority. The Examiners were unable to test the effectiveness of this provision because according to the ONDCP, no such order has ever been made.

339. Customs retains a record of all false declarations or failures to declare currency. The table below reflects Antigua and Barbuda Customs and excise Division data on False Declaration of Currency:

Table 22: Customs and Excise Division – False Declaration of Currency Data.

Year	Seizure	Amount	Result	Remarks
2003	2	$US 55,400.00 Can 880.00	Prosecution and conviction	
2004	3	$US 92, 737.00 7,640	No Prosecution No Conviction	
2005	3	$US162,567.00 24,950.00 $8,800.00	1 Prosecution 1 Conviction 1 Case pending	
2006	4	$US 350,857.00 32,239.00 EC 1,500.00	No Prosecution No Conviction	

Source: Customs and Excise Division

340. Customs notified the Examiners that prosecution means seizure by the Court and that all cash seized was forfeited to the Crown. Further, all cases of the detention of cash have been handed over to the ONDCP. The ONDCP did not produce any information or records to prove that they have been dealing/investigating cases with regard to the cross border transportation of cash. The ONDCP indicated that they had no pending investigations or

prosecutions with respect to detained cash. With regard to the maintenance of records where there is a suspicion of ML or FT, no information was provided to the Examiners to suggest that this has been done.

341. Section 18(9) of the MLPA requires a person to whom a Currency Report is made to forward the report to the Supervisory Authority (the Head of the FIU) within 48 hours. In these cases the Customs Division would forward the report to the ONDCP. As mentioned earlier the ONDCP did not provide any records to the Examiners in terms of Currency Reports submitted to them by Customs.

342. There is a joint MOU between Customs, the Police, the ABDF, Immigration and the ONDCP for the co-ordination of action relating to matters of ML and FT. The Examiners were unable to test the level of domestic co-ordination among Customs, Immigration, ONDCP and other relevant authorities on issues related to the cross border transportation of cash, based on the fact that no information was obtained, either in interviews or in the MEQ, to indicate that other authorities besides Customs are involved in the investigations of these matters.

343. Customs is a member of the Caribbean Customs Law Enforcement Council (CCLEC), World Customs Organisation (WCO), and is subject to CARICOM Agreements, and in that context co-operates with its counterparts. The Director of the ONDCP also has the authority to co-operate and liaise with international counterparts pursuant to section 12(1) of the ONDCPA. However, no information was produced by Customs or the ONDCP to show that they had at any time co-operated with a foreign counterpart on issues related to the cross border transportation of cash. In addition it was mentioned that Customs does not keep statistics on requests for assistance made or received.

344. Persons who fail to report the transport or receipt of currency of US$10,000 or more under sections 18(1) and 18(2) of the MLPA are liable to a fine of $50,000 or 2 years imprisonment. An application for forfeiture of funds seized may be made under Section 18B(1) of the Act. Under section 2 of the MLPA, *"Person" includes any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations."*

345. Where currency is seized under section 18A(1) of the MLPA, the Supervisory Authority is empowered to apply for its further detention under section 18A(4) of the said Act, to institute charges pursuant to section 27(1) of the MLPA (the DPP also has power to institute charges), and to apply for its forfeiture under section 18B(1).

346. Section 3 of the MLPA states where an offence of ML is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of the body of persons in respect of the offence, whether as director, manager, secretary or other similar officer, or was purporting to act in that capacity, commits that offence and shall be so tried.

347. The ECCB and the FSRC have regulatory sanctions that can be imposed on financial institutions. These sanctions include among others, written warnings, ordering regular reports and suspension or revocation of licence.

348. The penalties under the MLPR for failure to make a report to a Customs Officer assigned for duty at the point of arrival or departure or to supply full and correct information are; imprisonment for a period not exceeding two (2) years; a fine of up to EC$50,000.00; and the confiscation of the cash or negotiable instruments being imported. These penalties can be imposed by the Court or administratively by the Comptroller of Customs.

349. The Attorney General can make an application under section 37(1) of the PTA, to a Judge of the High Court for a forfeiture order in respect of property owned or controlled by, or on behalf of, a terrorist group or property that has been, is being or will be used, in whole or in

part, to commit, or facilitate the commission of a terrorist act. In relation to ML there is automatic forfeiture of frozen property under section 20 of the MLPA and civil forfeiture under section 20A of the same Act.

350. Seizing is done by the Commissioner of Police or the Director of the ONDCP under sections 25 or 35 of the PTA, or by a Customs or Police Officer or member of the ABDF engaged in maritime duties under section 18A(1) of the MLPA.

351. The Attorney General can impose an immediate freeze under section 3(2)(b) of the PTA by order which he has seven (7) days to publish in the Gazette. The Supervisory Authority is required to make an ex parte freeze application by section 19(1A) of the MLPA.

352. Section 23(1) of the PTA provides for application to the Court by a Police or ONDCP Officer for the gathering of information when investigating a terrorist offence. Section 15 of the MLPA provides for application by the Supervisory Authority for production orders to trace property during the course of an investigation.

353. Under sections 3(4) and (6) of the PTA an entity can apply for revocation of the order declaring the person a specified entity. Section 37(8) of the PTA provides for application by a person who has interest in forfeited property, to the Court to set aside a forfeiture order. Forfeiture under the MLPA can be challenged pursuant to section 21 of the MLPA by a person who claims to have had an interest in the property. Section 35(8) of the PTA provides for notice to be given to a person who appears to have an interest in the property, and for the person to be heard before an order for destruction of the property. Section 19B(4) of the MLPA provides for an application to vary a freeze order.

354. With regard to the voiding of actions prejudicial to confiscation, section 20E(1) of the MLPA prohibits the disposition of forfeited property. Section 20E(4) of the MLPA provides for voiding dispositions of property in contravention of section 20E(1) of the MLPA.

355. Where there is cross border transportation of currency or bearer negotiable instruments that are related to a PTA offence, the regime under the PTA for freezing and dealing with property related to FT and terrorism applies.

356. For instance under section 6 of the PTA, every person who provides or collects by any means, directly or indirectly, any funds, intending, knowing or having reasonably grounds to believe that the funds will be used in full or in part to carry out a terrorist act, commits an offence and shall on conviction on indictment be liable to a term of imprisonment not exceeding twenty-five (25) years. Section 25(1) of the said Act states where the Commissioner of Police or the Director of the ONDCP has reasonable grounds of suspecting that any property has been, or is being used to commit an offence under this Act, he may seize the property.

357. Section 10(1)(d) of the ONDCPA gives to the Director of the ONDCP the function to liaise with law enforcement and FIUs outside Antigua and Barbuda in relation to specified offences, which include ML and FT. Further, section 12(3) of the ONDCPA provides for the Director of the ONDCP to cooperate or liaise with any individual in or outside Antigua and Barbuda who, in his opinion, is properly concerned in a matter under investigation. These powers could be used to cooperate with other competent authorities with a view to establishing the source, destination and purpose of the movement of gold, precious metals and precious stones that are suspected of being the proceeds of crime, laundered assets or instrumentalities.

358. Information relating to cross border currency obtained by the ONDCP is held on computer, while information collected by Customs is held in a hardcopy database. No information was produced to the Examiners to show that the methods or systems of reporting cross border transactions are subject to strict safeguards.

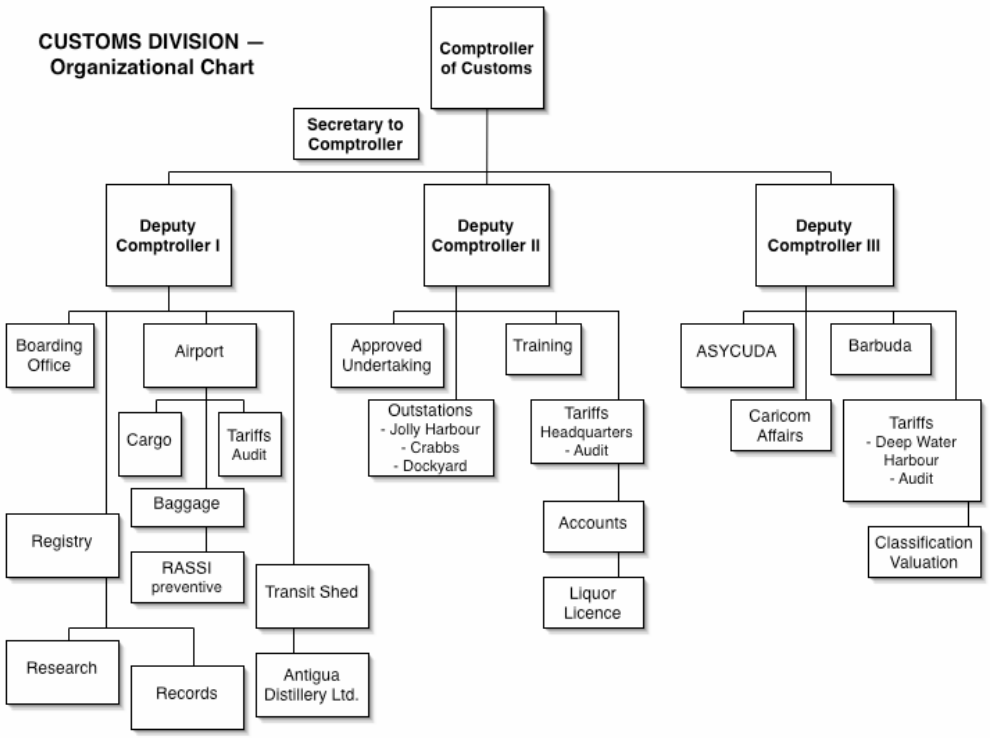
Additional Elements

359. Antigua and Barbuda has not implemented or considered establishing the measures set out in the Best Practices Paper for SR.1X.

360. Information relating to cross border currency obtained by the ONDCP is held on a protected computer. This data is available to competent authorities for AML/CFT purposes.

Recommendation 30 (Customs authorities)

361. The Customs Division is considered by the Comptroller to be adequately structured and funded. (See organizational chart below).



362. Customs officers are now being submitted to polygraph tests. The process is ongoing.

363. Customs officers have been trained both locally and regionally in drug interdiction, identification and investigation, profiling, financial investigation, and money laundering.

Recommendation 32

364. Customs and the ONDCP maintain statistics on cross border transportation of currency and negotiable instruments. (See Table 22 above).

2.7.2 Recommendations and Comments

365. Customs, the ONDCP and other law enforcement agencies should work closely together to investigate cases of cross border transportation of currency or bearer negotiable instruments in order to determine its country of origin. Bearing in mind that such currency may be the proceeds of criminal conduct committed in the said country.

366. The Examiners are of the view that the ONDCP should be more involved and if possible take control of the investigation with respect to cash seized at the ports of entry, and where appropriate initiate money laundering proceedings against the culprits.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• **Cases of cross border transportation of cash or other bearer negotiable instruments are not thoroughly investigated.** • **Customs, Immigration, the ONDCP and other competent authorities do not co-ordinate domestically on issues related to the implementation of Special Recommendation IX.**

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

367. The AML/CFT regime in Antigua and Barbuda is set out in legislation and regulations supported by relevant guidelines detailing appropriate AML/CFT operational measures. Preventive AML/CFT measures for financial institutions are provided for in the Money Laundering Prevention Act 1996 as amended (MLPA) and the Money Laundering (Prevention) Regulations 2007 (MLPR). Pursuant to section 11(vii) of the MLPA, the ONDCP has issued the Money Laundering & the Financing of Terrorism Guidelines for Financial Institutions (ML/FTG). Guidelines have also been issued by the Eastern Caribbean Central Bank (ECCB), the supervisory authority under the Banking Act (BA) for domestic banks and the Financial Services Regulatory Commission (FSRC), the supervisory authority under the International Business Corporations Act (IBCA) for offshore financial institutions The guidelines issued by the FSRC consist of Customer Due Diligence Guidelines for International Banking Corporations (CDDGIBC) and Guidelines for International Insurance Corporations on Anti-Money laundering and Combating the Financing of Terrorism (GIIC).

368. Section 2 of the MLPA defines financial institutions as 'any person whose regular business or occupation is, for the account of that person the carrying on of (a) any activity listed in the First Schedule to the Act and (b) any other activity defined by the Minister by an order published in the Gazette amending the First Schedule.' The Minister in this context means the Minster responsible for national drug control and security.

369. Currently, there are eighteen (18) activities listed in the First Schedule as follows:

- 'Banking business' and 'financial business' as defined in the Banking Act and the Financial Institutions (Non-Banking) Act;
- 'international offshore banking business' as defined in the International Business Corporations Act;
- Venture risk capital;
- Money transmission services;

- Issuing and administering means payments (e.g. credit cards, travelers' cheques and bankers' drafts);
- Guarantees and commitments;
- Trading for own account or for account of customers in;

  (a) money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.)
  (b) foreign exchange;
  (c) financial and commodity –based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments etc.);
  (d) transferable or negotiable instruments.
- Money broking;
- Money lending and pawning;
- Money Exchange (e.g. casa de cambio);
- Real property business;
- Credit unions;
- Building societies;
- Trust business;
- Insurance business;
- Dealers in precious metal, art or jewellery;
- Casinos;
- Internet gambling; and
- Sports betting.

370. The activities listed above are defined as 'relevant businesses' in the MLPR.

Status of Guidelines

371. The guidelines issued by the ECCB and the FSRC have no sanctions for non-compliance since they are primarily meant to supplement the ML/FTG issued by the ONDCP, the primary agency for the administration of the AML/CFT laws. With regard to the FSRC, section 316(4) of the IBCA does state that failure to comply with guidelines and directions issued by the FSRC are to be dealt with under section 359A (1) (c) of the IBCA. However, this section only imposes a penalty of an amount not exceeding US$10,000 for failure to comply with any directions given in writing by the FSRC. Guidelines are not mentioned in the provision and would therefore appear not to be subject to this penalty for non-compliance.

372. As such, no penalties have been imposed by either the ECCB or the FSRC for any breaches of these guidelines. With regard to the ML/FTG, section 12(6) of the MLPA mandates a penalty of a fine not exceeding EC $20,000 for non-compliance with the ML/FTG. While the above provision imposes a direct sanction for contravention of the ML/FTG, the penalty of a maximum fine of EC $20,000, which is approximately US $7,500 is not dissuasive particularly when applied to a financial institution. Furthermore, since this sanction has never been imposed by the ONDCP, there is no means of assessing the effectiveness of this penalty. Given these factors, the ML/FTG is not considered by the Examiners as other enforceable means.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

373. At the date of the Mutual Evaluation, Antigua and Barbuda had not done a formal risk assessment of the financial sector as contemplated by FATF standards. Most of the requirements which take risk into consideration in the regulations and guidelines are concerned with enhanced measures for perceived higher risk for circumstances noted in the FATF Recommendations. In this way, the Authorities in Antigua and Barbuda have employed a partial and selective approach to risk for certain provisions without any proper risk assessment. Financial institutions have been advised in the ML/FTG to develop graduated customer acceptance policies and procedures which take into account the risk posed by individual customers and require more extensive due diligence for higher risk customers. Additionally, the supervisory authorities utilise a risk-based approach in the supervision of their licensees, including on-site AML/CFT examinations.

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

3.2.1 Description and Analysis

Recommendation 5

374. While there is no direct legislative prohibition against anonymous accounts, section 11A of the MLPA prohibits financial institutions from opening, operating or authorising the operation of an account in a false name. Any person who contravenes this section is liable on summary conviction to a fine not exceeding EC $20,000 or to a term of imprisonment not exceeding two years or both. Specific identification procedures for accounts are detailed in regulation 4 of the MLPR.

375. The above requirement is further detailed in regulation 15 of the IBCR which stipulates specific identification information to be obtained from actual account holders for individual, organizational, joint or other multiparty accounts whether identified by name or number. Additionally, paragraph 26 of the CDDGIBC requires that the identity of the account holder of a numbered account should be known to a sufficient number of staff to operate proper due diligence. Such accounts should in no way be used to hide the customer identity from a bank's compliance function or from the supervisors. Financial institutions in discussions asserted that they did not maintain anonymous accounts or accounts in fictitious names. Further, while one offshore institution did admit to maintaining numbered accounts, these were in accordance with identification requirements and the relevant records are available to appropriate staff and competent authorities.

Application of CDD measures

376. Regulation 4(2) of the MLPR requires financial institutions to undertake identification procedures in the following circumstances:

a) Formation of a business relationship.

b) Carrying out any one-off transaction of EC $25,000 or over. This includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

c) Carrying out one-off transactions that are wire transfers.

d) There is suspicion that any one-off transaction involves money laundering or the financing of terrorism, regardless of any thresholds or exemptions stated in the law.

In addition to the above, regulation 4(3)(k) of the MLPR requires that the identification process be carried out again when doubts arise about the veracity or adequacy of previously obtained identification data.

377. The threshold limit for one-off transactions of EC $25,000 or approximately US$10,000 is below the required FATF threshold of US$15,000 resulting in CDD being required for a greater number of one–off transactions. It should be noted that while the threshold of EC $25,000 for one-off or linked transactions is provided for in the MLPR, the ML/FTG stipulates a threshold of EC $10,000. While the MLPR as regulations enacted in May 2007 takes precedence over the ML/FTG, this inconsistency should be rectified by accordingly adjusting the ML/FTG.

378. The FATF criterion requires that one-off transactions that are wire transfers in the circumstances covered by the Interpretative Note to SRVII be subject to CDD measures. The requirement as stated in the MLPR is general for all one-off transactions that are wire transfers and should cover the conditions stated in the criterion. The requirement concerning suspicion of transactions involving money laundering or the financing of terrorism is only applicable to one-off transactions rather than all transactions as required by the FATF criterion.

379. Regulation 4(3)(a) requires financial institutions to maintain identification procedures which require an applicant for business which is defined as a person, whether natural or legal or acting as principal or agent to produce satisfactory evidence of identity, or take measures specified in procedures to produce satisfactory evidence of an applicant's identity and to verify the applicant's identity using reliable, independent source documents, data or information.

380. Paragraph 2.1.7 of the ML/FTG requires financial institutions to obtain particulars of the identity of all customers at the opening of an account or at the time of one-off or linked transactions. Paragraph 2.1.9 of the ML/FTG requires verification of the above information. Paragraph 2.1.16A of the ML/FTG states that satisfactory evidence of identity for natural persons includes identification documents issued by a government or government authority indicating the person's name, date of birth, residential address, and country of citizenship and carrying a photograph of the person. Such documents include:

a. valid passport

b. voter registration card

c. national identity card

d. driving licence.

381. In verifying current permanent address, paragraph 2.1.21 of the ML/FTG states that satisfactory evidence can be obtained by undertaking a combination of checking the Register of Electors, making a credit reference agency search, requesting sight of a recent utility bill, tax bill, financial institution statement or checking a local telephone directory. For prospective non-resident personal customers, passports or valid national identity together with verification from a reputable credit or financial institution in the applicant's home country are required (Para. 2.1.28 of ML/FTG).

382. Pursuant to regulation 4(3)(g) of the MLPR financial institutions are required to verify the authorisation of any person purporting to act on behalf of legal persons or trusts. While there is no specific requirement for the identity and verification of the identity of the agent in this particular instance, the requirement in regulation 4(3)(a) of the MLPR for the identification of all applicants for business which is defined to include agents complies with this obligation.

383. Paragraph 2.1.39 of the MLG 2006 specifies that copies of the following documents should be obtained in order to verify particulars of identification provided by corporate customers (whether registered onshore or offshore):

(a) certificate of incorporation;

(b) memorandum of articles of association;

(c) certificate showing the registered office of the corporation;

(d) company registration form showing particulars of current directors.

384. Paragraph 2.1.39A of the ML/FTG requires verification of the principals and persons having authority to operate accounts opened for unincorporated businesses. A copy of any business registration form or business licence should also be obtained.

385. Paragraph 2.1.39B of the ML/FTG deals with partnerships and requires verification of all partners who are relevant to the application and have individual authority to operate the account. Verification is to proceed as if the partners were directors of a company. In the case of limited partnership, the identity of the general partner should be verified. Changes in the composition of a partnership should be monitored and verification carried out on any new partner. Copies of the partnership agreements and documents pertaining to natural persons from each partner should be obtained.

386. In the case of clubs or societies, paragraph 2.1.40 of the ML/FTG requires financial institutions to satisfy themselves as to the legitimate purpose of the organization by requesting sight of the organization's constitution. The identity of all signatories should be verified and care taken to ensure that the identity of new signatories are verified.

387. With regard to trusts, paragraph 2.1.42 of the ML/FTG requires financial institutions to ask trustees/nominees to state from the outset the capacity in which they are operating or making the account application. Sight of the original trust deed, and any subsidiary deed evidencing the appointment of current trustees should also be obtained. Information on the identity of the settlor and/or beneficial owner of the funds, who provided the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust must be available.

388. Where an account applicant acts or appears to act for another person, regulation 4(3)(e) of the MLPR requires financial institution to take reasonable measures to establish the identity of the other person. Additionally, in cases where an account applicant acts in a professional capacity as attorney, notary public, accountant, auditor or nominee of a company on behalf of another person, regulation 4(3)(f) of the MLPR requires financial institutions to establish the identity of the person on whose behalf the applicant is acting.

389. Regulation 4(3)(h) of the MLPR states that where an applicant for business is a legal person or trust, a financial institution must take procedures to determine who are the natural persons that ultimately own or control the applicant. While there is no specific requirement for financial institution to understand the ownership and control structure of the customer, the obligation to ascertain the natural persons that ultimately own or control the customer will of necessity include complying with this requirement.

390. Discussions with financial institutions confirmed that with regard to legal persons, information on directors, officers, shareholders who hold more than five (5) percent interest and copies of Articles of Association are routinely obtained. Additionally, all beneficial owners of accounts and natural persons who own or control legal persons are identified.

391. Regulation 4(3)(i) of the MLPR states that where the client is a business then reasonable measures must be taken to establish the purpose and intended nature of the business. Financial institutions interviewed noted that this was included in their list of information requested at the time of establishing the business relationship.

392. Paragraph 2.1.4 of the ML/FTG 2002 states that when a business relationship is being established, the nature of the business that the customer expects to conduct with the deposit taking institution should be ascertained at the outset to indicate what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, deposit taking institutions need to have a clear understanding of the legitimate business of their customers.

393. Paragraph 23 of the CDDGIBC states that banks need to obtain all information necessary to establish to their full satisfaction the identity of each new customer and the purpose and intended nature of the business relationship. The extent and nature of the information depends on the type of applicant (personal, corporate, etc.) and the expected size of the account.

394. Regulation 15 of the IBCR 1998 (Statutory Instrument 41) prescribe the minimum requirement in this regard i.e. the nature of the business. The banks interviewed stated that this information was requested to facilitate the review of the types and values of transactions on customers' accounts. Corporate customers have to submit corporate formation documents including business plans outlining the type of business that they are licensed or registered to undertake.

395. Section 4 (3) (l) of the MLPR requires persons involved in relevant business activity to maintain identification procedures which require the conducting of ongoing due diligence. Paragraph (b) of the definition of customer due diligence in regulation 2 of the MLPR defines ongoing due diligence as undertaking measures for conducting ongoing monitoring of a business relationship and scrutiny of transactions throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, the business and risk profile, including where necessary, the customer's source of funds and source of wealth.

396. Paragraph 2.1.8 of the ML/FTG requires that any subsequent changes to the identity of the customer of which the deposit taking institution becomes aware should be recorded as part of the KYC process. Generally this would be undertaken as part of best practice and due diligence (i.e. for the deposit taking institution's own protection against fraud and bad debts), but it also serves for money laundering prevention.

397. In addition, paragraph 2.1.10 of the ML/FTG as amended 2003 covers ongoing monitoring and updating of customers' records. This paragraph notes that any change in activity, the nature or scale of the business should be reported to the compliance officer, who if he/she deems it necessary or appropriate in accordance with the policy and procedures of the financial institution should report it to senior management.

398. Paragraph 20 of the CDDGIBC (which relates to IBCs) states that the customer identification process applies at the outset of the relationship. To ensure that records remain up-to-date and relevant, there is a need for banks to undertake regular reviews of existing records. An appropriate time to do so is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated. However, if a bank becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as quickly as possible.

399. With regard to keeping the information obtained under the CDD process up-to-date, the banks interviewed stated that this was done as frequently as monthly for high risk customers to either a semi-annual or annual review. The compliance officers were responsible for ongoing monitoring and for ensuring that customers' records were kept current. With regard to credit unions, it was acknowledged that files were updated periodically, but that there was no system in place as such because the clientele did not come into the offices on a regular basis. However, it was noted that updates were done when members applied for loans and when they came to check their accounts.

400. There was however one domestic bank which indicated that most customers' records were reviewed every five (5) years on a rotating basis unless information surfaced that dictated that this should be affected earlier. This reportedly was a direct result of the bank's list of customers being so long.

401. The ECCB reported that their inspections revealed that there are some banks that were having issues in relation to keeping documents and information, which were obtained during the CDD process, updated. Some of these issues were related to difficulties in contacting the customers concerned. The ECCB further indicated that a compromise was reached with the banks whereby the banks would flag the accounts concerned so that whenever the customer came in to the bank to do any transactions on the account the documents would be updated.

Risk

402. Regulation 4(3)(d) of the MLPR states that relevant businesses should maintain identification procedures which require enhanced due diligence where a customer is or has become high risk. This requirement does not cover business relationships or transactions as stipulated in the FATF criterion.

403. Paragraph 2.1.5A of the ML/FTG (See MLG amendment of 29 January 2004) states that "banks should develop graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk customers." Paragraph 2.1.5C of the ML/FTG (See MLG amendment of 29 January 2004) requires intensified monitoring for higher risk accounts. Banks must set key indicators for these accounts while taking note of the country of origin, source of funds, and the type of transactions involved.

404. Where customers are non-resident, financial institutions are required by paragraph 2.1.34 of the ML/FTG to obtain a certified copy of the passport, seek an account opening reference from a reputable credit or financial institution in the applicant's home country. Verification details must cover the individual's true name(s) used, current permanent address, and date of birth and verification of signature.

405. With regard to enhanced due diligence for private banking, paragraph 2.1.4A of the ML/FTG (as amended 2004) provides that all new clients and new accounts should be approved by at least one person of appropriate seniority, other than the private banking relationship manager. If safeguards are put in place to protect the confidentiality of private banking customers a financial institution must ensure that at least equivalent scrutiny and monitoring of these customers can be conducted. For example, their accounts must be open to review by compliance officers and auditors. A private bank interviewed noted that customers' accounts are reviewed on a quarterly basis by internal auditors and an annual basis by external auditors.

406. In addition to the usual verification procedures, with regard to trust and nominee accounts, paragraph 2.1.42 of the ML/FTG requires that the financial institution verify the identity of the underlying beneficiary on whose behalf the applicant for business is acting. These enhanced procedures may involve an introduction certificate from a regulated financial sector business, or having sight of the original trust deed or enabling document.

407. With regard to IBCs, the CDDGIBC at paragraphs 14, 15 and 16 require that banks establish a graduated customer acceptance policy that considers the types of customers that are likely to pose a higher than average risk and require more extensive due diligence as a result of the higher risk. In establishing these policies, banks are required to consider factors such as customers' background, country of origin, public or high profile position, linked accounts, business activities or other risk indicators.

408. Pursuant to paragraphs 25 and 29 of the CDDGIBC enhanced due diligence is also required for transferred accounts and bearer shares respectively. With regard to the latter, paragraph 29 specifically states that 'special care needs to be exercised in initiating business

transactions with companies that have nominee shareholders or shares in bearer form. Satisfactory evidence of the identity of beneficial owners of all such companies needs to be obtained. In the case of entities which have a significant proportion of capital in the form of bearer shares, extra vigilance is called for. A bank may be completely unaware that the bearer shares have changed hands. The onus is on banks to put in place satisfactory procedures to monitor the identity of material beneficial owners. This may require the bank to immobilise the shares, e.g. by holding the bearer shares in custody'.

409. The IBCA at section 130(2)(b) requires that a corporation maintains a register of shareholders which shows the total number of bearer shares issued, the names of the beneficial owners and the number identification and date of issue of each bearer certificate. The Examiners noted that in general banks tended to avoid customers that had bearer shares or to have custodial arrangements in place. In one case a domestic bank had taken a decision not to engage in business relationships with customers who had bearer shares because it was felt that the risk for the bank was too great.

410. Whereas there are specific enhanced due diligence procedures recommended for high risk persons there are no provisions for the relaxation of customer due diligence measures for low risk persons whether resident in Antigua and Barbuda or another country. The financial institutions interviewed applied CDD measures as required by the regulations and guidelines except where as discussed above enhanced due diligence is required.

411. It should be noted however that paragraphs 2.1.23 - 2.1.27 of the ML/FTG provide for the authorisation of the opening of an account by a senior manager in circumstances where Antiguan and Barbudan residents, particularly young persons, the elderly and disabled people, may not be able to provide full documentary evidence of their identity, and where independent address verification is not possible. Additionally, where the persons involved in the transaction are students, minors or involve accounts opened through a school related scheme. The senior manager must be satisfied with the circumstances, and must record his or her authorisation on the customer's file, and must also retain this information in the same manner and for the same period of time as other identification records.

412. Internal procedures should allow for such circumstances and should provide appropriate advice to account opening staff on how identity can be confirmed and what local checks can be made.

413. As discussed above, where financial institutions apply enhanced due diligence on a risk basis, it is in keeping with the provisions in the guidelines issued by the ONDCP and the FSRC.

Timing of verification

414. Regulation 4(3)(a) of the MLPR requires persons who carry on relevant business to maintain procedures that require the identification and verification of the identity of customers and beneficial owners as soon as is reasonably practicable after first contact..

415. Section 2 of the ML/FTG at paragraph 2.1.14 covers identification procedures, which includes timing of verification requirements. Specifically, banks are required to promptly take appropriate steps to verify the customer's identity before commitments are entered into or money is deposited. The time frame for this according to the guidelines is dependent on certain factors such as the nature of the business and the geographical location of the parties. Transfers or payments of any money to third parties are not carried out until verification requirements are satisfied.

416. Paragraph 18 of the CDDGIBC 2003 requires banks to establish a systematic procedure for identifying new customers and that the bank should not establish a banking relationship until the identity of a new customer is satisfactorily verified. The international banks insisted that they do not establish banking relationships until all CDD information is obtained. However

the domestic banks that were interviewed indicated that in those cases where they might have started a business relationship with a customer (by accepting a deposit) their policy is to return monies to the customer and sever the relationship if the customer fails to submit all required information/documentation. However, in most cases they adopt the same policy as the international banks.

417. The relevant guidelines do not permit customers to utilise the business relationship prior to verification of identity. The above requirements do not include occasional transactions and are not enforceable. While the MLPR allows for the verification of the identity of customers as soon as reasonably practicable, the conditions in the guidelines for the time frame and the prohibition against transfers or payments of any money to third parties until verification is complete is not enforceable.

418. Pursuant to regulation 4(3)(c) of the MLPR, persons involved in relevant business activity must have procedures which require that 'where satisfactory evidence of identity is not obtained, the business relationship or one-off transaction must not proceed any further, or shall proceed only in accordance with any direction of the Supervisory Authority'. There is no requirement to consider making a suspicious transaction report.

419. Based on the interviews it was found that banks did not proceed with transactions where there was insufficient CDD. Particularly, the banks stated that they would not open accounts unless they were told to do so by the Supervisory Authority. The banks' main concern was the risk to the institution. The banks also revealed that they had never been asked not to close an account. Notification is given to the Supervisory Authority when an account is closed and some of the banks stated that they filed SARs with regard to attempted transactions. There were however, some institutions that were unaware that attempted transactions should be filed even though paragraph 5.10 of the MLG requires that 'the offer of suspicious funds or the request to undertake a suspicious transaction may need to be reported to the Money Laundering Reporting Officer/Compliance Officer (or alternatively a line supervisor), whether or not the funds are accepted or the transaction proceeded with.' The credit unions stated that where there was suspicion at the time of membership in the credit union, such membership would be denied but no SAR would be filed.

420. Section 2.14 of the MLG states in relevant part that 'the failure of an applicant to provide satisfactory evidence of identity without adequate explanation may in itself lead to a suspicion that the investor is engaged in money laundering.' There is however no requirement that financial institutions should consider filing a suspicious transaction report.

421. According to paragraph 20 of the CDDGIBC, (applicable to IBCs) due diligence is applied on existing relationships when:

- A transaction of significance takes place; or
- Customer documentation standards change substantially; or
- There is a material change in the way that the account is operated;

or

- The financial institution lacks sufficient information about an existing customer.

422. A similar provision obtains for international insurance corporations (paragraph 16 of the GIIC).

423. The requirement for IBCs to carry out retroactive CDD on all existing accounts will of necessity include numbered accounts.

Recommendation 6

424. The requirements for politically exposed persons (PEPs) are mostly detailed in the MLG. Paragraph 2.1.5A of the MLG defines PEPs to include Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials. Paragraph 2.1.5B of the MLG requires banks to gather sufficient information from a new customer in order to establish whether he/she is a PEP. Further, in order to ascertain this information, the financial institution should check publicly available information and also seek to identify those persons, companies and legal entitles that are related to a PEP. The decision to open an account for a PEP should be taken at a senior management level.

425. Requirements similar to those above are also stipulated in paragraph 38 of the CDDGIBC for international banking corporations. With regard to international insurance companies the GIIC while not specifically mentioning PEPs provides that as part of the insurance companies acceptance policy that factors such as 'public or high profile positions' should be taken into account.

426. The above requirements for banks are set out in the MLG and the CDDIBC which are not other enforceable means and therefore do not comply with the FATF criteria. Furthermore the requirement for insurance companies, in addition to not being other enforceable means, is too general to provide any meaningful guidance concerning PEPs. There is no requirement that when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, that financial institutions are required to obtain senior management approval to continue the business relationship.

427. Regulation 4(3)(j) of the MLPR requires financial institutions to take reasonable measures to establish the source of funds and the source of wealth of all applicants for business. This regulation will of necessity include PEPs. Regulation 4(3)(d) of the MLPR requires financial institutions to take enhanced due diligence procedures where a customer is or becomes a high risk customer or a PEP. Enhanced due diligence is defined in regulation 2 (MLPR) to include intensified monitoring of accounts that are appropriate where a customer is or becomes a PEP or is related to such a person.

428. The interviewed banks were aware of PEPs as a specific high risk class of customer and all had measures in place to identify and monitor PEPs. Non-bank financial institutions indicated that as part of their CDD investigations, their compliance officers were responsible for ensuring that PEPs and their affiliates could be identified by the institutions. The banks interviewed stated that senior management approval was required for PEP accounts. In fact one institution stated that as a general policy PEPs were expressly prohibited except where they could provide audited financial statements showing the source of funds. All interviewees noted that customers identified as PEPs are "red flagged" and enhanced ongoing CDD measures conducted on these customers at more regular intervals than adopted for other customers.

Additional Elements

429. Antigua and Barbuda does not differentiate between the various types of PEPs.

430. The above requirements are extended to domestic PEPs. While Antigua and Barbuda has not signed the 2003 United Nations Convention against Corruption, they have enacted the Corruption Act 2004 and the Integrity in Public Office Act 2004 which embody the salient features of the Convention.

Recommendation 7

431. Requirements for correspondent banking are set out in paragraph 2.1.47 of the MLG (See amendment 2004). The minimum procedures that a bank should undertake relating to the opening of correspondent accounts are as follows:

- Banks must fully understand and document the nature of the respondent bank's management and business;
- Banks must ascertain that the respondent bank has effective customer acceptance and KYC policies and is effectively supervised;
- Banks must identify and monitor the use of correspondent accounts that may be used as payable-through accounts; and
- Banks should not enter into or continue a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management) and which is unaffiliated with a regulated financial group.

432. It should be noted, based on the above, that while banks have to assess the respondent bank's customer acceptance and KYC policies, the criterion requires an assessment of the respondent institution's entire AML/CFT system. Accordingly, AML/CFT controls such as record-keeping, monitoring, suspicious transaction reporting and internal controls are not covered.

433. Paragraph 42 of the CDDGIBC 2003 states that international banking corporations should gather sufficient information about their respondent banks to understand fully the nature of the respondent's business. Factors to consider include: information about the respondent bank's management, major business activities, where they are located and its money-laundering prevention and detection efforts; the purpose of the account; the identity of any third party entities that will use the correspondent banking services; and the condition of bank regulation and supervision in the respondent's country.

434. Both the MLG and the CDDGIBC do not address the need for senior management to approve the establishment of correspondent relationships nor do they require the documentation of the respective AML/CFT responsibilities of each institution in these relationships. Discussions with financial institutions revealed that whereas there are no formal requirements for these matters, in practice these procedures are adopted.

435. The only requirement concerning payable-through accounts in paragraph 2.1.47 of the MLG is for financial institutions to identify and monitor their use. However, paragraphs 31 and 45 of the CDDGIBC require banks to ensure that respondent institutions have performed normal CDD measures as rigorous as those utilized by the bank for its customers and that all relevant identification data is available upon request. Additionally, the financial institution should be satisfied that the respondent institution is able to provide relevant customer identification data upon request.

436. Correspondent banking facilities are only provided on a limited basis in Antigua and Barbuda and by few financial institutions. The requirements stipulated in the ML/FTG and the CDDGIBC have been incorporated as part of relevant policies and procedures. The above requirements are all detailed in the MLG and the CDDGIBC which are not considered other enforceable means and therefore do not comply with the FATF criteria.

Recommendation 8

437. There are no provisions in the ML/FTG which require financial institutions to have policies in place or take such measures that may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. The only provisions in this regard are contained at paragraph 39 of the CDDGIBC which requires an offshore bank to proactively assess various risks posed by emerging technologies and to design customer identification procedures that correspond to the risk they face.

438. Paragraph 2.1.34 of the MLG outlines measures for managing the risks associated with non face-to-face customers. They include:

- Obtaining a certified copy of the passport or other identification document issued by a government or government authority; and
- Obtaining a credit check or banking reference from a reputable credit or financial institution in the applicant's home country. Verification details should be requested covering true name/s used, current permanent address, date of birth and verification signature.

439. Paragraph 2.1.37 of the ML/FTG requires financial institutions offering Internet banking services implement procedures to identify and authenticate the customer, and ensure that there is sufficient communication to confirm address and personal identity. The same supporting documentation should be obtained from Internet customers as for other non face to face customers.

440. Paragraph 39 of the CDDGIBC states that 'banks should apply equally effective customer identification procedures and on-going monitoring standards for non-face-to-face customers (those who do not present themselves for personal interview) as for those available for interview. A typical example of a non-face-to-face customer is one who wishes to conduct electronic banking via the Internet or similar technology'.

441. Paragraph 40 of the CDDGIBC goes on to state that 'in accepting business from non-face-to-face customers banks should take specific and adequate measures to mitigate the higher risk. Examples of measures to mitigate risk include: certification of documents presented; requisition of additional documents to complement those which are required for face-to-face customers; independent contact with the customer by the bank; third party introduction, e.g. by an introducer subject to the criteria mentioned in paragraph 31; or requiring the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards'.

442. In discussions, those financial institutions that did accept non-face-to-face customers indicated that they had policies and procedures in place to address the risks. Most financial institutions did provide Internet banking facilities but these were limited to account enquiries and transfers between accounts in the customer's name.

443. While paragraphs 39 and 40 of the CDDGIBC provide extensive CDD and on-going monitoring for non-face-to-face customers, they are not applicable to all financial institutions and they are not considered enforceable and there are no sanctions for failure to follow the stipulated provisions.

3.2.2 Recommendations and Comments

444. *Recommendation 5*; Legislative requirement for CDD measures where there is suspicion of money laundering or the financing of terrorism should cover all transactions.

445. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable in accordance with FATF requirements.

446. The requirements concerning the time frame and measures to be adopted prior to verification should be enforceable in accordance with FATF requirements.

447. The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction should be enforceable.

448. The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship should be enforceable.

449. The requirement to apply CDD requirements to all existing customers should be imposed on all financial institutions and be enforceable in accordance with FATF standards.

450. *Recommendation 6*: The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP should be enforceable in accordance with FATF requirements.

451. The requirement for banks to obtain senior management approval for establishing business relationships with a PEP should be enforceable in accordance with FATF requirements.

452. Financial institutions should be required to obtain senior management approval to continue the business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.

453. *Recommendation 7*: Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing customer acceptance and KYC policies and whether it is effectively supervised should be enforceable in accordance with FATF requirements.

454. Financial institutions should be required to assess all the AML/CFT controls of respondents and whether they have been subject to money laundering or terrorist financing investigation or regulatory action.

455. Financial institutions should be required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship.

456. Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.

457. Financial institutions should be required to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilizing payable through accounts or are able to provide relevant customer identification upon request for these customers.

458. *Recommendation 8*: Financial institutions should be required to have measures aimed at preventing the misuse of technology in ML and FT schemes.

459. Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers should be enforceable in accordance with FATF standards.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• **Legislative requirement for CDD measures where there is suspicion of money laundering or the financing of terrorism is limited to occasional transactions.** • **The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date is not enforceable.** • **The requirements concerning the time frame and measures to be adopted prior to verification are not enforceable.** • **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction is not enforceable.** • **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship is not enforceable.**

		• **The requirement to apply CDD requirements to all existing customers is limited to IBCs and is not enforceable.**
R.6	**NC**	• **The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP is not enforceable.** • **The requirement for banks to obtain senior management approval for establishing business relationships with a PEP is not enforceable.** • **No requirement that when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, that financial institutions are required to obtain senior management approval to continue the business relationship.**
R.7	**NC**	• **Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing customer acceptance and KYC policies and whether it is effectively supervised is not enforceable.** • **Requirement for assessing a respondent's controls does not include all AML/CFT controls or whether it has been subject to money laundering or terrorist financing investigation or regulatory action and is not enforceable.** • **Financial institutions are not required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship** • **Financial institutions are not required to obtain approval from senior management before establishing new correspondent relationships.** • **The requirement for financial institutions to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilizing payable-through accounts or are able to provide relevant customer identification upon request for these customers while only applicable to IBCs is not enforceable.**
R.8	**NC**	• **There are no enforceable provisions which require all financial institutions to have measures aimed at preventing the misuse of technology in ML and FT schemes.** • **Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers are not enforceable.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

460. Third parties and introduced business is addressed by regulation 4(5) of the MLPR, which requires that the financial institutions obtain written assurance from the introducer/third party that the customer's identity has been recorded under procedures maintained by the introducer/third party. However, it does not provide that the

identification information concerning the elements of the CDD process in criteria 5.3 to 5.6 be immediately obtained from the third party or introducer.

461. Requirements for introduced business are also set out in paragraph 31 of the CDDGIBC for offshore banks. Banks that use introducers are required to carefully assess whether the introducers are "fit and proper" and are exercising the necessary due diligence in accordance with the standards set out in the CDDGIBC. Banks are required to immediately obtain from the introducer all relevant identification data and other documentation pertaining to the customer's identity for careful review. This information must be available for review by the FSRC, ONDCP or any other competent authority. This comprehensive requirement should include the elements of the CDD process in criteria 5.3 to 5.6.

462. There is no provision in the MLPR or ML/FTG that requires financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request and without delay. As already mentioned, the CDDGIBC requires that all relevant documentation data and other documentation pertaining to the customer's identity should be immediately submitted by the introducer to the bank.

463. Pursuant to regulation 4(5)(b) of the MLPR, third parties are required to be regulated by a local or overseas regulatory authority. There is no specific provision that regulation or supervision is in accordance with Recommendation 23, 24 and 29 and that the third party has measures in place to comply with the CDD requirements set out in R. 5 and R. 10. While paragraph 31 of the CDDGIBC does not require the third party to be regulated or supervised, it must comply with the minimum customer due diligence practices in the CDDGIBC, and the customer due diligence procedures of the introducer should be as rigorous as those which the bank would have conducted itself for the customer.

464. The competent authorities have not issued any guidance about countries from which third parties are acceptable. The ML/FTG provides guidance in paragraph 4.3B about foreign transactions advising financial institutions to be aware of the FATF NCCT list of countries and against automatically presuming a source of funds as legitimate based on the country of origin. With the termination of the NCCT list, the authorities need to establish criteria for identifying countries which do not adequately apply the FATF Recommendations.

465. Regulation 4(5)(b) of the MLPR states in relevant part that the acceptance by a financial institution of written assurance under procedures maintained by the third party is not a delegation of liability for CDD. Additionally, with regard to IBCs, paragraph 31 of the CDDB provides that 'the ultimate responsibility for knowing customers always lies with the bank.'

466. Interviewed financial institutions indicated that it was general practice to carry out all relevant CDD measures and obtain full identification documentation for introduced business.

467. Aside from the obligations stipulated in the MLPR, all of the above requirements in the ML/FTG and the CDDGIBC are not enforceable by the rules of the Methodology and therefore do not comply with the FATF criteria.

3.3.2 Recommendations and Comments

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

469. Financial institutions should be required to take adequate measures to ensure that copies of the identification data and other relevant CDD documentation from third parties will be made available upon request and without delay.

470. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in R.5 and R.10.

471. Competent authorities should take into account information available on countries which adequately apply the FATF Recommendations in determining in which countries third parties can be based.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	• **The requirement for IBCs to immediately obtain from a third party the necessary identification information on the customer is not enforceable.** • **No requirement for financial institutions – except for an unenforceable requirement for IBCs to obtain CDD documentation - to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request and without delay.** • **No requirement for financial institutions to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with the CDD requirements set out in R.5 and R.10.** • **Competent authorities have not issued any guidance about countries in which third parties can be based since the FATF NCCT listing.**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

472. Section 25 of the MLPA provides that "subject to the provisions of the Constitution, the provision of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other law or otherwise".

473. Further, section 26(1) of the MLPA states that it is not unlawful for any person to make any disclosure in compliance with the Act, while section 26(2) provides that the Supervisory Authority may share information pertaining to suspicious transactions reported in a SAR with any governmental; or regulatory authority within or outside of Antigua and Barbuda to assist in criminal investigations or prosecutions..

474. Sections 12(2) and (3) of the ONDCPA also allows the Supervisory Authority to liaise with any entity or individual within and outside of Antigua and Barbuda that is involved in legal proceedings and investigations relating to matters in the Act.

475. Although section 32(1) of the BA prohibits the disclosure of customer information by any director, manager, secretary or employee without the customer's permission, section 32(1)(d) allows such disclosure 'under the provisions of any law in Antigua and Barbuda…'.

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476. Sections 244 and 254 of the IBCA impose confidentiality obligations on officers, employees, agents, auditors and solicitors of offshore banking and trust corporations with regard to information relating to the business affairs of customers. However, exemptions are provided in the following instances:
   a) in the performance or exercise of duties or functions under the IBCA;
   b) pursuant to a request by an examiner or inspector under the IBCA;
   c) pursuant to a request by the Supervisory Authority under the MLPA; and
   d) pursuant to an order of a court of competent jurisdiction in Antigua and Barbuda.

477. There were no confidentiality provisions relating to customer accounts in the Co-operatives Societies Act 1997 (CSA) and the Insurance Act 1969 (IA), which governed the operations of credit unions and insurance entities respectively at the time of the on-site visit.

478. Under section 23(1) of the BA, every bank is required to submit to the ECCB such information and data as the ECCB may require for proper discharge of its functions and responsibilities. Additionally, section 21(1) of the BA requires a financial institution to make available for inspection by the ECCB all books, minutes, accounts and records of its business as requested.

479. The provisions allowing disclosure of information regardless of confidentiality measures are however not applicable to the ECCB as the domestic regulator of banks without a MOU. The Banking Act at section 32(1)(c) provides that customer information is secret except when the ECCB is lawfully required to make a disclosure by a Court in Antigua and Barbuda. With regard to sharing of information with foreign counterparts the ECCB can do so on a reciprocal basis, subject to a confidentiality agreement and a MOU between the ECCB and the foreign authority.

480. During interviews with the ECCB, it was confirmed that the ECCB was unable to share information on its banks with other regulators without a formal agreement. It was noted however that information could be and was provided to the Minster of Finance in the form of a copy of the report on any on-site visit. This information was however considered confidential. At the time of the Mutual Evaluation there were no agreements or MOUs in place that would allow the ECCB to share information on domestic banks in Antigua and Barbuda with other regulators.

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481. As noted, sections 244 and 254 of the IBCA provides for the access of customer information by an examiner or inspector under the IBCA. Such examiner or inspector would be appointed from within or outside the FSRC.

482. Section 244(1a) of the IBCA makes it unlawful for a person to disclose any information relating to a customer of a corporation that has been acquired in the performance of his duties:

   i. as an employee of Government
   ii. as a director, agent, employee of the Authority or person designated by the Authority to perform functions under the Act.

483. This prohibition is not applicable in the performance or exercise of those functions in compliance with a requirement of the Act or an order of a Court of competent jurisdiction in Antigua and Barbuda.

484. The Authority referred to above is the FSRC. While the above provision imposes confidentiality obligations on the FSRC, sections 372 of the IBCA states that nothing in the IBCA shall prevent the Commission from disclosing information concerning the ownership, management, operations and the financial returns submitted in compliance with section 242 of a licensed institution to enable or assist a foreign regulatory authority to exercise its regulatory functions, except that no customer information may be disclosed without an order from a Court of competent jurisdiction. The FSRC in discussions indicated that it was possible to share information with other regulators through MOUs which it had signed with several other supervisory agencies in other countries.

485. With regard to the supervisory authorities for credit unions, co-operative societies and insurance entities, there are no confidentiality or disclosure of information gateway provisions in the CSA or the IA for the Registrar of Co-operative Societies or the Registrar of Insurance respectively.

486. In relation to financial institutions sharing information for the purposes of correspondent banking, third party or introduced business and wire transfers, financial institutions need only obtain the customer's consent under the relevant statutes to permit such sharing.

3.4.2 Recommendations and Comments

487. The Antigua and Barbuda Authorities should enact provisions allowing the ECCB, FSRC, the Registrar of Co-operatives and the Registrar of Insurance to share information with other competent authorities.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• **The ECCB and FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without a MOU.** • **There are no legislative provisions allowing the Registrar of Co-operative Societies and the Registrar of Insurance to share information with other competent authorities.**

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

3.5.1 Description and Analysis

Recommendation 10

488. Antigua and Barbuda has addressed record keeping requirements through section 12 of the MLPA. Specifically, section 12(1) requires financial institutions to retain either the actual or a copy of each customer generated financial transaction document in its original form for the minimum retention period applicable to the document. Section 12(2) requires financial institutions to retain either the original or a copy of each financial transaction document that was not customer generated. Section 12(3) removes the requirement in section 12(2) from single transactions under EC $1,000. 'Customer generated financial transaction document' and 'financial transaction document' have been defined at section 12B(1) of the MLPA.

489. Specifically, a 'customer generated financial transaction document' is defined as 'a document of a financial institution that relates to:

- The opening or closing by a person of an account with the institution;
- The operation by a person of an account with the institution ;
- The opening or use by a person of a deposit box or packet held by the institution;
- The telegraphic or electronic transfer of funds by the institution on behalf of the person to another person;
- The transmission of funds between Antigua and Barbuda and a foreign country or between foreign countries on behalf of a person; or
- An application by a person for a loan from the institution, that is given to the institution by or on behalf of the person whether or not the document is signed by or on behalf of the person.'

490. While a 'financial transaction document,' in relation to a financial institution is defined as 'any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes

- A document relating to the opening, operating or closing of an account held with the institution; and
- The opening or use of a deposit box held by the institution.'

491. It should be noted that the definition of a financial transaction document is broad enough to include both domestic and international transactions.

492. In both instances, the MLPA mandates at section 12B(1)(vi) – 'minimum retention period'; that where such documents relate to the opening of an account with a financial institution, the retention period is six (6) years after the account is closed. Where the documents relate to the opening by a customer of a deposit box, then the retention period is six (6) years after the day on which the deposit box ceases to be used by the customer. In all other cases, the retention period for financial transaction documents is six (6) years after the day on which the transaction takes place. The requirement is applicable regardless of whether the account or business relationship is ongoing or has been terminated.

493. Section 5 of the MLPR also specifies that a relevant business must maintain procedures which require the retention of specified records for the period prescribed in the Act. In addition, regulation 16 (d) of the IBCR also obliges financial institutions to retain records of all of their transactions for at least five (5) years.

494. The above legislative provisions comply with FATF requirements except for the exemption allowed for the single transactions under EC $1,000. FATF standards require the maintaining of records of all transactions.

495. While the MLPA, the MLPR and the MLG do not deal with the issue of sufficiency of records to permit reconstruction for prosecution of criminal activity, in respect of offshore financial institutions, regulation 16(a) of the IBCR requires that for all transactions the financial institution obtain the following information: (i) the name of the account (ii) the account number (iii) the type of transaction (iv) the amount of the transaction (v) the date of the transaction, and (vi) the identity of the party authorizing the transaction.

496. Pursuant to regulation 5(1) of the MLPR a person involved in relevant business activity or financial institution must maintain procedures which require the retention of identification records. Regulation 4(3)(a) specifically includes the satisfactory evidence of identity and that the identity evidence should be verifiable using reliable, independent source documents,

data and information. With regard to account files, section 12B(1) of the MLPA provides as stated above for the definition of 'financial transaction document', which comprises account files. There are no provisions which require the maintenance of business correspondence for a specified retention period.

497. There are no provisions in law or regulation that requires financial institutions to ensure that all customer and transaction records and information are available for the Supervisory Authority on a timely basis. Paragraph 3.2 of the ML/FTG does require that financial institutions should be able to retrieve relevant information without delay.

498. Discussions with financial institutions indicate that it is industry practice to maintain all pertinent records including account files and correspondence well beyond legal requirements.

Special Recommendation VII

499. Paragraph 3.1A of the ML/FTG requires that financial institutions including money remitters shall include accurate and meaningful full originator information on funds transfers and related messages. Originator information should include name, address and account number (when being transferred from an account). The guidelines also specify that where an account number does not exist that a unique reference number should be included or an identifier that will permit the transaction to be traced back to the originator. Paragraph 3.6 of the ML/FTG requires that the originator information should remain with the transfer or related message through the payment chain. Similar requirements are stipulated in paragraph 62 of the CDDIBC.

500. With regard to cross-border wire transfers, paragraph 3.7 of the ML/FTG requires that full originator information as defined in the Methodology be included with the transfers. Paragraph 3.8 of the ML/FTG also requires that "Where several individual transfers from a single originator are bundled in a batch file for transmission to beneficiaries in another country, they shall be exempted from including full originator information, provided they include the originator's account number or unique reference number, and the batch file contains full originator information that is fully traceable within the recipient's country. However, financial institutions are required to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing.

501. Cross-border wire transfers in paragraph 63 of the CDDGIBC are required to include full originator information. A unique reference number must be included in the absence of an account. Financial institutions are given the discretion to opt for a national identity number, customer identification number, or date and place of birth instead of the originator's address.

502. Paragraph 3.9 of the MLFTG requires that "Information accompanying domestic wire transfers must also include the same originator information as indicated for cross-border wire transfers, unless the bank is satisfied that full originator information can be made available to the beneficiary financial institution and appropriate authorities by other means. In this latter case, the financial institution need only include the account number or a unique identifier provided that this number or identifier will permit the transaction to be traced back to the originator. The information must be made available by the ordering financial institution within three (3) days of receiving the request either from the beneficiary financial institution or from appropriate authorities." Similar requirements are detailed in paragraph 64 of the CDDGIBC.

503. Paragraph 3.12 of the ML/FTG requires that "For both cross-border and domestic wire transfers, financial institutions processing an intermediary element of such chains of wire transfers must ensure that all originator information that accompanies a wire transfer is

retained with the transfer." Similar requirements are set out in paragraph 67 of the CDDGIBC.

504. There is no requirement for a receiving intermediary financial institution to keep a record of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer.

505. Paragraph 3.13 of the ML/FTG 2002 provides that "beneficiary financial institutions should have effective risk-based procedures in place to identify wire transfers lacking complete originator information. The lack of complete originator information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to the Supervisory Authority. Where necessary, the beneficiary financial institution must consider restricting or even terminating its business relationship with financial institutions that fail to meet these standards. Similar requirements are set out in paragraph 68 of the CDDGIBC.

506. The requirements regarding SRVII were included as part of amendments to the ML/FTG issued by the Supervisory Authority in July 2006. Section 12(5)(iii) of the MLPA requires financial institutions to comply with guidelines issued by the Supervisory Authority. Monitoring of the AML/CFT requirements of financial institutions has been incorporated in the regulatory regimes of the relevant supervisory bodies.

507. The only penalty for failure to comply with the requirements of the ML/FTG and thereby SRVII is a fine not exceeding EC $20,000 under section 12(6) of the MLPA. The penalty of EC $20,000 which is approximately US $7,500 is not considered dissuasive in relation to financial institutions. Additionally the penalty has never been imposed so its effectiveness cannot be assessed. The penalty is a criminal sanction under the MLPA and can only be imposed by the Court through prosecution by the DPP. Under the MLPA, the Supervisory Authority is the competent authority that will commence this process with the DPP. The penalty is only specific to financial institutions and does not appear to be applicable to directors and senior management.

508. Financial institutions indicated in interviews that they ensured that full originator information always accompanied both incoming and outgoing wire transfers.

Additional Elements

509. As can be ascertained from the above paragraphs, all incoming and outgoing cross-border wire transfers must contain full and accurate originator information.

510. The above requirements, while mirroring the criteria of SRVII, are set out in the ML/FTG which is not considered enforceable under the rules of the Methodology. Consequently, these requirements do not comply with the Methodology standards. Additionally, the requirements covered by criterion VII.7 concerning Recommendation 17 are not fully satisfied.

3.5.2 Recommendations and Comments

511. *Recommendation 10:* The exemption of single transactions under EC $1,000 from record keeping requirements should be removed.

512. Legal provision for financial institutions to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would

facilitate the prosecution of criminal activity should be extended from IBCs to all financial institutions.

513. The MLPA or the MLPR should be amended to require financial institutions to retain records of business correspondence for at least five (5) years following the termination of an account or business relationship.

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

515. *Special Recommendation VII:* Requirements for wire transfers in the ML/FTG should be made enforceable in accordance with the FATF Methodology.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**NC**	• **Single transactions under EC $1,000 are exempted from record keeping requirements.** • **Only IBCs are required to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity.** • **There is no requirement for financial institutions to retain business correspondence for at least five (5) years following the termination of an account or business relationship.** • **There is no enforceable requirement for financial institutions to ensure that customer and transaction records are available to the Supervisory Authority or other competent authorities on a timely basis.**
SR.VII	**NC**	• **Requirements for wire transfers in the ML/FTG are not enforceable in accordance with the FATF Methodology.**

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

516. Section 13(1) of the MLPA states that financial institutions 'shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose and to relations and transactions with persons, including business and other financial institutions, from countries that have not adopted a comprehensive anti money laundering programme.'

517. There are no provisions which require financial institutions to examine the background and purpose of the above transactions and to put those findings in writing and retain such written findings available for competent authorities and auditors for at least five (5) years.

518. Discussions with financial institutions reveal that they retain all records pertaining to transactions including reports concerning any enquiries and findings about complex, unusual or large business transactions or unusual patterns of transactions.

Recommendation 21

519. As mentioned above section 13(1) of the MLPA requires financial institutions to pay special attention to relations and transactions with persons, including business and other financial institutions, from countries that have not adopted a comprehensive anti money laundering programme. This provision will include countries which do not or insufficiently apply the FATF Recommendations. This requirement is further detailed in paragraph 4.3B of the ML/FTG which requires financial institutions to give particular attention to transactions from countries that do not apply or insufficiently apply FATF recommendations.

520. There are no measures that require competent authorities to notify financial institutions about weaknesses in the AML/CFT systems of other countries.

521. However, paragraph 4.3B of the MLG recommends that financial institutions should:

- make themselves aware of jurisdictions with weak AML/CFT systems and keep updated to any changes in the listing;
- look at all transactions diligently;
- develop through experience over time and through the methodical application of their AML/CFT policies, the sensitivity, instincts and know–how to detect and deal with suspicious transactions and activities; and
- consider the feasibility of implementing the use of software to detect possible money laundering trends in transactions.

522. There are no provisions for financial institutions to examine the background and purpose of transactions persons etc., from or in countries that do not sufficiently apply the FATF Recommendations and provide written findings to assist competent authorities and auditors.

523. There are no provisions for competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.

524. However, Directive No. 3 of 2006 issued to financial institutions by the Supervisory Authority states as follows:

"Financial institutions, in addition to their obligations under Paragraph 4.3B of the Money Laundering and Financing of Terrorism Guidelines, to be particularly vigilant in respect of transactions with countries deemed by the FATF to have sub-standard or non-existent anti-money laundering/terrorist financing legal frameworks and institutional structures, and who remain on the FATF NCCT list, are required to take the following actions in dealings with such jurisdictions:

(1) Apply more stringent customer due diligence;

(2) Report to the Supervisory Authority whether your financial institution has any branches in any NCCT jurisdiction. This report should be submitted within the next 30 days, and thereafter upon any further change of circumstances.

(3) Provide quarterly summary reports to the Supervisory Authority on the level of financial transactions with these jurisdictions."

525. It should be noted that paragraph 4.3B of the ML/FTG pertains to suspicious transactions and not necessarily to transactions that have no apparent economic or lawful purpose; even though it is recognised that such transactions may be suspicious.

526. Additionally, as noted in section 3.3 of this Report, there are no longer any countries listed on the FATF NCCT list and as such financial institutions will of necessity require guidance to identify countries that do not or insufficiently apply the FATF Recommendations.

527. At the time of the on-site visit the Directive and the guidelines placed the onus to determine compliant countries on the financial institutions without direction from the competent authorities as required by Recommendation 21. Of the above measures, only the legislative provision for section 13(1) of the MLPA complies with one of the FATF criteria for Recommendation 21. The other measures formulated in the ML/FTG are not considered enforceable for compliance with the FATF requirements.

3.6.2 Recommendations and Comments

528. *Recommendation 11*: Financial institutions should be required to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and put their findings in writing.

529. Financial institutions should be required to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.

530. *Recommendation 21*: Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.

531. Written findings of the examinations of transactions that have no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations should be available to assist competent authorities.

532. There should be provisions to allow for the application of counter measures to countries that do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• **There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and put their findings in writing.** • **There is no requirement to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.**
R.21	**NC**	• **There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.** • **Financial institutions are not required to examine the background and purpose of transactions that have no apparent economic or lawful purpose from or in countries that do not or insufficiently apply the FATF Recommendations and make available the written findings to competent authorities or auditors.** • **There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.**

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

3.7.1 Description and Analysis

Recommendation 13& Special Recommendation IV

533. The requirements to report suspicious transactions that are suspected of being related to money laundering are contained in the MLPA at section 13 (2). Money laundering in Antigua and Barbuda is ascribed to circumstances which involve any form of unlawful activity. The definition of unlawful activity does not apply to all offences required to be included as predicate offences under Recommendation 1 as discussed in section 2.1 of this Report. The reporting requirement however is only applicable where the transactions are complex, unusual or large business transactions whether completed or not, where there are unusual patterns of transactions, where transactions are insignificant but periodic and have no apparent economic or lawful purpose, and to transactions from countries that have not adopted a comprehensive anti money laundering programme (Section 13(1) of the MLPA).

534. In these circumstances, whenever there is suspicion that any such transaction could be related to money laundering, financial institutions are obligated to promptly report them to the Supervisory Authority. Notwithstanding the generality of the circumstances in which money laundering has been linked, section 13 (2) of the MLPA has limited suspicious activity reporting to the conditions specified therein.

535. Section 13(5) of the MLPA makes it an offence to wilfully fail to comply with the suspicious reporting requirements of the MLPA. Section 13(6) imposes a penalty of a fine not exceeding EC $50,000 or to a term of imprisonment not exceeding six months or both on any financial institution, director or employee of a financial institution for failure to report suspicious transactions. Additionally, the licence of the financial institution may be suspended or revoked by the appropriate regulatory authority.

536. With regard to IBCs, section 260(3) of the IBCA, empowers an examiner of the FSRC, when examining a licensed institution, to file a written report of suspicious activity/transaction to the Supervisory Authority through the Administrator, identifying the account by name and number and reporting the basis of the suspicion.

537. Section 34(4) of the PTA requires every financial institution to report to the Director of the ONDCP "every transaction which occurs within the course of its activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act".

538. As defined in the PTA, a terrorist act does not include suspicion that is linked to terrorist organisations or those who finance terrorism.

539. The transactions described at section 13(1) of the MLPA, include 'all complex, unusual or large business transactions whether completed or not'. Accordingly, the requirement for financial institutions to report suspicious transactions under section 13(2) means that attempted transactions would be reported where they meet subsection (1) requirements. The requirement for the reporting of transactions related to the commission of a terrorist act in section 34(4) of the PTA does not include attempted transactions. There are no exemptions in suspicious reporting requirements for AML/CFT.

Recommendation 14

540. Section 13 (4) of the MLPA provides that when a SAR is prepared and submitted in good faith then the financial institution, its employees, directors, owners or other representatives as authorized by law shall be exempt from criminal, civil or administrative liability for complying with this provision. It also exempts those persons mentioned above from any restriction on disclosure of information imposed by contract or any legislative, regulatory or administrative provision, regardless of the result of the communication.

541. Section 13(3) MLPA states that "Financial institutions shall not notify any person, other than a court, or other person authorized by law, that information has been requested by or furnished to a court or the Supervisory Authority". As noted above with regard to suspicious reporting requirements, sections 13(5) and (6) of the MLPA apply in making tipping-off an offence and impose a maximum penalty of EC $50,000 and or 6 months imprisonment or both. In addition, the licence of the financial institution may also be revoked.

542. While the above provision regarding financial institutions covers information requested by the Court or the Supervisory Authority, the de facto FIU in Antigua and Barbuda, the requirement for persons is limited to information concerning money laundering investigations. Section 7(1) of the MLPA makes it an offence for a person who knows or suspects that an investigation into money laundering has been, is being or is about to be made to divulge that fact or other information to another. The FATF criterion requires the prohibition of the disclosure of the fact that a STR or related information is being reported or provided to the FIU. Submission of a suspicious transaction report need not result in a money laundering investigation and it could be debated that section 7(1) of the MLPA does not cover suspicious transaction reports or related information reported or provided to the FIU outside the confines of a money laundering investigation.

Additional Elements

543. Section 8 (2) of the MLPR 2007 states that names and personal details of the employees of a financial institution that make a suspicious activity or transaction report to the Supervisory Authority are to be kept confidential by the Supervisory Authority and members of the ONDCP. Section 32 of the ONDCPA states that any person who is a member of the ONDCP who divulges information that has come into his possession as a result of his employment in the ONDCP to another person other than in the proper exercise of his duties commits an offence. Section 35(3) of the ONDCPA provides a penalty for conviction of an offence under section 32 on summary conviction of a fine not exceeding EC $50,000 or to a term of imprisonment not exceeding two years or both; or upon conviction on indictment to a fine not exceeding EC $100,000 or to a term of imprisonment not exceeding five years or both. The Confidentiality & Associated Conditions of Employment of the ONDCP also details the matter of confidentiality.

Recommendation 19

544. Antigua and Barbuda has considered threshold reporting by all financial institutions, but has concluded that such reporting is unfeasible. Subsequently, the jurisdiction has mandated Internet gaming and Internet wagering companies, pursuant to regulations 148(d) of IGIWR, to report all payouts exceeding US$25,000.00, to the Supervisory Authority. The ONDCP maintains a computerized database of all such reports and is authorised to share such information with law enforcement by section 10(1)(e) of the ONDCPA..

545. The information detailed in Significant Payment Reports made to the ONDCP is kept confidential by staff who are subject to a confidentiality agreement.

Recommendation 25

546. Up to the time of the onsite visit the Supervisory Authority had not provided general feedback to financial institutions on STRs received. However, feedback has been provided on specific cases. The Supervisory Authority acknowledges receipt of all STRs received. The consensus among the majority of financial institutions interviewed during the on-site

evaluation was that such acknowledgements were always sent and were usually timely. A minority of institutions indicated however that in the past the Supervisory Authority was tardy in acknowledging receipts of STRs submitted.

547. The Supervisory Authority should provide financial institutions with adequate and appropriate feedback either generally or on a specific or case-by-case basis.

Recommendation 32

Statistics

548. As mentioned above, the ONDCP maintains a database of all payouts over US $25,000 from Internet gaming and Internet wagering companies. The Assessors were not provided with any statistics by the ONDCP about such payouts. The ONDCP maintains statistics on STRs that relate to wire transfer transactions. There is no requirement for automatic reporting on wire transfers above a threshold.

3.7.2 Recommendations and Comments

549. *Recommendation 13*: The requirement for FIs to report suspicious transactions should be applicable to all transactions.
550. The obligation to make a STR related to money laundering should apply to all offences required to be included as predicate offences under Recommendation 1.
551. The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism.
552. *Recommendation 14:* The tipping-off offence with regard to directors, officers and employees of financial institutions should be extended to include the submission of STRs or related information to the FIU.
553. *Recommendation 25:* The Supervisory Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback.
554. *Special Recommendation IV:* The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism.
555. The obligation to make a STR related to terrorism should include attempted transactions.

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

	Rating	Summary of factors underlying rating
R.13	**PC**	• **The requirement for FIs to report suspicious transactions is linked only to transactions that are large, unusual, complex etc.** • **The obligation to make a STR related to money laundering does not apply to all offences required to be included as predicate offences under Recommendation 1.** • **The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.**
R.14	**PC**	• **The tipping-off offence with regard to directors, officers and employees of financial institutions is limited to information concerning money laundering investigations rather than the**

		submission of STRs or related information to the FIU.
R.19	**C**	**This Recommendation is fully observed.**
R.25	**PC**	• **The Supervisory Authority has not provided financial institutions and DNFBPs with adequate and appropriate feedback.**
SR.IV	**NC**	• **The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.** • **The obligation to make a STR related to terrorism does not include attempted transactions.**

Internal controls and other measures

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

3.8.1 Description and Analysis

Recommendation 15

556. Regulation 3(1)(b) of the MLPR requires persons who carry on relevant business to " establish such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering." It is noted that there is no reference to the financing of terrorism in this regulation. Regulation 3(1)(c) of the MLPR requires all persons carrying on relevant business to take appropriate measures to make employees aware of the provisions of the MLPR and relevant sections of the MLPA.

557. Paragraph 1.0 of the ML/FTG requires financial institutions to establish and maintain clear responsibilities that would ensure that internal procedures and controls that serve to prevent their institutions from being used by criminals to launder money are developed and maintained thereby ensuring that they comply with their obligation dictated by the MLPA, MLPR, ML/FTG, and CDDB.

558. Paragraph 1.2 of the ML/FTG has recommended procedures that financial institutions should adopt. These procedures include customer identification and verification of customer identification and the prompt validation of suspicion and subsequent reporting to the Supervisory Authority.

559. The application of customer due diligence, record keeping and retention, recognition and reporting of suspicious transactions, and the reporting of such transactions are also addressed by the ML/FTG. Additionally, to assist the process, the ML/FTG encourages deposit taking institutions to evaluate and give consideration to the feasibility of implementing application software designed to automatically detect money laundering trends in financial transactions.

560. There are no guidelines detailing the specifics of the appropriate measures that financial institutions' are required to take under regulation 3(1)(c) of the MLPR to make employees aware of the provisions of the MLPR and the relevant sections of the MLPA. Notwithstanding, the Evaluators were informed by financial institutions that such communication formed part of the initial and ongoing training that all staff were required to undergo.

561. Regulation 6(1)(a) of the MLPR requires the designation of a money laundering compliance officer by all persons engaged in relevant business. Regulation 19 of the International Business Companies Regulations requires IBCs to appoint a "compliance officer". The compliance officer ensures that the institution is compliant with the MLPA and its

Regulations, the IBCA and its Regulations. The compliance officer also has the responsibility for filing suspicious activity reports with the Supervisory Authority.

562. Section 1 of the ML/FTG requires all Antigua and Barbuda financial institutions to appoint a Compliance Officer who has the necessary authority to ensure that internal policies and controls are developed managed and maintained. The functions of the Compliance Officer are:

i. Receive and vet suspicious activity reports from staff;
ii. File suspicious transaction reports with the Supervisory Authority;
iii. Develop an anti-money laundering compliance programme;
iv. Ensure that the anti-money laundering compliance programme in enforced;
v. Coordinate training of staff in anti-money laundering awareness, detection methods etc.

563. The level and authority of compliance officers varied among financial institutions. Not all compliance officers held management positions.

564. Paragraph 1.2(III) of the ML/FTG recommends that all financial institutions operating in Antigua and Barbuda should, among other things, provide the compliance officer with the necessary access to systems and records to fulfil his/her functions. However issues relating to the timeliness of such access have not been specifically addressed. Additionally, paragraph 1.2(III) assumes that the records that are necessary to fulfil the compliance officer's functions in particular the vetting of suspicious activity reports from staff include customer identification data, CDD information, transaction records and other relevant information.

565. The Assessment Team was advised by compliance officers of interviewed financial institutions that they were granted timely access to all systems and records needed for the effective implementation of their functions.

566. There is no requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. Paragraph 1.3 of the ML/FTG requires financial institutions to make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering activities in order to satisfy management that the requirement to maintain such procedures have been discharged. Larger financial institutions may wish to ask their internal audit or compliance departments to undertake this role while smaller institutions may wish to introduce a regular review by management.

567. Furthermore, paragraph 1.3A of the ML/FTG (as amended January 2004) requires financial institutions to instruct their internal and external auditors to review their AML/CFT systems and to submit a separate annual report to the Supervisory Authority. The report should include the following:

- Brief description of activities and services offered by the bank
- Description of procedures used to review the bank's AML/CFT system including devised tests of the AML/CFT system
- Description of the AML/CFT system
- Results of tests of effectiveness conducted on the system
- Final evaluation

568. Regulation 3(c) of the MLPR requires financial institutions to take appropriate measures to ensure that employees are:

(i) Made aware of the provisions of the MLPR, .
(ii) Given training in how to recognize and deal with transactions or activities which may be related to money laundering or the financing of terrorism.

- Competent for the work they do, remain competent, appropriately supervised, and have their competence regularly reviewed.

The ML/FTG at section 5 gives guidance on the need for staff awareness and the timing and content of training programmes. Paragraph 5.14 of the ML/FTG highlights the necessity for refresher training at regular intervals.

569. Paragraph 54 of the CDDGIBC recommends that all banks must have an ongoing employee training programme so that bank staff is adequately trained in KYC procedures. Training requirements should have a different focus for new staff, front-line staff, compliance staff or staff dealing with new customers. New staff should be educated in the importance of KYC policies and the basic requirements at the bank. Front-line staff members who deal directly with the public should be trained to verify the identity of new customers, to exercise due diligence in handling accounts of existing customers on an ongoing basis and to detect patterns of suspicious activity. Regular refresher training should be provided to ensure that staff are reminded of their responsibilities and are kept informed of new developments. It is crucial that all relevant staff fully understand the need for and implement KYC policies consistently.

570. All the financial institutions that participated in the on-site Mutual Evaluation indicated that they provided their employees with ongoing training of AML and CFT developments. The degree and specificity varied among financial institutions as did the methods that were employed. However, they all indicated that the training is focused on the institutions' legal AML/CFT requirements, CDD and suspicious activity reporting.

571. Paragraph 1.1A of the MLG provides that financial institutions should put in place adequate screening procedures to ensure high standards when hiring employees.

572. Paragraph 53 of the CDDGIBC outlines that the integrity of a financial institution is heavily dependent on the integrity of its employees, as it is the employees who are responsible for implementing its policies and programmes. The licensed institutions should put in place adequate screening procedures to ensure high standards when hiring employees.

573. Interviewed financial institutions indicated that they had screening procedures in place for the hiring of new employees which included background checks for criminal activity.

Additional Elements

574. Paragraph 51 of the CDDB empowers the compliance officer to conduct ongoing monitoring of staff performance through sample testing of compliance and review of exception reports to alert senior management if he/she believes that management is failing to address KYC procedures in a responsible manner.

575. All of the above requirements except for the training obligations detailed in the MLR and the designation of a compliance officer in the International Business Corporations Regulations 1998 are set out in the ML/FTG and/or the CDDGIBC which are not considered enforceable by the rules of the Methodology. As such, the aforementioned requirements in the ML/FTG and the CDDGIBC do not comply with FATF standards.

Recommendation 22

576. Paragraph 1.5 of the ML/FTG (as amended 2004) requires financial institutions to ensure that the principles mentioned in the guidelines are applied to their branches and subsidiaries

abroad, especially those that operate in countries which do not or insufficiently apply these recommendations, to the extent that the local applicable laws and regulations permit. Financial institutions should inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of these guidelines.

577. Paragraph 55 of the CDDGIBC requires all parent banks licensed in Antigua and Barbuda to communicate their KYC policies and procedures (which must meet the standards set herein) to their overseas branches and subsidiaries, including non-banking entities such as trust companies, and have a routine for testing compliance against both Antigua and Barbuda and host country KYC standards. These compliance tests should also be tested by internal and external auditors**.**

578. The only requirement concerning differences in AML/CFT obligations between host and home countries is in the CDDGIBC. Paragraph 57 of the CDDGIBC states that where the minimum KYC standards of the host countries differ from those of Antigua and Barbuda, branches and subsidiaries in the host jurisdictions should apply the higher standard of the two. If, however, local laws and regulations (especially secrecy provisions) prohibit the implementation of Antigua and Barbuda's KYC standards, where the latter are more stringent, overseas branches and subsidiaries would have to comply with host country standards, but they should make sure to inform their head office or parent bank, which in turn must inform the Supervisor of International Banks and Trust Corporations about the nature of the difference.

579. It should be noted that paragraph 58 of the CDDB states that banks should be aware of the high reputational risk of conducting business in jurisdictions that have lower or inadequate KYC standards. Parent banks should have a procedure for reviewing the vulnerability of the individual operating units and implement additional safeguards where appropriate. If necessary, the Commission and/or the ONDCP should be considered.

580. Financial institutions that were members of groups advised that they operated in most instances with global AML/CFT policies and procedures which were accordingly adapted to jurisdictional requirements. In cases of differences between host and group AML/CFT requirements, the higher of the two was applied where permissible.

Additional Elements

581. There are no provisions in Antigua and Barbuda requiring financial institutions to apply consistent CDD measures at the group level taking into account the activity of the customer with the various branches and majority-owned subsidiaries worldwide.

582. All of the above requirements are stipulated either in the ML/FTG or the CDDGIBC and therefore do not comply with the FATF standards.

3.8.2 Recommendations and Comments

583. *Recommendation 15*: Requirement for financial institutions to develop internal procedures and controls to prevent ML should include FT.

584. Requirement for financial institutions to appoint a compliance officer at management level should be enforceable in accordance with FATF standards.

585. Requirement for financial institutions to provide compliance officers with necessary access to systems and records should be enforceable in accordance with FATF standards.

586. Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.

587. Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees should be enforceable in accordance with FATF standards.

588. *Recommendation 22*: Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries should be enforceable in accordance with FATF standards.

589. Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF recommendations should be enforceable in accordance with FATF standards.

590. Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines should be enforceable in accordance with FATF standards.

591. Branches and subsidiaries of financial institutions in host countries should be required to apply the higher of AML/CFT standards of host and home countries to the extent that local laws and regulations permit.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**NC**	• **Requirement for financial institutions to develop internal procedures and controls is limited to money laundering and does not include financing of terrorism.** • **Requirement for financial institutions to appoint a compliance officer at management level is not enforceable.** • **Requirement for financial institutions to provide compliance officers with necessary access to systems and records is not enforceable.** • **No requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.** • **Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees is not enforceable.**
R.22	**NC**	• **Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries is not enforceable.** • **Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF recommendations is not enforceable.** • **Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines is not enforceable.** • **Requirement for IBCs branches and subsidiaries in host countries to apply the higher of AML/CFT standards of host and home**

		countries is not enforceable.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

592. There is no law in Antigua and Barbuda directly prohibiting the establishment or continued operation of shell banks. Licensing requirements in the BA and the IBCA governing the regulation of domestic and offshore banks respectively are designed to ensure that shell banks are not permitted to operate.

593. Section 5(1) of the BA requires an applicant for a financial institution licence to submit information in Schedule 1 which includes the address of the location of the principal and other places of business where the applicant proposes to do business. Section 235(5) of the IBCA mandates as one of the conditions for the granting of a licence to operate, that licensees must have a physical presence in Antigua and Barbuda and notify the FSRC, of its principal office in Antigua and Barbuda. While there is no specific requirement in the licensing process for applicants to present information on the mind and management of the proposed operation, the Regulators advised that such information is obtained as part of the process.

594. Paragraph 2.1.47 of the ML/FTG prohibits banks from entering into or continuing a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management) and which is unaffiliated with a regulated financial group (i.e. shell banks). A similar requirement is also set out in paragraph 44 of the CDDGIBC. Since these requirements are stipulated in the ML/FTG and the CDDGIBC, they are not enforceable in accordance with the rules of the Methodology and therefore do not comply with FATF standards.

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

3.9.2 Recommendations and Comments

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

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

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**NC**	• **Requirement for domestic and offshore banks not to enter into or continue correspondent banking relationships with shell banks is not enforceable.** • **No requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.**

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Recommendation 23& 30 –Authorities/SROs roles and duties & Structure and resources

598. The Eastern Caribbean Central Bank (ECCB) is the regulator and supervisor of domestic banks in Antigua and Barbuda under the BA. The ECCB is the Regional Central Bank for the Organisation of Eastern Caribbean States (OECS) with responsibility for the regulation and supervision of thirty-nine (39) institutions in the various territories. In Antigua and Barbuda, the ECCB is responsible for the supervision of eight (8) domestic banks and two (2) non-bank financial institutions. As a supervisory authority its main aims are to ensure compliance of its licensees with relevant legislation, protection of depositors' funds and facilitation of the sound operation of licensees.

599. While the ECCB has not been formally designated with the responsibility for ensuring compliance of its licensees with AML/CFT obligations, this function has been incorporated as part of its supervisory regime as complementary to ensuring compliance with relevant legislation. Final authority for the granting and revocation of licences under the BA rests with the Minister of Finance. In practice, these decisions are taken on the basis of the recommendations of the ECCB and this situation has not affected the autonomy of the ECCB.

FSRC

600. Offshore banks and licensed international financial institutions are regulated by the Financial Services Regulatory Commission (FSRC), pursuant to the International Business Corporations Act, Cap. 222 of the revised laws 1992 as amended (IBCA) and the International Business Corporations Regulations as amended (IBCR). The FSRC is responsible for the administration of the IBCA including but not limited to the incorporation of IBCs and the licensing of international banking, trust and insurance corporations. The FSRC is also responsible for the regulation of interactive gaming and interactive wagering corporations. At the end of 2006, the FSRC was responsible for regulating twenty-four (24) international financial institutions and eighty-two (82) interactive gaming and interactive wagering corporations. The FSRC is totally autonomous and independent in its funding which comes from licence and examination fees. Like the ECCB, the FSRC has not been delegated with ensuring compliance of its licensed financial institutions with AML/CFT obligations. However, it has also included this function in its supervisory regime.

Registrar of Insurance

601. The Office of the Registrar of Insurance is a department of the Ministry of Finance. The Registrar of Insurance is responsible for the administration of the Insurance Act (IA), which includes ensuring compliance with the provisions of the Act and registration and cancellation of registration of insurers. As a department of the Ministry of Finance, the Office of the Registrar of Insurance is totally dependent on the Ministry for funding and staff. Like the other supervisory agencies it has not been designated with the responsibility for ensuring compliance of its registered insurers with AML/CFT obligations but has included this as one of its functions. At the time of the Mutual Evaluation, there were twenty (20) registered insurance institutions.

Registrar of Co-operative Societies

602. The Office of the Registrar of Co-operative Societies is a department of the Ministry of Finance. The Registrar of Co-operative Societies operates under the Co-operative Societies Act (CSA). The main function of the Registrar of Co-operative Societies is the administration of the CSA which includes registration of co-operative societies and ensuring compliance with the Act by registered co-operatives comply with the provisions of the Act. The situation with regard to funding, staffing and the designation of responsibility for ensuring compliance with AML/CFT obligations is the same as described for the Registrar of Insurance.

603. Under section 10 of the ONDCPA, the ONDCP is required to enforce the provisions of the MLPA. However, since the ONDCP, in the person of the Supervisory Authority also functions as the FIU, it has been left to the various regulatory agencies with the requisite expertise to ensure compliance of their licensees with the MLPA. At the time of the Mutual Evaluation, the responsibility for regulating money remitters for compliance with the MLPA still resided with the ONDCP.

ECCB

604. At the time of the Mutual Evaluation, the ECCB's bank supervision department had eighteen (18) staff members responsible for implementing both the off-site surveillance and on-site inspection programs for thirty-nine (39) institutions in the OECS. The staff of the ECCB is required to maintain high ethical and professional standards and take an oath of confidentiality. All members of staff have either first or second degree qualifications in accounting or finance related studies and two (2) have obtained ACAMS certification. The ECCB has an extensive training programme which includes AML/CFT training for all members of staff of the Supervision Department. The ECCB believes that the present staff complement is adequate to meet current supervisory responsibilities. As already mentioned, the ECCB is the Regional Central Bank for the OECS established in 1983 under the Eastern Caribbean Central Bank Agreement Act. The ECCB has been able to function with autonomy, free from undue political or other influence in its operations.

FSRC

605. At the time of the Mutual Evaluation the FSRC had a staff complement of forty-six (46), with five (5) members of staff under the Supervisor of International Banks and Trust Corporations/Superintendent of Insurance to carry out the supervisory regime for twenty-four (24) international financial institutions. The minimum qualification for the professional staff is a first degree in accounting, finance or economic related studies. Staff is required to maintain high ethical and professional standards. Section 244(1a) of the IBCA imposes an obligation of confidentiality on all employees of the FSRC. The FSRC has been very active in providing training to its employees. In addition to attending training programmes, they are actively encouraged to acquire professional certifications e.g. ACAMS, which are funded by the FSRC. Currently there are three (3) members of staff with ACAMS qualifications. The FSRC is independently funded from licensing and examination fees and has complete autonomy in its operations.

Registrar of Insurance

606. The Office of the Registrar of Insurance has eight (8) members of staff, all of whom including the Registrar participate in on-site examinations of registered insurers. All members of staff are employees of the civil service assigned to the Office of the Registrar

within the Ministry of Finance. The Registrar has no control over the hiring of staff which is handled by the relevant government agency. The Registrar is the only member of staff with a university degree. The staff of the Registrar of Insurance has received specialized training in insurance regulation including AML/CFT from U.S. Government experts. The Ministry of Finance has final approval over the training requests of the Registrar.

Registrar of Co-operative Societies

607. The Registrar of Co-operative Societies has eleven (11) employees consisting of four (4) professional and seven (7) administrative members of staff. Professional members of staff have first degrees in business or accounting related studies. The Registrar of Co-operative Societies as a department within the Ministry of Finance is in a similar situation to that of the Registrar of insurance with regard to the hiring of new employees and training. Qualifications for new employees are forwarded to the relevant government agency for hiring. Training requests have to be approved by the Ministry of Finance. Employees have received extensive AML/CFT training including seminars with the ONDCP and the FSRC. ACAMS certification is being pursued by two (2) employees.

Recommendation 29 & 17 – Authorities Powers and Sanctions

ECCB

608. The ECCB has adequate powers under the BA to monitor and ensure compliance by its licensees with requirements to combat money laundering and terrorist financing. Section 23 of the BA requires financial institutions to furnish the ECCB with such information and data as the ECCB may require for the proper discharge of its functions and responsibilities. This provision enables the ECCB to carry out its off-site surveillance of licensees by requesting relevant data and information on a scheduled basis.

609. Section 22 of the BA gives the ECCB the power to examine or cause an examination to be made of each licensed financial institution whenever, in its judgment, such an examination is necessary in order to determine that the financial institution is in a sound financial condition and that the requirements of the Act are being complied with. This section also covers violation of any law, regulation or guidelines issued by the ECCB and to which the institution or person is subject.

610. On-site AML/CFT inspections involve reviewing all AML/CFT policies and procedures, assessment of compliance function and adequacy of AML/CFT internal controls and audit. Transaction sampling of KYC, record keeping and reporting procedures is carried out. Staff AML/CFT training programmes are also reviewed.

611. Sections 20 and 21 of the BA grants the ECCB the necessary powers to inspect and request records, documents or information relevant to monitoring compliance with the local legislation and the FATF recommendations. Section 21(1) of the BA requires a licensed financial institution "to produce for the inspection of any examiner appointed by the Central Bank at such times as the examiner specifies all books, minutes, accounts, cash, securities documents and vouchers relating to its business…." Section 21(2) makes it an offence for a financial institution to default in providing the requested information. The penalty for failure to produce records requested is, under Section 21(2) of the BA, $50,000 and in the case of a continuing offence a further penalty of $1,000 for each day on which the offence is continued after conviction thereof."

612. The ECCB's powers of enforcement are stipulated in section 22 of the BA. If in the opinion of the ECCB, an on-site examination reveals that a financial institution or any affiliate, director, officer, employee or significant shareholder is:

a) Engaging in unsafe or unsound practices
b) Violating any law, regulations or guidelines issued by the ECCB
c) The ECCB has reasonable cause to believe that the practices or violations referred to above are likely to occur

The ECCB can take one or more of the following measures:

i. issue a written warning
ii. conclude a written agreement providing for a programme of remedial action
iii. issue a cease and desist order for the practices or violations
iv. issue such directions as considered necessary in relation to the management of the institution

If the above measures do not produce the desired result, the ECCB can recommend to the Minister varying the conditions of a licence or revoking it altogether. While the enforcement actions are not specifically addressed to AML/CFT non-compliance issues, it is the opinion of the ECCB that these will either be unsafe and unsound practices or violations of law.

FSRC

613. Section 259 of the IBCA requires the FSRC to examine the affairs of every bank, trust or insurance corporation at least once a year. Regulation 20 of the IBCR 1998 No 41 states that "a licensed institution shall be subject to onsite examinations by the Commission at its head office, its local office, and any other office deemed appropriate by the Commission at least once a year to ensure that the licensed institution is in compliance with the IBCA, the MLPA, the PTA and any Regulations made under those Acts".

614. On-site inspections involve procedures similar to those described for the ECCB. Section 260 of the IBCA mandates a corporation to present "all books, minutes, cash, securities, vouchers, customer identification, customer account and transaction records, and all other documentation and records relating to its assets, liabilities and business generally or to any bank, trust or insurance activity, and to give the examiner such information concerning its affairs, business and activities as the examiner requests of it."

615. If the corporation fails to produce the documents, the supervisor may seek a Court order to compel the production of the documents. If the corporation fails to abide by the order of the Court, then that refusal would constitute grounds for the FSRC board to revoke the corporation's licence. In addition, the FSRC may also impose an administrative penalty of US$10,000(section 359A – IBC Act).

616. If an examination reveals that the corporation is carrying on business in an unlawful manner or is in unsound financial condition, the FSRC can under section 261 of the IBCA require that appropriate remedial measures be taken or appoint a person to advise the corporation on the action to be taken to remedy the situation. If the appropriate remedial action is not taken, the FSRC can revoke the licence of the corporation under section 236 of the IBCA.

Registrar of Insurance

617. Under section 39 of the IA, the Registrar of Insurance can demand from a registered insurer any document or information relating to any matter connected with the business or

transactions. Section 42 of the IA empowers the Registrar of Insurance to investigate the affairs of any insurer. These provisions allow the Registrar of Insurance to monitor registered insurers through submitted information and to carry out on-site inspections. There are no provisions in the IA for remedial or enforcement actions as contemplated by the FATF standards.

Registrar of Co-operative Societies

618. Section 18 of the CSA grants the Registrar of Co-operative Societies access to records of a registered co-operative society. Section 180 of the CSA permits the Registrar on his own motion to make an examination of the books and affairs of any society. Section 20 empowers the Registrar to suspend or revoke the registration of a society for non-compliance with provisions of the Act. While the above provisions allow for off-site monitoring and on-site examinations, enforcement action is limited to suspension of registration and eventual revocation if necessary.

619. Sanctions for failure to comply with AML/CFT requirements are set out in the MLPA, MLPR and the PTA. Some of the offences stipulated in the MLPA include money laundering, tipping-off, falsification of documents, opening of false accounts, failure to comply with recording keeping, reporting and training requirements, and failure to comply with instructions and guidelines of the Supervisory Authority. Penalties in the MLPA consist of fines and imprisonment which can be imposed separately or combined and with discretion within maximum limits. Fines range from EC $1,000,000 to those not exceeding EC $20,000. Terms of imprisonment range from 7 years to those not exceeding 6 months.

620. The MLPR sets out requirements for identification, record-keeping and internal reporting procedures. There are also obligations concerning systems and training to prevent money laundering and the use of disclosed information. Failure to comply with any of the requirements in the MLPR is an offence liable to imprisonment for a term of 2 years or a fine not exceeding EC $20,000 or both.

621. Offences stipulated in the PTA include but are not limited to the prohibition of terrorism, terrorist financing, money laundering, conspiracy, solicitation, promotion and facilitation of terrorism. Penalties range from imprisonment for terms not exceeding 25 years to terms not exceeding five (5) years.

622. All of the above penalties are criminal and can only be imposed by a Court of law via prosecution by the DPP. With regard to whether the penalties are effective, proportionate and dissuasive, it is noted that only one penalty which while discretionary in part has been imposed for failure to comply with any of the requirements of the MLPR. Additionally, some of the fines that have been imposed in the MLPA for financial institutions in particular fines not exceeding EC $20,000 or EC $50,000 cannot be considered dissuasive given the low amounts. This concern is pertinent to the penalty of a fine not exceeding EC $20,000 for failure of a financial institution to comply with the guidelines and training requirements of the Supervisory Authority.

623. Regulation 3(7) of the MLPR makes specific provision for sanctions in relation to financial institutions to be also applicable to their directors and senior management for failure to comply with the requirements in the MLPR. Section 4 of the MLPA makes a similar provision but only in relation to the offence of money laundering. There are no provisions for the sanctions of other offences in the MLPA to be applicable to both financial institutions and their directors and senior management. Similarly the PTA has no provisions to meet this requirement.

624. The sanctions directly applicable for failure to comply with national AML/CFT requirements as described above are not broad and proportionate as required by criterion 17.4. Sanctions of this type can only be indirectly applied by supervisory authorities under general safety and soundness provisions in their relevant legislation. Under section 22 of the BA, if the ECCB is of the opinion, after an on-site examination, that a financial institution is engaging in unsafe and unsound practices, it can implement measures similar to the types of sanctions noted in criterion 17.4. The ECCB advised that five (5) institutions had been subject to MOUs and Letters of Commitments (LOC) as a result of AML/CFT on-site examinations.

625. Under section 261 of the IBCA, the FSRC has the power to require a corporation to take remedial action if it is of the opinion that an examination of a corporation indicates that its business is being conducted in an unlawful manner or is in unsound financial condition. This provision, while allowing the FSRC general leeway with regard to the imposition of remedial conditions, is not specific to AML/CFT. Unlawful AML/CFT breaches will come under the MLPA, and the FSRC advised that in such instances it will inform the ONDCP for suitable action.

626. The Registrar of Insurance and the Registrar of Co-operative Societies can only apply penalties specific to non-compliance with provisions of their governing statutes.

Recommendation 23* –*Market entry

627. Section 17 of the MLPA provides a general prohibition against persons who have been convicted of an offence punishable by a term of imprisonment for at least twelve months from being eligible or licensed to carry on the business of a financial institution. The Act also specifies that it is immaterial whether or not the offence took place in Antigua and Barbuda or elsewhere.

ECCB

628. Licensing provisions under section 5 of the BA require the ECCB to ascertain whether the proposed directors and persons who constitute the management of the financial institution are fit and proper. The criteria for fit and proper are set out in section 26 of the BA. The criteria require the consideration of whether an individual has –

- Committed an offence involving fraud or other dishonesty or disreputable conduct,
- Contravened any provision against dishonesty, incompetence or malpractice in the provision of banking, insurance, investment or other financial services or the management of companies,
- Engaged in any business practices appearing to be deceitful or oppressive or otherwise improper,
- An employment record which leads to the belief that the person carried out an act of impropriety in handling his employer's business
- Engaged in or associated with business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment
- Engaged in any act constituting disreputable conduct.

629. In addition to the above, the ECCB assesses applications for domestic banking licences by conducting due diligence checks on directors, managers and significant shareholders of

applicants which includes ascertaining their financial condition and history, character of their business, obtaining police clearance certificates on each director, manager and significant shareholder and checking whether the applicant has been involved with a financial institution that had its licence revoked. As a result of this process, recommendations are made to the Minister of Finance as to whether a licence should be approved.

630. While the above requirements deal with the licensing of domestic financial institutions, there are no provisions in the BA for the ECCB to approve changes in directors, management or significant shareholding of a licensed financial institution. There are requirements in section 27 for the termination of a director or manager on specific grounds.

FSRC

631. Sections 229 and 232 of the IBCA require that the directors, officers, shareholders and promoters of the applicants for international banking, insurance and trust corporation licences undergo due diligence investigations and inquiries. The investigation may focus on *inter alia*:

- The financial status and history of the applicant corporation and any of its directors, affiliates and associates or of the applicant and any proposed affiliates and associates of the intended corporation;
- The character and experience of the directors or proposed directors of the corporation or intended corporation; and
- The adequacy of its capital for the purpose of the trade or business it intends to carry on.

632. The FSRC advised that the due diligence carried out in the licensing phase is extensive with outside reputable firms being engaged to do background checks on all directors, managers and shareholders. Any doubts about any individual being fit and proper can be the basis for not approving a licence.

633. Subsequent to licensing, regulation 10 of the IBCR 1998 No. 41 prohibits a licensed institution from making a change to its directors or the direct or indirect, legal or beneficial owner of five percent (5%) or more of a class of shares in the institution, without prior approval from the Authority. Applications for changes to directors or shareholders are subjected to similar extensive due diligence as obtains for licensing.

634. Additionally, section 65(1) of the IBCA empowers the FSRC to direct a corporation to effect changes in the composition of the corporation's board of directors and management if the FSRC considers that such a change is required to ensure that directors and officers of the corporation are fit and proper persons and have the skills commensurate with the size and nature of the activities of the corporation.

Registrar of Insurance

635. There are no provisions under the present insurance law, the IA requiring the Registrar of Insurance to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to register to carry on insurance business. Additionally, there is no provision for a registered insurer to obtain the approval of the Registrar of Insurance for changes in its shareholding, directorship or management. The Registrar did advise that fit and proper criteria are applied when processing applications for licences.

Registrar of Co-operative Societies

636. There are no provisions in the CSA for the use of fit and proper criteria in the assessing of applications for registration under the CSA. The Registrar of Co-operative Societies advised that due diligence was conducted on the proposed management of credit unions. While the Registrar has no power of approval over the management of a credit union, he will advise the credit union of concerns about proposed management appointees.

637. At the date of the on-site visit persons providing a money or value transfer service were required to be registered with the Commissioner of Inland Revenue. There is a draft Money Services Bill due to go before Parliament, which will require all persons offering a money transfer service to obtain a licence to conduct operations from the FSRC. There are no other financial institutions which are not licensed or registered and subject to supervision or oversight for AML/CFT purposes.

Recommendation 23& 32 –Ongoing supervision and monitoring

ECCB

638. The ECCB has implemented a supervisory regime in accordance with the Basel Core Principles. Beginning with the licensing process, the ECCB subjects all applicants to extensive due diligence and assesses proposed business and financial plans for feasibility and financial viability. Supervision is done on a risk-based approach combining off-site surveillance and on-site examination.

639. Off-site surveillance consists of financial data and other relevant reports on financial institution operations submitted by licensees on determined schedules. These reports form the basis for assessing the relative risk of each licensee and thereby prioritising the institutions by risk as a preliminary to determining the on-site examination cycle. Part of surveillance includes prudential meetings with institutions to discuss and clarify any issues of concern.

640. The frequency of on-site examinations is based on off-site risk assessment. Institutions ranked with the greatest risk are subject to more frequent examinations than those with low risk. The inspection cycle for low risk institutions is no longer than two (2) years. Inspections can be full scope covering all operations or targeted focussing on identified problems.

641. Actual on-site procedures for AML/CFT include transaction testing of KYC implementation, assessment of the adequacy of internal controls, review of systems to identify monitor and report unusual and or suspicious activity including source of funds declarations reports, ongoing training programmes for staff.

642. Results from the on-site examinations provide feedback into the risk assessment process and can form the basis for follow-up examinations to assess implementation of recommended remedial action.

643. At the time of the on-site visit, the ECCB could not share information on individual banks with other regulatory bodies without a Memorandum of Understanding.

FSRC

644. Regulatory and supervisory measures have been put in place to ensure that the requirements of Basel Core Principles are met. These cover licensing and structure and risk management techniques similar to those outlined above with the ECCB. The banks, where they are part of

financial groups, operate in a parallel fashion and hence the principles of consolidated supervision in the classical sense cannot be applied. However, efforts are made to maintain contact with the other country supervisors and to exchange information for mitigation of relevant risks. This is done through a formal Memorandum of Understanding (MOU) or other less formal means like letters and personal contact etc.

Registrar of Insurance

645. The powers of the Registrar of Insurance under the present IA are limited with regard to implementing the Basel Core Principles. Licensing requirements do not include fit and proper criteria. The Registrar has advised that on-site examinations are scheduled on the basis of a risk assessment of licensees. Consolidated supervision is not possible since the IA does not allow for the sharing of information with other supervisory authorities.

646. Money transmission services are listed as financial institutions in the First Schedule to the MLPA. They are therefore subject to compliance with national requirements to combat money laundering and terrorist financing. The Supervisory Authority has done visits to money transmission services to ascertain the level of compliance with AML/CFT requirements. No information on the number or results of these visits was provided to the Assessment Team.

Statistics

647. The Central Bank maintains documentation on the on-site examinations conducted at financial institutions. All institutions were subjected to AML examinations and follow-up examinations. To monitor the implementation of remedial action to address deficiencies identified, the Central Bank maintains logs. To date institutions have mostly implemented recommended action. One of the issues that remain outstanding is the automation of systems for identifying structuring and layering. No information on the total number of all types of inspection carried out by the ECCB on its licensees in Antigua and Barbuda for the last four (4) years was made available to the Assessment Team.

Table 23: FSRC On-site Examinations

No of examinations	2004	2005	2006
Banks	16	16	15
Trust	1	1	1
Insurance	0	1	1
Total	**17**	**18**	**17**

648. The above figures show that the FSRC has been able to inspect all of its licensed financial corporations as required under the IBCA for 2004 and 2005. The figure for 2006 of seventeen (17), however only accounts for approximately 75% of the twenty-four (24) licensed financial corporations.

649. The Registrar of Insurance advised that fifteen (15) on-site examinations which included AML/CFT were conducted during the years 2004 to 2005 and eight (8) examinations have been carried out for the years 2006 to 2007 at the time of the Mutual Evaluation. While the figures for the first period compares favourably with an overall number of twenty (20) insurance entities, the most recent figure of eight (8) suggests a decline.

650. The figures for the Department of Co-operatives reveal that the Department has been able to carry out on site examinations on all of its registered societies.

Table 24: Department of Co-operatives – On-site Examinations

Type of examination	2004	2005	2006	2007
Annual	5	5	5	4
Follow -up	2	3	3	0
AML inspections	0	5	5	3
Total	**7**	**13**	**13**	**7**

Recommendation 25* –*Guidelines (Guidance for financial institutions other than on STRs)

651. In 2002 the ONDCP issued guidelines pursuant to section 11 (vii) of the MLPA that sought to outline the requirements of Antigua and Barbuda's laws against money laundering and to assist financial institutions in complying with those laws. There have since been other amendments including the 2006 amendment which provided guidance to financial institutions on measures detailed in the PTA.

652. The ONDCP guidelines have outlined the kind of transactions that may be related to money laundering. They have been supplemented with Directives, some of which have been industry specific. Some of the issues covered in ONDCP Directives include:

- Specimen STR form that sets out the information that should be recorded when submitting STRs; and
- Specimen Terrorist Property Report form that specifies the information that must be submitted to the Supervisory Authority by financial institutions when submitting reports pursuant to the PTA.

653. The FSRC has also issued the CDDB guidelines that relate specifically to financial institutions and DNFBPs licensed as IBCs. The FSRC guidelines detail a comprehensive list of measures that IBCs could take to ensure that their AML/CFT measures are effective.

3.10.2 Recommendations and Comments

654. *Recommendation 17:* The sanction applicable for non- compliance of the ML/FTG should be amended to be dissuasive

655. Sanctions under the PTA and the MLPA that are applicable to financial institutions should also be applicable to their directors and senior management.

656. The range of AML/CFT sanctions should be broad and proportionate in accordance with FATF requirements.

657. *Recommendation 23:* The supervisory authorities should be designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements.

658. The BA should be amended to give the ECCB the power to approve changes in directors, management or significant shareholder of a licensed financial institution.

659. The Registrar of Insurance should be required to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business.

660. Registered insurers should be required to obtain the approval of the Registrar of Insurance for changes in shareholding, directorship or management.

661. The Registrar of Co-operative Societies should be required to use fit and proper criteria in assessing applications for registration.

662. The Registrar of Co-operative Societies should have power of approval over the management of a society.

663. Money value transfer service operators should be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

664. *Recommendation 29*: The Registrar of Insurance and the Registrar of Co-operative Societies should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• **Sanctions in the MLPA for breaches of the guidelines are not dissuasive.** • **Sanctions under the PTA and the MLPA except for money laundering are not applicable to the directors and senior management of legal persons.** • **The range of AML/CFT sanctions in enacted legislation is not broad and proportionate as required by FATF standards.**
R.23	**NC**	• **The supervisory authorities have not been designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements.** • **No provisions in the BA for the ECCB to approve changes in directors, management or significant shareholders of a licensed financial institution.** • **No provisions for the Registrar of Insurance to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business.** • **No provision for a registered insurer to obtain the approval of the Registrar of Insurance for changes in its shareholding, directorship or management.** • **No provision for the Registrar of Co-operative Societies to use fit and proper criteria in assessing applications for registration.** • **The Registrar of Co-operative Societies has no power of approval over the management of a society.** • **Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.**
R.25	**PC**	**See factor in section 3.7**

R.29	**PC**	• **Neither the Registrar of Insurance nor the Registrar of Co-operative Societies has adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.**

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

665. MVT service operators are registered with the Commissioner of Inland Revenue. Under an agreement between the Commissioner of Inland Revenue and the Supervisory Authority, prior to registration, the Commissioner is supposed to forward a copy of the application for registration to the Supervisory Authority/ONDCP for due diligence purposes in respect of the owners and proposed management of the business. Registration awaits the completion of the due diligence process.

666. As previously stated, there is a draft money services law which is expected to come before Parliament. Under the proposed legislation a money services corporation will be a corporation registered under the Companies Act 1995, and licensed and supervised by the FSRC. The full ambit of AML/CFT compliance would apply.

667. Money transmission services are listed as financial institutions in the First Schedule to the MLPA, and as such are subject to the AML/CFT regime. Deficiencies identified in the AML/CFT regime with regard to Recommendations 4-11, 13-15, 21-23 and SR VII in the relevant section of this Report are also applicable to MVT service operators.

668. By virtue of Section 11(iii) of the MLPA, money transmission services are subject to inspection by the Supervisory Authority. Inspection visits have been carried out by officers of the ONDCP. No information has been provided to the Assessment Team about the number of inspections of money transmission services that the Supervisory Authority has carried out in the last four (4) years or the results of these inspections. The Assessment Team is therefore unable to evaluate the effectiveness of the present monitoring system.

669. There is no requirement for registered MVT service providers to maintain a current list of their agents. The Supervisory Authority has a list of the subagents of MVTs. For the most part, MVT service operators that operate in the jurisdiction are agents of established MVT operators. They operate in Antigua and Barbuda through agency relationships.

670. Sanctions in the MLPA are applicable to MVT operators since they are listed as financial institutions in First Schedule. These sanctions are not applicable to all of the requirements of SR VI, in particular failure to register or licence as a MVT service operator.

3.11.2 Recommendations and Comments

671. Registered MVT service operators should be required to maintain a current list of agents which must be available to the designated competent authority.

672. Sanctions should be applicable to all of the criteria of SRVI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating

SR.VI	**NC**	• **No requirement for registered MVT service operators to maintain a current list of agents.** • **Unable to assess the effectiveness of current monitoring and compliance system for MVT service operators due to lack of information.** • **Sanctions are not applicable to all criteria of SR VI .i.e. failure to licence or register as a MVT service provider.** • **Deficiencies in Recs. 4-11, 13-15, 21-23, and SR VII are also applicable to MVT operators.**

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

673. The First Schedule to the MLPA sets out the financial institutions which are subject to AML obligations. As stated previously, section 2(1) of the MLPA defines a financial institution as any person whose regular occupation or business is, for the account of that person, the carrying on of any activity listed in the First Schedule to the Act. The First Schedule lists the financial institutions that fall under the ambit of DNFBPs as follows:

- Casinos
- Internet gambling
- Sports betting
- Dealers in jewelry, precious metals and art
- Real property business
- Trust business

The list of financial institutions in the First Schedule has been included in Appendix C of the MLG.

674. These listed DNFBPs are therefore *prima facie* subject to the AML/CFT requirements as well as customer due diligence and record keeping standards.

675. Lawyers and notaries, other independent legal professionals and accountants are not listed under the First Schedule or Appendix C of the ML/FTG. These entities do not therefore come within the AML regime of the MLPA. It must also be noted that while trust business is listed as a regulated DNFBP, it does not encompass the full range of company service providers as contemplated by the FATF designation. Thus, except where listed DNFBPs offer services which are customarily rendered by company service providers, the activities of company service providers will not be caught by the MLPA AML regime. Such services include:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

676. The Minister responsible for national drug control and security may by an order published in the Gazette amend the First Schedule to include any other financial activity. Consideration should be given to amending the First Schedule to include the DNFBPs which currently have not been listed. Of note is that at paragraph (vi) of the introduction to the ML/FTG it is acknowledged that "the sophisticated launderer involves many other unwitting accomplices". Accountants and attorneys-at-law, company formation agents, antique dealers, car dealers and others selling high value commodities and luxury goods have been included as unwitting accomplices.

677. At the end of 2006, there were forty-one (41) gaming companies, twenty-four (24) sportbook/virtual casinos, two (2) virtual casinos, fifteen (15) sports book companies and seven (7) land based casinos. Assets of the businesses engaged in internet gambling totalled US$820 million with revenues of US$1,086 million for 2006. No information was provided to the Team of Assessors on the numbers of dealers in jewellery, precious metals and art and real estate agents.

Recommendation 5

Casinos, Internet Gambling and Sports Betting

678. The identification procedures under section 2 of the ML/FTG in respect of deposit taking institutions are applicable to casinos, Internet gambling and sports betting by virtue of their listing in the First Schedule to the MLPA and Appendix C of the ML/FTG. These general customer due diligence requirements have already been discussed under section 3 of this Report. However, at paragraph 2.2.1 of the ML/FTG, it is recognised that there are a number of differences as financial institutions which justify the creation of special guidelines or the inapplicability of some aspects of the ML/FTG guidelines for the casinos, Internet gaming and sports betting.

679. Internet gaming operations are subject to the provisions of the MLPA, MLPR and the Interactive Gaming and Interactive Wagering Regulations (IGIWR). Guidelines which relate to one-off transactions and linked one-off transactions do not apply to Internet gaming on account that all business transacted between a player and a licence holder must be conducted via a player account.

680. Regulation 148(a) of the IGIWR prohibits payment in excess of US $5,000 to be made from a player's account unless satisfactory evidence of the player's age, place of residence and identity has been provided. Satisfactory evidence of age, residence and identity may consist of a photocopy of a government issued document such as a passport. Additionally, reliance is placed on credit checks and banking references which do not produce information which is inconsistent with any other particulars supplied by the player. Some Internet gaming operators indicated that they engage independent databases to confirm the information supplied by players.

681. The majority of the casino and sports betting operators interviewed indicated that they do not rely solely on the due diligence conducted by introducers or intermediaries. The general obligation under regulation 4(5) of the MLPR only requires obtaining written assurance from the introducer/third party that the customer's identity has been recorded under procedures maintained by the introducer/third party.

682. If incomplete or unsatisfactory evidence of identity is provided, no payment should be made from the player's account. The matter should be referred to the Directorate of Gaming. No guidance is provided in this situation with regard to reducing the possibility of tipping-off.

683. CDD obligations are more stringently applied in respect of casinos and Internet gaming than with other listed DNFBPs. Also, while land based casinos and betting operations pursuant to the BGA are classified as financial institutions, they are not regulated by the FSRC and CDD obligations in respect of these operations are not applied consistently.

684. The FSRC is given on-line access to at least one (1) sports betting operation, allowing the FSRC to monitor the computerised monitoring system for identifying suspicious activity. In this way the FSRC is able to continuously monitor the suspicious reporting system in this particular business.

Recommendation 6

685. The requirements for CDD measures with regard to PEPs are stipulated in the MLPR and the ML/FTG dealt with in section 3.2 of this Report and are applicable to listed DNFBPs

Recommendation 8

686. With respect to policies or measures to address the misuse of technological developments in money laundering or terrorist financing schemes, there is statutory reference in relation to interactive gaming and wagering. Regulation 91 of the IGIWR provides that a licence holder must have its primary server located in Antigua and Barbuda. The primary server must contain as a minimum all information relating to all players, which includes game history, financial history and current liabilities. The computer system used for the conduct of gaming activities must be located physically in a secure data centre.

687. Regulation 100 of the IGIWR expressly recognises the potential for money laundering risk to all forms of gaming. Operators are thereby required to use a computerised monitoring system which has been approved by the FSRC. An approved system should be able to detect potential money laundering activity by analysing the real-time transactions and user profiles. It should also be capable of associating those transactions and user profiles with known and emerging risk profiles.

688. The regulation provides examples of activities which could constitute misuse of technological developments, namely:

- detecting a high dollar amount or a high volume of transactions from a narrow range of Internet Protocol ("IP") addresses;
- detecting a high dollar amount or a high volume of transactions from a narrow range of Bank Identification Numbers ("BIN");
- detecting usual betting patterns associated with money laundering; and
- detecting attempts to evade thresholds.

689. The system must alert the licence holder, who must immediately notify the FSRC in order to facilitate a timely response. An independent history of the suspicious gaming activities must be kept by the licence holder to allow investigation of potential money laundering. Given the recent enactment of the IGIWR, there is no indication as to the effectiveness of the system.

690. The provisions under regulation 100 of the IGIWR are complementary to the statutory CDD obligations set out in the MLPA.

691. Interactive gaming and wagering companies are mandated by section 101 of the IGIWR to display on their entry screens a link to all additional sites or a list of all the Uniform Resource Locators (URLs) with which there exist a storefront arrangement. The relationship between the storefront URL and that of the main licence holder must be displayed clearly on the storefront's screen. Interactive gaming and interactive wagering companies are further required to disclose a licensed gaming or interactive wagering company that has acquired another (whether licensed to conduct business in Antigua and Barbuda or not) on its entry screen.

692. CDD measures for non-face-to-face Internet gaming and wagering customers are outlined in paragraphs 39 and 40 of the CDDGIBC. Internet gaming and wagering companies should assess proactively various risks posed by emerging technologies and design customer identification procedures with due regard to such risks. In accepting business from non-face-to-face customers, they may require additional certification documents, third party introduction from a reputable source, or that the first payment to the customer is carried out through an account in the customer's name with a bank which is subject to similar CDD standards exacted in Antigua and Barbuda.

693. While real estate agents are subject to the same CDD requirements as other financial institutions in relation to non-face-to-face customers, in practice, there is little customer verification. There appears to be no verification of customers in respect of transactions by dealers in precious metals, art or jewellery.

Recommendation 9

694. Requirements for introduced business are set out in the MLPR, the ML/FTG and the CDDGIBC as detailed in section 3.3 of this Report. As indicated above, the majority of the casino and sports betting operators interviewed indicated that they do not rely solely on the due diligence conducted by introducers or intermediaries. Also, they may rely on independent databases, credit checks and banking references to confirm the information provided by players.

Recommendation 10

695. For DFNBPs, the general provision under section 12 of the MLPA relative to the retention of financial records applies. DNFBPs, like other financial institutions, are required to retain or retain a copy of each customer generated financial transaction document in its original form for a period of six (6) years (as stated in section 12B(1) of the MLPA).

696. Where the DNFBP is required by law to release an original of a customer generated financial document before the end of the minimum retention period of six (6) years, it must retain a complete copy of the document until the expiration of the minimum retention period or the return of the document, whichever occurs first. The DNFBP must maintain a register of the documents released.

697. The records which are to be kept are specified in regulation 5 of the MLPR, namely, evidence of identity for due diligence procedures and information as to where that evidence may be obtained. Also, for DNFBPs (with the exception of casinos) a record containing details relating to all transactions carried out by the business person in the course of relevant business must be kept.

698. In the case of casinos, the record should contain details relating to any transaction carried out by a person who carries on relevant business, and where the transaction involves the payment of US$3,000 or more or its equivalent in Eastern Caribbean currency. If there is a suspicion of money laundering or financing of terrorism, the casino is required to keep details relating to the transaction regardless of the amount involved.

699. Pursuant to regulation 179 of the IGIWR, a licence holder must keep accounting records that correctly record and explain the transactions and financial position for the licence holder's operations. The accounting records must be kept in a manner that allows true and fair financial statements and accounts to be prepared from time to time and the financial statements and accounts to be audited in a convenient and proper manner.

700. Regulation 175 of the IGIWR provides guidance on the keeping of gaming records. The FSRC may by written notice to a licence holder, *inter alia*, approve a place for the keeping of the licence holder's gaming records, approve the keeping of information contained in a gaming or betting record in a manner different from the manner in which the information was kept when the record was used by the licence holder or the authorised Client Service Provider and require the licence holder to keep records for a longer period than specified in other legislation.

701. If the DNFBP fails to retain the records as required, it commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars ($20,000). However, for those DNFBPs such as real estate agencies which are not closely monitored, it is unlikely that their failure to retain adequate records will be easily detected.

Recommendation 11 and Recommendation 17

702. The requirements for the monitoring of complex, unusual or large business transactions are set out in section 13 of the MLPA and are therefore applicable to listed DNFBPs. These requirements are discussed in section 3.6 of this Report.

4.1.2 Recommendations and Comments

703. Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this Report are also applicable to listed DNFBPs. Implementation of the specific recommendations in the relevant sections of this Report will also apply to listed DNFBPs.

704. Lawyers and notaries, other independent legal professionals, accountants and company service providers should be brought under the ambit of the AML/CFT regime.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• **Lawyers and notaries, other independent legal professionals, accountants and company service providers are not considered financial institutions under the MLPA, and they are therefore outside the ambit of the AML/CFT regime.** • **Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this Report are also applicable to listed DNFBPs.**

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

Recommendation 13

705. DNFBPs which are listed in the First Schedule to the MLPA are subject to requirements of R.13, R.14, R.15 and R.21. The details of compliance with the requirements of R.13, R.14, R.15 and R.21 as outlined in sections 3.6, 3.7 and 3.8 of this Report are also applicable to DNFBPs.

706. Antigua and Barbuda does not require lawyers and notaries, other independent legal professionals and accountants to send suspicious transaction reports to the appropriate authority as they are not listed under the First Schedule.

Recommendation 15

707. DNFBPs are required to follow the guidelines on internal controls, policies and procedures under section 1 of the ML/FTG. The Examiners noted that the level of compliance with the guidelines varied widely amongst DNFBPs. Compliance was usually high among Internet casino, gaming and sports betting facilities. Real estate agents appear to be aware of AML/CFT issues generally, but they are not familiar with the requirements of the ML/FTG. It is doubtful whether dealers in precious metals, jewellery and art are mindful of their obligations under the ML/FTG.

708. At paragraph 1.0 of the ML/FTG, the DNFBPs are recommended to appoint a Compliance Officer who should serve as the central point of contact with the Supervisory Authority. The financial institution's ability to appoint a Compliance Officer would clearly depend on factors such as the size of the institution and the resources available.

709. In a number of the DNFBPs interviewed, the Compliance Officer fulfils other functions within the institution, often an accounting or audit function. Where this occurs, the independence of the audit function to test compliance with the internal procedures, policies and control is compromised.

710. The Examiners noted that with respect to casinos, Internet gaming and sports betting, an attempt is made to screen employees when hiring to ensure high standards. The same could not be said of the majority of the other DNFBPs. AML/CFT concerns did not appear to play a prominent role in respect of hiring.

711. Ongoing employee training in AML/CFT initiatives, usually at all levels, takes place in casino, Internet gaming and sports betting facilities. Training is provided in-house and by the FSRC and the ONDCP. Very little training, if any, has been undergone by the staff of real estate agencies, pawning establishments and dealers in precious metals, art and jewellery.

4.2.2 Recommendations and Comments

712. The requirements for DNFBPs are the same as for all other financial institutions. The deficiencies identified with regard to specific recommendations are also applicable to DNFBPs. Implementation of specific recommendations in the relevant sections of this Report will also include DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating

R.16	**NC**	• **Deficiencies identified for financial institutions for R13, R14, R15 and R21 in sections 3.6.3, 3.7.3 and 3.8.3 of this Report are also applicable to DNFBPs.**

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

4.3.1 Description and Analysis

Recommendation 24

Interactive Gaming and Interactive Wagering

713. The Supervisory Authority is authorized to supervise and monitor compliance with AML/CFT obligations under the MLPA. The MLPA allows for the Supervisory Authority to have access to relevant information and records of financial institutions for monitoring. Sanctions are available in the MLPA for various offences. However, given the fact that the Supervisory Authority acts as the FIU, relevant supervisory agencies have assumed the responsibility for ensuring the compliance of their supervised entities with AML/CFT obligations. The Supervisory Authority has never formally designated any of the supervisory agencies with the responsibility for AML/CFT. In the case of Internet casinos, regulation 188(e) of the Interactive Gaming and Interactive Wagering Regulations requires examiners of the FSRC to have full regard to "the licence holder's compliance with the provisions of: (i) the Money Laundering Act and any regulations made thereunder; (ii) the Prevention of Terrorism Act and any Regulations made thereunder; and (iii) any guidelines and directions issued by the Board." The role of the designated authority responsible for the AML/CFT regulatory and supervisory regime has been undertaken by the FSRC. Under the IBCA and the IGIWR, the FSRC can monitor and sanction Internet casinos. As at the end of 2006, there were twenty- four (24) sport book/virtual casinos, forty-one (41) gaming companies, fifteen (15) sport book and two (2) virtual casinos. In addition, there were seven (7) land based casinos

714. All interactive gaming and interactive wagering companies must first be incorporated under the IBCA, posses a Certificate of Incorporation and a certificate of good standing before being granted a licence. An application for a licence is made in the prescribed form to the FSRC. The FSRC grants the licence if it is satisfied as to the suitability of the applicant, including its directors, partners and shareholders with five percent (5%) or more of the ownership or controlling interest in the company. Particular care is taken to identify and assess the natural person behind any beneficial ownership. In considering the suitability of the applicant, the FSRC takes into account, for example, the integrity of the applicant, his business reputation, sound current financial position and financial background, his technical expertise in conducting Internet gaming or wagering and his commitment to maintaining a physical presence in Antigua and Barbuda.

715. The FSRC may consider evidence that an applicant has been licensed to conduct gaming in another jurisdiction. It will satisfy itself that the applicant is committed to the prevention of money laundering, financing of terrorism and the detection of suspicious transactions, and that it can demonstrate game fairness and transparency.

716. Every licence holder or applicant for a licence is required by regulation 23 of the IGIWR to report material changes affecting the applicant or licence holder, for example, in the ownership or interest in the applicant or licence holder, in management and the scope of the licence holder's corporate business structure or operating structure. The material change report must be submitted in writing to the FSRC prior to any material change becoming effective.

717. An applicant is required to pay a non-refundable fee in the amount of fifteen thousand United States dollars (US$15,000) to cover the expenses of conducting due diligence investigations and assessment of the applicant. If the expenses exceed the initial deposit, the FSRC will notify the applicant in writing to require a further non-refundable deposit in the amount determined.

718. Pursuant to regulation 43 of the IGIWR, the FSRC may suspend or revoke a licence or assess a civil penalty against a licence holder who violates a regulation or an order of the FSRC. The civil penalty should not exceed five thousand United States dollars ($5,000) per day for each day the violation is continued.

719. Any person who serves as a key person in relation to the operations of the licence holder is required by regulation 62 to obtain a key person licence, which is renewable annually. A key person is any person who

- occupies or acts in a managerial position or supervisory capacity in relation to operations carried out by a licence holder;
- is in a position to control or exercise significant influence over the operations;
- is an Information Technology Director or has access or control over any component of the information security or information processing systems of a licence holder; or
- is a client service provider or equivalent person providing key services related to the operation of a licence holder's business.

720. A key person's licence may be suspended or revoked on grounds including improper conduct or conviction of the licence holder and contravention of a regulation or a condition of the licence.

721. Regulation 90 of the IGIWR prohibits a licence holder from conducting authorised gaming from premises outside Antigua and Barbuda, unless it is also operating outside the jurisdiction pursuant to laws of that other jurisdiction. The licence holder must disclose to the FSRC the existence of the other premises, and the FSRC must be satisfied with the business conducted from that jurisdiction.

722. The FSRC is empowered under Part IX of the IGIWR to investigate any licence holder or key person to determine the suitability of a licence holder to hold or continue to hold an interactive gaming or interactive wagering licence. The FSRC may request the licence holder or key person to provide information or documentation that the FSRC considers relevant to the investigation. The licence holder or the key person must comply with the request.

723. Regulation 162 of the IGIWR authorises the FSRC to monitor licence holders and key persons. A licence holder or a key person must at the request of the FSRC, do anything reasonably necessary to allow an investigation of the licence holder's or key person's operations.

724. Regulation 20(1) of the IBCR states that a licensed institution shall be subject to on-site examinations by the Commission at its head office, its local office, and any other office deemed appropriate by the Commission at least once a year to ensure that the licensed institution is in compliance with the IBCA, the MLPA, the PTA and any regulations made under those Acts. The interactive gaming and wagering sector in Antigua and Barbuda is regulated stringently. Land based casinos are subject to the AML/CFT requirements under the MLPA and MLPR. However, the regulatory regime is not as stringently monitored as the interactive facilities.

725. The Supervisory Authority under the MLPA is authorised to supervise and monitor compliance with the AML/CFT regime. Section 11 of the MLPA gives the Supervisory

Authority various powers, including the power to inspect records, to instruct financial institutions to take steps appropriate for an investigation, to create training standards and issue guidelines. The Supervisory Authority's power of sanction lies in instituting criminal proceedings relating to money laundering and the breach of requirements under the MLPA. The FSRC conducts examinations and has powers of sanction.

726. Regulation 188 of the IGIWR provides for the annual review of licence holders, having regard to the suitability of licence holders, compliance with the requirements of the FSRC, the MLPA and the PTA, the proper keeping of gaming and accounting records, the proper training of staff and the safety and soundness of the operations of the licence holders.

Land based Casinos and Sports betting

727. Licences in respect of land based casinos and sports betting operations are granted by the Minister of Finance pursuant to section 4 of the Gaming and Betting Act Cap 47 (GBA). Section 4 of the GBA states that the Minister of Finance may grant to any person a gaming licence and he may refuse to grant, or at any time for any reason, after giving to the holder of the gaming licence an opportunity of being heard, revoke a gaming licence issued under this Act and his decision revoking any gaming licence shall be final and no appeal shall lie from it to any Court. However, no provision has been made under the GBA for the regulation or monitoring of these operations save where the operations relate to the collection of gaming tax. The regulatory and supervisory body is the Supervisory Authority under the MLPA by virtue of the classification of casinos and sports betting as financial institutions. No information was provided to the Evaluation Team about the supervision of land based casinos by the Supervisory Authority.

728. While real estate agents, dealers in jewellery, precious metals and art are included in the First Schedule to the MLPA, there appears to be no measures in place to monitor and ensure compliance with AML/CFT obligations. These businesses are not formally licensed or regulated and there is no recognised body or association which can function as a self regulatory organisation for any of them. Under the MLPA, the Supervisory Authority is responsible for ensuring the compliance of these businesses. Section 11 of the MLPA gives the Supervisory Authority various powers, including power to inspect records, to instruct financial institutions to take steps appropriate for an investigation, to create training standards and issue guidelines. The Supervisory Authority's sanction power lies in instituting criminal proceedings relating to ML and the breach of requirements under the MLPA.

729. There is concern amongst some real estate agents that the sector is not well regulated. Purchasers do not have to engage the services of real estate agents to purchase land, and in this regard, any person may negotiate the sale of land.

730. With respect to the purchase of land by non-citizens, these persons are required to obtain a non-citizen landholding licence. These applications must be dealt with by an attorney. The applications are submitted to the Ministry of Agriculture, the Attorney General and the Cabinet for approval and then to the Governor General for signature. Real estate agents usually rely on the due diligence conducted by attorneys and the government officers involved in the vetting process.

731. The one real estate agent who was interviewed did advise that the Supervisory Authority had provided training for real estate agents and visited his offices to ask questions about measures in place for compliance with AML/CFT requirements. No information was provided to the Assessment Team as to the extent of any work done by the Supervisory Authority with regard to these businesses.

732. As already noted lawyers, notaries, other independent legal professionals and accountants are not included under the AML/CFT regime.

Recommendation 25

733. The ML/FTG were issued to assist financial institutions and certain DNFBPs (namely Internet casinos, real estate agents/real property business and dealers in jewellery, precious metals or art) to implement and comply with their respective AML/CFT requirements.

734. The Supervisory Authority also issues directives from time to time, which usually relate to amendment of forms or the implementation of a measure prescribed under the MLPA.

735. The FSRC has issued the CDD Guidelines of Interactive Gaming and Interactive Wagering Corporations (CDDGIGIWC) for companies who engage in internet gaming, internet casinos and sportsbooks to implement and comply with AML/CFT requirements.

736. The guidelines are updated periodically to keep abreast of developments and amendments to legislation in the AML/CFT regime. However, it is necessary that the CDDGIGIWC be updated to reflect the repeal of the IGIWR 2001 and the recent enactment of the IGIWR 2007[17].

737. The Examiners noted that the respective guidelines and directives were in practice not issued to all persons and companies in the sectors.

738. With respect to Associations and other professional bodies concerning accountants, attorneys and real estate agents, for example, the Examiners were not informed as to the publication of AML/CFT guidelines by these bodies locally. However, a number of professionals in Antigua and Barbuda are members of international professional bodies which regularly provide guidance on AML/CFT matters. It is uncertain whether the local professionals avail themselves of these publications.

4.3.2 Recommendations and Comments

739. Casinos, real estate agents, dealers in precious metals and stones should be subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.

740. The Supervisory Authority should ensure that respective guidelines and directives are issued to all persons and companies in the sectors.

4.3.3 Compliance with Recommendations 24 & 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• **Casinos, real estate agents, dealers in precious metals and stones are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.**
R.25	**PC**	• **The respective guidelines and directives are in practice not issued to all persons and companies in the sectors.** • **See factor in section 3.7.3**

[17] The FSRC - Gaming Division has since the onsite visit presented the Commission's Board of Directors with twenty-one (21) new guidelines addressing the fundamental changes in the IGIWR 2007. The Division of Gaming anticipates that the new guidelines will be issued to all gaming operators.

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

4.4.1 Description and Analysis

741. The only non-financial business and profession other than DNFBPs that Antigua and Barbuda has included in the list of financial institution activities subject to AML/CFT obligations is pawning. The Authorities advised that there are no known pawning services in the country.

742. There is no statutory requirement that DNFBPs which are not included in the First Schedule to the MLPA comply with AML/CFT obligations. For example, car dealerships, travel agents and dealers in high value and luxury goods are not targeted for AML/CFT compliance. Also, tax consultants and financial advisors who are not caught under the general company regime are likely to be excluded from the statutorily imposed AML/CFT obligations. The Authorities should consider conducting an assessment of non-financial businesses and professions other than DNFBPs to ascertain those at risk of being misused for money laundering or terrorist financing in Antigua and Barbuda with a view to including them under the AML/CFT regime.

743. Regulation 17 of the IBCR prohibits offshore banks from dealing with cash and bearer negotiable instruments.

744. The jurisdiction has a fairly well developed system that encourages the use of credit cards, debit cards and automated teller services. As a general rule, automated machines do not issue money in foreign currencies. The highest denomination bank note is the EC$100 note.

745. Measures have been put in place to ensure a secured automated transfer system. In discussions with financial institutions, most of them indicated that they provided Internet banking services. However, these were limited to account enquiries and transfers between the customer's own accounts. It is a condition for the grant of a licence issued by the FSRC that a licensee would not offer or provide any services on the Internet without approval of the Commission (section 235(4) of the IGIWR). Antigua and Barbuda has established a regime for the licensing and regulation of interactive gaming and interactive wagering. While this activity has its own inherent AML/CFT risks particularly in relation to its mode of delivery, the presence of such activity once well regulated and supervised can only serve to spur the use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.2 Recommendations and Comments

746. The Authorities should consider conducting an assessment of all non-financial businesses and professions other than DNFBPs to ascertain those at risk of being misused for money laundering or terrorist financing in Antigua and Barbuda with a view to including them under the AML/CFT regime. This recommendation does not affect the rating of Recommendation 20.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	**This Recommendation is fully observed.**

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

5.1.1 Description and Analysis

747. The laws of Antigua and Barbuda recognise a number of legal persons. The main entities which enjoy legal personality are limited liability companies, international business companies, partnerships and co-operatives. These legal entities must be registered in accordance with the legislation which governs the respective entities. At December 2006, there were approximately 2,000 registered companies on the companies' registry, of which 1,500 were operating.

Companies

748. In order to incorporate a company, sections 4 and 7 of the Companies Act (CA) require the submission to the Registrar of Companies of Articles of Incorporation, names of incorporators and directors and the address of the registered office of the company. Section 194 of the CA requires the submission of annual returns every April for the end of the previous calendar year. Under the Companies (Amendment) Regulation 2007 enacted in June 2007, the annual returns consist as follows:

a) Name of the company

b) Composition of share capital

c) Type of business

d) Name and address of directors

e) Name and address of company attorney and external auditor

f) Name and address of shareholders

749. A company is required by section 177(1) of the CA to prepare and maintain at its registered office records containing:

a) the articles, by-laws, a copy of any unanimous shareholder agreement and any amendments to these documents;

b) minutes of meetings and resolutions of shareholders; and

c) copies of all notices required pursuant to the CA.

750. The company must also prepare and maintain a register of members showing the name and the latest known address of each person who is a member, a statement of the shares held by each member, and copies of all notices required pursuant to the CA. Other records required to be maintained by the company include a register of the directors and secretaries and a register of the directors' holdings.

751. Substantial shareholders are defined in section 181(1) as persons (whether by themselves or nominees) holding at least ten percent (10%) of the unrestricted voting rights at any general meeting of the shareholders. Companies have to be informed of changes in substantial shareholding by the shareholders within fourteen (14) days of the changes.

752. During the usual business hours of the company, the directors and shareholders of the company and their agents and legal representatives may examine the records required to be kept at the registered office of the company. They may take extracts of the records free of

charge. The shareholders are entitled upon request and without charge to one copy of the Articles and By-laws of the company, any unanimous shareholder agreement and to one copy of any amendments to these documents.

753. With the exception of inspection reports of company investigations ordered by the Court, a person who has paid the prescribed fee is entitled during normal business hours to examine and make copies of extracts of documents filed at the Registry (section 495(1) of the CA).

754. The Supervisory Authority under section 11(vi) of the MLPA can seek the assistance of any government authority, department or statutory or other public body (which includes the Registrar of Companies and the FSRC) to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under the section. The Supervisory Authority can also consult with any person, institution or organisation within or outside Antigua and Barbuda for the purposes of the exercise of its powers or duties under the MLPA. With respect to terrorist related matters, law enforcement authorities may rely on their powers under section 23 of the PTA to gather information, which may include information on the beneficial ownership and control of companies.

755. The database of the Registrar of Companies is not automated. The Registrar has undertaken an exercise to ensure that all companies are up to date in the submission of their required annual returns. It should be noted that the requirement for the name and address of shareholders in the annual return does not stipulate identifying natural persons who own or control shareholding. Access to the Registrar's database by all government agencies and bodies is allowed on the basis of a written letter from the relevant Ministry. Given the above conditions, the information maintained by the Registrar of Companies would not be adequate or always current to meet the requirements for beneficial ownership and control information.

756. Financial institutions are required under regulation 4 of the MLPR to obtain information on the beneficial ownership and control of legal persons. This information is available to the Supervisory Authority under sections 11(iii) of the MLPA. The ECCB and the FSRC are able to access beneficial ownership and control information from their licensees under the BA and the IBCA.

International Business Companies

757. All entities proposing to carry on international business, i.e. banking trust business, insurance, manufacturing or other trading or commercial activities, in Antigua and Barbuda must be incorporated under the IBCA. Section 318 of the IBCA requires the Director, i.e. the Administrator or the Deputy Director of the FSRC, to maintain a register of IBCs. Sections 5 and 8 of the IBCA require the submission to the Director of Articles of Incorporation, names of the incorporators, one of whom must be an attorney entitled to practice in Antigua and Barbuda, and directors of the corporation, and the address of the registered office of the corporation. These provisions do not include submission of information on the ownership and control details required by FATF standards. This information is maintained by the attorney listed as one of the incorporators. As already mentioned in section 4 of this Report, attorneys are not included in the AML/CFT regime in Antigua and Barbuda.

758. In the case of corporations proposing to do business in banking, trust or insurance, an application for a licence in accordance with Part III of the IBCA must be submitted along with Articles of Incorporation. An application for a licence under Part III requires details of the applicant corporation, the names and addresses of the directors, particulars of the proposed international trades or businesses, names of any shareholders or subscribers for shares of the corporation. Section 242(1)(ab) requires banking corporations to submit to the Supervisor of Banking and Trust Corporations in the FSRC an annual certification attesting

to the ownership, directors and officers of the institution. This requirement is also imposed on trust corporations but not specified for insurance corporations. The Supervisor may require a banking corporation to submit any additional information he feels necessary for the proper understanding of any statement or return received, and the banking corporation must submit the additional information and returns within such time and in such manner as prescribed. Additionally, it is noted that regulation 3 of the IBCR, 1998 No 41 states that the FSRC shall not issue a licence to an institution whose ownership is held directly or indirectly in "bearer shares" or otherwise unknown.

759. An IBC, in accordance with section 128 of the IBCA, must have at all times a registered office and a resident agent in Antigua and Barbuda. The registered agent is responsible for the records and registers to be kept at the registered office.

760. The Articles and the By-laws, a copy of any unanimous shareholder agreements and any amendments to these documents, minutes of meetings and resolutions of shareholders and copies of notices must be prepared and maintained at the registered office of the corporation (section 130 of the IBCA). In addition to these records, the corporation must maintain a register of shareholders, showing *inter alia* the name and the latest known address of each person who is a registered shareholder and the shares held by each shareholder. These obligations also apply to holders of bearer shares.

761. The Director must maintain a Register of International Business Corporations in which to keep the name of every corporation that is registered under the IBCA. Any person who has paid the prescribed fee is entitled during normal business hours to examine and to make copies of or take extracts from a document required by the IBCA save a report submitted to the Director in respect of an investigation or request for mutual legal assistance in relation to the corporation.

762. The directors and shareholders of a corporation and their agents and legal representatives may during the usual business hours of the corporation examine the records of the corporation required under section 130, and they may take extracts from these documents free of charge. A shareholder is entitled upon request and without charge to one copy of the articles and by-laws of the corporation, any unanimous shareholder agreement and to any amendments to these records. The creditors of the corporation and their agents and legal representatives are entitled to similar privilege, with the exception of access to unanimous shareholder agreements or amendments to these.

763. Sections 259(1) and 259(5) of the IBCA require the FSRC to examine the affairs of every bank, trust or insurance corporation at least once a year. If an examiner is not being granted access to all the records, documentation and information he requires, the appropriate official or the Director may apply to the Court for an order to produce the information. Additionally, regulation 4 of the IBCR, 1998 No. 41 requires licensed institutions and their owners, directors, officers and agents to provide all information requested by the FSRC as to the ownership and management of the institution. Further, regulation 10 of the IBCR 1998 No. 41 requires the approval of the FSRC to any change in the directors or the direct or indirect, legal or beneficial owner of five percent (5%) or more of shares in a licensed institution.

764. The above requirements result in the FSRC having adequate, accurate and current information on the beneficial ownership and control of licensed IBCs. Similar information with regard to IBCs other than those licensed as banking, trust or insurance corporations is maintained by the relevant attorneys who provide company formation services. There is no requirement in the IBCA for this information to be submitted to the FSRC at anytime. As such, information on these IBCs can only be accessed from the financial institutions with which they maintain business relationships or accounts.

Partnerships

765. Partnerships are governed by the Partnership Act (Cap. 306) (the PA). The Act does not speak to the types of partnership which may be formed or to registration and reporting requirements imposed on partnerships. The PA is dated and only addresses circumstances in which the advance of money on contract, by annuity, as remuneration of agents and by way of goodwill will not constitute a person a partner; and in the case of bankruptcy, circumstances in which a lender will not rank with other creditors. Other matters in relation to partnerships are governed primarily by the common law.

Co-operatives

766. Co-operative societies are regulated by the CSA. A co-operative or co-operative society is a body corporate whose members are committed to joint action on the basis of democracy and self-help in order to secure a service or economic arrangement that is socially desirable and beneficial to all the members. At the date of the on-site, there were five (5) registered credit unions three (3) of them were closed bond and the other two (2) were open bond.

767. An application for registration must be accompanied by the proposed By-laws of the society, the prescribed application fee and such other information in respect of the society as the Registrar of Co-operative Societies requires. The Registrar indicated that such other information usually covers the business and operational plans and the types of proposed services.

768. The co-operative society is constituted by its members. However, the day-to-day management of the society is usually carried out by the board of directors in accordance with sections 51(1), 51(2) and 53 of the CSA. In addition, every society is required by section 51(1) to have a president, treasurer and a secretary, though, subject to the by-laws, the president must be a director (section 51(3)). The society's by-laws may provide for other officers.

769. Provision is made under section 18 of the CSA for the maintenance of records. The society's certificate of registration must be displayed permanently at its registered office (section 18(1)). Subsection (2) stipulates that the records must be available at all reasonable times at the registered office of the society. The records which must be kept are:

    a. a copy of the CSA and any regulations made thereunder;

    b. a copy of the by-laws of the society;

    c. the register of members;

    d. all minutes of meetings of members and resolutions of members;

    e. copies of all notices of directors and notices of change of directors;

    f. a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the society, with the dates on which each person became or ceased to be a director;

    g. a copy of every certificate issued to it by the Registrar;

    h. a copy of every order of the Registrar relating to the society; and

    i. all minutes of meetings of directors and committees.

770. During the normal office hours of the society, the Registrar or members of a society, their agents and their legal representatives may examine any of the records specified in section 18(2).

771. Within thirty (30) days of its annual meeting, the society must submit to the Registrar the last annual return and financial statement, as stipulated by section 141(1) of the CSA.

Monthly reports are required within thirty (30) days of the reporting period. The Registrar may also require special returns on any subject connected with the business and affairs of the society to be submitted within the time stated by the Registrar.

772. Investigations into the affairs of co-operative societies is authorised under Part XII of the CSA. Under section 180, the Registrar may, either of his own motion or on the application of members, appoint a person to examine the books and affairs of the society. The society and its officers, members, agents or employees are under an obligation to furnish the books, documents, accounts or securities required by the examiner.

773. Section 181(1) entitles a member, the Registrar or any interested person to apply *ex parte* to a Court for an order directing an investigation to be made of the society and any of its member societies or corporations. Where the Court appoints an inspector in connection with a request made pursuant to section 181, the inspector may furnish to or exchange information and otherwise co-operate with any public official in Antigua and Barbuda or elsewhere who is authorised to exercise investigatory powers.

774. Failure to comply with the CSA and to furnish any information are under section 220(4) punishable on summary conviction to a fine not exceeding $5,000 or imprisonment of six months or both. A further fine of $50 is imposed for each day for which the contravention continues after a conviction is obtained. Offences with respect to reports are punishable, in the case of an individual, to a fine of $2000 and to imprisonment for a term of one year; in the case of a person other than an individual, to a fine of $10,000. The above penalties are not dissuasive and apparently have not been amended since initial enactment in 1997. Under the CSA, the Registrar of Co-operative Societies has access at anytime to the register of members of any co-operative society.

Bearer shares and nominee shareholding

775. Companies incorporated under the CA are prohibited by section 29(2) from issuing bearer shares or bearer share certificates. However, section 27(1) of the IBCA provides that shares in a corporation may be in bearer form. Nominee shareholders are permitted under the CA and the IBCA. As already noted, the FSRC under regulation 3 of the IBCR 1998 No 41 cannot issue a licence to an institution whose ownership is held directly or indirectly in "bearer shares" or otherwise unknown. As a result, IBCs not licensed to carry out banking, trust or insurance business are the only IBCs that issue bearer shares or bearer share certificates.

776. Interviews with two international trust companies that incorporate IBCs revealed that one did not incorporate IBCs with bearer shares while the other had custodial arrangements in place to immobilise bearer shares of IBCs. Section 130 (d) of the IBCA requires IBCs to keep, prepare and maintain at their registered offices the total number of bearer shares issued, the names of the beneficial owners and the number identification and date of issue of each bearer certificate. This information does not appear to be available for public inspection. Additionally, there are no measures to ensure that IBCs comply with this requirement.

777. As already mentioned lawyers function as company service providers by incorporating IBCs and retaining information on ownership and control details. However, since lawyers are not subject to AML/CFT obligations, information concerning bearer shares that may be accessible via lawyers is not available.

778. Under section 343(1) of the IBCA, a shareholder of a corporation, the Director or an appropriate official may apply *ex parte* to the court for an order directing that an investigation be made of the corporation and any of its affiliates.

779. Section 344(1)(m) of the IBCA specifically provides that in connection with an investigation relating to corporate capacities under Division B of the IBCA, the MLPA or in connection with a request under the MACMA or any mutual legal assistance in criminal matters treaty in respect of a corporation, the Court may make an order it thinks fit, including an order requiring the resident agent to disclose the names of the beneficial owners of the bearer shares kept in the register. While the above provision allows access to information on bearer shares, the lack of any measure to ensure that registers of bearer shares are reliably maintained reduces the effectiveness of such provision.

Additional Elements

780. While there are requirements for financial institutions to verify beneficial ownership and control information, there are no measures in place to facilitate access by financial institutions so as to allow them to more easily verify the customer identification data.

5.1.2 Recommendations and Comments

781. Appropriate measures should be taken to ensure that bearer shares are not misused for money laundering and the principles set out in criteria 33.1 and 33.2 apply equally to legal persons that use bearer shares.

782. Statutory obligation to provide information as to the ownership and management of partnerships should be put in place.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• **Statutory obligation to provide information as to the ownership and management of partnerships is lacking.** • **There are no measures in place to ensure that bearer shares under the IBCA are not misused for money laundering.**

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

5.2.1 Description and Analysis

783. The only specific legislation dealing with legal arrangements in Antigua and Barbuda is the International Trust Act (ITA). Under the ITA, an international trust is one in respect of which at least one of the trustees is either a corporation incorporated under the IBCA or is a licensed trust company doing business in Antigua and Barbuda. A licensed trust company is governed by the BA. Section 2 of the ITA specifies that the settlor and beneficiaries must be non-resident at all times, and that the trust property must not include any land situated in Antigua and Barbuda.

784. Part 2 of the ITA makes provision for three types of international trust, namely, protective or spendthrift, charitable and non-charitable international trusts. Registration of these trusts is governed by Part 7 of the ITA. In compliance with section 36(1), a register of international trusts is maintained by the Registrar who is a person appointed by the Board of the FSRC.

785. Section 36(2) of the ITA requires trusts that provide for the law of Antigua and Barbuda to be the governing law of all or any aspects of the trust to be registered as an international trust with the Registrar. Section 36(7) of the ITA specifies that the name of the trust, the

date of creation, settlement or establishment of the trust and the address of the registered office of the trust and in the case of amended foreign trusts, the date on which the trust was amended to provide for the law of Antigua and Barbuda to be the governing law of all or any aspects of that trust are to be entered on the register.

786. Certificates of registration of international trusts are issued and in accordance with section 37 of the ITA are only valid for a period of one year from the date of registration and must be renewed annually. Application for renewal must be made within ninety (90) days of the expiration of the last certificate of registration. Section 39 of the ITA limits inspection of the register to when a trustee of a trust authorises in writing a person to inspect the entry of that trust on the register.

787. The above requirements for the establishment of a register of international trusts does not require the maintenance in the register of adequate, accurate and current information on the beneficial ownership and control of international trusts as required by FATF standards. Additionally, access to the register for inspection has to be authorised by a trustee of a trust. However, it is noted that international trusts by definition must have at least one of the trustees as a corporation under the IBCA or a licensed trust company under the BA, which are required under regulations 4(3)(e) and (h) of the MLPR to obtain information on beneficial ownership and control of legal persons. While the above provisions allow for the obtaining of the information required by the FATF, it is recommended that the authorities in Antigua and Barbuda consider including the FATF requirements as part of the register information in order to complement the data held by the IBCs and the licensed trust companies.

788. The provisions under the IBCA which relate to banking corporations are expressed by section 254 of the IBCA to apply *mutatis mutandis* to a trust corporation. In this regard, confidential matters are protected. Subject to an express provision in the trust instrument, the disclosure of information in relation to the affairs of the trust is prohibited. However, disclosure is permitted where the information is required by the Court, an inspector or examiner of the FSRC or pursuant to a request by the Supervisory Authority under the MLPA.

789. An examiner is prohibited by section 260(2) of the IBCA from copying or otherwise recording information relating to the name or the account of any depositor or the name of any settlor or beneficiary of a trust if the deposit agreement or instrument establishing the account or trust directs that the information be kept secret. This prohibition is overridden where the examiner has reasonable grounds for believing that the information is relevant to his examination or the investigation of a criminal activity.

790. With regard to licensed trust companies, section 23 of the BA grants the ECCB the power to proscribe such information and data from financial institutions as may be necessary to carry out its functions and responsibilities. Additionally, sections 20 and 21 of the BA also grant the ECCB power to inspect and request records, documents or information relevant to monitoring compliance with local legislation.

791. In addition to the access granted to the relevant supervisory authorities to trust information held by international trust corporations and trust companies, section 11(iii) of the MLPA authorises the Supervisory Authority to obtain information on beneficial ownership from a financial institution holding trust accounts.

792. There is no registration requirement for local trusts. Most trusts are drafted by an attorney. As pointed out under section 4 of this Report, lawyers do not come within the definition of 'financial institution', and they are therefore not included in the AML/CFT regime. The Examiners were unable to ascertain the extent to which local trusts are regulated.

Additional Elements

793. While there are requirements for financial institutions to verify beneficial ownership and control information, there are no measures in place to facilitate access by financial institutions so as to allow them to more easily verify the customer identification data.

5.2.2 Recommendations and Comments

794. Measures should be put in place for either registration or effective monitoring of local trusts in accordance with FATF information requirements.

795. The Authorities should consider including adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trusts.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**PC**	• **No measures for the registration or effective monitoring of local trusts.**

5.3 Non profit organisations (SR.VIII)

5.3.1 Description and Analysis

796. The laws of Antigua and Barbuda provide for NPOs to be established either as incorporated companies pursuant to the CA or as societies pursuant to the Friendly Societies Act (FSA). Under Part III of the CA, section 328, every company without a share capital is described as a non-profit company. NPOs under the CA are registered with the Registrar of Companies. The approval of the Attorney General is required before the shares of a non-profit company are filed. In order to qualify for approval, a non-profit company must restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like. In the case of societies under the FSA, the societies are registered with the Registrar of Friendly Societies, who by virtue of section 3(2) of the Friendly Societies Act is the Registrar of the High Court.

797. The following societies are societies to which the FSA applies:

(1) Friendly societies;
(2) Cattle insurance societies;
(3) Benevolent societies for any benevolent or charitable purpose;
(4) Working men's clubs; and
(5) Specially authorised societies.

798. A society cannot be registered under the FSA unless it consists of at least seven (7) persons. The Registrar will also not register a society if there is already a society registered in the same name or a similar name or where the name is likely to deceive the public as to the nature or identity of the society.

799. Section 38 of the PTA 2005 provides that the Attorney General may sign a certificate stating that there are reasonable grounds to suspect that an applicant for registration as a registered

charity or for incorporation as a non-profit company or that a registered charity or a non-profit company has made, is making or is likely to be made available resources to a terrorist group. Where the certificate is found by the High Court to be reasonable, it shall be deemed to be sufficient grounds for the refusal of the application for registration and the revocation of the registration of the charity; in the case of a non-profit company, for the refusal of the application for incorporation or the cancellation of the company.

800. At the time of the on-site visit, no review of the adequacy of domestic laws and regulations that relate to non-profit organisations had been undertaken by the Authorities in Antigua and Barbuda. There are no measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing. No periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted. There is no regulatory mechanism with regard to societies in relation to AML/CFT concerns. At present, there are insufficient personnel to regulate this sector adequately. Except for the annual audit and returns to the Registrar of Friendly Societies, the Examiners were not aware of any measures to ensure that NPOs were conducting their organisation's business within the objects for which the societies were established. The Examiners were informed by the Antigua and Barbuda Authorities that it is the intention that societies established under the FSA will be brought under the regulatory functions of the FSRC.

801. No programmes have been implemented to raise the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse. The Guidelines issued by the ONDCP do not specifically target NPOs. The Examiners were informed that the Registrar of Friendly Societies was apprised recently of AML/CFT issues.

802. The Antigua and Barbuda Authorities assured the Examiners that raising awareness in the NPO sector about money laundering and terrorist financing abuse is an important concern of the Supervisory Authority, and that this deficiency is being dealt with as a matter of priority.

803. Section 30 of the FSA makes it mandatory for a friendly society to keep a copy of its last annual balance sheet, the last five-year evaluation, together with any special report of the auditors. These should always be displayed in a conspicuous place at the registered office of the friendly society.

804. Friendly societies are required by section 25 of the FSA to keep their accounts up-to-date. They are required to keep separate accounts of all monies received or paid on account of every fund or benefit assured by the society, of all monies received and paid on account of any other fund or benefit, and of the management expenses of the society and of all contributions made.

805. Friendly societies are required by section 28 of the FSA to submit annual returns to the Registrar of Friendly Societies and conduct annual audits. However, there is no indication as to whether friendly societies comply with this requirement.

806. Under section 194 of the CA, a company must submit to the Registrar an annual return in the prescribed form containing the prescribed information for the relevant financial year. The director or officer of the company must certify the contents of the return. If default is made in complying with section 194, the company and every director and officer who is in default is guilty of an offence.

807. Provision is made under Part III, Division B of the CA with respect to external companies. Section 342(1) of the CA empowers the Registrar to restrict the powers or activities that an external company can exercise or carry on in Antigua and Barbuda. The Registrar may

exercise his powers in the prescribed circumstances. However, no guidance has been provided as to what these circumstances may be. Further, if one of the circumstances is that the power will be exercised on the recommendation of a regulatory authority, then, unless there is a regulatory mechanism which monitors effectively the activities of the external company, arguably, the inability of the authorities to capture ultra vires or undesired activities of the external company would be a limitation on the exercise of the Registrar's power.

808. With respect to the supervision of the international activities of friendly societies, it has not been demonstrated that these bodies are regulated.

809. The Examiners were unable to ascertain the extent of supervision of the sector's international activities.

810. A person is entitled under section 36 of the FSA to a copy of the rules of a friendly society upon the payment of twenty-four cents. Any member or person may obtain without payment a copy of the last annual return or balance sheet or other audited document. A member or person may inspect the books of the friendly society. However, a reference to "person" appears to be limited to someone who has an interest in the subject matter of the friendly society. Section 70 authorises the Registrar to appoint a qualified person to inspect the books of the society. There is no indication as to whether the Registrar has exercised this power.

811. The conditions of registration under section 7(2) of the FSA provide that the friendly society must submit to the Registrar copies of the rules, together with a list of the names of the secretary, of every member of the management of the society, and of every trustee or other officer intended to be authorised to sue and be sued on behalf of the society. The rules are expressed under the First Schedule to the FSA to contain *inter alia* the whole of the objects for which the society is to be established. The Registrar is obligated under section 4 of the FSA to make an annual return to the Minister, showing the date of registration and the objects of the society, the number of members on the roll of the society, and the amount of money invested in real security or deposited in a savings bank, a statement as to whether or not the society is in receipt of assistance from the Government, and any other matter as may be prescribed. However, there is no provision under the FSA which obligates the society to maintain this information or make it available publicly. Notwithstanding, the records of the Registry are public documents and should be available upon payment of the appropriate fee.

812. All registered companies have to provide a Constitution, Articles and Memoranda of Association and By-laws, which should describe the objects of the company. The requirement to submit the Articles of Association is made pursuant to section 4 of the CA. These are public documents.

813. Section 80 of the FSA provides that where an offence is committed by a society, every member of the management committee of that society shall be liable to the same penalty as if he had committed the offence, unless it is proved that the member is ignorant of or attempted to prevent the commission of the offence. If an offence does not carry a prescribed penalty, the penalty for that offence cannot exceed one thousand dollars ($1,000) (section 84 of the FSA). If a person falsifies any document required by the FSA contrary to section 83, he shall be liable to a penalty not exceeding three thousand dollars ($3,000). In the case of an officer or person who aids or abets in the amalgamation or transfer of engagements or in the dissolution of a friendly society otherwise than provided in the FSA, he shall be liable to any penalty imposed in respect of the specific offence or be imprisoned with hard labour for any term not exceeding three (3) months. These sanctions are not dissuasive, and amendment to the FSA is needed in this regard.

814. A person who falsifies or submits incorrect documents required to be submitted by the CA is liable on summary conviction under section 530(1) of the CA to a fine of $5,000 or to imprisonment for a term of two (2) years or both. When an offence is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable to the same penalty. Most offences under the Act are punishable in this manner.

815. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under the Act.

816. There are no provisions under the FSA with respect to the freezing of accounts. However, as indicated above, sanctions may include de-registration of the friendly society. In the case of a non-profit company, the ML/FTG should apply. The requirement for the filing of SARs and quarterly reports to the Supervisory Authority is mandatory. However, there is no indication that SARs and the quarterly reports are filed in respect of these companies.

817. The removal of a committee of management, a treasurer or other officer, or a trustee is one of the matters to be provided for by the Rules of the society.

818. The Registrar of Companies has authority to terminate the capacities of an NPO that has not complied with oversight measures. Pursuant to section 509(1) of the CA, the Registrar may refuse to receive, file or register a document submitted to him if he is of the opinion that the document, *inter alia*, contains any matter contrary to the law.

819. Section 351(1) provides that the Minister may suspend or revoke the registration of an external company for failing to comply with any requirement of Part III, Division B of the CA or for any other prescribed cause. When an external company ceases to carry on its business in Antigua and Barbuda, the company must file a notice to that effect with the Registrar.

820. In general, the sanctions and oversight measures do not serve as effective safeguards to protect the NPO sector from terrorist financing.

821. There is no express requirement under the FSA for records to be maintained by societies. Correspondingly, there is no express retention period for which records must be kept. However, given the obligation on the part of the society to have its books available for inspection, and the obligation to file periodic returns, the inference is that records are kept. The FSA should nonetheless make provision with respect to adequate record keeping.

822. The manner of keeping accounts is provided under section 25 of the FSA and has been stated above. The annual return made pursuant to section 28(1) must show the receipts and expenditure, funds and effects of the society as audited. The expenditure in respect of the several objects of the society must be shown separately.

823. Part I, Division H of the CA contains ample provisions as to the keeping of records by companies registered under the Act. A company must in accordance with section 175 of the CA have at all times a registered office in Antigua and Barbuda. The company must prepare and maintain at its registered office records containing the articles and the by-laws, the minutes of meetings, and copies of notices required under the Act.

824. The company must also prepare and maintain a register of members, showing the name and the last known address of each member, the date of registration of each member, and the date on which a member's membership ceases. Section 178 of the CA provides for the maintenance of a register of directors and secretaries.

825. Section 187(1) of the CA provides that a company must prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and resolutions of the directors and any committees of the directors. The records must at all reasonable times be available for inspection by the directors.

826. Where the accounting records of a company are kept at a place outside Antigua and Barbuda, accounting records which enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis should be kept within Antigua and Barbuda.

827. A company and its agents must take reasonable precautions to facilitate detection and correction of inaccuracies in the records, prevent loss or destruction of the records and the falsification of entries. It is not certain whether inaccuracies in the records would include verifying that funds have been spent in a manner consistent with the purpose and objects of the company.

828. There is no requirement as to the period of time for which records of companies must be kept by the company. However, section 507 of the CA reposes in the Registrar a discretion as to whether he should produce a document of a prescribed class after six (6) years from the date he received it. The inference is that documents must be kept by the Registrar for at least six (6) years.

829. The ONDCP under section 10(1)(c) of the ONDCPA has the function to investigate specified offences, which include offences under the PTA. The Director in his capacity as Supervisory Authority in entitled under section 11(vi) of the MLPA and section 12(3) of the ONDCPA to liaise with the Director of Companies on such matters. The investigation of an offence under the PTA would in the usual course be initiated upon an order being made that a person or group is declared a specified entity. The investigative authorities would have access to the records of any entity named in the order. The order may also include a provision authorising the freezing of accounts of financial institutions. While friendly societies and most non-profit companies do not come within the ambit of the activities of financial institutions as provided in the First Schedule to the MLPA, it is felt nonetheless that on a purposive interpretation, the term 'financial institution' would be construed widely to include all NPOs.

830. The Registrar may apply pursuant to section 518(1) of the CA to the Court, *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies. The Court may make any order it deems fit, including the authorisation of an inspector to any premises in which the Court is satisfied that there might be relevant information, and the examination and copying of any documents or records found on the premises.

831. There is also a duty imposed by section 33 of the PTA on persons who have information relating to terrorist offences to disclose that information immediately to a police officer or an officer of the ONDCP. Failure to do so is an offence and is punishable by imprisonment for a term not exceeding five (5) years.

832. Section 11(vi) of the MLPA provides for the Supervisory Authority to request information from the Registrar of Companies as a government authority. As mentioned above, section 12(3) of the ONDCPA provides that "The Director may, in any particular case in the performance of his functions, co-operate or liaise with any other entity or individual in or outside Antigua and Barbuda that, in the opinion of the Director, is properly concerned in the matter under investigation or in legal proceedings relating to the matter under the Act."

833. The Antigua and Barbuda Authorities have indicated that the Supervisory Authority and the Director of the ONDCP[18] work closely with domestic agencies such as the Police and the Office of the Director of Public Prosecutions in AML/CFT matters. However, the Examiners were informed that to date there have been no terrorist related matters in Antigua and Barbuda. It is therefore difficult to ascertain the effectiveness of domestic cooperation, coordination and information sharing in respect of terrorist activities.

834. The records kept by the Registrar of Companies are public records and as such should be available to investigators during the course of any investigation. A similar arrangement applies in respect of records kept by the Registrar of Friendly Societies.

835. As previously stated, section 11(iv) of the MLPA and section 12(3) of the ONDCPA provide for the Supervisory Authority or the Director, respectively, to request information from the Registrar of Companies or the Registrar of Friendly Societies as government authorities.

836. There are clear gateways for information exchange with foreign jurisdictions. Section 29 of the PTA authorises the Director of the ONDCP or the Commissioner of Police to disclose to a foreign authority any information in his possession or in the possession of any government department or agency in relation to terrorist groups and terrorist acts, provided that the disclosure is not prohibited by any provision of law, and will not in the Commissioner's view be prejudicial to national security or public safety.

837. Perceived hindrances to the effective combating of terrorist financing are the lack of expertise and resources, particularly where there is an international element involved. However, these would be minimised greatly by enhanced co-operation with more experienced jurisdictions and by a proactive approach to dealing with terrorist matters. Such an approach may entail keeping abreast of terrorist movements and activities through the various media.

838. The Attorney General and the Director of the ONDCP are the designated points of contact for information relating to NPOs.

5.3.2 Recommendations and Comments

839. The Authorities should review the adequacy of domestic laws and regulations that relate to non-profit organisations.

840. Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.

841. Periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.

842. A regulatory framework governing friendly societies must be implemented.

843. The Antigua and Barbuda Authorities should monitor more closely the NPO sector's international activities.

844. Programmes should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.

845. Measures should be instituted to protect NPOs from terrorist abuse.

[18] As previously stated both these functions are performed by one individual.

846. There should be adequate provisions for record keeping in the NPO sector.

847. The period for which records must be maintained by NPOs must be prescribed.

848. Sanctions for violation of oversight measures or rules in the NPO sector should be dissuasive.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• **No review of the adequacy of domestic laws and regulations that relate to NPOs has been undertaken by the Authorities in Antigua and Barbuda.** • **There are no measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing.** • **No periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted.** • **There is no regulatory framework for friendly societies.** • **Although NPOs come within the regulatory framework of the FSRC, it appears that this sector is not adequately monitored.** • **No programmes have been implemented to raise the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse.** • **The sanctions and oversight measures do not serve as effective safeguards in the combating of terrorism.** • **The provisions for record keeping under the FSA are inadequate.**

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 and 32)

6.1.1 Description and Analysis

Recommendation 31

849. The Government of Antigua and Barbuda recognises the need for Law Enforcement Authorities to cooperate and co-ordinate with each other and therefore established a Multilateral Interagency Memorandum of Understanding between Customs, the Police, the Antigua Barbuda Defence Force, Immigration, and the ONDCP in the year 2003. The Memorandum defines the roles of all Parties to the agreement in relation to the illegal importation and exportation of drugs, terrorist activities, activities relating to the proceeds, profits and instrumentalities of crime, and money laundering. It provides for all Parties to co-ordinate in joint operations and exchange information spontaneously and upon request. Information obtained from the ONDCP indicates that this MOU has been utilized and found to be effective.

850. The majority of the Law Enforcement Agencies interviewed acknowledged that there is harmony amongst them as it relates to combating ML and other predicate offences. It was mentioned that cooperation is so good that there is no need to apply the MOU when request for assistance is made or received domestically. However the Examiners found that contact among law enforcement authorities is maintained in an ad hoc manner as there were no systems in place that would allow them to interface in a structured and systematic way. Although requested, no information was produced by the ONDCP to prove that Policy Makers, the ONDCP and other Competent Authorities co-ordinate locally concerning the development and implementation of policies and activities to combat Money Laundering and Terrorist Financing.

851. The DPP maintains a close working relationship with the Police. The Commissioner of Police advised that her department has a good working relationship with the ONDCP.

852. The Team found that the Central Authority maintains regular contact with the ONDCP, especially concerning the execution of foreign requests for assistance.

853. An Agreement for Cooperation and Partnership was developed between the ONDCP and the FSRC in September of 2000. The intent of this agreement is to have the Parties complement each other in the most efficient and effective manner possible, by exchanging information and intelligence which will benefit each other in carrying out their respective roles.

854. The ONDCP and the ECCB are in the process of negotiating a MOU to facilitate the sharing of information between them. It is not sure when this MOU would be finalised as it is still in its early stages.

Additional Elements

855. There are no formal mechanisms in place for consultation between competent authorities, the financial sector and other sectors that are subject to AML/CFT laws, regulations, guidelines or other measures.

Recommendation 32

856. The process of review of the AML/CFT system is ongoing, spearheaded by the Director of the ONDCP in consultation with the Attorney General. Formal consultations designed to acquire greater perspective of the AML/CFT regime and develop proposals for the way forward have taken place at interagency meetings which were attended by, among others, the following: Customs Department, ABDF, Immigration Department, the Narcotics Squad, Police Criminal Investigations Department, ONDCP, FSRC, ECCB, Inland Revenue, Registrar of Insurance, Registrar of Cooperatives, and the DPP's Office.

Recommendation 30 –Resources (Policy makers)

857. The Attorney General's Office has a staff complement of twenty-two (22) persons. The legal staff consists of the Attorney General, the Solicitor General, the Deputy Solicitor General, the Crown Solicitor, a Senior Crown Counsel, four (4) Crown Counsel, a Parliamentary Counsel and a Legislative Draftsman. The remaining staff serves in an administrative capacity.

858. Concerning national cooperation and coordination, the role of the Attorney General's Office as policy makers is to assess and advice on the legal criteria on which cooperation and coordination are based. The Attorney General is a Minister of Government, and in this capacity he plays a direct role in shaping national cooperation and coordination policies. The Attorney General also serves as the central authority in money laundering and financing of terrorism matters.

859. Policy matters are dealt with by the Attorney General and senior legal staff. Given the sensitivity of the matters in which these senior officers are involved, maintaining confidentiality is very important. The Attorney General and the other legal officers are guided by the Code of Conduct which governs the legal profession, the Integrity in Public Life Act 2004 and the Corruption Act. The Attorney General and other senior staff who deal with policy matters are all appropriately skilled.

860. Training of senior staff is ongoing. The Attorney General and other senior staff attend workshops and conferences on a regular basis in relation to money laundering and the financing of terrorism. However, the lack of resources limits the training opportunities available to all staff.

6.1.2 Recommendations and Comments

861. The level of co-operation amongst law enforcement could be improved. A more proactive approach should be adapted when sharing information. The Examiners found that contact is maintained in an ad hoc manner.

862. Antigua and Barbuda should consider establishing measures to allow policy makers, the ONDCP, the FRSC and other competent authorities to meet continuously to discuss, develop and implement policies and activities to combat money laundering.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• **There are no effective mechanisms in place to allow policy makers, the ONDCP, the FSRC and other competent authorities to cooperate and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and FT.**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

863. Antigua and Barbuda ratified the 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 8th March, 1993. The Convention was incorporated into the laws of Antigua and Barbuda by Statutory Instrument No. 14 of 1993.

864. The United Nations Convention against Transnational Organised Crime (the Palermo Convention) was ratified by Antigua and Barbuda on 24th April, 2002. The Convention was incorporated into the laws of Antigua and Barbuda by S.I. No. 54 of 2002.

865. The 1999 UN International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) was ratified by Antigua and Barbuda on 29 March 2003. The Convention was incorporated into the laws of Antigua and Barbuda by S.I. No. 32 of 2002. The primary legislation governing terrorist activities are the PTA and the Suppression of Terrorism Act (No. 17 of 1993) (the STA).

866. While Antigua and Barbuda has ratified the Vienna, Palermo and the Financing of Terrorism Conventions, it has not fully implemented all the relevant elements of these Conventions. The level of Antigua and Barbuda's compliance with the requirements of the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention is summarized by reference to the following table:

Table 25: Compliance with relevant Treaties

Treaty	Articles	Antigua & Barbuda Situation
Vienna Convention (1988)	3 (Offences and Sanctions)	Addressed by the MDA. Facilitating an offence is not a separate offence under the MDA; it comes within the offence under section 3 of the POCA of 'being in any way knowingly concerned in the commission of an offence.' While the lists of controlled drugs in the Schedules to the MDA are extensive, the lists do not include the controlled substances recommended under Tables I and II of the Vienna Convention. The Examiners were unable to ascertain whether the controlled drugs under the MDA are derivatives of the substances listed in the Tables.
	4 (Jurisdiction)	Both the MDA and the POCA incorporate provisions which fully satisfy the jurisdictional elements of territoriality, including the commission of offences on vessels. Section 12 of the MDA makes provision for offences committed aboard ships, vessels, aircrafts, vehicles and other means of conveyance within Antigua and Barbuda. Under section 20 of the MDA, acts relating to the commission of an offence are caught if those acts, if committed in Antigua and Barbuda, would have constituted an offence. The definition of "proceeds of crime" under section 3 of the POCA includes acts committed within and outside Antigua and Barbuda.
	5 (Confiscation)	Wide confiscation measures are provided under the MLPA and

		the POCA and to a more limited extent under the MDA and the PTA. These measures include fairly adequate investigatory powers and the ability to trace proceeds. The relevant provisions are to be found under Parts IV, IVA, and IVB of the MLPA; under sections 18 to 24 of the POCA in relation to confiscation and sections 25 and 42 to 47 in respect of investigatory powers; under section 27 of the MDA with respect to the forfeiture and destruction of prohibited substances; and sections 17 and 23 in relation to investigatory measures.
	6 (Extradition)	Notwithstanding that the EA makes extradition conditional on the existence of a treaty; relevant conventions to which Antigua and Barbuda is a party may be deemed to form the legal basis for extradition, particularly as regards financing of terrorist offences. The Minister of Foreign Affairs may pursuant to section 17 of the EA enter into special extradition arrangements with a foreign state.
	7 (Mutual Legal Assistance)	Generous provision is made under the MACMA, MLPA and PTA for rendering assistance. The legislative provisions are enhanced by the policy of the Antigua and Barbuda Government to render assistance to the greatest extent possible.
	8 (Transfer of Proceedings)	The Examiners were unable to ascertain from the legislation provided whether Antigua and Barbuda permits the transfer of proceedings.
	9 (Other forms of co-operation and training)	Other means of co-operation are utilised by the authorities of Antigua and Barbuda. These include the use of letters rogatory and the establishment of joint operations. Training in the area of co-operation is provided, though on account of limited resources it

		may not be adequate.
	10 (International Co-operation and Assistance for Transit states)	Transit states are not excluded from the mutual legal assistance regime. Provision is made pursuant to section 33(1) of the MACMA for Antigua and Barbuda to be used as a transit state for the purposes of mutual legal assistance.
	11 (Controlled Delivery)	No provisions for controlled delivery of prohibited substances under the laws of Antigua and Barbuda
	15 (Commercial carriers)	There are measures in place to ensure that commercial carriers are not used for unlawful drug activity.
	17 (Illicit Traffic at sea)	Section 12 of the Misuse of Drugs Act (Cap. 283) makes provision for the seizure of controlled substances found aboard a ship or vessel.
	19 (Use of mail)	The postal service is subject to drug control measures.
Palermo Convention	5 (Criminalization of participation in an organized criminal group)	Apart from the limited provision in respect of organised fraud under the POCA, no distinct offence of participation in an organised criminal group has been established under the laws of Antigua and Barbuda. Offences relating to organised criminal activity must be brought under offences covering persons generally. The reference to terrorist group under the PTA does not address in a comprehensive way organised criminal activity.
	6 (Criminalization of laundering of the Proceeds of Crime)	The laundering of proceeds of crime has been criminalised under the POCA. However, the narrow list of predicate offences provided in the Schedule to the Act severely restricts the jurisdiction's compliance with this Article. A more

		comprehensive criminalisation of the laundering of proceeds of crime is to be found under section 3 of the MLPA, relative to the definition of "proceeds of crime" under section 2(1) of the MLPA.
	7 (Measures to combat money laundering)	The full implementation of this Article is hindered by the inapplicability of the principal supervisory regime to some NPOs and certain non-financial institutions such as law firms.
	10 (Liability of Legal persons)	Legal persons are covered in all the statutes. However, the lack of an offence for organised criminal groups limits the implementation of this Article. Additionally, penalties can be enhanced to serve as effective deterrents, especially those under the less recent legislation.
	11 (Prosecution Adjudication and sanction)	Prosecution in respect of organised criminal groups is hampered by the non-criminalisation of the activities directly relating to organised criminal groups. Sanctions can be enhanced to make criminal activity more prohibitive.
	12 (Confiscation and Seizure)	The measures implemented are adequate, especially those under Parts IV, IVA and IVB of the MLPA. However, attention must be paid to the definition of key terms such as 'property' and 'funds'.
	13 (International Co-operation for the purposes of confiscation)	Section 16 of the MACMA provides specifically for international co-operation for the purposes of confiscation. A similar provision is made under section 23(2) of the MLPA.
	14 (Disposal of confiscated proceeds of crime or property)	Organised crime is not expressly addressed. Further, compensation to the victims of crime is not covered.

	15 (Jurisdiction)	Comprehensive provision is made regarding a state's jurisdiction in respect of the conduct of investigations, prosecutions and judicial proceedings. Regard though must be had to whether a particular activity has been criminalised.
	16 (Extradition)	Measures under the EA relate only to treaty state parties and Commonwealth states. The measures may not be applicable as regards a distinct offence of organised criminal activity.
	18 (Mutual Legal Assistance)	Provision is made under the MACMA, section 23(1) of the MLPA and sections 29 to 31 of the PTA for rendering assistance
	19 (Joint Investigations)	Law enforcement authorities participate in joint investigation operations.
	20 (Special Investigative Techniques)	Outside the PTA, intrusive investigative techniques such as the interception of communications are not expressly authorised. There is need for enhancement in this area.
	24 (Protection of witnesses)	A comprehensive witness protection programme as envisaged by this Article has not been implemented.
	25 (Assistance and protection of victims)	This is not addressed under the laws of Antigua and Barbuda.
	26 (Measures to enhance cooperation with law enforcement authorities)	The mitigation of punishment of an accused person who cooperates in the investigation and prosecution of an offence and the grant of immunity from prosecution to persons who assist in the investigation or prosecution of an offence are not covered under the laws of Antigua and Barbuda.

	27 (Law Enforcement cooperation)	Both national and international cooperation measures have been implemented by Antigua and Barbuda. However, the lack of a distinct scheme in relation to organised criminal groups must be addressed.
	29 (Training and technical assistance)	Training and technical assistance are provided in relation to organised criminal groups. However, this Article requires the criminalisation of offences which directly relate to organised criminal groups to achieve full effectiveness in the fight against organised crime.
	30 (Other measures)	Antigua and Barbuda has entered into a number of memoranda of understanding and agreements to enhance cooperation locally, regionally and internationally.
	31 (Prevention)	The prevention of misuse of financial vehicles by organised criminal groups is hindered by the lack of offences directly relating to organised criminal groups and the inapplicability of the principal supervisory regime to certain bodies including NPOs and non-financial entities such as lawyers and notaries public.
	34 (Implementation of the Convention)	While criminal groups may be subsumed under persons generally, the effective implementation of this Convention requires the criminalisation of distinct offences in relation to organised criminal groups.
Terrorist Financing Convention	2 (Offences)	The definition of 'terrorist act' embodies the elements of the offences stipulated under Article 1(b) of the Convention. The EA is expressed to make provision under section 24(1) for the application of the counter terrorism conventions of the United Nations Security Council. All of the treaties listed in the

		Annex of the Convention are expressed to be counter terrorism conventions under section 30(2) of the PTA. Three additional conventions have been included under section 2 of the PTA as counter terrorism conventions, namely: 1. The Convention on Offences and Certain Other Acts committed on Board Aircraft, signed at Tokyo on 14 September 1964; 2. The Convention on the Marking of Plastic Explosives for the Purposes of Detection, signed at Montreal on 1 March 1991; and 3. The International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
	4 (Criminalization)	The offences set forth in Article 2 have been criminalised under section 3 of the PTA. The penalties prescribed for the various offences range from imprisonment for terms not exceeding fifteen years to twenty-five years. Given the seriousness of the offences, the terms should be accompanied by prohibitive fines. Compensation for victims should be available under the PTA.
	5 (Liability of legal persons)	Legal persons are included in the term 'entity'. However, the commission of offences relates to persons, which from the definition of 'entity' appears to include natural persons and incorporated bodies. On a narrow interpretation of the term 'entity', 'person' may not include groups, trusts, partnerships, funds or incorporated associations or organisations.
	6 (Justification for commission of offence)	Offences committed for the purpose of advancing a political, ideological or religious cause are

		caught under the PTA. Section 32(1) of the PTA deems offences not to be offences of a political or fiscal character for the purposes of extradition. Provision is made under section 8 of the EA relating to the return of persons on the basis of philosophical, racial and ethnic justifications. No provision has been made under the PTA to bring these latter considerations within the scope of the PTA.
	7 (Jurisdiction)	The jurisdictional matters outlined in Article 7 have been incorporated under section 26 of the PTA. Coordination of actions in cases involving forum conveniens issues is dealt with pursuant to mutual legal assistance measures.
	8 (Measures for identification, detection, freezing and seizure of funds)	Where a financing of terrorist offence is deemed to be a money laundering offence, the scheme for forfeiture and identification of funds under sections 19A and 19B of the MLPA will be applicable. Asset sharing as obtains in respect of money laundering is available.
	9 (Investigations & the rights of the accused).	An order to detain an accused must specify the place at which he is to be detained and the conditions subject to his detention, including access to a government medical officer and the video recording of the detention. The accused has the right to retain and instruct counsel and produce any document in his defence. He must have an opportunity to be heard. No provision has been made under section 5 of the PTA, however, for the intercession of the International Red Cross as envisaged by Article 9(5).
	10 (Extradition of nationals)	Extensive extradition measures are provided under section 30 of the PTA and the EA.

	11 (Offences which are extraditable)	Offences are extraditable offences if they come within the ambit of section 4(1) of the EA. Section 4(1) defines an extradition crime as conduct if it occurred in Antigua and Barbuda would constitute an offence punishable with imprisonment of at least twelve months and which would be similarly punishable under the laws of the foreign state. All terrorist offences are punishable with imprisonment of at least twelve months. In the case of extra-territorial offences against a foreign state, the offence would be punishable under that law with corresponding imprisonment of at least twelve months if it were committed in Antigua and Barbuda. Alternatively, the offence is extraditable if the foreign state bases its jurisdiction on the nationality of the offender, the conduct constituting the offence occurred outside Antigua and Barbuda, and if the offence occurred in Antigua and Barbuda it would be punishable with imprisonment for a term of at least twelve months. Terrorist offences are extradictable offences.
	12 (Assistance to other states)	The assistance mechanisms established under section 29 of the PTA, section 23 of the MLPA and the MACMA accord with the provisions of Article 12. Even in the absence of treaties, assistance can still be rendered through conventions as provided under section 31(1) of the PTA or by means of an order by the Minister of Foreign Affairs pursuant to section 31(2) of the PTA.
	13 (Refusal to assist in the case of a fiscal offence)	Fiscal offences are deemed under section 32(1) of the PTA to constitute offences for the purposes of the EA and mutual assistance.
	14 (Refusal to assist in the case of a political offence)	Offences of a political character or which are linked to a political motive are deemed to be offences

		for the purposes of the EA and mutual assistance.
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	Where the Antigua and Barbuda Authorities have substantial grounds for believing that a request for extradition or mutual assistance in respect of terrorist offences has been made for the purpose of prosecuting a person on the basis of his race, religion, nationality, ethnic origin or political opinion or that compliance with the request would occasion prejudice to him, the authorities may decline to render assistance. General restrictions on the return of accused persons are stated under Part III of the EA.
	16 (Transfer of prisoners)	Part V of the EA lays down the principles which govern the treatment of persons returned. The extradition regime applies in respect of terrorist offences.
	17 (Guarantee of fair treatment of persons in custody)	A person accused of a terrorist offence is afforded the usual constitutional rights of persons accused of other crimes. Measures taken or proceedings must be in conformity with the laws of Antigua and Barbuda and in conformity with applicable international law principles.
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Measures to prohibit persons from encouraging and organising the commission of offences have been made under sections 7, 10, 11, 13, 14,15, 16, 17, 19 and 20 of the PTA. With respect to CDD measures, the ML/FTG provides for the reporting of suspicious transactions. These reporting requirements have been given legislative endorsement under section 34(3) of the PTA. Measures for facilitating information exchange between agencies are provided by way of memoranda of understanding and treaties in respect of foreign

		agencies. Provision is also made under sections 29 to 32 of the PTA for cooperation and the rendering of assistance.

868. With regard to Antigua and Barbuda's level of implementation of the UNSCRs 1267 its successors and UNSCR 1373, please refer to discussions at section 2.2 (SR II) of this Report.

Additional Elements

869. Antigua and Barbuda ratified the Inter-American Convention against Terrorism on 29th July, 2002. (See S.I. No. 31 of 2002). This Convention contains similar provisions to those found in the Terrorist Financing Convention. There are, however, some noteworthy departures. The denial of refugee status pursuant to Article 12 is addressed under section 41 of the PTA. However, the denial of asylum under Article 13 is not addressed under the laws of Antigua and Barbuda.

6.2.2 Recommendations and Comments

870. Antigua and Barbuda has ratified the Vienna, Palermo and Terrorist Financing Conventions and there is enacted legislation that implements substantial portions of these Conventions. There are however some provisions that are not covered adequately as stated in discussions on Rec. 1 and SR. II in section 2 of this Report. For example, with regard to the Vienna Convention, the MDA must address all the precursor chemicals mentioned in the Tables of the Convention. Additionally, with respect to the Palermo Convention, the POCA in particular should be revisited with a view to either amending it to capture predicate offences to money laundering and financing of terrorism offences, or repealing it. Provision should also be made for the transfer of proceedings pursuant to Article 8 of the Vienna Convention.

871. All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• **There are some shortcomings with regard to the implementation of provisions in the Vienna, Palermo and Terrorist Financing Conventions.**
SR.I	**PC**	• **The definitions of "person" and "entity" are not consistent, and this may affect whether terrorist groups are captured for some offences.** • **No provision has been made under the terrorism legislation for access to frozen funds as required by the UNSCRs 1373 and 1452.**

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and SR. V

872. Mutual legal assistance in anti-money laundering and financing of terrorism matters is provided for under the MACMA. The MACMA provides for mutual assistance for all countries that are members of the British Commonwealth, and for other countries with which Antigua and Barbuda has signed mutual legal assistance treaties (MLATs). Section 30(2) of the MACMA provides for the MACMA to "apply in relation to the country specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications (if any) as may be prescribed". The MACMA also provides for requests to be made by Antigua and Barbuda to foreign countries. Antigua and Barbuda has signed an MLAT with the United States of America.

873. Provision is also made for mutual legal assistance under other legislation. However, these provisions are read in conjunction with the MACMA. Part V of the MLPA deals with international cooperation in money laundering matters and gives general guidance on the scope of the powers of authorities designated to act on requests. Section 67 of the POCA relates specifically to external forfeiture and confiscation orders. Part VI of the PTA addresses information sharing, extradition and mutual assistance in criminal matters in relation to terrorist acts.

874. Under section 31(1) of the PTA, where Antigua and Barbuda and another **S**tate are Parties to a counter terrorism convention and have an arrangement for mutual legal assistance in criminal matters, the arrangement shall be deemed for purposes of the MACMA to include mutual assistance in criminal matters in respect of offences falling within the scope of the Convention.

875. Conversely, under section 31(2) of the PTA, where Antigua and Barbuda and another **S**tate are Parties to a counter terrorism convention, and have no arrangement for mutual legal assistance in criminal matters, the Minister of Foreign Affairs by order published in the Gazette, may treat the counter terrorism Convention as an arrangement between Antigua and Barbuda and the State and provide for mutual assistance in criminal matters in respect of offences falling within the scope of the Convention.

876. Pursuant to section 29 of the PTA, the Commissioner of Police or the Director of the ONDCP may, on request from the appropriate authority of a foreign **S**tate, disclose to that authority information relating to actions or movement of terrorists, use of false documents, traffic in weapons and sensitive materials by terrorists, and the use of communications technologies by terrorists, if disclosure is not prohibited by law and is not prejudicial to national security.

877. There is no limitation under section 23(4) of the MLPA as to the types of matters for which assistance may be rendered. The Antigua and Barbuda Authorities may receive and take appropriate measures for assistance related to civil, criminal or administrative investigations, prosecutions or proceedings involving money laundering.

878. Upon the Central Authority for Antigua and Barbuda, who is the Attorney General, accepting a request for assistance from a requesting state in a criminal matter under the MACMA or under a bilateral or multilateral treaty, the MACMA allows the appropriate authority in Antigua and Barbuda to provide, *inter alia,* the following assistance:

(a) Obtain articles by search and seizure;

(b) Obtain evidence;

(c) Locate or identify persons;

(d) Trace property;

(e) Provide judicial or official records;

(f) Render assistance in serving documents;

(g) Arrange the attendance of persons; and

(h) Give effect to certain foreign orders.

879. Section 18 of the MACMA and the Schedule thereto set out the procedure to be followed by Commonwealth countries in making requests for assistance under the MACMA. A request for assistance must specify the assistance requested, the period within which the country wishes the request to be complied with and such information that will facilitate compliance with the request. It must also identify the person, agency or authority that initiated the request. Where applicable, the relevant certificate or order by a competent authority of the Commonwealth **S**tate justifying the need for assistance must be submitted with the request.

880. Antigua and Barbuda has in place a clear and effective process for the execution of mutual legal assistance requests. Generally, requests are received by the Attorney General, assessed, consented to and passed to the Supervisory Authority for action within a few days of receipt.

881. The ONDCP's financial investigators and legal department process the request**s**. It is the standard procedure of the ONDCP to fulfil requests for assistance in money laundering matters within three (3) weeks of receipt. This is done in the case of straightforward and uncomplicated requests. In the case of more complex requests, the period for responding would be longer. A response is then submitted back through the Attorney General to the Requesting **S**tate. There is scope for further expediting this process in urgent cases.

882. Based on the responses received from countries that have made requests for mutual legal assistance from Antigua and Barbuda, the Antigua and Barbuda Authorities generally have been able to provide assistance in a timely and effective manner**.** The Examiners are unaware of any complaints from foreign jurisdictions with regard to any aspect of the assistance requested.

883. Conditions for mutual legal assistance under the MACMA are based on the Harare Scheme for Commonwealth countries. It is the policy of the Antigua and Barbuda authorities to render assistance in all cases where it is possible to do so. Assistance is not made subject to unreasonable, disproportionate or unduly restrictive conditions. A request is not refused on the grounds that proceedings have not commenced in the requesting **S**tate, nor is a conviction required before assistance is provided. The absence of reciprocity is not a bar to the rendering of assistance.

884. However, the Antigua and Barbuda Authorities may be inclined to refuse assistance if the request compromises **S**tate interests. A request based on discriminatory policies relating to a person's race, religion, nationality or political opinions is also likely to be refused.

885. The fact that an offence involves fiscal matters would not normally be the sole basis for refusal of assistance. Generally, if there are fiscal elements, public interest factors will have to be weighed. Where the offence is entirely of a fiscal nature, in the absence of a Tax Information Exchange Agreement (TIEA), the Antigua and Barbuda Authorities would be reluctant to render assistance by virtue of section 23(5b) of the MLPA. This section provides for disclosure of information in relation to the imposition, assessment or collection of taxes only where an MLAT exists and only in accordance with the terms of the Treaty. Antigua and Barbuda has signed a TIEA with the United States of America, and requests relating to fiscal matters will normally be dealt with pursuant to the TIEA and not the MACMA. Requests from countries with which Antigua and Barbuda has not signed a TIEA are usually not primarily fiscal in nature, and Antigua and Barbuda will therefore provide assistance to the greatest extent possible.

886. The MLPA is the principal Act used for obtaining confidential records from financial institutions in money laundering and financing of terrorism matters. Secrecy or confidentiality requirements do not impede the rendering of mutual legal assistance. Section 23(6) of the MLPA specifically provides that any provisions referring to secrecy or confidentiality will not be an impediment to compliance when the information is requested by or shared with the Court.

887. Section 25 of the MLPA in broad terms overrides secrecy obligations under the Act that subject to the provisions of the Constitution, the provisions of the MLPA will have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law. However, there may be instances where secrecy or confidentiality will be observed, for example, in circumstances where privilege applies.

888. If information relates to a client's account held by a financial institution, it will not be disclosed unless the client is the subject of a criminal investigation involving the offence of money laundering and the Court has on application by the Supervisory Authority and the Attorney General ordered the disclosure of the information. It is customary that the client's consent will be sought to have the information disclosed.

889. A request may not be declined on the sole basis of secrecy where it relates to terrorist activity.

890. The Director of the ONDCP, in his capacity as Supervisory Authority under the MLPA, responds to mutual legal assistance requests. Section 14 of the MLPA includes powers to compel production of documents. He may apply to a Judge requesting an order authorising him or an officer of the ONDCP to enter the premises of financial institutions to search the premises and remove any document, material or thing. There does not appear to be any limitation on the type of document that may be removed. Additionally, under the ONDCPA he can search premises without a warrant, seize property and detain, interview, fingerprint and photograph persons. Witness statements may be taken for use in criminal prosecutions.

891. Extensive investigatory powers are given under the PTA to law enforcement authorities. They may arrest without a warrant. Suspects can be detained upon authorisation by a Judge. Section 23 of the PTA enables law enforcement officers to apply to the Court for an order permitting them to gather information with respect to terrorist offences. However, the written consent of the Attorney General must first be obtained. Persons named in an order may be compelled to produce documents unless the information is subject to privilege or other confidentiality rule. A person cannot refuse to answer questions or produce documents on the ground that to do so will incriminate him or subject him to proceedings. The power to intercept communications is stated in section 24 of the PTA. Law enforcement officers are also authorised to seize property used in the commission of terrorist acts.

892. The question of *forum conveniens* is determined by negotiation as there is no special mechanism outlining the factors to be taken into account and the procedures to be followed. In considering the appropriate forum, regard is had, for example, to whether the defendant is present in the jurisdiction, the availability of witnesses, and the connection of the matter to the jurisdiction. Consideration with regard to extradition is also brought to bear and whether the interests of justice would be served by having the defendant tried in another jurisdiction. The question of the cost of proceedings to the jurisdiction is also germane.

Additional Elements

893. The investigatory powers available in responding to a mutual legal request generally may be used when there is a direct request from foreign judicial or law enforcement authorities to

their counterparts in Antigua and Barbuda. Assistance is rendered on the basis of comity, and the domestic authorities respond to the greatest extent possible.

894. The issue of deciding the most convenient forum for financing of terrorism proceedings has not arisen. However, general *forum conviniens* principles will be taken into consideration.

895. The power to compel production of records under the MLPA, and to search, seize and take witness statements under the ONDCPA is available for international cooperation in financing of terrorism matters. Wide investigatory powers are also available pursuant to the PTA.

Special Recommendation V

896. The ONDCP has a mandate to deal with matters of terrorism, and therefore FT, and is the primary coordinating body with respect to FT. As stated previously, requests for assistance can be dealt with under the MACMA and any treaty or other arrangement in place.

Recommendation 37 and SR. V

897. The principle of dual criminality applies to mutual legal assistance. Section 19(2)(d) of the MACMA makes it mandatory for a request to be refused if, in the opinion of the Attorney General, the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Antigua and Barbuda, would not have constituted an offence under the criminal law of Antigua and Barbuda. The Authorities have informed the Examiners that assistance is rendered in respect of other aspects of the request where dual criminality exists. However, it is doubtful whether the dual criminality requirement would be overridden for very intrusive measures.

898. Under section 3(a) of the MACMA, a discretionary ground is provided if the request relates to the prosecution or punishment of a person in respect of conduct which occurred outside the jurisdiction, and which is similar to conduct punishable under the laws of Antigua and Barbuda.

899. There is no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying an offence. Technical differences do not pose an impediment to the provision of mutual legal assistance, and this has been made explicit in the EA. Section 4(a) of the EA in defining "extradition crime" sets out certain elements of the criminal offence which will apply "however described in the law of the foreign state or Commonwealth country". In the case of money laundering and its predicate offences, it would be unusual to have a request which cannot be based on some offence which is punishable under the laws of Antigua and Barbuda, given the wide definition of money laundering under the MLPA.

Recommendation 38 and SR. V

900. In response to mutual legal assistance requests, the MLPA is the principal Act used for identifying, freezing and confiscating laundered property and the instrumentalities used or intended for use in a money laundering offence. The PTA may be used to seize, freeze and confiscate property used or intended for use in the commission of a financing of terrorism offence. Section 23(1) of the PTA mandates the Court, or a law enforcement officer in consultation with the Attorney General, to cooperate in rendering assistance to foreign countries in accordance with the MLPA and within the limits of the countries' respective legal systems.

901. The Court or the law enforcement officer in consultation with the Attorney General may receive a request from another **S**tate to identify, trace, freeze, seize or forfeit the property, proceeds or instrumentalities connected to money laundering offences. They may take appropriate action, including those referable to automatic forfeiture upon conviction of a money laundering offence and civil forfeiture. Thus, the provisions and procedures which deal with identifying, tracing, freezing, seizing or forfeiting the property, proceeds or instrumentalities connected to money laundering offences in the domestic context are applicable to mutual legal assistance requests.

902. Section 23(3) of the MLPA permits the recognition in Antigua and Barbuda of a judicial order or judgment of a foreign Court or competent authority. The order may be recognised as evidence that the property, proceeds or instrumentalities referred to in it may be subject to forfeiture.

903. Express provision is made under section 67 of the POCA for the registration of external forfeiture and confiscation orders. Sections 31 to 38 of the POCA are said to have effect, subject to such modifications as may be specified in the order. The sections cited govern restraining orders and the procedures to be observed in giving effect to them.

904. Where there exist treaties and agreements, these will determine the measures to be applied regarding seizures and confiscation.

905. An Agreement has been signed with the United Kingdom concerning the investigation, restraint and confiscation of the Proceeds and Instruments of Crime. It came into effect on 1st October, 2004. It extends to the territories for whose international relations the Government of the United Kingdom is responsible.

906. Mutual legal assistance requests relating to identifying, freezing, and confiscating property pursuant to the MLPA may be made in respect of any property in which a defendant has an interest. An application for a restraining order under the POCA is made against 'any realisable property held by the defendant' or against 'specified realisable property held by a person other than the defendant'. Realisable property is any property held by a person who has been charged with or convicted of a scheduled offence or any gift made by that person which is caught by the Act. The amount that might be realised at the time a confiscation order is made is the total of the values of all the realisable property held (including gifts), less the total amount payable in pursuance of obligations which have priority. There is no restriction on the property that can be realised. A defendant's realisable property could therefore be taken to include property of a corresponding value. As mentioned previously, "property" is not defined in accordance with the definition set out in the Palermo Convention, though this should not affect the effective and timely response to mutual legal assistance requests.

907. The ONDCP is the main coordinating body with respect to money laundering and financing of terrorism matters. Section 12 of the ONDCPA directs the ONDCP to co-operate and liaison with other authorities and persons in and outside of Antigua and Barbuda. The Director, with the approval of the Cabinet, may enter into a written agreement or arrangement with public authorities, including foreign authorities, who have similar functions to those of the ONDCP.

908. The Director may in any particular case liaise or co-operate with any other person in the matter under investigation or in any legal proceedings relating to that matter. Such matters would include those relating to seizure and confiscation actions.

909. A Forfeiture Fund has been established under section 20G(1) of the MLPA. The Minister responsible for national drug control and security administers the Fund. All funds and proceeds from the sale of property forfeited under the MLPA or penalties paid in relation to a civil proceeds assessment order are to be deposited in the Fund, after deduction of twenty (20) per centum management expenses. These expenses are paid into the Consolidated Fund. However, given the difficulty in ascertaining the extent to which the provisions of the MLPA apply in respect of the deemed money laundering terrorism offences under section 9(3) of the PTA, it is uncertain whether terrorist funds and proceeds in relation to terrorist property are to be paid into the Fund. For the avoidance of doubt, reference could be made under the PTA in relation to all terrorist offences for the payment of confiscated proceeds of terrorism or terrorist financing into the Fund or into a fund specifically established for the deposit of proceeds of terrorism activity.

910. The monies deposited into the Fund may be applied for the purposes of the ONDCP or for any other purpose determined by the Minister. The Examiners were informed that the building which houses the offices of the ONDCP has been built using confiscated assets.

911. Asset sharing with other countries has taken place upon the outcome of several cases, primarily in relation to drug trafficking cases. An arrangement exists between Antigua and Barbuda and Canada with regard to asset sharing**.** There is no formal agreement with the United States of America, though assets are shared on a case-by-case basis.

Additional Elements

912. Non criminal confiscation orders are subject to the normal civil High Court procedure, which provides for registration and giving effect to foreign orders in the jurisdiction. Given that section 20G of the MLPA specifies that monies deposited into the Fund are those derived under section 20A and section 20B of the MLPA in respect of forfeiture, shared assets derived from non criminal confiscation orders are not paid into the Fund. Consideration should be made for these funds and proceeds to be deposited into the Fund. This would apply equally to non criminal confiscation orders in respect of terrorism matters.

Recommendation 30 – Resources (Central Authority for receiving/sending mutual legal assistance requests

913. As previously stated, the Attorney General is the Central Authority for sending and receiving mutual legal assistance requests, having been designated under section 4 of the MACMA. The Attorney General is the functional authority in dealing with extradition requests, though the Minister of Foreign Affairs is the Competent Authority under the EA. The Head of Department at the Attorney General's Office is the Solicitor General. He and his secretary are required by section 11(2) of the Civil Service Act (Cap. 87) to take and subscribe to the oath or affirmation of office and of secrecy.

914. Staff of the Attorney General's Office are subject to requirements of confidentiality and high integrity and are recruited with attention to skill levels. See. Section 6.1 of this Report. Regulation 18 of the Civil Service Regulations 1993 (No. 1 of 1993) gives guidance on the conduct of employees in their professional roles.

915. The staff of the Attorney General's Office are knowledgeable in mutual legal assistance requests and extradition matters. It is felt that staff competence in this area is adequate. However, ongoing training is necessary to keep staff au fait with developments, particularly with regard to money laundering and financing of terrorism. The lack of resources restricts the type of training and the opportunities available for training staff.

Recommendation 32

Statistics

916. The ONDCP maintains statistics on international mutual legal assistance requests and extradition requests that are made or received relating to money laundering and financing of terrorism, including whether the request was granted or denied. The statistics were provided through the collaboration of the Attorney General and the Solicitor General.

917. There has been only one instance in which a request for assistance made by a foreign jurisdiction was denied. The reason for the denial of the request was not communicated to the Examiners.

Table 26: MLAT Requests Received

	ML	Predicate Offences	FT	Tracing	Freezing	Seizing	Confiscation	Extradition	Others
2003	12	24	0	18	5	4	4	0	0
2004	8	26	0	1	0	0	0	1	2
2005	11	49	0	33	4	3	2	0	0
2006	10	2	0	9	0	0	0	0	0
Total	41	101	0	61	9	7	6	1	2

Table 27: MLAT Requests Received – Predicate Offences

	Requests Received	Requests Granted	Requests Denied	Drug Trafficking	Investment Fraud	Other Fraud	Other
2003	24	24	0	7	1	11	5
2004	26	26	0	2	12	8	4
2005	49	49	0	11	7	24	7
2006	2	2	0	0	0	0	0
Total	101	101	0	20	20	43	16

Table 28: MLAT Requests Made

	ML	FT	Tracing	Freezing	Seizing	Confiscation	Other
2003	26	0	5	0	0	0	21
2004	3	0	3	0	0	0	0
2005	5	0	4	0	0	1	0
2006	2	0	2	0	0	0	0
Total	36	0	14	0	0	1	21

Table 29: MLAT Requests Made – Predicate Offences

	Requests Made	Requests Granted	Requests Denied	Drug Trafficking	Investment Fraud	Other Fraud	Other
2003	24	23	1	7	1	11	5

2004	26	25	0	2	12	8	4
2005	49	49	0	11	7	24	7
2006	0	0	0	0	0	0	0
Total	99	97	1	20	20	43	16

Table 30: Breakdown of MLA Requests Made

Number of MLA Requests Made

Year	Requested Country	Type of Request		Total Requests
		Formal	Informal	
2003	USA	0	15	15
	Canada	0	2	2
	Ukraine	0	2	2
	Barbados	0	1	1
	Guyana	0	1	1
	St. Vincent	0	1	1
	St. Kitts & Nevis	0	1	1
	Trinidad & Tobago	0	1	1
	Dominica	0	1	1
	Australia	0	1	1
Total		0	26	26
		0	2	2
2004	UK Drug Liaison Office Barbados	0	1	1
Total		0	3	3
2005	Canada	1	2	3
	St. Vincent	0	1	1
	St. Kitts & Nevis	0	2	2
	Brazil	0	1	1
	United States	0	1	1
	Trinidad & Tobago	0	1	1
Total		1	8	9
2006	St. Lucia	1	2	3
	Grenada	0	1	1
	Barbados	0	2	2
	Virgin Islands	0	1	1
Total		1	6	7

Table 31: Breakdown of MLA Requests Received

Number of MLA Requests Received

Year	Requesting Country	Type of Request	Total Requests
		Formal Informal	
2003	USA	6	6

		0	
	Canada	4 0	4
	UK	2 0	2
Total		12 0	12
2004	USA	3 4	7
	Canada	3 0	3
	UK	2 2	4
Total		8 6	14
2005	USA	8 14	22
	Canada	5 0	5
	UK	1 3	4
Total		14 17	31
2006	USA	5 3	8
	Canada	1 0	1
	UK	4 0	4
Total		10 3	13

Table 32: Requests Received by Regional FIUs

Number of MLA Requests Received

Year	Requesting Country	Type of Request	Total Requests
		Formal Informal	
2003	Dominica	0 3	3
	St. Vincent	0 1	1
	St. Kitts	0 2	2
	Grenada	0	2

		2	
Total		0 8	8
2004	Dominica	0 2	2
	St. Vincent	0 2	2
	Grenada	0 2	2
Total		0 6	6
2005	Dominica	0 4	4
	Bahamas	0 1	1
	St. Kitts & Nevis	0 1	1
	Grenada	0 1	1
	Trinidad & Tobago	0 1	1
	Belize	0 1	1
	Dominican Republic	0 1	1
Total		0 10	10
2006	St. Kitts & Nevis	0 2	2
	St. Vincent	0 1	1
Total		0 3	3

Table 33: Other Requests Received

Number of MLA Requests Received

Year	Requesting Country	Type of Request	Total Requests
		Formal Informal	
2003	Sweden	0 3	3
	Ukraine	0 1	1
Total		0 4	4

2004	**Brazil**	**0 1**	**1**
	Belgium	**0 1**	**1**
	Slovak Republic	**0 1**	**1**
	United Arab Emirates	**0 1**	**1**
Total		**0 4**	**4**

6.3.2 Recommendations and Comments

918. Antigua and Barbuda has a robust mutual legal assistance regime. However, there is need for the establishment of a Forfeiture Fund into which the confiscated proceeds of terrorism activity can be deposited.

919. Provision should be made for the sharing of assets confiscated in relation to terrorism offences.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**C**	• **This recommendation is fully observed.**
R.37	**C**	• **This recommendation is fully observed.**
R.38	**LC**	• **No provision has been made for confiscated proceeds of terrorism or terrorism assets seized to be deposited into a Forfeiture Fund.** • **No provision has been made for the sharing of assets confiscated as a result of coordinated law enforcement actions.** • **No provision has been made for assets from terrorist activity to be deposited into a Forfeiture Fund.**
SR.V	**LC**	• **The provisions of Rec. 38 have not been met with regard to the establishment of a Forfeiture Fund and the sharing of confiscated assets.**

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and SR. V

920. Extradition is governed primarily by the EA. The EA defines an 'extradition crime' as conduct constituting an offence punishable at a minimum with imprisonment for a term of at least twelve (12) months. Section 24 of the MLPA states that "money laundering is an offence for the purpose of any law relating to extradition or the rendition of fugitive offenders". Given that money laundering offences are punishable by a minimum penalty of

twelve (12) months' imprisonment, money laundering offences are extraditable offences for the purposes of the EA.

921. The Minister of Foreign Affairs is the competent authority to whom extradition requests should be made. Extradition requests may be made by a Commonwealth country, which includes any part or political subdivision, dependency, protectorate or protected state of a Commonwealth country. The procedure for extradition is set out in Part IV of the EA. Special extradition arrangements may be made with a foreign **S**tate with which there are no general extradition arrangements.

922. Antigua and Barbuda has signed Extradition Treaties with the United States of America, the United Kingdom, Canada, the English speaking Caribbean countries and most Commonwealth States.

923. Since 2000**,** five (5) extradition requests were made by a foreign **S**tate. Of these three (3) were made by the United States; one (1) by the British Virgin Islands and a request made by Canada was later withdrawn. In 2004 Antigua and Barbuda made a request to the United Kingdom. This request is pending.

924. The EA does not expressly prohibit the extradition of nationals of Antigua and Barbuda. Section 3 of the EA is construed widely to apply to persons who are nationals of Antigua and Barbuda, and this is confirmed by the statistics provided. Additionally, the Authorities of Antigua and Barbuda confirmed that nationals could be extradited.

925. On account that Antigua and Barbuda does not make a distinction between its nationals and non-nationals of Antigua and Barbuda with regard to extradition, there is no need for special measures to ensure the expeditious and efficient prosecution of Antigua and Barbuda nationals. The Antigua and Barbuda Authorities stated that they cooperate with the Requesting State to the fullest extent to expedite the extradition process.

926. Section 11(6) of the EA provides that where no period is specified or the application is made under special extradition arrangements, the Court of committal may fix a reasonable period for the extradition to be handled without undue delay. The Examiners were advised that the duration for extradition procedures varies, from about one (1) year to three (3) years. The complexity of the matter and whether extradition formalities have been observed are factors which determine the period in which the extradition is completed.

927. Where a person waives formal extradition proceedings, the process is considerably more expeditious. The Antigua and Barbuda Authorities informed the Examiners that a request made by the United States of America in 2005, and which did not undergo the full extradition hearing, was completed in one (1) year. If there is delay, a person committed may apply for his discharge.

Additional Elements

928. Persons cannot be extradited based only on warrants of arrests or judgements. There must be evidence upon which a Court can act and this evidence must be by way of sworn affidavit. Such evidence will necessarily include particulars of the offence of which the person is accused or was convicted and particulars sufficient to justify the issue of a warrant of arrest under the EA.

929. A person is permitted to give notice that he waives his right to formal extradition proceedings.

Recommendation 37 and SR. V

930. An order of the Minister of Foreign Affairs to proceed with the extradition must specify the offence which, in the estimation of the Minister, would constitute equivalent conduct in Antigua and Barbuda. There is no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. Similarly, technical differences do not impede the provision of assistance. Section 4(a) of the EA in defining "extradition crime" sets out certain elements of the offence which will apply "however described in the law of the foreign state or Commonwealth country".

931. In the absence of conditions for extradition, assistance can be rendered by less intrusive measures such as refusal of entry to the person by the Chief Immigration Officer or deportation for breaches of domestic law. Persons can also be encouraged to return voluntarily to the Requesting **S**tate. The extent of assistance available will depend on the circumstances of the case.

932. With regard to extradition proceedings related to terrorist acts and the financing of terrorism, provision is made under Part VI of the PTA. Where Antigua and Barbuda becomes a party to a counter terrorism convention, the extradition arrangements under the Convention are deemed for the purposes of the Extradition Act to include provision for extradition in respect of offences which fall within the scope of the Convention. If there are no extradition arrangements under the counter terrorism convention, the convention may be treated as an extradition arrangement. A list of counter terrorism conventions is given under Part 1 of the PTA.

933. The general extradition provisions relating to undue delay apply equally to extradition in terrorism matters.

934. Section 32(1)(a) of the PTA provides that an offence of a political or fiscal character may constitute a terrorist act for the purposes of extradition. As is the case with extradition requests generally, Antigua and Barbuda has no legal or practical impediment to rendering assistance where both countries criminalise the conduct on which the offence is based. Terrorist related extradition procedures apply to both Antigua and Barbuda nationals and non-nationals.

935. With respect to simplified and less intrusive procedures, section 40(1) of the PTA provides that the Chief Immigration Officer or other authorised officer shall not grant authority permitting a person to enter the country if he has reasonable grounds to suspect that the person is or will be involved in the commission of a terrorist act. Under section 40(2), the Minister may deport a person whom he has reasonable grounds to suspect is or will be involved in the commission of a terrorist act. He may also refuse the application for refugee status of a suspected person.

Additional Elements

936. Although there have been no extradition requests relating to terrorist activity, the Antigua and Barbuda Authorities advised that the simplified procedure whereby a person may waive his right to formal proceedings is available in terrorist related requests.

6.4.2 Recommendations and Comments

937. There appears to be a high level of cooperation between Antigua and Barbuda and foreign States with regard to extradition matters. However, the Authorities should seek ways to

limit the delay in extradition procedures. The latter comment does not affect the rating of this Recommendation.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	**This Recommendation is fully observed.**
R.37	**C**	**This Recommendation is fully observed.**
SR.V	**LC**	• **See factor in section 6.3**

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

938. Pursuant to section 12(2) of the ONDCPA, the Director may, for the purpose of facilitating the performance of the functions of the ONDCP, enter into "an agreement or arrangement in writing with the public authority or authorities of a foreign State which have similar functions to the ONDCP.

939. Section 12(3) enables the Director, in any particular case in the performance of his functions, to co-operate or liaise with any other entity or individual in or outside of Antigua and Barbuda that, in the opinion of the Director, is concerned in the matter under investigation or in legal proceedings relating to that matter under the Act. This provision gives the Director the authority to provide the widest range of cooperation to their foreign counterparts.

940. The ONDCP notified the Examiners that they have signed MOUs with their counterparts in Canada and Panama. Further, they are sharing information both formally and informally with foreign FIUs in relation to ML and other predicate offences. Information is being shared spontaneously and upon request. Exchanges of information in relation to ML and predicate offences are the normal course of their work. The ONDCP is a member of Egmont and uses the Egmont secure web to exchange information among Egmont countries.

941. Under Sections 10(1) of the ONDCPA, the ONDCP has as two of its functions: "(b) to investigate reports of suspicious activity concerning specified offences and the proceeds of crime" and "(e) to liaise with law enforcement agencies and Financial Intelligence Units outside Antigua and Barbuda concerning drug trafficking, money laundering and specified offences whether committed in Antigua and Barbuda or elsewhere." This includes the sharing of database information on SARs, pursuant to section 12(1) of the ONDCPA.

942. With respect to other databases, the Supervisory Authority under section 11(vi) of the MLPA may instruct any financial institution or seek the assistance of any government department, statutory body, or other public body to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under this section." The ONDCP also has search powers under Part IV of the MLPA.

943. The Police Force is sharing information with its foreign counterpart through Interpol. They are also exchanging information via the Association of Caribbean Commissioners of Police (ACCP) MOU that was signed among CARICOM Countries. This exchange includes conducting investigations where a criminal offence is suspected to have been committed.

The Police Force has not established any MOUs directly with their foreign counterparts. They do not maintain statistics in terms of requests for assistance made or received.

944. The Customs and Excise Division is exchanging information through the World Customs Organization. Customs did not establish any MOUs with their foreign colleagues. The Division does not keep records of requests for assistance granted and received.

945. Section 12 of the ONDCPA provides for the ONDCP to liaise and cooperate with foreign counterparts. The Director of the ONDCP has ultimate approval. There are no restrictions on information exchange in the legislation.

946. Antigua and Barbuda has a bilateral Mutual Legal Assistance Treaty with the U.S., and a bilateral agreement with the United Kingdom concerning the Investigation, Restraint and Confiscation of the Proceeds and Instruments of Crime.

947. With regard to the ECCB, section 32(2)(b) of the BA provides that the provisions for banking secrecy under section 32(1) of the BA "shall not be construed as preventing the Central Bank from (i) sharing any information received or any report prepared by the Central Bank in the performance of its duties under this Act, with any local or foreign authority responsible for the supervision or regulation of a financial institution, or for maintaining the integrity of the financial systems; or (ii) providing access, to any officer of a foreign authority responsible for the supervision or regulation of financial institutions in order to assess the safety and soundness of a foreign financial institution, on a reciprocal basis…"

948. With regard to the FSRC, section 373 of the IBCA provides that "Nothing is this Act shall prevent the Commission from disclosing information concerning the ownership, management and operation of a licensed institution to enable or assist a foreign regulatory authority to exercise its regulatory functions, except that no customer information may be disclosed without an order from a court of competent jurisdiction."

949. Assistance may be obtained by means of Letters Rogatory. The request for assistance is made by one Court to another; this arrangement is dependent upon comity. The process for obtaining assistance is very complex, and the instances where Letters Rogatory are relied on are rare.

950. The registration of foreign orders in Antigua and Barbuda is a mechanism which enables a foreign order to be given effect in the jurisdiction. The registration mechanism has its limitations in that it does not serve as an enforcement of the order. Further, it is not applicable in all circumstances. Registration cannot be used, for example, to obtain banking documents as these can only be delivered to a person authorised by **S**tatute to obtain confidential documents.

951. The Director of the ONDCP has access to and can communicate with the principal stakeholders: Commissioner of Police, Comptroller of Customs, Commander of ABDF, Chief Immigration Officer, to marshal human and other resources to effect rapid response to requests for law enforcement assistance. However, this exchange does not exist between the ECCB and the FSRC.

952. MOUs are in place, have been concluded or are currently being negotiated with other foreign jurisdictions, particularly members of CARICOM. As stated previously, the ONDCP is a member of Egmont and uses the Egmont secure web. The Police make use of Interpol. The National Joint Communication Centre, which is housed at the ONDCP Headquarters, is a repository of information from law enforcement agencies.

953. Section 32(2) of the BA provides for sharing of information by the Central Bank "on the basis, and subject to a Memorandum of Understanding between the Central Bank and such authorities." The Examiners were not provided with any information to show that the FSRC is authorised to exchange information with the Central Bank.

954. Spontaneous and requested exchanges of information in relation to ML and predicate offences are the normal course of the work done by the ONDCP.

955. Information sharing by the Central Bank under Section 32(2) BA is for the purpose of "supervision or regulation of a financial institution, or for maintaining the integrity of the financial institution." The FSRC is authorized to share information with the ONCDP upon a letter of request made by the ONDCP. The FSRC is not legally authorised to share information with the Central Bank.

956. The ONDCP does conduct inquiries on behalf of foreign FIUs. The Police Force conducts inquiries and investigations on behalf of its counterparts who are members of Interpol. The Customs Division conducts inquiries/investigations on behalf of its foreign counters who are members of the World Customs Organization. The Immigration Department conducts similar inquiries upon request made through the Ministry of Foreign Affairs.

957. As previously stated, one of the functions of the ONDCP under section 10 (1) (b) of the ONDCPA is to liaise with law enforcement agencies and Financial Intelligence Units outside Antigua and Barbuda concerning drug trafficking, money laundering and specified offences whether committed in Antigua and Barbuda or elsewhere. According to the ONDCP this includes conducting investigations on behalf of its foreign counterparts, which they have been doing.

958. Section 12 of the ONDCPA provides for the ONDCP to liaise and cooperate with foreign counterparts. The Director of the ONDCP has ultimate approval. There are no restrictions on information exchange in the legislation. It was mentioned in interview that the ONDCP has been exchanging information with their foreign counterparts on a consistent basis and that there are no conditions that can be referred to as disproportionate or restrictive.

959. There is no legal provision that stipulates refusal solely on the grounds of fiscal matters. A Tax Information Exchange Agreement exists with the U.S. Issues relating to fiscal matters have been previously addressed in this Report.

960. With respect to money laundering, secrecy or confidentiality requirements are overridden by section 25 of the MLPA.

961. Section 33(2) of the BA provides for overriding secrecy provisions to allow the Central Bank to share information with any officer of a foreign authority responsible for the supervision or regulation of financial institutions in order to assess the safety and soundness of a foreign financial institution.

962. Section 244(1)(c) of the IBCA provides for disclosure by the FSRC of banking information pursuant to a request by the Supervisory Authority under the MLPA. The Supervisory Authority in his capacity as Director of the ONDCP has powers to liaise with foreign competent authorities pursuant to section 10(1)(d) of the ONDCPA.

963. Section 32 of the ONDCPA makes it an offence for a member of the ONDCP to divulge information obtained in the course of his employment in the ONDCP to another person other than in the proper exercise of their duties. Members of the ONDCP are subject to a confidentiality agreement mentioned previously in the Report.

964. Antigua and Barbuda has not established any MOUs or other formal measures to facilitate the prompt and constructive exchange of information with foreign non-counterparts. Exchanges of information in this regard can only be done via an MLA Request.

965. It is a matter of practice that the Requesting Authority disclose the purpose of a request for assistance and on whose behalf it is made.

966. The ONDCP can, by virtue of the powers vested upon the Supervisory Authority under the MLPA, obtain from other competent authorities or other persons relevant information requested by a foreign FIU

967. Section 29 of the PTA provides that "The Commissioner of Police or the Director of the ONDCP may, on a request made by the appropriate authority of a foreign state, disclose to that authority, any information in his possession or in the possession of any other government department or agency, relating to any of the following"— (a) actions or movement of terrorists; (b) use of forged or falsified travel papers by persons suspected of involvement in the commission of a terrorist act; (c) traffic in weapons and sensitive materials by terrorist groups; (d) the use of communications technologies by terrorist groups, if the disclosure is not prohibited by any provision of law and will not be prejudicial to national security or public safety.

968. No specific provisions have been made under the PTA for the rapid, constructive and effective exchange of information with foreign counterparts in relation to FT. The ONDCP has not made or received any request for assistance concerning FT.

969. The ONDCP have established MOUs with the FIUs in Panama and Canada. The ONDCP is a member of the Egmont group of FIUs and is therefore capable of exchanging information with respect to FT, if requested.

970. Section 12 of the PTA authorises the Commissioner of Police or the Director of the ONDCP to disclose any information in his possession or in the possession of any other government department or agency to the appropriate authority of a foreign state upon request. The PTA does not indicate whether information can be exchanged spontaneously.

971. Under the PTA only the Commissioner of Police or the Director of the ONDCP can conduct inquiries on behalf of foreign counterparts with respect to FT.

972. Pursuant to section 29 of the PTA the Director of the ONDCP is authorised to search its own database as well as the databases of any government department on behalf of foreign counterparts.

973. Under the PTA the Commissioner of Police or the Director of the ONDCP is authorised to conduct investigations on behalf of foreign counterparts in relation to FT.

974. There are no provisions under the PTA that restrict the sharing of information with foreign counterparts, unless in the Commissioner of Police's view be prejudicial to national security.

975. As previously stated, in Antigua and Barbuda there is no legal provision that stipulates refusal to render assistance to a foreign jurisdiction solely on the grounds of fiscal matters.

976. Section 32(2) of the PTA provides that "Notwithstanding anything in the Mutual Legal Assistance in Criminal Matters Act, no request for mutual assistance in relation to an offence under this Act or an offence under any other Act where the act or omission also constitutes a terrorist act may be declined solely on the basis of secrecy.

977. Pursuant to section 32 of the ONDCP Act, any person who is member of the ONDCP who divulges information that has come into his possession as a result of his employment in the ONDCP to another person other than in the proper exercise of their duties commits an offence.

Additional Elements

978. The PTA does not indicate whether the ONDCP or other competent authorities are allowed to exchange information with foreign non-counterparts promptly and constructively. However, as stated previously, under section 12 of the ONDCPA the Director of the ONDCP can co-operate or liaise with any other entity or individual in or outside of Antigua and Barbuda that, in the opinion of the Director, is properly concerned in the matter under investigation or in legal proceedings relating to that matter under the Act.

979. It is a matter of practice that the requesting authority discloses the purpose of the request and on whose behalf the request is made.

980. The Director of the ODNCP by his powers vested under section 29 of the PTA can obtain from other competent authorities or other persons relevant information requested by a foreign FIU.

Recommendation 32

Statistics

981. The ONDCP maintains annual statistics on international requests for mutual legal assistance, including formal requests made or received by the FIU, and spontaneous referrals made by it to foreign authorities

Additional Elements

982. The ONDCP maintains statistics on requests for assistance other than formal MLAT and mutual legal assistance for information in evidential format.

6.5.2 Recommendations and Comments

983. Antigua and Barbuda should consider introducing the relevant legislative framework that would allow the FSRC to exchange information directly with its foreign counterparts.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• **The FSRC is not authorised to exchange information with its foreign counterparts.** • **The level of cooperation between the ECCB and the FSRC is unclear.**

7. OTHER ISSUES

7.1 Resources and statistics

Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	• **The resources of law enforcement agencies are insufficient for their task, particularly the Police. A number of these entities have not received training in ML/FT matters.**
R.32	**PC**	• **While statistics on money laundering investigations, prosecutions and convictions are kept, the low number of convictions which result from investigations gives credence to the view that these statistics are not adequately reviewed to ensure optimum effectiveness and efficiency of the anti-money laundering regime.** • **There are no investigations or prosecutions whereby the effectiveness of the terrorist financing investigations and prosecutions may be measured. The effectiveness of the financing of terrorism mechanisms could not be ascertained.** • **No statistics have been provided to show whether the restraint and confiscation mechanisms under the POCA are effective.** • **No measures had been instituted to review the effectiveness of their AML/CFT systems.** • **No available statistics with regard to MVTs.**

7.2 Other relevant AML/CFT measures or issues

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

7.3 General framework for AML/CFT system (see also section 1.1)

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating[19]
Legal systems		
1. ML offence	**PC**	**Key definitions are inconsistently defined in the Statutes and these definitions are not in the terms provided under the Palermo and Vienna Conventions.** **The list of precursor chemicals does not accord with the list under the Vienna Convention.** **The list of money laundering predicate offences under the POCA is too limited.** **The predicate offences for money laundering do not cover three (3) out of the twenty (20) FATF's Designated Category of Offences, specifically Participation in an Organised Criminal Group, Trafficking in human beings and migrant smuggling and Piracy.**
2. ML offence – mental element and corporate liability	**LC**	**The number of money laundering prosecutions is remarkably low given the wide measures and the absence of thresholds available under the MLPA.**
3. Confiscation and provisional measures	**LC**	**Ineffective implementation of the freezing and forfeiture regime.** **No express provision in the PTA for third parties to have their interest in property**

1. [19] These factors are only required to be set out when the rating is less than Compliant.

		excluded from seized property.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	**The ECCB and FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without a MOU.** **There are no legislative provisions allowing the Registrar of Co-operative Societies and the Registrar of Insurance to share information with other competent authorities.**
5. Customer due diligence	**PC**	**Legislative requirement for CDD measures where there is suspicion of money laundering or the financing of terrorism is limited to occasional transactions.** **The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date is not enforceable.** **The requirements concerning the time frame and measures to be adopted prior to verification are not enforceable.** **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction is not enforceable.** **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship is not enforceable.** **The requirement to apply CDD requirements to all existing customers is limited to IBCs and is not enforceable.**
6. Politically exposed persons	**NC**	**The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP is not enforceable.** **The requirement for banks to obtain senior management approval for establishing business relationships with a PEP is not**

		enforceable. **No requirement that when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, that financial institutions are required to obtain senior management approval to continue the business relationship.**
7. Correspondent banking	**NC**	**Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing customer acceptance and KYC policies and whether it is effectively supervised is not enforceable.** **Requirement for assessing a respondent's controls does not include all AML/CFT controls or whether it has been subject to money laundering or terrorist financing investigation or regulatory action and is not enforceable.** **Financial institutions are not required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship.** **Financial institutions are not required to obtain approval from senior management before establishing new correspondent relationships.** **The requirement for financial institutions to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilizing payable-through accounts or are able to provide relevant customer identification upon request for these customers while only applicable to IBCs is not enforceable.**
8. New technologies & non face-to-face business	**NC**	**There are no enforceable provisions which require all financial institutions to have measures aimed at preventing the misuse of technology in ML and FT schemes.** **Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers are not enforceable.**
9. Third parties and introducers	**NC**	**The requirement for IBCs to immediately obtain from a third party the necessary identification information on the customer**

		is not enforceable. **No requirement for financial institutions – except for an unenforceable requirement for IBCs to obtain CDD documentation – to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available for the third party upon request and without delay.** **No requirement for financial institutions to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23,24 and 29 and have measures in place to comply with the CDD requirements set out in R.5 and R.10.** **Competent authorities have not issued any guidance about countries in which third parties can be based since the FATF NCCT listing.**
10. Record keeping	**NC**	**Single transactions under EC $1,000 are exempted from record keeping requirements.** **Only IBCs are required to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity.** **There is no requirement for financial institutions to retain business correspondence for at least five (5) years following the termination of an account or business relationship.** **There is no enforceable requirement for financial institutions to ensure that customer and transaction records are available to the Supervisory Authority or other competent authorities on a timely basis.**
11. Unusual transactions	**NC**	**There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and put**

		their findings in writing. **There is no requirement to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.**
12. DNFBP – R.5, 6, 8-11	**NC**	**Lawyers and notaries, other independent legal professionals, accountants and company service providers are not considered financial institutions under the MLPA, and they are therefore outside the ambit of the AML/CFT regime.** **Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this Report are also applicable to listed DNFBPs.**
13. Suspicious transaction reporting	**PC**	**The requirement for FIs to report suspicious transactions is linked only to transactions that are large, unusual, complex etc.** **The obligation to make a STR related to money laundering does not apply to all offences required to be included as predicate offences under Recommendation 1.** **The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.**
14. Protection & no tipping-off	**PC**	**The tipping-off offence with regard to directors, officers and employees of financial institutions is limited to information concerning money laundering investigations rather than the submission of STRs or related information to the FIU.**
15. Internal controls, compliance & audit	**NC**	**Requirement for financial institutions to develop internal procedures and controls is limited to money laundering and does not include financing of terrorism.** **Requirement for financial institutions to appoint a compliance officer at management level is not enforceable.** **Requirement for financial institutions to**

		provide compliance officers with necessary access to systems and records is not enforceable. **No requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.** **Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees is not enforceable.**
16. DNFBP – R.13-15 & 21	**NC**	**Deficiencies identified for financial institutions for R13, R14, R15 and R21 in sections 3.6.3, 3.7.3 and 3.8.3 of this Report are also applicable to DNFBPs.**
17. Sanctions	**PC**	**Sanctions in the MLPA for breaches of the guideline are not dissuasive.** **Sanctions under the PTA and the MLPA except for money laundering are not applicable to the directors and senior management of legal persons.** **The range of AML/CFT sanctions in enacted legislation is not broad and proportionate as required by FATF standards.**
18. Shell banks	**NC**	**Requirement for domestic and offshore banks not to enter into or continue correspondent banking relationships with shell banks is not enforceable.** **No requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.**
19. Other forms of reporting	**C**	**This Recommendation is fully observed**
20. Other NFBP & secure transaction techniques	**C**	**This Recommendation is fully observed.**
21. Special attention for higher risk countries	**NC**	**There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.** **Financial institutions are not required to examine the background and purpose of**

		transactions that have no apparent economic or lawful purpose from or in countries that do not or insufficiently apply the FATF Recommendations and make available the written findings to competent authorities or auditors. **There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.**
22. Foreign branches & subsidiaries	**NC**	**Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries is not enforceable.** **Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF Recommendations is not enforceable.** **Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines is not enforceable.** **Requirement for IBCs' branches and subsidiaries in host countries to apply the higher of AML/CFT standards of host and home countries is not enforceable.**
23. Regulation, supervision and monitoring	**NC**	**The supervisory authorities have not been designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements.** **No provisions in the BA for the ECCB to approve changes in directors, management or significant shareholders of a licensed financial institution.** **No provisions for the Registrar of Insurance to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business.**

		No provision for a registered insurer to obtain the approval of the Registrar of Insurance for changes in its shareholding, directorship or management. **No provision for the Registrar of Co-operative Societies to use fit and proper criteria in assessing applications for registration.** **The Registrar of Co-operative Societies has no power of approval over the management of a society.** **Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.**
24. DNFBP - regulation, supervision and monitoring	**PC**	**Casinos, real estate agents, dealers in precious metals and stones are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.**
25. Guidelines & Feedback	**PC**	**The Supervisory Authority has not provided financial institutions and DNFBPs with adequate and appropriate feedback.** **The respective guidelines and directives are in practice not issued to all persons and companies in the sectors.**
Institutional and other measures		
26. The FIU	**PC**	**The Supervisory Authority has not been appointed.** **SARs are being copied to the FSRC by the entities they regulate.** **A number of reporting bodies have not received training with regard to the manner of reporting SARs.** **There is no systematic review of the efficiency of ML and FT systems.** **The ONDCP's operational independence and autonomy can be unduly influenced by its inability to hire appropriate staff without the approval of Cabinet.**

		The ONDCP does not prepare and publish periodic reports of it operations, ML trends and typologies for public scrutiny.
27. Law enforcement authorities	**LC**	**No legislative or other measures have been put in place to allow the ONDCP when investigating ML to postpone or waive the arrest of suspected persons or the seizure of cash so as to identify other persons involved in such activities.**
28. Powers of competent authorities	**C**	**This recommendation is fully observed.**
29. Supervisors	**PC**	**Neither the Registrar of Insurance nor the Registrar of Co-operative Societies has adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.**
30. Resources, integrity and training	**PC**	**The resources of law enforcement agencies are insufficient for their task, particularly the Police. A number of these entities have not received training in ML/FT matters.**
31. National co-operation	**LC**	**There are no effective mechanisms in place to allow policy makers, the ONDCP, the FSRC and other competent authorities to cooperate and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and FT.**
32. Statistics	**PC**	**While statistics on money laundering investigations, prosecutions and convictions are kept, the low number of convictions which result from investigations gives credence to the view that these statistics are not adequately reviewed to ensure optimum effectiveness and efficiency of the anti-money laundering regime.** **There are no investigations or prosecutions whereby the effectiveness of the terrorist financing investigations and prosecutions may be measured. The effectiveness of the financing of terrorism mechanisms could not be ascertained.** **No statistics have been provided to show whether the restraint and confiscation mechanisms under the POCA are effective.** **No measures had been instituted to review the effectiveness of their AML/CFT systems.** **No available statistics with regard to MVTs.**
33. Legal persons – beneficial owners	**NC**	**Statutory obligation to provide information**

		as to the ownership and management of partnerships is lacking. **There are no measures in place to ensure that bearer shares under the IBCA are not misused for money laundering.**
34. Legal arrangements – beneficial owners	**PC**	**No measures for the registration or effective monitoring of local trusts.**
International Co-operation		
35. Conventions	**LC**	**There are some shortcomings with regard to the implementation of provisions in the Vienna, Palermo and Terrorist Financing Conventions.**
36. Mutual legal assistance (MLA)	**C**	**This recommendation is fully observed.**
37. Dual criminality	**C**	**This recommendation is fully observed.**
38. MLA on confiscation and freezing	**LC**	**No provision has been made for confiscated proceeds of terrorism or terrorism assets seized to be deposited into a Forfeiture Fund.** **No provision has been made for the sharing of assets confiscated as a result of coordinated law enforcement actions.** **No provision has been made for assets from terrorist activity to be deposited into a Forfeiture Fund.**
39. Extradition	**C**	**This recommendation is fully observed.**
40. Other forms of co-operation	**LC**	**The FSRC is not authorised to exchange information with its foreign counterparts.** **The level of cooperation between the ECCB and the FSRC is unclear.**
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	**The definitions of "person" and "entity" are not consistent, and this may affect whether terrorist groups are captured for some offences.** **No provision has been made under the terrorism legislation for access to frozen funds as required by the UNSCRs 1373 and 1452.**
SR.II Criminalise terrorist financing	**PC**	**The deemed money laundering terrorism offences under the PTA and their reference to limited sections of the MLPA introduce an element of uncertainty into the financing of terrorism framework with respect to the**

		extent to which either Act is applicable, and hence, the extent to which the elements of Special Recommendation II are covered. **Sanctions should include fines to be dissuasive.** **Under the PTA, the intentional element of the offence cannot be inferred from objective factual circumstances.**
SR.III Freeze and confiscate terrorist assets	**NC**	**It is difficult to ascertain the extent of the application of the freezing mechanism under the MLPA and the PTA to deemed PTA money laundering terrorism offences.** **There is no provision for access to funds for basic expenses and certain fees as required by UNSCR 1452.** **The term "funds" is undefined in the PTA.** **Guidance to financial institutions that may be holding targeted terrorist funds is not sufficient.** **The type of property which may constitute other assets is not explicit.** **De-listing procedures are not publicly known.** **There is no specific provision for specified entities to have funds unfrozen.** **The PTA does not provide third party protection consistent with Article 8 of the Terrorist Financing Convention.**
SR.IV Suspicious transaction reporting	**NC**	**The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.** **The obligation to make a STR related to terrorism does not include attempted transactions.**
SR.V International co-operation	**LC**	**The provisions of Rec. 38 have not been met with regard to the establishment of a Forfeiture Fund and the sharing of confiscated assets.**

SR VI AML requirements for money/value transfer services	**NC**	**No requirement for registered MVT service operators to maintain a current list of agents.** **Unable to assess the effectiveness of current monitoring and compliance system for MVT service operators due to lack of information.** **Sanctions are not applicable to all criteria of SR VI .i.e. failure to licence or register as a MVT service provider.** **Deficiencies in Recs. 4-11, 13-15, 21-23, and SR VII are also applicable to MVT operators.**
SR VII Wire transfer rules	**NC**	**Requirements for wire transfers in the ML/FTG are not enforceable in accordance with the FATF Methodology.**
SR.VIII Non profit organisations	**NC**	**No review of the adequacy of domestic laws and regulations that relate to NPOs has been undertaken by the Authorities in Antigua and Barbuda.** **There are no measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing.** **No periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted.** **There is no regulatory framework for friendly societies.** **Although NPOs come within the regulatory framework of the FSRC, it appears that this sector is not adequately monitored.** **No programmes have been implemented to raise the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse.** **The sanctions and oversight measures do not serve as effective safeguards in the combating of terrorism.**

		The provisions for record keeping under the FSA are inadequate.
SR.IX Cross Border Declaration & Disclosure	**PC**	**Cases of cross border transportation of cash or other bearer negotiable instruments are not thoroughly investigated.** **Customs, Immigration, ONDCP and other competent authorities do not co-ordinate domestically on issues related to the implementation of Special Recommendation IX.**

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• **The list of predicate offences under the POCA needs to be expanded. An all-crimes approach similar to what obtains under the MLPA could be explored.** • **The list of precursor chemicals under the MDA should be amended to include the chemicals stated in Tables I and II of the Vienna Convention.** • **The equivalent Antigua and Barbuda legislation which corresponds to the FATF list of Designated Category of Offences should be revised to ensure that the Acts capture all the offences contemplated by the FAFT recommended categories. Legislation should be enacted to address participation in an organised criminal group and racketeering, trafficking in human beings and migrant smuggling and piracy.** • **Facilitation of a money laundering offence should be stated as a separate crime.** • **Caution should be exercised in the drafting of legislation. There is inconsistency in the definition of key terms, and these definitions are left to judicial interpretation, for example, the definitions of "property" and "person". Terms should be defined in accordance with the definitions provided under the Vienna Convention and the Palermo Convention. Accordingly, amendments should be made to the MLPA and the MDA and to the POCA if it is not repealed.**
2.2 Criminalisation of Terrorist Financing (SR.II)	• **In accordance with Article (1), the term "funds" under the PTA should be defined, and it should include the wide range of assets contained in the definition under the Convention.** • **The PTA should be amended so that the mental elements of knowledge and intent should extend to both individual terrorists and terrorist groups.** • **The deemed money laundering offences under**

	section 9 of the PTA should be revisited with a view to determining whether the creation of specific money laundering terrorism offences is necessary. The Antigua and Barbuda Authorities should also consider whether the creation of these offences in any way limits the effectiveness of the financing of terrorism mechanism under the PTA. • **While the terms of imprisonment are for relatively long periods, given the gravity of terrorist offences, the Government of Antigua and Barbuda should consider making the sanctions more prohibitive by including large fines and an obligation to compensate victims.**
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• **The Antigua and Barbuda Authorities should seek to prosecute money laundering offences as stand-alone offences pursuant to the MLPA.** • **Greater emphasis should be placed on the investigation of offences with a view to securing convictions.** • **The PTA should make express provision for bona fide third parties to have their interest in property excluded from seized property.**
2.4 Freezing of funds used for terrorist financing (SR.III)	• **The PTA should be amended to include a definition of "funds" in the terms provided under the Financing of Terrorism Convention. Additionally, the funds or other assets should extend to those wholly or jointly owned or controlled directly or indirectly by terrorists, and they should cover funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by terrorists, in keeping with the requirements of UNSCRs 1267 and 1373.** • **Procedures for de-listing should be publicly known. At a minimum, the order declaring a person a specified entity should be accompanied by a statement as to the recourses available to him in respect of de-listing.** • **The Guidelines for reporting suspicious transactions with regard to terrorist financing should be reviewed so as to create a uniform reporting structure.** • **Specific provision should be made whereby a specified entity can apply to have funds unfrozen. Similar provision should also be made for persons who have been affected inadvertently by a freezing mechanism.** • **While it is possible that access to terrorist funds for the purpose of meeting basic expenses and**

	certain costs may be authorised in the case of deemed terrorist money laundering offences, there is no express provision under the PTA in this regard. Accordingly, the PTA should be amended to allow access to funds in accordance with UNSCR 1452. • **The seizure mechanism under the PTA should include like provisions.** • **Specific measures should be put in place to ensure that the communication of the Attorney General's order in relation to the freezing of terrorist funds to the Director of the ONDCP does not result in delay in the communication of the directive to the financial institution. The measures should also ensure that the element of secrecy of the communication is not compromised.** • **Express mention should be made under the PTA for the prevention or voiding of actions or contracts where the property is the subject of terrorist activity.** • **The Antigua and Barbuda Authorities should review the deeming money laundering provision under section 9(3) of the PTA. Greater clarity is needed as to the application of the MLPA with regard to terrorist offences. Ideally, special consideration must be given to whether it is necessary to deem these offences as money laundering terrorist offences.** • **Given the gravity of terrorist offences and the likely extent of harm to innocent third parties, administrative or legislative provisions should consider providing for the compensation of victims.**
2.5 The Financial Intelligence Unit and its functions (R.26)	• **Antigua and Barbuda should move quickly to appoint the Supervisory Authority taking into account the essential role this person plays in coordinating and implementing the country's AML/CFT framework.** • **The practice of copying SARs to the FSRC should be revised, in order to avoid duplication of work and to avoid exposing the information contained in the SARs to contamination and abuse.** • **The ONDCP should consider establishing a structured training schedule, in the short term, to target those entities that have not yet received training in the manner of reporting. Thereafter, continuous dialogue should be maintained with reporting bodies with a view to evaluating their**

	reporting patterns so that weaknesses could be identified and addressed accordingly. • **The Antigua and Barbuda Authorities should consider establishing a process that would allow for a systematic review of the efficiency of the systems that provide for the combating of ML and FT.** • **The ONDCP should prepare periodic reports in terms of its operation, which would facilitate the analysis of its growth and productivity. These reports should reflect ML and FT trends and typologies so that the authorities could adapt appropriate measures and strategies. In addition these reports should be made available to all stakeholders and the general public on the whole for scrutiny in the interest of transparency and accountability.** • **The Antigua and Barbuda Authorities should review the practice of having Cabinet give the final approval with regard to the hiring of the ONDCP staff.**
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	**Recommendation 27.** • **Antigua and Barbuda should consider establishing measures that would allow law enforcement authorities when investigating ML cases to postpone or waive the arrest of suspected person and/or the seizure of cash so as to identify other persons involved in the commission of the offence.** • **Law Enforcement Authorities should consider reviewing there strategy in combating ML with the view to adapting a more aggressive approach which may generate more ML prosecutions and possibly convictions.**
2.7 Cross Border Declaration & Disclosure (SR IX)	• **Customs, the ONDCP and other law enforcement agencies should work closely together to investigate cases of cross border transportation of currency or bearer negotiable instruments in order to determine its country of origin. Bearing in mind that such currency may be the proceeds of criminal conduct committed in the said country.** • **The Examiners are of the view that the ONDCP should be more involved and if possible take control of the investigation with respect to cash seized at the ports of entry and where appropriate initiate money laundering proceedings against the culprits.**
3. Preventive Measures – Financial Institutions	

3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	***Recommendation 5*;** • **Legislative requirement for CDD measures where there is suspicion of money laundering or the financing of terrorism should cover all transactions.** • **The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable in accordance with FATF requirements.** • **The requirements concerning the time frame and measures to be adopted prior to verification should be enforceable in accordance with FATF requirements.** • **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction should be enforceable.** • **The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship should be enforceable.** • **The requirement to apply CDD requirements to all existing customers should be imposed on all financial institutions and be enforceable in accordance with FATF standards.** ***Recommendation 6*:** • **The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP should be enforceable in accordance with FATF requirements.** • **The requirement for banks to obtain senior management approval for establishing business relationships with a PEP should be enforceable in accordance with FATF requirements.** • **Financial institutions should be required to obtain senior management approval to continue the business relationship when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP.** ***Recommendation 7*:** • **Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing**

	customer acceptance and KYC policies and whether it is effectively supervised should be enforceable in accordance with FATF requirements. • **Financial institutions should be required to assess all the AML/CFT controls of respondents and whether they have been subjected to money laundering or terrorist financing investigation or regulatory action.** • **Financial institutions should be required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship.** • **Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships** • **Financial institutions should be required to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilizing payable through accounts or are able to provide relevant customer identification upon request for these customers.** ***Recommendation 8*:** • **Financial institutions should be required to have measures aimed at preventing the misuse of technology in ML and FT schemes.** • **Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers should be enforceable in accordance with FATF standards.**
3.3 Third parties and introduced business (R.9)	• **Financial institutions relying upon third parties should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process in criteria 5.3 to 5.6.** • **Financial institutions should be required to take adequate measures to insure that copies of the identification data and other relevant CDD documentation form third parties will be made available upon request and without delay.** • **Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in R.5 and R.10.** • **Competent authorities should take into account**

	information available on countries which adequately apply the FATF Recommendations in determining in which countries third parties can be based.
3.4 Financial institution secrecy or confidentiality (R.4)	• **The Antigua and Barbuda Authorities should enact provisions allowing the ECCB, FSRC, the Registrar of Co-operatives and the Registrar of Insurance to share information with other competent authorities.**
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10:*** • **The exemption of single transactions under EC $1,000 from record keeping requirements should be removed.** • **Legal provision for financial institutions to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity should be extended from IBCs to all financial institutions.** • **The MLPA or the MLPR should be amended to require financial institutions to retain records of business correspondence for at least five (5) years following the termination of an account or business relationship.** • **Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.** ***Special Recommendation VII*** • **Requirements for wire transfers in the MLFTG should be made enforceable in accordance with the FATF Methodology.**
3.6 Monitoring of transactions and relationships (R.11 & 21)	***Recommendation 11*:** • **Financial institutions should be required to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and put their findings in writing.** • **Financial institutions should be required to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.** ***Recommendation 21*:**

	• **Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.** • **Written findings of the examinations of transactions that have no apparent economic or visible lawful purpose with persons from or in countries, which do not or insufficiently apply the FATF Recommendations should be available to assist competent authorities.** • **There should be provisions to allow for the application of counter measures to countries that do not or insufficiently apply the FATF Recommendations.**
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	***Recommendation 13*:** • **The requirement for FIs to report suspicious transactions should be applicable to all transactions.** • **The obligation to make a STR related to money laundering should apply to all offences required to be included as predicate offences under Recommendation 1.** • **The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism.** ***Recommendation 14:*** • **The tipping off offence with regard to directors, officers and employees of financial institutions should be extended to include the submission of STRs or related information to the FIU.** ***Recommendation 25:*** • **The Supervisory Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback.** ***Special Recommendation IV:*** • **The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism.** • **The obligation to make a STR related to terrorism should include attempted transactions.**
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	***Recommendation 15*:** • **Requirement for financial institutions to develop internal procedures and controls to**

	prevent ML should include FT. • **Requirement for financial institutions to appoint a compliance officer at management level should be enforceable in accordance with FATF standards.** • **Requirement for financial institutions to provide compliance officers with necessary access to systems and records should be enforceable in accordance with FATF standards.** • **Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.** • **Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees should be enforceable in accordance with FATF standards.** ***Recommendation 22*:** • **Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries should be enforceable in accordance with FATF standards** • **Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF recommendations should be enforceable in accordance with FATF standards.** • **Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines should be enforceable in accordance with FATF standards.** • **Branches and subsidiaries of financial institutions in host countries should be required to apply the higher of AML/CFT standards of host and home countries to the extent that local laws and regulations permit.**
3.9 Shell banks (R.18)	• **Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks.**

	• **Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.**
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	***Recommendation 17:*** • **The sanction applicable for non- compliance of the MLFTG should be amended to be dissuasive** • **Sanctions under the PTA and the MLPA that are applicable to financial institutions should also be applicable to their directors and senior management.** • **The range of AML/CFT sanctions should be broad and proportionate in accordance with FATF requirements.** ***Recommendation 23:*** • **The supervisory authorities should be designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements.** • **The BA should be amended to give the ECCB the power to approve changes in directors, management or significant shareholder of a licensed financial institution.** • **The Registrar of Insurance should be required to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business.** • **Registered insurers should be required to obtain the approval of the Registrar of Insurance for changes in shareholding, directorship or management.** • **The Registrar of Co-operative Societies should be required to use fit and proper criteria in assessing applications for registration.** • **The Registrar of Co-operative Societies should have power of approval over the management of a society.** • **Money value transfer service operators should be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.** ***Recommendation 29*:** • **The Registrar of Insurance and the Registrar of Co-operative Societies should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with**

	AML/CFT requirement.
3.11 Money value transfer services (SR.VI)	• **Registered MVT service operators should be required to maintain a current list of agents which must be available to the designated competent authority.** • **Sanctions should be applicable to all of the criteria of SRVI.**
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• **Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this report are also applicable to listed DNFBPs. Implementation of the specific recommendations in the relevant sections of this Report will also apply to listed DNFBPs.** • **Lawyers and notaries, other independent legal professionals, accountants and company service providers should be brought under the ambit of the AML/CFT regime.**
4.2 Suspicious transaction reporting (R.16)	• **The requirements for DNFBPs are the same as for all other financial institutions. The deficiencies identified with regard to specific recommendations are also applicable to DNFBPs. Implementation of specific recommendations in the relevant sections of this report will also include DNFBPs.**
4.3 Regulation, supervision and monitoring (R.24-25)	• **Casinos, real estate agents, dealers in precious metals and stones should be subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.** • **The Supervisory Authority should ensure that respective guidelines and directives are issued to all persons and companies in the sectors.**
4.4 Other non-financial businesses and professions (R.20)	• **The Authorities should consider conducting an assessment of non-financial businesses and professions other than DNFBPs to ascertain those at risk of being misused for money laundering or terrorist financing in Antigua and Barbuda with a view to including them under the AML/CFT regime. This recommendation does not affect the rating of Recommendation 20.**
5. Legal Persons and Arrangements & Non-Profit	

Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• **Appropriate measures should be taken to ensure that bearer shares are not misused for money laundering and the principles set out in criteria 33.1 and 33.2 apply equally to legal persons that use bearer shares.** • **Statutory obligation to provide information as to the ownership and management of partnerships should be put in place.**
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• **Measures should be put in place for either registration or effective monitoring of local trusts in accordance with FATF information requirements.** • **The Authorities should consider including adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trusts.**
5.3 Non profit organisations (SR.VIII)	• **The Authorities should review the adequacy of domestic laws and regulations that relate to non-profit organisations.** • **Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.** • **Periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.** • **A regulatory framework governing friendly societies must be implemented.** • **The Antigua and Barbuda Authorities should monitor more closely the NPO sector's international activities.** • **Programmes should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.** • **Measures should be instituted to protect NPOs from terrorist abuse.** • **There should be adequate provisions for record keeping in the NPO sector.** • **The period for which records must be maintained by NPOs must be prescribed.** • **Sanctions for violation of oversight measures or**

	rules in the NPO sector should be dissuasive.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• **The level of co-operation amongst law enforcement could be improved. A more proactive approach should be adapted when sharing information. The Examiners found that contact is maintained in an ad hoc manner.** • **Antigua and Barbuda should consider establishing measures to allow Policy makers, the ONDCP, the FRSC and other competent authorities to meet continuously to discuss, develop and implement policies and activities to combat money laundering.**
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• **Antigua and Barbuda has ratified the Vienna, Palermo and Terrorist Financing Conventions and there is enacted legislation that implements substantial portions of these Conventions. There are however some provisions that are not covered adequately as stated in discussions on Rec. 1 and SR. II in section 2 of this Report. For example, with regard to the Vienna Convention, the MDA must address all the precursor chemicals mentioned in the Tables of the Convention. Additionally, with respect to the Palermo Convention, the POCA in particular should be revisited with a view to either amending it to capture predicate offences to money laundering and financing of terrorism offences, or repealing it. Provision should also be made for the transfer of proceedings pursuant to Article 8 of the Vienna Convention.** • **All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452.**
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• **Antigua and Barbuda has a robust mutual legal assistance regime. However, there is need for the establishment of a forfeiture fund into which the confiscated proceeds of terrorism activity can be deposited.** • **Provision should be made for the sharing of assets confiscated in relation to terrorism offences.**
6.4 Extradition (R.39, 37 & SR.V)	• **There appears to be a high level of cooperation between Antigua and Barbuda and foreign States with regard to extradition matters. However, the Authorities should seek ways to**

	limit the delay in extradition procedures. The latter commend does not affect the rating of this Recommendation.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• **Antigua and Barbuda should consider introducing the relevant legislative framework that would allow the FSRC to exchange information directly with its foreign counterparts.**
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Recommendation 30.** • **Antigua and Barbuda should consider filling the vacant positions within the ONDCP in order to strengthen its human resource capabilities. There is also need to increase the number of Investigators to complement the work of the staff of the Financial Investigations Unit.** • **The budgetary resources of the ONDCP should be increased to adequately cover training and the hiring of qualified staff.** • **The resources allocated to the Police, Customs, Immigration and Prosecutors should be reviewed so as to provide amounts that would enable them to perform their various functions.** • **The ONDCP should consider implementing a systematic training programme for its staff, particularly in the areas of ML investigations and Court procedures. This could be achieved by coordinating ML Workshops/Seminars on a regular basis. Customs, Immigration, Police and Coast Guard should be included in such training.** ***Recommendation 32*** • **Antigua and Barbuda should consider instituting measures to review the effectiveness of their system for combating ML and FT. In the process of reviewing shortcomings would be highlighted and brought to the attention of the Authorities for appropriate action.** • **Law enforcement Authorities should take particular steps to ensure that their statistics in relation to their operations are comprehensive and review friendly. These statistics should be able to clearly indicate the effectiveness of the whole preventive and repressive AML/CFT systems and reflect the impact of STR in investigations, prosecutions and convictions.**
7.2 Other relevant AML/CFT measures or issues	

7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: **List of abbreviations**
Annex 2: **Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
Annex 3: **Copies of key laws, regulations and other measures**
Annex 4: **List of all laws, regulations and other material received**

Annex 1

LIST OF ABBREVIATIONS

ABDF	Antigua and Barbuda Defence Force
BA	Banking Act, 2005
BGA	Betting and Gaming Act, Cap. 47
CA	Companies Act, 1995
CED	Customs and Excise Department
CCGDR	Customs (Currency and Goods) Declaration Regulations 1999
CCMA	Customs (Control and Management) Act, 1993
CDDG (IGWC)	Customer Due Diligence Guidelines for Interactive Gaming & Interactive Wagering Companies
DEA	Drug Enforcement Administration
DPP	Director of Public Prosecutions
EA	Extradition Act, 1993
ECCB	Eastern Caribbean Central Bank
ECR	Exchange Control Regulations
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigations
FSRC	Financial Services Regulatory Commission
GIIC	Guidelines for International Insurance Companies (Issued by FSRC December 2003)
IBCA	International Business Companies Act, Cap. 222
IBC	International Business Companies
IBCR	International Business Corporations Regulations (as amended)
IGIWR	Interactive Gaming & Interactive Wagering Regulations
IGIWG	International Gaming & International Wagering Guidelines
ITA	International Trust Act, 2004
IMF	International Monetary Fund
MACMA	Mutual Assistance in Criminal Matters Act, 1993
MIMOU	Multilateral Interagency Memorandum of Understanding
MLAT	Mutual Legal Assistance Treaty
MLRO	Money Laundering Reporting Officer
MLFTG	Money Laundering and Financing of Terrorism Guidelines
MLPA	Money Laundering Prevention Act, 1996 (as amended)
MVT	Money Value or Transfer Service
NJCC	National Joint Coordination Centre
NPO	Non Profit Organisation
OECS	Organisation of Eastern Caribbean States
ONDCP	Office of National Drug and Money Laundering Control Policy
ONDCPA	Office of National Drug and Money Laundering Control Policy Act, 2003
POCA	Proceeds of Crime Act, 1993
PTA	Prevention of Terrorism Act, 2005
SA	Supervisory Authority
STA	Suppression of Terrorism Act
UNDP	United Nations Drug Programme
URL	Uniform Resource Locator

Annex 2

Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

Ministries

Ministry of Legal Affairs
- Office of the Attorney General
- Solicitor General's Department
- Office of the Director of Public Prosecutions (DPP)

Ministry of National Security
- Commissioner of Police
- Deputy Commissioner of Police
- Assistant Commissioner of Police
- Narcotics Squad
- Comptroller of Customs
- Chief Immigration Officer
- Antigua and Barbuda Defence Force
- Antigua and Barbuda Coast Guard

Ministry of Finance
- Minister of Finance

2 Operational Agencies

Office of National Drug and Money Laundering Control Policy
- Acting Director, ONDCP
- Financial Intelligence Unit
- Financial Investigation Unit
- Legal Department

Customs Department

3 Financial Sector – Government

Eastern Caribbean Central Bank
Financial Services Regulatory Commission (FSRC)
- Supervisor of Banks and Trusts
- Supervisor of Registry
- Manager of IBCs and Non Bank Financial Institutions

Registrar of Insurance
Registrar of Cooperatives

4. Financial Sector – Associations and Private Sector Entities

- Stanford International Bank
- Stanford Trust Company
- PKY Private Bank
- Caribbean Alliance Insurance

- Sagicor
- Scotiabank
- Royal Bank of Canada.
- Bank of Antigua
- RBTT
- Finance and Development Company Ltd.
- First Credit Union
- Real Estate Antigua
- Global Bank of Commerce
- PC & L Insurance
- Offshore Bankers Association
- Domestic Bankers Association
- Sports Offshore Ltd.
- CB Corporation
- Sporting Bet Plc.
- BODOG Entertainment
- Western Union
- Association of AML/CFT Compliance Officers
- ABI Trust (International)

5. DNFBPs – Government and SROs

- Director of Gaming
- Institute of Chartered Accountants of the Eastern Caribbean
- Association of AML/CFT Compliance Officers

Money Laundering (Prevention) Act 1996

2. (1) In this Act—

"money laundering" means —

(a) engaging directly or indirectly, in a transaction that involves money, or other property, or
(b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Antigua and Barbuda any money, or other property,
knowing or having reasonable grounds to suspect that the money, or other property, is derived, obtained or realised, directly or indirectly, from some form of unlawful activity or is an instrumentality.

"money laundering offence" means—

(i) an offence against*:

(a) sections 3 and 5 of this Act;
(b) sections 11A and 18 of this Act
(c) section 61 of the Proceeds of Crime Act, 1993; or
(d) sections 4, 5, 6(3), 7 and 8 of the Misuse of Drugs Act, Cap. 283; or

(ii) an offence against:

(a) any foreign law specified by regulation under this Act; or

(b) any foreign law, whether or not it is specified by regulation under this Act which prescribes dealings in property which is the proceeds of crime, which, if it was committed in Antigua and Barbuda, would be an offence against this Act or any other law of Antigua and Barbuda.
In deciding whether an offence against any foreign law is a money laundering offence within the meaning of this definition, due regard should be given to differences in the form and usages of foreign laws and the meaning of any language used in such law should be

construed broadly and not strictly.

PART IV
Offences

Money laundering.

61. (1) In this section "transaction" includes the receiving or making of a gift.

(2) A person who, after the commencement of this Act, engages in money laundering commits an indictable offence and is liable, on conviction, to-
{a) a fine of $200,000 or imprisonment for a period of twenty years, or both, if he is a natural person; or
(b) a fine of $500,000, if it is a body coporate.

(3) A person shall be taken to engage in money laundering where
(a) the person engages, directly or indirectly, in a transaction that involves money or other property, that is proceeds of crime; or
(b) the person receives, possesses, conceals, disposes of, or brings into Antigua and Barbuda, any money or other property that is proceeds of crime,
and the person knows or ought reasonably to know, that the money or other property is derived, obtained or realised, directly or indirectly from some form of unlawful activity.

Annex 4

List of All Laws, Regulations and Other Material Received

1. Banking Act 1991 No. 17
2. Banking (Amendment) Act 1993 No. 21.
3. Banking Act (Disclosure in Statement of Accounts) Regulations 1994.
4. Banking Act (Credit Institutions Capital Requirement) Order 1994.
5. Betting and Gaming Act, 1963.
6. Constitution of Antigua and Barbuda.
7. Cooperative Society Act, 1997.
8. Criminal Investigation Department Organizational Chart.
9. Extradition Act, 1993.
10. FSRC Organizational Chart.
11. IBC statistical data.
12. International Banks and Trust Corporations Regulations, 1995.
13. International Business Corporations Act, Ch 222 as Amended (Consolidated).
14. Larceny Act Ch 241.
15. List of countries with which MOUs have been established.
16. Money Laundering Guidelines for Financial Institutions.
17. Money Laundering (Prevention) Act, 1996 as Amended (Consolidated).
18. Money Laundering (Prevention) (Regulations), 2007.
19. Mutual Assistance in Criminal Matters Act, 1993.
20. Mutual Assistance in Criminal Matters (Designation of Central Authority) Order, 1995.
21. Number of requests for information by the ONDCP from the FSRC.
22. Office of National Drug and Money Laundering Control Policy Act, 2003.
23. Organizational Chart of the Police Prosecution Unit.
24. Organizational Chart of the ONDCP.
25. Prevention of Corruption Act, 2003.
26. Prevention of Terrorism Act, 2005.
27. Proceeds of Crime Act, 1993.
28. Policy Manual for the Prevention of Money Laundering.
29. Resolution ratifying the Inter-American Convention against Terrorism.
30. Resolution ratifying the United Nations Convention against Transnational Organised Crime.
31. Resolution ratifying the International Convention for the Suppression of the Financing of Terrorism.
32. Resolution ratifying Security Council Resolutions Nos. 1267 of 1999, 1269 of 1999, 1333 of 2000, 1373 of 2001 and 1390 of 2002 on the Suppression of Terrorism.
33. Statistics 2003 - 2006