

MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT  
ANTI-MONEY LAUNDERING AND COMBATING THE  
FINANCING OF TERRORISM

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**BARBADOS**

**MINISTERIAL REPORT**



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## **PREFACE – information and methodology used for the evaluation of Barbados**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Barbados 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. The evaluation was based on the laws, regulations and other materials supplied by Barbados, and information obtained by the evaluation team during its on-site visit to Barbados from 4 – 15 December 2006, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Barbados government agencies and the private sector. A list of the bodies met is set out in Annex XX to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of a members of the CFATF Secretariat and CFATF experts in criminal law, law enforcement and regulatory issues: Ms Rochelle Deleveaux (financial expert from the Central Bank of The Bahamas), Mr. Dougal James (financial expert from the International Financial Services Authority of St. Vincent & the Grenadines), Mr. Errol George (law enforcement expert from the Financial Investigation Agency of the British Virgin Islands) Mr. Kurt Rattray (legal expert from the Ministry of Justice, Jamaica) and Mr. Roger Hernandez from the CFATF Secretariat. 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 (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

## **Executive Summary**

### **1. Background Information**

1. The Mutual Evaluation Report of Barbados summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in Barbados at the time of the on-site visit (4 – 16 December, 2006). The report evaluates the level of compliance with the FATF 40 + 9 Recommendations (see attached table on Ratings of Compliance with FATF Recommendations) and provides recommendations for enhancing the AML/CFT regime.

2. Barbados, the most easterly of the islands of the Caribbean, is 166 square miles with a population of approximately 270,000. The country has a relatively low crime rate and is politically stable. The main sectors of the economy are tourism and financial services with the international business sector accounting for approximately 51% of corporate taxes in 2005.

3. Generally serious crime in Barbados has been on the decline. With the advent of more stringent controls in financial institutions, there have been increased attempts at structuring transactions to avoid reporting thresholds but these have been mitigated by financial institutions risking profiling their client base.

4. The financial sector includes international/offshore and local financial institutions. The supervisory authorities include the Central Bank of Barbados (CBB), the Securities Commission, the Supervisor of Insurance and Pensions, the Cooperatives Department and the International Business Unit of the Ministry of Economic Affairs and Development. There are no casinos in Barbados. The authorities are of the view that real estate agents, dealers in precious metals and precious stones, lawyers and accountants do not present a proven material AML/CFT risk. A significant majority of the market for trust and company service facilities is provided by the licensees of the CBB.

5. The Anti-Money Laundering Authority (AMLA) maintains oversight of the national AML/CFT framework. Other parties to the institutional framework include the Ministry of Finance, which oversees prudential supervisory authorities, the Office of the Attorney General, which is responsible for law enforcement and judiciary bodies, the Director of Public Prosecutions, the Ministry of Economic Affairs and Development and the Ministry of Commerce, Consumer Affairs & Business Development.

6. Deliberations on the approach to risk take place at the level of the AMLA, the domestic regulators and private sector. AML/CFT guidelines incorporating a risk-based approach have been issued by the CBB in conjunction with the AMLA. Financial sector regulators categorize their licensees according to risk profiling. The CBB undertakes ongoing risk assessments in shaping a risk-based approach to supervision.

### **2. Legal Systems and Related Institutional Measures**

7. Barbados has broadly criminalized ML under the Money Laundering and Financing of Terrorism (Prevention and Control) Act (MLFTA) and specifically within the context of drug trafficking under the Drug Abuse (Prevention and Control) Act (DAPCA). ML offences include receiving, possessing, concealing, disposing of, importing or exporting proceeds of unlawful activity. While the definition of unlawful activity allows for a wide array of serious predicate offences, human trafficking, corruption and bribery are not totally consistent with the requirements of the Palermo Convention.

8. The offence of ML extends to any type of property and applies to persons who commit the predicate offence. Criminal liability extends to legal persons and proof of knowledge can be drawn from objective circumstances. There is some uncertainty as to the scope of extraterritoriality under the

MLFTA with regard to whether it is necessary for a foreign crime to constitute a predicate offence in Barbados law. The scale of sanctions applicable to an individual and a corporate body (US\$100,000/5 years; US\$1million/25 years) for the primary ML offence is substantial and appropriately dissuasive. The low number of ML prosecutions and the factors attributed by the DPP for this suggest an ineffective use of ML provisions.

9. Terrorist financing is criminalized in accordance with the TF Convention in the Anti-Terrorism Act (ATA). The components of the terrorist financing offence are broad enough to capture funding for individual terrorists or terrorist organizations. Funds are defined in the ATA in accordance with the TF Convention. A range of secondary offences are covered, terrorist financing offences are predicate offences for ML and objective factual circumstances may be used to prove intent. Both natural and legal persons are subject to criminal sanctions, with individuals liable on conviction on indictment to a 25 years term of imprisonment and corporate bodies to a fine of BD\$ 2,000,000. There is no evidence of terrorist funds in Barbados and there have been no cases of terrorist financing in Barbados.

10. Relevant forfeiture/confiscation powers are provided for under POCA, MLFTA, and DAPCA. POCA has a comprehensive forfeiture/confiscation regime which is however restricted to a narrow range of offences. The scope of forfeiture provision under the MLFTA, while substantially wider does not allow for the forfeiture of instrumentalities, and is limited to money laundering convictions. The forfeiture/confiscation regime under DAPCA covers only drug related offences. POCA contains the most comprehensive provision for freezing/restraining property which can only be activated by a narrow range of criminal acts. There are two freezing provisions under MLFTA. Powers of search and seizure exist under POCA and DAPCA. Production or inspection orders are available under POCA. Monitoring orders can be sought under POCA and the MLFTA. Effective protection of bona fide third party rights consistent with the Palermo Convention is provided under the statutory scheme under POCA.

11. There is no specific legislative authority in Barbados to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). However, the DPP can invoke relevant provisions of the ATA or POCA to effect restraint of property. An application for a freezing order may be made *ex parte* under the ATA. There is authority to restrain/freeze, forfeit or confiscate terrorist-related property under POCA, since terrorist acts and terrorist financing are scheduled offences. The forfeiture scheme under the ATA is similar to that under MLFTA. There is no statutory power to authorize access to funds required to be frozen pursuant to the UN Sanctions Committee listing. Protection of bona fide third party rights is included in the ATA. No terrorist funds have been discovered in Barbados.

12. The Financial Intelligence Unit (FIU) is an administrative type FIU and was established in 2002 and operates within the framework of the AMLA. The AMLA is the designated body responsible for receiving all suspicious and unusual transaction reports (SUTRs). Analysis of SUTRs is presently done with computer based software. Detailed analysis is hampered by lack of adequate resources (staff) within the FIU. A system of two-way feedback exists between the FIU and reporting institutions. The FIU has power to request information from any financial institutions and also has access to information from government bodies. The FIU is authorized to share information with a number of principal supervisory/regulatory authorities. The FIU has a statutory obligation to prepare and submit annual reports to the Attorney General, however due to a lack of resources, it has not been able to keep up to date with this obligation. The FIU has entered into several MOUs with Egmont affiliated FIUs.

13. Responsibility for the investigation and prosecution of ML and FT related offences rest with the Royal Barbados Police Force's (RBPF) Financial Crimes Investigation Unit (FCIU) and the Office of the Director of Public Prosecutions. The FCIU has responsibility for completing investigations into all ML and TF related reports forwarded by the FIU, identifying and tracing criminal proceeds and conducting investigations pertaining to mutual legal assistance requests. The FCIU indicated that only a small number of reports forwarded by the FIU result in full scale investigations with fewer resulting

in arrests and filing of criminal charges. The police Drug Unit (DU) has responsibility for investigating all drug offences. The legal framework in Barbados does not provide for the use of special investigative techniques but these are under consideration. The Police Force is understaffed and facing challenges in recruiting new officers. The Office of the Director of Public Prosecutions is largely autonomous and has responsibility for criminal prosecutions, extradition, mutual legal assistance, and asset forfeiture and confiscation proceedings. While the department is fully staffed it is under-resourced in relation to its wide range of functions. The competent authorities of Barbados continue to engage in a wide range of joint law enforcement operations and initiatives.

14. Currently Barbados has a cross-border disclosure system entailing the use of passenger embarkation/disembarkation cards to be completed by all persons entering and leaving Barbados via designated ports of entry. Suspicion of money laundering or terrorist financing or making of a false declaration were not mentioned as a basis for stopping and seizure of currency and negotiable instruments. The Customs and Excise Department has the authority to share information with foreign counterparts. Terrorist related funds would be subject to the same confiscation, freezing and seizing provision of any such funds. The competent authorities maintain and were able to produce adequate statistical data on cash seizures but there were no statistics to allow for an evaluation of the effectiveness of the cross-border disclosure system.

### **3. Preventive Measures – Financial Institutions**

15. The MLFTA is the primary legislation with respect to CDD and defines those financial institutions subject to AML/CFT requirements. Financial institutions must comply with guidelines issued by the AMLA under the MLFTA. Anti-Money Laundering Guidelines were issued jointly by the AMLA and financial sector regulators and are enforceable where the requirements mirror obligations with sanctions under the MLFTA. The Central Bank of Barbados (CBB) and the Supervisor of insurance can exercise their general powers of sanctions as supervisory authorities over their licensees for non-compliance with the AML/CFT guidelines. Statistics on the use of administrative sanctions by the CBB relating to AML/CFT breaches were provided by the authorities. As such the CBB AML/CFT Guidelines and the AML/CFT Guidelines issued by the Supervisor of Insurance are considered enforceable means.

16. Customer due diligence measures are generally comprehensive and include customer identification, beneficial ownership requirements, ongoing due diligence, measures for politically exposed persons, correspondent banking and new technologies and non-face to face customers. Requirements for introduced business are also detailed. These measures are generally applied by all financial institutions. The main shortcoming is that some requirements are not set out in law or regulation as required by the FATF standards and others are only enforceable on the licensees of the CBB and the Supervisor of Insurance.

17. While there are no secrecy laws inhibiting the implementation of the FATF Recommendations, certain regulatory authorities are limited in their ability to either share or access information. Record keeping requirements are extensive and generally observed. However, there is no requirement in law or regulation for account files and business correspondence to be retained for five years after termination of the business relationship or for financial institutions to ensure that records are available on a timely basis to competent authorities. Wire transfer requirements are comprehensive and adhered to.

18. Requirements for monitoring of complex, unusual large transactions are only enforceable on licensees of the CBB and the Supervisor of Insurance. Financial institutions are not required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. There are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. Written findings of internal examinations of transactions is limited to transactions

exceeding BD\$10,000. No countermeasures have been issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.

19. Financial institutions are required to report any transactions which they suspect on reasonable grounds may involve proceeds of crime. While proceeds of crime cover a wide range of predicate offences, human trafficking, corruption and bribery are not adequately addresses in law. Financial institutions are not required to report attempted or aborted suspicious transactions. While there are safe harbor provisions for SUTR reporting, the immunity provision under the MLFTA is not referable to the mandatory reporting provision. Tipping off is prohibited. Several financial institutions indicated that they received no feedback from the FIU in relation to suspicious transaction reporting. While the number of SUTRs has been increasing since 2003, the number is low.

20. While the requirement for internal controls, policies and procedures in the MLFTA do not include the prevention and detection of FT, section 22F(b) states that the AMLA may issue guidelines in respect of the detection of funds allocated or used for the purpose of committing an offence under the ATA. There is no enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention. Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees are only enforceable on the licensees of the CBB and the Supervisor of Insurance. The requirements for financial institutions to ensure that their foreign branches and subsidiaries observe equivalent AML/CFT measures or inform their home country supervisor if they cannot are only enforceable on licensees of the CBB and the Supervisor of Insurance. There is no requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations. Additionally, branches and subsidiaries in host countries are not required to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ.

21. Regulation and supervision of the financial sector is shared among 4 primary regulatory authorities, namely the CBB, Securities Commission, Supervisor of Insurance, and the Registrar of Co-operative Societies. Each agency licenses and supervises their constituents in accordance with various statutes, regulations and guidelines. A framework for regulating and supervising MVT services provided by entities outside the present supervisory regime is in the process of development.

22. The CBB licenses, regulates and supervises commercial banks and offshore banks, finance companies, trust companies and merchant banks. Onsite and offsite examinations are conducted to assess the level of compliance with relevant statutes. The Securities Commission regulates and supervises the securities industry and conducts on-site examinations in conjunction with the CBB. The Supervisor of Insurance is responsible for domestic and offshore insurance companies. Onsite inspections have been conducted by examinations staff. The Registrar of Co-operatives Societies is responsible for credit unions and co-operative societies. Off-site monitoring and on-site examination are conducted by the staff of the Co-operative Department.

23. Staff of the various regulatory authorities are suitably qualified for their positions and trained in AML/CFT matters. While the regulatory authorities are adequately funded, the Registrar of Co-operatives has an inadequate number of staff.

24. The CBB has adequate inspection powers under the relevant statutes. On-site inspections

include comprehensive reviews of the AML/CFT framework of each licensee and transaction sampling. The Securities Commission powers of inspection and compelling production or access to all records are limited. The Supervisor of Insurance and the Registrar of Co-operatives have powers of inspection and access to all books and records of their respective licensees.

25. Criminal sanctions for AML/CFT breaches cover the areas of suspicious transactions reporting, record keeping and disclosure of information. Criminal sanctions are applicable to natural and legal persons and officers of licensees of all supervisory agencies. In addition to the above, the CBB has general sanctioning powers which provide for a range of penalties up to suspension of licence. The Securities Commission has no administrative power to institute sanctions for AML/CFT or general sanctioning powers. The Supervisor of Insurance has the general power to issue directions following any inspection. Failure to comply with a direction is punishable. The Registrar of Co-operatives has no general sanctioning powers for unsafe and unsound practices.

26. The CBB utilizes fit and proper criteria approving directors, shareholders, beneficial owners and senior executive officers of licensees. The Securities Commission carries out limited due diligence on directors and senior management. There are no specific provisions dealing with the application of fit and proper criteria. The Supervisor of Insurance conducts due diligence on beneficial owners, directors and managers to ensure that they meet fit and proper requirements. There is no provision for the Registrar of Co-operatives to vet the appointment of senior management utilizing fit and proper criteria.

27. Both the CBB and the Supervisor of Insurance apply prudential regulatory and supervisory measures for AML/CFT purposes. The measures applied by the Securities Commission are not as stringent. AML/CFT risk is determined according to the size of the security entity and whether or not it is regulated by another domestic regulator. Statistics for on-site inspections by all regulatory authorities demonstrate adequate coverage of relevant licensees. Most on-site examinations include an AML/CFT component.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)**

28. The general definition of financial institution under the MLFTA would include the activities of DNFBPs as defined by the FATF. Except for trust and company service providers who are licensees of the CBB, there are no measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements. No guidelines have been issued to DNFBPs except for those which are licensees of the CBB.

#### **5. Legal Persons and Arrangements & Non-Profit Organisations**

29. Under the Companies Act, the Registrar of Companies maintains a register with information on directors and registered offices of companies. There is no legislative requirement for companies to disclose beneficial ownership information. Companies are required to prepare and maintain at their registered office bye-laws, shareholder and debenture holder information. Public access is possible on payment of a fee. IBCs are required to provide ultimate beneficial shareholder information on first application for registration to the office of the Director of International Business.

30. International trusts operate under the International Trust Act and are defined as financial institutions under the MLFTA. They are required to maintain information on all parties to the trust. Additionally, a trustee of an international trust must file information on the settlor and protector of the trust with the Director of International Business. Trust services in Barbados are provided mainly by the licensees of the CBB. Ongoing due diligence is required in the context of changes to any parties to the

trust. This information is available to the relevant domestic supervisory authorities. While the DNFBBs activities of lawyers and accountants are included in the AML/CFT legal framework, there are no measures for monitoring and ensuring compliance with AML/CFT requirements in particularly retention and control information for trusts. The same applies for international trusts.

31. The Charities Act provides a fairly elaborate framework for the registration and administration of charities. Charities are required to be registered with the Registrar of Corporate Affairs and Intellectual Property. Charities are required to keep proper accounting records. Information exchange regarding charities between the Registrar and other government departments is also possible. Sanctions for breaches of the Charities Act are not dissuasive.

## **6. National and International Co-operation**

32. The AMLA is the national body responsible for AML/CFT policy in Barbados. Members of the AMLA include law enforcement and supervisory authorities and other relevant government agencies. Monthly meetings facilitate information sharing. The FIU maintains good relationships with other domestic competent authorities and reporting entities. The law enforcement authorities maintain a collaborative relationship among various agencies. The supervisory authorities collaborate in the performance of their functions. The review procedures of the AML/CFT infrastructure allows for formulation and drafting of new legislative requirements through a consultative process. The AML/CFT regime is under a continuous review process as attested by the various legislative amendments and other updates.

33. Barbados has signed and ratified the Vienna, Palermo and Terrorist Financing Conventions. Human trafficking, corruption and bribery are designated categories of offences which are not adequately provided for in legislation. Barbados has given effect to UN Resolutions S/RES/1267(1999) and S/RES/1373(2001) by passing the ATA, however there is no requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.

34. While the Mutual Assistance in Criminal Matters Act (MACMA) allows Barbados to provide for a wide range of mutual legal assistance for criminal matters, the instrumentalities of ML and FT are not included. Provisions of the Act facilitate reciprocal assistance between Barbados and other Commonwealth and non-Commonwealth countries. Dual criminality is a precondition with the substance of the offence determining whether it is also a criminal offence in Barbados. There are provisions facilitating international co-operation under other legislation. Barbados has concluded a Mutual Legal Assistance Treaty (MLAT) with the United States covering reciprocal assistance in investigation and proceedings relating to criminal matters. Requests for mutual legal assistance are routed through the Attorney General who is the Central Authority. Grounds for refusal of a request is on a discretionary basis and does not include fiscal matters, secrecy or confidentiality requirements. Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority. While statistics on MLATs were presented, it was not possible to assess effectiveness due to the limited number of MLATs.

35. ML is an extraditable offence under the Extradition Act. Extradition in connection with crimes of a political character or request for purposes of prosecuting or punishing on the basis of race, tribe, religion, sex, nationality or political opinion will be refused. Extradition requires the establishment of dual criminality. Terrorism and financing of terrorism are extraditable and subject to the same requirements and conditions for extradition as other similar offences.

36. In general law enforcement and the FIU can engage in a wide range of international co-operation. They attempt to render assistance to foreign authorities in a timely fashion and there is no legal hindrance to the constructive and effective provision of such assistance. Some supervisory

authorities in Barbados have different constraints on sharing information with international counterparts.

## **7. Resources and Statistics**

37. Most of the competent authorities have adequate resources to carry out their functions. However, the FIU, law enforcement and prosecutorial authorities and the Registrar of Co-operative Societies are inadequately staffed.

38. Comprehensive statistics are generally maintained. However, there are no statistics on cross-border declaration reports and insufficient details on mutual legal assistance requests.

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Barbados

1. Barbados, the most easterly of the islands in the Caribbean, is 166 square miles with a population of approximately 270,000. Barbados has the demographic profile of a developed country and has a high literacy rate of 97.6% and life expectancy of 76.4 years. The 2005 UNDP Human Development Index<sup>1</sup>, lists Barbados among the top 30 nations on several indices (including human development and economic performance), and 4th on the Human and Income Poverty Index for developing countries.

2. Barbados enjoys a relatively low crime rate and social and political stability. The unemployment rate was 8.1% as at March 2006.

3. Barbados is a thriving and highly reputable centre for tourism, international business and financial services. Tourism and the financial services are the main sources of foreign exchange earnings. In its recently concluded IMF Article IV Consultation, it is stated “Per capita income is the highest in the region and the country enjoys an investment grade rating...Business conditions are adequate, and corruption and crime are low.”<sup>2</sup>

4. The international business sector contributed approximately 51% towards corporate taxes in 2005. In an effort to boost the sector, Barbados has to date concluded 14 Double Taxation Agreements.

5. The World Economic Forum ranked Barbados 31<sup>st</sup> of 125 countries in the world with respect to economic competitiveness. The economy is on a development path at the base of which is a rate of growth that for two years has substantially exceeded the target of 3%.

6. Barbados has a stable and democratic system of government. It became an independent nation on November 30, 1966. Barbados is a parliamentary democracy. Executive authority is vested in the Prime Minister and Cabinet, which is collectively responsible to the Parliament. The Prime Minister is appointed by the Governor General as the member of the House of Assembly best able to command the support of the majority of the members. The Prime Minister usually selects a cabinet from his party members in the legislature.

7. Barbados' judicial, political and administrative institutions are patterned on the British system but have adapted to suit local circumstances. Since 1955, Barbados has had two major political parties - the Barbados Labour Party and the Democratic Labour Party. Both parties are fundamentally committed to democracy, the rule of law and a free-market economy as the basis of political stability, social and economic prosperity. Barbados enjoys an enviable international reputation in each of these areas, as well as with respect to administrative competence, economic efficiency and the observance of human rights and democratic freedoms.

8. The 2006 IMF Article IV Consultation ranks Barbados 23<sup>rd</sup> in the political risk index.

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<sup>1</sup> Human Development Report, 2005 - UNDP.

<sup>2</sup> IMF Staff Report for the 2006 Article IV Consultation – July 2006

9. The present constitution provides for the separation of powers under the Governor General, Parliament, the Executive, the Judiciary and the Public Service. The country is a constitutional monarchy with a parliamentary system of government. Therefore, at the helm is the monarchy and acting on its behalf is the Governor General.

10. The 2003 IMF FSAP Country report<sup>3</sup>, concluded that with respect to transparency in financial policies, observance was generally high in banking, and offered suggestions for consideration relating to other non-banking areas.

11 Money laundering was criminalized in Barbados from 1990 when it was included in the Proceeds of Crime Act, CAP. 143 (POCA). It was given more focused treatment in the anti-money laundering legislation of 1998 (CAP. 129). In 2000 the Anti-Money Laundering Authority (AMLA) and the Financial Intelligence Unit (FIU) were established to supervise the financial sector. The AMLA was specially structured to garner the widest relevant information. The Chairman and Deputy Chairman are legal luminaries, in the form of a former President of the Caribbean Development Bank and a university professor. The other members of the AMLA are the heads (or their representatives) of key public agencies and statutory bodies: Solicitor General, Commissioner of Police, Commissioner of Inland Revenue, Supervisor of Insurance and Pensions, Registrar of Corporate Affairs and Intellectual Property, Comptroller of Customs, and the Head of Banking Supervision of the Central Bank of Barbados.

12 The Money Laundering and Financing of Terrorism (Prevention and Control) Act. CAP. 129, (MLFTA) requires a number of relevant agencies to provide the Director of the FIU with information on request. The major regulators have also entered into a Memorandum of Understanding for the exchange of information, and cooperation and consultation in order to carry out their regulatory and supervisory functions. Signatories to this memorandum are the Central Bank, the FIU, the Supervisor of Insurance and Pensions, the Ministry of Industry and International Business (“now replaced by the Ministry of Economic Affairs and Development”), The Securities Commission, The Registrar of Cooperatives and Friendly Societies, and Registrar of Corporate Affairs and Intellectual Property.

13 Part of the mandate of the AMLA is to provide basic training for the financial sector. This training extends to the analysis of new trends and the changing demands of the international community. The aim is to give the financial sector a thorough knowledge of money laundering and terrorism financing issues so they fully understand that AML/CFT issues must be an integral part of their safety and soundness infrastructure.

14 The Prevention of Corruption Act (CAP. 144) was passed in 1929. According to section 3 of that Act, any person who, by himself or by or in conjunction with any person, corruptly solicits or receives or agrees to receive, for himself or for any other person, any gift, loan, fee, reward or advantage whatsoever as an inducement to, or reward for or otherwise on account of any member, officer or servant of the Crown or of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the Crown or such public body is concerned, shall be guilty of an offence. Where a corruption conviction is in respect of a matter or transaction related to a contract, or a proposal for a contract, with the Crown or any Government Department or any public body, or a sub-contract to execute any work comprised in such a contract, the penalty increases (sec. 6).

15. Corruption is not a significant problem in Barbados. This is largely due to the transparent way in which both Government and financial sector business is conducted. The 2006 IMF Article IV Consultation ranks Barbados ranks 24<sup>th</sup> in the corruption perception index. The 2006 Index of Economic Freedom ranked Barbados at number 26 in the world. The U.S. Department of Commerce acknowledged that “Barbados uses transparent policies and effective laws to foster competition and

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<sup>3</sup> Barbados: Financial System Stability Assessment, IMF Country Report No. 03/35 of February 2003.

establish clear rules for foreign and domestic investors in the areas of tax, labor, environment, health and safety” and that “Corruption is not regarded as a major problem.”

16. The Barbadian court system is generally unbiased and reasonably efficient. The structure of the court system is made up of Magistrates’ Courts, spread across the island, the High or Supreme Court, the Court of Appeal and the Caribbean Court of Justice. This last-mentioned Court, which has recently been inaugurated, exercises jurisdiction in two significant areas: interpretation or application of the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the Caricom Single Market and Economy; and as the island’s ultimate court of appeal replacing the London Judicial Committee of the Privy Council.

17. Magistrates and judges have been sensitized to money laundering and terrorist financing issues through training and attendance at international conferences. The current Registrar of the Supreme Court, in another capacity, recently sat as a member of the Authority, and thus brings an intimate knowledge of these matters to her office and the judicial system. The library of the Supreme Court is well equipped and is computerized, giving judicial officers immediate access to all online resources. An urgent matter slotting system has been instituted to enable all urgent matters to receive speedy attention and not be held up in any case backlog.

18. A premium is placed on ethical and professional standards. The General Orders of the Public Service of Barbados provide that officers and employees are forbidden from soliciting or accepting gifts, other than the ordinary gift of personal friends, whether in the form of money, goods, free or reduced passages, or other personal benefits, and from giving such presents. The Royal Barbados Police Force has been internationally accredited and operates by the highest accepted ethical and professional standards. There have been no instances of police officers investigated, suspended, prosecuted or convicted for corruption in the last five years.

19. There are no recognized SROs for AML/CFT purposes. However, professional associations exist amongst whose goals is that of preserving the highest level of ethics and professional behaviour. The Barbados Bar Association was incorporated under the Barbados Bar Association Act of 1940 (BBA). The Association’s goals include supporting and protecting the character, status and interest of the Legal Profession generally and particularly attorneys-at-law practicing in Barbados; promoting honorable practice and settling disputed points in practice; and settling questions of professional conduct, discipline and etiquette. The Association has a Disciplinary Committee which meets monthly. The conduct of the profession is governed by the Legal Profession Code of Ethics, 1988. The BBA stipulates the rules for the election of a Council, which currently consists of 17 members, 5 of whom sit as the Executive. The Association comprises approximately 520 members.

20. The Institute of Chartered Accountants of Barbados (ICAB) was established by an Act of Parliament of Barbados in 1974. ICAB seeks inter alia to maintain the highest standards of professional etiquette and ethics among its members and encourage the observance of such standards amongst non-members. There are standing Committees on Investigations, Discipline, Appeals and Ethics. A Bill will shortly be tabled before Parliament to further strengthen governance of the Institute.

21. The Barbados Association of Compliance Professionals (BACP) was formed in 2000 in response to the emergence of the role of the compliance professional as a key function within the financial services industry. Its vision is to serve the Barbados financial service community by assisting in maintaining the integrity of financial institutions and mitigating their exposure to legal, regulatory and operational risks. BACP hosted a major Caribbean Regional Compliance Association/International Compliance Association (CRCA/ICA) conference in Barbados in October 2006 and contributes to the development of AML/CFT policy.

22. The Barbados International Business Association (BIBA) is an association of private financial institutions whose goals include liaising with and facilitating the work of the relevant Government Ministries, statutory bodies and other organizations involved in the development and regulation of

international business in Barbados. There are several executive committees in place including banking, insurance, trusts and IBCs. BIBA hosts AML/CFT training and actively contributes to the development of financial sector policy.

23. The Bankers Association is another key industry collaborator with whom there is ongoing dialogue at both the level of the Governor of the CBB and the Bank Supervision Department on policy issues including AML/CFT.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

24. The predicate offences from which unlawful proceeds originate at the local level are principally the trade in illegal drugs and fraud. In terms of the potential of funds to be laundered, the illegal drugs trade seems more significant than any other source of criminal proceeds. Barbados continues to be an importer of cannabis from a neighbouring island, and notwithstanding a high degree of seizures, this problem has not abated. Cannabis seems to be the drug most used, but there is a fairly significant use of crack cocaine.

25. Funds originating outside of Barbados may find their way to the island at the layering stage in the laundering process. These seem to be largely generated by frauds.

26. Generally, serious crimes in Barbados have been on the decline. It seems reasonable to infer that if crime is falling by significant proportions, the money available for laundering should also be falling. The following statistics for some serious crimes tell the general story:

**Table 1; Serious Crime Statistics**

| Offence  | 2002 | 2003 | 2004 | 2005 |
|----------|------|------|------|------|
| Murder   | 25   | 33   | 22   | 29   |
| Robbery  | 350  | 316  | 289  | 230  |
| Burglary | 2798 | 2021 | 1963 | 1889 |
| Drugs    | 1275 | 1231 | 1266 | 904  |

27. With the advent of more stringent controls at financial institutions, there have been increased attempts at structuring transactions to avoid the reporting thresholds. However, this is mitigated by the requirement for financial institutions to risk profile their client base.

## 1.3 Overview of the Financial Sector and DNFBP

28. In accordance with the MLFTA, a financial institution:

- (a) means any person who carries on business under the *Financial Institutions Act*; and includes:
- (i) a deposit taking institution,
  - (ii) a credit union within the meaning of the *Co-operatives Societies Act*,
  - (iii) a building society within the *Building Societies Act*,
  - (iv) a friendly society within the meaning of the *Friendly Societies Act*,
  - (v) an insurance business within the meaning of the *Insurance Act*,
  - (vi) an off-shore bank within the meaning of the *Off-shore Banking Act*,
  - (vii) an exempt insurance company within the meaning of the *Exempt Insurance Act*,
  - (viii) an international business company within the meaning of the *International Business Companies Act*,

- (ix) a society with restricted liability within the meaning of the *Societies with Restricted Liability Act*,
- (x) a foreign sales corporation within the meaning of the *Barbados Foreign Sales Corporation Act*,
- (xi) a mutual fund, mutual fund administrator and a mutual fund manager,
- (xii) international trusts within the meaning of the *International Trusts Act*;

29. The following chart sets out the types of financial institutions that are authorised to carry out the financial activities that are listed in the Glossary of the FATF 40 Recommendations:

**Table 2: Types of financial institutions authorise to perform financial activities in the glossary of the FATF 40 Recommendations**

| Type of financial activity<br>(See Glossary of the 40 Recommendations)   | Type of financial institution authorised to perform activity in Barbados   |
|--|--|
| <b>A.</b> Acceptance of deposits and other repayable funds from the public (including Private banking)   | International/offshore banks, commercial banks, finance companies, trust companies, merchant banks, credit unions, cooperatives  |
| <b>B.</b> Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))   | International/offshore banks, commercial banks, finance companies, trust companies, merchant banks, credit unions, cooperatives  |
| <b>C.</b> Financial leasing (other than financial leasing arrangements in relation to consumer products)   | Finance companies, merchant banks  |
| <b>D.</b> 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) | International/offshore banks, commercial banks, finance companies, trust companies, merchant banks,  |
| <b>E.</b> Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)  | International/offshore banks, commercial banks, finance companies, trust companies, merchant banks,  |
| <b>F.</b> Financial guarantees and commitments   | International/offshore banks, commercial banks, finance companies, merchant banks,   |
| <b>G.</b> Trading in:<br>(a) money market instruments (cheques, bills, CDs, derivatives etc.);<br>(b) foreign exchange;<br>(c) exchange, interest rate and index instruments;<br>(d) transferable securities;<br>(e) commodity futures trading   | International/offshore banks, commercial banks, finance companies, trust companies, merchant banks, brokers, dealers, investment advisers, traders, underwriters, issuers, securities companies, restricted administration licensees, mutual funds, exempt mutual fund, general administration licensees |

|   |  |
|---|--|
| <b>H.</b> Participation in securities issues and the provision of financial services related to such issues   | International/offshore banks, commercial banks, trust companies, merchant banks, brokers, dealers, investment advisers, traders, underwriters, issuers, securities companies, restricted administration licensees, mutual funds, exempt mutual fund, general administration licensees  |
| <b>I.</b> Individual and collective portfolio management  | Finance companies, trust companies, merchant banks, brokers, dealers, investment advisers, traders, underwriters, issuers, securities companies, restricted administration licensees, mutual funds, exempt mutual fund, general administration licensees, international/offshore banks |
| <b>J.</b> Safekeeping and administration of cash or liquid securities on behalf of other persons  | International/offshore banks, commercial banks, trust companies, merchant banks,   |
| <b>K.</b> Otherwise investing, administering or managing funds or money on behalf of other persons  | International/offshore banks, commercial banks, trust companies, merchant banks, brokers, dealers, investment advisers, traders, underwriters, issuers, securities companies, restricted administration licensees, mutual funds, exempt mutual fund, general administration licensees  |
| <b>L.</b> Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)) | Exempt insurance companies, qualified exempt insurance companies, life insurance companies, general insurance companies  |
| <b>M.</b> Money and currency changing   | Commercial banks, finance companies, trust companies, merchant banks,  |

30. The financial services sector includes international/offshore banks, commercial banks, finance companies, trust companies and merchant banks all of which are regulated and supervised by the Central Bank of Barbados (CBB). Offshore banks are governed by the International Financial Services Act, CAP 325, (IFSA), which defines international financial services to include the receiving and using of foreign funds from non-residents or prescribed persons for international banking business.

31. Onshore commercial banks, trust companies, finance companies, merchant banks, and similar financial institutions are regulated by the Financial Institutions Act CAP 324A (FIA). Trust companies, finance companies, and merchant banks, in addition to carrying on banking business, can also perform functions as trustee, administrator or executor, or the business of broker, investment analyst, investment adviser, or such other business not prohibited by the CBB.

32. As at June 30, 2006 there were 50 offshore banks, 6 commercial banks, 6 trust companies, 6 finance companies and 2 merchant banks. The total asset size of offshore banks was BD\$65.52 billion and onshore financial institutions BD\$9.82 billion.

33. The Securities Commission administers the Securities Act 2001-13 (SA) and the Mutual Funds Act, 2002-22 (MFA). A securities company is defined under the SA to include companies carrying on securities trading business, brokers, dealers, underwriters, and investment advisers. Mutual fund business is defined under the MFA as registered unit trusts, finance companies and corporate

entities carrying on mutual fund business. This does not include persons licensed under the FIA except for finance companies, the Insurance Act, the Exempt Insurance Act, the Friendly Societies Act, the Co-operative Societies Act and any company or partnership primarily engaged in industrial, commercial or charitable enterprise.

34. At March 31, 2006 there were 9 Brokers, 4 Dealers, 5 Investment Advisers, 4 Traders, 5 Underwriters, 38 Issuers, 10 Securities Companies, 2 Restricted Administration Licensees, 9 Mutual Funds, 1 Exempt Mutual Fund, and 4 General Administration Licensees. The 2 Self-Regulatory Organisations are the Barbados Central Securities Depository Inc. and the Barbados Stock Exchange Inc.

35. The Supervisor of Insurance and Pensions administers the Insurance Act, 1996-32 (IA), Exempt Insurance Act, CAP 308A (EIA), and the Occupational Pension Benefits Act, 2003. As at August 31, 2006 there were 178 exempt insurance companies, 57 qualified exempt insurance companies, 25 management companies, 23 holding companies, 11 life insurance companies and 20 general insurance companies. As at December 31, 2005 total asset size of international insurance companies and local insurance companies was \$35.4 billion and \$2.3 billion respectively.

36 The Cooperatives Department is charged with the administration of the Cooperatives Societies Act, CAP 378A (CSA), the Friendly Societies Act, CAP.379, the Building Societies Act, CAP.377 and the Industrial and Provident Societies Act, CAP.380. The latter 2 Acts are of limited significance. As at June 30, 2006 there were 37 credit unions and 14 cooperatives. The total asset size of credit unions was \$943,273,423. There were 39 registered friendly societies which had evolved into fraternities and were not involved in any significant financial transactions. Funds received are as a result of subscriptions paid by members. The Auditor General is responsible for conducting an audit of the various organisations.

37 The International Business Unit of the Ministry of Economic Affairs and Development regulates International Business Companies under the International Business Companies Act. CAP.77 (IBCA), Societies with Restricted Liabilities under the Societies with Restricted Liability Act, CAP.318B (SRLA) and Foreign Sales Corporations under the Barbados Foreign Sales Corporation Act, CAP. 59C (BFSCA). With regards to the latter Act, no new applications were approved following the WTO ruling against the US based concessions as illegal subsidy. At the end of 2006, there were 3,488 international business entities which included 2,714 international business companies, 391 societies with restricted liabilities, and 91 foreign sales corporations.

38. There are no casinos in Barbados. The authorities are of the view that Real Estate Agents do not present a proven material AML/CFT risk. As a general rule real estate agents in Barbados act as facilitators of real estate transactions and are not involved in any financial service since they do not receive or transfer monies from one party to another. All real estate transactions must be completed between Attorneys and no real estate agent forms part of the completed real estate transaction.

39 Dealers in precious metals and precious stones are considered by the authorities to pose no proven material AML/CFT risk. As customers of financial institutions licensed under FIA, these businesses would be subject to the requirements contained in the CBB AML/CFT Guidelines.

40. Notaries and Accountants are also considered to pose no proven material AML/CFT risk. The legal and accounting professions are self-regulated through professional associations whose mandate speaks to professional conduct, discipline and etiquette.

41. Licensees under the IFSA and FIA engage in the business of trust and company service providers as defined in the Forty Recommendations. With the approval of the CBB, licensees may form a subsidiary company to provide the services of acting as director in relation to other legal persons. Section 2 of the International Trusts Act, CAP 245 permits a licensee under the IFSA and FIA to serve as trustee for an international trust.

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

42. Corporate Affairs and Intellectual Property Office, has responsibility for, among other things, the incorporation/registration of companies, registration of business names, limited partnerships, the organisation of societies with restricted liability and registration of trademarks, patents and industrial designs. The Corporate Affairs and Intellectual Property Office administers and/or has responsibilities under twenty-nine (29) enactments and ten (10) international agreements and conventions.

43 The enactments confer responsibilities in relation to, inter alia, the incorporation and registration of Companies, (both domestic and external), namely International Business Companies, Foreign Sales Corporations, Exempt Insurance and Management Companies, International Banks, and Societies with Restricted Liability. The Office is also responsible for the registration and maintenance of public records relating to business names, limited partnerships, newspapers, pharmacies, charities, bills of sale and company charges and for the grant and registration of patents, trade and service marks, industrial designs and other intellectual property rights.

44 The services offered by the office may be divided for convenience into two sections - Corporate Affairs which deals with the registration and/or incorporation of various business vehicles such as companies, limited partnerships and business names and Intellectual Property which registers Trade Marks, Patents and Industrial Designs.

45 The Companies Act, CAP 308, allows for the incorporation of domestic companies and registration of external companies to undertake business in Barbados. Applications are submitted in prescribed formats and accompanied by a statutory declaration. Bearer shares are prohibited. A company must have its registered office in Barbados and it must prepare and retain records as specified in Division H of the Act. The Registrar maintains a register of all companies, which is open for inspection by the public.

46 The IBCA governs international business companies carrying on the business of international manufacturing, international trade and commerce from within Barbados. An IBC must comply with the record-keeping requirements of the Companies Act and Income Tax Act.

47 The SRLA provides for the organisation of societies with restricted liability with full corporate personality and for related matters. Applications are submitted in prescribed formats. A society must have its registered office in Barbados and records retained and maintained in accordance with Part V of the Act.

48 The Partnership Act, CAP 313 provides for a relationship, which subsists between persons carrying on a business in common with a view of profit. The Limited Liability Partnership Act, CAP 312 establishes limited partnerships. A body corporate may be a limited partner. Limited partnerships must be registered with the Registrar of Companies in the form prescribed. The register is open for inspection by the public.

49 Legal arrangements can be created under the International Trusts Act, CAP 245. An international trust may be only created by an instrument in writing. An international trust may be created for non-charitable purposes in accordance with Part III of the Act on purpose trusts. A trustee must keep in Barbados:

- a) A copy of the instrument creating the trust and copies of any other instrument amending or supplementing the instrument;
- b) A register in which the following information is set out:

1. the name of the settlor,
2. a summary of the purposes of the trust,
3. the name of the protector of the trust, and
4. such documents as are necessary to show the true financial position of the trust.

50 The trust register is confidential and not available to the public.

## **1.5 Overview of strategy to prevent money laundering and terrorist financing**

### *a. AML/CFT Strategies and Priorities*

51 Barbados remains committed to ensuring that it conforms to international standards as it relates to AML/CFT. The AMLA, as part of its mandate, maintains oversight of the national framework and through the FIU collaborates with domestic regulators on an ongoing basis.

52 Emphasis continues to be placed on furthering collaboration and cooperation between regulators and stakeholders. A consultative approach has been adopted with industry associations such as BACP, BIBA, and ICAB in the development of policy, including guidelines. In addition, the private sector has partnered with regulators to deliver seminars to staff of financial institutions.

53. Since the CFATF mutual evaluation of 2001, Barbados' AML/CFT framework was subject to review by the IMF (2003). The FSAP reported favourable progress and recommended that:

- Barbados proceeds expeditiously to implement its onsite program for offshore banks, following the then recent enactment of the IFSA. The Central Bank has now developed a mature onsite program.
- An AML/CFT compliance program be implemented in the securities and capital markets sector in line with appropriate risk for these industries. This program has advanced and joint onsite examinations with the Central Bank have commenced on common constituents.
- AMLA consider requiring regulators to request their licensees to submit written reports on their AML/CFT programs. This interim measure was not advanced but onsite examinations by all domestic regulators have now commenced.

54. A framework for regulating and supervising Money or Value Transfer services (MVTs) not provided by licensees of the Central Bank is in the process of development.

55. The adequacy of the laws governing non-profit organisations has been the subject of discussion by the AMLA and legislative review is being considered.

56. Amendments to the MLFTA are under consideration to lend clarity to some of the provisions and further strengthen the framework.

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

57. The Ministry of Finance has primary responsibility for the financial sector. It oversees the CBB, the Supervisor of Insurance and Pensions, the Securities Commission and the Customs Department.

58. The CBB is responsible for licensing, regulating and supervising offshore banks, commercial banks, trust companies, finance companies and merchant banks. The CBB was created under the

Central Bank Act, CAP 323C,(CBA) which has as one of its purposes, the promotion of a sound financial structure. Adequate powers to regulate and supervise banks are contained in the CBA, IFSA and FIA.

59. The CBB, in conjunction with the AMLA, has led the way in formulating comprehensive guidelines on AML/CFT, which has formed the basis for guidance issued by other domestic regulators. The CBB hosts a forum of domestic regulators whose purpose is to collaborate on common issues facing the financial sector. The CBB is collaborating with the Registrar of Cooperatives in the supervision of the largest credit unions in Barbados. Other domestic regulators include the Securities Commission which is responsible for licensing, regulating and supervising the securities industry, the Supervisor of Insurance who is responsible for licensing, regulating and supervising the insurance sector and the Registrar of Cooperatives who is responsible for registering, regulating and supervising credit unions and cooperatives.

60. The Ministry of Industry and International Business has responsibility for the promotion of investment in Barbados; the expansion of productive capacity and competitiveness of industrial activity; the effective regulation where desirable of industrial activity; and ensuring the availability of affordable supplies of energy and their efficient utilization. The FIU is responsible for supervision of financial institutions not licensed and regulated by any of the above primary regulators.

61. The Ministry of Economic Affairs and Development has responsibility for the encouragement and growth of a vibrant international business and financial services sector. It oversees Industry and International Business, and Corporate Affairs and Intellectual Property Office. The International Business Unit of the Ministry of Economic Affairs & Development was established with a mandate to develop international business and financial services within Barbados. The Unit has principal responsibility for coordinating intra-governmental liaison affecting the international business and financial services sector and is also responsible for oversight of International Business Companies, Societies with Restricted Liabilities and Foreign Sales Corporations.

62. The Attorney General's portfolio includes:

- i. Police Administration and Preservation of Public Order,
- ii. Court Process Office
- iii. The Magistrates' Courts
- iv. The Supreme Court
- v. The Police Department
- vi. The National Task Force on Crime Prevention
- vii. The Financial Intelligence Unit

63. The Director of Public Prosecutions is a public office whose independence is protected by the Constitution.. The same is also true of the judicial branch of government which comprises the Magistrate Courts, a High Court and a Court of Appeal.

64. The Ministry of Commerce, Consumer Affairs & Business Development has oversight for the Cooperatives Department whose function is to administer the Co-operative Societies Act; the Friendly Societies Act; the Building Societies Act; and the Industrial and Provident Societies Act. The Ministry also has within its portfolio responsibility for betting and gaming.

**c. *Approach concerning risk***

65. The CBB in conjunction with the AMLA, has issued guidelines on the risk-based approach. Deliberations on the approach concerning risk take place at the level of:

- AMLA, which oversees the national framework and decides on revisions to both legislation and guidelines;

- Domestic regulators on an individual and collective basis. Meetings are held among regulators to discuss emerging standards and harmonization of implementation, where relevant;
- The private sector, which makes submissions directly to domestic regulators or through industry bodies such as BIBA.

66. Barbados has determined that certain financial institutions do not pose a significant risk for money laundering and terrorist financing:

A Cooperatives and Friendly Societies

67 Friendly societies are of little significance in the financial system in terms of (a) asset base and (b) financial activity that may heighten potential for money laundering and terrorist financing. There are approximately 10 active fraternities to which members pay a nominal monthly fee, which is fully applied to sickness benefit payouts. This is the sole mechanism for members to access funds. It must be noted that the advent of the national insurance scheme in Barbados diminished the usefulness of fraternities. In addition, 35 of the 37 registered credit unions are closed bond.

B Securities sector

68 The securities market is thin and has for some time been characterized by low volume and low value transactions. Periodic large and extraordinary transactions occurring since the 2001 evaluation related to mergers and acquisitions particularly in the banking and insurance sectors, and were subject to enhanced scrutiny by the Securities Commission. The overlap of registrants of the Commission and the CBB also provides for combined oversight. The Commission has adopted the CBB Guidelines in recognition of overlapping constituents.

C Real Estate Agents

69 As stated in section 1.3 of the report, agents do not ordinarily carry out activities referred to in the definition of DNFBPs in the FATF Recommendations. Consequently, the risk posed for money laundering and terrorist financing is considered low. The broad activities-based definition of a financial institution in the MLFTA already accommodates the inclusion of such agents as financial institutions should their business model and risk profile evolve in the future.

### **Risk-Based Supervision**

70 Financial sector regulators also stratify their licensees, based on risk profiling. For example, the CBB undertakes ongoing risk assessments (which include coverage of such factors as whether the entity engages in third party business, the products and service mix, and geographic penetration) in shaping a risk-based approach to supervision.

71 Consistent with the risk-based approach, the AML/CFT guidelines issued by regulators contain both advisory and obligatory requirements. Advisory matters permit financial institutions to implement alternative but effective measures. Obligatory requirements are aligned with legal obligations found in the MLFTA and basic obligations found in the FATF Recommendations. The sector guidelines were issued in conjunction with the AMLA.

72 In addition, the MLFTA requires financial institutions to take reasonable measures to demonstrate compliance with a number of general obligations. The intention is not for the Act to be prescriptive and rigid but to permit sufficient flexibility that allows for reasonable measures that best matches the risk experience of diverse financial institutions. This also allows for a regulatory environment that can respond quickly to changing international standards. Consequently, the AML/CFT guidelines complement the MLFT.

- 73 The guidelines:
- 1) Were issued in accordance with 8(1)(f) of the MLFTA and have a clear basis in law;
  - 2) Address in detail the prescriptive requirements in the Methodology, thus complementing the general obligations in the MLFTA;
  - 3) Reflect obligations in the MLFTA, non-compliance of which can be enforced through sanction under the MLFTA, or through application of supervisory powers including ensuring safety and soundness responsibilities.

74 Criminal sanctions exist for most obligations placed on financial institutions in the MLFTA. Administrative sanctions vary among supervisors.

75 Additionally, the guidelines are applied on a risk basis to a mix of financial institutions with varied risk profiles. In some cases, this results in varying thresholds that define compliance with ratings.

76 The Central Bank recognises the diversity of the institutions it regulates and seeks to establish that, overall, processes appropriate to institutions are in place and operating effectively. Through its onsite work program, the examiners verify that all licensees have designed an AML/CFT framework that satisfies the needs of their institution, taking into account:

- i. The nature and scale of the business;
- ii. The complexity, volume and size of transactions;
- iii. The degree of risk associated with each area of operation;
- iv. Type of customer (e.g. whether ownership is highly complex, whether the customer is a PEP, whether the customer's employment income supports account activity, whether customer is known to other members of the financial group);
- v. Type of product/service (e.g. whether private banking, one-off transaction, mortgage);
- vi. Delivery channels (e.g. whether internet banking, wire transfers to third parties, remote cash withdrawals);
- vii. Geographical area (e.g. whether business is conducted in or through jurisdictions with high levels of drug trafficking or corruption, whether the customer is subject to regulatory or public disclosure requirements); and
- viii. Value of account and frequency of transactions.

77. The review covers an assessment of the AML policy and procedures including review of the criteria for applying reduced and enhanced due diligence, risk categorisation and ratings of the customer base, products and services, and identification of assigned actions by risk types. The examiners also verify that effective systems are in place to periodically test the accuracy of the assignment of the customer base to risk categories and that the requisite due diligence is being followed.

*d. Progress since the last mutual evaluation*

78. The last CFATF mutual evaluation of Barbados took place in November 2001. The main recommendations consisted of : consider bringing attorneys, accountants, real estate agents, notaries, vehicle dealers and similar entities under the AML/CFT regime; improve the reporting performance of non-financial institutions; expand the FIU; provide training to the judiciary; improve on-site inspection function with regard to off-shore banks and insurance companies; increase supervisory staff of the Central Bank; seek membership of the Egmont Group; and increase public awareness of AML/CFT issues.

**Update on Legal Recommendations**

79 Section 8 of the MLFTA places a reporting obligation on all financial institutions, the

definition of which includes “any person whose business involves money transmission services, investments services or any other services of a financial nature.” Members of the bar, accountants and real estate agents do provide services of a financial nature. As already mentioned the authorities are of the view that real estate agents, given the nature of their business, do not pose a material ML/TF threat. Attorneys and accountants have not demonstrated a proven ML/TF risk. As such, attorneys, accountants and real estate agents are not formally supervised for compliance with AML/CFT requirements. The authorities are of the view that the framework for independent legal professionals and accountants can be further strengthened and that the aforementioned obligations applies to all services offered by these DNFBPs, including FATF designated services. The FIU has issued guidance on attorney-client accounts and the AML/CFT Guidelines lend further guidance on business introducers and professional service providers. Like other financial institutions, the FIU engages in dialogue with non-financial businesses and has extended training to this group in accordance with Section 6 of the MLFTA.

80 The offshore banking sector continues to receive special attention by way for example of strict entry requirements and ongoing due diligence on directors, shareholders and executive officers. Since enactment of the IFSA in 2002, all licensees have been subject to at least 1 full or focused AML/CFT examination. The onsite examination program is now at a mature stage and ongoing monitoring of developments in the sector continue to be undertaken by the Offsite Unit of the Bank Supervision Department. The Department maintains a close working relationship with the sector, meeting at least annually with directors and shareholders of licensees and the Banking Committee of the Barbados International Business Association.

81 In accordance with Section 6 of the MLFTA, the FIU has delivered training in record-keeping and reporting obligations as required under that Act. The AMLA captures statistics on financial institutions in its annual reports. Effective reporting and communication is in place between the FIU and Customs department.

82 The judiciary has undergone training as detailed in Section 2.6 of this report. Training is ongoing.

83 Segregated Cell Companies are fully regulated and supervised for AML/CFT compliance. The Companies Act permits a legal person inter alia to organize itself as a Segregated Cell Company(SCC) for the purpose of carrying on financial services activity including insurance, banking and mutual fund activity. However, in order to conduct financial services business, the responsible financial sector regulator must issue the SCC with a licence. Due diligence is undertaken on the owners and structure of the applicant. Each regulatory authority has measures in place to monitor their constituents for AML/CFT compliance on an ongoing basis.

84 Barbados joined the Egmont Group in 2002 and as such is able to share information with its foreign counterparts.

## **Update on Financial Recommendations**

85 The Supervisor of Insurance and Pensions conducts onsite examinations for AML/CFT compliance. Supervision of licensees of the Supervisor of Insurance has been strengthened and staffing has increased. The Securities Commission has also commenced onsite examinations and has joined with the Central Bank to undertake inspections of common licensees. The Central Bank has also conducted joint examinations with the Registrar of Cooperatives targeting the largest credit unions. This has facilitated the transfer of knowledge and approach as it relates to developing onsite examination techniques and capacity building.

86 The Central Bank uses a comprehensive AML/CFT work program to review the systems in place at both domestic and offshore licensees. The work programme covers reviews of the adequacy of the Compliance policy, Internal Audit / Independent Review, Education and Training, Exemptions,

Risk Profiling, Know Your Customer, Wire / Fund Transfer, Monetary Instruments, Reporting, Record-Keeping and High Risk Activity. Transaction sampling is undertaken across products and services, on a risk basis, to verify the effective implementation of documented policies and procedures.

87 The IFSA was enacted in 2002, replacing the Offshore Banking Act. The 2003 FSAP concluded: “Many of the Core Principles For Effective Supervision of offshore banks are either “Compliant” or “Largely Compliant.” Barbados was “Largely Compliant” with Core Principle 15 and comments related to the recent commencement of onsite examinations of offshore banks. All offshore banks have been subject to at least 1 full or focused AML/CFT examination.

88 The onsite examination program is now at a mature stage. The number of offshore banking (and domestic) licensees has not grown significantly since the last mutual evaluation. Supervisory processes have been strengthened and the staff complement of the Bank Supervision Department stands at 35 persons, compared to 26 in 2001.

89 The nature of business of credit unions and cooperatives renders these entities to be low risk for money laundering and terrorist financing. As said earlier, the Central Bank has conducted joint examinations with the Registrar of Cooperatives targeting the largest credit unions.

90 Efforts are ongoing to fully staff the FIU. In the interim, the FIU continues to work in conjunction with domestic regulators to oversee the AML/CFT framework of financial institutions.

91 Training of competent authorities is ongoing. Sections 2.5 and 3.10 give details on the types of training to which the FIU, Judiciary, Central Bank and Securities Commission have been exposed. Financial institutions, private sector bodies, domestic regulators and the CFATF also host seminars and conferences, which have been of significant benefit to the sector. The FIU has conducted training for financial institutions in respect of the business transaction record keeping obligations and reporting obligation under the MLFTA.

### **Update on Law Enforcement recommendations**

92 Barbados joined the Egmont Group in 2002 and is fully benefiting from association with this Group. Training of competent authorities is ongoing. (See Section 2.5).

93 The public awareness to money laundering and terrorist financing is reasonably high. This has been achieved through a number of initiatives. The FIU has been engaged in continuous training and sensitisation of the financial community. There have also been a number of general public information programmes, such as television discussions, Government Information Service information tips, newspaper articles written by the acting Director of the FIU, anti-money laundering tips on the television Evening News, and postings available on the websites of competent authorities. Further, private sector entities have been sensitising their customers to the issue.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

##### 2.1.1 Description and Analysis

##### Recommendation 1

94 Money laundering is criminalised under sections 3 and 20 (1) of the MLFTA. The offence is drawn broadly to cover the direct or indirect engagement in any transaction involving money or other property constituting “proceeds of crime”; as well as receiving, possessing, concealing, disposing of, importing or exporting such property. “Proceeds of crime” denotes proceeds of “unlawful activity” i.e. any criminal offence, wherever committed, which attracts a penalty of death or a custodial sanction of at least one year. This means that the legislation contemplates extraterritorial application of the predicate offence. The scope of this aspect of the money laundering offence is addressed at paragraph 112 below.

95 In terms of the state of mind (*mens rea*) of the offender, s/he must generally know or have reasonable grounds to suspect that the property is derived or realised, directly or indirectly, from some form of “unlawful activity”; but there is also scope under the legislation for wilful blindness (in the case of an individual), and for failure to implement appropriate internal controls (in the case of a financial institution) to suffice (s. 3 (2)(a), (b)). By extending the *mens rea* beyond the more customary knowledge/reasonable suspicion elements, section 3(2) exceeds the basic minimum Vienna/Palermo Convention requirements and broadens the potential targets of the legislation.”

96 The breadth of the definition of “unlawful activity” under the MLFTA means that the legislation has the potential to cover a wide array of serious predicate offences. However, a question arises as to whether the full compass of the FATF “designated categories of offences” is adequately caught. (See paragraphs 102 - 105).

97 There is also provision for a money laundering offence under section 19 of the Drug Abuse (Prevention and Control) Act, Cap. 131 (DAPCA) i.e. assisting another to retain the benefit of drug trafficking, a provision which predates the MLFTA. The offence arises in the context of “drug trafficking”, as defined, and the *mens rea* is knowledge or suspicion (which contrasts with that under the MLFTA described above). With the enactment of the more expansive laundering provision under the MLFTA, it would appear that drugs-related money laundering may now also be prosecuted under that Act.

98 The reason for the different *mens rea* criteria under the two statutes is not clear

99. The offence of money laundering appropriately extends to any type of property regardless of value that directly or indirectly represents the proceeds of crime (MLFTA, section 3). “Property” includes money and all other property real or personal, including things in action and other intangible or incorporeal property wherever situated, and includes any interest in such property (MLFTA section 2)

100. Where a person is charged with an offence under section 20 of the MLFTA, and the court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, then it shall be presumed, unless the contrary is proved, that the property was derived from the proceeds of crime (section 20A (1)). In such a case, the standard of proof is on a balance of probabilities (section 20A (2)).

101 Conviction for a predicate offence is therefore not a prerequisite to successful prosecution for money laundering under the MLFTA. Although there is no such provision under the DAPCA, it is presumed that a similar principle applies to laundering under the DAPCA.

102 As indicated above, a wide range of serious predicate offences is potentially covered by the MLFTA. The attached Table sets out details of the specific legislative provisions which are intended to criminalise the “designated categories of offences” referred to in FATF Recommendation 1. The examiners feel satisfied that, for the most part, these legislative provisions are adequate to cover the designated categories. There were some initial queries as to whether participation in an organised criminal group and racketeering (which are not specifically criminalised) are appropriately covered under Barbadian law. However, the authorities explained that Barbados has the capacity to deal with these Palermo activities by relying on the concept of conspiracy to commit the relevant offences.

**Table 3: Criminalisation of designated categories of offences**

| <b>DESIGNATED CATEGORY OF OFFENCES</b>                             | <b>RELEVANT LEGISLATION</b>  |
|--|--|
| Participation in an organised criminal group and racketeering;     | Money Laundering and Financing of Terrorism (Prevention and Control) Act, Cap. 129   |
| Terrorism, including terrorist financing;                          | Anti-Terrorism Act Cap. 158  |
| Trafficking in human beings and migrant smuggling;                 |  |
| Sexual exploitation including sexual exploitation of children;     | Sexual Offences Act , Cap. 154   |
| Illicit trafficking in narcotic drugs and psychotropic substances; | Drug Abuse (Prevention & Control) Act, Cap. 131  |
| Illicit arms trafficking;  | Firearms Act, Cap. 179   |
| Illicit trafficking in stolen and other goods;                     | Theft Act, Cap. 155  |
| Corruption and bribery;  | Theft Act, Cap. 155  |
| Fraud;   | Counterfeit of currency (Convention) Act, Cap. 64  |
| Counterfeiting currency;   | Copyright Act, Cap. 300  |
| Counterfeiting and piracy of products;                             | Counterfeiting Offences Act, Cap 124   |
| Environmental crime;   | Health Services Act, Cap. 44<br>Cultivation of Trees Act, Cap. 389<br>Fisheries Act Cap. 391<br>Marine Pollution Control Act, Cap. 392A<br>National Conservation Commission Act Cap. 393<br>Coastal Zone Management Act Cap. 394<br>Pesticides Control act Cap. 395<br>Returnable Containers Act Cap. 395A<br>Soil Conservation (Scotland District) Act Cap. 396<br>Trees (Preservation) Act Cap. 397<br>Wild Birds Association Act Cap. 398 |
| Murder;  | Common Law   |
| Grievous bodily harm   | Offences Against the Person Act, Cap. 141  |
| Kidnapping, illegal restraint and hostage-taking;                  | Offences Against the Person Act, Cap. 141  |
| Robbery or theft;  | Theft Act, Cap. 155  |
| Smuggling;   | Customs Act, Cap. 66   |
| Extortion;   | Theft Act, Cap. 155  |

|  |                             |
|--|-----------------------------|
| Forgery;                                 | Forgery Act, Cap. 133       |
| <b>DESIGNATED CATEGORY OF OFFENCES</b>   | <b>RELEVANT LEGISLATION</b> |
| Piracy, and                              | Copyright Act, Cap. 300     |
| Insider trading, and market manipulation | Securities Act, Cap. 318    |

103 This notwithstanding, there appears to be a couple of contemporary offences (or contemporary manifestations of long-standing offences) which are not adequately addressed in the law. In this regard, human trafficking is an activity that is not explicitly criminalised in Barbados. The authorities indicated that there is the capability to address this phenomenon by invoking provisions of a variety of statutes including the Offences against the Person Act and the Sexual Offences Act, as well as labour and immigration legislation.

104 While this approach may afford partial coverage of the issue, the concern is that some of the legislation was crafted in an earlier era to address particular acts of criminality which were problematic at the time. For instance, many of the offences under the Offences against the Person Act (based on the English model) were designed to cover what was perceived as the particular vulnerability of women and young girls to sexual predation in certain contexts. The current international instruments dealing with human trafficking take into account contemporary manifestations of sexual and other abuse, and it is therefore uncertain that full coverage is achieved by the current approach.

105 Corruption and bribery, also within the designated categories, provide another illustration. These offences have long been known to the law, and the governing legislation in Barbados is the Prevention of Corruption Act, cap. 144 of 1929. The maximum custodial sanction under the Act is 2 years for offenders convicted on indictment, which is not likely to be sufficiently dissuasive. The reality is that the modern profile of corruption/bribery substantially differs from what it was decades ago, and there have been recent regional and international Conventions developed to provide a more effective armoury against these offences. For example, the call for states to implement whistle blowing legislation is a significant recent development. The authorities conceded that corruption is an area that requires legislative reinforcement.

106. Barbados uses a threshold approach in determining predicate offences for money laundering, in that all offences punishable by death, or at least 12 months' imprisonment fall within "unlawful activity" for the purposes of the MLFTA. Many serious offences are therefore caught, but this is qualified by the observations noted above.

107. The definitions of "proceeds of crime" and "unlawful activity" which are imported into the offence of money laundering seem to indicate that extraterritorial crimes attracting a penalty of death or 1 year's imprisonment in the foreign jurisdiction will qualify as predicate offences to money laundering in Barbados (see section 3 of the MLFTA). What is less certain from the language is whether a dual criminality principle applies i.e. whether it is also necessary for the foreign crime to constitute a predicate offence under Barbadian law.

108 A related provision is section 4 of the MLFTA which provides that any act done by a person outside of Barbados with intent to do that act within Barbados is, if it would be an offence within Barbados, an offence under the MLFTA. It may be that the intention was to legislate for the dual criminality principle mentioned above. If this is so, it is not clear why the provision limits the extraterritorial act to one intended to be carried out in Barbados. There will be predicate crimes committed exclusively abroad, with no intention to carry out "that act" in Barbados, but which generate proceeds that become subject to laundering in Barbados. It is suggested that these foreign crimes would not be covered by section 4.

109. There is therefore uncertainty as to the scope of the extraterritoriality principle under the MLFTA.

110. The offence of money laundering under the MLFTA is drawn broadly and will apply to persons who commit the predicate offence (section 3 (1)). This is not inconsistent with domestic legal principles in Barbados.

111. Any person who attempts, or who aids, abets, counsels or procures the commission of, or who conspires to commit the offence of money laundering is guilty of an offence (MLFTA, section 20 (2)). There is therefore a wide span of secondary offences captured.

#### Additional Elements

112. It seems that section 4 of the MLFTA, as drafted, is wide enough to capture not only criminal acts committed abroad, but any act. Presumably, therefore, the intention is that non-criminal extraterritorial acts, which would violate Barbadian law if committed locally, would be appropriate predicate acts for money laundering. However, as indicated at paragraph 113 above, the actual language of the provision is restrictive, and does not appear to have this effect.

#### Recommendation 2

113. Section 20 (1) of the MLFTA makes it an offence for any person (whether natural or legal) to engage in money laundering. As already noted section 3 (2) of the MLFTA provides for knowledge as a minimum *mens rea* requirement for the offence.

114. Typically, courts examine all the surrounding circumstances to determine whether the required mental element is proved. In establishing the mental element or *mens rea* for laundering, the team is not aware of any legal impediment to inferences being drawn from objective factual circumstances. Also, under section 3(2) of the MLFTA, the concept of willful blindness, for the purposes of money laundering, can be deduced from failure of an individual to act reasonably in the particular circumstances; and a financial institution which neglects, on objective grounds, to implement required controls may expose itself to a laundering charge.

115. Criminal liability for money laundering extends to “legal persons”, as defined by the FATF. Corporate bodies are specifically contemplated (MLFTA section 17(1)), and associations of persons (e.g. partnerships or unincorporated bodies) appear to be captured under sections 17(3) and 21 of the MLFTA.

116. In Barbados, money laundering by legal persons is treated as a criminal violation attracting the sanctions described in paragraph 121 below. Criminal liability may trigger confiscation/forfeiture proceedings (see Section 2.3 below).

117. A person, including a legal person, guilty of money laundering is liable (a) on summary conviction, to a maximum fine of \$200,000 or imprisonment for 5 years or both; and (b) on conviction on indictment, to a maximum fine of \$2,000,000 or imprisonment for 25 years or to both (MLFTA, section 20(3)).

118. As regards attempts, aiding and abetting and other secondary offences, the penalties are (a) on summary conviction, a maximum fine of \$150,000 and/or a 3- year term of imprisonment; (b) on conviction on indictment, a maximum fine of \$1,500,000 and/or a 15-year prison term (MLFTA, section 20(4)).

119. Further, section 12 (1) provides that a person who has been convicted of an indictable offence may not be licensed to carry on the business of a financial institution; and where the person is a financial institution, its licence shall, without further action, be cancelled. The authorities have indicated an intention to qualify this latter measure by amending the law to make the licence liable to cancellation.

120. The scale of sanctions applicable to an individual and a corporate body (US\$100,000/5 years; US\$1 million/25 years) for the primary laundering offence seems to be substantial and appropriately dissuasive. The courts will also have discretion to impose penalties below the statutory maxima

depending on the evidence before them. There is accordingly proper scope for proportionate sanctions to be imposed.

121 Similarly, US\$75,000/3 years; US\$750,000/15 years for the secondary offences should operate as some disincentive to engagement in these crimes, and judicial discretion may be exercised to properly calibrate the penalties imposed. The examiners conclude that, based on the wide coverage of serious offences under the MLFTA, the appropriateness of the *mens rea* element and the rigour of the penalties applicable to ML, the requirements of the Vienna and Palermo Conventions are substantially met in Barbadian legislation.

**Recommendation 32 (money laundering investigation/prosecution data)**

**Table 4: Police/DPP Statistics(ML investigations/prosecutions)**

|  | 2002     | 2003     | 2004     | 2005     |
|--|----------|----------|----------|----------|
| <b>ML Investigations<br/>Commenced</b> | <b>6</b> | <b>9</b> | <b>6</b> | <b>3</b> |
| <b>ML Prosecutions<br/>Commenced</b>   | <b>0</b> | <b>0</b> | <b>1</b> | <b>3</b> |
| <b>ML Convictions</b>                  | <b>0</b> | <b>0</b> | <b>0</b> | <b>1</b> |

122. Although some information was provided on the types of money laundering investigations that have been conducted, and intelligence-gathering mechanisms used, the data presented did not suggest that over a 4-year period there was a considerable number of investigations being pursued in the jurisdiction. In fact, from the information gleaned, the number of money laundering prosecutions seems very low. The DPP explained that typically, prosecutions are brought for the predicate offences e.g. theft, fraud, rather than money laundering itself, based on the Office’s careful assessment of the prospect of successful prosecution for laundering, after balancing a number of factors including the weight of evidence in the case; availability of witnesses; availability of personnel and resources; the merits of accepting a guilty plea, or proceeding to trial on the predicate charge with which the courts were more familiar, as against opting for the vagaries of a lengthy trial for the more complex laundering offence. The DPP’s explanation highlights difficulties in prosecuting ML offences which support the view of ineffective use of ML provisions.

2.1.2 Recommendations and Comments

123. The authorities should review the adequacy of the legislative coverage of human trafficking, corruption and bribery, to ensure coverage of all designated categories of offences. .

124. The different *mens rea* elements of money laundering offences under the MLFTA and section 19 of DAPCA should be harmonized.

125. The language of section 4 of the MLFTA should be reviewed with a view to removing the current limitation which requires that there be an intention for the extraterritorial act to be also committed in Barbados.

### 2.1.3 Compliance with Recommendations 1, 2 & 32

|             | Rating    | Summary of factors underlying rating   |
|-------------|-----------|--|
| <b>R.1</b>  | <b>LC</b> | <b>The crimes of human trafficking, corruption and bribery falling within the designated categories of offences have not been adequately addressed in legislation</b><br><b>Extraterritoriality of predicate offences is not clearly defined</b> |
| <b>R.2</b>  | <b>LC</b> | <b>Ineffective use of ML provisions.</b>   |
| <b>R.32</b> | <b>LC</b> | <b>For factors see sections: 2.7, 6.3, 6.5</b>   |

## 2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

### 2.2.1 Description and Analysis

#### **Special Recommendation II**

126. A person who in or outside Barbados directly or indirectly, unlawfully and willfully, (a) provides or collects funds; or (b) provides financial services or makes such services available to persons, with the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used in full or in part, in order to carry out (i) an act that constitutes an offence under or defined in any of the treaties listed in the Third Schedule (as contained in the annex to the International Convention for the Suppression of the Financing of Terrorism [“Terrorist Financing Convention”]); or (ii) any other act (A) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and (B) that is intended to cause (a) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities; (bb) the risk, damage, interference or disruption of the kind mentioned in sub-paragraph (B), (C) or (D) of section 3(1) [i.e. serious risk to public health or safety; substantial property damage jeopardising health/safety or an essential service; interference with or disruption of an essential service, not arising from lawful protest] is guilty of a terrorist financing offence (Anti-Terrorism Act, Cap. 158, 2002-6, (ATA) section. 4(1)).

127. The coverage of the provision is broad enough to capture funding for individual terrorists or terrorist organisations. Funds are defined in the ATA in accordance with the TF Convention, and will cover funds from legal and illegal sources (ATA, section. 2).

128. For an act to constitute an offence it is not necessary to prove that the funds or the financial services were actually used to carry out the terrorist offence (ATA, section 4(2)). While there is no specific mention in the legislation that funding need not be linked to a specific terrorist act, legislation is sufficiently detailed to not hinder a successful prosecution under this head.

129. Section 4(3) of the ATA prescribes a range of secondary offences to terrorist financing. A person who aids, abets, counsels, procures, incites or solicits the commission of financing of terrorism; or conspires with others to do so is guilty of an offence, and is liable to punishment to the same degree as the principal offender. These acts basically cover the terrain contemplated by the conduct spoken to in Article 2.5 of the Terrorist Financing Convention.

130 It is observed that the offence of an attempt to finance terrorism is omitted from section 4(3). However, by virtue of section 22(7) of the Interpretation Act, where a statute creates an offence, attempts to commit that offence will also constitute a crime, and be deemed to attract the same penalty as the actual offence. Accordingly, attempts to commit terrorist financing are punishable with a maximum prison term of 25 years.

131. There is no explicit statutory designation of terrorist financing offences as predicate crimes for money laundering. The authorities' position is that terrorist financing offences, by virtue of the penalty attached to them which exceeds the 1-year threshold prescribed for "unlawful activity" under the MLFTA, are predicate offences for money laundering. It is not believed that a lack of specific designation within the legislation will pose an obstacle to effective prosecution.

132. The terrorist financing offences under section 4 of the ATA are drawn broadly enough to cover situations where the offender is in a separate jurisdiction from the one in which the terrorist or terrorist group is located, or the terrorist act took place.

133. Objective factual circumstances may be used to prove intent. Both natural and legal persons are subject to criminal sanction: liability under section 4 attaches to "persons", which would ordinarily cover individuals, associations of persons and corporate bodies. Additionally, where the manager of a corporate or unincorporated body commits the financing offence while acting in his/her official capacity, the entity itself becomes vicariously liable on conviction on indictment to a fine of BD\$2,000,000. This is supplementary to the criminal liability of the manager, and any civil or administrative liability that may also apply (section 5). Individuals are liable on conviction on indictment to imprisonment for a term of 25 years.

**Recommendation 32 (terrorist financing investigation/prosecution data)**

134. There is no evidence of terrorist funds in Barbados and there have been no cases of terrorist financing in Barbados and therefore no statistics.

Recommendations and Comments

2.2.3 Compliance with Special Recommendation II & 32

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| SR.II | C      |  |
| R.32  | PC     | See factors in sections: 2.7, 6.3, 6.5 |

**2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)**

2.3.1 Description and Analysis

**Recommendation 3**

135. Barbados has introduced legislation to authorise forfeiture/confiscation of the proceeds of money laundering, financing of terrorism and certain other predicate crimes, and there is some provision to confiscate instrumentalities and property of corresponding value. The relevant forfeiture/confiscation powers are, however, provided for under different statutes, and it appears that

there are distinct policy approaches underpinning these separate provisions, as detailed below:

## **Criminal Forfeiture**

### **POCA**

136. Where a person is convicted of a “scheduled offence”, the Director of Public Prosecutions (DPP) has power to apply to the High Court for a forfeiture order against “tainted property” and/or a confiscation order (in the nature of a pecuniary penalty) in relation to the benefits derived by the person from that offence (sections 5, 10, 18).

137. Property is broadly defined in section 2 of POCA to capture real and personal property, including things in action and other intangible or incorporeal property. “Tainted property” is defined in section 3 to cover not only proceeds derived, directly or indirectly, from the commission of the scheduled offence, but also property “used in, or in connection with” that offence (i.e. instrumentalities of the offence). The definition also covers proceeds and instrumentalities wholly or partially belonging to others. Gifts or transfers of property to others so as to insulate the defendant from the reach of the law are also caught (sections 4(3)-(6), (12)-(14) and 12. The term does not seem to capture instrumentalities intended for use in the commission of the offence.

138. The “scheduled offences” (section 3) for which these forfeiture/confiscation powers are available under POCA are restricted to a narrow range of crimes, albeit serious ones. This will effectively limit the scope of the POCA forfeiture/confiscation measures. The relevant offences are:

- (a) The money laundering offence of assisting another to retain the benefit of drug trafficking (DAPCA section 19)
- (b) Trafficking in, and possession with a view to supplying controlled drugs (DAPCA sections 6(3), 18)
- (c) Terrorist acts and terrorist financing (ATA, sections 3, 4)
- (d) conspiracy, aiding and abetting, counselling or procuring, attempting to commit and inciting to commit any of the offences in (a) to (c) above.

The money laundering offence under (a) is limited since it relates exclusively to drugs trafficking. Forfeiture measures as they relate to money laundering of non-drug trafficking predicate crimes would appear to fall under the relevant MLFTA provisions, and are described below.

139. It is important to note that the forfeiture/confiscation scheme under POCA, owing to the requirement to identify “tainted property”, or benefits derived from the particular scheduled offence, only enables the state to proceed against instrumentalities/proceeds associated with, and benefits realized from that offence. In other words, the scheme confers no power to deprive the convicted person of all his assets, only those specifically linked to the scheduled offence for which he was convicted. While it is open to the authorities to establish a regime along these lines, it provides a point of departure from the schemes under other statutes outlined below.

140. There is also power under section 15 for the court to order payment in lieu of forfeiture, so that property of corresponding value is covered by the regime. This power is exercisable in a number of circumstances, including where the property originally intended for forfeiture cannot be located, or is practically valueless, or is so commingled with other property as to present difficulties of severance.

### **MLFTA**

141. Under section 14, the High Court, on application by the DPP, is empowered to forfeit any property (i) owned by a person convicted of a money laundering offence, or (ii) otherwise in his possession or under his control. Property of the convicted person which is subject to a freezing order restraining dealings in the asset is also caught.

142. It is observed that there is no provision corresponding to the confiscation (pecuniary penalty) order under POCA, so that the authorities may only forfeit specific real or personal assets under this provision. Additionally, there is no specific provision for forfeiture of instrumentalities. The reason for

the differences of approach under the two statutes is unclear.

143. There is provision under section 14(5) of the MLFTA for a person against whom a forfeiture order has been made to apply to the Court for a substitute order for payment to be issued, in lieu of the forfeiture. However, it is noted that the counterpart provision under section 15 of POCA (discussed above) enables the court before making a forfeiture order to order payment in lieu, based on certain prescribed criteria. This appears to be a more flexible provision, and it is unclear why a different policy is adopted under the MLFTA.

144. The scope of the forfeiture provision under the MLFTA is substantially wider than the counterpart forfeiture provision under POCA. The presumption established by section 14 is that all property belonging to the convicted person (whenever and however acquired) is deemed to have been obtained as a result of the money laundering, unless the person can adduce evidence in rebuttal. Property not owned by him but which he possesses or controls is also caught. There is no requirement for the DPP to link the property to the specific offence, as under POCA. The rationale for the distinct policy approaches underpinning the two regimes has not been made clear to the examiners.

145. Recent legal authorities pertinent to Caribbean common law jurisdictions support the establishment of an overall confiscation regime which while robust, exhibits controlling features which properly balance the competing interests of the state and the suspect. Some of these controlling features include limiting the state's power to assets obtained within a prescribed period before the institution of proceedings; allowing a convicted person to rebut the statutory presumption of the tainted origins of property on a balance of probabilities i.e. the civil standard, rather than beyond reasonable doubt i.e. the criminal standard; and giving the court discretion to refuse confiscation where a serious risk of injustice arises..

146. The MLFTA provision does not appear to have appropriate balancing features. The state's powers are not confined to assets obtained within a prescribed period, and the convicted person must rebut the statutory presumption to the criminal standard (beyond reasonable doubt) [section 14(2), (3)]. Additionally, the approach taken contrasts with that under section 9 of the ATA, which sets out a parallel scheme for terrorist-related offences. Strangely, the latter provision uses both a criminal and civil standard [see paragraphs 240 – 242 for further comment].

147. There are other considerations. The POCA scheme is fully elaborated, addressing issues such as (i) the procedure to be followed in making applications, including notification to, and intervention by third parties [sections 5-8, 13]; (ii) the factors to be considered by the courts before making forfeiture orders [section 10(4)]; (iii) the power of the court to vary/discharge orders, and set aside property transfers made to escape the reach of the law [sections 12, 14]. Such particularity is desirable since confiscation represents a substantial interference with constitutionally protected property rights. The MLFTA regime, however, despite the general power of the court under section 14(4) to issue directions, appears sparse by comparison, leaving much to implication.

148. In the circumstances, the assessment team is not persuaded that, having regard to the most recent legal authorities, the forfeiture regime under the MLFTA represents a proportionate response to the crime of money laundering. There is accordingly a concern that a successful constitutional challenge could be mounted against it, on the basis that convicted persons are denied a fair hearing as guaranteed by section 18.8 of the Constitution.

### **DAPCA**

149. A further forfeiture scheme is provided for under DAPCA. Section 47 empowers the court to forfeit proceeds, and instrumentalities (apart from premises, aircraft and certain ships) of the drugs offences committed in violation of the Act. The reason for the exclusion of the specified instrumentalities is unclear.

150. There seems to be some overlap with the scheme under POCA which authorises forfeiture of tainted property/confiscation of benefits linked to "scheduled offences", among them specified drugs-related offences under DAPCA. For example, if a person is convicted of possession of controlled drugs with intent to supply (section 6(3) DAPCA), it appears that the DPP could either seek a forfeiture/confiscation order under section 5 of POCA, or alternatively, institute proceedings for

forfeiture under section 47(1) of DAPCA. Where instrumentalities are concerned, the POCA jurisdiction does not contain the limitations incorporated into the scheme under DAPCA, so that the DPP could conceivably target premises or ships of any size under POCA.

151. It is also noted that the regimes under both DAPCA and POCA require a linkage with the specific offence committed. However, the former provides very little detail on the process to be followed in the forfeiture proceedings (unlike the POCA framework), although there is some protection of third party rights under section 47(3) [see paragraphs 201 – 204 below for details].

152. An important observation should be made in relation to the three confiscation schemes identified. Because the more comprehensive forfeiture/confiscation regime under POCA relates to the narrow band of offences listed in the Schedule to that Act (drugs laundering, drugs trafficking offences, terrorism), there is a wide range of offences (e.g. counterfeiting and other types of fraud, copyright infringements, corruption, arms trafficking) which would fall outside the ambit of this useful scheme. The MLFTA forfeiture framework, even without the legal concerns expressed above, is limited to convictions for money laundering, and the DAPCA covers only the drugs-related offences addressed in that statute.

153. There are therefore a considerable number of predicate offences for which there appears to be no legal authority for effecting forfeiture/confiscation.

154. Under POCA, powers of confiscation/forfeiture extend to property derived both directly and indirectly from the commission of crime, and “property” is broadly defined in section 2 to capture real property, money, *choses in action* and other sorts of personal property. Moreover, the wide definition of “tainted property” covers not only proceeds and instrumentalities belonging to the defendant, but also those wholly or partially belonging to others. Gifts or transfers of property to others so as to insulate the defendant from the reach of the law are also caught: sections 4(3)-(6), (12)-(14) and 12.

155. Under the MLFTA, the forfeiture power is exercisable against property owned by the convicted person (whether or not subject to a freezing order), as well as property of another which is held or controlled by him (section 14(1)). Where the defendant enters into property transactions with others (for value or by way of gifts) with a view to thwart law enforcement, these will therefore not necessarily preclude the operation of the section. “Property” is also widely defined in section 2 to cover all sorts of proprietary interests, as under POCA. However, as already pointed out, the MLFTA powers will potentially extend to property not necessarily derived from criminal activity.

156. The DAPCA confers power on the courts to forfeit “any money or other thing” obtained or possessed by a person as a result of drugs crimes (section 47(1)(b)). This ability to forfeit proceeds of drugs offences is, however, limited to personal property, since real property would not be captured by the reference to “money or other thing”.

### **Freezing/Restraint**

157. There are provisions for freezing/restraining property under different statutes.

### **POCA**

158. POCA contains the most comprehensive regime. Where a person has been charged with or convicted of a “scheduled offence”, the DPP may apply to the High Court for a restraining order against any “realisable property” held by the defendant, or specified realisable property held by another person (section 31(1)). By section 4(3), “realisable property” signifies any property held by the defendant, as well as property held by any other person by virtue of a transfer by way of gift from the defendant. The effect of the freezing order is to bar the defendant or any other person from dealing with the property except in accordance with the terms of the order (section 32(1)).

159. The freezing power conferred by the Act is appropriately controlled. Before granting the order, the Court must satisfy itself as to certain matters. For example, there must be reasonable grounds to believe (i) where a person has been charged, but not convicted, that the person is culpable; (ii) that the property constitutes “tainted property” in relation to the offence, or that the defendant benefited

directly or indirectly from the commission of the offence; (iii) where the “tainted property” targeted belongs to another person, that it is nonetheless under the defendant’s effective control; (iv) that a forfeiture/confiscation order is likely to be made (section 32(1)).

160. Additionally, POCA makes specific provision for certain vital aspects of the restraint regime. Where circumstances warrant, the Court may, at the DPP’s request, provide for the proper management and preservation of the restrained property by giving appropriate directions to the Public Trustee or any other person; and the Court also has power to order that the defendant’s or other person’s reasonable living and business expenses, and costs of legal representation, be met out of the property (section 32(1)(g), (2)). There is also jurisdiction to revoke or vary the order (sections 38(a), 39). Third party rights are also addressed (see paragraphs 201 – 204 below for details).

161. Although POCA has extensive provisions dealing with restraint, it should be recalled that these can only be activated with respect to persons charged or convicted of one or other of the “scheduled offences”, which comprise a narrow range of criminal acts, as explained above.

### **MLFTA**

162. This Act contains two freezing provisions. The principal power to freeze arises under section 13. On application by the DPP, the High Court may “freeze” any property it is satisfied is owned, or held/controlled by a person charged or about to be charged with a money laundering offence (subsection (1)). “Freezing” is defined in section 2 to mean the restraint of any transaction or dealing in property.

163. Subsection (2) makes some provision for third party rights, management of the property and payment of reasonable expenses. However, there are noticeable differences between this scheme and that under POCA. It is observed that a freezing order can be made under section 13 of the MLFTA where the person targeted has either been charged or is about to be charged. In the latter case, the life of the order will expire if the DPP fails to prefer charges within 7 days of the making of the order. The corresponding POCA provision (section 31) applies where the person has already been charged or convicted. It does not contemplate the laying of charges prospectively, as under the MLFTA.

164. More importantly, there is no explicit requirement under the MLFTA for the Court to satisfy itself that the facts reasonably imply the person’s guilt, as under POCA. While it may be arguable that since the Court “may” grant an order and therefore has a discretion to refuse to do so if the facts presented by the DPP in a case seem weak, it is far more customary in legislation of this nature to detail all the factors which the court must consider before interfering with constitutionally protected property rights. As outlined above, POCA elaborates the grounds on which the court is to act. All parties concerned are therefore alerted as to the clear statutory requirements. By contrast, there is the risk that the absence of detail in the MLFTA scheme could lead to unevenness of application of the freezing measure by different judges: for instance, one judge might require the DPP to show the existence of reasonable grounds to believe the person charged with money laundering is implicated; another might apply the somewhat lower threshold of reasonable grounds to suspect his involvement.

165. Separately, the MLFTA contains an emergency freezing provision under section 6A(5). It may be invoked by AMLA by applying (through the FIU) to a Judge in Chambers for an order (a) to prohibit the completion of any transaction for up to 72 hours; and (b) to freeze a person’s bank account for not more than 5 days. There do not appear to be any supporting provisions to undergird this freezing power. The AMLA may initiate the process “on receipt of information under this Act”, but the criteria giving the Judge jurisdiction to grant the order, provisions for intervention by an aggrieved party, or for discharge of the order etc., are not articulated.

166. Again, in the context of disturbing property rights, this approach is unusual and may give rise to legal challenges as to the proportionality of the provision.

### **Seizure**

167. Powers of search and seizure as preparatory steps to restraint or forfeiture are conferred under POCA. Section 25 empowers police officers to apply to a magistrate for a warrant to enter and search land and premises for property reasonably suspected to be “tainted property”, with a view to seizure.

The property can thereby be preserved for any future restraint or forfeiture proceedings. In line with other POCA provisions, the seizure regime is admirably controlled: the preconditions to be met by the police in the warrant application, the logistics of execution of the warrant, preservation of the seized property, accountability of the executing officers, protection of third party rights etc., are all detailed (sections 26-30).

168. It should be noted, however, that while these provisions seem reasonably robust, there are limitations on the scope of their application. The POCA powers of search and seizure only arise in the context of “tainted property”, which is linked to the currently restrictively-drawn scheduled list of offences. This necessarily means that there would be a number of offences for which the POCA seizure regime could not be invoked as a measure preliminary to restraint or forfeiture.

169. Section 35 of the DAPCA empowers magistrates or justices of the peace (J.P.’s) to issue warrants authorising the police to search premises, and seize and detain “articles liable to seizure”, on being satisfied that such articles are reasonably suspected to be on the premises. Articles liable to seizure include funds or “things” liable to forfeiture under the Act (subsection (4)(b)). By section 47 the court has power to forfeit to the Crown proceeds, as well as certain instrumentalities of the drugs offences. The search and seizure power will not extend to instrumentalities in the form of aircraft and prescribed ships.

170. There is explicit provision for the DPP’s application for a restraining order under POCA to be made *ex parte* (section. 31(2)).

171. Such specific provision is absent from the freezing regimes under sections 6A(5) and 13 of the MLFTA, and the team is unaware that this is addressed in subsidiary legislation. For clarity and consistency with the POCA approach, it is desirable that express provision be made.

172. Investigative powers to support restraint and forfeiture/confiscation exist under various statutes. These powers may take different forms e.g. (a) production and inspection orders; (b) search and seizure warrants (c) monitoring orders; (d) income tax disclosure orders.

### **Production/Inspection Orders**

173. Broadly speaking, under section 42 of POCA, a police officer may apply to a Judge in Chambers for a production or inspection order to examine documents useful in tracking or quantifying property relevant to investigating a “scheduled offence”. The Judge must be satisfied that the officer reasonably suspects that a person convicted of the offence (or reasonably suspected of its commission) holds a property-tracking document. Such an order may either require the person targeted to produce the relevant document or make it available to the officer for inspection. There are supporting provisions elaborating on such matters as the mechanics of execution of the order, conditions for its variation and sanctions for breaches (sections 43-46).

174. There do not appear to be comparable provisions for production/inspection orders under the MLFTA. In terms of DAPCA, the same is true for those offences not caught by the POCA “scheduled offences”.

### **Search and Seizure warrants**

175. Search and seizure in relation to property reasonably believed to be “tainted property” has already been discussed above. Section 47 of POCA introduces another provision targeting search and seizure of property-tracking documents in circumstances where a production order has been violated, or it would not be feasible to grant such an order. Again, there are provisions controlling the exercise of the powers conferred on law enforcement.

176. Another useful evidence-gathering provision appears under section 15 of the MLFTA. The section confers power on the police, acting pursuant to a magistrate’s warrant, to enter and search premises, containers and objects for documents or material reasonably believed to afford evidence of the commission of an offence under the Act. The scheme here is supported by express provisions on, *inter alia*, (a) the manner of securing and executing the warrant (b) the custody of any material seized

(c) the procedures to be followed where an interested party seeks the return of the seized property, and (d) law enforcement inter-agency intelligence-sharing arising from the seizure. There is an additional search and seizure provision under section 11 in relation to documents and articles providing evidence of the commission of a money laundering offence, or of a breach by a financial institution of its statutory obligations.

### **Monitoring orders**

177. The police also have power under POCA to seek a monitoring order from a Judge in Chambers requiring “financial institutions” to disclose information about transactions conducted over a maximum 3-month period through a customer’s account with the institution. This robust evidence-gathering mechanism is not, however, in the nature of a “fishing expedition”, which would be disproportionately intrusive, having regard to privacy rights; the police will have to satisfy the Judge that there are reasonable grounds for suspecting that the customer has committed, or was otherwise involved in the commission of, a scheduled offence (or is about to so implicate him/herself), or has derived a direct or indirect benefit from the commission of such a crime (section 48).

178. There are further provisions prohibiting the disclosure by the institution of the existence of the order except to prescribed functionaries whose responsibilities in relation to the operation of the order place them on a “need to know” footing (section 49).

179. The examiners observe a limitation on the application of these useful provisions: a different definition of “financial institution” is used (see section 54) when compared to that under section 2(1) of the MLFTA. The latter statute not only sets out a broader spectrum of entities, but includes a catch-all provision in (b)(ii), namely, businesses involving “other services of a financial nature”. It would appear, for example, that entities such as insurance companies are excluded from the scope of the POCA scheme, the rationale for which is unclear.

180. The monitoring order regime will apply, *mutatis mutandis*, to the investigation of money laundering offences under the MLFTA, by virtue of section 18(1) of that Act.

181. However, because the offences covered by POCA and MLFTA are restricted, investigations of a number of predicate offences cannot, at present, benefit from the monitoring order power.

### **Income Tax and other Disclosure Orders**

182. Sections 55 and 56 of POCA establish a mechanism by which the DPP may access information or documents about a taxpayer which are in the custody of the Commissioner of Inland Revenue, in the context of an investigation into a scheduled offence. The DPP has to apply to a Judge for the disclosure order and must show, *inter alia*, that there are reasonable grounds to believe that the person committed, or benefited from the commission of the offence, and that access to the information/documents would be in the public interest by substantially enhancing the criminal investigation. Any order granted obliges the Commissioner to make the material available for on-site examination, or allow its removal for such examination. There is a bar on the further disclosure of information/material obtained pursuant to an order, except in cases relevant to the investigation or proceedings under the Act (section 59).

183. Owing to the potential sensitivity of the information, the disclosure power is qualified by section 57, which enables the Commissioner to lodge a written objection to the release of material identified in an order, on the following grounds: (a) the existence of a bilateral or multilateral taxation treaty or agreement signed by Barbados which prohibits the disclosure of such information; (b) the material is privileged under law or sealed by court order or other legal authority (c) the disclosure would otherwise be contrary to the public interest. There is provision for the objection to be considered by a Judge in Chambers, and his/her ruling on the matter is subject to appeal to the Court of Appeal.

184. A related disclosure power exists under section 60, which authorises the High Court, on the DPP’s application, to order any head of a Government department or statutory body to produce to the

DPP or his nominee information or documents the Court considers relevant to an investigation into, or proceedings relating to, a scheduled offence. There is no qualification along the lines of the earlier provisions enabling these departments or bodies to object to the release of the material.

185. Powers comparable to those conferred by sections 55-60 of POCA are incorporated by reference into the MLFTA, in the context of money laundering investigations (section 18(1) MLFTA).

186. Separately, there is also the ability under the MLFTA for the FIU to access information from specified Government departments i.e. the Inland Revenue Department, Land Tax Department and VAT Office, Customs and Immigration Departments, and the Central Bank and National Insurance Departments (section 6A(4)). By virtue of this provision, where the Director of the FIU reasonably believes that a person should be investigated under the Act, and that access to the records of any of these Government departments is necessary for purposes of that investigation, he may request the information from the head of that entity; the Act requires the agency director to furnish the information – there is no discretion to object.

187. The authorities supplied the examiners with a list of proposed amendments to the MLFTA, which includes a recommendation that the current listed entities under section 6A(4) be expanded to embrace “all public institutions and departments”. There is no objection to the principle that information should potentially be available from a larger pool of Government agencies.

188. The examiners are, however, somewhat uncomfortable with one aspect of the approach to accessing information from the Government entities covered by section 6A(4) of the MLFTA. While it is accepted that there is a statutory duty on the FIU Director (under section 22A) to treat with any information received confidentially and only for legitimate purposes, there is no recognition in the legislation that a Government entity may have *bona fide* reasons for declining to supply requested information. The entity may be under a duty of non-disclosure (or otherwise restricted in the manner of disclosure) with regard to certain material it possesses. This could arise, for instance, from cooperation agreements with foreign counterparts or agencies, or the application of legal professional privilege. In such circumstances, there should be a provision, analogous to that under section 57 of POCA, allowing the head of the entity some latitude in responding to the FIU Director’s request. This concern will become even more pronounced when “all public institutions and departments” are brought within the ambit of section 6A(4), as proposed by the Government.

## **POCA**

189. Effective protection of bona fide third party rights is provided under this statutory scheme, consistent with the requirements of the Palermo Convention.

### **Forfeiture**

190. Where the DPP applies for a forfeiture order, he is required to give at least 14 days’ written notice to the person convicted, and to any other person who the DPP reasonably believes has an interest in the property. Further, the offender and any person claiming an interest in the property may appear and adduce evidence at the hearing of the application. The Court also has a wide discretion to direct the DPP to (a) give notice of the application to any person it believes has an interest in the property, and (b) appropriately publicise the application in the Gazette and a local newspaper (section 6).

191. Additionally, before a forfeiture order is made, a person who claims an interest in the property may apply to the Court for a declaratory order as to the nature, extent and value of his interest in the property. This will be granted where the Court is satisfied on the balance of probabilities (a) that he was not in any way involved in the commission of the offence; and (b) where he acquired the interest during or after the commission of the offence, that sufficient consideration was provided in circumstances showing he was unaware of the tainted origins of the property. There is also provision for a similar application to be made where a forfeiture order has already been issued. Armed with such a declaratory order, the person is entitled to apply to the Public Trustee for a direction that his

proprietary interest be returned to him *in specie*, or alternatively, that an equivalent sum be paid to him (section 13).

192. Third party rights are also safeguarded under section 10, since the Court is mandated to consider a number of factors before granting a forfeiture order, including the rights and interests of third parties, and any hardship that the operation of the order may cause any person. Moreover, while the Court has power to set aside transfers made to insulate the offender against forfeiture, the bona fide purchaser for value acting without notice of the illegality will be protected (section 12). Finally, where a conviction is subsequently quashed, or a forfeiture order set aside, the Public Trustee is authorised to restore the property, or its value to the affected parties (section 14).

### Restraint

193. It would be customary for applications for restraining orders to be made *ex parte*, so that suspects are not alerted to the intentions of law enforcement and are therefore prevented from taking preemptive action. However, in certain cases, the Court may take the view that the prospect of dissipation of the property is negligible, and section 34 empowers the Court to determine whether notice and a hearing should be given to any person appearing to have an interest in the property.

194. As already indicated in granting a restraining order, the Court may direct the Public Trustee or another person to take custody of, and administer the property. The appointee has power to apply to the Court for directions as to the proper management and preservation of the property. The application must be served on all interested parties, who are given a statutory right to appear and make submissions at the hearing (section 32(4), (5)).

195. Provision is also made for a disposition of property made in breach of a restraining order to be set aside by the Court, which can then make a declaration of the respective rights of persons acquiring interests in the property (section 37).

### MLFTA

#### Forfeiture

196. Under section 14, the Court is empowered to forfeit property. In making the order, the Court has a wide discretion to issue directions to (a) determine disputes as to the ownership or other interest in the property; and (b) dispose of the property (subsection (4)). There is also specific provision under subsection (5) for the person affected by the forfeiture order (potentially someone other than the offender) to apply to the Court for the opportunity to pay a pecuniary sum in lieu of property deprivation. Some bona fide third party rights can therefore be addressed under these broad powers.

197. However, in contrast to the POCA scheme elaborated above, there is very little particularity of the mechanisms by which third parties can be engaged in the forfeiture process: e.g. notice requirements (obligation on the DPP; direction by the Court); intervention by the third party, acting on his own initiative, during the proceedings. There are also no statutory criteria to guide the Court in making orders, or in considering the application of an affected party under section 14(5), again unlike the POCA provisions. There is accordingly scope for inconsistency in the exercise of the judicial discretion by different judges.

#### Freezing

198. Under section 13, the Court, in freezing property, has a similarly wide discretion to address disputing claims of interest in the relevant property. Again, the elaborate framework of the POCA counterpart provisions is not adopted here.

### DAPCA

199. The power to forfeit proceeds and instrumentalities under section 47 is to some extent balanced by the obligation on the Court to give notice of the proceedings to persons who appear to have an interest in the property, so as to afford third parties an opportunity to present their claims (subsection (3)). However, the provision is not wide enough to cover persons of whom the Court is unaware, and as such, falls short of the more extensive POCA scheme. The examiners understand, however that as a matter of longstanding practice relevant notice is in fact published in local newspapers. For all practical

purposes, therefore, notice to third parties appears to be adequately safeguarded.

200. Although subsection (2) would allow third parties to offer to redeem the article forfeited, it remains true that section 47 does not afford the extensive safeguards of the POCA model, adverted to above.

#### Additional Elements

##### *Civil Forfeiture*

201 The process of civil forfeiture does not violate the Constitution of Barbados (section 16(2)(a)(ii)), and there are currently laws in place, albeit limited, which authorise this measure.

202 Under sections 9 and 17 of POCA, there is power for a forfeiture order to be granted, on the DPP's application, although no one has been convicted of a scheduled offence. The DPP may invoke the provisions where a suspect has absconded i.e. broadly, where a charge has been preferred against the suspect, but he remains at large 6 months after reasonable steps were taken during the period to execute an arrest warrant against him.

203 By section 17, the High Court may grant the order where it is satisfied that criminal proceedings were initiated, the accused has absconded and the property is tainted. The provision does not mention the standard of proof to be met by the DPP in order to establish these facts, which means that the operation of section 66 is triggered i.e. the applicable standard is proof beyond a reasonable doubt (the criminal standard). The civil forfeiture scheme is buttressed by supporting provisions in sections 10-12.

204 It is incongruous, however, that the relevant standard of proof is the criminal one, since the proceedings are in effect civil in character.

205 Section 47 of the DAPCA contemplates not only criminal forfeiture of proceeds or instrumentalities, but civil or *in rem* forfeiture as well, since the court may act even in the absence of a criminal conviction. However, there is no elaboration of the relevant procedures to be followed, the standard of proof to be applied etc., which contrasts with the approach under POCA. The rationale for the difference in policy is unclear.

206 The authorities have indicated an intention to expand the mechanisms for civil forfeiture, alluding to several examples of suspects in possession of assets which are not commensurate with their known sources of income.

#### Recommendation 32(confiscating/freezing data)

**Table 5: Police/DPP Statistics(confiscation/freezing data)**

|  | <b>2002</b>   | <b>2003</b>    | <b>2004</b>    | <b>2005</b>   |
|--|---------------|----------------|----------------|---------------|
| No of Freeze Orders                      | <b>1</b>      | <b>4</b>       | <b>1</b>       | <b>0</b>      |
| Value of property frozen (B'dos \$)      | <b>67,124</b> | <b>342,628</b> | <b>104,372</b> | <b>0</b>      |
| Value of property confiscated (B'dos \$) | <b>0</b>      | <b>0</b>       | <b>0</b>       | <b>0</b>      |
| Value of property seized (B'dos \$)      | <b>34,324</b> | <b>507,300</b> | <b>440,000</b> | <b>73,843</b> |

### 2.3.2 Recommendations and Comments

#### Summary of Major Comments

207 The narrow span of offences covered under POCA constrains the effectiveness of many useful powers established under the statute, including forfeiture/confiscation; restraint; production/inspection and seizure; monitoring of financial accounts.

208 The policy undergirding each of the forfeiture schemes under POCA, the MLFTA and DAPCA differs in a manner which seems difficult to justify, having regard to the offences with which they deal. The commendable particularity of the POCA regime is not translated into the other schemes.

209 There are constitutional concerns regarding the MLFTA forfeiture framework, which appears to place a disproportionate burden on the convicted person to prove the lawful provenance of properties owned or controlled by him/her. As a whole, the scheme does not exhibit sufficient balancing features as between the state and the person subject to forfeiture.

210 A broad spectrum of predicate offences falls outside the ambit of the forfeiture regimes under POCA, MLFTA and DAPCA. A vital law enforcement measure is therefore not available for these offences.

#### Recommendations

211 The authorities should consider reviewing the forfeiture/confiscation regime to ensure that all serious offences are covered; the various statutes are rationalized as far as possible to provide greater certainty in application. Specific attention should be given to adjusting the MLFTA forfeiture scheme so as to incorporate appropriate balancing features in keeping with recent case law. Further there should be greater particularity on various aspects of any approach, including factors to be taken into account by the court before issuing orders; coverage of instrumentalities; bona fide third party rights; variation/discharge of orders.

212 The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offence is caught.

213 The definition of “scheduled offence” under POCA should be extended to incorporate the serious offences contemplated by the FATF’s “designated categories of offences”

214 A specific provision should be enacted for the forfeiture of instrumentalities in MLFTA

215 Appropriate powers of production and inspection should be introduced in the MLFTA. For those offences under DAPCA falling outside the scope of the POCA “scheduled offences”, similar powers should also be incorporated.

216 The definitions of “financial institutions” under POCA and the MLFTA should be harmonised.

217 Section 60 of POCA should be amended to enable government departments/entities, on appropriate grounds, to lodge objections to the disclosure of information. The scheme under section 57 in respect of the Commissioner of Inland Revenue may provide a useful precedent.

218 Section 6A (4) of the MLFTA should be amended to enable Government Departments to object to the release of information to the FIU Director on appropriate grounds. Section 57 of POCA as a guide requires the FIU Director to access data from Government departments only on the authority of a court order, as under sections 55 and 60 of POCA in relation to the DPP.

Additional Elements (not part of rating)

219 The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard.

220 The civil forfeiture scheme under section 47 of the DAPCA should be amplified to address such matters as the procedures to be followed and standard of proof

2.3.3 Compliance with Recommendations 3 & 32

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.3  | PC     | <p><b>Forfeiture/restraint/monitoring orders only limited to proceeds of money laundering, predicate offence of drug-trafficking terrorist acts and financing of terrorism.</b></p> <p><b>No specific provision for forfeiture of instrumentalities under the MLFTA.</b></p> <p><b>No provision for ex parte application for freezing or seizing property subject to confiscation under the MLFTA</b></p> <p><b>No provision for production/inspection orders under MLFTA.</b></p> <p><b>Lack of integrated approach to forfeiture/restraint detracts from effectiveness.</b></p> |
| R.32 | LC     | <p><b>See factors in sections: 2.7, 6.3, 6.5</b></p>  |

**2.4 Freezing of funds used for terrorist financing (SR.III & R.32)**

2.4.1 Description and Analysis

**Special Recommendation III**

221. There is no specific legislative authority in Barbados to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267/(1999). However, the authorities do not regard this as inhibiting their capacity to freeze assets of persons so designated. It was explained that where any such property in Barbados, the DPP would regard the UN designation as providing sufficient evidence to support an application under the ATA or POCA to effect restraint of the property. The difficulty for the examiners here is that the applicable provisions (sections 31, 32 POCA; section 8 ATA) require (i) in the ordinary case, that the DPP first charge a person for terrorism or FT, or otherwise satisfy the Court that such a charge is imminent; or (ii) that a foreign country request the freezing of property where it has, at a minimum, reasonable suspicion that a person has committed such an offence. This therefore seems to restrict Barbados’s capacity to act to cases where the person in question is located in Barbados, or a foreign country intervenes by way of a mutual legal assistance request. In contrast, the UN designated entity approach is intended to operate independently of the presence of the person in a particular jurisdiction, and of a foreign request being made. For this reason, the examiners are not satisfied that this approach has the effectiveness of the more usual mechanism of specifically legislating a “specified (or listed) entity” scheme as embodied in the 2002 Commonwealth Model Legislative Provisions to combat

terrorism.;

222. Barbados has an obligation by virtue of UN S/RES/1373 (2001) to adopt freezing measures against persons involved in terrorism and FT, independently of any specific UN designation. There are in fact statutory provisions intended to achieve this in Barbados.

### **Freezing/Restraint**

223. The High Court, where it is satisfied on the application by the DPP that;

(a) a person has been charged or is about to be charged with terrorism or terrorist financing;  
or

(b) a request has been made by the appropriate authority of another State in accordance with section 16 [mutual assistance procedures] in respect of a person who has been charged or is about to be charged with such an offence, or who is reasonably suspected of having committed the offence,

may make a “freezing order”, restraining dealings in assets which are in the possession, or under the control of that person.

224. An application for a freezing order may be made ex parte and shall be in writing accompanied by an affidavit setting out a number of critical matters to assist the Court in the determination of the application (ATA section 8 (1) and (2)).

225. Separately, the DPP may apply under POCA for a restraint order where a person has been convicted of or charged with a “scheduled offence”, which includes terrorism/terrorist financing crimes. The scheme is outlined under EC 3.2 above. There is therefore some overlap between the ATA and POCA regimes, but the latter is more detailed. There is need for rationalization.

226. As already noted above, section 8 of the ATA contemplates freezing applications being made pursuant to the request of foreign states, in which event the Court has to be satisfied that reciprocal arrangements with respect to freezing exist between Barbados and the country concerned (subsection (4)). This is an appropriate power consistent with the requirement for international cooperation. The relevant mutual legal assistance procedures for processing such foreign requests are set out in section 27 of the Mutual Assistance in Criminal Matters Act, CAP. 140A (“MACMA”).

227 Surprisingly, however, whereas the foreign request has the flexibility of being grounded in reasonable suspicion that the person committed the terrorist-related offence (section 8(1)(b)(ii)), there is no such corresponding ground for local cases: a charge must have already been laid or be imminent (section 8(1)(a)). The basis for the disparity is unclear.

228 The freezing power conferred on the Court under section 8(1) extends to “funds” “in the possession, or under the control” of the accused/suspect. The term “funds” is defined widely in section 2 to cover assets of every type, in line with the Terrorist Financing Convention. The concepts of possession and control signal that there is authority to reach property not only owned exclusively by the target, but also property jointly held, or in another person’s/entity’s custody.

229 However, there would be no such power in relation to assets of persons listed by the UN Sanctions Committee.

230 Under section 8(3) of the ATA, the Court in issuing a freezing order is under a duty to publish it “within such time and manner” as it deems fit. Although the provision gives the Court a wide latitude, it is anticipated that in freezing cases of this nature, the directions as to publication would take into account the urgent need to alert, inter alia, the financial sector to the ruling. In addition, it is expected that the DPP would communicate with the FIU, which would inform the financial sector.

231 The authority to freeze derives from an order of the Court, a breach of which amounts to a contempt of Court attracting sanctions. Although no freezing orders have been issued in respect of terrorist-related activity, it is believed that financial institutions served with/notified of such an order,

will respond with the same level of seriousness now shown to other court orders.

232 Under section 8(3)(c) of the ATA, where a freezing order is made, the Court is mandated to ensure that any person interested in the frozen assets is “afforded an opportunity to be heard by the Court within such time as the Court determines”. This provision covers not only third parties, but also the suspect himself, who could accordingly take the opportunity to apply for a revocation or review of the order, and the release of frozen assets.

233 The provision does not, however, specifically speak to the Court’s power to order revocation, with or without conditions, or any factors to be taken into account in arriving at a decision. In this regard, the ATA differs from the parallel POCA scheme under section 39 of that Act.

234 Section 8(3)(c) of the ATA would also enable a person erroneously made the subject of a freezing order to challenge the basis for the order. The observation on the lack of particularity of the provision when compared to POCA applies here as well.

235 There is no statutory power to authorise access to funds required to be frozen pursuant to the UN Sanctions Committee listing.

236 However, outside that specific UN sanctions mechanism, section 8 (5) of the ATA provides that the Court may, in making a freezing order, give directions with regard to a variety of matters, including the payment of (i) debts incurred in good faith prior to the making of the order; (ii) moneys to the accused for his and his family’s reasonable subsistence; and (iii) the costs to defend criminal proceedings against him. There is therefore scope in this context to modulate the strictures of the freezing power. Under the POCA regime, the Court has a similar power (section 32(2)).

237 There is authority to restrain/freeze, forfeit or confiscate terrorist-related property under POCA, since terrorist acts and terrorist financing are “scheduled offences”. See section 2.3 of this report.

238 Protection of bona fide third party rights is envisaged by section 8(3)(b), (c) of the ATA [notice of freezing order to known interested parties; opportunity to be heard in Court]; section 8(5)(b) [disposal of funds by Court to determine disputed claims and proper administration]; and section 8(8) [freezing order shall not prejudice the rights of any third party]. Protection of third party rights in the context of POCA restraint/forfeiture orders is dealt with in section 2.3 of this report.

239. Special Resolution III, although substantially focused on freezing mechanisms, also addresses powers of confiscation. Barbados has legislated for confiscation (and/or forfeiture), as indicated below.

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### **Confiscation**

240 A forfeiture or confiscation order may be sought in the context of a criminal conviction for terrorist-related offences under POCA (see paragraphs 168 – 171 above).

241 There is also a forfeiture power under section 9 of the ATA, targeting assets held by or under the control of persons convicted of terrorism/financing of terrorism. This therefore also overlaps with the POCA counterpart provision, but the latter is far more comprehensive from an operational viewpoint.

242 The scheme under the ATA seems similar in many respects to the approach taken to forfeiture in respect of money laundering under the MLFTA. In one significant departure, however, the standard of proof on the convicted person is the criminal standard for certain purposes, the civil standard for others; under the MLFTA, the criminal standard is required. The language of the provision makes it difficult to follow how this would operate in practice.

243 The ATA regime is considerably wider than that under POCA, which creates incongruity in the law.

244 Barbados has a network of regulators/supervisors with responsibility for AML/CFT. The MLFTA imposes certain obligations on financial institutions with the objective of detecting and deterring FT (sections 8-10).

245 However, it was noted by the examiners that although the MLFTA specifically cites FT and ML in its title, the legislation seemed disproportionately focused on the ML threat. There is in fact little reference in the legislation to FT. The authorities conceded this, explaining that at the time of passing of the MLFTA, the main focus was on implementing the ML aspect in line with their obligations under the Vienna Convention and Basle Principles.

246 During discussions with the team, however, the authorities signalled an intention to amend the MLFTA to broaden the duty on financial institutions under section 9(1)(a), so that employees can report to superiors their suspicions of FT, not only ML. This would be part of a broader package of revisions to the statute.

247 The proposed expansion of references to FT should also include an amendment to section 10 [training of employees in Barbadian laws relating to ML, and in recognising and handling ML transactions]; and to section 11(c) [search warrant where magistrate satisfied employee implicated in ML].

**Recommendation 32 (terrorist freezing data)**

248. No terrorist funds have been discovered in Barbados. ML statistics are reported pursuant to section 22D of the MLFTA.

2.4.2 Recommendations and Comments

249 The authorities should incorporate into legislation requirements a special mechanism to enable the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee, in keeping with UN Security Council Resolution 1267 of 1999. The requirements should also confer power to authorise the release of funds required to be frozen, for the purpose of meeting basic expenses associated with, e.g., the accused’s reasonable subsistence or defence of criminal proceedings. The 2002 Commonwealth Model Legislative Provisions on the “specified (listed) entity” regime provide a useful guide

250 The authorities should critically review the freezing/restraint and forfeiture regimes under the ATA and POCA, with a view to amending the legislation to provide for a uniform approach to these measures.

251 The authorities should review the grounds needed to support an application for a freezing order under section 8(1) of the ATA, so as to ensure consistency between local cases and those arising from mutual legal assistance requests.

252 The scope of the MLFTA should be expanded to incorporate FT in sections 9-11.

2.4.3 Compliance with Special Recommendation III & 32

|        | Rating | Summary of factors underlying rating  |
|--------|--------|---|
| SR.III | PC     | <b>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.<br/>Divergent policy re forfeiture/restraint under ATA and POCA</b> |
| R.32   | LC     | <b>See factors in sections: 2.7, 6.3, 6.5</b>   |

**Authorities**

## **2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)**

### 2.5.1 Description and Analysis

#### **Recommendation 26**

253. The AMLA of Barbados was appointed in accordance with Section 5 of the MLFTA. The AMLA falls within the portfolio of the Office of the Attorney General and is the national body responsible for overseeing the country's AML/CTF policy.

254. The AMLA comprises of a former head of the Caribbean Development Bank (CDB) as Chairman, a university professor as Deputy Chairman, the Solicitor General, Commissioner of Police (COP), Head of the Banking Supervision Department of the Central Bank, Commissioner of Inland Revenue, Supervisor of Insurance and Pensions, Comptroller of Customs and the Registrar of Corporate Affairs and Intellectual Property.

255. The FIU which is an administrative-type FIU was established in 2002 under Section 6B of the MLFTA and operates within the framework of the AMLA. The FIU is designated as the executive arm with responsibility for carrying out the daily administrative functions of the AMLA. These functions include the implementation of the AML/CFT policies as established by the AMLA. The ALMA meets on a monthly basis to review the work of the FIU and AML/CFT policies and monitor the international progress of AML/CFT issues.

#### **Functions and responsibilities of the AMLA/ FIU**

256. Section 6A (1) of the MLFTA designates the AMLA as the body responsible for receiving all disclosures of information and reports from financial institutions concerning transactions suspected of involving proceeds of crime, the financing of terrorism and includes all reports that are of a suspicious or an unusual nature. Proceeds of crime are defined as proceeds of unlawful activity punishable by death or by imprisonment for a period of not less than 12 months.

257. Section 8 (4) of the MLFTA provides that where any financial institution fails to comply with reporting requirements, the directors of the institution are guilty of an offence and are jointly and severally liable on conviction on indictment to a fine of BDS\$100,000.00.

258. Suspicious and unusual transaction reports (SUTRs) are submitted to the AMLA using a prescribed form included in the Guidance Notes issued by relevant supervisory authorities in conjunction with the AMLA. Currently all reports are either hand delivered or sent by post. Electronic reporting was said to be a desirable goal which will be pursued in the future.

#### **Receipt and analysis of SUTR's**

259. Once a SUTR is received, it is logged and entered into a register and the FIU's database. The Director reviews the SUTRs and assigns them to one of two (2) Senior Analysts who either conduct the necessary analysis and investigation or delegate a junior Analyst to carry out the necessary analysis and investigations. The Senior Analysts maintain supervision of all investigations.

260. Analysis of SUTRs is presently done with the aid of computer based software. The FIU explained that detailed analysis of suspicious and unusual transaction reports is hampered by a lack of adequate resources (staff) within the FIU.

#### **Giving of direction to financial institutions**

261. Under section 22F of the MLFTA, the AMLA has responsibility for issuing guidelines to financial institutions in respect of their obligations in the detection, prevention and deterrence of money laundering and the detection of funds allocated or used for the purpose of committing an offence under the ATA. AML guidelines were issued to the financial sector in 2001. These were updated and reissued by the AMLA in the last quarter of 2006. This was done in conjunction with the following financial sector regulators: the Central Bank of Barbados, the Supervisor of Insurance and Pensions, the Registrar of Cooperatives and the Securities Commission. AML/CFT guidelines were also issued in conjunction with the Ministry of Economic Affairs and Development.

262. The guidelines are applicable to all the licensees of the listed regulators and institutions involved in fiduciary and investment services. Section 8 (1) (f) of the MLFTA places a statutory obligation on financial institutions to comply with training requirements created and guidelines issued by the Authority in accordance with the MLFTA. However no sanctions are specified in the MLFTA for non-compliance with the guidelines. The guidelines incorporate reporting requirements and procedures and a copy of the formal SUTR report form.

### **Feedback and training**

263. The FIU indicated that a system of two-way feedback exists between the FIU and reporting institutions. This feedback usually occurs through verbal or written communication between the Director of the FIU and compliance officers or money laundering reporting officers of financial institutions and other forms of consultative fora. Such consultations occurred prior to the publication and dissemination of the October 2006 Guidance Notes. General feed-back also takes place during training sessions with financial institutions. The evaluation team noted that most financial institutions interviewed expressed the view that the FIU offered very little feedback on SUTRs.

264. The FIU provides AML/CTF training to partner agencies i.e. Customs as well as financial institutions within the local financial services sector. Training is provided as thought necessary or as requested and is sometimes done in partnership with the Central Bank. The FIU was unable to produce records of training programmes conducted with financial institutions for the period 2002 through to 2006. Some of the interviewed financial institutions indicated that they had received initial training from the FIU and had requested follow-up training which the FIU had not been able to provide. The FIU explained that the small number of training sessions undertaken by the unit over the past years was due to the limited resources (staff) within Unit. This view was also echoed by the interviewed financial institutions. The evaluation team was informed that an analyst was recently appointed who, because of his training background, would also assist in the training programme for the FIU. This programme is expected to be introduced sometime in 2007 and will include training the staff of financial institutions in the local financial services sector.

### **Power to request information including additional information**

265 Section 6A (3) (c) of the MLFTA empowers the FIU to request from any financial institution the production of any information (including additional information), except information which is subject to legal professional privilege, that the Authority considers relevant to fulfill its functions. Section 8 (1) (c) provides that “every financial institution shall comply with any instruction issued to it by the Authority pursuant to section 6A” (receiving forthwith reports and disclosures).

266 By virtue of Section 8(1) (d) of the MLFTA any member of the Authority or any person designated by the Authority is permitted to enter any premises of a financial institution and inspect business transaction and identification records, make notes and copies of records and have questions answered.

267 The FIU indicated that it has a good relationship with reporting entities and expressed general satisfaction with the documentation and information provided in the SUTRs submitted by reporting

entities. If at some stage during analysis the FIU determines that further information is required in order to undertake further investigations it has the power to request such information. The FIU indicated that information including additional information is usually forthcoming and generally provided within a reasonable timeframe.

268 The Director of the FIU in exercising his powers under Section 6A (4) of the MLFTA to conduct investigations for the purposes of the Act can request information from the records of;

- The Central Bank
- The Customs Department
- The Immigration Department
- The Inland Revenue Department
- The Land Tax Department
- The National Insurance Department; or
- The Vat Office

269. Direct electronic access to local law enforcement agencies' databases was unavailable at the time of the onsite evaluation but the FIU explained that information is provided by local law enforcement agencies upon request. Additionally, the Royal Barbados Police Force can conduct INTERPOL checks on behalf of the FIU as necessary. The FIU further explained that information exchange between the unit and local law enforcement agencies generally takes place within a reasonable timeframe.

### **Dissemination of information**

270. The FIU is authorized to share information with a number of principal supervisory/regulatory authorities within Barbados including the Central Bank; Ministry of Industry and International Business (now replaced by the Ministry of Economic Affairs and Development); Registrar of Corporate Affairs and Intellectual Property; the Securities and Exchange Commission; Registrar of Cooperatives; Supervisor of Insurance. This process is facilitated by a Memorandum of Understanding (MOU) entered into with the above supervisory/regulatory authorities.

271. The FIU has access to a number of open source databases including World Check, Complanet and Lexis/Nexis. The FIU is also connected to the Egmont Secure Website (ESW) through which it can receive and request information from foreign Egmont FIUs.

272. Section 6A (2) of the MLFTA provides that where after considering any report or disclosure of information made by a financial institution to the AMLA and the FIU has reasonable ground to believe that a business transaction involves criminal activity or proceeds of crime or an offence under section 4 of the ATA, the AMLA is required to forward such information to the Commissioner of Police (COP).

273 Additionally, Section 6D (1) of the MLFTA provides that information received by or on behalf of the AMLA may be referred to any institution or department referred to in subsection (4) (b) of Section 6A. These institutions/departments as listed under subsection (4) (b) of Sec. 6A includes the Central Bank, Customs Department, Immigration Department, Inland Revenue Department, Land Tax Department, the National Insurance Department and VAT Office.

274. The AMLA is established under Section 5 of the MLFTA as a policy entity and sets the framework within which the FIU operates. The Director, established under section 6B of the said Act, determines the operational activities of the FIU. The FIU is not a revenue-generating body and therefore relies on government to provide funding for its operations. The FIU has no direct control of its budget allocations beyond initial submissions for funds. Financial allocations for the FIU are provided within the overall budget of the Office of the Attorney General.

### **Protection of information**

275. The FIU occupies space on the second floor of a building which is shared with three (3) other offices. These offices include two (2) private offices situated on the ground floor and a government office situated on the second floor. The exterior of the office is fitted with security cameras possessing recording capabilities. Entry to the office is access-controlled with a video-monitor viewing the entrance of the office. There are motion sensors installed throughout the office, complemented by an alarm system.

276 The FIU has limited capability to store information electronically. The majority of information held within the FIU is kept in hard copy form. Hard copy files are stored in fireproof filing cabinets situated in the offices of the Director and Senior Analyst. Information stored electronically is entered and stored in a Microsoft Access Database System. This database is on a stand-alone computer so as to prevent outside access. The electronic system is mainly used to record SUTRs and other correspondence coming into the office. The system is password protected and accessible only by key personnel within the FIU. No two (2) persons can access the system at the same time and once accessed the person (unless he/she has administrative privilege) is only allowed to view information relevant to him or herself. The FIU indicated that there are plans to upgrade the electronic storage system so as to allow greater storage capacity and data-mining.

277 The remaining computers within the FIU are linked by a server which is located within an access-controlled room which doubles as an office for the IT Specialist. The web-based network system is protected by a hardware firewall so as to prevent the system being compromised through the internet. Back-up of the network system currently takes place once or twice per week. Back-up devices are stored offsite for security reasons.

278 Records kept within the FIU are generally held for a period not less than five (5) years after the end of an investigation.

279 Section 22A (1) of the MLFTA speaks to the disclosure of information held within the FIU and states that “every person who receives reports or information under the MLFTA and every person concerned with the administration of the MLFTA shall regard as secret and confidential all documents, information or matters disclosed in the administration of the MLFTA.”

280 Section 22A (2) prohibits the disclosure or publication of contents of any documents or any communication or information by persons who would have come by such knowledge in the course of his duties under the MLFTA.

281 Subsection 22 (A) (3) of the MLFTA provides, on conviction on indictment, for a penalty of \$50,000 or imprisonment for a period of 5 years or both for any person concerned with the MLFTA who discloses information outside the provisions of the said Act. Dissemination is done in strict compliance with existing laws.

282 Whereas disclosures or publication of information held by the FIU is prohibited under Section 22A of the MLFTA, there are no legal provisions which expressly prohibit FIU staff being ordered to give evidence in a court of law. However, during the onsite visit examiners were told of a proposed amendment to the MLFTA which was soon to be tabled in the local Parliament. This amendment will seek to prevent FIU staff being called to give evidence regarding sources of information.

### **Periodical Reports**

283. Section 22D of the MLFTA places a statutory obligation on the AMLA to prepare and submit annual reports to the Attorney General. The annual reports are tabled in the House of Parliament and published in the local Gazette. The mutual evaluation team was provided with a copy of the FIU’s annual report for the period 2000/2001. The report predates the creation of the FIU under Section 6B

(1) of the MLFTA, 2002.

284. The 2000/2001 annual report contained information on disclosures of suspicious and unusual transactions made by financial institutions in accordance with Section 8 of the MLFTA, a breakdown of the type of financial institutions making the reports and the numbers of reports analyzed by the FIU and forwarded to the Commissioner of Police for further investigations. The reports also include details relating to training courses attended and training courses conducted by the technical staff of the FIU and training courses attended by staff members of the FIU. There was no information on typologies and trends with regard to SUTRs. The FIU has published no annual reports for the period 2002 through to 2005. The FIU explained that a lack of resources (staff) within the FIU hampered the FIU's ability to fulfill this obligation.

### **Egmont Group**

285. The FIU joined the Egmont Group of Financial Intelligence Units in 2002. In addition to sharing information with fellow Egmont FIUs, the Acting Director regularly attends Egmont plenary meetings. The FIU has been connected to the Egmont Secure Website (ESW) since August of 2002. The ESW is used to share information with foreign Egmont FIUs.

286. The staff of the FIU is aware of the Egmont Group "Statement of Purpose" and fully adheres to Egmont's Principles regarding information exchange among Egmont FIUs.

287. Section 6C of the MLFTA authorizes the Director in accordance with directions issued by the AMLA to communicate information that is relevant to the MLFTA to any national financial intelligence unit of a foreign state (by whatever name called)

- a) where the unit is located in a state that is party to any agreement with Barbados in respect of the exchange of information under this Act; and
- b) where he is satisfied that the state has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

288. The FIU has entered into several MOUs with Egmont affiliated FIUs. At the time of the onsite visit, the FIU had signed seven (7) such MOUs. .

289. The interviews conducted by the mutual evaluation team revealed that there is a great deal of awareness about the FIU and its role within the country's overall AML/CFT policy framework.

### **Recommendation 30 (Structure, funding, technical and other resources of the FIU)**

290. The FIU operates within the framework of the AMLA. The Director is appointed by the Governor General, acting on the advice of the Public Service Commission (PSC). The staff of the FIU is appointed in accordance with the general provisions of the Civil Establishment Act. The Acting Director is responsible for the daily administrative and operational functions of the FIU and reports to the AMLA and the Attorney General. The powers of the Director of the FIU are contained within Section 6 of the MLFTA.

291. At the time of the onsite visit the FIU had an establishment of seven (7) staff members consisting of the Acting Director, two (2) Senior Analysts, two (2) Analysts, an IT Specialist and an Administrative Secretary. Vacancies within the FIU are advertised publicly and the interview and selection process takes place only after candidates are thoroughly vetted to ensure that they are of the best quality in terms of competence and personal integrity.

292. The FIU has the capability to store information electronically. At the time of the onsite visit, electronic information was stored in a Microsoft Access Database which generally lacks the ability to

store a wide range of information. The FIU should seek to upgrade its IT system so as to enhance its ability to store and maintain a wide range of information. This will serve to enhance the FIU's electronic information storage capabilities. .

**Table 6: Government Financial appropriation to the FIU for periods 2002-03 to 2006-07**

| Year      | Amount in BDS\$ |
|-----------|-----------------|
| 2002-2003 | \$ 575,581.00   |
| 2003-2004 | \$ 584, 454.00  |
| 2004-2005 | \$ 672, 977.00  |
| 2005-2006 | \$ 638, 987.00  |
| 2006-2007 | \$ 730, 490.00  |

293. The FIU was said to be under-resourced and therefore limited in its ability to effectively carry out its functions given its broad mandate. Traditionally, there has been a high turn over of staff within the FIU resulting in a major leakage of trained and qualified individuals. The current Director has acted in the post since 2001.

294. The Director and staff of the FIU are employed in accordance with the Civil Establishment Act and their professional conduct is therefore guided by the General Standing Orders of the Public Service. Additionally, persons taking up employment within the FIU are subject to a declaration of secrecy. Members of staff of the FIU are required to abide by existing security measures and procedures aimed at protecting information and sensitive material held within the FIU. Provisions in section 22 of the MLFTA already referred to impose confidentiality obligations and penalties on staff members of the FIU.

295. The FIU has a staff of qualified individuals who have all been exposed to AML/CFT training both on a local as well as an international level. Staff has attended training provided by the Egmont Group, the World Bank, the Commonwealth Secretariat, the Caribbean Regional Drug Law Enforcement Training Centre (REDTRAC) in Jamaica and the CFATF. The FIU informed the mutual evaluation team of plans to enhance the level of training provided by the FIU. An analyst who has a background as a training officer was appointed. His background in training will assist the FIU training programme. This individual will have responsibility for drafting and developing a comprehensive and all inclusive training programme which will include identifying the necessary training courses and seminars for FIU staff. This training programme is expected to be introduced sometime in 2007.

296. The high turn over of staff, the back log in the public annual reporting obligation and in providing training as requested by financial institutions suggest that the FIU is not adequately resourced to fulfill its mandate. The fact that the FIU does not have any direct control over its budget allocation may also contribute to the present situation.

**Recommendation 32 (Statistical data FIU)**

297. The FIU maintains and was able to produce the following statistics on SUTRs relating to money laundering received since its creation. The statistical data represented the number of reports received from reporting institutions, the number of reports forwarded to the Commissioner of Police for further action or investigation as required under Section 6A(2) of the MLFTA, the number of reports closed due to the lack of additional information needed to undertake further analysis and investigation and the number of reports pending or still undergoing analysis and investigation. The FIU should seek to compile and maintain information relative to ML/TF methods and trends as part of its broader AML/CTF awareness programmes.

298. During the onsite evaluation the FIU explained that it had yet to receive a SUTR linked to terrorist

financing.

299. The following table represents statistical data on SUTRs received by the FIU between the periods 2002 through to Dec. 7<sup>th</sup> 2006.

**Table 7: Breakdown of SUTRs by reporting institutions**

|                            | 2002      | 2003      | 2004      | 2005      | Dec. 2006 |
|----------------------------|-----------|-----------|-----------|-----------|-----------|
| <b>Domestic Banks</b>      | 44        | 25        | 12        | 41        | 55        |
| <b>Credit Unions</b>       | 9         | Nil       | 17        | 9         | 16        |
| <b>Insurance Companies</b> | 7         | 2         | 2         | 1         | Nil       |
| <b>Offshore Companies</b>  | 13        | 2         | 3         | 3         | 2         |
| <b>Others</b>              | 3         | Nil       | 1         | 6         | 10*       |
| <b>Totals</b>              | <b>76</b> | <b>29</b> | <b>35</b> | <b>60</b> | <b>83</b> |

300. The following table represents the number of SUTRs forwarded to the Commissioner of Police for further action or investigation, the number of SUTRs closed due to the lack of additional information needed to undertake further analysis and investigation and the number of SUTRs pending or still undergoing analysis and investigations.

**Table 8: Disposition of SUTRs**

|  | 2002      | 2003      | 2004      | 2005      | 2006      |
|--|-----------|-----------|-----------|-----------|-----------|
| <b>SUTRs forwarded the Commissioner Police</b> | <b>3</b>  | <b>9</b>  | <b>5</b>  | <b>0</b>  | <b>15</b> |
| <b>SUTRs Closed</b>                            | <b>22</b> | <b>7</b>  | <b>4</b>  | <b>1</b>  | <b>0</b>  |
| <b>SUTRs Pending</b>                           | <b>51</b> | <b>13</b> | <b>26</b> | <b>59</b> | <b>68</b> |
| <b>TOTAL</b>                                   | <b>76</b> | <b>29</b> | <b>35</b> | <b>60</b> | <b>83</b> |

301. The following table represents information requested from the FIU by domestic authorities, information requested by the FIU from domestic authorities and information requested from FIU by foreign FIUs or authorities.

**Table 9: Information Requests**

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\* Includes one report from a DNFBP.

|   | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|------|------|------|------|------|
| <b>Information requested from FIU by (domestic authorities)</b> | 4    | 16   | 5    | Nil  | 6    |
| <b>FIU requests for information from (domestic sources)</b>     | Nil  | Nil  | 7    | 24   | 5    |
| <b>Overseas request for information from FIU</b>                | 2    | 28   | 22   | 13   | 14   |

302 The above statistics indicated that the FIU had received a total of two hundred and eighty-three (283) SUTRs between the period January 1<sup>st</sup> 2002 and December 7<sup>th</sup> 2006. The majority of SUTRs throughout the period came from the domestic banks which accounted for 66% of the total in 2006. Except for 2002, offshore companies accounted for less than 10% of total SUTRs and only had 2 for 2006.

303 Members of the mutual evaluation team consider the number of reports received as low taking into consideration that there are in excess of five hundred designated reporting entities with a statutory obligation to report all transactions where there are grounds to suspect that such transactions involves the proceeds of crime, the financing of terrorism or are of a suspicious or an unusual nature (section 8 (b) of the MLFTA). The authorities are of the view that the designated reporting entities are not homogenous in terms of the nature and risk of their business operations. This, together with the low incidence of ML and FT prosecutions, international requests and SUTR reporting reflects the success of the national framework in minimizing instances of ML and FT.

304 However, the evaluation team considered whether the low number of reports may be the result of under-reporting within the local financial services sector. During the onsite visit only one of the financial institutions interviewed expressed the view that it had no legal obligation to report unusual transactions and thus only reported transactions it deemed suspicious in nature. This may be due to the reporting institution's lack of understanding and or limited awareness of its reporting obligation. Both factors can seriously affect the level of reporting to the FIU and may be responsible for the low number of reports if other reporting entities are of a similar view. The competent authorities should therefore seek to clarify this issue so that financial institutions are made fully aware of their reporting obligations under Section 8 (b) of the MLFTA. This can be accomplished by issuing supplementary directions with respect to guidance on "unusual transactions" and enhancing the level of AML/CTF awareness training provided to financial institutions within the local financial services sector. However, given the extensive nature of the reporting obligation, the number of reports is still considered low by the evaluation team.

305 Section 8 (1) (h) of the MLFTA places a statutory obligation on financial institutions to monitor and report to the AMLA all currency exchanges of BDS\$ 10,000.00 or more and all instructions for the transfer of international funds of BDS\$10,000.00 or more, whether such transfers are by telegraphs or wire in and out of Barbados, where the transfer appears to be of an unusual nature. There were no statistical data available representing unusual currency transactions or international wire/telegraphic transfers of BDS\$ 10,000.00 or more filed by financial institutions.

## 2.5.2 Recommendations and Comments

306 While the FIU meets most of the FATF requirements for its functioning, the following is recommended;

307 The FIU should publicly release all outstanding annual reports and include in such reports, statistics, typologies and trends as well as information regarding its activities.

308 The FIU should seek to enhance the level of AML/CTF awareness within the local financial services sector with a view to providing more detailed guidance to reporting institutions as to their reporting obligations under Section 8 (b) of the MLFTA. This would seek to address concerns of possible under-reporting by financial institutions.

309 Authorities should consider giving the FIU greater access or control of its finances so as to enhance its current structure. This would allow the FIU to maintain and where possible increase its current level of staffing and further develop its IT capabilities so as to conduct more detailed analysis and investigation of SUTRs.

310 The FIU should seek to follow through on its plans to further upgrade its IT capabilities. This would diminish its reliance on the manual information storage process and the older and less suitable electronic storage systems (Microsoft access) currently being utilized to handle and store information.

311 While the FIU was able to produce adequate statistics relating to SUTRs, it should seek to broaden these statistics so as to include prescribed predicate offences linked to SUTRs filed by reporting institutions

### 2.5.3 Compliance with Recommendations 26, 30 & 32

|             | Rating    | Summary of factors relevant to s.2.5 underlying overall rating   |
|-------------|-----------|--|
| <b>R.26</b> | <b>LC</b> | <b>No annual report released by the FIU since the 2000/2001 report. There was no information on typologies and trends with regard to SUTRs in the report.</b>              |
| <b>R.30</b> | <b>PC</b> | <b>The FIU lacks sufficient resources (human and technological) to allow it to properly carry out all its functions in its mandate. See factors in sections: 2.6, 3.10</b> |
| <b>R.32</b> | <b>LC</b> | <b>See factors in sections: 2.7, 6.3, 6.5</b>  |

## 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, 30 & 32)

### 2.6.1 Description and Analysis

#### Recommendation 27

312 Barbados has an extensive network of law enforcement authorities. However, responsibilities for investigating and prosecuting ML and TF related offences rest with the Royal Barbados Police Force’s (RBPF) Financial Crimes Investigation Unit (FCIU) and the Office of the Director of Public Prosecutions.

313 The Office of the Director of Public Prosecution is a government department headed by the Director of Public Prosecutions (DPP). The office is responsible for prosecuting all indictable offences taken before the local courts. This includes the prosecution of all ML and TF offences and the freezing, confiscation and forfeiture of criminal proceeds. The Office of the DPP maintains a close working

relationship with the FCIU. The DPP commented on the work of the FCIU and Police Force in general and indicated that there has been considerable improvement in the preparation of case files forwarded to his office for review, guidance and prosecutions.

314 The RBPF's FCIU has responsibility for completing investigations into all ML and TF related reports forwarded to the Commissioner of Police by the FIU and all financial crimes reported to the Royal Barbados Police Force. The FCIU also has responsibility for tracing and identifying criminal proceeds and conducting investigations pertaining to mutual legal assistance requests forwarded to the Central Authority of Barbados.

315 The Customs and Excise Department falls under the Ministry of Finance in the Ministry of Home Affairs and operates within the general provisions of the Customs Act CAP. 66. The Customs and Excise Department is primarily responsible for the collection of government revenue payable on imported and exported goods and border protection. There is no specific department within Customs and Excise dedicated to combating money laundering and terrorist financing and the department has no marine capability.

316 There is a Customs Enforcement Division (CED) which acts as the department's investigative arm. The CED has responsibility for investigating all customs infractions including the interception of undeclared or uncustomed goods, fraud relating to false declarations and drug and firearm interdiction at the designated ports of entry. Officers of the CED work in close collaboration with the Police Drug and K-9 Units. Officers of these units form a Joint Contraband Team (JCT) which routinely conducts anti-narcotics and contraband operations at the designated ports of entries. The department is a member of the Joint Intelligence Unit (JIU) which also comprises Immigration Department, Coast Guard and the Police Special Branch. The JIU operates out of the Joint Intelligence Headquarters (JIH) situated at Central Police Station in Bridgetown. The JIH coordinates information exchange among the four (4) member agencies. The protocol of information exchange among JIU member agencies is facilitated by an MOU. The department indicated that it has a close working relationship with other member agencies of the JIU.

317 The department collaborates with its regional counterparts via the Caribbean Customs Law Enforcement Council (CCLEC) Secretariat based in Saint Lucia. The department also collaborates with international counterparts and has participated in joint counter-narcotics operations with international law enforcement agencies. Several customs officers have received basic training in ML and TF. Some of this training was provided by the FIU. In addition to training offered locally, officers also attend Basic Financial Investigation Technique Courses offered at REDTRAC in Jamaica.

318 The Immigration Department falls under the Ministry of State in the Prime Minister's Office and operates within the general provisions of the Immigration Act, CAP. 190. The Immigration Department has responsibility for documenting, controlling and monitoring persons entering Barbados. The department provides twenty-four (24) hours coverage of the designated ports of entry. Illegal migration is said to be the greatest challenge facing the department. The department indicated having a close working relationship with other members of the JIU with whom information is shared. The department shares information with Customs and Excise concerning declaration of currency in the amount of BDS\$10,000.00 or above made by persons entering Barbados. This requirement is captured within the Immigration Embarkation/Disembarkation card which must be completed by every person entering and leaving Barbados. The department can share information with the FIU when requested by the Director of the FIU. The department has its own electronic database which can be accessed by the police on a read only basis. Immigration officers actively participate in joint operations with fellow members of the JIU. These operations are generally aimed at identifying and apprehending persons suspected to be in the country illegally.

319 The Coast Guard (CG) falls within the organizational structure of the Barbados Defense Force (BDF) which comes under the Ministry of Defense (MOD). The MOD falls under the portfolio of the

Prime Minister. The CG has responsibility for enforcing the country's maritime laws. The functions of the CG include the interdiction of illegal drug and contraband, water-sports regulation, fisheries regulation, marine environmental protection and search and rescue. In addition to its regular functions, the CG can be mobilized to assist fellow Regional Security System (RSS) member countries in times of disasters. Fellow RSS member countries include Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. The majority of the CG powers are contained in the Defense Force Act of 1979. Such powers include the power to arrest persons found committing offences under the various pieces of maritime related legislation subject to enforcement by the CG. The CG is a member of the JIU and conducts joint maritime operations with local law enforcement agencies and regional counterparts. The CG indicated that it has a close working relationship with fellow member agencies of the JIU.

320 There are no legislative or regulatory provisions within Barbados governing the use of investigative methods such as waiving or postponing arrest of suspects and the use of control deliveries. However, the Royal Barbados Police Force when appropriate or in certain circumstances can and may decide to postpone or waive arrest of persons suspected of being involved in criminal activities. The use of such methods (postponement or waive of arrest and controlled deliveries) are normally utilized by the drug unit while conducting drug trafficking investigations.

#### Additional Elements

321 The legal framework within Barbados does not provide for the use of special investigative techniques such as telephone wire-tapping and other forms of electronic surveillance devices for the purpose of gathering evidence during investigations linked to ML, TF and other types of serious crimes. However, the authorities recognize the importance of having such investigative tools available to law enforcement agencies. As a result, the use of these investigative techniques has been under consideration for some time.

322 The competent authorities of Barbados continue to engage in a wide range of joint law enforcement operations and initiatives with both regional and international counterparts. Such co-operation is normally facilitated by formal mechanisms i.e. MOUs such as those entered into among local regulators and local law enforcement agencies and the treaties for mutual legal assistance such as those entered into with Canada and the United States of America. During the onsite visit, the competent authorities indicated that they were engaged in a collaborative effort with fellow CARICOM member countries aimed at introducing and implementing security measures for the Cricket World Cup scheduled to be hosted in the region between March and April 2007. These security measures among other things will guard against criminal elements who may wish to use the venue as a platform or staging ground for criminal activities including ML and TF related crimes.

323 There is no arrangement for law enforcement authorities, the FIU and other competent authorities to review ML and FT methods, techniques and trends on a regular interagency basis.

#### **Recommendation 28 (Powers to compel, search, seizure and production of records)**

##### **Power to search, inspect or remove records (MLFTA)**

324 Section 8 (1) (d) (i) of the MLFTA places a statutory obligation on all financial institutions to permit any member of the Authority (AMLA) or any person duly authorised by it (including the FIU), upon request, to enter into any premises of the financial institution during normal working hours for the purpose of inspecting business transaction and identification records; (ii) permit any member of the Authority or any person duly authorised by it, to make any notes or take any copies of the whole or any part of any such record; and (iii) answer any questions of the Authority, or any person duly authorised by it, in relation to such records.

325 Under Section 11 of the MLFTA, a magistrate may issue a warrant to any police officer to enter any premises belonging to, or in the possession or control of, a financial institution or any officer or employee of such institution and search the premises and remove any document, material or other thing therein if the magistrate is satisfied by evidence on oath that there are reasonable grounds to believe that (a) A financial institution has failed to keep a business transaction record as required by paragraph (a) of section 8(1); (b) A financial institution has failed to comply with the reporting requirements of paragraph (b) of section 8(1); (c) an officer or an employee of a financial institution is committing, has committed or is about to commit a money laundering offence.

326 Additionally, Section 15 provides for a magistrate to issue a warrant to any constable or other person named in the warrant to enter and search, by day or night and if necessary by force, such building, thing, receptacle or place for any document or thing that may afford evidence of an offence under the Act and to seize and take away such document or thing.

### **Production Orders (POCA)**

327 Sections 42, 43, 44 and 45 of POCA empower police officers to apply to a judge for the purpose of obtaining an order to compel production of material specified in the order for the purpose of carrying out investigations into prescribed offences including ML and TF. Production orders are issued to compel the production of documents including documents which are relevant in identifying, locating or quantifying property suspected to be the proceeds of crime.

328 Section 46 of the POCA prescribes punishment for natural persons and bodies corporate who fail to comply with production orders issued in accordance with the said Act. Punishment upon summary conviction for failing to comply with such orders includes (a) a fine of BDS\$10,000.00 or imprisonment for a period of two (2) years or both, where the offender is a natural person; and (b) a fine of BDS\$50,000.00, where the offender is a body corporate.

### **Search Warrant (POCA)**

329. Section 47 of POCA provides that where a person is convicted of a scheduled offence and a police officer has reasonable grounds for suspecting that there is in any premises any document relevant to identifying, locating or quantifying property of the person who committed the offence or to identify or locate a document necessary for the transfer of property of the person who committed the offence or document relevant to quantifying tainted property in relation to the offence or to identifying or locating a document necessary for transfer of tainted property in relation to the offence that police officer may apply to a Judge for a warrant to search the premises.

### **Monitoring Orders (POCA)**

330. Section 48 of POCA empowers a police officer to apply to a judge in chambers for an ex parte order called a monitoring order directing financial institutions to give information to a police officer obtained by that financial institution about transactions conducted through an account held by a particular person with that institution.

### **Search Warrants (DAPCA)**

331. Under the DAPCA, section 35 (2), search warrants can be granted by a magistrate or justice of the peace if they are satisfied on information on oath that there is in any place or premises an article liable to seizure under the said Act. Such articles include controlled drugs, pipes and equipment or apparatus fit and intended for use in connection with the misuse of a controlled drug or the preparation of any such drug for misuse.

### **Powers to Search Premises and Persons (Customs Act)**

332 Section 251 of the Customs Act, CAP 66 requires the importer, exporter or any such person concerned with the importation or exportation of such goods to provide to an officer at his request anytime within three years of the date of exportation or importation or delivery of such goods to the officer, the invoice, books of account, or any other documents of whatever nature relating to such goods which the officer requires.

333 Additionally all persons given duty-free concessions must keep records to the satisfaction of the Comptroller and must produce these documents for examination. Section 117 allows for the examination of books to ascertain the accuracy of declarations.

334 Section 76 of the Value Added Tax Act, CAP 87 refers to any officer being able to enter a place or premises associated with any taxable activity at reasonable times and inspect, examine any books of account of a person, any property or process relevant in determining the amount of taxes payable or refundable. The officer may require the owner, manager or any other person on the premises to give all reasonable assistance in the inspection, audit or examination or to answer any questions. If at the time of the inspection, it is clear to the officer that there is a violation of the Act, he may seize and take away any of the records or books of account that provide evidence of the violation.

335 Section 77 of the Value Added Tax Act, CAP 87 refers to instances where there has been a violation of the Act or a document or thing which may afford evidence of a violation may be found in a place, receptacle or thing, the magistrate may issue a warrant to any officer or constable to enter and search such place that contains the evidence. Once seized the document or thing must be taken to the Comptroller of Customs for safe-keeping.

336 Section 78 of the Value Added Tax Act, CAP 87 provides that persons who interfere with any search and seizure will be liable on summary conviction to a fine of BDS \$5,000.00 or to imprisonment for a term of six months. Sections 79 states that the previous Section (Section 78) refers to banks, attorneys-at-law their employees, and officers as well as businesses, persons and premises.

337 Section 100 of the Customs Act states that any persons evading customs laws in relation to the importation and exportation of goods is liable to a penalty of BDS\$500.00 or more or 3 times the value of the goods whichever is the greater, or to imprisonment of for a term of 1 year or to both and all goods in respect of which such an offence is committed shall be liable to forfeiture. Section 100A provides that goods on which false entries or declarations or invoices have been made, are also liable to forfeiture.

338 Sections 199 of Customs Act refers to a “writ of assistance” that is available to the Comptroller of Customs in carrying out his duties. The writ is issued by the Supreme Court and will remain in force for a period of six months. The writ may be used to search premises of any nature, and in the case of resistance, gives officers the power to break through doors and open packages etc. and seize and take away any un-customed or undeclared goods, books or documents and secure them in the Queen’s warehouse. Section 200 also refers to special search warrants which may also be used by officers to secure un-customed or undeclared goods.

339 Sections 232 of the Customs Act provides for the search of persons under the Customs Act and states that “where any officer is informed or has reason to suppose that any person on a ship or aircraft, or any person who has landed from a ship or aircraft, or any person whom the officer may suspect to have received any good from any such person, to be carrying or to have un-customed or prohibited or restricted goods about his person, such officer may search that person”.

#### **Powers to take witness statements**

340. The relevant law enforcement authorities within Barbados have the power to conduct interviews and record statements from persons for use in criminal investigation and prosecution of any

offences including ML and TF and other underlying predicate offences.

***Recommendation 30 (Structure, funding, staff, technical and other resources of law enforcement and prosecutorial authorities).***

**Police**

341 The RBPF is the principle law enforcement agency within Barbados. The Police Force comes under the Office of the Attorney General (OAG). The police force is headed by the COP who is appointed by the Prime Minister.

342 As at December 2006 the RBPF employed approximately 1,400 police officers and it was said to be about one hundred (100) officers short of its desired strength. Members of the mutual evaluation team were told that recruitment of police officers posed some challenges. Those challenges were being reviewed with an aim, among other things, to address the issue of police salaries so as to make the career more attractive to suitably qualified persons wishing to seek employment within the force.

343 As mentioned earlier, the Police FCIU is responsible for completing investigations into all ML and TF related reports forwarded to the COP by the FIU and all financial crimes reported to the RBPF. During the onsite visit the FCIU indicated that of the reports forwarded by the FIU, only a small number resulted in full scale investigation with even fewer resulting in arrests and the filing of criminal charges. Reports that fail to lead to full scale investigation are normally kept as information which is occasionally shared with foreign law enforcement agencies on a police to police basis. There have been instances when this has led to arrest and prosecution of persons in other jurisdictions. Such arrests occasionally result in members of the FCIU being called upon to give testimony overseas. The FCIU falls within the general Criminal Investigations Department (CID) and comprises of an Inspector who is head of the unit, a station sergeant, a sergeant and a constable. The CID is headed by a Detective Superintendent.

344 The police Drug Unit (DU) has responsibility for investigating all drug offences related to the trafficking and sale of illegal drugs or narcotics within Barbados. The unit comprises of 25 officers who are under the command of a Superintendent. The DU, the CED and K-9 units work together as the JCT to conduct routine anti-narcotics and illegal contraband operations (searches) at the designated ports of entries. The work of the JCT is enhanced by the use of police K-9s which are trained to detect narcotics and other illegal contraband.

345 The Police expressed general satisfaction with the number of police officers who have so far received ML and TF related training.

346 The budgetary allocation for the police force is determined by Parliament on an annual basis after a submission of budget estimates by the Commissioner of Police.

347 The following table represents funding allocated to the RBPF for the period 2002-2007.

**Table 10: RBPF Funding**

|           | <b>Amount of funds allocated (BDS \$)</b> |
|-----------|---|
| 2002-2003 | \$12, 166.702.00                          |
| 2003-2004 | \$14,927,015.00                           |
| 2004-2005 | \$19, 185.853.00                          |
| 2005-2006 | \$24, 322.066.00                          |
| 2006-2007 | \$27,507,121.00                           |

348 Discipline within the police force is held to a strict standard and police officers are expected to abide by and uphold this standard both while on and off duty. Disciplinary matters are dealt with in accordance with the provisions of the Police Act CAP. 167. Additionally, the General Standing Orders of the Public Service requires civil servants to conduct themselves in a professional manner. The police acknowledged the presence of a small number of officers who have engaged in corrupt practices and made mention of a soon to be introduced mechanism which will serve to enhance and maintain professional conduct of police officers within the force.

349 Disciplinary matters are reported to the Office of Professional Responsibility which falls within the portfolio of the Deputy Commissioner of Police (DCP). Upon receipt of a complaint against a police officer, a file is prepared and sent to the DCP who selects an investigating officer. Upon completion of the investigations, the investigating officer submits his findings to the DCP who will decide whether or not there is enough evidence to charge the officer with a disciplinary offence, warn the officer or have the matter dismissed. If formal charges are brought against the officer, a trial is held where evidence including oral evidence is presented and recorded by a senior police officer in the capacity of a magistrate. The recorded evidence is then submitted to the DCP together with a report of the senior officer's findings. The evidence is then referred to the COP who will make a ruling as to whether or not the officer is guilty. Any subsequent course of action taken thereafter is based on whether or not the officer is found guilty. If the conduct of the officer requires a warning, a written warning is given where the officer is cautioned about his conduct. A copy of the written warning is then placed on the officer's personal file. The COP's authority to adjudicate internal disciplinary matters within the police force is mandated by the Police Complaint Authority which is appointed by Parliament.

350 The RBPF recruits police officers twice a year on average. Recruits are required to undergo an initial training period of six (6) months prior to assuming full police duties. Initial training takes place at the Regional Police Training Centre (RPTC) which is located at Seawell, Christ Church. The RPTC was established in 1956 and is one of the longest standing law enforcement training facilities in the region. This facility provides basic and specialized training for police officers including officers from other Caribbean Countries. At the time of the onsite examination there were a total of nineteen (19) police recruits undergoing initial training at the RPTC of which sixteen (16) were Barbadians. In addition to receiving training (ML and TF) locally, a number of officers attend specialized training courses overseas. Courses attended overseas include the Basic Financial Investigation Techniques course currently offered at the REDTRAC in Jamaica. Officers also attend courses in the U.S.A, Canada and the U.K.

### **Office of the Director of Public Prosecutions (DPP)**

351 The Office of the Director of Public Prosecutions is a Government Department headed by the DPP. The DPP's appointment is established under Sections 79 and 101 of the Constitution of Barbados.

352 Section 79(5) of the Constitution stipulates that the exercise of the powers of the Office of the Director of Public Prosecution under the Constitution shall not be subject to the direction or control of any other person or authority. This provision, which is entrenched in the Constitution, is designed to ensure the DPP's autonomy in the exercise of his powers. While this appears to be largely so, the DPP noted that in very limited cases, such as matters relating to treason, sedition and mutiny, it is the AG who has decision making competence. The DPP also alluded to the provision of the ATA (section 15) under which the AG has the power to direct the DPP in matters concerning exchange of information relating to terrorist investigations and extradition proceedings. The assessors understand that the issue of the DPP's autonomy has been examined in a review undertaken by two Constitutional Commissions, which recommended that the DPP should have responsibility for the areas aforementioned.

353 During the onsite visit, the authorities indicated that the recommendations were still under consideration and the examining team is therefore unclear as to the Government's position on the matter.

354 The Office of the Director of Public Prosecutions has a full complement of nine (9) legal officers. The Department consists of the DPP, the Deputy Director, two (2) principal crown counsel; two (2) senior crown counsel; and two (2) crown counsel. The administrative support staff includes a legal secretary and a stenographer/typist. The department is said to be under-resourced taking into consideration the number of legal matters for which the department has responsibility including criminal prosecutions; extradition; mutual legal assistance; asset forfeiture and confiscation proceedings. It was said that there was need for a legal assistant and an additional clerical officer to assist with the growing demands placed on department.

355 Currently, the police are responsible for conducting prosecutions in the Magistrate's court. The DPP is of the view that all prosecutions should be undertaken by his office, and he advised that a proposal to this effect, which would entail expansion of staff, was made to the government. However, to date no such position has been taken.

356 The budgetary allocation for the Office of the DPP is determined by Parliament on an annual basis after a submission of budget estimates by the DPP. Funding allocated to the Office of the Director of Public Prosecutions for the periods 2004-2005 and 2005-2006 was \$948,649.00 and \$975,625.00 respectively.

357 The staff of the Office of the Director of Public Prosecutions is appointed on the recommendation of the DPP; and is subject to the approval of the Judicial and Legal Service Commission. Members of staff are required to act in accordance with the high traditions of the legal profession; exercise fidelity to trust; act without fear of judicial disfavour or public unpopularity; scrupulously preserve their independence in the discharge of their professional duties; and act with integrity, honour and dignity at all times.

358 The Department of the Director of Public Prosecutions has a highly trained staff all of whom have been exposed to some form of ML and TF related training. The Deputy Director of Public Prosecutions is a trained expert in the AML/CFT Methodology. Staff members have attended training courses offered by the United Nations Drug Control Programme (UNDCP), DEA, FBI, the British High Commission and the Commonwealth Secretariat.

### **Customs and Excise Department**

359 The Customs and Excise Department comes under the Ministry of Finance and falls within the portfolio of the Office of the Prime Minister. The department is headed by a Comptroller who is appointed by the Public Service Commission.

360 The department has a staff of four hundred and eighty-five (485) employees which include personnel from the VAT Department together with ancillary and support staff. These employees are stationed at the three (3) designated ports of entry comprising Bridgetown Port, Port St. Charles and the Grantley Adams Airport.

361 The CED is headed by a senior customs officer who has approximately twenty-one officers under his command. The CED has responsibility for investigating all customs infractions. Officers of the CED are stationed at the three (3) main ports of entry.

362 The CED works closely with the VAT department. The CED also works in close collaboration with the police Drug and K-9 Units as part of JCT which carries out routine anti-narcotics and illegal contraband (searches) at the various ports of entry. The CED is said to be under-resourced (staffed) by

at least eight (8) officers due to the growing demands being placed on the unit.

363 The department's budgetary allocation is determined by Parliament on an annual basis after a submission of budget estimates by the Comptroller of Customs. The Department was allocated a total of BDS\$ 22.8 million for the financial year 2005-2006.

364 The professional conduct of custom officers is held to strict standards. Officers are required to sign extracts from the Official Secrets Act CAP.174. Additionally, the Customs Department is a signatory to the General Agreement on Tariffs and Trade/World Trade Organisation (GATT/WTO) Valuation Agreement (GATT/WTOVA). Article 10 of the GATT/WTOVA speaks to confidentiality. Customs officers are required to abide by Article 10. Information provided to customs officers is provided on a confidential basis. Therefore, such information should not be disclosed except with the permission of the person or government or in the context of judicial proceedings. The behaviour and conduct of officers is also guided by the provisions of the Public Service General Orders and Public Service Regulations 1978.

365 A number of customs officers have been exposed to basic ML and TF training as part of their initial training. Some of this training is provided by the FIU. The department also reported having received training from the Royal Canadian Mounted Police. Officers also attend basic Financial Investigation Techniques courses offered at REDTRAC in Jamaica. In addition to training courses offered locally, officers also attend training courses in countries such as Canada, United States and the United Kingdom. Authorities expressed satisfaction with the number of customs officers who have so far received ML and TF related training.

### **Immigration Department**

366 The Immigration Department falls under the Ministry of State which comes within the portfolio of the Prime Minister. The department is headed by a Chief Immigration Officer who is appointed by the Public Service Commission. The department has a staff of approximately two hundred (200) officers stationed at the three (3) designated ports of entry.

367 As one (1) of the two (2) lead agencies tasked with securing the country's borders, the department has the ability to conduct investigations which are generally aimed at identifying persons who are in the country illegally.

368 The following table represents funding allocated to the Immigration Department for the period 2002-2007.

**Table 11: Immigration Department Funding**

|           | <b>Amount of funds allocated (BDS \$)</b> |
|-----------|---|
| 2002-2003 | \$7,362,194.00                            |
| 2003-2004 | \$10,638,407.00                           |
| 2004-2005 | \$9,961,758.00                            |
| 2005-2006 | \$10,372,245.00                           |
| 2006-2007 | \$10,622,046.00                           |

369. Immigration officers are appointed in accordance with the Civil Establishment Act and their powers are contained within the general provisions of the Immigration Act, CAP 190. The professional conduct of immigration officers is guided by the department's Code of Conduct and the general Public Service Regulations, 1978.

370. The department does not have a dedicated unit tasked with the investigation of ML and TF. However, some officers have been exposed to ML training in addition to training which normally focuses on issues relating to border control. The majority of training provided to immigration officers is done locally. However, the department has the ability to access training from counterparts in countries such as the U/States, U/Kingdom and Canada.

**Coast Guard**

371 The Coast Guard (CG) falls within the organizational structure of the BDF which comes under the Ministry of Defense and falls within the portfolio of the Prime Minister. The CG is headed by a Lieutenant Commander who reports to the Chief of Staff of the Defense Force. The L/Commander has responsibility for overseeing the daily administration of the CG. He is assisted by a First Lieutenant who is the head of operations. The CG has a staff of approximately one hundred and thirty (130) persons, 60% of whom are assigned to operational duties.

372 There are plans to increase the number of persons recruited into the CG to approximately 30 persons per year over the next five (5) years. If successful, this will increase the strength to approximately two hundred and eighty persons (280) by the year 2011. This planned increase was one (1) of a number of recommendations made based on a Strategic Review of the CG conducted in 2003.

373 The CG has an active sea cadet programme which consists of approximately 130 to 140 young persons from which potential recruits can be drawn.

374 The CG fleet of vessels comprises of one (1) large offshore patrol vessel namely “Trident” which is the largest vessel in the fleet. In addition to “Trident” there is one (1) forty (40) foot patrol vessel, four (4) rigid-hull inflatable vessels, two (2) Boston Whalers and a number of smaller vessels. Funding for the CG is provided within the overall budget allocations of the Defense Force. Financing is said to be a major challenge within the CG. The budget allocation for the financial year 2006-2007 was said to be BDS\$ 12,000,000.00.

375 The professional conduct of persons employed within the CG is held to strict standards. This conduct is guided by CG Standing Orders. Personnel are subject to routine vetting to ensure that their character remains impeccable. This vetting process includes polygraph testing which is administered by a trained member of staff.

376 Coast Guard personnel have received no formal ML and TF training due to the fact that this does not form part of their overall mandate. Upon joining the Coast Guard persons are provided with specialized training in areas such as maritime law enforcement safety and boat handling. The majority of CG related training is provided locally often with the assistance of regional and international counterparts and other private companies. Special mention was made of training which was tailored specifically for Barbados and which exposed officers to areas such as maritime counter-terrorism and covert boarding techniques. Members of the CG also receive training in areas such as basic and advance engineering, maritime rescue, survival skills, crime scene examination, chain of evidence, statement taking and giving oral testimony. In addition to training provided locally, officers also receive specialized maritime related training in countries such as the U/States, U/Kingdom and Canada.

**Recommendation 32 (statistics: investigations, prosecutions and convictions )**

377. The following tables represent a summary of statistical data maintained and produced by local law enforcement authorities in relation to drugs seizures.

**Table 12: Police Drug Unit – Drug Seizures**

| <b>Drug Seizures</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> |
|----------------------|-------------|-------------|-------------|-------------|
| Cannabis             | 6026 Kgs    | 3751.34 Kgs | 3244.68 Kgs | 3667.52 Kgs |

|                              |             |             |             |            |
|------------------------------|-------------|-------------|-------------|------------|
| Cannabis Plants              | 581         | 301         | 1496        | 1196       |
| Cocaine                      | 73.69 Kgs   | 100.13 Kgs  | 41.86 Kgs   | 182.30 Kgs |
| Liquid Cocaine               | Nil         | 3.45 Litres | Nil         | Nil        |
| Ecstasy Tablets              | Nil         | Nil         | 1098        | 2445       |
| Landings                     | 14          | 8           | 7           | 7          |
| Drug Seized<br>(at landings) | 5771.31 Kgs | 1870.45 Kgs | 2269.29 Kgs | 2466 Kgs   |

**Table 13: Customs Enforcement Division – Drug Seizures**

| <b>Year</b> | <b>Seizures</b> | <b>Estimated Street Value BD\$</b> |
|-------------|-----------------|------------------------------------|
| <b>2004</b> | <b>6</b>        | <b>32,577.00</b>                   |
| <b>2005</b> | <b>5</b>        | <b>116, 080.00</b>                 |

378. The following table represents statistical data produced by the Royal Barbados Police Force Financial Crimes Investigations Unit. Data includes Money Laundering and Terrorist Financing reports investigate, Production Orders served and Search Warrants executed.

**Table 14: FCIU – ML/FT Reports/Production Orders/Search Warrants**

|                          | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> |
|--------------------------|-------------|-------------|-------------|-------------|
| <b>ML Reports</b>        | <b>0</b>    | <b>3</b>    | <b>2</b>    | <b>5</b>    |
| <b>TF Reports</b>        | <b>0</b>    | <b>0</b>    | <b>0</b>    | <b>0</b>    |
| <b>Production Orders</b> | <b>3</b>    | <b>6</b>    | <b>7</b>    | <b>7</b>    |
| <b>Search Warrants</b>   | <b>8</b>    | <b>11</b>   | <b>16</b>   | <b>14</b>   |

### 2.6.2 Recommendations and Comments

379. The authorities should consider implementing the necessary legal framework and guidelines to provide for use of special investigative methods and techniques (electronic surveillance, waiving or postponing arrests and controlled deliveries) by law enforcement agencies to advance ML, TF and other serious criminal investigations.

380. The prosecutorial and law enforcement agencies should strive to maintain and where necessary expand the type of ML and TF statistical data currently held by each agency. This will allow the competent authorities to better review and measure the effectiveness of the country's AML/CFT policies and programmes on an ongoing basis.

### 2.6.3 Compliance with Recommendation 27, 28, 30 & 32

|             | <b>Rating</b> | <b>Summary of factors relevant to s.2.6 underlying overall rating</b> |
|-------------|---------------|---|
| <b>R.27</b> | <b>C</b>      | <b>This recommendation is fully observed.</b>                         |
| <b>R.28</b> | <b>C</b>      | <b>This recommendation is fully observed..</b>                        |
| <b>R.30</b> | <b>PC</b>     | <b>Law enforcement and prosecutorial authorities are inadequately</b> |

|             |           |  |
|-------------|-----------|--|
|             |           | <b>resourced. See factors in sections: 2.5, 3.10</b> |
| <b>R.32</b> | <b>LC</b> | <b>See factors in sections: 2.7, 6.3, 6.5</b>        |

## **2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)**

### 2.7.1 Description and Analysis

#### **Special Recommendation IX**

381 There are three (3) designated ports of entry in Barbados. These include the Grantley Adams International Airport which is the designated port of entry for persons arriving and departing by air, the Bridgetown Port and Port St. Charles which are the designated ports of entry for persons arriving by sea.

382 The Customs, Police and Immigration Departments play the leading role as it relates to the seizure and investigation of any money and monetary instruments illegally imported and exported from Barbados.

383 The cross-border declaration system currently in place within Barbados is provided for by the Exchange Control Act, CAP 71(ECA), and the MLFTA, Cap. 129.

384 The ECA (Sections 24 and 25) prescribes for the importation and exportation of money and monetary instruments including money and monetary instruments and the MLFTA (section 8A) provides for the management of this process where permission has not been obtained under the ECA and establishes a reporting threshold of BDS\$ 10,000.00.

385 Section 24 of the ECA prohibits the importation of legal tender without the permission of the Exchange Control Authority. Section 25 of the ECA prohibits the exportation on the person of a traveler or in a traveler's luggage, legal tender, any postal order, gold, and any of the following documents (including any such document which has been cancelled);

- (i) Any certificate of title to a security and any coupon, and
- (ii) Any policy of assurance; and
- (iii) Any bill of exchange or promissory note expressed in terms of foreign currency and payable outside Barbados; and
- (iv) Any document to which Section 7 of the Exchange Control Act applies which includes cheques or other draft or letter of credit so intended, not issued by an authorized dealer or in pursuance of a permission granted by the Exchange Control Authority; and any document certifying the destruction, loss or cancellation of any of the documents mention above.

386 The ECA gives the Exchange Control Authority the power of approval or disapproval so that all such movement of money and monetary instruments into and out of Barbados takes place within the context of the Exchange Control Authority's discretion. The management of this process enables the Exchange Control Authority to require disclosing parties to provide any additional information needed to properly give effect to the Exchange Control Authority's functions.

387 Under section 8A (1) of the MLFTA, persons transferring Barbadian or foreign currency in excess of BDS\$10,000 into or out of Barbados are legally obligated to make a report of such transfers unless permission was obtained under the ECA. Section 8A (subsections 10 and 11) of the MLFTA specifies the situation at which currency is deemed to be taken out and brought into Barbados, basically upon entry into the respective arrival and departure customs areas in the designated ports of entry. Subsection 8A (7) of the MLFTA requires the above currency reports to be made either to the

Comptroller of Customs or the AMLA when entering or leaving Barbados.

388 The cross-border disclosure system currently in place includes a Passenger Embarkation/Disembarkation card (Form 6) which must be completed by all persons entering and leaving Barbados via designated ports of entry. The E/D card (question 19, part b) provides for the voluntary declaration of currency or other monetary instruments in excess of BDS\$10,000.00 or its foreign equivalent.

389 It is illegal to export amounts above the stipulated BDS\$7,500.00 in cash and other monetary instruments totaling BDS\$3,700.00. Amounts above that which is specified are subject to seizure and can be either handed to the police or paid into government treasury. There was no information as to the circumstances which would dictate either course of action. Intervention including search and seizure of money and monetary instruments is normally based on suspicion of the movement of the proceeds of drug trafficking. Suspicion of money laundering or terrorist financing or making a false declaration were not mentioned as a basis for stopping and seizure of currency and negotiable instruments.

390 The competent authorities indicated that there are instances when arriving passengers declare having in their possession amounts of money and or monetary instruments greater than the prescribed threshold. When such declarations are made, the information is logged and stored by customs and immigration officials. There are protocols in place to facilitate the sharing of this information with fellow JIU member agencies. This information can also be shared with fellow members of CCLEC through its Secretariat based in St. Lucia. The protocol for information sharing and communication among CCLEC members takes place both on a formal and informal basis and generally includes information on the unusual movement of goods such as gold, precious metals or precious stones.

391 The Customs and Excise Department of Barbados which is a member of the World Customs Organization (WCO) has the authority to share information with foreign counterparts outside CCLEC member countries. Information sharing usually takes place within the existing framework for mutual legal assistance in criminal matters.

392 Section 8A (12) of the MLFTA provides that where a person makes a report about a currency transfer in excess of BDS\$ 10,000.00 without the permission of the Exchange Control Authority to a customs officer, the officer shall as soon as practicable after receipt of the report, forward it to the AMLA/FIU. Under Section 6A (4) of the MLFTA, the Director of the FIU can request information from the records of the Customs Department.

393 It is important to note that under section 8A (4) of the MLFTA, a financial institution is under no obligation to make a report in respect of currency transferred on behalf of that financial institution by a commercial carrier of goods.

394 Enforcement of the above system is strengthened by the lawful authority of the relevant authorities (Customs and Immigration officials) to conduct searches at the designated ports of entry. Searches are usually based on intelligence and suspicion of illegal drugs trafficking. Under the Customs Act, CAP. 66 (section 5) customs officers have the same powers and authority as police officers for the purposes of carrying out the customs law. However, as mentioned earlier, officers of the Customs Enforcement Division (CED) and members of the Police Drugs and Canine Units make up the Joint Contraband Team (JCT) which routinely conducts anti-narcotics and contraband operations (searches) at the designated ports of entry. As a result, persons found in breach of customs laws including persons found in possession of undeclared money and monetary instruments and other contraband are handed over to the police for subsequent action including formal arrest and prosecution. This is based on common practice and procedures.

395 Any person (s) who contravenes subsection (1) or (5) of section 8A of the MLFTA which refers to cross-border provisions is guilty of an offence and is liable upon summary conviction to a fine of BDS\$ 10,000.00 or to imprisonment for a term of two (2) years; upon conviction on indictment to a

fine of BDS\$ 200,000.00 or imprisonment for a term of five (5) years (Section 8A (6) of the MLFTA). Section 245 of the Customs Act imposes a penalty of a fine of \$150,000 or 3 times the value of the goods, whichever is greater or imprisonment for 2 years or both such fine and imprisonment for making false declarations. It is recommended that these penalties should be included on the Passenger Embarkation/Disembarkation card..

396 The definition of ML under section (3) (1) (b) of the MLFTA includes the bringing in or sending out of Barbados of any money or other property that is the proceeds of crime. Further, the penalty for the unlawful and physical cross border transportation of currency qualifies it as a predicate offence for money laundering. As a consequence, such an offence would trigger the powers of the FIU and the powers of other local law enforcement agencies and actions necessary to combat ML and TF.

397 The competent authorities indicated that terrorist related funds which are involved in a cross-border offence would be subject to the same confiscation, freezing and seizing provisions as any such funds generally provided for under the MLFTA and ATA.

**Recommendation 32**

398. The competent authorities maintain and were able to produce adequate statistical data on cash seizures for the years 2002 through to 2005 as seen below.

**Table 15; Cash Seizures**

| <b>Currency Seizures</b> | <b>2002</b>   | <b>2003</b>  | <b>2004</b>  | <b>2005</b>   |
|--------------------------|---------------|--------------|--------------|---------------|
| BDS Currency             | \$490, 866.00 | \$23, 425.00 | \$ 33,133.02 | \$ 576,188.76 |
| U.S. Currency            | \$ 74,245.00  | \$ 2,765.00  | \$ 947.00    | \$ 34, 820.00 |
| British Pounds           | 6,300.00      | Nil          | Nil          | 9,000.00      |

399. The competent authorities also indicated that there are instances when arriving passengers declare having in their possession money and or monetary instruments above the prescribed threshold. However, there was no statistical data representing the number of declarations made during a specific period.

400. In addition, there was no statistical data representing the number of successful prosecutions and forfeiture of seized money or monetary instruments directly related to instances of non-compliance or failure to declare amounts in excess of the prescribed threshold. As a result, it is difficult to measure the effectiveness of the system. The competent authorities should seek to compile and maintain proper statistical data so that the effectiveness of the cross-border declaration system can be measured. This will assist in identifying existing weaknesses thus allowing the competent authorities to enhance the system where necessary so as to facilitate and ensure stricter compliance.

**Recommendation and Comments**

401. The competent authorities should seek to broaden the type of statistical data maintained in relation to the cross-border declaration system. Apart from assisting the authorities in measuring the effectiveness of the cross-border declaration system, it will also assist in identifying existing weaknesses thus allowing the competent authorities to enhance the system where necessary so as to facilitate and ensure stricter compliance.

402. Suspicion of money laundering or terrorist financing or making a false declaration should provide grounds for stopping and seizure of currency and negotiable instruments.

403. The competent authorities should consider including penalties for the making of false declarations in accordance with the relevant section of the Customs Act on the Passenger Embarkation/Disembarkation card.

|               | <b>Rating</b> | <b>Summary of factors underlying ratings</b>   |
|---------------|---------------|--|
| <b>SR. IX</b> | <b>LC</b>     | <p><b>Suspicion of money laundering or terrorist financing or making a false declaration do not provide basis for stopping and seizure of currency and negotiable instruments.</b></p> <p><b>Effectiveness of system to detect cross-border transfer of currency and negotiable instruments cannot be evaluated due to lack of statistics.</b></p> |
| <b>R. 32</b>  | <b>LC</b>     | <b>No statistics on cross-border declaration reports. See factors in sections: 6.3, 6.5</b>  |

### 3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

#### General

404. The MLFTA is the primary legislation with respect to CDD and defines those financial institutions which are subject to the AML/CFT requirements of the Act. Section 2(1) of the MLFTA defines “financial institution” as:

“(a) any person who carries on business under the *Financial Institutions Act*; and  
(b) includes;

- i. a deposit taking institution,
- ii. any person whose business involves money transmission services, investments services or any other services of a financial nature;
- iii. a credit union within the meaning of the *Co-operatives Societies Act*,
- iv. a building society within the *Building Societies Act*,
- v. a friendly society within the meaning of the *Friendly Societies Act*,
- vi. an insurance business within the meaning of the *Insurance Act*,
- vii. an off-shore bank within the meaning of the *Off-shore Banking Act*,
- viii. an exempt insurance company within the meaning of the *Exempt Insurance Act*,
- ix. an international business company within the meaning of the *International Business Companies Act*,
- x. a society with restricted liability within the meaning of the *Societies with Restricted Liability Act*,
- xi. a foreign sales corporation within the meaning of the *Barbados Foreign Sales Corporation Act*,
- xii. a mutual fund, mutual fund administrator and a mutual fund manager,
- xiii. international trusts within the meaning of the *International Trusts Act*;

405. With the exception of mutual funds, mutual fund administrators and mutual fund managers, the registrants of the Securities Commission under the Securities Act are not specifically included in the definition of “financial institution” as shown above. However the authorities are of the view that the definition category “any person whose business involves money transmission services, investments services or any other services of a financial nature...” subjects all of the registrants of the Securities Commission to the MLFTA’s CDD requirements. Additionally, with regard to the above, the Off-shore Act has been repealed and replaced by the International Financial Services Act (IFSA) which in section 15 provides for the revocation of a licence under the IFSA on the grounds of breach of any duty or obligation under the MLFTA.

#### **Anti-Money Laundering Guidelines**

406 Anti-Money Laundering Guidelines were issued to the financial sector in 2001. The AMLA updated and re-issued these Guidelines in the last quarter of 2006, pursuant to section 22F of the MLFTA in conjunction with the following financial sector regulators: the CBB, the Supervisor of Insurance and Pensions, the Registrar of Cooperatives, and the Securities Commission. It should be noted that the Securities Commission did not issue their own substantive AML/CFT guidelines but in October 2006 adopted the CBB’s Guidelines. AML/CFT guidelines were also issued by the Ministry of Economic Affairs and Development. The authorities advise that the 2006 AML/CFT guidelines deal with several new areas which were not addressed in the 2001 guidelines such as terrorist financing, the role of the board and senior management, the risk based approach and risk profiling of customers.

407 Section 8(1)(f) of the MLFTA provides that financial institutions must comply with the guidelines issued by AMLA under the MLFTA. The AML/CFT guidelines issued jointly by the AMLA and financial sector regulators pursuant to section 8(1)(f) are enforceable where the requirements mirror obligations which have sanctions under the MLFTA or one of the regulatory

statutes. .

408 With respect to CDD, several obligations imposed under the MLFTA have no corresponding sanctions. In the MLFTA sanctions relating to CDD are limited to (i) failing to report (a) a suspicious transaction or (b) an unusual currency exchange transaction of \$10,000 or more; or (ii) failing to maintain business transaction records, all of which are indictable offences. Section 12(1) of the MLFTA provides that a person convicted of an indictable offence may not be licensed to carry on the business of a financial institution; and where the person is a financial institution its licence shall, without further action, be cancelled.

409 The IFSA is the only regulatory statute that makes specific provision for enforcement action to be taken where a licensee breaches the provisions of the MLFTA. Section 15 of the IFSA provides that the Minister may revoke a licensee's licence if, inter alia, the licensee is in breach of any duty or obligation imposed upon it by the IFSA or commits an offence under the IFSA or under the MLFTA.

410 However, the CBB, under sections 50 of the FIA and 57 of IFSA can exercise its general power of sanctions as a supervisory authority over its licensees for non-compliance with the AML/CFT Guidelines. The CBB advised that as a result of deficiencies identified in focused AML/CFT inspections in 2005 and 2006, remedial measures were imposed on 17 and 14 licensees respectively. Remedial actions included cease and desist and in one instance, the CBB delayed a licensee's plans for business/product expansion. It is standard practice for inspection findings to cite/quote the breach in question and all licensees were required to submit action plans on a regular basis to facilitate monitoring of the resolution progress. The 4 licences revoked in 2005 and 2006 were not due to breaches of the MLFTA. The statistics also exclude the AML focused inspections jointly undertaken with the Registrar of Cooperatives in 2006. However, the same approach was taken in the report regarding the identification of breaches of the MLFTA and Guidelines.

411 The Supervisor of Insurance has a general power under section 55(1)(b) of the IA to issue directions to remedy any defaults by a local or foreign licensee except that in the case of a foreign company such directions shall not apply to the issue of renewal of policies or the entering of contracts in the course of the foreign company's business outside Barbados. Directions issued remain in force for twelve months but the Supervisor of Insurance may issue further directions to the company. Failure to comply with a direction of the Supervisor is a summary offence punishable by a fine. The Supervisor of Insurance also identifies the nature of AML/CFT breaches arising from onsite examinations of its licensees. A breakdown of statistics was unavailable.

412 As such the CBB AML/CFT Guidelines and the AML/CFT guidelines issued by the Supervisor of Insurance are considered enforceable means as defined in the FATF Methodology for the licensees of the CBB and the Supervisor of Insurance, respectively.

### **Customer Due Diligence & Record Keeping**

#### **3.1 Risk of money laundering or terrorist financing**

413 The assessment team was advised that risk assessment of various financial sectors have been discussed at AMLA meetings, where reports identifying issues and recommendations for legislative reform were presented. No formal documented risk assessment of any financial sector was made available to the assessment team. There is awareness that effective implementation of the AML/CFT measures requires consideration of the diversity of financial institutions. Therefore, the AML/CFT Guidelines advocate a risk-based approach to CDD measures for financial institutions.

414 Financial institutions may apply customer due diligence standards on a risk sensitive basis

depending on the type of customer, business relationship or transaction. Financial institutions are required to document a risk-based approach in their AML/CFT programmes which should include an assessment of the risk posed by the nature of the business and the implementation of appropriate mitigation measures, while maintaining an overall effective programme. This should be evidenced by categorization of the customer base, products and services by risk rating (e.g. low, medium, and high) and identification of assigned actions by risk types.

415 While each financial institution will determine the number and designation of risk categories, the fundamental issue is the adoption of reasonable criteria for assessing risks. Financial institutions are required to periodically test the accuracy of the assignment of the customer base to risk categories and that requisite due diligence is being followed. Risk categories should also be reviewed as typologies in the practices by money launderers and terrorist evolve.

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

### **3.2.1 Description and Analysis**

#### **Recommendation 5**

#### **Required CDD measures**

416 Section 8(2) of the MLFTA requires all customer accounts of a financial institution to be kept in the true name of the account holder. Section 7 (1) of the MLFTA requires a financial institution to take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce the applicant's identification record. .

417 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Supervisor of Insurance, the Registrar of Cooperatives and the Securities Commission address the customer due diligence requirements set out in sections 7 and 8 of the MLFTA. The guidelines provide that financial institutions should avoid acceptance of anonymous accounts or accounts in fictitious names and must obtain the true name of the customer. Where financial institutions maintain numbered accounts, they must ensure compliance with the requirements of the guidelines.

418 The AML/CFT guidelines issued to insurance companies provide that financial institutions are ultimately responsible for verifying the identity of their customers. In this regard, all policies or other insurance contracts must be held in the correct name of the customer.

419 The Ministry of Economic Affairs and Development's AML/CFT guidelines provide that an institution should not enter into a business relationship or carry out a significant one-off transaction unless it has fully implemented relevant systems which include determining (or receiving confirmation of) the true identity of customers requesting their services.

420 There is no legislative requirement for customer identity to be verified for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, where there is a suspicion of money laundering or terrorist financing or where a financial institution has doubts about the veracity or adequacy of previously obtained information.

421 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Supervisor of Insurance, the Registrar of Cooperatives and the Securities Commission require financial institutions to:

- establish procedures for obtaining identification information on new customers so as to be satisfied that a prospective customer is who he claims to be;
- use reasonable measures to verify and adequately document the identity of the customer or account holder at the outset of a business relationship;
- review existing records if there are doubts about previously obtained customer identification data;
- be cognizant of tipping off a customer when conducting due diligence and there is a suspicion that a transaction relates to money laundering or the financing of terrorism. In these circumstances financial institutions must make a business decision whether to open the account or execute the transaction as the case may be, but must submit a suspicious report to the AMLA.

422. CDD is required for persons carrying out occasional transactions:

- Over BDS\$10,000 or its equivalent in foreign currency, whether conducted in a single or multiple operations that appear to be linked; and
- Occasional wire transfers over BDS\$2,000 or its equivalent in foreign currency.

423. The Ministry of Economic Affairs and Development’s AML/CFT Guidelines require institutions to carry out CDD prior to the establishment of the business relationship (paragraphs 46 and 48).

424. With respect to the requirement to carry out CDD on occasional transactions above a designated threshold the Ministry’s guidelines speak only indirectly to this requirement and do not clearly indicate the threshold amount. The guidelines state in paragraph 35:

“Verification is not required in the case of small one-off transactions (whether single or linked) unless at any time between entry and termination it appears that two or more transactions which appear to have been small one-off transactions are in fact linked and constitute a significant one-off transaction. For the purposes of these Guidelines, transactions which are separated by an interval of three months or more are not required, in the absence of specific evidence to the contrary, to be treated as linked.”

425. The MLFTA does not contain a requirement for financial institutions to verify the identity of individual customers using reliable independent source documents, data or information. This requirement is met however in the case of legal persons. Section 7(1) of the MLFTA requires financial institutions to identify prospective customers by requiring them to produce their identification records. Section 2 of the MLFTA defines “identification record” as follows:

(a) in the case of a corporate body,

(i) certified copies of the certificate of incorporation, authenticated where the body is incorporated abroad, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property and any amendments thereto;

(ii) the certificate of continuance issued pursuant to section 352 or 356.2 of the Companies Act, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property and any amendments thereto;

(iii) the certificate of registration, where the body corporate was incorporated abroad and registered under the Companies Act, and other necessary documents filed with the Registrar of Corporate Affairs and Intellectual Property for registration as an external company and any annual returns filed;

(iv) the name, address, occupation, nationality and such other evidence as may satisfy the financial institution that the directors and shareholders are who they claim to be;

(b) in the case of an individual, sufficient documentary evidence to prove to the satisfaction of a

financial institution that the individual is who that individual claims to be, and for the purposes of paragraphs (a) and (b) “person” includes a nominee, agent, beneficiary or principal in relation to a business transaction;”

426. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require: licensees to satisfy themselves as to the identity of their customers by obtaining the following

A. Personal Customer:

- a. True name and permanent residential address;
- b. Valid photo-bearing identification, with unique identifier, (e.g. passport, national identification card, driver’s licence);
- c. Date and place of birth and nationality (if dual, should be indicated)
- d. Occupation;
- e. Contact details e.g. telephone number, fax number and e-mail address
- f. Purpose of account
- g. Signature

B. Corporate Customers:

- a. Name of corporate entity; principal place of business and registered office; and mailing address;
- b. Identity information (See Section 7.1) on the beneficial owners of the entity. This information must extend, as far as practicable, to identifying those who ultimately own and control the company and should include anyone who is giving instructions to the financial institutions to act on behalf of the company. However,
  - If the company is publicly listed on an authorised stock exchange and not subject to effective control by a small group of individuals, identification on shareholders is not required;
  - If the company is private, but widely held entity, identity should be sought on persons with a minimum of 10% shareholding.
- c. Identity information on directors and officers who exercise effective control over the business and are in a position to override internal procedures / control mechanisms and, in the case of bank accounts, the signatories to the account;
- d. Certified copy of the Certificate of Incorporation, authenticated where the body is incorporated outside of Barbados, or Certificate of Continuance pursuant to Section 352 or 356.2 of the Companies Act or Certificate of Registration where the body was incorporated abroad but registered under the Companies Act;
- e. Certified Copy of the Memorandum and Articles of Association of the entity;
- f. By-laws and any other relevant corporate documents filed with the Registrar of Corporate Affairs and Intellectual Property;
- g. Evidence that the entity is in compliance with its statutory obligations and is not in the process of being wound-up;
- h. Board resolution authorising the opening of the account and conferring authority on signatories to the account; and
- i. Recent financial information or audited statements.

### C. Partnerships:

Each partner should be identified as well as immediate family members with ownership control. In addition to providing the identification documentation for partners/controllers and authorised signatories, where a formal partnership arrangement exists, there should be a mandate from the partnership authorizing the opening of an account.

### D. For Trusts:

- a. Name of trust;
- b. Nature / type of trust;
- c. Country of establishment;
- d. Identity of the trustee(s), settlor(s), protector(s)/controller(s) or similar person holding power to appoint or remove the trustee and where possible the names or classes of beneficiaries;
- e. Identity of person(s) with powers to add beneficiaries, where applicable; and
- f. Identity of the person providing the funds, if not the ultimate settlor..

427. Customer identity can be verified using a combination of methods:

#### A. Personal Clients

For personal customers the guidelines provide that financial institutions should verify “some” customer information on a risk basis, through the use of reliable, independent source documents, data or information to prove to a financial institutions’ satisfaction that the individual customer is who that individual claims to be. The guidelines outline what basic CDD information should be obtained, as well as possible measures for customer verification.

428. Under the guidelines financial institutions should take the following measures for verifying the identities of personal customers:

- Confirm the date of birth from an official document (e.g. birth certificate).
- Confirm the permanent address (e.g. utility bill, tax assessment, bank statement, letter from a public notary).
- Contact the customer e.g. by telephone, letter, email to confirm information supplied
- Confirming the validity of the official documents provided through certification by an authorised person.
- Confirm the permanent and/ business residence through credit agencies, home visits
- Obtain personal references from third parties and existing customers in writing.
- Contact issuers of references.
- Confirmation of employment.

#### B. Corporate Customers & Partnerships

- Review of current audited information (preferably audited).
- Obtain statements of affairs, bank statements, confirmation of net worth from reputable financial advisers.
- Seek confirmation from a reputable service provider(s).
- Confirm that the company is in good standing.
- Undertake enquiries using public and private databases.
- Obtain prior banking and commercial references, in writing.
- Contact issuers of references.

- Onsite visitations.
- Contact the customer e.g. by telephone, letter, email to confirm information supplied.

C. Trusts and Fiduciary Clients

- Seek confirmation from a reputable service provider(s).
- Obtain prior bank references.
- Access public or private databases.

429. Financial institutions are also advised in the guideline on acceptable measures to be taken in instances where original documents are not available or where documents are unfamiliar.

430. The Ministry of Economic Affairs and Development's AML/CFT Guidelines requires financial institutions to carry out CDD measures using reliable, independent source documents, data or information. These Guidelines mirror the guidance provided by the CBB AML/CFT Guidelines with respect to what might constitute appropriate documentary evidence for different types of customers.

**Beneficial owners**

431. The MLFTA section 7(2) provides that where an applicant requests a financial institution to enter into any transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person. Subsection 7(3) of the MLFTA states that where it appears to a financial institution that an applicant requesting it to enter into any transaction is acting on behalf of another person, the institution shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise. There is no legislative requirement for the financial institution to verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person or determine who are the natural persons that ultimately own or control the customer.

432. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide that financial institutions should seek to identify the customer and all those who exercise control over the account/transaction. A customer includes:

- i) A person or entity that maintains an account with the financial institution;
- ii) A person or entity on whose behalf an account is maintained i.e. beneficial owner;
- iii) The beneficiaries of transactions conducted by professional intermediaries such as lawyers, accountants, notaries, business introducers or any other professional service providers.

433. Financial institutions should identify the beneficial owners of its corporate customers (and credit unions should identify the beneficial owners of their corporate members). This information should extend, as far as practicable, to identifying those who ultimately own and control the company and should include anyone who is giving instructions to the credit union to act on behalf of the company. However,

- i. If the company is publicly listed on an authorised stock exchange and not subject to effective control by a small group of individuals, identification on shareholders is not required;
- ii. If the company is private, identity should be sought on persons with a minimum of 10% shareholding.

434. In practice, where a third party seeks to act on behalf of a member of a credit union, credit unions request a letter of authorization from the member authorizing the third party to act on behalf of the member. Verification of the third party's identity is also conducted.

435. The Ministry of Economic Affairs and Development's AML/CFT Guidelines provide that unless a company is quoted on a recognized stock exchange or is a subsidiary of such a company or is a private company with substantial premises and payroll of its own, steps should be taken to verify the company's underlying beneficial owner(s) namely those who ultimately own or control the company. The expression "underlying beneficial owner(s)" includes any person(s) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

436. The Ministry of Economic Affairs and Development's AML/CFT Guidelines largely mirror the provisions of the AML/CFT Guidelines and include in the list of data that should be obtained by financial institutions copies of Powers of Attorney or other authorities given by the directors in relation to the company, and a signed director's statement as to the nature of the company's business.

437. Under the AML/CFT Guidelines issued by the Supervisor of Insurance, financial institutions should seek to identify their customers and all those who exercise control over the policy/contract.

438. Paragraph 32 of the Ministry's AML/CFT Guidelines provide that where an institution suspects that there may be an undisclosed principal (whether individual or corporate) it should monitor the activities of the customer to ascertain whether the customer is in fact merely an intermediary. If a principal is found to exist, further enquiry should be made and that principal should be treated as a verification subject.

439. Section 7 of the MLFTA provides that financial institutions should take reasonable measures to satisfy themselves as to the true identity of any prospective applicant and defines "reasonable measures". In determining what constitutes reasonable measures section 7(4) provides that "regard shall be had to all the circumstances of the case and, in particular...*(b)* to such custom and practice as may from time to time be current in the relevant business." This general provision is vague and does not adequately address the requirement of obtaining information on the purpose and intended nature of the business relationship.

440. AML/CFT Guidelines for financial institutions regulated by Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions; to take reasonable measures to understand the ownership and control structure of the customer; obtain information on the purpose and intended nature of the business relationship, the source of funds, and source of wealth, where applicable.

441. For legal arrangements such as trusts, financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction is conducted. This applies especially if there are any doubts as to whether or not these clients or customers are acting on their own behalf.

442. At a minimum, the financial institution should obtain the following: -

- a. Name of trust;
- b. Nature / type of trust;
- c. Country of establishment;
- d. Identity of the trustee(s), settlor(s), protector(s)/controller(s) or similar person holding power to appoint or remove the trustee and where possible the names or classes of beneficiaries;
- e. Identity of person(s) with powers to add beneficiaries, where applicable; and
- f. Identity of the person providing the funds, if not the ultimate settlor.

443. Paragraph 32 of the Ministry of Economic Affairs and Development's AML/CFT Guidelines provide that where an institution suspects that there may be an undisclosed principal (whether individual or corporate) it should monitor the activities of the customer to ascertain whether the

customer is in fact merely an intermediary. If a principal is found to exist, further enquiry should be made and that principal should be treated as a verification subject.

444. The Ministry of Economic Affairs and Development's AML/CFT Guidelines states that for personal customers financial institutions should obtain the reason for opening the account and the expected level of business and source of funds. This requirement is limited to personal customers.

### **Ongoing due diligence**

445. There is no express legislative requirement for financial institutions to conduct on-going due diligence on business relationships except for currency exchanges of \$10 000 or more and all instructions for transfers of international funds of \$10 000 or more into and out of Barbados for the purpose of reporting to the AMLA transactions which are of an unusual nature (Section 8(1)(h)).

446. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions to monitor account activity throughout the life of the business relationship; and review the existing records if there is a material change in how the account is operated or if there are doubts about previously obtained customer identification data. Section 8 of the guidelines provides that financial institutions should develop effective manual &/or automated systems to enable staff to monitor, on a solo, consolidated and group-wide basis, transactions undertaken throughout the course of the business relationship and identify activity that is inconsistent with the financial institution's knowledge of the customer, their business and risk profile.

447. Financial institutions are required to review and update identification records, on a risk-focused basis so as to ensure that all existing customer records are current and valid and conform to requirements. Further, for high risk customers and high risk transactions, the Guidelines require financial institutions to apply enhanced due diligence.

448. The Ministry of Economic Affairs and Development's AML/CFT Guidelines provide in paragraphs 74 and 75 that institutions should be alert to the implications of the financial flows and transaction patterns of existing customers, particularly where there is a significant, unexpected and unexplained change in the behaviour of an account. Against such patterns of legitimate business, suspicious transactions should be recognizable as falling into one or more of the following categories:

- ❖ any unusual financial activity of the customer in the context of his own usual
- ❖ any unusual transaction in the course of some usual financial activity;
- ❖ any unusually-linked transactions;
- ❖ any unusual employment of an intermediary in the course of some usual transaction or financial activity;
- ❖ any unusual method of settlement;
- ❖ any unusual or disadvantageous early redemption of an investment product.

449. The Ministry's AML/CFT Guidelines provide that customer identification records should be verified periodically to ensure that identification information remains current. Any change in the name and address of any customer from that given when the business relationship was first established should be recorded.

### **Risk**

450. The AML/CFT guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions to undertake enhanced due diligence for customers based on such factors as business activity, ownership structure, nationality, residence status, anticipated or actual volume and types of transactions. Higher risk customers discussed in the Guideline include trusts, NPOs, non-face-to-face customers, PEPs, corporate vehicles.

451. A financial institution's policy framework must include a description of the types of customers

that are likely to pose a higher than average risk and procedures for dealing with such applications. Financial institutions are expected to design an AML/CFT framework that satisfies their business/ risk profile, taking into account:

- I. The nature and scale of the business;
- II. The complexity, volume and size of transactions;
- III. The degree of risk associated with each area of operation;
- IV. Type of customer (e.g. whether ownership is highly complex, whether the customer is a PEP, whether the customer's employment income supports account activity, whether customer is known to other members of the financial group);
- V. Type of product/service (e.g. whether private banking, one-off transaction, mortgage);
- VI. Delivery channels (e.g. whether internet banking, wire transfers to third parties, remote cash withdrawals);
- VII. Geographical area (e.g. whether business is conducted in or through jurisdictions with high levels of drug trafficking or corruption, whether the customer is subject to regulatory or public disclosure requirements); and
- VIII. Value of account and frequency of transactions (e.g. whether high value and low volume, low value and low volume, high value and high volume).

452. Further, the guidelines require that higher-risk customers be approved by the financial institution's senior management, and stringent documentation, verification and transaction monitoring procedures must be established. In applying a risk-based approach, enhanced due diligence for high risk accounts may include, where deemed relevant, and with more frequency than applied for low risk customers:

- a) An evaluation of the principals;
- b) A review of current financial statements;
- c) Verification of the source of funds;
- d) Verification of source of wealth;
- e) The conduct of reference checks;
- f) Checks of electronic databases; and
- g) Periodic reporting to the Board about high risk accounts.

453. The Ministry of Economic Affairs and Development's AML/CFT Guidelines do not contain any guidance on performing enhanced due diligence.

454. Section 7(5) of the MLFTA provides that no evidence of identity is required where there is a transaction or series of transactions taking place in the course of a business relationship, in respect of which the applicant is either a financial institution subject to the requirements of the MLFTA or has already produced satisfactory evidence of identity.

455. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide generally that all financial institutions must comply with the customer identity obligations found at section 7 of the MLFTA. The guidelines further provide for reduced due diligence where the financial institution is regulated by (a) the CBB under IFSA or FIA, (b) the Securities Commission of Barbados (c) the Supervisor of Insurance in Barbados (d) the Registrar of Co-operatives in Barbados; as well as the Government of Barbados, or a statutory body.

456. Further, in keeping with the risk-based approach, financial institutions are allowed to apply reduced CDD measures consistent with the guidelines. Reduced due diligence is acceptable for example, where information on the identity of the customer or beneficial owner is publicly available or where checks and controls exist elsewhere in national systems. The guidelines also provide that, in

addition to the entities listed above financial institutions may apply reduced due diligence to existing customers who conduct transactions or a series of transactions or open new accounts. However in the latter case, where the financial institution believes that the source of funds/wealth originates from an external source or from a country where there is a high level of drug trafficking or corruption; or that equivalent standards have not been followed; or a material change occurred in the way that an account is operating, or there are doubts about previously obtained customer due diligence data, the financial institution must take additional measures in accordance with the guideline. There is no specific reference in this regard to compliance with FATF recommendations. However, in carrying out CDD financial institutions are required by section 7(4)(a), to have regard to all the circumstances of the case and, in particular, to whether a prospective customer is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money laundering. This section does not refer to terrorist financing.

457. Although the Guidelines indicate that simplified CDD measures are not appropriate for high risk customers, there is no express prohibition against reduced CDD measures where there is a risk of money laundering or terrorist financing.

458. The IMF in its 2000 valuation recognized that the risks associated with credit unions is relatively low, especially because of the disclosure of membership provision in the Co-operative Societies Act and the closed bond of almost every society.

459. The majority of persons using the large open bond society make direct debit payments to the society through their employer. This further reduces the money laundering risk, as it is known where the money is originating. Nevertheless, the full range of “Know Your Customer Guidelines” is applied to Credit Unions.

460. The Ministry of Economic Affairs and Development’s AML/CFT guidelines do not speak of reduced due diligence but rather in terms of verification not being required in the following circumstances:

- when the applicant for business is an institution itself subject either to the guidelines or to their foreign equivalent in another jurisdiction;
- in the case of small one-off transactions (whether single or linked) unless at any time between entry and termination it appears that two or more transactions which appear to have been small one-off transactions are in fact linked and constitute a significant one-off transaction.

461. The Ministry’s guidelines provide that certain postal, telephonic and electronic business may be the subject of reduced due diligence where funds are paid into a “non-paying account” by post, or electronically, or by telephoned instruction if

- it is reasonable in all the circumstances for payment to be made by such means;
- such payment is made from an account held in the name of the applicant for business at another regulated institution or recognized foreign regulated institutions;
- the name(s) of the applicant for business corresponds with the name(s) of the paying account-holder;
- the receiving institution keeps a record of the applicant’s account details with that other institution; and
- there is no suspicion of money laundering.

462. A non-paying account is defined as an account or investment product which does not provide: cheque or other money transmission facilities, or the facility for transfer of funds to other types of account which do provide such facilities, or the facility for repayment or transfer to a person other than the applicant for business whether on closure or maturity of the account, or on realization or maturity of the investment, or otherwise.

463. These provisions also apply to mailshots, off-the-page and coupon business placed over the

telephone or by other electronic media.

### **Timing of verification**

464. The MLFTA does not specifically address timing of verification. The AML/CFT guidelines require financial institutions to verify and adequately document the identity of a customer or account holder at the outset of a business relationship i.e. the earlier of acceptance of the signed application / proposal, or the first receipt of funds from the customer. For the purposes of the guidelines, a customer includes a person or entity on whose behalf an account is maintained. Financial institutions are permitted to complete verification of identity after establishment of the business relationship only in exceptional circumstances, where it would be essential not to interrupt the normal conduct of business for example, in the case of non face-to-face business and securities transactions. Financial Institutions are required to make a determination that in each case, this is an acceptable risk.

465. In these cases, the Guidelines provide that financial institutions should retain control of funds received until verification requirements are met and where requirements are not met, a business decision should be made on whether to open the account or execute the transaction.

466. There is no reference in the guidelines to the time within which verification should be completed in cases where verification is not completed at the outset of the business relationship. However, the authorities are of the view that the guidelines, while allowing flexibility for the financial institution to make a risk-based decision, do indicate that a financial institution “should make all effort to obtain such information as soon as possible and in accepting transactions, should indicate to the customer that failure to provide the information within a set framework, may trigger termination of the transaction.” It should be noted that this requirement is limited to non-face to face customers.

467. Where a financial institution or its subsidiary initiates transactions in its role as a securities broker or in the sale of mutual funds without establishing face-to-face contact and obtaining all of the relevant documentation, it should make all efforts to obtain such information as soon as possible. In accepting such transactions, financial institutions should:

- i. Set limits on the number and aggregate value of transactions that can be carried out;
- ii. Indicate to customers that failure to provide the information within a set timeframe, may trigger the termination of the transaction; and
- iii. Consider submitting a suspicious report.

468. The Ministry of Economic Affairs and Development’s guidelines provide that generally verification should, whenever possible, be completed before any transaction is completed unless it is necessary for sound business reasons to open an account or carry out a significant one-off transaction before verification can be completed. In such cases, stringent controls should be applied to ensure that any funds received are not passed to third parties.

469. Alternatively, a senior member of key staff may give appropriate authority to commence the business relationship prior to completion of verification. This authority should not be delegated. Any such decision should be recorded in writing. These guidelines further provide that verification, once begun, should normally be pursued either to a conclusion or to the point of refusal. If a prospective customer does not pursue an application, key staff may (or may not) consider that this is in itself suspicious and reportable to the AMLA.

470. The Guidelines do not require verification in these circumstances to be completed as soon as reasonably practicable, nor do they expressly state that the money laundering risks should be effectively managed

### **Failure to complete CDD**

471. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives indicate that

generally, financial institutions should not establish a business relationship if customer documentation information is not forthcoming at the outset of the relationship. As part of their due diligence process, financial institutions should discontinue a transaction, if customer documentation information is not forthcoming at the outset of the business relationship.

472. The guidelines provide that where a financial institution permits verification after the establishment of a business relationship, if identity information is not subsequently forthcoming, and the financial institution determines that the circumstances give rise to suspicion, it should make a report to the AMLA. The requirement for financial institutions to consider making suspicious transaction reports if they do not establish the business relationship due to incomplete customer information appears to be limited to cases where the business relationship has been established prior to obtaining complete identity information (so as not to interrupt the normal course of business).

473. Financial institutions are required to be cognizant of tipping off a customer when conducting due diligence, and there is a suspicion that a transaction relates to money laundering or the financing of terrorism. Financial institutions must make a business decision whether to open the account or execute the transaction as the case may be, but must submit a suspicious report to AMLA.

474. The Ministry of Economic Affairs and Development's guidelines provide in paragraph 50 that verification, once begun, should normally be pursued either to a conclusion or to the point of refusal. If a prospective customer does not pursue an application, key staff may (or may not) consider that this is in itself suspicious and reportable to AMLA.

475. The Ministry's guidelines provide in paragraph 72 that in the event of failure to complete verification of any relevant verification subject and where there are no reasonable grounds for suspicion, any business relationship with or one-off transaction for the applicant for business should be suspended and any funds held to the applicant's order returned until verification is subsequently completed (if at all). Funds should never be returned to a third party but only to the source from which they came. If failure to complete verification itself raises suspicion, a report should be made to the AMLA for determination as to how to proceed. There is no requirement for the business relationship to be terminated.

#### **Existing customers**

476. There is no requirement in law or regulation for financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

477. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions to develop a risk-based program for ensuring compliance of existing customers. Financial institutions must:

- i. Record their non-compliant business relationships, noting what information or documentation is missing; and
- ii. Establish a framework for effecting retrospective due diligence, including the setting of deadlines for the completion of each risk category. The timing of retrofitting can be linked to the occurrence of a significant transaction, a material change in the way that an account is operating; or if there are doubts about previously obtained customer due diligence data.

478. Further where a financial institution deems on the basis of risk and materiality, that it is not practical to retrofit a customer (e.g. the settlor has died; the policy or other contract is inactive or dormant), exemption of such policies should be approved by the compliance officer and senior management, ratified by the board and documented on the individual's file.

479. The examiners were advised by the Authorities that the FIU had reiterated to financial institutions the need to comply with the guidelines as it relates to retrofitting existing customer identity. One credit union interviewed confirmed that this process had started to ensure compliance with the 2006 AML/CFT guidelines. The domestic and offshore financial institutions that were interviewed all indicated that they

carried out CDD on their customers and seemed generally to be aware of the requirements of the AML/CFT framework of Barbados. Financial institutions generally have in place systems to prevent money laundering and combat financing of terrorism, including internal policies and procedures for: verifying the identity of customers on a risk sensitive basis and carrying out CDD measures in respect of the shareholders of corporate entities, on-going monitoring of customers and rejection of customers who fail to provide full identification information. However, not all institutions interviewed had in place a risk rating framework

### **Recommendation 6**

480. The only requirements for financial institutions dealing with PEPs are stipulated in the AML/CFT Guidelines issued by the various supervisory bodies in conjunction with the AMLA. The AML/CFT guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide that a financial institution's policy framework must include a description of the types of customers that are likely to pose a higher than average risk and procedures for dealing with such applications. Financial institutions are expected to design an AML/CFT framework that satisfies their business/ risk profile, taking into account among other factors the type of customer (e.g. whether ownership is highly complex, whether the customer is a PEP, whether the customer's employment income supports account activity, whether customer is known to other members of the financial group)

481. The AML/CFT guidelines include PEPS among the category of customers requiring enhanced due diligence. PEPs are defined as foreign senior political figures in accordance with FATF requirements and also include any corporate entity, partnership or trust relationship that has been established by or for the benefit of a senior political figure. A financial institution's policy framework must differentiate risk categories and corresponding mitigation measures. Financial institutions are required to obtain senior management approval for high-risk customers, including PEPS. Further, financial institutions may consider as part of their enhanced due diligence, periodic reporting to the Board about high risk accounts. Section 7.4.6 requires financial institutions to:

- i. Develop policies, procedures and processes such as the use of electronic databases to assess whether a customer is or has become a PEP;
- ii. Take reasonable measures to establish the source of wealth and the source of funds of PEPs;
- iii. Exercise greater scrutiny and monitoring of all PEP accounts; and
- iv. Require senior management to determine whether to continue the relationship where an existing customer subsequently becomes or is found to be a PEP;

482. In addition to the identity information normally requested for personal customers, the following information on a PEP is also required;

- a) Estimated net worth, including financial statements
- b) Information on immediate family members or close associates having transaction authority over the account and
- c) References or other information to confirm the reputation of the client.

483. The Ministry of Economic Affairs and Development guidelines do not address the treatment of PEPs. The requirements for PEPs as stipulated in the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives fully comply with the criteria of Recommendation 6. However, only the AML/CFT Guidelines of the CBB and the Supervisor of Insurance are enforceable on the licensees of

the CBB and the Supervisor of Insurance, respectively.

484. Financial institutions appeared to be aware of the heightened monitoring requirements for PEPs. Several of the financial institutions interviewed advised that they have in place policies on PEPs. One offshore institution indicated that they have a risk focused compliance committee that maintains an “alert” list which identifies high risk customers and all PEPs are on this list. Another institution indicated that approval for business relationships with PEPs are signed off by the Executive Director. One of the insurance companies interviewed applies enhanced due diligence to PEPs.

### **Recommendation 7**

485. Requirements for correspondent banking are stipulated in the CBB AML/CFT Guidelines. The Central Bank of Barbados, as part of its on-sight examination program reviews whether licensees’ AML/CFT policies apply to inter alia, correspondent banking relationships. Section 7.4.8 of the CBB AML/CFT Guidelines requires financial institutions to establish enhanced due diligence measures for correspondent banking relationships. Financial institutions are required to conduct due diligence on their respondent banks on a risk basis and must obtain the following on the respondent bank:

- Information on the ownership, and board and senior management;
- Assessment of the risk profile (consider the location and the nature of major business activities);
- Satisfy itself that there is an equivalent AML/CFT programme in place;
- Confirmation that the respondent does not maintain business relations with shell banks;
- Assessment of the quality of bank supervision and regulation in the respondent’s country; and
- Evidence of senior management’s approval before establishing the relationship.

486. In general, financial institutions are to refer to electronic databases to make checks on higher-risk customers. Financial institutions are required to obtain senior management approval for high-risk customers, including correspondent banking relationships.

487. While there is no direct requirement to document the respective AML/CFT responsibilities of each institution in the correspondent relationship, the authorities are of the view, that the need for licensees to show evidence of senior management’s approval before establishing the relationship will, in practice include the need for clear definition of the roles of each institution in the relationship, in keeping with prudent banking practices. With regard to “payable-through accounts”, the authorities’ view is that the need for the financial institution to satisfy itself that the respondent institution has equivalent AML/CFT systems in place will indicate that the respondent performs the normal CDD obligations of Recommendation 5. However, this does not necessarily indicate that the respondent is able to provide the relevant customer identification data upon request to the correspondent financial institutions. The CBB has advised that none of its licensees offer payable-through accounts. This is monitored on an ongoing basis through the examination process

488. The requirements for correspondent banking relationships in the CBB AML/CFT Guidelines comply with some of the criteria of Recommendation 7. However, in determining the quality of the supervision of a respondent institution, there is no specific requirement to ascertain if the respondent has been subject to a money laundering or terrorist financing investigation or regulatory action.

### **Recommendation 8**

489. The requirements dealing with measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes are in the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives. Financial institutions are required to pay special attention to new and

developing technologies. The guidelines further require compliance officers to participate in the approval process for high-risk business lines and new products, including those involving new technologies.

490. When accepting business from non-face-to-face customers, in order to prove to its satisfaction that the individual is who he/she claims to be, financial institutions are required to:

- a. Obtain documents certified by approved persons as identified in the CBB Guideline;
- b. Request additional documents to complement those which are required for face-to-face customers, including more than one photo bearing ID;
- c. Make independent contact with the customer, for example by telephone on a listed business or other number; and
- d. Request third party introduction e.g. by a regulated business introducer.

491. In addition, financial institutions may:

- a) Carry out employment checks (where applicable) with the customer's consent through a job letter or verbal confirmation on a listed business or other number;
- b) Require the first payment to be carried out through an account in the customer's name with another bank subject to equivalent customer due diligence standards; and
- c) Obtain any other information deemed appropriate.

492. Where initial checks fail to identify the customer, additional checks should be independently confirmed and recorded. If the prospective customer is required to attend a branch to conduct the first transaction, or to collect account documentation or credit/debit cards, then valid photo bearing identification should be obtained at that time.

493. Where a financial institution or its subsidiary initiates transactions in its role as a securities broker or in the sale of mutual funds without establishing face-to-face contact and obtaining all of the relevant documentation, it should make all efforts to obtain such information as soon as possible. In accepting such transactions, financial institutions should:

- iv. Set limits on the number and aggregate value of transactions that can be carried out;
- v. Indicate to customers that failure to provide the information within a set timeframe, may trigger the termination of the transaction; and
- vi. Consider submitting a suspicious report.

494. The above requirements outline specific CDD procedures for managing risks associated with non-face to face customers. While the procedures are specific to establishing customer relationships, the AML/CFT guidelines has identified non-face to face customers as requiring enhanced due diligence incorporating ongoing due diligence. Since the requirements are issued in the AML/CFT guidelines, they are only enforceable on the licensees of the CBB and the Supervisor of Insurance..

### **3.2.2 Recommendations and Comments**

495. The following is recommended;

496. Financial institutions should be legislatively required to;

- o undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;

- verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;
- determine who are the natural persons that ultimately own or control the customer;
- conduct on-going due diligence on business relationships;
- verify individual customer identity using reliable, independent source documents, data or information (identification data);

497. Simplified CDD measures should not be acceptable whenever there is a suspicion of ML or TF.

498. The enforceability of the following requirements should be extended from the licensees of the CBB and the Supervisor of Insurance to all other financial institution;

- Scrutiny of transactions and updating of data or documents collected under the CDD process
- Measures for high and low risk categories of customers
- Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.

499. The authorities should make the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance’s AML/CFT Guidelines enforceable on all financial institutions.

500. Financial institutions in gathering information about the quality of a respondent’s supervision should ascertain whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

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

### 3.2.3 Compliance with Recommendations 5 to 8

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
| R.5 | PC     | <p><b>There are no legislative requirements for financial institutions to</b></p> <ul style="list-style-type: none"> <li>❖ <b>undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;</b></li> <li>❖ <b>verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</b></li> <li>❖ <b>determine who are the natural persons that ultimately own or control the customer;</b></li> <li>❖ <b>conduct on-going due diligence on business relationships;</b></li> <li>❖ <b>verify individual customer identity using reliable, independent source documents, data or information (identification data);</b></li> </ul> <p><b>No express prohibition against reduced CDD measures where there is a risk of ML and FT</b></p> <p><b>The following requirements are only enforceable on the licensees of</b></p> |

|            |           |   |
|------------|-----------|---|
|            |           | <p><b>the CBB and the Supervisor of Insurance;</b></p> <ul style="list-style-type: none"> <li>• <b>Scrutiny of transactions and updating of data or documents collected under the CDD process</b></li> <li>• <b>Measures for high and low risk categories of customers</b></li> <li>• <b>Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.</b></li> </ul> |
| <b>R.6</b> | <b>PC</b> | <b>Requirements for politically exposed persons are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b>   |
| <b>R.7</b> | <b>LC</b> | <b>No specific requirement for financial institutions to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.</b>   |
| <b>R.8</b> | <b>PC</b> | <b>The requirements for non-face to face customers are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b>  |

### **3.3 Third parties and introduced business (R.9)**

#### 3.3.1 Description and Analysis

#### **Recommendation 9**

502. The only requirements dealing with third parties and introduced business are in the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperative Societies. The Ministry of Economic Affairs and Development AML/CFT Guidelines also has similar requirements.

503. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives state that financial institutions should obtain copies of the due diligence documentation provided to the introducer prior to the commencement of the business relationship. The due diligence documentation as required in section 7 of the Guidelines covering customer due diligence is in compliance with the elements of the CDD process dealt with in criteria 5.3 to 5.6 of Recommendation 5.

504. Where a prospective customer is introduced from within a financial institution's group, provided the identity of the customer has been verified by the introducing parent company, branch, subsidiary or associate in line with the standards set out in the guideline, it is not necessary to re-verify the identification documents unless doubts subsequently arise about the veracity of the information. The financial institution must, however, retain copies of the identification records in accordance with the requirements in the MLFTA. Financial institutions should obtain written confirmation from a group member confirming completion of verification.

505. The Ministry of Economic Affairs and Development's AML/CFT Guidelines provide that verification may not be needed in the case of a reliable introduction from a locally regulated institution in the form of a written introduction. Judgment should be exercised as to whether a local introduction may be treated as reliable, employing the knowledge which the institution has of local institutions generally, supplemented as necessary by appropriate enquiries. Details of the introduction should be kept as part of the records of the customer introduced.

506. The Ministry's AML/CFT Guidelines do not require financial institutions to immediately obtain from the third party the necessary information concerning elements of the CDD process.. However, introducers should agree to supply copies of verification records to financial institutions upon demand (paragraph 44).

507. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives state that a financial institution should satisfy itself that the regulated entity or introducer has in place KYC practices at least equivalent to those required by Barbados law and the financial institutions itself. In addition, financial institutions should:

- a. Document in a written agreement the respective responsibilities of the two parties;
- b. Satisfy itself that an introducer continues to conform to the criteria set out above (e.g. conduct periodic reviews);
- c. Consider terminating the relationship where an introducer fails to provide the requisite customer identification and verification documents; and
- d. Consider terminating the relationship with an introducer where there are persistent deviations from the written agreement.

508. Financial institutions are not required to assess whether the third party introducer is adequately supervised for AML/CFT purposes in accordance with Recommendations 23,24 and 29

509. Financial institutions are required to take enhanced due diligence measures when establishing and maintaining a relationship or accepting documentation with respect to countries where, for example, it is believed that there is a high level of drug trafficking or corruption.. There are no express prohibitions against accepting documentation or requirement to implement enhanced due diligence from countries which insufficiently apply the FATF recommendations. There is no indication that authorities have determined the countries in which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based.

510. While a financial institution may rely on other regulated third parties to introduce new business in whole or in part the ultimate responsibility for customer identification and verification remains with the financial institution.

511. The Ministry's AML/CFT Guidelines provide that where a financial institution relies on an introducer the financial institution should be satisfied that the rules of the introducer's professional body or regulator (as the case may be) include ethical guidelines, which taken in conjunction with the money laundering regulations in their jurisdiction include requirements at least equivalent to those in the Ministry's Guidelines. This guidance does not fully address the requirements of Recommendations 23, 24 and 29. Additionally, there is no indication as to whether the Ministry of Economic Affairs and Development has determined in which countries third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based. Finally, the Ministry's guidelines do not advise that the ultimate responsibility for customer identification and verification remains with the financial institutions relying on the third party.

512. Since the requirements dealing with third parties and introduced business are in the AML/CFT Guidelines, only those in the AML/CFT Guidelines for the CBB and the Supervisor of Insurance are enforceable on the licensees of the CBB and the Supervisor of Insurance. The CBB reviews, as part of its on-site inspections, whether inter alia licensees accept introduced business and whether they assess the CDD standards of those introducing business. The requirements in the CBB AML/CFT Guidelines are mirrored in all the other guidelines except for those of the Ministry of Economic Affairs and Development; the deficiencies of which have already been noted. The CBB AML/CFT Guidelines comply with most of the criteria of Recommendation 9 except for financial institutions not being required to assess whether the third party introducer is adequately supervised for AML/CFT purposes in accordance with Recommendations 23, 24 and 29 and no indication of the competent authorities determining in which countries third parties that meet the conditions of being regulated and supervised

and comply with CDD requirements can be based.

### 3.3.2 Recommendations and Comments

513. The following is recommended;

514 The authorities should consider making the requirements for third party and introduced business as stipulated in the CBB AML/CFT Guidelines enforceable on all other financial institutions.

515 Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.

516 Authorities should consider advising financial institutions about countries from which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based.

### 3.3.3 Compliance with Recommendation 9

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.9 | PC     | <p><b>Requirements for third parties and introduced business are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b></p> <p><b>No requirement for financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29.</b></p> <p><b>No indication of authorities determining in which countries third parties that satisfy the conditions of being regulated and supervised and comply with CDD requirements can be based.</b></p> |

## 3.4 Financial institution secrecy or confidentiality (R.4)

### 3.4.1 Description and Analysis

#### Recommendation 4

517 Barbados has no secrecy laws inhibiting the implementation of the FATF Recommendations. The MLFTA requires financial institutions to take reasonable measures to satisfy themselves that an applicant for business is who he says he is and to identify and verify persons on whose behalf an applicant for business may be acting.

518 Section 6A(4) of the MLFTA allows the Director of the FIU access to the records of the Customs, Immigration, Inland Revenue, Land Tax and National Insurance Departments, the VAT Office and the Central Bank. The CBB is the only financial sector regulator included in the section 6A(4) list. The Authorities have already identified this issue for legal remedy. It should be noted that section 6A(3)(c) empowers the AMLA to require from any financial institution the production of any information except information which is subject to legal professional privilege that the AMLA

considers relevant to fulfill its functions

519 Section 6D of the MLFTA allows the AMLA to share any report or disclosure information with the above entities, subject to the confidentiality provision in the Act. Further, notwithstanding any law to the contrary, any of the above entities may provide information to the AMLA or to each other for the purpose of the MLFTA, if the information is not subject to legal professional privilege. The MLFTA section 8(1)(d) provides that the AMLA or its authorized appointee may enter a financial institution to inspect and take copies of customer identity records and business transaction records relating to transactions in excess of \$10,000 and question financial institutions in relation to such records.

520 Section 6C of the MLFTA permits the FIU to communicate relevant information to any foreign FIU where:

- The FIU is located in a state that is party to any agreement with Barbados in respect of the exchange of information under the MLFTA; and
- The FIU is satisfied that the state has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

521. Section 22A of the MLFTA places a duty of confidentiality on the AMLA, every person who receives reports or information under the Act and every person concerned with the administration of the Act. The Act further prevents a person from disclosing the contents of any document, communication or information unless provided for under the Act or as is necessary in the course of the person's duties.

### **Central Bank**

522 Provisions authorizing access to information of a financial institution or its holding company by the Central Bank are found at sections 47 – 48 and 52 of FIA and sections 53 – 54 of IFSA.

523 Section 34 of the CBB Act, allows the Central Bank where it considers it necessary, to cause an examination of the affairs of any financial institution for the purpose of ascertaining the nature of its business and the condition of its affairs. The financial institution must furnish any information required, including any books, records or other document containing or likely to contain information.

524 Section 44(1) of the FIA places a duty of confidentiality on the CBB, subject to defined statutory exceptions, its officers (and any persons duly authorized by it to receive information about financial institutions on behalf of the Central Bank) in respect of any statement, return or information furnished or submitted by a financial institution in respect of its business.

525 Section 44 of the FIA authorizes the CBB to share information with the Director of Public Prosecutions, the Commissioner of Inland Revenue and the appropriate supervisory authority of financial institutions outside Barbados at the request of that authority, where there is a branch, holding company or affiliate of the financial institution operating in that country.

526 There are no provisions in the FIA authorizing the CBB to share information with other domestic financial sector supervisory agencies. The authorities advise that the issue of information sharing with domestic supervisory authorities has been addressed in the Financial Institutions (Amendment) Act, 2006, which is awaiting proclamation.

527 Section 48 of the IFSA permits the CBB to share information relative to its offshore financial institutions with any supervisory or regulatory authority of financial institutions in Barbados and in response to the request of a foreign financial sector regulatory authority, where there is a branch, holding company or affiliate of a financial institution operating in that country.

528 The Barbadian authorities indicated that, information sharing is facilitated at the domestic level at monthly meetings of the Anti-Money Laundering AMLA whose board includes representatives from

the Office of the Supervisor of Insurance, Ministry of Industry and International Business, Corporate Affairs & Intellectual Property, Police, Central Bank, Customs, Inland Revenue Department, and Land Tax Department.

### **Securities Commission**

529 The Securities Act section 8 prohibits the use of confidential information received by Commissioners and staff of the Securities Commission as a result of their relationship with the Commission. This duty of confidentiality is subject to defined exceptions.

530 By virtue of section 133 of the Securities Act, the Securities Commission may appoint a person to conduct an investigation to ascertain whether any person has contravened, is contravening or is about to contravene the Act. Such investigator has power to summon persons to testify to all matters relating to the subject matter of the investigation and to produce all records under his control or in his possession relating to the investigation. The Securities Act makes no reference to ML or TF. The Barbadian authorities have advised that the AMLA has authorized the Securities Commission under section 8(1)(d) of the MLFTA to inspect and take copies of customer identification records and business transaction records relating to transactions in excess of \$10,000.

531 In relation to mutual funds, section 33 of the Mutual Funds Act empowers the Securities Commission to inspect the books of a mutual fund without prior notice. Section 34 makes provision for the inspector to be given access to all the records of the mutual fund when requested. Section 35 makes it mandatory for an operator of a mutual fund to give the Securities Commission certain information when requested.

532 An MOU between regulators in Barbados provides for the sharing of information domestically. Additionally section 11 of the Securities Act mandates the Securities Commission to consult and co-operate with other domestic and international regulatory agencies. Section 11 (2) specifically empowers the Securities Commission to co-operate with an agency of a foreign government in connection with a securities related investigation whether the activities took place within or outside Barbados.

### **Registrar of Cooperatives Societies**

533. The Registrar is authorized under the Cooperative Societies Act to appoint a person to examine the books and affairs of cooperative societies. The Registrar or any appointee is authorized to inspect the books, accounts, papers and securities of a registered society and is entitled to inspect their cash in hand. There is no provision in the CSA subjecting the Registrar to a duty of confidentiality.

534. Under Section 165(1) of the Co-operative Societies Act a member of a society, the Registrar or any interested person may apply ex parte, or on any notice that the court may require, to the court for an order directing an investigation to be made of the society and any of its member societies or cooperations. Section 165(2) permits the court to order an investigation of the society and appoint an inspector (who may be the Registrar) to conduct the investigation. The court may also order the production of documents and compel persons to give evidence on oath before the inspector. These powers are applicable where the court is of the view that inter alia;

- the society is not fulfilling the purpose stated in its bylaws;
- the society is not carrying on business in accordance with the Cooperative Societies Act, the regulations or the by-laws;
- the society is not organized or being operated on cooperative principles;
- the business of the society or any of its member societies is or has been carried on with intent to defraud any person;

535. Section 167(2) of the Co-operative Societies Act, authorizes the inspector to furnish to, or exchange information and otherwise co-operate with, any public official in Barbados or elsewhere who

- (a) is authorised to exercise investigatory powers; and
- (b) is investigating, with respect to the society, an allegation of improper conduct that is the same as or similar to the conduct described in section 165(2).

### **Supervisor of Insurance**

536. Under the IA, the Supervisor of Insurance may conduct inspections of its domestic and offshore financial institutions and compel information about any aspect of their insurance business (see sections 52 and 53)

537. Section 42 requires foreign companies to keep within Barbados and make available to the Supervisor on request records of local policies issued by the company, aggregate premiums received on these policies, premiums paid on re-insurance and such other books, records, receipt vouchers necessary to allow the company to prepare for transmission to the Supervisor a statement of the insurance business carried on by it in Barbados.

538. Section 42(2) authorizes the Supervisor to examine the books and records of the company, and the company must cause these books to be readily available for examination and facilitate the examination.

539. The Supervisor is under a duty of confidentiality with respect to information acquired under Part II of the Insurance Act (which includes information obtained on inspection). While the IA does not expressly authorise the Supervisor to share information with domestic and foreign counterparts, the Supervisor has provided information to regional and international regulators.

540 Under section 35 of the EIA, the Supervisor of Insurance is under a duty not to disclose confidential information relating to a financial institution. This duty is subject to defined exceptions which include disclosure to other regulatory authorities where:

- the other regulatory authority permits reciprocal disclosure;
- the disclosure is in the interest of prudential regulation of the exempt insurance industry;
- the disclosure pertains to those actions of a financial institution in violation of any enactment or with respect to the failure of the financial institution to comply with generally accepted principles relating to the exempt insurance industry;
- the financial institution is given prior notification of the intention to disclose the requested information; and
- any information disclosed is restricted to the information requested by the other regulatory authority.

### **Ministry of Economic Affairs and Development (the Ministry)**

541. There do not appear to be any legislative provisions empowering the Ministry of Economic Affairs and Development to access information from their licensees or to disclose information to domestic or foreign counterparts.

542. All competent authorities except for the Ministry of Economic Affairs and Development in Barbados may access the information necessary to properly perform their functions in combating ML or FT. Each of the regulators except the Registrar of Cooperatives is under a duty of confidentiality with

respect to non-public information obtained in the course of their duties.

543. Sharing of information at the domestic level is also facilitated by a Memorandum of Understanding dated March 2006 between the Central Bank, the Ministry of Economic Affairs and Development, the Barbados Stock Exchange, the Securities Commission, the Registrar of Cooperatives and Friendly Societies, the Financial Intelligence Unit, the Supervisor of Insurance and the Department of Corporate Affairs and Intellectual Property. Information may only be shared under the MOU to the extent permitted by the regulatory laws..

#### 3.4.2 Recommendations and Comments

544. While Barbados has no secrecy laws inhibiting the implementation of the FATF Recommendations there are certain deficiencies which detract from full compliance with requirements of Recommendation 4. Therefore the following recommendations are made;

545 The MLFTA should be amended to specify the reason for inspections by the AMLA i.e. review of compliance with MLFTA and AML/CFT guidelines generally

546 The FIA should be amended to allow the CBB to share information with domestic regulators

547 The CSA should be amended to permit the Registrar of Cooperative Societies to share information with domestic and foreign regulators without having to obtain a Court Order

548 An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted.

549 The EIA should be amended to facilitate information sharing with foreign counterparts by the Supervisor of Insurance

550 The Ministry of Economic Affairs and Development should be authorized to access information from its licensees and be able to share information appropriately with other competent authorities.

#### 3.4.3 Compliance with Recommendation 4

|            | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|------------|---------------|---|
| <b>R.4</b> | <b>PC</b>     | <b>The CBB cannot share information with other domestic financial sector supervisory agencies.<br/>Under the CSA, the Registrar of Cooperatives can only share information pursuant to a court order;<br/>The Ministry of Economic Affairs and Development does not have the authority to access information from licensees or to disclose information to domestic or foreign counterparts.</b> |

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

#### 3.5.1 Description and Analysis

## **Recommendation 10**

551. Section 8(1) (a) of the MLFTA requires every financial institution to establish and maintain for a period of 5 years;

- i. Business transaction records of all business transactions exceeding \$10,000 or its equivalent in foreign currency for a period of five years after the termination of the business transaction
- ii. A record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained where evidence of a person's identity is obtained in accordance with section 7

552. Section 7 of the MLFTA requires financial institutions to take reasonable measures to require customers to produce identification records.

553. Section 2(1) of the MLFTA defines "business transaction records" to include:

- (a) the identification records of all the persons who are a party to the transaction;
- (b) a description of the transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for the transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

554. Section 2(1) also defines "identification record" as;

(i) in the case of an individual, sufficient documentary evidence to prove to the satisfaction of a financial institution that the individual is who that individual claims to be:

(ii) in the case of a corporate body inter alia:

- certified copies of the certificate of incorporation;
- certificate of continuance issued pursuant to section 352 or 356.2 of the Companies Act,
- certificate of registration, where the body corporate was incorporated abroad and registered under the Companies Act, and any annual returns filed;
- the name, address, occupation, nationality and such other evidence as may satisfy the financial institution that the directors and shareholders are who they claim to be;

555. Section 8(3) of the MLFTA requires that records maintained under subsection 8(1)(a) contain particulars sufficient to identify:

(a) the name, address and occupation (or where appropriate, the business or principal activity) of each person (conducting the transaction or on whose behalf the transaction is being conducted, as the case may be) and the method used by the financial institution to verify the identity of each such person;

(b) the nature and date of the transaction;

(c) the type and amount of currency involved;

(d) the type and identifying number of any account with the financial institution involved in the transaction;

(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(f) the name and address of the financial institution, and of the officer, employee or agent of the

financial institution who prepared the record.

556. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions to retain all records of business transactions exceeding BDS\$10,000 or the equivalent in foreign currency and to ensure that linked transactions, which are individually below this limit, but with an aggregate value exceeding this amount, are monitored and appropriately recorded. Records obtained on occasional transactions should also be retained. The retention period for these records is a minimum of five years after the termination of the business transaction, or the business relationship, whichever is applicable. Further, the guidelines provide that it may be necessary for financial institutions to retain records, until such time as advised by the FIU or High Court, for a period exceeding the date of termination of the last business transaction where:

- i. There has been a report of a suspicious activity; or
- ii. There is an on-going investigation relating to a transaction or client.

557. In describing the nature of the records that should be retained, the guidelines provide that to comply with Section 8 (1) (a) of the MLFTA, financial institutions should retain:

- i. Copies or records of customer identification, including those obtained through the conduct of enhanced due diligence;
- ii. Account files, account statements and business correspondence; and
- iii. All business transaction records, domestic and international, of all transactions exceeding BDS\$10,000 or its equivalent in foreign currency. In the case of wire transfers, the records for all transactions are to be maintained.

558. The Ministry of Economic Affairs and Development's AML/CFT Guidelines provide in paragraph 90 that in order to facilitate the investigation of any audit trail concerning the transactions of their customers, institutions should retain the following records:

- account opening and verification records and written introductions for a period of at least 5 years after termination or, where an account has become dormant, 5 years from the last transaction;
- ledger records for a period of at least 5 years following the date on which the relevant transaction or series of transactions is completed;
- records in support of ledger entries, including credit and debit slips and cheques, for a period of at least 5 years following the date on which the relevant transaction or series of transactions is completed.

559. Additionally, paragraph 91 provides that where an investigation into a suspicious customer or a suspicious transaction has been initiated, the AMLA may request an institution to keep records until further notice, notwithstanding that the prescribed period for retention has elapsed. Even in the absence of such a request, where an institution knows that an investigation is proceeding in respect of its customer, it should not, without the prior approval of the AMLA, destroy any relevant records even though the prescribed period for retention may have elapsed.

560. The above legislative provisions link the retention of business transaction records to a transaction threshold of over BD\$10,000 or its equivalent in foreign currency. Financial institutions are therefore not required to retain records of business transactions under BD\$10,000 under the MLFTA. FATF recommendations require legislative obligations for the retention of records on all transactions and identification data on all accounts. With regard to the retention period for identification data the Ministry of Economic Affairs and Development's AML/CFT Guidelines provides for the retention of identification data for at least five years after termination and the AML/CFT guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and

the Registrar of Cooperative Societies refers to the retention of records of business transactions for a minimum of five years after the termination of the business transaction, or the business relationship.

561. FATF recommendation 10 requires legislative obligations for the retention of “all necessary records on transactions. The Authorities are of the view that Barbados has legislatively defined business transaction records over BDS\$10,000 or the equivalent in foreign currency as the “necessary records”. The only exception relates to occasional and wire transactions, which are detailed in the guidelines as mandatory requirements.” The examination team does not support this position

562. Extension of the record-keeping retention period by a competent authority and retention of account files and business correspondence are dealt with in the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperative Societies and not in legislation as required by the FATF Recommendations..

563. The MLFTA in section 8(1) (d) requires financial institutions to permit any member of the AMLA or any person duly authorised by it, upon request, to enter into any premises of the financial institution during normal working hours and

- (i) inspect the records kept pursuant to paragraph (a) (i.e business transaction records and identity verification evidence);
- (ii) permit any member of the AMLA or any person duly authorised by it, to make any notes or take any copies of the whole or any part of any such record; and answer any questions of the AMLA, or any person duly authorised by it, in relation to such records;

564. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require the records of financial institutions to be retained in a format, including electronic, scanned or microfilm, that would facilitate reconstruction of individual transactions (including the amounts and types of currency involved) so as to provide, if necessary, evidence for prosecution of criminal activity and to enable financial institutions to comply swiftly with information requests from the FIU. This applies whether or not records are stored off the premises of the licensee.

565. Paragraph 95 and 96 of the Ministry of Economic Affairs and Development’s AML/CFT Guidelines provides that institutions should keep all relevant records in readily retrievable form and be able to access records without undue delay. A retrievable form may consist of an original hard copy, microform, or electronic data. Records held by third parties are not regarded as being in a readily retrievable form unless the institution is reasonably satisfied that the third party is itself an institution which is able and willing to keep such records and disclose them to it when required.

566. While the above legislative provisions provide for access by the FIU to transaction and identification records, timely access is specified only in the AML/CFT guidelines.

### **Special Recommendation VII**

567. There are no direct requirements in law or regulation for financial institutions to comply with the requirements of SR VII. Financial institutions licensed under the FIA & IFSA that are offering wire transfer services must pursuant to section 8(1)(f) of the MLFTA comply with the CBB’s AML/CFT Guidelines which contain relevant measures in section 7.4.9.

568. The requirements at Section 7.4.9 are not applicable to the following types of payments:

- i) Any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction. However, when credit or debit cards are used as a payment system to effect a money transfer, the necessary information should be included in the message; and

- ii) Financial institution-to-financial institution transfers where both the originator and the beneficiary are financial institutions acting on their own behalf.

569. Section 7.4.9 of the CBB's AML/CFT guideline states that where a licensee acts as the ordering financial institution, it should obtain, retain and verify the full originator information, i.e. the originator's name, account number (or unique identifier where the originator is not an account holder), and address for wire transfers in any amount. Verification of existing customers should be refreshed where there are doubts about previously obtained information.

570. In practice, one of the banks interviewed advised the examination team that they retain the name, account number and unique identification number of the originator with the wire transfer but not the address

571. A licensee acting as an ordering financial institution is required to retain full originator information with cross-border wire transfers above BDS\$2,000. Batch transfers that include cross-border wire transfers sent by a money/value transfer service provider are to be treated as cross-border transfers.

572. Batch transfers that include cross-border transfers may be treated as domestic wire transfers by the ordering financial institution, provided that the requirements applicable to domestic transfers (set out below) are met.

573. Ordering financial institutions conducting domestic wire transfers above the BDS\$2000 threshold are required to include full originator information. However, the financial institution may send only the originator's account number (or in the absence of an account number, a unique identifier) where full originator information can be made available to:

- The receiving financial institution and the Central Bank within three (3) business days of receipt of a request; and
- Domestic law enforcement authorities upon request.

574. The CBB AML/CFT Guidelines state in a footnote, that in general only routine transactions should be batched.

575. As an intermediary financial institution, the licensee is required to ensure that all originator information is retained with ongoing transfers of any amount. Where difficulties arise in retaining the information from cross-border transfers in related domestic transfers, then all information received from the ordering financial institution should be retained for five years. Licensees had until 31/12/2006 to put appropriate systems in place to facilitate the capture and transfer of all required information.

576. As already noted the CBB AML/CFT Guidelines establish a de minimis threshold at BDS\$2,000. Section 7 of the Guideline states that the extent of identity information and verification of occasional wire transfers below BDS\$2,000 is dependent on the materiality of the transaction and the degree of suspicion. This will be dependent on the licensee's knowledge of the customer, their business and the risk profile.

577. As beneficiary financial institution, the CBB Guideline states that licensees are required to apply a risk-based system to the review of transfers for complete originator information and reporting of unusual or suspicious activity.

578. There is a general requirement in the Guidelines that any transaction that gives rise to reasonable grounds to suspect that it is related to the commission of a money laundering or terrorism offence is to be reported to the AMLA (Section 8 of the CBB Guideline).

579. Financial institutions licensed under the FIA & IFSA that are offering wire transfer services must comply with the AML/CFT guidelines pursuant to section 8(1)(f) of the MLFTA and are

examined for compliance by the Central Bank which derives its inspection powers from the FIA & IFSA. The Central Bank utilises the CBB AML/CFT Guidelines as an integral part of the framework for assessing how licensees implement their AML/CFT policies and have incorporate testing for compliance with the relevant requirements within its supervisory regime.

580. Although licensees are subject to regulation and supervision by the CBB, only the IFSA specifically provides that the Central Bank may sanction a licensee for breach of the MLFTA. The sanction which may be imposed is revocation of a financial institution’s licence. The FIA contains no such provision but the CBB can take any of the actions defined in the law - remedial measures, cease and desist orders and compulsory wind-up. The ultimate penalty is revocation of a license where the licensee is deemed to be operating in an unsafe and unsound manner. There is no indication that any sanctions have been imposed for non-compliance with the CBB AML/CFT Guidelines relative to observance of SR VII.

581. Stand-alone money remitters are not subject to any regulatory oversight except for exchange control purposes. In practice stand alone money remitters may only use wire transfers to receive money in Barbados but may not remit money out of Barbados.

582. The requirements relating to SR VII are not set out in law or regulation but are covered in the CBB AML/CFT guidelines which are considered enforceable means. The guidelines are comprehensive and require financial institutions to observe the requirements of SR VII.

### 3.5.2 Recommendations and Comments

583. Most of the criteria of Recommendation 10 are dealt with in the AML/CFT guidelines rather than in legislation as required. Therefore the following is recommended:

584 The MLFTA should be amended to require the retention of all necessary records on all transactions for a period of five years after termination of the transaction;

585 Financial institutions should be legislatively required to maintain records of account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested by a competent authority.

586 Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis.

587. Most of the requirements of SR VII are covered in the CBB AML/CFT Guidelines. It is recommended that stand-alone money remitters be monitored for compliance with the requirements of SRVII.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.10 | NC     | <p><b>Only records of business transactions exceeding \$10 000 are legislatively required to be retained for five years after termination of a transaction;</b></p> <p><b>No requirement in law or regulations for account files and business correspondence to be retained for at least five years after the termination of the business relationship;</b></p> <p><b>No direct legal requirement for financial institutions to ensure that</b></p> |

|               |           |  |
|---------------|-----------|--|
|               |           | <b>records available on a timely basis to domestic competent authorities.</b>  |
| <b>SR.VII</b> | <b>PC</b> | <b>Stand alone money-remitters are not subject to any regulatory oversight except for exchange control purposes.</b> |

**Unusual and Suspicious Transactions**

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

3.6.1 Description and Analysis

**Recommendation 11**

588 The only requirements for the monitoring of complex, unusual large transactions are specified in the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives. Section 8 of the Guidelines deals with requirements for unusual and suspicious transactions which may be complex, unusual or large or of an unusual pattern. These may include significant transactions relative to the account relationship, transactions that exceed prescribed limits or a very high account turnover. While unusual transactions are not necessarily suspicious, section 8 states that they should give rise to further enquiry and analysis. Additionally, licensees are required to examine, to the extent possible, the background and purpose of transactions that appear to have no apparent economic or visible lawful purpose, irrespective of where they originate and develop procedures to assist in the identification of unusual or suspicious activity in all types of business transactions, products and services offered by financial institutions..

589 Section 8 (1) (a) of the MLFTA requires record retention for five years for business transactions which exceed BD\$10,000. Section 10 of the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require the maintaining of records related to unusual and suspicious transaction reports. Licensees are to maintain internal written findings of transactions investigated irrespective of whether a suspicious transaction report was made and consideration of those reports and of any action taken. It should be noted that the requirements of the guidelines relative to maintaining records for a minimum of five years are limited to business transactions which exceed \$10,000. Some financial institutions interviewed indicated that they report suspicious and unusual transactions to the FIU. Others however did not appear to fully appreciate that both suspicious and unusual transactions should be reported to the FIU and reported only suspicious transactions. Additionally, in the course of discussions with the assessors financial institutions indicated their awareness of the legal requirement to retain records relating to business transactions exceeding BD\$10,000 for the statutory five year period.

590 While the above guidelines are comprehensive with regard to monitoring complex, unusual and large transactions, only business transactions which exceed BD\$10,000 are required to be maintained for the minimum statutory period of five years. Also the guidelines while being applicable to the licensees of the relevant supervisory authorities are only enforceable on the licensees of the Central Bank and the Supervisor of Insurance. Additionally, the Ministry of Economic Affairs and Development AML/CFT Guidelines do not have any requirements for the monitoring of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

**Recommendation 21**

591 Section 7(4)(a) of the MLFTA provides that where financial institutions verify customer identity, regard should be had to inter alia whether the applicant is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money laundering.

592 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives caution financial institutions about doing business with persons from countries where, for example, it is believed that there is a high level of drug trafficking or corruption and greater care may be needed in establishing and maintaining the relationship or accepting documentation from such countries.

593 The Ministry of Economic Affairs and Development's AML/CFT Guidelines state in paragraph 67 in relation to companies that as legal controls vary between jurisdictions, particular attention may need to be given to the place of origin of corporate documentation and the background against which it is produced. Financial institutions and service providers should exercise extreme caution in their business relations and transactions with persons, including companies and financial institutions, from jurisdictions with no or inadequate anti-money laundering structures and procedures. However, these guidelines are not enforceable on its licensees.

594 The authorities have no measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. Of the above measures only the Ministry of Economic Affairs and Development's AML/CFT Guidelines is specific with regard to no or inadequate anti-money laundering structures and procedures. However, there is no reference to the FATF Recommendations, the criteria for assessing adequacy of AML/CFT measures. This together with no measures in place to advise of concerns about weaknesses in the AML/CFT systems of other countries leaves effective implementation of existing deficient measures solely at the discretion of the financial institutions.

595 As already mentioned under Recommendation 11, the AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require financial institutions to examine, to the extent possible, the background and purpose of transactions that appear to have no apparent economic or visible lawful purpose, irrespective of where they originate and to document and retain the findings of such examinations of business transactions exceeding BD\$10,000 for a minimum of five years. This requirement covering all transactions which have no apparent economic or visible lawful purpose will of necessity include those transactions from countries which do not or insufficiently apply the FATF recommendations. However, only, the CBB AML/CFT Guidelines are enforceable on its licensees. There is no similar requirement in the Ministry of Economic Affairs and Development's Guidelines.

596 Barbados has not issued instructions regarding counter-measures, however financial institutions are advised in the AML/CFT guidelines to make a decision based on risk as to their business transactions and relationships and apply enhanced due diligence as applicable. They state that financial institutions may be wary of doing business with persons from countries where, as already mentioned, it is believed that there is a high level of drug trafficking or corruption and greater care may be needed in establishing and maintaining the relationship or accepting documentation from such countries. High-risk customers should be approved by senior management and stringent documentation, verification and transaction monitoring procedures should be established.

### 3.6.2 Recommendations and Comments

597 The following is recommended;

598 The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions;

599 The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years.

600 The AML/CFT guidelines should provide specific guidance with regard to requiring special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;

601 Written findings of all transactions with no apparent economic or lawful purpose from countries that do not or insufficiently apply the FATF Recommendations should be available for competent authorities;

602 Authorities should put in place measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries;

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

### 3.6.3 Compliance with Recommendations 11 & 21

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.11</b> | <b>PC</b>     | <p><b>Monitoring requirements specified in the AML/CFT guidelines are only enforceable on the licensees of the Central Bank and the Supervisor of Insurance</b></p> <p><b>The retention of the written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</b></p>  |
| <b>R.21</b> | <b>NC</b>     | <p><b>Financial institutions are not required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</b></p> <p><b>No effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</b></p> <p><b>Written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</b></p> <p><b>No countermeasures issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</b></p> |

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

### 3.7.1 Description and Analysis<sup>4</sup>

#### **Recommendation 13 and SR IV**

604 Section 8(1)(b) of the MLFTA places a duty on financial institutions to forthwith report to the AMLA any business transaction where the identity of the person involved, the transaction or any other circumstance concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction inter alia involves proceeds of crime, the financing of terrorism or is of a suspicious or an unusual nature. Failure to make a report is punishable by a fine of \$100,000 on conviction.

605 Proceeds of crime are defined in section 2 of the MLFTA as proceeds of unlawful activity. Unlawful activity is defined as any activity which is a crime under law punishable by death or imprisonment for a period of not less than 12 months. While this definition allows for a wide range of predicate offences to be covered under the MLFTA, some of the FATF designated categories of offences – human trafficking and corruption and bribery are not adequately addressed in law. See discussion in section 2.1.1.

606 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance, and the Registrar of Cooperatives meet the requirements of section 8 (1) (b) of the MLFTA. The Ministry of Economic Affairs and Development's Guidelines also requires financial institutions to recognize and report suspicious transactions involving proceeds of crime or the funding of terrorism to the AMLA. In practice financial institutions are aware of the obligation to report suspicious transactions to the FIU, and have made reports. There appeared to be some uncertainty amongst some financial institutions as to the meaning of "unusual" transactions. One financial institution interviewed stated that it reports to the FIU suspicious transactions only but not unusual transactions.

607 The MLFTA does not specifically require financial institutions to report attempted or aborted suspicious transactions. The Barbadian authorities have advised however, that they intend to amend the definition of "business transaction" in section 2 of the MLFTA to include in that definition aborted and attempted transactions. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives exceed the requirements of the legislation and state that a transaction includes an attempted or aborted transaction. The Ministry of Economic Affairs and Development's Guidelines do not address this requirement. The requirement to report suspicious transactions applies to tax matters once the offences are caught under the meaning of unlawful activity.

#### **Recommendation 14**

608 Sections 22A(5) & 22A(6) of the MLFTA state that where a financial institution has information about one of its accounts and has reasonable grounds for believing that (a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence or (b) the information would otherwise be of assistance in the enforcement of the Act or any regulations made thereunder, the financial institution may give the information to the AMLA, in which event no action, suit or proceeding lies against the institution, an officer, employee or agent acting in the course of the person's employment or agency.

609 Section 52 of the POCA contains largely similar provisions but provides that financial institutions may give the relevant information to the police or to the Director of Public Prosecutions.

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<sup>4</sup> The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

610 Neither the MLFTA nor the POCA condition their protection on reporting in good faith, however the requirement to have a reasonable belief as to the matters set out in the provisions complies with this requirement.

611 It should be noted that both these provisions are based on voluntary or permissive reporting, since the entities “may”, not shall, supply the information. There are, however, other reporting provisions under the MLFTA which are mandatory, rather than discretionary in effect, and a question arises as to the application of the protection afforded under section 22A(6) in these cases.

612 Section 8(1)(b) mandates financial institutions to report to AMLA any “business transaction” where the identity of the person involved, the transaction “or any other circumstance” surrounding the transaction reasonably leads the institution to suspect it is dealing with a suspicious or unusual transaction, or that proceeds of crime or FT are involved. “Business transaction” is defined under section 2(1) to mean “any arrangement, including opening an account”, to facilitate a financial transaction between persons, and to include related transactions between these persons and third parties, as well as gifts. This is therefore an expansive definition. There is also a mandatory requirement under section 8(1)(h) to report unusual currency exchanges/transfers of international funds of at least \$10,000 to AMLA.

613 The authorities, while conceding that the immunity provision under section 22A(6) of the MLFTA is based on language suggestive of voluntary reporting, nonetheless expressed the view that this should not preclude its application to the compulsory reporting provisions of section 8(1)(b) and (h).

614 The examiners, however, envisage difficulties in the application of section 22A(6). It is important to note that the immunity provided by this subsection can only be invoked where the financial institution supplies information about an “account” held with it (see subsection (5)). “Account” is defined in section 2(1) to cover any facility or arrangement by which the institution carries out any of certain specified transactions (processing of currency deposits and withdrawals; accounts transfers; cashing/collecting negotiable instruments and offering safety deposit box facilities). This is therefore a restrictive definition. Consequently, while entities reporting with reference to “accounts” may perhaps shelter under section 22A(6), those making non-account disclosures will not benefit from the protection of the subsection. This is significant, since as explained above, the duty under section 8(1)(b) is to report “business transactions”, the scope of which extends beyond the concept of reporting about an account. Failure to report as required attracts sanctions under section 8(4), so entities will be under pressure to comply, but without appropriate immunity in non-account cases.

615 The existence of two distinct sets of reporting provisions in the MLFTA creates inconsistency in the framework, and a single policy in favour of mandatory reporting should be reflected in the legislation. The examiners therefore call for an amendment to section 22A to (i) remove the reference to voluntary reporting by financial institutions under subsection (5), and (ii) adjust subsection (6) so as to be clearly referable to the section 8 reporting obligations.”

616 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide that licensed financial institutions, their directors, officers, employees and agents are protected under the MLFTA from any action, suit or proceedings for breach of any restriction on disclosure of information, if they report suspicious activity in good faith to the AMLA, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

617 Part II of the Ministry of Economic Affairs and Development’s AML/CFT Guidelines states that any person who voluntarily discloses information to the Reporting AMLA arising out of a suspicion or belief that any money or other property represents the proceeds of criminal conduct is protected by law under sections 52(1) and 52(2) of the POCA from being sued for breach of any duty of

confidentiality.

618 However, these provisions in the respective Guidelines do not operate independently, but only in support of the primary legislation. Owing to the deficiencies identified above in the latter, the examiners conclude that there is inadequate protection for financial institutions reporting as required under the MLFTA.”

619 Section 22(1) of the MLFTA makes it an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced. A person guilty of an offence under subsection (1), is liable on summary conviction to a fine of \$50 000 or imprisonment for 2 years or to both. While there is no direct reference to reporting of transactions to the FIU in the above provision, the AML/CFT Guidelines interpret the provision as including reporting to the FIU.

620 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provides that it is against the law for employees, directors, officers or agents of a licensee to disclose that a suspicious transaction report or related information on a specific transaction has been reported to the AMLA.

621 Further, the guidelines state that where there is a suspicion that a transaction relates to money laundering or the financing of terrorism, licensees should be cognizant of tipping off a customer when conducting due diligence. The licensee should make a business decision whether to open the account or execute the transaction as the case may be, but a suspicious report should be submitted to the AMLA.

622 The Ministry of Economic Affairs and development’s AML/CFT Guidelines provide in paragraphs 84 and 88 that in establishing its reporting system, each institution (or group) must bear in mind the importance of minimizing the number of persons who should be aware of the reporting of a suspicion; the more widely known, the greater the opportunities for tipping off. Discreet inquiries are made to confirm the basis for suspicion but the customer is never approached.

623 Section 22A of the MLFTA places a duty of confidentiality on the AMLA, every person who receives reports or information under the Act and every person concerned with the administration of the Act. The Act further prevents a person from disclosing the contents of any document, communication or information obtained in the course of his duties under the MLFTA unless permitted under the Act or as is necessary in the course of the person’s duties.

**Recommendation 25(only feedback and guidance related to STRs)**

624. The several financial institutions interviewed by the examination team consistently indicated that they received no feedback from the FIU in relation to suspicious transaction reports made to the FIU.

**Recommendation 19**

625. In Barbados reporting requirements for financial institutions relating to large transactions are limited to currency exchange transactions or transfers of foreign currency above a threshold which are of an unusual nature. Although the examination team was not provided with any policy document showing a critical consideration of whether or not to implement a system for reporting large currency transactions, it is evident that some consideration was given to the feasibility of such a system in view of the provisions of section 8(1)(h) of the MLFTA. This section requires financial institutions to monitor and report to the AMLA all currency exchanges of \$10 000 or more and all instructions for transfers of international funds of \$10 000 or more, whether by telegraph or wire, into and out of Barbados, where the transaction appears to be of an unusual nature.

626. The Barbadian Authorities expressed the view that large transaction reporting would require all transactions above the threshold to be reported to the FIU, regardless of their legitimacy. This would require a large database and additional resources to manage it if it is at all to be useful, with no proportional benefit. When it is considered that the large transactions record will remain in the custody of the financial institution and with the FIU having full access when required, large transaction reporting seems unhelpful.

**Recommendation 32**

627. The number of SUTRs received by the FIU is presented below.

**Table 15: No of SUTRs received by the FIU**

| <b>Year</b>        | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
|--------------------|-------------|-------------|-------------|-------------|-------------|
| <b>No of SUTRs</b> | 76          | 29          | 35          | 60          | 83          |

628. As reflected in the above figures, the number of SUTRs has been increasing since 2003. However, in relation to the number of reporting entities the figures are low and would suggest that suspicious and unusual reporting is not effective. The authorities are of the view that the level of reporting reflects on the success of the national framework in minimizing instances of ML and FT. There was no statistical data on the number of currency exchanges of \$10,000 or more submitted by financial institutions to the FIU.

**3.7.2 Recommendations and Comments**

629. The following is recommended:

630 The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or FT.

631 The FIU should provide feedback to financial institutions with regard to suspicious transaction reports.

632 The FIU should maintain statistics on the number of currency exchanges of \$10,000 or more submitted.

633 Section 22A(5) of the MLFTA should be amended to remove the reference to voluntary reporting by financial institutions, and section 22A(6) should be revised to make it clear that immunity against liability applies to the financial institutions reporting under sections 8(1)(b) and (h) of the Act.

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

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|-------------|---------------|---|
| <b>R.13</b> | <b>LC</b>     | <b>No requirement in law or regulations to report attempted or aborted suspicious transactions<br/>Human trafficking, corruption and bribery are not adequately addressed in legislation as predicate offences.</b> |
| <b>R.14</b> | <b>PC</b>     | <b>MLFTA establishes inconsistent mandatory and voluntary reporting provisions; immunity provision under MLFTA is not referable to mandatory reporting provisions</b>   |

|              |           |  |
|--------------|-----------|--|
| <b>R.19</b>  | <b>C</b>  | <b>This recommendation is fully observed</b>   |
| <b>R.25</b>  | <b>PC</b> | <b>The FIU does not provide feedback on STRs to financial institutions. See factors in section 4.3</b> |
| <b>SR.IV</b> | <b>LC</b> | <b>No requirement in law or regulations to report attempted or aborted suspicious transactions</b>     |

***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**

634 Section 8(1)(e) of the MLFTA requires financial institutions to develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and controls. Section 8(1)(e) makes no reference to terrorist financing. The financial institutions interviewed by the examination team indicated that in practice they have developed or are in the process of developing internal procedures for combating both money laundering and terrorist financing.

635 Section 8(1)(e) does not explain what measures the internal policies, procedures and controls of financial institutions should cover although these measures are described in the AML/CFT guidelines. The MLFTA imposes no penalties or sanctions for failure to develop internal policies, procedures and controls to combat money laundering. The record retention requirements of the MLFTA are set out in section 8(1)(a).

636 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives place responsibility on:

- Directors to approve AML/CFT policies and procedures that are appropriate for the risks faced by the licensee.
- Senior management to develop a risk management programme that provides for:
  1. Development of internal policies, procedures and controls for inter alia –
    - a. The opening of customer accounts and verification of customer identity;
    - b. Establishing business relations with third parties (including custodians, fund managers, correspondent banks, business introducers);
    - c. Determining business relationships that the licensee will not accept;
    - d. The timely detection of unusual and suspicious transactions, and reporting to the AMLA;
    - e. Internal reporting; and
    - f. Record retention.

637. Part II of the Ministry of Economic Affairs and Development’s AML/CFT Guidelines states that financial institutions perform their duty of vigilance by having in place systems which enable them to:

- i. determine (or receive confirmation of) the true identity of customers requesting their services;
- ii. recognise and report suspicious transactions to the Reporting Authority; in this respect any person who voluntarily discloses information to the AMLA arising out of a suspicion or belief

that any money or other property represents the proceeds of criminal conduct is protected by law under sections 52(1) and 52(2) of the Proceeds of Crime Act, from being sued for breach of any duty of confidentiality;

- iii. keep records for the prescribed period of time;
- iv. train key staff;
- v. liaise closely with the AMLA on matters concerning vigilance policy and systems; and
- vi. ensure that internal auditing and compliance departments regularly monitor the implementation and operation of vigilance systems.

638. Section 9 of the MLFTA requires financial institutions to establish and maintain internal reporting procedures to:

- (a) Identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment, and which gives rise to knowledge or suspicion by the employee that another person is engaged in money laundering;
- (b) Enable any person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to paragraph (b) of section 8(1) of the Act.

639. While there is no reference to the prevention of terrorism financing in this section 22F(b) states that the AMLA may issue guidelines in respect of the detection of funds allocated or used for the purpose of committing an offence under the ATA.

640. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives place a responsibility on directors to:

- Appoint an individual within the organization for ensuring that the licensee's AML/CFT procedures are being managed effectively; and
- Seek assurance that the licensee is in compliance with its statutory responsibilities as it relates to AML/CFT. This includes reviewing the reports from Compliance on the operations and effectiveness of compliance systems.

641 The guidelines require that all licensees designate a suitably qualified person with the appropriate authority, seniority and independence as Compliance Officer. The Compliance Officer should be independent of the receipt, transfer or payment of funds or management of customer assets and should have timely and uninhibited access to customer identification, transaction records and other relevant information. The powers and reporting structure of the officer should be conducive to the effective and independent exercise of duties.

642 Paragraphs 7 and 8 of the Ministry of Economic Affairs and Development's AML/CFT Guidelines state all institutions/organizations should appoint a Reporting Officer as the point of contact with the AMLA in the handling of cases of suspicious customers and transactions. The Reporting Officer should be a senior member of key staff with the necessary authority to ensure compliance with the Guidelines. In addition, institutions may find it useful to delegate the responsibility for maintaining vigilance systems to a Prevention Officer (or more than one Prevention Officer) rather than reserve to the Reporting Officer all such day-to-day responsibility. A Prevention Officer should nevertheless have the necessary authority to guarantee to the Reporting Officer compliance with the guidelines. The Guidelines do not address the need for the Reporting Officer to have timely access to information relevant to suspicious transactions such as CDD information and transaction records.

643 Section 8(1)(e)(ii) of the MLFTA requires financial institutions to develop audit functions to evaluate their internal policies, procedures and controls to prevent money laundering but no reference is made to terrorist financing, although section 22F(b) provides for the AMLA to issue guidelines which specifically incorporate requirements for terrorist financing. Section 8(1)(g) places a duty on financial institutions to develop a procedure to audit compliance with Section 8 of the MLFTA which makes

provision for inter alia record retention, reporting of unusual and suspicious transactions, access to information by the AMLA or its representatives, development of internal policies and procedures to combat money laundering.

644. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require senior management to develop and implement an effective independent risk-based oversight function to test and evaluate the compliance program.

645 The guidelines require licensees to have their internal audit department or group internal audit carry out reviews to evaluate how effectively compliance policies are being implemented. Such reviews should be carried out on a frequency consistent with the licensee's size and risk profile. The review process should identify and note weaknesses in policies and procedures, corrective measures and ensure timely follow-up of actions.

646 The Ministry of Economic Affairs and Development's AML/CFT Guidelines provide that financial institutions should ensure that internal auditing and compliance departments regularly monitor the implementation and operation of "vigilance" systems.

647. Section 10 of the MLFTA requires a financial institution to establish and maintain internal reporting procedures to:

- a) Take appropriate measures for the purpose of making employees aware of the laws of Barbados relating to money laundering, and the procedures and related policies established and maintained by it pursuant to this Part; and
- b) Provide its employees with appropriate training in the recognition and handling of money laundering transactions.

648 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide that one of the components of a licensee's risk management programme is an ongoing training programme designed to ensure adherence by employees to the legal and internal procedures, and familiarity with the dangers they and the business entity face and on how their job responsibilities can encounter specified money laundering and terrorist financing risks.

649 The guidelines require licensees to establish ongoing employee training programmes. Licensees are required inter alia to:

- Develop an appropriately tailored training and awareness programme consistent with their size, resources and type of operation to enable their employees to be aware of the risks associated with money laundering and terrorist financing, to understand how the institution might be used for such activities, to recognise and handle potential money laundering or terrorist financing transactions and to be aware of new techniques and trends in money laundering and terrorist financing;
- Clearly explain to staff the laws, the penalties for non-compliance, their obligations and the requirements concerning customer due diligence and suspicious transaction reporting;
  - Ensure that all staff members are aware of the identity and responsibilities of the Compliance Officer and/or the Reporting Officer to whom they should report unusual or suspicious transactions; and
  - Establish and maintain a regular schedule of new and refresher programmes, appropriate to their risk profile, for the different types of training required for:
    - a. New hire orientation;
    - b. Operations staff;

- c. Supervisors;
- d. Board and senior management; and
- e. Audit and compliance staff.

650. The Ministry of Economic Affairs and Development's AML/CFT guidelines provide that institutions should be constantly vigilant in deterring criminals from making use of their facilities for the purpose of money laundering. Institutions perform their duty of vigilance by having in place systems which enable them to inter alia to train key staff.

651 Institutions have a duty to ensure that key staff receive sufficient training to alert them to the circumstances whereby they should report customers/clients and/or their transactions to the internal compliance officer. Such training should include making key staff aware of the basic elements of:

- ❖ the Proceeds of Crime Act; the Money Laundering (Prevention and Control) Act and any Regulations made or Code of Practice issued thereunder, and in particular the personal obligations of key staff thereunder, as distinct from the obligations of their employers thereunder;
- ❖ guidelines issued by the AMLA;
- ❖ vigilance policy and vigilance systems;
- ❖ the recognition and handling of suspicious transactions;
- ❖ other pieces of anti-money laundering legislation identified under the Barbados Anti-Money Laundering Regime at the beginning of the guidance notes.

652 The ATA is not among the legislation identified in this regard.

653 The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives provide that one of the components of a licensee's risk management programme is the screening procedures for hiring, and ongoing systems to promote high ethical and professional standards to prevent the licensee from being used for criminal activity. The guidelines further require licensees to undertake due diligence on prospective staff members. Licensees are required inter alia to:

- Verify the applicant's identity; and
- Develop a risk-focused approach to determining when pre-employment background screening is considered appropriate or when the level of screening should be increased, based upon the position and responsibilities associated with a particular position. The sensitivity of the position or the access level of an individual staff member may warrant additional background screening, which should include verification of references, experience, education and professional qualifications.

654. The Ministry of Economic Affairs and Development's AML/CFT Guidelines do not require institutions to have screening procedures for new employees. .

#### **Additional elements**

655. The AML/CFT guidelines require that the compliance officer should have the powers and reporting structure that is conducive to the effective and independent exercise of duties. The adequacy of the reporting structure is assessed during onsite examinations of licensees.

656. The MLFTA provisions for internal policies, procedures and controls to prevent ML, develop appropriate compliance management arrangements, audit functions, and implement appropriate training comply with some requirements. There is no reference to the prevention of terrorist financing or imposition of penalties or sanctions for failure to comply with the above provisions. Specific measures are stipulated in the AML/CFT Guidelines which are only enforceable on the licensees of the Central Bank. These include requirements for an independent audit function, training in new techniques and

trends in ML and FT and screening procedures for new employees. It is noted that the CBB AML/CFT guidelines do not have any requirement for policies and procedures on record retention or the designation of an AML/CFT compliance office at management level.

**Recommendation 22**

657. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives state that licensees should ensure that, at a minimum, the guidelines are also implemented in their branches and subsidiaries abroad.

658. The Ministry of Economic Affairs and Development's Guidelines require that groups whose headquarters are in Barbados and who operate branches or controls subsidiaries in another jurisdiction, to:

- ensure that such branches or subsidiaries observe these Guidelines or adhere to local standards if those are at least equivalent;
- keep all such branches and subsidiaries informed as to current group policy; and
- ensure that each branch or subsidiary informs itself as to its own local reporting point equivalent to the AMLA in Barbados and that it is conversant with procedures for disclosure.

659. There are no direct requirements in law, regulation or guidelines for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations.

660. There are no direct requirements in law, regulations or guidelines for branches and subsidiaries in host countries to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.

661. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives require licensees to inform the relevant supervisory authority and the AMLA if the local applicable laws and regulations prohibit the implementation of the Guidelines. The Ministry of Economic Affairs and Development's Guidelines do not address this requirement.

662. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperatives state that licensees should develop effective manual &/or automated systems to enable staff to monitor, on a solo, consolidated and group-wide basis, transactions undertaken throughout the course of the business relationship and identify activity that is inconsistent with the licensee's knowledge of the customer, their business and risk profile.

663 The only criteria of Recommendation 22 that are enforceable are as follows:

- Financial institutions are required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with requirements in Barbados, to the extent that host country laws and regulations permit.
- Financial institutions are required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

664. These requirements are only enforceable on the licensees of the CBB and the Supervisor of Insurance.

### 3.8.2 Recommendations and Comments

665. The following is recommended;

666 All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply.

667 All financial institutions should be required to designate an AML/CFT compliance officer at management level and develop policies and procedures for record retention.

668 Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.

669 The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados and the FATF should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.

670 Financial institutions should be required to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations.

671 Branches and subsidiaries in host countries should apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.

672 The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.

### 3.8.3 Compliance with Recommendations 15 & 22

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.15</b> | <b>PC</b>     | <b>The legislative provisions for internal controls, compliance and audit do not include the imposition of penalties and sanctions for failure to comply with the provisions.</b><br><br><b>No enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention.</b><br><br><b>Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees are only enforceable on the licensees of the CBB and</b> |

|             |           |   |
|-------------|-----------|---|
|             |           | <b>the Supervisor of Insurance.</b>   |
| <b>R.22</b> | <b>PC</b> | <p><b>The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b></p> <p><b>No requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations</b></p> <p><b>No requirement for branches and subsidiaries in host countries to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.</b></p> <p><b>The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b></p> |

### **3.9 Shell banks (R.18)**

#### 3.9.1 Description and Analysis

#### **Recommendation 18**

673. The legislative regime in Barbados prohibits the establishment of shell banks. Section 6(1) of IFSA states that a licence shall not be granted under the Act unless the company:

- a) Has a place of business in Barbados approved by the Central Bank which will be its registered office;
- b) Has, if the Central Bank so directs, appointed a person in Barbados who is approved by the Central Bank to be its agent; and
- c) Has appointed a person in Barbados who is approved by the Central Bank to be its agent in the absence or inability to act of the person referred to under paragraph (b).

674. Section 6(2) of IFSA states that a licensee shall not:

- 1) Cease to have a place of business in Barbados;
- 2) Change its place of business without the written approval of the Central Bank;
- 3) (c) Cease to have an authorised agent if required under subsection (1);
- 4) Change its authorised agent without the written approval of the Central Bank.

675. Applications for offshore banking licences are entertained from the following:-

- Reputable, adequately capitalized and well managed local entities with a proven track record. These entities are restricted from accepting third party deposits but may engage in third party business.
- Well-established international banks or financial institutions as well as branches/subsidiaries and affiliates of such international banks or financial institutions with a proven track record and which are subject to effective consolidated supervision. In the case of such applicants, the written authorization of the parent supervisory authority should be provided.
- Wholly owned subsidiaries of well-established international non-bank corporations whose activities are limited to intra-group treasury operations and where the operations are consolidated in the published financial statements of the parent company. However, the licensee is restricted from accepting deposits from third parties. These entities may, however, engage in third party business e.g. assets under management.
- Applications in which the beneficial ownership rests with individuals of high net worth. However, the licensee is restricted from accepting deposits from third parties and engaging in third party business.

676. Under the FIA, foreign banks can only be issued a licence if the bank designates and notifies the Minister of Finance of its principal office in Barbados and the name of the officer who is the authorised agent in Barbados and the name of another officer authorised to act in the absence or inability of the authorised agent.

677. The CBB AML/CFT guidelines provide that financial institutions offering cross-border wire or fund transfers should avoid correspondent and respondent banking relations with shell banks. Financial institutions are also required to *inter alia* confirm that their respondents do not maintain business relations with shell banks.

### 3.9.2 Recommendations and Comments

678 The licensing obligations in Barbados effectively prevent the establishment of shell banks in the jurisdiction, while the requirements for correspondent banking excludes such relationships with shell banks.

### 3.9.3 Compliance with Recommendation 18

|             | Rating   | Summary of factors underlying rating |
|-------------|----------|--------------------------------------|
| <b>R.18</b> | <b>C</b> |                                      |

## **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, 30, 29, 17, 32 & 25)**

#### 3.10.1 Description and Analysis

#### **Recommendation 23**

679 Under Section 5 (1) of the MLFTA, the AMLA is specifically responsible for supervising financial institutions in accordance with the MLFTA. The AMLA, through its administrative arm, the FIU, collaborates with all domestic regulators to fulfill this mandate. The regulators as part of their supervisory responsibility to ensure that their licensees do not operate to the detriment of the customers of their licenses feel incumbent to ensure adequate compliance with not only the obligations of the MLFTA but also the AML/CFT Guidelines issued in conjunction with the AMLA.

680 Regulation and supervision of the financial sector is shared among 4 primary regulatory authorities, namely the CBB, Securities Commission, Supervisor of Insurance, and the Registrar of Co-operative Societies. Each agency licenses and supervises their constituents in accordance with various statutes, regulations and guidelines. The International Business Unit of the Ministry of Economic Affairs and Development licenses IBCs, Societies with Restricted Liability and Exempt Insurance Companies. The office of the Director of International Business monitors IBCs for compliance with the International Business Companies Act and has issued in conjunction with the AMLA, AML guidelines for fiduciary services and business investment.

681 The licensees of all these regulators and their obligation to comply with the AML/CFT regime in Barbados are captured in the MLFTA. A framework for regulating and supervising MVT services provided by entities outside the present supervisory regime is in the process of development.

682 A review of the supervisory and regulatory framework of the financial sector is ongoing with a view to bringing together some of the primary regulatory authorities under a single regulatory body. The goal is for all the regulators except the CBB to form a single regulatory unit. This will allow for more efficient and effective deployment of resources for the supervision of financial institutions that are not licensees of the CBB.

683 The proposed Financial Services Commission will include:

- (1) The office of the Registrar of Co-operatives and Friendly Societies.
- (2) The office of the Supervisor of Insurance and Pensions.
- (3) The Securities Commission.
- (4) The regulatory and supervisory functions of the office of the Director of International Business.

### **Central Bank**

684. The CBB licenses, regulates and supervises commercial banks, and Part III companies (finance companies, trust companies and merchant banks) in accordance with the FIA and its accompanying Regulations. Regulations have been issued on capital adequacy, asset classification & provisioning, fees and financial statements. The CBB also licenses and supervises offshore banks in accordance with the IFSA. Guidelines on AML/CFT were first issued in 1998. Onsite and offsite examinations are conducted to assess the level of compliance with the FIA, IFSA, MLFTA and other relevant statutes such as the International Trust Act, Cap 245, the Trustee Act, Cap 1979-3, and the Companies Act, Cap 308. As at 30/06/2006, the licensees of the CBB comprised onshore of 6 commercial banks, 7 deposit taking Part III companies, 7 non-deposit taking Part III companies and 54 offshore banks – of which 13 were in the process of voluntary wind-up, while 1 was being compulsory wound-up.

### **Securities Commission**

685. The Securities Commission was established by the Securities Act to regulate and supervise the securities industry in Barbados. The Securities Commission is also responsible for the administration of the Mutual Funds Act. In 2006 the Commission commenced the on-site examination of its registrants. This is done in conjunction with the CBB and has an AML/CFT component. At March 31, 2006 there were 9 Brokers, 4 Dealers, 5 Investment Advisers, 4 Traders, 5 Underwriters, 38 Issuers, 10 Securities Companies, 2 Restricted Administration Licensees, 9 Mutual funds, 1 Exempt Mutual Fund, and 4 General Administration Licensees. The 2 Self-Regulatory Organisations are the Barbados Central Securities Depository Inc. and the Barbados Stock Exchange Inc.

### **Supervisor of Insurance**

686. The office of the Supervisor of Insurance is responsible for the supervision of domestic and off shore insurance companies. On-site inspections where the books and records of insurance companies are inspected in accordance with Section 52 of the IA have been conducted by the examination staff. On-site inspections usually have an AML/CFT component. As at August 31, 2006 there were 178 exempt insurance companies, 57 qualified exempt insurance companies, 25 management companies, 23 holding companies, 11 life insurance companies and 20 general insurance companies.

**Registrar of Cooperatives**

687. The office of the Registrar of Co-operative Societies is responsible for regulating and supervising credit unions and co-operative societies in accordance with the CSA. Risk based on-site examination of societies are conducted by the staff of the Co-operatives Department and includes an AML component for assessing compliance with AML requirements. There is in place a process of off-site monitoring of credit unions by the field and examination staff of the department. On-site examinations of the five largest credit unions are done in conjunction with the CBB. There are 37 credit unions and 12 non credit union co-operatives in Barbados.

**Director of International Business**

688. The Director of International Business’s supervisory functions are limited to monitoring compliance with the IBCA covering international manufacturing, trade and commerce. The main focus of monitoring is the annual renewal of licences of IBCs requiring the submission of current financial information. No supervision with regard to ensuring compliance with the AML guidelines is carried out. At the time of the mutual evaluation 4000 IBCs were registered in Barbados.

**Recommendation 30**

**Central Bank**

689 The CBBA provides for the establishment of a Central Bank and for related matters. The Bank is governed by a board of directors comprising the Governor (Chairman of the board) and five other directors. The Governor is appointed by the Minister of Finance for a term not exceeding 5-years, while the other directors hold office for 3 years. Both the Governor and the other directors are eligible for reappointment. Section 16 of the CBBA makes provision for the board to appoint and employ, at such remuneration and on such terms and conditions as it may prescribe, such officers and employees, agents and correspondents as deemed necessary for the efficient functioning of the Bank.

690 The CBB, a statutory body under the Ministry of Finance, is funded independent of Government. Sections 107 and 96 of IFSA and FIA respectively permit the Minister of Finance to delegate any of his functions to the Central Bank save the issuing or revoking of licenses. Notwithstanding, the Minister decides on all applications for licenses and revocations, based upon recommendations from the Central Bank. As such, the Central Bank has operated with sufficient independence in the supervision of its constituents.

691 The supervisory functions of the CBB are carried out by the Bank Supervision Department which comprises of four units designated for onsite, offsite, policy and statistics and administrative support. The table below provides a breakdown of staff employed in the Bank Supervision Department at the time of the mutual evaluation.

**Table 16: Summary of BSD Staff**

|      | <b>Technical</b> | <b>Non-Technical</b> | <b>Total</b> |
|------|------------------|----------------------|--------------|
| 2002 | 27               | 3                    | 30           |
| 2003 | 30               | 5                    | 35           |

|            |    |   |    |
|------------|----|---|----|
| 2004       | 30 | 5 | 35 |
| 2005       | 30 | 5 | 35 |
| 2006/06/30 | 30 | 5 | 35 |

692 Section 18 of the CBBA prohibits any director, officer and employee of the CBB from disclosing to any person any material information relating to the affairs of the Bank or of any other bank or financial institution or other person, firm, company or organization which he has acquired in the performance of his duties or the exercise of his functions. All members of the Bank Supervision Department sign an oath of confidentiality on joining the Department. Confidentiality provisions are also contained at Sections 44 of FIA, Section 48 of IFSA and Section 22A of the MLFTA. Sanctions for a breach of the confidentiality provision of IFSA are a fine of \$25,000 and/or imprisonment for 12 months. The penalty under the MLFTA is a fine of \$50,000 and/or imprisonment for 5 years. There are no sanctions under the FIA.

693 Staff of the Bank Supervision Department must at a minimum have a first degree or professional designation in accounting, economics or a related discipline. Several members of staff have further attained Masters Degrees and specialized professional designations. Before appointment to the CBB, prospective employees are subject to due diligence by the Human Resources and Security Departments of the CBB.

694 Between 2005 and present, Bank Supervision examiners gained AML/CFT exposure through attendance of various training courses and conferences facilitated by Federal Reserve Board, CFATF, CGBS, CRISP, the Commonwealth Secretariat, the Barbados Securities Commission/SEC/USAID/CARTAC, and the IMF/First Initiative. The Department also conducts in-house training at least once per annum, and AML/CFT has been included on the agenda. The Department subscribes to FSI Connect, which provides training on AML/CFT. One staff member is trained as a CFATF mutual evaluation expert and another is a Certified Anti-Money Laundering Specialist. .

### **Securities Commission**

695 The Commission was established by the Securities Act 2001-13. It is governed by a board of 7 Commissioners to whom the management of the Commission reports. The Commission is funded by receipts from registrants and from the government of Barbados.

696 The Commission is staffed by 8 regular Officers including a General Manager who, though appointed by the board, holds office upon such terms and conditions as approved by the Minister of Finance (s. 14). All other officers also hold office upon terms and condition approved by the Minister (s. 16). Authority has been granted for the recruitment of 3 additional persons to form a dedicated inspection department. Officers must have at a minimum a first degree or professional designation in accounting, finance or related discipline.

697 Section 8 of the Securities Act, 2001-13 forbids any Commissioner or other officer of the Commission from making use directly or indirectly of any confidential information obtained as a result of his relationship with the Commission. A person contravening this section is liable on summary conviction to a fine of \$50,000 and imprisonment for 12 months.

698 The Commission's Legal Counsel is a former Senior Analyst of the FIU and has extensive knowledge of AML/CFT issues. Since joining the Commission he has attended the Economic Crime Symposium at Jesus College Cambridge as part of his ongoing awareness of new developments in the area. The Commission's Compliance Officer also has been exposed to training in the area and is presently pursuing a compliance diploma which is funded by the Commission.

### **Supervisor of Insurance**

699 The office of the Supervisor of Insurance and Pensions is staffed by 19 officers including the Supervisor of Insurance and Pensions, Deputy Supervisor of Insurance and Pensions and Assistance Supervisor of Insurance and Pensions. Approval has been given for additions to be made to the staff complement. The Supervisor of Insurance holds a public office and is responsible for the general administration of the Act. The office is funded from the Government's consolidated funds.

700 Section 54 of the Insurance Act CAP.310 forbids any person from directly or indirectly, except in the performance of any duty under the Act from making a record of , divulge or communicate to any person, any information acquired by him. A person performing any duty under this part shall take an oath, in the manner and form specified, to maintain secrecy. A person contravening any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for one year, or both.

701 Officers must have at a minimum a first degree or professional designation in accounting, economics or related discipline. AML/CFT training has been provided by CARTAC, OFSI (Canada) and other international organizations as well as the FIU. Training has been received in all areas of insurance supervision as well as AML/CFT. There are plans for continued AML/CFT training during 2007. The services of OSFI, the FIU and competent staff of the department will be utilized to meet these training needs.

### **Registrar of Co-operatives**

702. The technical staff of the Co-operative Department is made up of the Registrar, the Deputy Registrar and seven (7) examiners. This is seen as inadequate given the number of registered co-operative societies, however, it is hoped that the problem will be solved with the coming into being of the Financial Services Commission. The department is funded from the Government's consolidated funds.

703. The technical staff is qualified at a minimum with a first degree or a professional designation in the accounting or business related disciplines. All government employees are subject to confidentiality provisions imposed under the Official Secrets Act, 1911. The staff of the Co-operative Department has been receiving AML/CFT training from the FIU. They have also been exposed to risk management and on site examination training. The joint on-site examinations of the five largest credit unions conducted in conjunction with the CBB are seen as an avenue for training of examiners from the Co-operative Department.

### **Recommendation 29**

#### **Central Bank**

704 Section 43 of the FIA and Section 47 of IFSA empower the CBB to exercise a monitoring function on its licensees by requiring the submission of financial statements and any other returns the CBB determines necessary with respect to the business of the licensees.

705. The CBB's inspection powers are provided for in the relevant sections of the FIA and IFSA. Section 47 of the FIA states inter alia that the Central Bank may examine or cause an examination to be made by any of its officers or any person authorized by it, of the affairs of each licensee as it considers necessary:

- a) To determine whether the provisions of this Act, the CBBA or regulations made under this Act or the CBBA or any directive of the Central Bank are being complied with;
- b) To ascertain whether the licensee is in a sound financial condition;

706. Where the Central Bank has reasonable grounds to believe that a licensee is carrying on its

business in a manner detrimental to the interests of its depositors or of its creditors, or may have insufficient assets to cover its liabilities to the public, or may be in breach of any of the provisions of this Act.

707. Section 53 of the IFSA grants the Central Bank the power where necessary, to cause an examination to be made by any of its officers or any person authorized by it of the affairs of a licensee, to determine whether the provisions of this Act or the regulations made hereunder are being complied with or whether the licensee is in a sound financial condition. Further, where necessary, the Central Bank may in respect of any holding company, parent company or any other company that holds shares in a licensee (a) inspect the books of the company; or (b) request any information from the appropriate authorities in any country where the company is located.

708. With the enactment of the IFSA in 2002, onsite examinations of offshore banks have included detailed assessments of the level of compliance with the MLFTA and AML/CFT Guideline as part of the assessment of safety and soundness.

709. Section 1 of the CBB AML/CFT Guidelines states that the guidelines set out the expectations of the Bank and the AMLA in relation to the minimum standards for anti-money laundering and the combating of the financing of terrorism (AML/CFT) practices by all licensees and, together with the MLFTA, it will form an integral part of the framework used by the Bank in assessing how licensees implement their AML/CFT policies.

710. Section 8(1)(f) of the MLFTA requires all licensees to comply with the Guideline, which contains both advisory and obligatory requirements. With regard to advisory requirements, licensees have the discretion to implement alternative but effective measures.

711. In executing powers as granted under IFSA and FIA, the Bank Supervision Department undertakes comprehensive reviews of the AML/CFT framework of each licensee. Such examinations cover reviews of the adequacy of:

- Compliance policy
- Internal Audit / Independent Review
- Education and Training
- Exemptions / Risk Profiling
- Know Your Customer
- Wire / Fund Transfer
- Monetary Instruments
- Reporting
- Record-Keeping
- High Risk Activity (e.g. private banking, introduced business, professional intermediaries, PEPS, non-face to face customers)

712. Transaction sampling is undertaken across products and services, on a risk basis, to verify the effective implementation of documented policies and procedures.

713. Access by examiners to the records, documents and information of CBB licensees is provided for at Sections 54 and 48 of IFSA and FIA, respectively.

714. In addition, Sections 47(2) and 43(2) of IFSA and FIA, respectively state that the Central Bank may require a licensee to submit:

- Such further information as it considers necessary for the proper understanding of any statement or return furnished by the licensee;

- Any information it considers necessary in respect of any holding company, subsidiary or affiliate of the licensee; and the information shall be submitted within such time and in such manner as the Central Bank requires.

715. Section 8.1 of the Guideline requires licensees to document in writing their suspicion about a transaction and documentation of internal enquiries. These and other records are accessible to the examiners during onsite examinations. The power to compel production or to obtain access for supervisory purposes is not predicated on a court order.

### **Securities Commission**

716. Section 4 of the Securities Act requires the Securities Commission to maintain surveillance over the securities market and register, authorise or regulate registrants in accordance with the Act.

717. The Securities Commission's power of inspection of the affairs of its registrants is limited under the Securities Act. Section 40 of the Securities Act permits the Securities Commission to inspect the records and examine the affairs of self-regulatory organizations. The only other provision is Section 135 which allows inspections in cases where the Securities Commission is of the view that a registrant may be in breach of the Act. With regard to mutual funds, section 33 of the Mutual Funds Act empowers the Securities Commission to inspect the books of a mutual fund without prior notice. Pursuant to Section 8(1) of the MLFTA, the AMLA authorized the Securities Commission, acting through its officers, to enter any premise of the Commission's registrants and licensees that meet the definition of a financial institution, and conduct AML/CFT on-site inspections.

718. With regard to compelling production or obtaining access to all records and documents and information relevant to monitoring compliance, there is no provision in the Securities Act granting the Securities Commission such powers. However, Sections 34 and 35 of the Mutual Funds Act empowers the Securities Commission to request any information or access any record necessary to carry out its duties in relation to mutual funds. The AMLA in accordance with section 8 (1) (d) of the MLFTA granted powers to the Securities Commission to access records, documents and all information of registrants.

719. The Securities Commission started monitoring the sector by way of on-site examinations during 2006. These examinations have an AML/CFT focus. The Commission has also adopted the Central Bank's AML/CFT guidelines that came into effect in September 2006.

### **Supervisor of Insurance**

720. Section 4 of the IA makes the Supervisor of Insurance responsible for the general administration of the IA. The Insurance sector is monitored by the office of the Supervisor of Insurance through a process of off-site and on-site inspections. Section 50 of the IA empowers the Supervisor to demand from any company information relating to any matter in connection with its insurance business within Barbados.

721. Section 44 of the Insurance Act gives the Supervisor the power to compel production of or access to all records, documents or information necessary to access compliance. The power to compel production or to obtain access for supervisory purposes is not predicated on a court order.

722. The AMLA in conjunction with the Supervisor of Insurance has issued AML/CFT guidelines for the insurance industry. The guidelines establish the minimum standard that the AMLA and the Supervisor expect businesses to follow. They are applicable to all entities that are incorporated in Barbados and that are licensed under the IA and the EIA.

723. Section 42(2) of the IA empowers the Supervisor to inspect the books and records of insurance companies. Licensees are obligated to make the books readily available for examination and facilitate such examination. This mandate has been carried out from time to time.

### **Registrar of Cooperatives**

724. The monitoring function under the CSA is carried out through the requirements for various reports and prudential returns on different aspects of the operations of co-operative societies that are submitted to the Registrar of Co-operative Societies. These reports and returns are reviewed by the financial staff of the Registrar of Co-operative Societies.

725. Section 164A of the CSA grants the Registrar or any person appointed by the Registrar access at all times to all the books, accounts, papers and securities of a registered society. Also, every officer of the registered society is required to furnish such information in regard to the transactions and workings of the society as the person making such inspection may require. Contravention of this provision is punishable by a fine of \$2,000 and/or imprisonment for six months. The power to compel production or obtain access to information for supervisory purposes is not predicated on a court order.

726. Section 164 of the CSA allows the Registrar of Co-operative Societies to appoint a person to examine the books and affairs of a society and report to the Registrar. In addition, the appointed person is authorised to have access to all books, accounts, securities or other documents necessary for the examination.

727. AML/CFT guidelines for credit unions were issued by AMLA in September 2006. Section 8(1) of the MLFTA obligates credit unions to comply with the guidelines. They provide guidance to credit unions on how they can fulfill their obligations in relation to the MLFTA.

### **Recommendation 17**

728. Criminal sanctions for not complying with the AML/CFT obligations are provided for in the MLFTA and the ATA. The sanctions in the MLFTA cover engaging in money laundering, reporting of suspicious transactions, record-keeping, and disclosure of information (tipping off). While there is a requirement in the MLFTA for financial institutions to develop internal policies, procedures and controls to combat ML and audit functions to evaluate them, there is no sanction for failure to comply with this requirement. Criminal sanctions in the ATA are applicable to natural and legal persons and cover terrorism and financing of terrorism. Section 5 of the ATA establishes the liability of legal entity if an offence is committed by a person responsible for the management or control of the legal entity. A natural person is liable on conviction on indictment for financing of terrorism to imprisonment for 25 years while a legal entity is liable on conviction on indictment to a \$2,000,000 fine.

729. In addition to the above sanctions section 21 of the MLFTA states – Where an offence of money laundering 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 such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence and shall be tried and punished accordingly. The above is applicable to officers of licensees of all supervisory agencies within the country.

730. Sanctions under the MLFTA for failure to comply with reporting obligations range from summary conviction with a fine of \$10,000 or 2 years imprisonment to conviction on indictment with a \$200,000 fine or 5 years imprisonment. Penalties for money laundering offences include summary conviction with a fine of \$150,000 and/or 3 year imprisonment and conviction on indictment with a \$2,000,000 fine and/or 25 years imprisonment. Disclosure of information penalties start from a fine of \$50,000 and/or 2 year imprisonment and increases to a \$50,000 fine and/or 5 years imprisonment. .

### **Central Bank**

731. Sanctions with regard to the functions of the CBB pertain to the powers and requirements of the CBB as a supervisor under the FIA and IFSA and are not specific to the requirements for combating ML and FT. The following are sanctions licensees of the CBB are liable to;

- A licensee that fails to submit information required or requested under section 47(1) of IFSA is punishable on conviction on indictment to a fine of \$25,000. In addition to a fine in this amount, a fine of \$5,000 also applies under the FIA for every day that the offence continues after summary conviction.
- Failure to provide an examiner with information required in accordance with Section 53(1) of IFSA results in the auditor, officer or employee of a licensee being liable on conviction on indictment to a fine of \$25,000 and a further fine of \$2,500 for each day during which the offence continues – (Section (56)). The same is the case in the FIA, except that the continuing fine is \$5,000.
- A director, officer, employee or agent of a licensee who with intent to deceive, makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee, or omits a statement or entry that should be made therein, is guilty of an offence and is liable on conviction on indictment to a fine of \$25,000 or imprisonment for 5 years or to both. (Section 60 of IFSA).
- Where any book, account, document or information specified in, and produced in accordance with, section 49 of FIA is false in any material particular, the licensee concerned is guilty of an offence and is liable on summary conviction to a fine of \$50 000.
- Breach of any duty or obligation imposed upon a licensee by the IFSA or the committing of an offence under the IFSA. (Section 15)
- Failure to take remedial measures within a specified period or failure within a specified period to comply with a cease and desist order, or to take any action required by the Central Bank are grounds for revocation of a license. (Section 58 & 51 of IFSA & FIA, respectively).

732. In addition, a licence may be revoked under the FIA, if the Minister of Finance is of the opinion that a licensee is carrying on business in a manner detrimental to the public interest or the interest of depositors. The only provision specific to AML/CFT is under Section 15 of IFSA which makes the committing of an offence under the MLFTA a condition for the revocation of a licence under IFSA.

733. General sanctioning powers, applicable after the results of on-site examinations are stipulated in Section 57 of IFSA and Section 50 of the FIA. Section 57 of IFSA empowers the CBB to require licensees to take necessary remedial measures, or appoint a person to advise the licensee on remedial action, or suspend the licence of the licensee for not more than three months. These options are available when the results of an onsite examination indicate that the licensee is operating unlawfully or in an unsound financial condition. Similar powers are available under Section 50 of the FIA with the addition that the CBB can require the cessation of unsound practice or unlawful behaviour and restrict transactions that the licensee may undertake. Breaches of the CBB AML/CFT Guidelines are dealt with under these general sanctioning powers.

### **Securities Commission**

734. The Securities Commission has no administrative powers to institute sanctions for AML/CFT breaches. Sanctions available under the SA deal specifically with offences arising from the regulatory provisions of the SA. The SA has no general sanctioning powers similar to the CBB. The issue of strengthening administrative powers has already been identified for legal remedy by the Committee reviewing the securities legislation.

### **Supervisor of Insurance**

735. Sections 184 (1) and (2) of the Insurance Act states that any person who contravenes any provision of the Act, any provision of any statutory instrument or any direction or requirement given or made by the Supervisor or a person appointed under section 52, is guilty of an offence, unless he can prove that he did not knowingly commit the contravention or omission and, in the case of a default in complying with any such provision, direction or requirement, the offence shall be deemed to be continued so long as the default continues. Where an offence is committed by a company and the offence is proved to have been committed with the consent or connivance of , or to have been facilitated by any neglect on the part of any director, principal officer or an actuary or auditor of the company, he, as well as the company, shall be deemed to be guilty of the offence.

736. Section 185 of the Act further states that all offences against the Act for which no other penalty is prescribed shall be punishable on summary conviction thereof

- (a) In the case of a company, by a fine of \$2,500, and where the offence is a continuing offence, by a further fine of \$500 for every day during which the offence continues.
- (b) In the case of an individual, by a fine of \$1,000 or imprisonment for one year, and where the offence is a continuing offence, by a further fine of \$250 for every day during which the offence continues.

737 Under section 55 (1)(b) of the IA, the Supervisor of Insurance has power to issue directions to remedy any defaults discovered as a result of an investigation of a local or foreign licensee except that in the case of a foreign company such directions shall not apply to the issue of renewal of policies or the entering of contracts in the course of the foreign company's business outside Barbados. Directions issued remain in force for twelve months but the Supervisor of Insurance may issue further directions to the company. Failure to comply with a direction of the Supervisor is a summary offence punishable by a fine.

### **Registrar of Co-operative Societies**

738. Along with provision for specific offences in the CSA, there is a general provision for failure to comply with any requirement of the Act. Currently, the CSA grants the Registrar powers of enforcement and sanctions only against co-operative societies and officers (Board of Directors, Supervisory and Credit Committees). However, the amendments to the Co-operative Societies Act will include employees or agents of a co-operative.

739. As already mentioned with the Securities Commission the breaches and applicable sanctions are not specific to the implementation requirements for combating money laundering and terrorist financing as stipulated in the FATF'S Recommendations. Additionally, there are no general sanctioning powers for unsafe and unsound practices.

### **Recommendation 23 (market entry)**

#### **Central Bank**

740. Section 7 of IFSA requires all applicants for an offshore banking license to submit inter alia the names and addresses of all directors and shareholders (and the number of shares directly or indirectly held by the latter) and any other information of a financial or other nature as that may be required in any general or particular case.

741. Section 9 allows for an examination of the financial status and history of the applicant, any of its directors, associates or affiliates, the character and experience of the directors and adequacy of capital. Further Section 13 of IFSA states that no person or group that is under the control of another person or group shall, without the approval of the Minister of Finance and subject to such conditions as he may consider necessary, acquire or hold shares of a value of more than 10 percent of the stated capital of the licensee.

742. Only a body corporate may be issued with a license under FIA. Section 5 requires applicants to

submit a copy of the articles, by laws or other instruments under which the company is incorporated or organized as well as any such information required. With respect to a Barbados bank a licence is issued on the following conditions:

- That no person or group that is under the control of another person or group shall, without the approval of the Minister and subject to such conditions as he may consider necessary, acquire shares of a value exceeding 20 per cent of the stated capital of the licensee,
- That where approval has been obtained to increase the shareholding in accordance with subparagraph (1) of this subsection, no person shall hold shares, the value of which exceeds the amount approved by the Minister.

743. In determining whether the approval of the Minister should be granted, the Minister shall take inter alia into account whether the person who is seeking to acquire the shares:

- Has been convicted of an offence involving fraud or dishonesty,
- Is a discharged bankrupt, or
- Has been involved in any act of impropriety related to banking business or financial matters.

744. All applications are processed by the Bank Supervision Department and upon completion, a recommendation is made to the Minister. All prospective directors, shareholders, senior executives, and beneficial owners are required to complete a detailed confidential statement which allows for the application of fit and proper tests and the conduct of due diligence. Licensees have been instructed on the timing of refreshing of confidential statements, a copy of which is posted on the Central Bank's website.

745. In addition to the above, directors, shareholders, beneficial owners and senior executive officers of licensees are subject to additional fit and proper tests to gauge inter alia their experience, background, probity in financial matters, record of offences, censure or discipline from a professional body. Extensive investigations are undertaken on applicants, with the assistance of local and overseas supervisory and law enforcement authorities to ascertain that persons are fit and proper persons for the conduct of international financial services.

746. It is a condition of every license granted under the IFSA that the licensee must notify the Central Bank in writing of any change in the directors or senior officers within 14 days of the change. All IFSA and FIA licensees are required to report monthly to the Central Bank on any changes to senior management. Sections 43(1), 43(2), and 52 of the FIA, and 47(1), 47(2) and 53 of IFSA form the legal basis for the above measures. Failure to satisfy the set requirements will and has led in the past to licensees conforming to CBB requests to change directorship. .

### **Securities Commission**

747. The Securities Commission carries out limited due diligence on Directors and senior management. The SA requires applicants for registration as a market actor i.e. a broker, investment adviser, dealer in securities, a trader in securities, and an underwriter of securities to be of good character. There are no specific provisions dealing with the application of fit and proper criteria in assessing registration applications or requiring the Securities Commission approval for changes in the control and management of registrants. The Mutual Funds Act and the Mutual Funds Regulations empower the Securities Commission to approve mutual fund administrators, directors or similar senior officers. It should be noted that a fund administrator that is a company is only required to have at least two directors approved by the Securities Commission.

### **Supervisor of Insurance**

748. Due diligence is conducted on beneficial owners, directors and managers in an effort to exclude criminals and undesirable elements and to ensure that they meet the fit and proper requirements necessary to operate in the insurance industry. Persons are required to submit inter alia qualifications, references and testimonials, certificate of character and other information as requested by the Supervisor. Section 12 of the Insurance Act requires the Supervisor to be satisfied that the person

holding the office of Managing Director, Chief Executive Officer, or Principal Representative of the company is fit and proper to hold that office before registration is granted. Similar requirements are stipulated for the registration of insurance intermediaries i.e. brokers, salesmen, agents, adjustors, loss assessors etc, under section 83 of the IA. The EI has no specific requirements for beneficial owners, directors or managers to be fit and proper.

### **Registrar of Cooperatives**

749. Section 57 of the CSA makes provision for the qualification of directors on the basis of ineligibility factors. Some of these factors include being of unsound mind, and having the status of a bankrupt. Amendments to the Co-operative Societies Act have subjected officers to similar qualifications. None of the factors refer to application of fit and proper criteria. It is standard practice for by-laws of cooperatives to reflect prescriptive measures as it relates to fit and proper criteria. These must be reviewed and approved by the Registrar, who has in the past requested changes be made, for example to management before granting approval. Any amendments to the by-laws must also be approved by the Registrar. Special attention is paid to positions with signing powers e.g. Secretary and Treasurer for whom the Registrar must issue formal instruments.

750. Section 4(1)(a) of the Act requires co-operative societies to conform to co-operative principles including one vote per member or delegate. This serves to restrict the influence of potential criminal elements on the operations of Credit Unions.

751. Section 7 requires directors and officers to discharge their powers and duties in good faith, in the best interest of the society, honestly and exercise care, diligence and skill that a reasonable prudent person will exercise in comparable circumstances.

752. Societies are required to appoint a Supervisory Committee to oversee operations for safety and soundness. Section 215(1) of the CSA requires the Supervisory Committee to report forthwith to the Registrar any serious breaches in the use of funds, property and securities of the society by the Board or other officers. There is no provision for the Registrar to vet the appointment of senior management utilizing fit and proper criteria.

### **Money value transfer providers**

753. All commercial banks licensed under the FIA are authorized foreign exchange dealers. Part III Companies licensed under the FIA must seek the Central Bank's approval to become authorized dealers. Money Value Transfer (MVT) services or money / currency changing services that are supervised by the Central Bank are therefore subject to strict licensing requirements. MVT providers that are not licensees under the FIA must be registered with the Foreign Exchange and Export Credit Department of the Central Bank. A framework for regulating and supervising MVT services not provided by licensees of the Central Bank was in the process of development. At the time of the mutual evaluation there were only two stand-alone money remitters. There is need for the development and implementation of an improved framework for regulating and supervising MVT services that are not licensees of the Central Bank.

### **Post Office**

754. Under Section 11 of the Post Office Act, Cap 27A, The Post Office can issue money and postal orders. While the provision of these products would include the Post Office in the definition of financial institution in the MLFTA, the authorities are of the view that the Post Office poses no significant risk for money laundering and terrorist financing and therefore is subject to reduced AML /CFT obligations.

### **Recommendation 23 (ongoing supervision and monitoring)**

755. Both the CBB and the Supervisor of Insurance apply prudential regulatory and supervisory measures for AML/CFT purposes. These include the following:

- The licensing process includes assessments of the ownership structure, quality of directors and senior managers, feasibility of business plans, organizational, profitability, and future prospects.
- An assessment of the risk management framework is undertaken inter alia through reviews of governance practices including policies and procedures, organizational & group structure, internal control and independent reviews.

756. Additionally, the CBB also has:

- All licensees subject to ongoing review by the Offsite Unit of the Bank Supervision Department based on the submission of monthly, quarterly and annual prudential returns. Onsite examinations are undertaken on a risk-basis and licensees are targeted for review at least once every 18 months.
- Licensees submit solo and consolidated information to the Bank Supervision Department for review. Applications from licensees for which Barbados is host supervisor are considered with reference to the home supervisor. Onsite examinations are conducted with reference to home supervisors. MOUs are in place with regional and other regulators to facilitate consolidated supervision.

### **Securities Commission**

757. The regulatory and supervisory measures applied by the Commission are not as stringent as those applied by the other regulators. Most of the local registrants of the Commission are also licensed by the CBB, which plays the role of lead regulator. Limited due diligence is conducted on new applicants. The background of senior management is usually checked to determine suitability. Where the applicant is from another jurisdiction external checks are limited to the gathering of information from the authorities in that jurisdiction.

758. No formal assessment of the risk management framework of registrants is undertaken by the Commission. The AML/CFT risk is determined according to the size of the security entity and whether or not it is supervised or regulated by another domestic regulator. Security entities that are unregulated by another regulator are seen as high risk and are priority for onsite inspection by the Commission..

### **Recommendation 32**

759. On-site and off-site examinations have become an important part of the regulatory and supervisory process of all the primary regulators in the fight to combat money laundering and terrorist financing. Off-site examinations are continuous, the results of which are used to inform scope of on-site examinations undertaken.

### **Central Bank**

760. Between 2005 and 2006, AML/CFT offsite assessments were conducted on 100% of IFSA and FIA licensees. This was undertaken through the application of a self-assessment questionnaire. The results informed the onsite examination program.

**Table 17: Summary of Onsite Examinations Between January 2005 and June 30, 2006**

| <b>Types of Exam</b>    | <b>Offshore Banks</b> | <b>Onshore Banks</b> | <b>Part III Companies</b> |
|-------------------------|-----------------------|----------------------|---------------------------|
| <b>Full Scope</b>       | 8                     | 2                    | 5                         |
| <b>AML/CFT Focused*</b> | 20                    | 3                    | 3                         |

|                                |   |   |   |
|--------------------------------|---|---|---|
| <b>Other Focused/Special**</b> | 1 | 1 | 0 |
|--------------------------------|---|---|---|

\*Included AML/CFT reviews

\*\*Included 2 joint inspections with the Securities Commission

761 In addition, there were 2 other special inspections undertaken, which required enforcement of Section 34 of the CBBA.

**Securities Commission**

762. On-site examination of registrants started in 2006 and is conducted with the assistance of the Supervision Department of the Central Bank. The examinations conducted so far all have an AML/CFT focus.

**Supervisor of Insurance**

763. On-site examinations of licensees are being conducted by officers of the Department. There is no formal examination template; however, there is a set schedule as to how these examinations should be conducted. All examinations have an AML/CFT component. Between 2004 and 2006 28 domestic companies and 17 off-shore companies were subject to on-site examinations.

**Registrar of Cooperatives**

764. Eighteen (18) such examinations of which 13 include an anti-money laundering component were conducted during the period January to September 2006. The five largest credit unions are usually examined in conjunction with the Central Bank of Barbados.

**Recommendation 25 – Guidelines(Guidance for financial institutions other than on STRs)**

765. The AMLA in conjunction with CBB, the Supervisor of Insurance and the Registrar of Co-operative Societies issued revised AML/CFT Guidelines for their licensees. The Securities Commission adopted the CBB AML/CFT Guidelines. The 2006 AML/CFT Guidelines is a comprehensive document that covers;

- Definitions of ML and TF
- Legislative And Regulatory Framework
- Role Of The Board And Senior Management
- Customer Due Diligence
- Unusual & Suspicious Transactions
- Compliance And Audit
- Record-Keeping
- Training And Awareness
- Pre-Employment Background Screening

- Red Flags

**Post Master General**

766. The Post Office while not classified as a financial institution under the MLFTA has issued AML/CFT guidelines. These guidelines were issued by the Post Master General in consultation with the AMLA. The areas covered include:

- . Description of Money Laundering and Financing of Terrorism.
- . Customer Service products.
- . Compliance procedures and systems.
- . Customer Due Diligence.
- . Training and Awareness.

3.10.2 Recommendations and Comments

**REC 17**

767. The Securities Commission and the Registrar of Co-operative Societies should be given the administrative power to institute sanctions for AML/CFT breaches.

768. All regulators except for the CBB and the Supervisor of Insurance should have general powers of sanctions to effectively address breaches by licensees.

**REC 23**

769. The Securities Commission should have the power to approve ownership of significant or controlling interests of their registrants.

770. The Registrar of Co-operatives should have power to approve senior management of their licensees.

771. The Securities Commission should be required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.

772. There is need for the development and implementation of an improved framework for regulating and supervising MVT services that are not licensees of the Central Bank.

**REC 29**

773. The Securities Commission should have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance.

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

|  | Rating | Summary of factors relevant to s.3.10 underlying overall rating |
|--|--------|---|
|--|--------|---|

|             |           |   |
|-------------|-----------|---|
| <b>R.17</b> | <b>LC</b> | <p><b>The Securities Commission and the Registrar of Co-operative Societies have no administrative power to institute sanctions for AML/CFT breaches.</b></p> <p><b>The Securities Commission, and the Registrar of Co-operative Societies have no general powers of sanctions to effectively address breaches by licensees.</b></p>  |
| <b>R.23</b> | <b>PC</b> | <p><b>The Securities Commission has no power of approval over ownership of significant or controlling interests of its registrants.</b></p> <p><b>The Registrar of Co-operatives has no power of approval over senior management of its licensees.</b></p> <p><b>The Securities Commission is not required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.</b></p> <p><b>Stand alone MVT service providers are not subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.</b></p> |
| <b>R.25</b> | <b>PC</b> | <b>See factors in section 3.7, 4.3</b>  |
| <b>R.29</b> | <b>LC</b> | <b>The Securities Commission does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance.</b>  |
| <b>R.30</b> | <b>PC</b> | <b>The Registrar of Co-operative Societies has inadequate number of staff. See factors in sections: 2.5, 2.6</b>  |
| <b>R.32</b> | <b>LC</b> | <b>See factors in sections: 2.7, 6.3, 6.5</b>   |

### **3.11 Money or value transfer services (SR.VI)**

#### 3.11.1 Description and Analysis (summary)

##### **Special Recommendation VI**

774. MVT service providers and money / currency exchange services that are licensees of the Central Bank are subject to strict regulation and supervision as discussed under Recommendation 29. MVT providers that are not licensees under FIA must be registered with the Foreign Exchange and Export Credit Department of the Central Bank. The competent authority for ensuring that the latter complies with the MLFTA is the FIU. However, beyond providing AML training to stand alone MVT providers, the FIU does not monitor or supervise them for compliance with AML requirements. There was no requirement for registered MVT service operators to maintain a current list of agents. The authorities have advised that a framework for regulating and supervising MVT services not provided by licensees of the Central Bank is being developed.

775 Under Section 11 of the Post Office Act, Cap 27A, The Post Office can issue money and postal orders. The Post Office is not defined as a financial institution under the MLFTA and is therefore not subject to AML obligations. However, the Post Office has been proactive in implementing AML measures and has issued its own AML guidelines for its operations. Some of these measures comprise

identification requirements including official ID for the purchase of any postal order. Postal orders are limited to a maximum of US\$250.00 per order. All sixteen post offices submit accounts to the Central Office. Accounts are screened weekly for simultaneous orders and an automated system is being developed to facilitate checking for names and destinations. The Post Office has provided information to the FIU on request.

### 3.11.2 Recommendations and Comments

776. It is recommended that the authorities proceed in developing a framework for the regulation and supervision of MVT services not provided by licensees of the CBB.

### 3.11.3 Compliance with Special Recommendation VI

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| SR.VI | NC     | <p><b>Stand alone MVT providers are not adequately regulated or supervised for compliance with AML/CFT requirements</b></p> <p><b>No requirement for MVT service operators to maintain a current list of agents.</b></p> |

## 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### 4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11, & 17)

#### 4.1.1 Description and Analysis

#### **Recommendation 12**

777. The general definition of financial institutions under the MLFTA to include persons whose business involves services of a financial nature would include the activities of DNFBPs as defined by the FATF. There are no casinos in Barbados. Real estate agents act as facilitators of real estate transactions and are not involved in any financial service since they do not receive or transfer monies from one party to another. Lawyers, accountants and dealers in precious metals and precious stones have proven no material AML/CFT risk. A significant portion of the business of trust and company service providers is carried out by the licensees of the CBB. Except for trust and company service providers who are licensees of the CBB, there is no implementation of the requirements of the AML/CFT regime on the DNFBPs. This is due to the authorities view that the unregulated DNFBPs are low risk in terms of exposure to being used as conduits for money laundering and financing of terrorism.

778. Proposed legislative amendments that will include specific DNFBP activities as defined in the FATF Recommendations are currently being considered. The definition of financial institution in the MLFTA will be expanded to include DNFBP activities. This will allow for the implementation of reporting requirements on DNFBPs under the country’s AML regime.

#### 4.1.2 Recommendations and Comments

779. Barbados does not have an established AML/CFT regime for DNFBPs except for licensees of the CBB. It is recommended that the authorities enact measures to apply the requirements of Recommendations 5, 6, 8 to 11, and 17 to DNFBPs not licensed by the CBB.

#### 4.1.3 Compliance with Recommendation 12

|             | Rating | Summary of factors relevant to s.4.1 underlying overall rating   |
|-------------|--------|--|
| <b>R.12</b> | NC     | <b>The requirements of Rec. 5, 6, 8 to 11, and 17 are not adequately enforced on DNFBPs not licensed by the CBB.</b> |

### 4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

#### 4.2.1 Description and Analysis

##### **Recommendation 16**

780. While section 8 of the MLFTA imposes an obligation for financial institutions, which by definition would include DNFBPS, to file STRS with the AMLA, no measures have been implemented to ensure compliance with this requirement by DNFBPs not licensed by the CBB.

#### 4.2.2 Recommendations and Comments

781. DNFBPs not licensed by the CBB should be subject to measures to ensure compliance with the same requirements as all other financial institutions under the relevant laws. The authorities should take measures to ensure that the requirements of Recommendations 13 to 15, 17 and 21 are applied to DNFBPS not licensed by the CBB.

#### 4.2.3 Compliance with Recommendation 16

|             | Rating | Summary of factors relevant to s.4.2 underlying overall rating  |
|-------------|--------|---|
| <b>R.16</b> | NC     | <b>The requirements of Recommendations 13 to 15, 17 and 21 are not adequately applied to DNFBPS not licensed by the CBB..</b> |

### 4.3 Regulation, supervision and monitoring (R.17, 24-25)

#### 4.3.1 Description and Analysis

782. There are no casinos in Barbados. However, there are plans to amend the MLFTA to capture the financial activities of gaming institutions. To the extent that financial activities fall within the definition of “financial institution” of the MLFTA, the FIU is the competent authority responsible for monitoring and ensuring compliance with AML/CFT requirements. At the time of the mutual evaluation, there were no measures to monitor and ensure compliance of DNFBPs with AML/CFT

requirements except those regulated by the CBB. . Except for the licensees of the CBB no guidelines have been issued to DNFbps.

#### 4.3.2 Recommendations and Comments

783. It is recommended that the authorities take measures to ensure that the requirements of Recommendations 24 and 25 should apply to DNFbps not licensed by the CBB.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFbp)

|             | <b>Rating</b> | <b>Summary of factors relevant to s.4.3 underlying overall rating</b>  |
|-------------|---------------|--|
| <b>R.24</b> | <b>NC</b>     | <b>No measures to monitor and ensure compliance of DNFbps with AML/CFT requirements except those regulated by the CBB.</b>   |
| <b>R.25</b> | <b>PC</b>     | <b>No specific guidelines have been issued for DNFbps to implement and comply with AML/CFT requirements except those regulated by the CBB.. See factors in sections: 3.7</b> |

### **4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)**

#### 4.4.1 Description and Analysis

##### **Recommendation 20**

784. There are businesses that deal in high value and luxury goods and gaming institutions in Barbados. Other than the gaming institutions, whose financial activities are to be subject to the requirements of the MLFTA, the authorities are of the view that there are no other entities whose risk profile requires them to be subject to FATF obligations.

785. A number of non-cash financial instruments have been in common use in Barbados. These include the use of credit and debit cards, cheques, electronic payments and transfers. The country has an extensive commercial bank branch network with 98 ATMs and approximately 3,000 point of sale terminals in commercial business places all over the island. The number of credit cards has increased 47% from approximately 68,000 in 2000 to 100,000 by December 2005. The largest denominated banknote is \$100. An Automated Clearing House and Real Time Gross Settlement System (RTGS) are in place in Barbados.

#### 4.4.2 Recommendations and Comments

786. Initiatives are in place to apply modern and secure techniques for the conducting of financial transactions as well as maintaining the integrity of the system.

#### 4.4.3 Compliance with Recommendation 20

|             | Rating   | Summary of factors underlying rating         |
|-------------|----------|--|
| <b>R.20</b> | <b>C</b> | <b>This recommendation is fully observed</b> |

## **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

#### **Recommendation 33**

787. The Companies Act provides for the incorporation of domestic companies and registration of external companies (IBCs, foreign sales corporations, exempt insurance and management companies, international banks and societies with restricted liability) to undertake business in Barbados. Sections 395 and 396 of the Companies Act require the Registrar to maintain a register of companies which can be accessed by members of the public for a fee. The register contains documents, companies are required to file under the Act at the time of incorporation and annually thereafter. These documents include articles of incorporation, a list of directors (inclusive of their full names, addresses and occupations) and address of the registered office of the company. Section 15A requires the filing of annual returns in a prescribed manner and form. None of the above requirements stipulates information on shareholders

788. Section 170 of the Companies Act requires companies to prepare and maintain at their registered office, bye-laws, shareholder information (including name, latest known address and number of shares held), a register of debenture holders etc. Section 175(1), (2) of the Companies Act provides access by shareholders free of charge to relevant shareholder information at companies' registered offices. While there is no specific provision granting access to competent authorities, section 175(4) of the Act allows access to "any person" on payment of a fee to shareholder information. An additional gateway is provided to shareholder lists of public companies under sections 176 – 178 of the Act via delivering of an affidavit to the public company. The use of the information is however, restricted under section 178 of the Act.. Section 29(2) of the Companies Act prohibits bearer shares.

789. Division B of Part V of the Act makes provision for investigations to be made into a company where it appears that persons involved in the formation of the company or its business or affairs or that of its affiliates, have acted fraudulently or dishonestly or if the company has been formed for a fraudulent purpose. The Registrar can apply ex parte for a Court order to conduct an investigation into the control and ownership of the company.

790. IBCs operate under the IBCA and are regulated by the Ministry of Economic Affairs and Development through the office of the Director of International Business. The IBCA does not have any provision requiring the submission of shareholder information to the International Business Unit of the Ministry of Economic Affairs and Development. However, an application form prescribed in the regulations to the legislation makes provision for shareholder profiles and contact information on ultimate beneficial shareholders without which, the application will not be processed.. The declaration in the application form commits applicants to notifying the Ministry of any material change in information supplied in the form before and after the licence is processed. . No such submission is requested at the annual renewal of the licence.

791. Section 7 of the MLFTA requires financial institutions to identify any person on whose behalf or for whose ultimate benefit an applicant may be acting for. The AML/CFT guidelines are specific as to requiring the identification of beneficial owners of corporate customers.

792. Section 7.4.7 of the CBB AML/CFT Guideline states that where a licensee decides that

companies with nominee shareholders represent an acceptable business risk, the licensee should exercise care in conducting transactions. Licensees are required to ensure that they can identify the beneficial owners of such companies and are required to immobilize bearer shares as a means of monitoring the identity of such companies by, for example, requiring custody by:

- a. The licensee, or its subsidiary, regulated affiliate, parent or holding company;
- b. A recognized regulated financial institution in a jurisdiction with equivalent AML/CFT standards; and
- c. Requiring the prior approval before shares can be exchanged

793. As already indicated, bearer shares are prohibited under the Companies Act. This restriction applies to companies incorporated in Barbados. As such, the requirements noted above in the CBB AML/CFT guidelines are for the offshore sector and their non-resident clients.

794. Information maintained by the Registrar of Companies is accessible to the FIU since the Registrar is a member of the AMLA. Information maintained by the financial institutions can be accessed by the FIU under Sections 6 and 8 of the MLFTA. The domestic regulatory authorities can also access information from their licensees or registrants under their relevant statutes.

795. The only requirement in the Companies Act which is specific with regard to shareholder information concerns records maintained at company offices. Access to shareholder information at the registered offices of companies is possible for competent authorities under the Companies Act. The IBCA has no direct requirements for information on beneficial shareholders. Beneficial ownership information of corporate clients is required in the AML/CFT guidelines. Access to beneficial ownership information is provided through the law enforcement and supervisory authorities' powers to access the information from licensees and registrants. However, there is no legislative requirement for legal persons to disclose beneficial ownership information. The above arrangements while providing mechanisms for competent authorities to access beneficial ownership information could be enhanced by establishing a complementing national registry.

### 5.1.2 Recommendations and Comments

- 796. The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry.
- 797. The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information.

### 5.1.3 Compliance with Recommendations 33

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.33</b> | <b>PC</b>     | <b>There is no legislative requirement for legal persons to disclose beneficial ownership information.</b> |

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

### **Recommendation 34**

798 The FIU, CBB and Ministry of Economic Affairs and Development share responsibility for trusts. The FIU has wide powers to access and obtain information from any financial institution under the MLFTA. The CBB has a formal and effective regime that incorporates transparency, access to and obtaining information. Adequate mandatory requirements reside in the guidelines on trusts.

799. International trusts are financial institutions as defined by the MLFTA and so fall under the supervision of the FIU for the purposes of ML and FT (sec. 2). Sec. 7 of the said Act requires a financial institution to take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it. Where it appears that an applicant is acting on behalf of another person, the institution shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

800. Section 13 of the International Trusts Act requires the trustee of a purpose trust to maintain in Barbados,

- A copy of the instrument creating the trust and copies of any other instrument amending or supplementing the instrument (this is confidential and not available to the public);
- A register in which the following information is set out:
  - (i) the name of the settlor,
  - (ii) a summary of the purposes of the trust,
  - (iii) the name of the protector of the trust, and
  - (iv) such documents as are necessary to show the true financial position of the trust.

801. In addition, a trustee of an international trust shall also file with the Director of International Business in Barbados the information referred to at paragraph (i), (ii) and (iii) above. This information is confidential and not available to the public, however the trustee can allow the protector or a person authorised by the protector to inspect the instrument, register and documents. The information filed with the Director of International Business does not include the beneficiary.

802. The Trustee Act provides for the duties and responsibilities of trustees and includes no provision for maintaining information with regard to the formation or operation of the trust and the parties involved.

803. Trust services are provided mainly by the licensees under the FIA and IFSA who are regulated and supervised by the CBB. The AML/CFT Guidelines for financial institutions regulated by the Central Bank, the Securities Commission, the Supervisor of Insurance and the Registrar of Cooperative Societies require at a minimum the following information on trusts;

- Name of trust;
- Nature / type of trust;
- Country of establishment;
- Identity of the trustee(s), settlor(s), protector(s)/controller(s) or similar person holding power to appoint or remove the trustee and where possible the names or classes of beneficiaries;
- Identity of person(s) with powers to add beneficiaries, where applicable; and
- Identity of the person providing the funds, if not the ultimate settlor.

804. Ongoing due diligence is required in the context of changes in any of the parties to the trust, revision of the trust, addition of funds, investment of trust funds or distribution of trust assets/provision of benefits out of trust assets. This information is available to the relevant domestic supervisory authorities, the law enforcement agencies and the FIU. However it should be noted that only the CBB

can apply sanctions for breaches of this particular section of the AML/CFT Guidelines.

805. The Ministry of Economic Affairs and Development's AML/CFT guidelines do not have specific information requirements dealing with trusts which would be applicable to company service providers. There are no measures in place for direct checking of the compliance of the licensees of the Ministry of Economic Affairs and Development. It should also be noted that while the DNFBP activities of lawyers and accountants are included in the AML/CFT legal framework, there are no measures for monitoring and ensuring compliance with AML/CFT requirements..

806. The provision for the registration of international trusts under the International Trusts Act meets most of the requirements for information on trusts except for the omission of information on beneficiaries. Only the requirements in the CBB AML/CFT guidelines are liable for sanctions for breaches by the licensees of the CBB and the Supervisor of Insurance while the Ministry of Economic Affairs and Development's AML/CFT guidelines applicable to company service providers do not have specific trust requirements. The FIU under the MLFTA can access information on trusts maintained by all financial institutions i.e. international trusts, supervised financial entities, company service providers, lawyers and accountants. However, licensees of the Ministry of Economic Affairs and Development are not checked for compliance with the relevant guidelines. Lawyers and accountants are not subject to compliance checks for AML/CFT requirements.

### 5.2.2 Recommendations and Comments

807. It is recommended that the authorities implement measures for monitoring and ensuring compliance of international trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants with AML/CFT requirements i.e. retention of beneficial ownership and control information.

### 5.2.3 Compliance with Recommendations 34

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.34 | PC     | <b>International trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants are not subject to measures for monitoring and ensuring compliance with AML/CFT requirements i.e. retention of beneficial ownership and control information.</b> |

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

#### **Special Recommendation VIII**

808. "Barbados has enacted the Charities Act as a mechanism for monitoring the operations of charities and NPO's . While this statute goes some way towards addressing the problems NPO's present, some enhancements may be necessary. The AMLA has been discussing the adequacy of its laws in this area, and legislative review is being considered."

809. "The Charities Act Cap. 243, originally passed in 1980 and amended more recently, provides a fairly elaborate framework for the registration and administration of "charities", which is defined to cover a broad spectrum of bodies established to carry out "charitable purposes". The entities need not be incorporated. Section 3 of the Act comprehends a vast array of activities in which they can be engaged for the public benefit, including such diverse matters as the relief and prevention of poverty,

sickness and disability, the promotion of science and cultural activities, the advancement of ethical and moral teachings and the welfare of animals.

810. The Act requires charities (except specially exempt bodies) to be registered with the Registrar of Corporate Affairs and Intellectual Property, and this process is designed to record details of the entity including the promoters. There is also an obligation on the managers (“charity trustees”) to notify the Registrar whenever the charity ceases its operations, or varies its objects. Where an entity fails to give the required notification, the Registrar has power under section 5(6) to order the body to comply. If the Registrar’s order is flouted, this can be treated as a violation of a High Court order (section 45).

811. Further, Part IV of the Act contains provisions for addressing charitable trusts which fail or cannot be executed in the manner originally contemplated. In such cases, the trustees will prepare a scheme for alternative distribution of the trust property, which has to be reviewed by the Attorney General as a preparatory step to approval of the scheme by the High Court. There is also a requirement of public notification. Part IV therefore establishes a commendable mechanism by which trusts can be saved from failure, but in a manner which ensures governmental oversight and public transparency.

812. The registration and oversight measures in the Charities Act would tend to minimise the opportunities for infiltration of NPO’s by terrorist groups.”

813. “Section 41 of the Charities Act imposes an obligation on charity trustees to keep proper accounting records of the operations of the charities they manage, and these records must, apart from specific exceptional cases, be preserved for a minimum of 7 years. There is also a duty on the trustees under section 42 to file statements of account with the Registrar within a prescribed period,(annually) and such statements are open to public inspection. This provision also empowers the Registrar to appoint a recognised auditor to investigate the “condition and accounts” of a charity, and the auditor has powers of access to records and information in the custody of the trustees to facilitate the audit.

814. It should also be noted that section 8 of the Act envisages information exchange regarding charities between the Registrar and other Government Departments/officials, including the Commissioners of Inland Revenue and Income Tax. This facility should strengthen the overall regulatory framework governing NPO’s.

815. Section 7.4.2 of the CBB AML/CFT Guideline includes measures for financial institutions to deal with NPO customer relationships. These include determining the risk level of activities in which the NPO is engaged, obtaining evidence of registration of the home and local operation where applicable, identity of all signatories to the account and of the board members and trustees.

816. As part of the verification process, licensees are required to confirm that the organisation is registered under the appropriate laws and with the tax authorities and carry out due diligence against publicly available terrorist lists. As part of ongoing monitoring activity, licensees are required to examine whether funds are being sent to high-risk countries.

817. It is believed that a number of the penalty provisions under the Charities Act call for review. For instance, failure to register a charity under section 5 will disentitle the trustees from claiming any otherwise applicable tax exemptions (section 6). While this sanction might have been sufficient in an earlier era, the modern threat of charity contamination by terrorists warrants a stiffer penalty for trustees who fail to register with the authorities.

818. Again, the sanctions for breach of section 19 (duty to lodge documents with Registrar notifying variation of trusts/change of registered office) and section 38 (duty to produce documents/render assistance requested by officer conducting inquiry) appear inordinately low, and are clearly not dissuasive. The authorities pointed out that the heavier sanctions regime under the MLFTA was the primary enforcement mechanism, but it does not appear that all the specific breaches under the

Charities Act would be captured. Although charities in Barbados (comprising mainly Christian churches and other benevolent bodies) are not now regarded as high risk for ML/FT, the examiners believe that preventive action should be taken by reviewing the applicable penalties under the Charities statute.

### 5.3.2 Recommendations and Comments

819. The authorities, in its review of the applicable law, should:

820 Carefully consider the FATF’s 2002 Best Practices Paper on Special Recommendation VIII, which advocates a number of measures for tightening the regime for NPO’s, including the incorporation of mechanisms to verify the actual allocation of charitable funds to the intended beneficiaries.

821 Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect.

### 5.3.3 Compliance with Special Recommendation VIII

|          | Rating | Summary of factors underlying rating                        |
|----------|--------|---|
| SR. VIII | LC     | Sanctions for breaches of Charities Act are not dissuasive. |

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 National co-operation and coordination (R.31 & 32)

#### 6.1.1 Description and Analysis

#### **Recommendation 31**

822. The AMLA with its legislative responsibility for supervising financial institutions in accordance with the MLFTA is also the national body responsible for AML/CFT policy in Barbados. The members of the AMLA include along with the Chairman and Deputy Chairman, the Solicitor General, the Commissioner of Inland Revenue Department, the Commissioner of Police, the Supervisor of Insurance, the Comptroller of Customs, the Registrar of Corporate Affairs and Intellectual Property, and Head of Banking Supervision of the CBB. Monthly meetings of the AMLA facilitate information sharing and provide a forum for discussion of AML/CFT issues including international developments and initiatives which directly affect members and the country.

823. The FIU as the administrative arm of the AMLA maintains good relationships with other domestic competent authorities and reporting entities. Information exchange between the FIU and local law enforcement is timely.

824. The law enforcement authorities maintain a collaborative relationship among various agencies. The Office of the DPP works closely with the FCIU of the RBPF. Information exchange between the Immigration Department, Customs, Police Special Branch and the Coast Guard is coordinated through

the Joint Intelligence Unit. The CED works in close collaboration with the Police Drug and K-9 Units in the JCT at designated ports of entry.

825. The supervisory authorities also collaborate in the performance of their functions. The CBB and the Securities Commission have similar licensees and coordinate their activities to allow for the efficient use of resources. The Registrar of Cooperative Societies usually carries out inspections of the five largest credit unions in conjunction with the CBB. An MOU between regulators provides for the sharing of information domestically.

**Recommendation 32**

826 The review procedures of the AML/CFT infrastructure in Barbados allows for the formulation and drafting of new legislative requirements through a consultative process. Stakeholders in the AML/CFT regime can identify corrections or adjustments and present a justification for the required action to the AMLA. Through discussion and consultation with the stakeholder the FIU is instructed to draft a proposal for circulation among affected stakeholders to secure their feedback. This process results in a formal proposal being presented by the Attorney General to Cabinet. Once approved, the proposal is drafted in legal form for debate and voting in Parliament.

827 The AML/CFT regime is under a continuous review process as attested to by the various legislative amendments and other updates. The principal ML legislation was passed in 1998. It was amended in 2000, again in 2001 and further amended in 2002. In 2002 the ATA was passed. One object of the latter amendment to the MLFTA was to harmonize the MLFTA and ATA. In that time frame, the Mutual Assistance in Criminal Matters Act, the Extradition Act were reviewed and amended. AML/CFT guidelines which are issued by the AMLA in conjunction with various domestic regulatory authorities were revised and reissued in 2006. The assessment team was given information about proposed legislative amendments designed to make the AML/CFT regime more compliant with FATF requirements.

6.1.2 Recommendations and Comments

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|-------------|---------------|---|
| <b>R.31</b> | <b>C</b>      | <b>This recommendation is fully observed</b>  |
| <b>R.32</b> | <b>LC</b>     | <b>See factors in sections: 2.7, 6.3, 6.5</b> |

**6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)**

6.2.1 Description and Analysis

**Recommendation 35**

828 Barbados has signed and ratified the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention. Full implementation of these instruments is measured by the steps taken by the jurisdiction to, inter alia, criminalise relevant offences, appropriately provide for restraint, forfeiture and intelligence-gathering mechanisms, and engage with international partners in AML/CFT.

829 As discussed in earlier sections, there has been criminalisation of many offences in Barbados, although not the full range required by the Palermo Convention.. Human trafficking, corruption and

bribery are designated categories of offences which are not adequately provided for in legislation. Restraint and forfeiture mechanisms do exist, but the manner of implementation raises concerns, particularly in relation to the MLFTA. Instrumentalities intended for use in the commission of an offence are not subject to restraint /forfeiture measures. Examination orders are not provided for under the MLFTA or DAPCA.

830 With regard to the Terrorist Financing Convention, the ATA essentially covers all the activities required to be criminalized by the Convention

831 There is evidence of international cooperation, and MACMA provides a useful basis for reciprocal provision of legal assistance. The Palermo definition of “serious crime” is not, however, reflected in the restraint/forfeiture regime under MACMA. The range of countries with which MLAT’s have been negotiated should be expanded.

**Special Recommendation I**

832. Barbados sought to give effect to the UN Resolutions S/RES/1267(1999) and S/RES/1373(2001) by passing the ATA. However, the ATA has no requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.

6.2.2 Recommendations and Comments

833. The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human trafficking and updating the corruption/bribery laws; (ii) UN Resolution S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN-designated entities.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.35</b> | <b>LC</b>     | <p><b>All designated categories of offences are not adequately addressed in the range of predicate offences</b></p> <p><b>Instrumentalities intended for use in the commission of an offence are not subject to restraint/forfeiture measures.</b></p> <p><b>The custodial element of the definition of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention.</b></p> |
| <b>SR.I</b> | <b>PC</b>     | <p><b>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.</b></p> <p><b>Overlap between ATA and POCA respecting freezing/forfeiture and ambiguous aspects to ATA forfeiture power, both detracting from effectiveness.</b></p>  |

**6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)**

6.3.1 Description and Analysis

**Recommendation 36**

834. The Mutual Assistance in Criminal Matters Act, Cap. 140A, (MACMA) establishes an overarching framework for the provision of a wide range of mutual legal assistance. The statutory regime is intended to give effect to the Commonwealth Scheme for Mutual Assistance in Criminal

Matters (“Harare Scheme”) as between Barbados and other Commonwealth states, and also to make special provision for assistance between Barbados and non-Commonwealth countries. The processes provided under MACMA may be invoked where a “criminal matter” (i.e. a criminal investigation or proceeding) is underway either locally or overseas. For purposes of the Act, this expression will include restraint, forfeiture and confiscation proceedings (which may be classified as civil, rather than criminal proceedings) [sections 2(1), Parts II-IV].

835. It is important to note that MACMA is not intended to be exclusive, and operates without prejudice to existing or prospective cooperative arrangements, whether formal or informal, in the field of mutual assistance (section 5(1)).

836. The types of assistance which may be requested or rendered relate to such matters as search, seizure, production and copying of documents and other material (sections 6, 8, 19, 21); taking evidence from persons, including prisoners transferred to the requesting country for the purpose (sections 6, 9, 19, 20, 22, 23); and serving documents (sections 11, 24).

837. Significantly, there is also coverage in terms of tracing, restraining and forfeiting/confiscating the proceeds of “serious crimes”, which is defined in section 2(1) to denote crimes for which there is (i) a fixed sentence in law; (ii) a minimum custodial sanction of 5 years; or (iii) a minimum threshold value of the proceeds involved.

838. Specifically, Barbados may request the help of another Commonwealth country in identifying and valuing proceeds reasonably believed to be located in that jurisdiction, where a person has been charged with or convicted of a “serious offence” in Barbados, or alternatively, is reasonably suspected of having committed the offence (section 14). This power would, for example, facilitate the issue in the other country of search and seizure warrants to locate the relevant property. Under section 16, where (i) a person has been convicted locally, or charges have been, or are likely to be laid, and (ii) a forfeiture/confiscation order has been, or is expected to be made, there is power to seek a restraining order against suspected proceeds in the other state. Further, under section 15, where a restraining, forfeiture or confiscation order has been issued locally in relation to proceeds of such offences, the authorities may formally seek the enforcement of the order in a foreign state in which there are assets to which the order would apply.

839. Comparable provisions exist where the investigations or proceedings are underway in the other Commonwealth country, and assets are believed to be located in Barbados (sections 25-27).

840. It is noted that, by virtue of section 29 of MACMA, these provisions outlined above will also apply, with necessary adjustments, to non-Commonwealth countries which have concluded a bilateral treaty with Barbados dealing with mutual legal assistance, or other countries which are parties to the Vienna Convention.

841. These are all valuable provisions which facilitate reciprocal assistance, but three limitations are observed. Firstly, the linking of “serious offences” to a minimum 5-year custodial penalty seems to run counter to the comparable definition under the Palermo Convention, which applies a 4-year threshold. There is therefore the potential for some relatively grave offences to fall outside the ambit of certain MACMA provisions.

842. Secondly, the property to be made the subject of restraint or forfeiture/confiscation is confined to proceeds or benefits of the serious offences; there is no power to target instrumentalities of, or intended for use in, such offences. Additionally, while there may be power under sections 15(1) and 26(1) to reach property of corresponding value, this would not extend to instrumentalities.

843. Thirdly, sections 16 and 27 only permit the respective authorities to request that the other obtain a restraining order in that other country. There should be an additional provision authorising a country to seek the other’s assistance, in appropriate circumstances, in obtaining a forfeiture/confiscation order in the other country. Such circumstances should include the conviction of the accused for a serious offence in the requesting country. While it is true that section 16 of the ATA contemplates a foreign request being made for Barbados to obtain a forfeiture order, using section 27 of MACMA as a basic model, this does not apply generally to serious crimes but is restricted to cases of terrorism and FT. Section 16 is further limited by the fact that, as pointed out in Section 2.4 of this

report, the forfeiture regime under the ATA is not as effective as that under POCA.

844. There are provisions facilitating international cooperation under other legislation. Under section 6C of the MLFTA, the Director of the FIU may communicate information that is relevant to ML or FT to any national financial intelligence unit of a foreign state (a) where the unit is located in a state that is party to any agreement with Barbados in respect of the exchange of information under this Act; and (b) where he is satisfied that the state has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

845. It is noteworthy that this facility for information exchange has appropriate safeguards (prerequisite of state-to-state agreement/MOU; confidentiality undertakings) to ensure that crime fighting is balanced with the recognition of individual privacy rights, consistent with Egmont principles. From an operational point of view, however, the authorities have not concluded any bilateral treaties or other agreements pursuant to this provision; typically, they have relied on multilateral instruments e.g. the Vienna Convention, for information exchange purposes.

846. Section 11 of the Securities Act permits the Securities Commission to co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law, whether the activities in question occurred within or outside Barbados.

847. Barbados has concluded a Mutual Legal Assistance Treaty (MLAT) with the United States (1996) covering reciprocal assistance in investigation and proceedings relating to criminal matters. This MLAT is of general application, and appears to follow the pattern established for instruments of this nature. Cooperation over a wide field appears to be facilitated by the treaty, including in matters of evidence-taking and –gathering, and in restraint, confiscation and restitution proceedings. There is also an MLAT with the United Kingdom, and though useful, it is of more limited application than the USA agreement since it relates exclusively to drugs investigations and proceedings.

848. The actual operational effectiveness of these arrangements is difficult to assess as the team was not provided with comprehensive statistics identifying the investigations or proceedings which resulted from application of the MLAT's.

849. The authorities are of the view that, overall, mutual assistance requests are handled with all reasonable despatch. The statistics provided over a 4-year period were relatively sparse, and without the comprehensive detail which would enable the team to properly assess the adequacy of processing of requests.

850. The MACMA regime does impose certain conditions for the approval of requests for assistance, but these are not unusual in the context of legislation of this nature. Requests are routed through the Attorney General, who is appointed as the Central Authority for these purposes (section 3). On receipt of an appropriate request for assistance by the Central Authority of Barbados, the request is directed to the relevant agency or department for execution. As indicated above, assistance is provided in relation to criminal investigations and proceedings, and there is no statutory bar to cooperation where judicial proceedings have not commenced abroad or a conviction has not been secured.

851. Requesting countries are required to supply to the Central Authority the information set out in the Schedule (section 17), which is designed to elicit sufficient details about the request to enable a proper assessment of the case. Section 18, in line with the customary approach, elaborates a number of circumstances in which the Central Authority has an obligation, or discretion, to refuse a foreign request. Mandatory refusal of a request applies in several cases including those where approval would (i) violate Barbadian law e.g. the Constitution, the dual criminality rule or the rule against double jeopardy (subsection (2)(d), (e), (f)); (ii) compromise security or public policy (subsection (2)(e)); (iii) give credence to an offence of a “political character”.

852. Two points arise here. The first relates to the dual criminality rule, which essentially requires that the relevant foreign acts constitute an offence under both the laws of the requesting state and of Barbados. Following the language of the provision, the Attorney General would have to determine whether the foreign conduct to which the request relates translates into an offence under Barbadian law

if committed locally; the particular characterisation of the act under foreign law would not be the deciding factor, but rather the elements of the behaviour as viewed from a Barbadian legal perspective. This is appropriate, and the provision as framed does not therefore appear to be unduly restrictive. It should be pointed out, however, that this provision is duplicated under the discretionary scheme in section 18(3), which creates uncertainty as to application and seems to be an oversight.

853. The second point concerns offences of a “political character”. Section 18(9) makes it clear that where international conventions adopted by both Barbados and the requesting state require certain acts to be criminalised, and further oblige parties to render reciprocal assistance in relation thereto, those acts will not constitute “political offences” for the purposes of the mandatory refusal provisions. This is consistent with international requirements, particularly in the wake of the recent focus on terrorist-related activities.

854. Section 18(3) sets out grounds for refusal on a discretionary basis. Among the relevant factors to be considered by the Attorney General are (i) the extent of the burden to be placed on Barbadian resources; and (ii) the degree of compliance by the requesting state with the information, documentation and other requirements of the Schedule. None of these appears unusual.

855. There are also appropriate restrictions under section 12 on the use of information or evidence gleaned from the mutual assistance process, in recognition of the sensitivity of the data and to ensure that the facility is not abused. Section 13 also confers certain immunities on persons giving evidence in Barbados pursuant to requests, so as to protect their privilege against self-incrimination under local law.

856. As stated above, the controls under section 6C of the MLFTA with respect to information exchange are justified in the circumstances.

857. None of the grounds for refusal provided for in Section 18 of MACMA involve “fiscal matters” or secrecy or confidentiality requirements on financial institutions or DNFBPs beyond legal professional privilege or secrecy.

858. Some of the intelligence-gathering powers under Recommendation 28 (search and seizure; examination; issue of summonses) are available under general laws to the Central Authority for satisfaction of a request for assistance. However, other important compulsory powers (e.g. under monitoring orders against financial institutions; production orders; income tax disclosure orders) by virtue of POCA cannot be invoked.

859. The authorities have not advised of any case causing dual jurisdictional conflict, and it does not appear that there is any special mechanism in place to address such issues.

**Recommendation 37 (dual criminality relating to mutual legal assistance)**

860. As indicated above (i) the dual criminality principle is a precondition to (or at least may be required before) granting formal mutual legal assistance under the MACMA scheme; (ii) it is the substance of the foreign conduct, rather than technical characterisations, which will be examined to determine whether the behaviour would be regarded as a criminal offence in Barbados.

861. Outside the MACMA framework, there is scope for mutual assistance to be rendered without insistence on dual criminality. As pointed out earlier, MACMA does not preclude the development of other forms of formal and informal cooperation in “criminal matters”, between Barbados and other states (or international law enforcement entities) [sections 5, 29]. It is observed that section 11(2) of the Securities Act does not require dual criminality as a prerequisite for the sharing of information; it simply states that “the Commission may co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law whether the activities in question occurred within or outside Barbados”.

862. Further, Barbados and the USA have agreed, under Article 1.3 of the MLAT between them,

that dual criminality will not be required for action to be taken, unless mandated by any specific provision.

**Recommendation 38**

863 Sections 25-27 and 29 of MACMA set out the relevant provisions that facilitate responses to foreign requests for tracing and restraining property. [Refer to EC 36.1 above]. However, as already indicated, while there is authority for forfeiture/confiscation orders issued abroad to be enforced in Barbados (by registration under section 26(3) MACMA), there is (apart from the limited exception under section 16 of the ATA) no power for the foreign state to request the local authorities to apply for such an order. The relevant forfeiture powers under POCA would also not be available, as they are limited to the offences listed in the Schedule to that Act.

864 There is some provision for targeting property of corresponding value, but this power is restricted to proceeds or benefits of the offences; instrumentalities are excluded from the ambit of the scheme.

865 The authorities have not advised of any cooperative arrangements for coordinating seizure and confiscation actions with other states. There is no asset forfeiture fund, the proceeds of which would be dedicated to specific purposes in Barbados. Policy-makers did not advise that this is being actively considered.

866 There is no general statutory authority to share confiscated assets. However, with respect to forfeited terrorist-related funds, section 10 (1) of the ATA provides that the Government of Barbados may, pursuant to any agreement with any other State, share any such funds with that State on a reciprocal basis. There is also a power to dedicate funds received in this way for the compensation of victims of terrorist offences (subsection (2)).

**Special Recommendation V**

867. Generally, all the mutual legal assistance provisions referred to above, including types, manner, conditions, processes and refusal of assistance, powers of competent authorities, dual criminality, freezing, seizure or confiscation apply to terrorism and terrorism financing offences, and are thus applicable to Special Recommendation V. Similarly, the limitations mentioned in the discussion would also apply.

**Recommendation 32**

**Table 18: Royal Barbados Police Force/International Requests**

|  | 2002 | 2003 | 2004 | 2005 |
|--|------|------|------|------|
| <b>Request for information</b>           | 2    | 3    | 4    | 2    |
| <b>Request for evidence collection</b>   | 1    | 2    | 5    | 1    |
| <b>Request for warrants to be served</b> | 0    | 1    | 2    | 0    |
| <b>MLAT Requests</b>                     | 0    | 1    | 1    | 3    |

868. These statistics are not sufficiently detailed to convey to the team a full appreciation of the types of international requests made over the period, the modes of processing and general outcomes. It is therefore not possible to assess the effectiveness of the mutual legal assistance measures in place.

### 6.3.2 Recommendations and Comments

869. It is recommended that;

870. The definition of “serious offences” under MACMA should be revised to make it applicable to offences attracting at least a 4-year custodial penalty, in accordance with the Palermo Convention.

871. The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure that the instrumentalities of, or intended for use in, the relevant offences are covered.

872. The range of evidence-gathering powers available for the satisfaction of mutual assistance requests should be reviewed. In particular, monitoring order and other powers under POCA should be examined with a view to extending their application to serious offences committed locally or abroad.

873. The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict.

874. The authorities should consider increasing their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU’s with foreign states.

875. The authorities should consider negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT’s with a broader range of countries should be considered.

876. MACMA should be amended to enable Barbados or foreign states to seek reciprocal assistance in obtaining forfeiture/confiscation orders in the jurisdiction of the other country, where the suspect has been convicted of a serious offence in the requesting state. In particular, where Barbados’s assistance is being sought, the forfeiture/confiscation powers under POCA should be made available.

877. The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered.

878. Extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes should be considered.

### 6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

|             | Rating    | Summary of factors relevant to s.6.3 underlying overall rating   |
|-------------|-----------|--|
| <b>R.36</b> | <b>PC</b> | <p><b>Range of mutual legal assistance does not include the instrumentalities of ML and FT.</b></p> <p><b>Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority.</b></p> <p><b>The custodial element of the definition of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention.</b></p> |

|             |           |   |
|-------------|-----------|---|
|             |           | <b>No mechanism to deal with dual jurisdictional conflict.<br/>Not possible to assess effectiveness of mutual legal assistance measures due to limited number of MLAT's.</b>  |
| <b>R.37</b> | <b>C</b>  | <b>This recommendation is fully observed.</b>   |
| <b>R.38</b> | <b>PC</b> | <b>No provision for foreign states to request local authority to apply for forfeiture/confiscation orders or vice versa except in limited circumstances under section 16 of the ATA.,<br/>No provision for the freezing, seizure or confiscation of instrumentalities of ML and FT.<br/>No arrangements for co-coordinating seizure and confiscation actions with other countries.<br/>No evidence of consideration of establishing an asset forfeiture fund.</b> |
| <b>SR.V</b> | <b>PC</b> | <b>Factors in Recs. 36 and 38 are also applicable.</b>  |
| <b>R.32</b> | <b>LC</b> | <b>Statistics do not provide sufficient details on mutual legal assistance requests. See sections: 2.7, 6.5</b>   |

#### **6.4 Extradition (R.37, 39, SR.V, R.32)**

##### 6.4.1 Description and Analysis

##### **Recommendation 39**

879. ML is an extraditable offence, being an “extradition crime” pursuant to section 4 and the schedule of the Extradition Act. Where a magistrate (i) is presented with a foreign arrest warrant or information alleging that a person located in Barbados is accused, or has been convicted of, an extradition crime committed in the foreign country, and (ii) is satisfied that such conduct if committed in Barbados would justify the issue of an arrest warrant, s/he may issue a warrant to apprehend the fugitive (section 10, 46(e)). This sets in train the process leading to an extradition hearing to determine whether the fugitive should be extradited.

880. The Extradition Act prohibits extradition in connection with crimes of a political character. Requests made for the purpose of prosecuting or punishing on the basis of race, tribe, religion, sex, nationality or political opinions will also be refused.

881. There is no legal prohibition against the extradition of Barbadian nationals, and the authorities will therefore take the necessary procedures where such a situation arises.

882. Section 22 of the Extradition Act stipulates that extradition requests may be made by Commonwealth countries to the Attorney General. Requisitions can be forwarded by the requisite authority of the requesting state either through the consular office of Barbados located in the requesting state or by the consular office of the requesting state located in Barbados. The section also provides for the establishment of other means by arrangement with requesting states. Section 23 makes similar provision, *mutatis mutandis*, where the request emanates from a non-Commonwealth country. There is also a broadly reciprocal provision under section 43 of the Act where Barbados seeks the extradition of a fugitive located in a Commonwealth or non-Commonwealth country. There have been no requests for extradition due to ML, but it is expected that such cases will be treated with reasonable dispatch.

##### **Recommendation 37(dual criminality relating to extradition)**

883. The process for extradition is provided under the Extradition Act. Extradition will require the establishment of dual criminality. By section 4 of the Extradition Act, an “extradition crime” is described as an offence, “however described” that, if committed in Barbados,

(a) would be a crime described in the Schedule (an array of offences including murder and genocide, serious sexual offences, money laundering, terrorist acts and financial crimes), or

(b) would be a crime that would be so described were the description to contain a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation necessary to constitute the offence, and for which the maximum penalty in that other country or state is death or imprisonment for a term of 12 months or more.

884. The description of an extradition crime suggests that the elements of the behaviour, rather than exact technical definition or categorization under law would be the deciding factor in determining dual criminality.

**Special Recommendation V**

885. Offences triable under the ATA which include terrorism and the financing of terrorism are extraditable and subject to the same requirements and conditions for extradition as other similar offences.

6.4.2 Recommendations and Comments

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

|             | Rating    | Summary of factors relevant to s.6.4 underlying overall rating |
|-------------|-----------|--|
| <b>R.39</b> | <b>C</b>  | <b>This recommendation is fully observed.</b>                  |
| <b>R.37</b> | <b>C</b>  | <b>This recommendation is fully observed.</b>                  |
| <b>SR.V</b> | <b>PC</b> | <b>See factors in section 6.3</b>                              |
| <b>R.32</b> | <b>LC</b> | <b>See factors in sections: 2.7, 6.3, 6.5</b>                  |

**6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)**

6.5.1 Description and Analysis

**Recommendation 40 and Special Recommendation V**

886. In general law enforcement and the FIU can engage in a wide range of international co-operation. They attempt to render assistance to foreign authorities in a timely fashion and there is no legal hindrance to the constructive and effective provision of such assistance. Barbados has no secrecy or confidentiality laws that prohibit the sharing of information. There is no requirement governing the exchange of information in Barbados that is not consistent with ordinary international practice. The involvement of fiscal matters is not a ground for refusal of a request

**FIU**

887. Under Section 6C of the MLFTA, the Director of the FIU can share information with foreign FIUs of states that have agreements with Barbados about the exchange of information and where appropriate undertakings for protecting the confidentiality of the information and for controlling the use have been made. The FIU, as a matter of course conducts inquiries on behalf of foreign FIUs including searching its own database with respect to information on suspicious transaction reports. Section 6A (3)(a) of the MLFTA provides the authority to conduct such investigations as are necessary for the purposes of the Act. All the investigative provisions of the MLFTA, in particular section. 6A, are disposed for use on behalf of foreign counterparts. Section 22A of the MLFTA imposes a duty of confidentiality on all employees of the FIU with regard to any information dealt with in their work. The Barbados FIU is a member of the Egmont Group and at the time of the mutual evaluation had signed seven (7) MOUs with Egmont affiliated FIUs.

### **Law enforcement agencies**

888. The RBPF is able to cooperate with its international counterparts through Interpol or through bilateral contacts. It can also conduct inquiries on behalf of foreign counterparts. The RBPF has taken part in a wide range of joint law enforcement operations and initiatives with both regional and international counterparts. The Customs and Excise Department is able to cooperate with its foreign counterparts through bilateral agreements or through the World Customs Organisation. The department collaborates with its regional counterparts via the Caribbean Customs Law Enforcement Council and has participated in joint counter-narcotics operations with international law enforcement agencies.

889 Under section 6A(1) of the MLFTA, the AMLA has power to receive disclosures of information from foreign states, and where such information reasonably leads the Authority to believe that a business transaction involves crime, proceeds of crime or FT, there is a duty to supply the information to the Commissioner of Police (subsection (2)). Section 22A(1) and (2) require the AMLA and any person receiving disclosures under the Act to treat the information as confidential, only releasing it as required by the statute or to discharge the duties of office. The Commissioner is also therefore subject to this obligation.

### **Supervisory authorities**

890. Some supervisory authorities in Barbados have different constraints on sharing information with international counterparts. All regulators except the Registrar of Co-operative Societies are under a duty of confidentiality with respect to non-public information obtained in the course of their duties.

891. Sections 48 and 44 of IFSA and FIA respectively permit the CBB, without the consent of a licensee, to disclose information received inter alia to the appropriate supervisory or regulatory authority of financial institutions of another country, at the request of that authority, where there is a branch, holding company or affiliate of the licensee operating in that country. An MOU is in place with regional regulators to facilitate information exchange with pan Caribbean banks. Discussions are ongoing to establish MOUs with 3 other regulator.

892. The Securities Commission under Section 11 of the Securities Act can consult and co-operate with other domestic and international regulatory agencies. Section 11 (2) specifically empowers the Securities Commission to co-operate with an agency of a foreign government in connection with a securities related investigation whether the activities took place within or outside Barbados.

893. While the IA does not expressly authorize the Supervisor of Insurance to share information with domestic and foreign counterparts, the Supervisor has provided information to regional and international regulators. The Registrar of Co-operative Societies can only share information pursuant to a Court Order. The Ministry of Economic Affairs and Development does not have the authority to access information from its licensees or to disclose information to foreign counterparts.

894. While the measures in place allow for a wide range of international co-operation, restrictions on

the sharing of information by some of the supervisory agencies exclude them from co-operation with their foreign counterparts.

**Recommendation 32**

**Table 19; Foreign Requests to the FIU;**

| <b>Year</b>   | <b>No of Requests</b> |
|---------------|-----------------------|
| <b>2002</b>   | 2                     |
| <b>2003</b>   | 28                    |
| <b>2004</b>   | 22                    |
| <b>2005</b>   | 13                    |
| <b>6/2006</b> | 14                    |

895. The above information deals only with foreign requests for information received by the FIU. The assessment team was advised that while some requests for information were pending at the time of the on-site visit, all requests are dealt with accordingly. The FIU advised that at present no information on spontaneous referrals made by the FIU to foreign authorities is maintained. With regard to formal requests for assistance made or received by supervisors relating to AML/CFT, these are sent through the FIU. Since 2003, nine such requests have been received from three regulators and all have been granted.

**6.5.2 Recommendations and Comments**

896. The Ministry of Economic Affairs and Development should be authorized to share information with foreign counterparts.

897. The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order

898. The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities.

**6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32**

|             | <b>Rating</b> | <b>Summary of factors relevant to s.6.5 underlying overall rating</b>   |
|-------------|---------------|---|
| <b>R.40</b> | <b>LC</b>     | <b>The Ministry of Economic Affairs and Development cannot share information with foreign counterparts<br/>The Registrar of Co-operative Societies can only share information by Court Order.</b> |
| <b>SR.V</b> | <b>PC</b>     | <b>Factors in Rec. 40 are also applicable. See factors in section 6.3</b>   |
| <b>R.32</b> | <b>LC</b>     | <b>No information about spontaneous referrals made by the FIU to foreign authorities<br/>See sections: 2.7, 6.3</b>   |

**7. OTHER ISSUES**

## 7.1 Other relevant AML/CFT measures or issues

899 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.

|      | Rating | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating  |
|------|--------|---|
| R.30 | PC     | <p>The FIU lacks sufficient resources (human and technological) to allow it to properly carry out all its functions in its mandate.</p> <p>Law enforcement and prosecutorial authorities are inadequately resourced.</p> <p>The Registrar of Co-operative Societies has inadequate number of staff.</p> |
| R.32 | LC     | <p>No statistics on the following;</p> <ul style="list-style-type: none"><li>• Cross-border declaration reports</li><li>• Spontaneous referrals made by the FIU to foreign authorities</li></ul> <p>Insufficient details on mutual legal assistance requests.</p>                                       |

## 7.2 General framework for AML/CFT system (see also section 1.1)

900 There are no elements of the general framework of the AML/CFT regime in Barbados that impairs or inhibits its effectiveness.

## 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).

| <b>Forty Recommendations</b>                           | <b>Rating</b> | <b>Summary of factors underlying rating<sup>5</sup></b>   |
|--|---------------|---|
| <b>Legal systems</b>                                   |               |   |
| 1. ML offence  | <b>LC</b>     | <p><b>The crimes of human trafficking, corruption and bribery provisions falling within the designated categories of offences have not been adequately addressed in legislation.</b></p> <p><b>Extraterritoriality of predicate offences is not clearly defined</b></p>   |
| 2. ML offence – mental element and corporate liability | <b>LC</b>     | <b>Ineffective use of ML provisions.</b>  |
| 3. Confiscation and provisional measures               | <b>PC</b>     | <p><b>Forfeiture/restraint orders only limited to proceeds of money laundering, predicate offence of drug-trafficking, terrorist acts and financing of terrorism.</b></p> <p><b>No specific provision for forfeiture of instrumentalities under the MLFTA.</b></p> <p><b>No provision for ex parte application for freezing or seizing property subject to confiscation under the MLFTA</b></p> <p><b>No provision for production/inspection orders under MLFTA.</b></p> <p><b>Lack of integrated approach to forfeiture/restraint detracts from effectiveness.</b></p> |

1. <sup>5</sup> These factors are only required to be set out when the rating is less than Compliant.

| Preventive measures                                 |    |  |
|---|----|--|
| 4. Secrecy laws consistent with the Recommendations | PC | <p><b>The CBB cannot share information with other domestic financial sector supervisory agencies.</b></p> <p><b>Under the CSA, the Registrar of Cooperatives can only share information pursuant to a court order;</b></p> <p><b>The Ministry of Economic Affairs and Development does not have the authority to compel information from licensees or to disclose information to domestic or foreign counterparts.</b></p>   |
| 5. Customer due diligence                           | PC | <p><b>There are no legislative requirements for financial institutions to</b></p> <ul style="list-style-type: none"> <li><b>❖ undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;</b></li> <li><b>❖ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</b></li> <li><b>❖ determine who are the natural persons that ultimately own or control the customer;</b></li> <li><b>❖ conduct on-going due diligence on business relationships;</b></li> <li><b>❖ verify individual customer identity using reliable, independent source documents, data or information (identification data);</b></li> </ul> <p><b>No express prohibition against reduced CDD measures where there is a risk of ML and FT</b></p> <p><b>The following requirements are only enforceable on the licensees of the CBB and the Supervisor of Insurance;</b></p> |

|   |    |   |
|---|----|---|
|   |    | <ul style="list-style-type: none"> <li>• Scrutiny of transactions and updating of data or documents collected under the CDD process</li> <li>• Measures for high and low risk categories of customers</li> <li>• Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.</li> </ul>   |
| 6. Politically exposed persons                  | PC | Requirements for politically exposed persons are only enforceable on the licensees of the CBB and the Supervisor of Insurance.  |
| 7. Correspondent banking                        | LC | No specific requirement for financial institutions to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.  |
| 8. New technologies & non face-to-face business | PC | The requirements for non-face to face customers are only enforceable on the licensees of the CBB and the Supervisor of Insurance.   |
| 9. Third parties and introducers                | PC | <p>Requirements for third parties and introduced business are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</p> <p>No requirement for financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29.</p> <p>No indication of authorities determining in which countries third parties that satisfy the conditions of being regulated and supervised and comply with CDD requirements can be based.</p> |
| 10. Record keeping                              | NC | <p>Only records of business transactions exceeding \$10 000 are legislatively required to be retained for five years after termination of a transaction;</p> <p>No requirement in law or regulations for account files and business correspondence to be retained for at least five years after the termination of the business relationship;</p> <p>No direct legal requirement for financial</p>  |

|   |           |  |
|---|-----------|--|
|   |           | institutions to ensure that records available on a timely basis to domestic competent authorities.   |
| 11. Unusual transactions                  | <b>PC</b> | <p><b>Monitoring requirements specified in the AML/CFT guidelines are only enforceable on the licensees of the Central Bank and the Supervisor of Insurance</b></p> <p><b>The retention of the written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</b></p>  |
| 12. DNFBP – R.5, 6, 8-11                  | <b>NC</b> | <b>The requirements of Rec. 5, 6, 8 to 11, and 17 are not adequately enforced on DNFBPs not licensed by the CBB.</b>   |
| 13. Suspicious transaction reporting      | <b>LC</b> | <p><b>No requirement in law or regulations to report attempted or aborted suspicious transactions.</b></p> <p><b>Human trafficking, corruption and bribery are not adequately addressed in legislation as predicate offences.</b></p>  |
| 14. Protection & no tipping-off           | <b>PC</b> | <b>MLFTA establishes inconsistent mandatory and voluntary reporting provisions; immunity provision under MLFTA is not referable to mandatory reporting provisions.</b>   |
| 15. Internal controls, compliance & audit | <b>PC</b> | <p><b>The legislative provisions for internal controls, compliance and audit do not include the imposition of penalties and sanctions for failure to comply with the provisions.</b></p> <p><b>No enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention.</b></p> <p><b>Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees are only enforceable on the licensees of the CBB and the Supervisor of Insurance.</b></p> |
| 16. DNFBP – R.13-15 & 21                  | <b>NC</b> | <b>The requirements of Recommendations 13</b>  |

|   |    |  |
|---|----|--|
|   |    | to 15, 17 and 21 are not adequately applied to DNFBPS not licensed by the CBB.   |
| 17. Sanctions                                   | LC | <p>The Securities Commission and the Registrar of Co-operative Societies have no administrative power to institute sanctions for AML/CFT breaches.</p> <p>The Securities Commission and the Registrar of Co-operative Societies have no general powers of sanctions to effectively address breaches by licensees.</p>  |
| 18. Shell banks                                 | C  |  |
| 19. Other forms of reporting                    | C  | <b>This recommendation is fully observed</b>   |
| 20. Other NFBP & secure transaction techniques  | C  | <b>This recommendation is fully observed</b>   |
| 21. Special attention for higher risk countries | NC | <p>Financial institutions are not required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.</p> <p>No effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</p> <p>Written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000.</p> <p>No countermeasures issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</p> |
| 22. Foreign branches & subsidiaries             | PC | <p>The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</p> <p>No requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent</p>   |

|  |    |   |
|--|----|---|
|  |    | <p>with requirements in Barbados and the FATF Recommendations</p> <p>No requirement for branches and subsidiaries in host countries to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.</p> <p>The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures is only enforceable on the licensees of the CBB and the Supervisor of Insurance.</p> |
| 23. Regulation, supervision and monitoring         | PC | <p>The Securities Commission has no power of approval over ownership of significant or controlling interests of its registrants.</p> <p>The Registrar of Co-operatives has no power of approval over senior management of its licensees.</p> <p>The Securities Commission is not required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.</p> <p>Stand alone MVT service providers are not subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements. .</p>   |
| 24. DNFBP - regulation, supervision and monitoring | NC | No measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements except those licensed by the CBB.  |
| 25. Guidelines & Feedback                          | PC | <p>The FIU does not provide feedback on STRs to financial institutions.</p> <p>No specific guidelines have been issued for DNFBPS to implement and comply with AML/CFT requirements except those regulated by the CBB.</p>  |
| <b>Institutional and other measures</b>            |    |   |

|  |    |   |
|--|----|---|
| 26. The FIU                                | LC | No annual report released by the FIU since the 2000/2001 report. There was no information on typologies and trends with regard to SUTRs in the report.  |
| 27. Law enforcement authorities            | C  | This recommendation is fully observed   |
| 28. Powers of competent authorities        | C  | This recommendation is fully observed   |
| 29. Supervisors                            | LC | The Securities Commission does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance.   |
| 30. Resources, integrity and training      | PC | The FIU lacks sufficient resources (human and technological) to allow it to properly carry out all its functions in its mandate.<br><br>Law enforcement and prosecutorial authorities are inadequately resourced.<br><br>The Registrar of Co-operative Societies has inadequate number of staff.  |
| 31. National co-operation                  | C  | This recommendation is fully observed   |
| 32. Statistics                             | LC | No statistics on the following; <ul style="list-style-type: none"> <li>• Cross-border declaration reports</li> <li>• Spontaneous referrals made by the FIU to foreign authorities</li> </ul> Insufficient details on mutual legal assistance requests.  |
| 33. Legal persons – beneficial owners      | PC | There is no legislative requirement for legal persons to disclose beneficial ownership information.   |
| 34. Legal arrangements – beneficial owners | PC | International trusts supervised by the Ministry of Economic Affairs and development, lawyers and accountants are not subject to measures for monitoring and ensuring compliance with AML/CFT requirements i.e. retention of beneficial ownership and control information.   |
| <b>International Co-operation</b>          |    |   |
| 35. Conventions                            | LC | All designated categories of offences are not adequately addressed in the range of predicate offences<br><br>Instrumentalities intended for use in the commission of an offence are not subject to restraint/forfeiture measures.<br><br>The custodial definition of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention. |
| 36. Mutual legal assistance (MLA)          | PC | Range of mutual legal assistance does not include the instrumentalities of ML   |

|   |               |   |
|---|---------------|---|
|   |               | <p>and FT.</p> <p><b>Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority.</b></p> <p><b>The custodial element of serious crime under the restraint/forfeiture regime is narrower than the Palermo Convention.</b></p> <p><b>No mechanism to deal with dual jurisdictional conflict.</b></p> <p><b>Not possible to assess effectiveness of mutual legal assistance measures due to limited number of MLAT's.</b></p>                             |
| 37. Dual criminality                          | <b>C</b>      | <b>This recommendation is fully observed</b>  |
| 38. MLA on confiscation and freezing          | <b>PC</b>     | <p><b>No provision for foreign states to request local authority to apply for forfeiture/confiscation orders or vice versa except in limited circumstances under section 16 of the ATA.</b></p> <p><b>No provision for the freezing, seizure or confiscation of instrumentalities of ML and FT.</b></p> <p><b>No arrangements for co-coordinating seizure and confiscation actions with other countries.</b></p> <p><b>No evidence of consideration of establishing an asset forfeiture fund.</b></p> |
| 39. Extradition                               | <b>C</b>      | <b>This recommendation is fully observed</b>  |
| 40. Other forms of co-operation               | <b>LC</b>     | <p><b>The Ministry of Economic Affairs and Development cannot share information with foreign counterparts</b></p> <p><b>The Registrar of Co-operative Societies can only share information by Court Order.</b></p>  |
| <b>Eight Special Recommendations</b>          | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
| SR.I Implement UN instruments                 | <b>PC</b>     | <p><b>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.</b></p> <p><b>Overlap between ATA and POCA respecting freezing/forfeiture and ambiguous aspects to ATA forfeiture power, both detracting from effectiveness.</b></p>   |
| SR.II Criminalise terrorist financing         | <b>C</b>      | .   |
| SR.III Freeze and confiscate terrorist assets | <b>PC</b>     | <b>No requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions</b>  |

|  |           |   |
|--|-----------|---|
|  |           | <b>Committee.</b><br><b>Divergent policy re forfeiture/restraint under ATA and POCA.</b>  |
| SR.IV Suspicious transaction reporting                   | <b>LC</b> | <b>No requirement in law or regulations to report attempted or aborted suspicious transactions</b>  |
| SR.V International co-operation                          | <b>PC</b> | <b>Factors in Recs. 36 and 38 are also applicable.</b>  |
| SR.VI AML requirements for money/value transfer services | <b>NC</b> | <b>Stand alone MVT providers are not regulated or supervised for compliance with AML/CFT requirements</b><br><b>No requirement for MVT service operators to maintain a current list of agents.</b>  |
| SR.VII Wire transfer rules                               | <b>PC</b> | <b>Stand alone money-remitters are not subject to any regulatory oversight except for exchange control purposes.</b>  |
| SR.VIII Non-profit organisations                         | <b>LC</b> | <b>Sanctions for breaches of Charities Act are not dissuasive.</b>  |
| SR.IX Cross Border Declaration & Disclosure              | <b>LC</b> | <b>Suspicion of money laundering or terrorist financing or making a false declaration do not provide basis for stopping and seizure of currency and negotiable instruments.</b><br><b>Effectiveness of system to detect cross-border transfer of currency and negotiable instruments cannot be evaluated due to lack of statistics.</b> |

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT System  | Recommended Action (listed in order of priority)   |
|---|--|
| <b>1. General</b>   | <b>No text required</b>  |
| <b>2. Legal System and Related Institutional Measures</b>           |  |
| Criminalisation of Money Laundering (R.1, 2 & 32)                   | <ul style="list-style-type: none"> <li>• The authorities should review the adequacy of the legislative coverage of human trafficking, corruption and bribery to ensure coverage of all designated categories of offences. .</li> <li>• The different <i>mens rea</i> elements of money laundering offences under the MLFTA and section 19 of DAPCA should be harmonized.</li> <li>• The language of section 4 of the MLFTA should be reviewed with a view to removing the current limitation which requires that there be an intention for the extraterritorial act to be also committed in Barbados</li> </ul>  |
| Criminalisation of Terrorist Financing (SR.II, R.32)                |  |
| Confiscation, freezing and seizing of proceeds of crime (R.3, R.32) | <ul style="list-style-type: none"> <li>• The authorities should consider reviewing the forfeiture/confiscation regime to ensure that all serious offences are covered; the various statutes are rationalized as far as possible to provide greater certainty in application. Specific attention should be given to adjusting the MLFTA forfeiture scheme so as to incorporate appropriate balancing features in keeping with recent case law. Further there should be greater particularity on various aspects of any approach, including factors to be taken into account by the court before issuing orders; coverage of instrumentalities; bona fide third party rights; variation/discharge of orders.</li> <li>• The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offence is caught.</li> <li>• The definition of “scheduled offence” under POCA should be extended to incorporate the serious offences contemplated by the FATF’s “designated categories of offences”</li> <li>• A specific provision should be enacted for the forfeiture of instrumentalities in MLFTA</li> <li>• Appropriate powers of production and inspection should be introduced in the MLFTA. For those offences under DAPCA falling outside the scope of the POCA “scheduled offences”, similar powers should also be incorporated.</li> </ul> |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• The definitions of “financial institutions” under POCA and the MLFTA should be harmonized.</li> <li>• Section 60 of POCA should be amended to enable government departments/entities, on appropriate grounds, to lodge objections to the disclosure of information. The scheme under section 57 in respect of the Commissioner of Inland Revenue may provide a useful precedent.</li> <li>• Section 6A (4) of the MLFTA should be amended to enable Government Departments to object to the release of information to the FIU Director on appropriate grounds. Section 57 of POCA as a guide requires the FIU Director to access data from Government departments only on the authority of a court order, as under sections 55 and 60 of POCA in relation to the DPP.</li> <li>• The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard.</li> <li>• The civil forfeiture scheme under section 47 of the DAPCA should be amplified to address such matters as the procedures to be followed and standard of proof.</li> </ul>  |
| Freezing of funds used for terrorist financing (SR.III, R.32)     | <ul style="list-style-type: none"> <li>• The authorities incorporate into legislation requirements, a special mechanism to enable the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee, in keeping with UN Security Council Resolution 1267 of 1999. The requirements should also confer power to authorise the release of funds required to be frozen, for the purpose of meeting basic expenses associated with, e.g., the accused’s reasonable subsistence or defence of criminal proceedings. The 2002 Commonwealth Model Legislative Provisions on the “specified (listed) entity” regime provide a useful guide.</li> <li>• The authorities should critically review the freezing/restraint and forfeiture regimes under the ATA and POCA, with a view to amending the legislation to provide for a uniform approach to these measures.</li> <li>• The authorities should review the grounds needed to support an application for a freezing order under section 8(1) of the ATA, so as to ensure consistency between local cases and those arising from mutual legal assistance requests.</li> <li>• Expand the scope of the MLFTA to incorporate FT in sections 9-11.</li> </ul> |
| The Financial Intelligence Unit and its functions (R.26, 30 & 32) | <ul style="list-style-type: none"> <li>• The FIU should publicly release all outstanding annual reports and include in such reports, statistics, typologies</li> </ul>  |

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|   | <p>and trends as well as information regarding its activities.</p> <ul style="list-style-type: none"> <li>• The FIU should seek to enhance the level of AML/CTF awareness within the local financial services sector with a view to providing more detailed guidance to reporting institutions as to their reporting obligations under Section 8 (b) of the MLFTA. This would seek to address concerns of possible under-reporting by financial institutions.</li> <li>• Authorities should consider giving the FIU greater access or control of its finances so as to enhance its current structure. This would allow the FIU to maintain and where possible increase its current level of staffing and further develop its IT capabilities so as to conduct more detailed analysis and investigation of SUTRs.</li> <li>• The FIU should seek to follow through on its plans to further upgrade its IT capabilities. This would diminish its reliance on manual processes and the older and less reliable electronic storage systems (Microsoft access) currently being utilized to handle and store information.</li> <li>• While the FIU was able to produce adequate statistics relating to SUTRs, it should seek to broaden these statistics so as to include prescribed predicate offences linked to SUTRs filed by reporting institutions</li> </ul> |
| <p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 &amp; 32)</p> | <ul style="list-style-type: none"> <li>• The authorities should consider implementing the necessary legal framework and guidelines to provide for use of special investigative methods and techniques (electronic surveillance, waiving or postponing arrests and controlled deliveries) by law enforcement agencies to advance ML, TF and other serious criminal investigations.</li> <li>• The prosecutorial and law enforcement agencies should strive to maintain and where necessary expand the type of ML and TF statistical data currently held by each agency. This will allow authorities to better review and measure the effectiveness of the country's AML/CFT policies and programmes on an ongoing basis.</li> </ul>   |
| <p>Cross border or disclosure (SR IX)</p>   | <ul style="list-style-type: none"> <li>• The competent authorities should seek to broaden the type of statistical data maintained in relation to the cross-border declaration system. Apart from assisting the authorities in measuring the effectiveness of the cross-border declaration system, it will also assist in identifying existing weaknesses thus allowing the competent authorities to enhance the system where necessary so as to facilitate and ensure stricter compliance.</li> <li>• Suspicion of money laundering or terrorist financing or making a false declaration should provide grounds for</li> </ul>   |

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|   | <p>stopping and seizure of currency and negotiable instruments.</p> <ul style="list-style-type: none"> <li>• The competent authorities should consider including penalties for the making of false declarations in accordance with the relevant section of the Customs Act on the Passenger Embarkation/Disembarkation card.</li> </ul>   |
| <b>3. Preventive Measures – Financial Institutions</b>                    |   |
| Risk of money laundering or terrorist financing                           |   |
| Customer due diligence, including enhanced or reduced measures (R.5 to 8) | <ul style="list-style-type: none"> <li>• Financial institutions should be legislatively required to; <ul style="list-style-type: none"> <li>○ undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD;</li> <li>○ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person;</li> <li>○ determine who are the natural persons that ultimately own or control the customer;</li> <li>○ conduct on-going due diligence on business relationships;</li> <li>○ verify individual customer identity using reliable, independent source documents, data or information (identification data);</li> </ul> </li> <li>• Simplified CDD measures should not be acceptable whenever there is a suspicion of ML or TF.</li> <li>• The enforceability of the following requirements should be extended from the licensees of the CBB and the Supervisor of insurance to all other financial institution; <ul style="list-style-type: none"> <li>➢ Scrutiny of transactions and updating of data or documents collected under the CDD process</li> <li>➢ Measures for high and low risk categories of customers</li> <li>➢ Timing of verification and failure to complete CDD and application of CDD requirements to existing customers.</li> </ul> </li> <li>• The authorities should make the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance’s AML/CFT Guidelines enforceable on all financial institutions.</li> <li>• Financial institutions in gathering information about the quality of a respondent’s supervision should ascertain whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• The authorities should make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions.</li> </ul>  |
| Third parties and introduced business (R.9)            | <ul style="list-style-type: none"> <li>• The authorities should consider making the requirements for third party and introduced business as stipulated in the CBB AML/CFT Guidelines enforceable on all other financial institutions.</li> <li>• Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.</li> <li>• Authorities should consider advising financial institutions about countries from which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based.</li> </ul>   |
| Financial institution secrecy or confidentiality (R.4) | <ul style="list-style-type: none"> <li>• The MLFTA should be amended to specify the reason for inspections by the AMLA i.e. review of compliance with MLFTA and AML/CFT guidelines generally</li> <li>• The FIA should be amended to allow the CBB to share information with domestic regulators</li> <li>• The CSA should be amended to permit the Registrar of Cooperative Societies to share information with domestic and foreign regulators without having to obtain a Court Order</li> <li>• An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted.</li> <li>• The Ministry of Economic Affairs and Development should be authorized to access information from its licensees and be able to share information appropriately with other competent authorities.</li> </ul> |
| Record keeping and wire transfer rules (R.10 & SR.VII) | <ul style="list-style-type: none"> <li>• The MLFTA should be amended to require the retention of all necessary records on all transactions for a period of five years after termination of the transaction;</li> <li>• Financial institutions should be legislatively required to maintain records of account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested by a competent authority.</li> <li>• Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis.</li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>• Stand-alone money remitters should be monitored for compliance with the requirements of SR VII.</li> </ul>   |
| Monitoring of transactions and relationships (R.11 & 21)                     | <ul style="list-style-type: none"> <li>• The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions;</li> <li>• The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years.</li> <li>• The AML/CFT guidelines should provide specific guidance with regard to requiring special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations;</li> <li>• Written findings of all transactions with no apparent economic or lawful purpose from countries that do not or insufficiently apply the FATF Recommendations should be available for competent authorities;</li> <li>• Authorities should put in place measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries;</li> <li>• Authorities should consider issuing instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul> |
| Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | <ul style="list-style-type: none"> <li>• The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in MI or FT.</li> <li>• The FIU should provide feedback to financial institutions with regard to suspicious transaction reports.</li> <li>• The FIU should maintain statistics on the number of currency exchanges of \$10,000 or more submitted.</li> <li>• Section 22A(5) of the MLFTA should be amended to remove the reference to voluntary reporting by financial institutions, and section 22A(6) should be revised to make it clear that immunity against liability applies to the financial institutions reporting under sections 8(1)(b) and (h) of the Act.</li> </ul>   |
| Internal controls, compliance, audit and foreign branches (R.15 & 22)        | <ul style="list-style-type: none"> <li>• All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply.</li> <li>• All financial institutions should be required to designate</li> </ul>  |

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|  | <p>an AML/CFT compliance officer at management level and develop policies and procedures for record retention.</p> <ul style="list-style-type: none"> <li>• Requirements for an independent audit function, training in new techniques and trends in ML and FT, and screening procedures for new employees should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> <li>• The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados and the FATF should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> <li>• Financial institutions should be required to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations.</li> <li>• Branches and subsidiaries in host countries should apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit.</li> <li>• The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</li> </ul> |
| Shell banks (R.18)   |  |
| The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25) | <ul style="list-style-type: none"> <li>• The Securities Commission and the Registrar of Co-operative Societies should be given the administrative power to institute sanctions for AML/CFT breaches.</li> <li>• All regulators except for the CBB and the Supervisor of Insurance should have general powers of sanctions to effectively address breaches by licensees.</li> <li>• The Securities Commission should have power to approve ownership of significant or controlling interests of their registrants.</li> <li>• The Registrar of Co-operatives should have power to approve senior management of their licensees.</li> <li>• The Securities Commission should be required to use fit</li> </ul>   |

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|  | <p>and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees.</p> <ul style="list-style-type: none"> <li>• There is need for the development and implementation of a framework for regulating and supervising MVT services that are not licensees of the Central Bank.</li> <li>• The Securities Commission should have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance.</li> </ul> |
| Money value transfer services (SR.VI)  | <ul style="list-style-type: none"> <li>• It is recommended that the authorities proceed in developing a framework for the regulation and supervision of MVT services not provided by licensees of the CBB.</li> </ul>   |
| <b>4. Preventive Measures –Non-Financial Businesses and Professions</b>            |   |
| Customer due diligence and record-keeping (R.12)                                   | <ul style="list-style-type: none"> <li>• It is recommended that the authorities enact measures to apply the requirements of Recommendations 5, 6, 8 to 11, and 17 to DNFBPs not licensed by the CBB.</li> </ul>   |
| Suspicious transaction reporting (R.16)  | <ul style="list-style-type: none"> <li>• The authorities should take measures to ensure that the requirements of Recommendations 13 to 15, 17 and 21 are applied to DNFBPS not licensed by the CBB.</li> </ul>  |
| Regulation, supervision and monitoring (R.24-25)                                   | <ul style="list-style-type: none"> <li>• It is recommended that the authorities take measures to ensure that the requirements of Recommendations 24 and 25 should apply to DNFBPs not licensed by the CBB..</li> </ul>  |
| Other designated non-financial businesses and professions (R.20)                   |   |
| <b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>            |   |
| Legal Persons – Access to beneficial ownership and control information (R.33)      | <ul style="list-style-type: none"> <li>• The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry.</li> <li>• The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information.</li> </ul>   |
| Legal Arrangements – Access to beneficial ownership and control information (R.34) | <ul style="list-style-type: none"> <li>• It is recommended that the authorities should implement measures for monitoring and ensuring compliance of international trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants with AML/CFT requirements i.e. retention of beneficial ownership and control information.</li> </ul>   |
| Non-profit organisations (SR.VIII)   | <ul style="list-style-type: none"> <li>• The authorities should carefully consider the FATF’s 2002 Best Practices Paper on Special Recommendation VIII, which advocates a number of measures for tightening the regime for NPO’s, including the</li> </ul>  |

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|  | <p>incorporation of mechanisms to verify the actual allocation of charitable funds to the intended beneficiaries.</p> <ul style="list-style-type: none"> <li>• Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect.</li> </ul>  |
| <b>6. National and International Co-operation</b>        |  |
| National co-operation and coordination (R.31 & 32)       |  |
| The Conventions and UN Special Resolutions (R.35 & SR.I) | <ul style="list-style-type: none"> <li>• The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human trafficking and updating the corruption/bribery laws; (ii) UN Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities.</li> </ul>  |
| Mutual Legal Assistance (R.36-38, SR.V, and R.32)        | <ul style="list-style-type: none"> <li>• The definition of “serious offences” under MACMA should be revised to make it applicable to offences attracting at least a 4-year custodial penalty, in accordance with the Palermo Convention.</li> <li>• The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure instrumentalities of, or intended for use in, the relevant offences are covered.</li> <li>• The range of evidence-gathering powers available for the satisfaction of mutual assistance requests should be reviewed. In particular, monitoring order and other powers under POCA should be examined with a view to extending their application to serious offences committed locally or abroad.</li> <li>• The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict.</li> <li>• The authorities should consider increasing their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU’s with foreign states.</li> <li>• The authorities should consider negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT’s with a broader range of countries.</li> <li>• MACMA should be amended to enable Barbados or foreign states to seek reciprocal assistance in obtaining forfeiture/confiscation orders in the jurisdiction of the other country, where the suspect has been convicted of a serious offence in the requesting state. In particular,</li> </ul> |

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|   | <p>where Barbados's assistance is being sought, the forfeiture/confiscation powers under POCA should be made available.</p> <ul style="list-style-type: none"> <li>• The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered.</li> <li>• Extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes should be considered.</li> </ul> |
| Extradition (R.39, 37, SR.V & R.32)             |  |
| Other Forms of Co-operation (R.40, SR.V & R.32) | <ul style="list-style-type: none"> <li>• The Ministry of Economic Affairs and Development should be authorized to share information with foreign counterparts.</li> <li>• The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order</li> <li>• The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities.</li> </ul>   |
| <b>7. Other Issues</b>                          |  |
| Other relevant AML/CFT measures or issues       |  |
| General framework – structural issues           |  |

**Table 3: Authorities' Response to the Evaluation (if necessary)**

| <b>Relevant sections and paragraphs</b> | <b>Country Comments</b> |
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## **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**  
**Abbreviations Used**

|            |   |
|------------|---|
| AMLA       | Anti-Money Laundering Authority   |
| ATA        | Anti-Terrorism Act, CAP 158   |
| BACP       | Barbados Association of Compliance Professionals                                    |
| BBA        | Barbados Bar Association  |
| BDF        | Barbados Defense Force  |
| BFSCA      | Barbados Foreign Sales Corporation Act, CAP 59C                                     |
| BIBA       | Barbados International Business Association   |
| CARICOM    | Caribbean Community   |
| CARTAC     | Caribbean Regional Technical Assistance Centre                                      |
| CBB        | Central Bank of Barbados  |
| CBBA       | Central Bank of Barbados Act, CAP 323C  |
| CCLEC      | Caribbean Customs Law Enforcement Council   |
| CDB        | Caribbean Development Bank  |
| CED        | Customs Enforcement Division  |
| CG         | Coast Guard   |
| CGBS       | Caribbean Group of Banking Supervisors  |
| CID        | Criminal Investigations Department  |
| COP        | Commissioner of Police  |
| CSA        | Cooperatives Societies Act, CAP 378A  |
| CRCA/ICA   | Caribbean Regional Compliance Association/International Compliance Association      |
| DAPCA      | Drug Abuse (Prevention and Control) Act, CAP131                                     |
| DCP        | Deputy Commissioner of Police   |
| DEA        | Drug Enforcement Agency   |
| DPP        | Director of Public Prosecutions   |
| DU         | Drug Unit   |
| ECA        | Exchange Control Act, CAP 71  |
| EIA        | Exempt Insurance Act, CAP 308A  |
| ESW        | Egmont Secure Website   |
| FBI        | Federal Bureau of Investigations  |
| FIA        | Financial Institutions Act, CAP 324A  |
| FIU        | Financial Intelligence Unit   |
| FSAP       | Financial Sector Assessment Program   |
| GATT/WTOVA | General Agreement on Tariffs and Trade/World Trade Organisation Valuation Agreement |
| IA         | Insurance Act 1996 –32  |
| IBCA       | International Business Companies Act, CAP 77  |
| ICAB       | Institute of Chartered Accountants of Barbados                                      |
| IFSA       | International Financial Services Act, CAP 325                                       |
| IMF        | International Monetary Fund   |
| INTERPOL   | International Criminal Police Organisation  |
| JCT        | Joint Contraband Team   |
| JIH        | Joint Intelligence Headquarters   |
| JIU        | Joint Intelligence Unit   |
| MACMA      | Mutual Assistance in Criminal Matters Act, CAP 140A                                 |

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| MLAT    | Mutual Legal Assistance Treaty   |
| MLFTA   | Money Laundering and Financing of Terrorism (Prevention and Control) Act, CAP129 |
| MOD     | Ministry of Defense  |
| MOU     | Memorandum of Understanding  |
| OAG     | Office of the Attorney General   |
| OFSI    | Office of the Superintendent of Financial Institutions                           |
| POCA    | Proceeds of Crime Act, CAP 143   |
| PSC     | Police Service Commission  |
| RBPF    | Royal Barbados Police Force  |
| REDTRAC | Caribbean Regional Drug Law Enforcement Training Centre                          |
| RPTC    | Regional Police Training Centre  |
| RSS     | Regional Security System   |
| SA      | Securities Act 2001 – 13   |
| SCC     | Segregated Cell Company  |
| SEC     | US Securities and Exchange Commission  |
| SRLA    | Societies with Restricted Liability Act, CAP 318B                                |
| SUTRs   | Suspicious and Unusual Transactions Reports                                      |
| UNDCP   | United Nations Drug Control Programme  |
| UNDP    | United Nations Development Programme   |
| USAID   | United States Agency for International Development                               |
| VAT     | Value Added Tax  |
| WCO     | World Customs Organisation   |
| WTO     | World Trade Organisation   |

## ANNEX 2

### **All Bodies Met During On-site Visit**

#### **GOVERNMENT AGENCIES**

Office of the Attorney General

Anti- Money Laundering Authority

Ministry of Finance

Ministry of Commerce, Consumer Affairs and Business Development

International Business Unit of the Ministry of Economic Affairs and development

Central Bank of Barbados

Barbados Securities Commission

Supervisor of Insurance

Registrar of Cooperatives & Friendly Societies

Registrar of Corporate Affairs & Intellectual Property

Office of the Director of Public Prosecutions

Financial Intelligence Unit

Commissioner of Police

Barbados Coast Guard

Barbados Customs & Excise Department

Barbados Immigration Department

Barbados Post Office

#### **INDUSTRY BODIES**

Barbados Bar Association

## ANNEX 2

Institute of Chartered Accountants of Barbados

Barbados Cooperative & Credit Union League Ltd

### FINANCIAL SECTOR INSTITUTIONS

Cidel Bank & Trust Inc

Barbados National Bank

Barbados Public Workers Cooperative Credit Union

First Caribbean International Bank

City of Barbados Cooperative Credit Union Ltd

Sagicor Insurance Company

Royal Bank of Canada

Western Union

Barbados Automated Clearing House Services Ins

Prism Services Inc