CARIBBEAN FINANCIAL
ACTION TASK FORCE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Grenada

JUNE 22 2009

Grenada is a member of the CFATF. This evaluation was conducted by the CFATF and was adopted as a 3rd mutual evaluation by its Council of Ministers on June 22 2009.

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PREFACE - information and methodology used for the evaluation of Grenada

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Grenada[1] 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[2]. The evaluation was based on the laws, regulations and other materials supplied by Grenada, and information obtained by the evaluation team during its on-site visit to Grenada from 20 – 31 October 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Grenada 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 members of the CFATF Secretariat and CFATF experts in criminal law, law enforcement and regulatory issues: Ms Heidi-Lynn, Senior Legal Counsel, Nevis Island Administration (legal expert), Mrs Sandra Taylor, Director III, Bank of Jamaica (financial expert), Ms Simone E. Martin, Ag Deputy Director Financial Services Commission, British Virgin Islands, (financial expert), Mr. Troy Lamontagne, Detective Corporal, Royal St. Lucia Police Force (law enforcement expert) 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 Grenada as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Grenada'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).

[1] All references to country apply equally to territories or jurisdictions.

[2] As updated in June 2008.

Executive Summary

1. Background Information

1. The Mutual Evaluation Report of the Grenada summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place at the time of the on-site visit (20-31 October, 2008). 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. The State of Grenada consists of three islands situated between the Caribbean Sea and the Atlantic Ocean, 12.7 degrees north latitude and 61.4 degrees west longitude. According to the last population census in 2001, Grenada has a population of 103,137 persons. It is a parliamentary democracy closely modeled on the British Westminster model with a bicameral legislature. Grenada's judicial system is based on the English system, including the principles and practice of English common law. In 2007, the gross domestic product of Grenada was EC$1,775 million (US$657 million). The main industries are tourism, construction and agriculture.

3. The financial sector in Grenada is small and lacks the sophistication of large and more developed jurisdictions. As at July 31, 2008, there were five commercial banks (four of which are subsidiaries or branches of large regional or foreign banks), fifteen credit unions (most of which are small workplace or community based credit unions), twenty four insurance companies, three money remitters, one building society and one Government owned Development Bank. While there is legislation providing for the establishment of offshore financial entities, at the time of the mutual evaluation, none were licensed or operational.

4. The Supervisory Authority is the committee responsible for advising the Minister of Finance on matters relating to money laundering and financing of terrorism. Other bodies of the institutional framework include the Ministry of Legal Affairs which is responsible for drafting laws pursuant to money laundering and financing of terrorism, the Financial Intelligence Unit (FIU) which is responsible for receiving, analyzing, obtaining and disseminating information which relates or may relate to the proceeds of the criminal offences, and the Office of the Director of Public Prosecutions (DPP) which is responsible for the prosecution of all criminal offences including money laundering and terrorist financing crimes. Financial regulatory authorities include the Eastern Caribbean Central Bank (ECCB), the Grenada Authority for the Regulation of Financial Institutions (GARFIN) and the Eastern Caribbean Securities Regulatory Commission (ECSRC).

5. The Government of Grenada has sought to establish a regime and mechanisms to prevent and detect money laundering and terrorist financing and their attendant problems. The initial emphasis on conventional financial institutions has been extended to include insurance companies and other non bank entities and DNFBPs. GARFIN was created in 2007 and empowered to regulate and supervise all non-bank financial entities including the offshore sector and money service businesses. Additionally, the whole regime against money laundering and terrorist financing is being strengthened by a number of new initiatives including the review and enactment of new legislation, strengthening of administrative institutions and public awareness campaigns.

2. Legal Systems and Related Institutional Measures

6. Money laundering has been criminalized under the Money Laundering (Prevention) Act, 1999 (MLPA) and the Proceeds of Crime Act, 1992 (POCA 1992) and the Proceeds of Crime Act, 2003 (POCA 2003). ML offences include receiving, possessing, concealing, disposing of, importing or exporting proceeds of criminal conduct. The physical and material elements of the ML offence do not include the prohibition of certain controlled drugs as required by the Vienna Convention. While the money laundering offences are applicable to all indictable offences, trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy or terrorist financing offence of providing or receiving money or other property in support of terrorist acts are not criminalized in Grenada.

7. 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. The ancillary offences to ML include attempting, instigating, counselling, procuring, aiding and facilitating the commission of the offence. The low number of ML prosecutions suggests an ineffective implementation of the legal framework.

8. Terrorist financing is criminalized under the Terrorism Act 2003 (TA). The components of the terrorist financing offence include the receipt, possession or provision of funding intended for or reasonably suspected to be used to support terrorist acts or a proscribed organization. The provision and collection of funds for an individual terrorist is not criminalized. Funds are defined in accordance with the TF Convention. Objective factual circumstances may be used to prove intent and both natural and legal persons are subject to criminal sanctions. While a range of secondary offences are covered and terrorist financing offences are predicate offences for ML, the terrorist financing offence of fund-raising is not subject to any sanctions and therefore is not a predicate offence for money laundering. Additionally, the terrorist financing offence of fund-raising does not apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is or the terrorist act occurred or will occur**.** There is no evidence of terrorists in Grenada and there have been no cases of terrorist financing in Grenada.

9. Provision is made for confiscation, freezing and seizing of the proceeds of crime under the POCA 1992, POCA 2003, and the MLPA. Confiscation of instrumentalities used in or intended for use in the commission of ML or other predicate offences is allowed. Confiscation is not targeted on specific assets as it is value-based. Provisional measures include the freezing and/or seizing of property to prevent any dealing, transfer or disposal of property subject to confiscation. Law enforcement agencies have powers to identify and trace property and the rights of bona fide third parties are protected. At the time of the mutual evaluation visit, the number of cases and the amounts of property forfeited suggest ineffective implementation of the forfeiture and freezing regime.

10. Freezing of funds used for terrorist financing, and funds and assets of specific criminal and terrorist organizations is included within the domestic laws of Grenada. However, there is no provision for the freezing of terrorist funds or other assets of designated persons in accordance with S/RES/1267(1999) and S/RES/1373(2001). There is provision to give effect to foreign freezing orders and a need for clear guidance to be issued to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists

and/or terrorist organizations. While the TA provides for application by affected persons to have restraint orders varied or discharged, there is no explicit provision authorizing access to funds or other assets that were frozen via restraint orders in accordance with S/RES/1452(2002). The rights of bona fide third parties are protected. While the Attorney General has the exclusive authority to de-list proscribed organizations and terrorists listed in the Schedule to the TA, there is no requirement that these procedures are publicly known. Furthermore, there is no mechanism available where victims of offences committed under TA are compensated consistent with the Terrorist Financing Convention. No terrorist funds have been discovered in Grenada.

11. The FIU was established by the Financial Intelligence Unit Act (FIUA) in 2003 with its main function including receiving, obtaining, investigating, analyzing and disseminating information which relate to a financial offence or the proceeds of the offences under POCA. The FIU receives suspicious activity reports (SARs) from various reporting institutions and has access to a number of databases. The FIU has the authority to request information from any source to fulfill its functions. The FIU is an autonomous body and while it is dependent on the Government for its finances, there is nothing to suggest that the budget can be used as a means to affect or interfere with the operation of the unit. The staff of the FIA is highly professional and has received training in ML, TF and criminal intelligence analysis. As a member of Egmont, the FIA freely exchanges information with its Egmont partners. While annual reports are legally required to be published, no typologies are included in these annual reports. The decline in the number of closed investigations and the total number of ongoing investigations suggests that the FIU is not performing effectively.

12. The responsibility for investigating serious crimes and criminal offences including ML and TF rests with the Royal Grenada Police Force (RGPF). An unofficial/informal group known as the "Task Force" incorporating the Criminal Investigation Department (CID), the Drug Unit, Special Branch, Customs Department and other units meets monthly to co-ordinate efforts. The RGPF has the authority to trace, indentify and confiscate assets where applicable. While there are no legislative measures for law enforcement authorities to waive or postpone the arrest of suspected persons and or seizure of money, these techniques are used after consultation with the Office of the DPP. The RGPF is currently challenged by resource constraints due to insufficient financial and technical expertise and training. The Immigration Unit is an entity within the RGPF with the responsibility of policing the eight ports of entry. While the number of officers involved in breaches of discipline and criminal activity give cause for concern about the integrity of the RGPF, a large number of the disciplinary actions were minor in nature and reflect the RGPF's zero tolerance policy.

13. The power of the DPP is vested under the Constitution, which provides for the complete independence in the exercise of powers conferred by the Constitution. The DPP's office is responsible for the prosecution of all criminal offences in Grenada including ML and FT matters. Confiscation, freezing and forfeiture of criminal proceeds fall within the scope of the office. The DPP's office has four professional and two clerical members of staff. The office of the DPP has a good relationship with the RGPF which seeks advice from time to time during the investigation and the prosecution of cases. Staff has been trained in techniques relevant to the prosecution of AML/CFT matters.

14. At the time of the mutual evaluation, Grenada had in place a disclosure system requiring persons making cross-border transportation of currency or bearer negotiable instruments to make a truthful disclosure upon request by a customs officer. Customs officers have the authority to make enquiries of travelers and can confiscate cash suspected of being related to criminal activity. Information obtained from false declarations and disclosures are retained for use by the

appropriate authorities. Although Customs, Immigration and other related authorities meet monthly to discuss issues, there is no indication of any organized or structured method of co-ordination. While the sanction for false disclosure/declaration is proportionate, it is not effective or dissuasive. No information as to the system or manner of storage of reports relating to cross-border transportation of currency or the number of cross-border disclosures or the amount of currency involved was made available to the assessors. A small number of customs officers have been exposed to training in financial investigation techniques.

3. Preventive Measures – Financial Institutions

15. The POCA, 1992 and POCA, 2003, the Proceeds of Crime (Anti-Money Laundering) Regulations, 2003 (POCAMLR) and the Anti-Money Laundering Guidelines ("Guidelines") provide the framework for customer due diligence (CDD) requirements for regulated (natural and legal) persons in the financial sector. The POCA and ancillary POCAMLR impose obligations on financial institutions and persons engaged in relevant business activities as defined in the First Schedule to POCA. The financial institutions and relevant business activities in the First Schedule cover all listed FATF financial institution activities and DNFBPs except for trust and company service providers. The Guidelines were issued pursuant to section 50(1) (b) of POCA by the Supervisory Authority to the regulated financial services sector and some DNFBPs. The examiners were advised that the Guidelines were not legally enforceable and paragraph 60 of the Guidelines states that "these Guidelines are not mandatory or exhaustive". As such, the Guidelines have not been treated as other enforceable means.

16. CDD measures include customer identification, beneficial ownership and timing of verification requirements and procedures to deal with failure to satisfactorily complete CDD. The main shortcomings are that substantive requirements are either not set out in law or enforceable means as required by the FATF standards or are not addressed. Effective implementation of AML/CFT measures by interviewed financial institutions was uneven at best. No specific requirements for PEPs over and above special attention and increased monitoring are outlined. None of the criteria relating to correspondent banking have been addressed. With regard to new technologies, there was no specific requirement for financial institutions to have policies to prevent misuse of technological developments in ML or TF or address risks associated with non-face to face business relationships or transactions.

17. Obligations for introduced business are general in nature and do not include most of the specific FATF requirements. Additionally, these obligations are set out in the non-mandatory Guidelines. There are no financial secrecy laws in Grenada. Legislation provides for competent authorities to access and share information locally and internationally as required by their functions. There is a comprehensive framework of international co-operation and procedures to assist foreign judicial, law enforcement, prosecutorial, and regulatory authorities. There are no restrictions on the sharing of information between financial institutions.

18. Record keeping requirements are extensive and generally observed. However, there is no requirement for account files and business correspondence to be maintained for at least five years after the termination of an account or business relationship. Wire transfer measures are limited to record keeping and monitoring and do not include most FATF requirements. These measures are set out in the non-mandatory Guidelines.

19. Financial institutions are required to maintain records on the activities relating to complex or unusual large transactions or unusual patterns of transactions which do not have any apparent economic or visible lawful purpose. However, there is no requirement to examine these transactions and set forth the findings in writing and keep those findings available for at least five years. While financial institutions are required to carry out enhanced CDD in relation to customers from countries which do not or insufficiently apply the FATF Recommendations, this requirement is set out in the Guidelines which is not enforceable. While the Guidelines includes a list of countries which are deemed to have AML regimes equivalent to Grenada there are no measures to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries. Additionally, there is no requirement for the examination of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF Recommendations and making available the findings of such examinations to assist competent authorities.

20. Section 48(3) of the POCA, 2003 places a statutory requirement on financial institutions to report suspicious transactions or activity that could constitute or be related to money laundering or the proceeds of criminal conduct. While money laundering offences are applicable to all indictable offences, trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy or terrorist financing offence of providing or receiving money or other property in support of terrorist acts are not criminalized in Grenada. While legislation requires that all suspicious transactions be reported and thereby includes attempted transactions, this requirement is not explicit. There are also no specific provisions requiring that all suspicious transactions be reported regardless of the amount of the transactions or whether they are thought to involve tax matters. The language of the legislative provision for the reporting of the suspicion of terrorist financing is discretionary and the reporting obligation does not include funds used for terrorism or by terrorist organizations or those who finance terrorism. The deficiencies noted with regard to attempted ML transactions, the amount of the transactions and whether they involve tax matters are also applicable to TF transactions.

21. Financial institutions and their directors, officers and employees are protected from both criminal and civil liability for reporting SARs in good faith. The safe harbour provision is extended to the FIU, its Director, officers and personnel in discharging their functions. Legal provisions establish a tipping off offence with regard to money laundering investigations and disclosures made to a police officer or to an appropriate person. Disclosures about suspicious transaction reporting regarding money laundering to the FIU are not offences. The tipping offence with regard to terrorist financing complies with FATF requirements. No evidence was presented to the examiners at the time of the mutual evaluation that the authorities had considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency. The FIU has not provided consistent feedback on suspicious transactions reports filed by financial institutions.

22. The requirements for internal procedures, policies and controls in the Guidelines incorporate some of the FATF criteria such as designation of an AML/CFT compliance officer at management level, access to CDD information by compliance staff and implementing screening procedures to ensure high standards when hiring employees. However, these requirements are not enforceable. Other FATF requirements including the establishment of internal procedures, policies and controls to prevent money laundering and financing of terrorism, maintenance of an adequately resourced and independent audit function and ongoing staff training are not addressed.

23. The requirement for financial institutions to ensure that their foreign branches, subsidiaries or representative offices observe anti-money laundering and counter terrorist financing measures consistent with Grenada is not enforceable. There is no requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations and no requirement for branches and subsidiaries of financial institutions in host countries to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ. Additionally, financial institutions are not 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 laws, regulations or other measures.

24. While there are legislative requirements for licensing financial institutions under the Offshore Banking Act (OBA) and the Banking Act (BA), there is no effective prohibition on the establishment and licensing of shell banks. There are no legislative provisions applicable to financial institutions to prevent them from entering into or continuing correspondent relationships with shell banks or requiring financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks

25. While the Supervisory Authority has the overarching responsibility for ensuring AML/CFT compliance, the effective discharge of this responsibility is done by the regulatory authorities the ECCB, GARFIN and the ECSRC. The ECCB is the regulatory authority responsible for the on and off-site supervision of commercial banks in Grenada. The ECSRC oversees the development and regulation of the regional securities market, licensees persons engaged in securities business and monitors and supervises such business. The GARFIN is responsible for the supervision of the non-bank financial sector. .

26. The ECCB is responsible under the BA for all licensing, enforcement and administrative decisions with respect to all commercial banks in Grenada. At the time of the mutual evaluation there were six (6) licensees under the supervision of the ECCB. The Bank Supervision Department of the ECCB is responsible for carrying out regulatory functions. Members of staff are duly qualified and must be fit and proper to hold their posts. In addition to in-house training sessions organised throughout the year, staff have been exposed to AML/CFT training workshops and seminars held regionally and internationally. Under the BA, the ECCB can conduct inspections and demand information from its licensees. The ECCB carries out risk based examinations based on findings and signals from the off-site review. The number of full-scope and AML/CFT examinations conducted in Grenada by the ECCB in the last four years was two and four respectively.

27. The ECSRC operates under the provisions of the Securities Act (SA). One company is licensed as a broker/dealer under the SA. Under the SA, the ECSRC can inspect the records and documents of securities businesses. The ECSRC may delegate any of its duties and in this regard the ECCB provides staff to undertake the technical work of the Commission.

28. GARFIN is responsible for the administration of the GARFIN Act as well as eleven (11) statutes governing the licensing and regulation of the non-bank financial sectors. This sector includes credit unions, insurance companies, international business companies and money services businesses. GARFIN was established in March 2008 and at the time of the mutual evaluation, was implementing a prudential reporting system for its regulated institutions. Under

its governing statute, GARFIN has the power to compel access to all records of its licensees. Since its inception, GARFIN has conducted focused reviews of three (3) small credit unions and a full scope inspection of a larger credit union. The reviews largely looked at compliance with the governing laws.

29. Under the provisions of the BA, significant shareholders, directors or senior management of commercial banks are subject to due diligence checks by the ECCB to determine whether they are fit and proper. Similar requirements are stipulated in the OBA. While there is a requirement that the ECSRC be notified about the changes in directors and substantial shareholders, there is no indication in the law that fitness and probity checks on directors, shareholders, management of licensees, is a requirement. Similarly the GARFIN Act appears silent on the conduct of "fit and proper" tests for licensees.

30. In general, criminal sanctions are available for offences under the POCA, 2003 and the MLPA, 1999 and are applicable to all natural and legal persons. The only supervisory authority which is able to impose enforcement actions for AML/CFT breaches is the ECCB under the BA. These can be imposed under the provisions dealing with unsafe and unsound practices and violation of laws, regulations or guidelines. This can result in the ECCB issuing a written warning, instituting a program of remedial action or issuing a cease and desist order or direction or recommending the restriction/variation or revocation of an institution's licence. The GARFIN Act does not provide for any ladder of enforcement (e.g. order to cease and desist) for GARFIN and the sanctions under the various pieces of legislation are not thought to be dissuasive enough. Under the SA, the ECSRC can impose sanctions in appropriate circumstances. However, none of the aforementioned regulatory specific Acts have specific sanctions or enforcement powers for failure to comply with AML/CFT recommendations.

31. GARFIN is the sole designated authority for the licensing of money value transfer (MVT) operators. The three money transmission companies in Grenada have been duly licensed by GARFIN. MVT operators within Grenada are not subject to any reporting requirements or other prudential filings to GARFIN. Onsite inspections, subsequent to the licensing of MVT operators have not been conducted by GARFIN. GARFIN anticipates the introduction of prudential return filing for MVT operators by December 2008 and onsite inspections in 2009. While there is no specific requirement for MVT operators to maintain a current list of its agents, GARFIN has been provided by each licensed MVT operator with a list of its outlets and agents. While the GARFIN Act allows GARFIN the power to grant or revoke a licence, the only administrative penalties are fees and penalties for late filing of reports. The range of disciplinary and financial sanctions is not sufficiently broad to encompass a variety of enforcement actions commensurable to the severity of the situation.

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

32. DNFBPs are required to comply with the AML/CFT obligations of POCA, 2003, the MLPA and the Guidelines. The DNFBPs include all entities required by the FATF except for dealers in precious metals and precious stones. Deficiencies noted with regard to the AML/CFT regime for financial institutions in relation to specific Recommendations are also applicable to DNFBPs. No framework has been put in place to ensure that DNFBPs comply with AML/CFT

requirements or a designated regulatory/supervisory body appointed with the responsibility. Interviewed DNFBPs expressed concerns and the need for further clarification regarding their obligations under the current AML/CFT regime.

5. Legal Persons and Arrangements & Non-Profit Organisations

33. The Registrar of Companies maintains a register of companies incorporated under the Companies Act (CA). The CA provides for the incorporation of domestic, external and non-profit companies. The Registrar is also responsible for the functions of the Registry of Courts, Registry of Lands and any other matters that must be formally registered. The Registry of Companies includes incorporation documents, changes in directorship and annual returns and is accessible to competent authorities and the public. There is no requirement to file information on a company's beneficial owners at the time of incorporation. Information on beneficial owners would be contained in the annual returns. However, there is no mechanism to ensure the timely filing of annual returns and there is no requirement to notify the Registrar immediately about changes in beneficial owners. The examiners were advised that a significant number of companies do not file annual returns as required. Resources for the effective and efficient operations of the registry functions were inadequate. Instances of files missing and a backlog of work would impede timely access to current information on particulars of companies.

34. While the International Companies Act (ICA) allows international business companies (IBCs) to have bearer shares, these shares are required to be held by a bearer share agent. Additionally, IBCs that carry out financial services businesses are not allowed to issue bearer shares. However the Grenadian authorities have failed to demonstrate that these measures have been adhered to and as such it is difficult to assess whether the measures are adequate and effective to ensure that bearer shares are not misused for money laundering.

35. There is no central filing requirement for trusts and no register of all trusts in Grenada. The incidents of trusts are extremely rare and the examiners were advised that a private trust would not be registered with the Registrar of Companies but the documents would be maintained by an attorney. The Guidelines require trustees to obtain individual verification information at a minimum on settlors, beneficiaries, protectors, and information on the purpose and nature of the trust and source of funds. However, the Guidelines are not enforceable. While Grenada has an International Trusts Act which provides for the creation and regulation of international trusts and related matters, there are no international trusts registered under the Act and none are envisaged until the legislation is completely reviewed.

36. The authorities in Grenada have informed the examiners that the country has not reviewed the adequacy of domestic laws in relation to non-profit organisations (NPOs) to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities. The authorities further advised that there has been no outreach to the NPO sector as it is very small and the risk is considered minimal. It is not mandatory for NPOs to be registered as companies under the CA. However, the CA allows for their incorporation once the Attorney General approves their articles on the determination that the company qualifies for the status of NPO. Provisions relevant to the identification of persons who own, control or direct company activities and filing requirements are the same as those for domestic companies. The Registrar's office does not conduct periodic checks on companies'

filings to ensure that information is accurate. There are no specific requirements for NPOs to maintain records of international transactions for a period of at least five years. There is no investigative expertise with regards to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.

6. National and International Co-operation

37. The main body which deals with money laundering and combating the financing of terrorism issues on a national level is the Supervisory Authority. The Supervisory Authority's role is articulating Government's AML/CFT policies to relevant members of the public, reviewing the money laundering and financing of terrorism situation and giving advice for necessary action to the Minister of Finance. Members of the Supervisory Authority include the DPP and the COP, the Executive Director of GARFIN as well as the Permanent Secretaries in the Ministry of Finance and the Ministry of National Security. The composition of the Supervisory Authority allows for some measure of consultation between competent authorities. It is noted that the Attorney General is not a member of the Supervisory Authority. The Supervisory Authority empowered by POCA, 2003 meets monthly to review the money laundering and financing of terrorism situation and give advice for necessary action to the Minister of Finance.

38. An action task force has been established including heads and representatives of all law enforcement and other pertinent entities involved in the fight against money laundering. Discussions are held on financial crimes etc and information sharing also takes place at these meetings, which are held monthly. Information shared between domestic agencies is primarily for intelligence purposes. With regard to consultation with financial institutions there seems to be no system in place to allow for greater and continuous consultation between the Supervisory Authority, GARFIN, the FIU and institutions subject to AML/CFT measures.

39. Grenada acceded to the Vienna and the Palermo Conventions on December 10, 1990 and May 21, 2004 respectively. The Terrorist Financing Convention was acceded to on December 13, 2001. Most of the provisions of the Conventions have been incorporated in legislation. However, not all predicate offences of money laundering have been criminalised. Additionally, the legislation covering terrorist financing does not cover all the activities required to be criminalised in accordance with the Convention and there is no evidence of implementation of the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (S/RES/1267(1999) and (S/RES/1373(2001).

40. Assistance can be provided for the full range of mutual legal assistance requests envisaged by the FATF Recommendations. The Mutual Legal Assistance in Criminal Matters Act (MLACMA), 2001 provides for a wide range of mutual legal assistance in investigations, prosecutions and related proceedings. The Attorney General is responsible for transmitting or receiving requests in accordance with MLACMA. Mutual legal assistance under the MLACMA is granted if an offence has been committed under the laws of the requesting country or territory, or there are reasonable grounds to suspect that an offence has been committed and that criminal proceedings or criminal investigations have commenced in the requesting country. There is no provision for the tracing and restraining of instrumentalities intended for use in the commission of an offence. The examiners were not informed of any arrangements for coordinating seizure and confiscation actions with other jurisdictions. There are no asset-sharing arrangements in place between Grenada and other countries. Generally, the provisions set out in MLACMA will also

apply to FT. However, in relation to FT offences, the provision/collection of funds for an individual terrorist is not criminalized. Therefore it will not be regarded as an offence for which mutual legal assistance could be sought.

41. Money laundering is an extraditable offence in Grenada. Extradition is available for any conduct that would be an offence if committed within Grenada. While the TA extends extradition to offences involving terrorism and the financing of terrorism, the terrorist financing offence of fund-raising and the provision/collection of funds to an individual terrorist are not subject to extradition proceedings.

42. Grenada has a comprehensive framework of international co-operation legislation and procedures to assist foreign judicial law enforcement, prosecutorial and regulatory authorities. The framework provides an efficient and effective mechanism for cross-border co-operation and exchange of information. Law enforcement, the FIU and the regulatory authorities can engage in a wide range of international co-operation and they render assistance in a timely fashion. The Exchange of Information Act (EIA) and the FIUA do not address whether requests can be refused on the sole ground that they are considered to involve fiscal matters.

7. Resources and Statistics

43. Most of the competent authorities have adequate resources to carry out their functions. However, the RGPF and the Attorney General's office have inadequate human resources.

44. Comprehensive statistics are generally maintained. However, statistics on the total number of cross-border disclosures or the amount of currency involved were not available and the statistics on mutual legal assistance requests did not contain sufficient information. Additionally, no information about spontaneous referrals made by the FIU to foreign authorities was available.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Grenada

1. The State of Grenada consists of three islands situated between the Caribbean Sea and the Atlantic Ocean, 12.7 degrees north latitude and 61.4 degrees west longitude. Grenada is the largest island (120 square miles). The other islands are Carriacou (13 square miles) and Petite Martinique (586 acres). The State is divided into seven parishes: St. George, St. Mark, St. Patrick, St. Andrew, St. John, St. David and Carriacou and Petite Martinique. The capital city is St. George's.

2. According to the last population census in 2001, Grenada has a population of 103,137 persons. Approximately 65% of Grenada's population is under the age of thirty. Life expectancy is seventy three years. The literacy rate is 96% (as of 2005) and the official language is English. The currency is the Eastern Caribbean Dollar which has been pegged to the US Dollar at a fixed rate of US$1=EC$2.70 since 1976. In 2007, the gross domestic product of Grenada was EC$1,775 million (US$657 million). The main industries are tourism, construction and agriculture.

3. Grenada was granted full independence from Great Britain on February 07, 1974. It is a parliamentary democracy closely modelled on the British Westminster model. Queen Elizabeth II of the United Kingdom is the Head of State and the Governor General acts as her representative in Grenada. Government is divided into three branches: executive, legislature and judiciary.

4. The legislature is bicameral consisting of an elected House of Representatives and an appointed Senate. The House of Representatives (Lower House) has fifteen elected members while the Senate (Upper House) has thirteen nominated members. The Prime Minister is both leader of the majority party in the House of Representatives and the Head of Government. The National Democratic Congress Party won eleven of the fifteen seats in the House of Representatives in general elections held on July 08, 2008. The current Prime Minister is Hon. Tillman Thomas a lawyer by profession.

5. Grenada's judicial system is based on the English system, including the principles and practice of English common law. It is a member of the Eastern Caribbean Supreme Court (ECSC) known in Grenada as the Supreme Court of Grenada and the West Indies Associated States. THE ECSC has two divisions, the High Court of Justice and the Court of Appeal. Appeals from the Court of Appeal go to the Judicial Committee of the Privy Council in London, England, which is Grenada's Court of last resort. The Supreme Court is guided by decisions of the Court of Appeal and the Privy Council.

6. Good governance is one of the top priorities of the new Government. It has already announced its intention to implement the Integrity in Public Life and Prevention of Corruption Acts which were enacted in 2007. To this end, an Integrity Commission will soon be established. This Commission will obtain declaration of the assets, liabilities and income of persons in public life.

7. Grenada is party to several international conventions addressing money laundering and terrorist financing activities including the Palermo and Vienna Conventions. The new Government is fully committed to the fight against money laundering and terrorist financing in all forms and to this end will make efforts to ensure that a similar culture is developed and maintained in all financial institutions, DNFBPs and other relevant institutions. This will be done through periodic workshops and public education programmes.

8. In addition the Government is committed to a strong and clean financial system and to achieve this it has articulated three key ingredients as follows – a strong political will, good partnership between all relevant players, and professional and institutional development. The Government has also committed to a comprehensive review of existing AML and CFT legislation to ensure that any existing shortcomings which may exist are addressed.

9. A Legal Profession Act covering the ethical and professional conduct of lawyers has been drafted and is expected to be enacted by year end. In addition, Grenada will also enact the Institute of Chartered Accountants of the Eastern Caribbean Act which will allow for the registration of local accountants in this regional self regulatory body.

1.2 General Situation of Money Laundering and Financing of Terrorism

10. Violent crimes have been on the rise in Grenada in 2008 but mainly in the area of homicides and particularly among youth. The majority of these homicides have however been as a result of domestic/family problems and not related to money laundering or terrorist activities.

Table 1: Summary of Offences 2004 - 2007

Type of Offence	**2004**	**2005**	**2006**	**2007**
Crimes Against Persons	59	56	89	92
Crimes Against Property	85	84	152	86
Drug Offences	32	24	49	30
Other Offences	13	8	25	32
Total	189	172	315	240

11. The above table presents the number of serious crimes prosecuted during the period 2004 to 2007 and come from the Royal Grenada Police Force. While the crime situation improved overall for 2007, offences against persons increased slightly. Crimes against property and drug offences, the most likely sources for laundered funds significantly declined in 2007.

12. While the financial sector as a whole in Grenada is growing it is very small and lacks the sophistication of large and more developed jurisdictions. The main pieces of legislation which regulate money laundering and terrorists financing in Grenada are the Proceeds of Crime Acts 1992 and 2003 (POCA), the Money Laundering (Prevention) Act 1999 (MLPA) and the Terrorism Act 2003 (TA).

13. The major risk of money laundering activity is through the banking system and money remitters. The major sources of funds which are laundered come from narcotics and fraud. Four of the five commercial banks are subsidiaries or branches of large regional or international banks and all have in place comprehensive anti money laundering programmes and systems. The banks all cooperate fully with the FIU and submit suspicious activity reports (SARs) in accordance with the Guidelines issued under the POCA. The money remittance companies have all been licensed and also submit SARs to the FIU.

14. Between 2003 and 2005 the FIU received eighty seven SARs – thirty one have been closed and fifty six are still under investigation. One case in this period emanating from a filed SAR led to a prosecution and conviction. There were three other money laundering prosecutions and convictions during this period and presently six other such cases are before the Magistrates Court.

15. A company engaged in 'foreign currency trading' recently attracted a large number of investors because of the high returns promised. This company was deemed to be conducting investment activities through a 'collective investment scheme' which constitutes "securities business" under the Securities Act (SA). The company ceased accepting new deposits following a cease and desist order from the Eastern Caribbean Securities Regulatory Commission (ECSRC) and was in the process of applying for the relevant licence when its trader in the Turks and Caicos had his assets frozen pending an investigation into his activities.

16. The securities sector in Grenada is very small and the risk of money laundering activity is considered to be low. Charitable organizations are also small and fund raising activity tends to be limited.

17. There are no casinos or internet gaming establishments in Grenada. Money transmission companies were recently licensed and will come under greater supervision by the Grenada Authority for the Regulation of Financial Institutions (GARFIN) in the coming months.

18. Given that the Caribbean is a transhipment point for narcotics to North America, Grenada is vulnerable to this scourge. The law enforcement agencies including the Coast Guard continue to be vigilant in this area.

19. Like most other countries, Grenada is concerned about the increasing level of terrorist activities throughout the world. The FIU and other law enforcement agencies are monitoring closely this area. The Financial Intelligence Unit Act (FIUA) mandates that persons should report all incidences of terrorism. To date, no such activities have been reported. The lists deriving from UN Security Resolution 1267 from time to time are circulated to all financial institutions for the

purpose of verification and addition to the asset freeze lists. Legislation criminalizing terrorism and terrorist financing was enacted in 2005 providing the legal framework for fighting this scourge.

1.3 Overview of the Financial Sector and DNFBP

20. As at July 31, 2008 the following financial institutions were operating in Grenada -

a) Five commercial banks, four of which are subsidiaries or branches of large regional or foreign banks and one which is a locally owned public company. The banks have a total of twenty one branches and combined assets of approximately US$975 million. In May 2008 the Government issued a notice of intention to revoke the licence of a small domestic commercial bank which was not regulated by the Eastern Caribbean Central Bank (ECCB). This followed the appointment of a receiver by the Minister of Finance in February 2008. This bank had total deposits of approximately US$16 million.

b) Fifteen credit unions most of which are small workplace or community based credit unions. Combined assets amounted to approximately US$95.7 million with the three largest accounting for approximately 84% of total assets or some US$80.8 million.

c) Twenty four insurance companies only four of which are locally owned with the others being branches or subsidiaries of regional and international insurance companies. The companies comprise life and general insurance with three being composite companies. Total gross premium income in 2006 amounted to approximately US$51 million.

d) Three money remittance entities, two of which are private companies which operate agencies of international remittance companies and one which is a statutory body operating an agency of an international company.

e) One building society with assets of US$15.5 million.

f) One Government owned Development Bank which is not a deposit taking entity. Funds come mainly from official institutional sources.

21. In addition, there was one company conducting investment business through a collective investment scheme whereby the funds are forwarded to a trader for investment on the foreign exchange market. This company was in the process of applying for the relevant licence under the SA when the assets of its trader were frozen in the Turks and Caicos Islands. The company had previously ceased accepting deposits on the directive of the ECSRC pending the application.

22. Grenada has legislation in the following areas but no entities licensed under these laws.

- Offshore Banking Act - Grenada previously had 47 offshore banks registered but by 2007 they had all either left or had their licences revoked.
- International Trusts Act
- International Insurance Act

- Company Management Act

23. The above legislation is to be reviewed within the next six months.

24. Grenada has no casinos or internet gaming establishments. One company is registered under the International Betting Act. This company is not an internet betting company but simply processes bets placed in other international jurisdictions from entities which are duly licensed.

25. Thirteen persons are registered as agents under the International Companies Act. One company is licensed as a broker/dealer under the SA. Grenada is a part of the ESCRC which is a regional stock exchange for the Organisation of Eastern Caribbean States (OECS) islands. There are three Grenadian companies presently listed on the ECSRC.

26. Accountants, lawyers and real estate agents are not professionally licensed in Grenada. There are approximately five accounting firms, sixty eight legal firms and twenty one real estate operators in Grenada. These entities are however designated as "relevant business activities" under the POCA and are specifically included in the Guidelines issued under the Act. There are five dealers in precious metals and stones all of which are jewellery stores.

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

Type of financial activity (See Glossary of the 40 Recommendations)	Type of financial institution authorised to perform activity in Grenada
A. Acceptance of deposits and other repayable funds from the public (including Private banking)	Banks, credit unions, building societies
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, credit unions, building societies, credit institutions (under the Banking Act), micro financing institutions
C. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks
D. 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)	Banks, money services businesses
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts,	Banks, credit unions

electronic money)	
F. Financial guarantees and commitments	Banks, Insurance Companies
G. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; commodity futures trading	(a) Banks, (b) Banks ,money services businesses (c) Banks Broker dealers, investment advisers
H. Participation in securities issues and the provision of financial services related to such issues	Broker Dealers, investment advisers
I. Individual and collective portfolio management	Broker dealers
J. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks
K. Otherwise investing, administering or managing funds or money on behalf of other persons	Broker dealers
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance companies
M. Money and currency changing	Banks, money services businesses

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

27. In Grenada, the main legislative instrument which governs legal persons and arrangements is the Companies Act No. 35 of 1994 (CA). This Act is uniform throughout the OECS and is based on Canadian company law. The Act is very comprehensive and addresses most issues relating to a company from its incorporation to its dissolution.

28. The Act has five parts which are:

I. Formation and operation of companies

Requirements for incorporation, corporate capacity and powers and share capital are stipulated. Provision is made for the management of companies, shareholders of

companies, proxies, financial disclosure and corporate records. Included also are provisions for transfer of shares and debentures, takeover bids, company changes and civil remedies.

II. Protection of creditors and investors

Obligations on registration of charges, trust deeds (relative to a public issue of debentures), receivers, prospectuses and insider trading are set out.

III. Other registered companies

Requirements for the establishment and functioning of non-profit and external companies, their limitations, dissolution and cancellation are detailed. The continuation of former-Act companies is also addressed.

IV. Winding up

Both voluntary and court initiated winding up of companies are provided for under Part IV.

V. Administration and general

Administrative issues are addressed. Provisions are made for the functions of the Registrar of Companies who has the overall responsibility for the incorporation and administrative monitoring of companies registered under the Act. It also provides for the investigation of companies by the Registrar who may apply "ex parte" to the Court for an order for an investigation of a company, as well as offences and their related penalties. It ensures that corporate entities act in all things in accordance with the CA.

29. The CA provides for one type of business i.e. the company. As in most other countries, Grenada also has other types of business. The sole trader and partnerships are also common business types. Though the sole trader and the partnership are not formally registered, they can have their business name registered under the Registration of Business Names Act Chapter 281 of the 1990 Revised Laws of Grenada, upon which a certificate of registration is issued, and the requisite documents held by the Registrar.

30. Common law would apply to the types of businesses where no legislative provisions govern any area of their operations. For example, contractual arrangements are governed by the provisions of common law.

31. Grenada also has an International Companies Act (Cap. 152) which makes provision for the incorporation of companies which do not carry on business in Grenada with persons domiciled or resident in Grenada. International companies are not allowed to own an interest in real property situate in Grenada except for use as an office. They are also not allowed to accept banking deposits or contracts of insurance. This Act will be reviewed within the next six months.

32. While trusts are not covered by any legislation in Grenada they may be formed under the common law. The duties of trustees are however governed by the Trustees Act Cap 329. Grenada has on its books an International Trusts Act which provides for the creation and regulation of international trusts and for related matters. An international trust is one where both the settler and the beneficiary are resident outside of Grenada and at least one of the trustees is a trust

corporation. There are no international trusts registered under the Act at the moment and none are envisaged until the legislation is completely reviewed within the next six months.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

33. The Government of Grenada views money laundering, terrorist financing and its attendant problems as extremely serious and have criminalised these activities. Consequently a regime and mechanism was established to prevent and detect these activities. From its inception, emphasis was placed on the conventional financial institutions including the money remittance companies. The focus was broadened to include insurance companies and other non bank entities and also the DNFBPs. GARFIN was created in 2007 and empowered to regulate and supervise all non-bank financial entities including the offshore sector and money service businesses.

34. Terrorist financing, though a new phenomenon, was criminalised by enactment of the TA in 2003. Grenada has signed and ratified all the relevant UN Conventions on corruption and the suppression of terrorism. In addition, the whole regime against money laundering and terrorist financing is being strengthened by a number of new initiatives as follows;

- A new Customs Act is currently under consideration for enactment in 2009.
- A review of all existing offshore legislation is to commence by end of 2008.
- A review of the existing POCA and the MLPA to be undertaken by end of 2008.
- The existing Guidelines issued under the POCA are presently being strengthened to include the terrorist financing requirements. The new Guidelines will be given legal status by October 15, 2008.
- The Supervisory Authority appointed under the POCA was recently strengthened by broadening its membership.
- GARFIN became functional in March 2007 and is gradually deepening its control over the regulation and supervision of all non-bank financial institutions including the offshore sector.
- The Integrity in Public Life and the Prevention of Corruption Acts were enacted in 2007.
- A training workshop was held in August 2008 with all financial institutions in Grenada on anti-money laundering and combating the financing of terrorism.
- A similar workshop was held for all DNFBs in October 2008.
- A broader public education programme is presently being formulated and will commence by October 2008.

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

35. Grenada's institutional framework for combating money laundering and terrorist financing encompasses the following -

36. **The Ministry of Finance (MOF)** headed by the Minister of Finance is the government entity responsible for making regulations under the POCA for the purpose of directing the fight against money laundering and financing of terrorism.

37. **The Ministry of Legal Affairs** headed by the Attorney General is the government agency responsible for drafting laws pursuant to money laundering and financing of terrorism. The Attorney General is the competent authority in relation to the receipt and dissemination of official requests pursuant to the mutual legal assistance laws.

38. **The Director of Public Prosecutions (DPP)** is responsible for prosecuting all criminal offences including money laundering and terrorist financing crimes. The DPP has additional responsibility to make the relevant application to the Supreme Court concerning restraint and confiscation of property realized from criminal activity. The Police prosecution department is also involved in the prosecution of financial crimes.

39. **The Ministry of National Security** is the overall coordinating Ministry for all law enforcement agencies in Grenada.

40. **The Supervisory Authority** is the committee responsible for advising the Minister of Finance on matters relating to money laundering and financing of terrorism. It also issues guidelines to financial institutions from time to time to ensure compliance with POCA.

41. **The Financial Intelligence Unit (FIU)** established by the FIUA is the agency responsible for receiving, analyzing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences created by POCA.

42. **The Royal Grenada Police Force (RGPF)** is the principal law enforcement agency responsible for the maintenance of general law and order. The Drug Squad is an agency within the RGPF responsible for the prevention, detection and arrest of persons engaged in narcotic trade. Because of the close link between money laundering and drug offences, the agency plays a major role in assisting the FIU to investigate matters pertaining to drugs and money laundering/terrorist financing.

43. **The Immigration Department** is an entity within the RGPF with the responsibility of policing the eight (8) ports of entry between Grenada, Petit Martinique and Cariacou.

44. **The Customs Department's** functions include revenue collection, facilitation of trade and travellers in accordance with the laws and regulation relating to Customs, and assisting in securing the social, ecological and economic environment of the country.

45. Financial sector regulatory authorities consist of the following –

a) **The ECCB** is responsible for licensing and monitoring of commercial banks under the Banking Act 2005 (BA).

b) **GARFIN** is responsible for the regulation and supervision of all non-bank financial institutions including the offshore sector and money service businesses under the GARFIN Act 2008.

c) **The ECSRC** is responsible for the regulation of securities business in Grenada under the SA.

c. Approach concerning risk

46. The authorities have not carried out a national AML/CFT risk assessment to validate the implementation of prescribed AML/CFT measures. The AML Regulations and Guidelines issued by the Supervisory Authority provide for exempted or reduced customer identification requirements; however, there is no basis for such exemption.

d. Progress since the last mutual evaluation

47. Since the last mutual evaluation review in 2003 Grenada was struck by two hurricanes the first of which totally devastated the economy. Damages were estimated at US$900 million which is twice Grenada's GDP. While most areas of the country have recovered, the effort to achieve this severely limited the ability to focus on the matters arising from the last review.

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

Consistency with United Nations Conventions

48. Grenada acceded to the 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 10th December, 1990 and the 2000 United Nations Convention against Transnational Organised Crime (the Palermo Convention) on 21st May, 2004.

49. Money laundering is defined in section 2(1) of the MLPA as "*engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime; or (b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Grenada any property that is the proceeds of crime, knowing or believing same to be the proceeds of crime".* Under the MLPA "transaction" includes the receiving or making of a gift. Property is defined to mean real or personal property of every description, whether situated in Grenada or elsewhere and whether tangible or intangible and includes any interest in any such real or personal property. Therefore, money laundering extends to any type of property, regardless of its value, that may directly or indirectly represent the proceeds of crime.

50. The offence is criminalised by section 3 of the MLPA. The ancillary offences of attempting, conspiring, aiding, abetting, counselling, procuring, inciting or being in any way knowingly concerned in, the commission of any of those offences are also captured in section 3.

Conversion or transfer and concealment or disguise of proceeds of criminal conduct

51. With regards to the Vienna Convention requirement in Article 3(1)(b) of conversion or transfer of property and concealing or disguising the true nature, source or ownership of property, the MLPA is deficient. However, Part V of POCA 2003 creates the offences of self and third party money laundering through the act of concealing or disguising and transferring or converting property that is the proceeds of criminal conduct. The elements of the offences are:

a) Self-laundering- section 43(1) of POCA 2003

i. Physical element: The defendant conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct, or converts or transfers that property, brings it into or removes it from Grenada.

ii. Mental element/*mens rea*: The defendant, having carried out either of the actions above knowingly or for the purpose of avoiding prosecution for a drug trafficking or relevant offence or the making or enforcement in his case of a confiscation order.

b) Third party laundering – section 43(2) of POCA 2003

i. Physical element: The defendant conceals or disguises, converts or transfers property, brings it into or removes it from Grenada.

ii. Mental element/*mens rea*: The defendant, having carried out either of the actions above knowingly, or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, for the purpose of assisting any person to avoid prosecution for a drug trafficking or relevant offence or the making or enforcement of a confiscation order.

52. For the purposes of section 43 of POCA 2003, concealing or disguising any property will include references to concealing its nature, source, location, disposition, movement or ownership or any right with respect to it.

53. "Criminal conduct" is defined in section 3(1) of POCA 2003 as meaning either a drug trafficking offence or any relevant offence.

54. In relation to drug trafficking offences which are dealt with in the Drug Abuse (Prevention and Control) Act, 1992 (DAPCA), the list of narcotic drugs and psychotropic substances in the First Schedule of DAPCA does not include all the substances detailed in Table I and II of the Vienna Convention. Article 3 (b)(i) of the Vienna Convention requires the criminalisation of the conversion or transfer of property arising from offences including the manufacture, transport or distribution of substances in Table I and II.

55. "Relevant offence" is defined in section 3(5) of POCA 2003 as meaning '*(a) any indictable offence or offence triable both summarily or on indictment in Grenada from which a person has benefitted as defined in section 10(3) of this Act, other than drug trafficking offence; (b) any offence listed in schedule 2 of this Act; (c) any act or omission which, had it occurred in Grenada, would have constituted an offence as defined in subsection (a) or subsection (b).'*

56. The examiners confirmed with the authorities in Grenada that the said schedule was not *gazetted* and therefore does not form part of the legislation. However, the examiners accepted that the meaning of "relevant offence" could be ascertained in part (a) of the definition notwithstanding the absence of the schedule which should have listed the offences.

57. The offence of converting or transferring property that is the proceeds of crime for the purpose of concealing or disguising the illicit origin of the property, in accordance with Article 3(1)(b)(i) of the Vienna Convention is dealt with under section 2 of the MLPA and section 43(2) of POCA, 2003.

The acquisition, possession or use of property derived from criminal conduct

58. Section 45 of POCA 2003 makes it an offence if a person, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

59. Section 43(1) of POCA, 2003 criminalises self-laundering in relation to the acquisition, possession or use of a person's own proceeds of crime.

Assisting another to retain proceeds of criminal conduct

60. Section 44(1) of POCA 2003 creates an offence if a person enters into, or is otherwise concerned in an arrangement where it (a) facilitates another's retention or control of that person's proceeds of criminal conduct, such as by concealment, removal from the jurisdiction, transfer to nominees or otherwise, or (b) the person uses another's proceeds to secure funds that are placed at that person's disposal or are used for that other person's benefit to acquire property by way of investment, and the person knows or suspects that the other person is or has been engaged in or has benefitted from criminal conduct.

Definition of proceeds

61. "Proceeds of crime" is defined in section 2(1) of the MLPA as "*any property or benefit that is derived, obtained or realised, directly or indirectly by any person from the commission of a scheduled offence".* The Second Schedule of the MLPA specifies the offences including the commission in Grenada of any offence under DAPCA and any offence which is punishable with imprisonment for a term of five years or any greater punishment.

62. Additionally, knowledge, intent, purpose, belief or suspicion required as an element of any offence under the MLPA may be inferred from objective, factual circumstances (section 2(2) of MPLA).

63. Property is defined as "*real, or personal property of every description, whether situated in Grenada or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property".*

64. POCA 1992 also provides a definition of "proceeds of crime" as follows:

"*(a) proceeds of a scheduled offence; or*

(b) any property or benefit derived, obtained or realised, directly or indirectly, by any person from any act or omission that occurred outside Grenada, and would, if it had occurred in Grenada, have constituted a scheduled offence."

65. As noted above, the MLPA criminalises money laundering as a stand-alone offence and therefore it is not necessary to obtain a conviction of a predicate offence to prove it.

Designated Categories of Predicate Offences

66. The table below sets out the range of legislative provisions covering the FATF twenty designated categories of offences for money laundering, as provided by the authorities in Grenada. Most offences are set out in the Criminal Code (CC).

Table 3: Criminalisation of designated categories of offences

DESIGNATED CATEGORIES OF OFFENCES	RELEVANT LEGISLATIVE PROVISIONS IN GRENADA
Participation in an organised criminal group and racketeering	Sections 5,6 & 33 of TA
Terrorism, including terrorist financing	Sections , 10, 31 & 35 TA
Trafficking in human beings and migrant smuggling	No legislative provisions
Sexual exploitation, including sexual exploitation of children	Section 177-183C of the CC
Illicit trafficking in narcotic drugs and psychotropic substances	Sections 18-20 DAPCA
Illicit arms trafficking	Section 4 of the Firearms Act
Illicit trafficking in stolen and other goods	Sections 291 and 292 of the CC
Corruption and bribery	Sections 392, 292, 396-400, 402, 405 & 406

	of the CC
Fraud	Sections 97, 278-286 of the CC
Counterfeiting currency	Sections 306-308 of the CC
Counterfeiting and piracy of products	No legislative provisions
Environmental crime	No legislative provisions
Murder, grievous bodily injury	Sections 207, 208, 230-232, of the CC
Kidnapping, illegal restraint and hostage-taking	Sections 184-186, 189-191 of the CC
Robbery or theft	Sections 95, 274-277 of the CC
Smuggling	Sections 192-206 of the Customs Act 1960
Extortion	Section 277 of the CC
Forgery	Sections 300-305 of the CC
Piracy	No legislative provisions
Insider Trading, & Market Manipulation	Sections 115 & 118of the SA

67. Grenada uses a threshold approach for establishing predicate offences for money laundering. As indicated earlier, the predicate offences for money laundering are referred to in MLPA as "scheduled offences". The Schedule makes reference to offences that are punishable with imprisonment for a term of five (5) years or more.

68. The offences listed in the table that are criminalized under the CC are punishable under Book III of the CC as indictable offences. These offences are deemed predicate offences for money laundering in accordance with section 3(5) of POCA, 2003. Additionally, under the MLPA, in order for these offences to be described as predicate offences, they must be punishable by a penalty of at least five (5) years imprisonment. Not all offences carry such a penalty. For instance, corruption is only punishable by imprisonment for two (2) years. Generally, penalties range from 1 year (for an offence of simple theft of an item not valuing over five thousand dollars) to life imprisonment (for the offence of drug trafficking). It should also be noted that the terrorist financing offence of providing or receiving money or other property in support of terrorist acts is not criminalized under the TA and therefore cannot be considered a predicate offence (see discussion in 2.2. below).

69. The listed offences would fall within the category of predicate offences for the purposes of money laundering in accordance with FATF standards as they carry penalties of one (1) year or more. While the threshold of a penalty of imprisonment of five years or more effectively omits crimes such as corruption and simple theft as predicate offences for money laundering under the MLPA, these offences would be included under section 3(5) of POCA, 2003.

70. There are no equivalent legislation in Grenada governing the offences of trafficking in human beings and migrant smuggling, counterfeiting and piracy of goods, environmental crime and piracy.

71. All three (3) pieces of legislation, MLPA, POCA 1992 and POCA 2003 provide that predicate offences for money laundering do extend to conduct that occurred in another country which constitutes an offence in that country, and which would have constituted an offence had it occurred in Grenada. See reference to the Schedule to MLPA, the definition of "proceeds of crime" in POCA 1992, and the definition of "relevant offence" in POCA 2003 outlined above.

72. The offence of money laundering applies to persons who commit the predicate offence and it may also apply to persons who have not committed a predicate offence – sections 43-47 of POCA of 2003. See MLPA's stand alone ML offence.

Ancillary offences

73. Under sections 43 to 46 of the CC, whoever attempts, instigates, commands, counsels, procures, solicits, or in any manner purposely, aids, facilitates, encourages, or promotes the commission of a crime is guilty of abetting that crime.

74. Section 48 makes it an offence if two or more persons agree to act together with a common purpose in committing or abetting a crime, whether with or without any previous concert or deliberation. Whoever abets a crime shall be punishable on indictment or on summary conviction, according as he would be punishable for committing that crime. These general provisions in the CC are applicable to all criminal offences.

Additional element

75. The proceeds of crime derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, does constitute a money laundering offence. The provisions in the MPLA, POCA 1992 and POCA 2003 are not based on a crime being committed in another country. The requirement is for the act to constitute a crime in Grenada.

Recommendation 2

Liability of natural persons

76. Money laundering offences apply to natural persons. By virtue of section 3 of the MLPA, any person who engages in money laundering commits an offence. The definition of money laundering in section 2(1) refers to a person doing an act knowing or believing the same to be the proceeds of crime.

77. Additionally, section 62(1) of POCA 1992 makes possession of property derived from unlawful activity an indictable offence if the offender knows or ought reasonably to know that property is the proceeds of crime.

78. Section 2(2) of MLPA states that knowledge, intent, purpose, belief or suspicion required as an element of an offence under the Act may be inferred from objective, factual circumstances.

Liability of legal persons

79. Section 4 of the MLPA extends criminal liability for money laundering to a body of persons, whether incorporated or unincorporated. Liability may be established by proof that a

director, manager, secretary or other officer acted in an official capacity for and on behalf of the body of persons at the time of the commission of the offence.

80. Furthermore, in accordance with section 3 of the Interpretation and General Provisions Act, "person" is defined as including any company or association or body of person, corporate or unincorporated. This provision applies to all legislation in the jurisdiction.

81. Corporate criminal liability is also extended by virtue of sections 64 of POCA 1992 and 59 of POCA 2003 providing that where a body corporate is guilty of money laundering and it is proved to have been committed with the consent or connivance of an officer of the body corporate, both the person purporting to act in that capacity and the body corporate shall be subject to punishment.

82. Criminal liability through the imposition of a penalty or fine does not preclude parallel civil or administrative action as established by section 55 of the Interpretation and General Provisions Act.

Criminal Sanctions

83. Natural and legal persons are subject to proportionate and dissuasive criminal sanctions for money laundering offences. These are covered under three separate pieces of legislation as follows:

MLPA

84. Pursuant to section 5 persons who commit the offence of money laundering are liable, on conviction on indictment to a fine of one million dollars or to imprisonment for 27 years, or to both. Section 4 extends the offence of money laundering committed by a body corporate to any person who at the time of the offence acted in an official capacity for or on behalf of the body corporate except in proven instances of the offence being committed without the person's knowledge or consent or the person exercising all diligence in relation to his official capacity to prevent the offence.

POCA 1992

85. Section 61 provides that a natural person committing the offence of money laundering is liable on conviction to a fine of two hundred thousand dollars or imprisonment for a period of 20 years, or both and a fine of five hundred thousand is imposed if the offender is a body corporate. The offence of possession of property derived from the proceeds of crime attracts a penalty on conviction, of a fine of one hundred thousand or imprisonment for a period of 5 years or both, if the offender is a natural person. Pursuant to section 62, a body corporate is liable to a fine of two hundred and fifty thousand dollars.

POCA 2003

86. Section 49 states that upon summary conviction of the money laundering offences under POCA 2003 namely, concealing or transferring, disguising or converting the proceeds of criminal conduct; assisting another to retain proceeds of criminal conduct; acquisition, possession or use of proceeds of criminal conduct; failure to disclose knowledge or suspicion; tipping off; and failure

to report a suspicious transaction; persons are liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding five hundred thousand, or both. On conviction on indictment, a term of imprisonment not exceeding 10 years or an unlimited fine is to be imposed. Bodies corporate are dealt with pursuant to section 59 where a similar provision to section 4 of the MLPA is created.

Statistics

87. The authorities advised that three persons have been convicted to date for money laundering and there are six money laundering cases presently before the Magistrate Court. While the number of convictions is low, the increase in the number of money laundering matters presently being dealt with is an improvement.

2.1.2 Recommendations and Comment

88. While the legal framework generally complies with the FATF requirements, deficiencies exist. Consequently the following is recommended.

- The authorities should consider pursuing ML as a stand-alone offence.
- Schedules I to III of DAPCA should be amended to include all narcotic drugs and psychotropic substances listed in Tables I and II of the Vienna Convention.
- The authorities should extend the range of predicate offences for ML to include all the FATF designated categories of offences i.e. trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy and the terrorist financing offence of providing or receiving money or other property in support of terrorist acts..
- The authorities should consider consolidating the three pieces of legislation governing money laundering. Having the MLPA, POCA 1992 and POCA 2003 in force with differing penalties for ML and definitions for certain key terms will give rise to confusion and has affected the ability of law enforcement and prosecutorial authorities to aggressively pursue ML offences.

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	**PC**	**The list of psychotropic substances in DAPCA is not in accordance with the list under the Vienna Convention** **The list of predicate offences for ML does not cover five (5) of the FATF's designated category of offences, particularly trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy or terrorist financing offence of providing or receiving money or other property in support of terrorist acts.**

		The low number of ML convictions suggests ineffective use of ML provisions given the wide range of measures available under the legislation.
R.2	**LC**	**The low number of money laundering convictions suggest ineffective use of ML provisions**

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

2.2.1 Description and Analysis

Special Recommendation II

Offence of terrorist financing

89. Grenada acceded to the UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) on 13th December, 2001. Terrorism is criminalized in the TA.

90. Section 8 of the TA creates offences for persons to receive, provide or invite another to provide money or other property intending that it be used or has reasonable cause to suspect that it may be used, in support of terrorist acts or for a proscribed organization.

91. Section 9 of the TA makes it an offence for a person to use money or other property for the purposes of terrorist acts. A person also commits an offence if he possesses money or other property intending that it should be used, or has reasonable cause to suspect that it be may used for the purposes of terrorist acts.

92. Additionally, pursuant to section 10 of the TA, a person commits an offence who enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorist acts or for a proscribed organization. No reference is made to the financing of an individual terrorist.

93. TA does not define "terrorism" but instead provides a definition for "terrorist act" as including the use of an action or threat of an action where the action involves the death of a person, serious violence against a person, serious damage to property, endangers a person's life, creates a serious risk to the health or safety of the public or a section of the public, or is designed to seriously interfere with or to seriously disrupt an electronic system.

94. The use or threat of action must be made for the purpose of advancing a political, religious or ideological cause and designed to influence a government or an international organization or to intimidate the public or a section of the public. This definition also comprises an act which constitutes an offence within the scope of and as defined in the following treaties:

- Convention for the Suppression of the Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970

- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973

- International convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of the Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988

  Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

95. The above list does not include all of the treaties required by Article 2 of the Terrorist Financing Convention. The missing treaties are as follows:

  - Convention on the Physical Protection of Nuclear Material adopted at Vienna on 3 March 1980

  - International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

96. For the purposes of the TA, "property" is defined as including property, wherever situated and whether real or personal, heritage, or moveable, and things in action and other intangible or incorporeal property.

97. However, a separate definition is given to "terrorist property" which means money or other property however acquired which is likely to be used for the purposes of committing terrorist acts (including any resources of a proscribed organization), proceeds of the commission of terrorist acts, and proceeds of acts carried out for the purposes of terrorist acts.

98. The TA also provides a definition of "cash" used for terrorist purposes which is subject to seizure and detention. Section 17(1) also refers to coins and notes in any currency, postal orders, travellers' cheques, bankers' drafts and such other kinds of monetary instrument as the AG may specify by order.

99. Terrorist financing offences under TA do not require the funds to be actually used to carry out terrorist acts or to be linked to a specific terrorist act as sections 8-10 only require that a person knows, intends or suspects that the money or other property is to be used for the purpose of terrorist acts, to be guilty of those offences.

Ancillary offences

100. Under sections 43 to 46 of the CC whoever attempts, instigates, commands, counsels, procures, solicits, or in any manner purposely, aids, facilitates, encourages, or promotes the commission of a crime is guilty of abetting that crime.

101. Section 48 makes it an offence if two or more persons agree to act together with a common purpose in committing or abetting a crime, whether with or without any previous concert or deliberation.

102. Whoever abets a crime shall be punishable on indictment or on summary conviction, according as he would be punishable for committing that crime. Therefore, for the purposes of Article 2(4) and (5) of the Terrorist Financing Convention, references to these provisions of the CC will apply.

Predicate offences for money laundering and jurisdiction

103. Section 3(5) of POCA outlines instances where an offence is deemed to be a predicate offence for the purposes of money laundering. It should be: (1) an indictable offence or offence triable both summarily or on indictment in Grenada from which a person has benefitted, other than a drug trafficking offence; (2) listed in Schedule 2 of POCA (schedule not *Gazetted*); or (3) any act or omission which, had it occurred in Grenada, would have constituted an offence in (1) or (2) above.

104. Section 15 of TA outlines the penalties for terrorist financing offences. The offences are: - the use and possession of money or other property for the purposes of terrorist acts (section 9); funding arrangements (section 10); facilitating the retention or control of terrorist property (section 11); and non-disclosure of suspicion of a person committing the above offences (section 12). They can be considered predicate offences for money laundering as they are subject to penalties on conviction by indictment (see sanctions to be imposed below).

105. However and most interestingly, the section 8 offence of providing or receiving money or other property in support of terrorist acts is not subject to any sanctions and therefore cannot be considered a predicate offence for money laundering.

106. Under section 35 of TA, the offences outlined in sections 9-12 apply to a person who commits them outside the jurisdiction and they would also apply if his action would have constituted the commission of those offences if they were done in Grenada. Most notably, reference to the section 8 offence of terrorist fund-raising is absent.

Liability of natural and legal persons and relevant sanctions

107. Whereas, the MLPA specifically states that the intent may be inferred from objective factual circumstances, there is no similar provision under the TA but it is also permitted in common law practice.

108. The TA imposes liability on both natural and legal persons committing offences under it. By virtue of section 3 of the Interpretation and General Provisions Act, Cap 153, "person"

includes any company or association or body of persons, corporate and unincorporate.

109. The imposition of criminal liability by or under the authority of any written law does not; in the absence of an express provision to the contrary operate as a bar to civil proceedings (section 55 of the Interpretation and General Provisions Act).

110. Under section 15 of TA, persons committing offences under sections 9-12 can be tried either on indictment or summarily. On conviction, offenders are liable as follows:

a) on indictment, to imprisonment for a term not exceeding twenty years, to an unlimited fine or both; or
b) on summary conviction, to imprisonment for a term not exceeding five years, to a fine not exceeding $500,000 or both.

111. These penalties, in the view of the assessors are dissuasive. However, the terrorist financing offence of fund-raising is excluded and not subject to any sanctions whatsoever.

Statistics

112. There has yet to be any report received by the FIU on matters regarding the financing of terrorism or statistics of any cases where persons have been investigated, prosecuted or convicted of terrorist financing.

2.2.2 Recommendations and Comments

113. The following is recommended;

- Schedule 2 of the TA should be amended to include the treaties on the Convention on the Physical Protection of Nuclear Material and the International Convention for the Suppression of Terrorist Bombing.

- The TA should be amended to include the terrorist financing offences of the provision/collection of funds for an individual terrorist.

- The TA should be amended to provide sanctions for the terrorist financing offence of providing or receiving money or other property in support of terrorist acts.

- The TA should be amended to provide for the terrorist financing offence of fund-raising to apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is or the terrorist act occurred/or will occur.

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**NC**	**Criminalisation of terrorist financing does not include all offences in the Annex to the Terrorist Financing Convention.**

		The terrorist financing offences do not cover the provision/collection of funds for an individual terrorist. **The terrorist financing offence of fund-raising is not subject to any sanctions and therefore is not a predicate offence for money laundering.** **The terrorist financing offence of fund-raising does not apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is or the terrorist act occurred/will occur.** **Effectiveness of terrorist financing regime is difficult to assess in light of the absence of investigations, prosecutions and convictions for FT**

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

2.3.1 Description and Analysis

Recommendation 3

Confiscation of proceeds of crime

114. The legislative provisions preventing persons from benefitting from the proceeds of crime are embedded in several pieces of legislation namely: DAPCA, POCA 1992 and 2003, MLPA and the TA. Each will be dealt with separately below:

DAPCA

115. Section 47(1) of DAPCA authorises court-ordered forfeiture orders against defendants for either proceeds obtained as the result or product of an offence or anything which the prosecution proves beyond reasonable doubt to have been acquired through, or as a result of the proceeds of an offence under the Act. Pursuant to section 47(5), even if defendants appeal against such orders, the articles so forfeited shall remain subject to the orders until the appeals are determined.

POCA 1992

116. POCA 1992 provides in section 10(1) for the DPP to apply to the Court for a forfeiture order against property in respect of the conviction of a person for a scheduled offence. If the court is satisfied that the property is tainted, the court may direct that it be forfeited to the Crown. In considering whether property is tainted property the court would consider whether that property was used in, or in connection with the commission of the offence or whether that property was derived, obtained or realised as a result of the commission of a scheduled offence.

117. The DPP could also obtain confiscation orders following the conviction of a person of a scheduled offence under section 18(1) of POCA 1992. If the court is satisfied that the person has

benefited from that offence, it shall order him to pay to the Crown an amount equal to the value of his benefits from the offence or a lesser amount the court certifies to be the amount that might be realised at the time the order is made.

118. The scheduled offences relate to possession of controlled drugs for the purpose of supply, trafficking in controlled drugs and assisting another to retain the benefit of drug trafficking criminalised by the DAPCA under sections 6, 18 and 19, respectively and associated money laundering offences. The offence of possession of property derived from unlawful activity is also criminalised pursuant to section 62 of POCA 1992.

POCA 2003

119. POCA 2003 states in section 9 that on the application of the DPP or if the High Court considers it appropriate, a confiscation order may be obtained against a defendant when he is about to be sentenced for one or more drug trafficking offences. The court will consider whether he has benefitted from the offence as a result of receiving any payment or other reward in connection with drug trafficking carried on by him or another person.

120. Confiscation orders under section 10 of POCA 2003 would apply in instances where the defendant has benefitted from a relevant offence for which he is to be sentenced. Section 10(3) provides, for the purposes of the Act, for the court to take into consideration, among other factors, the fact that the defendant derived a pecuniary advantage as a result of or in connection with the commission of the offence.

Confiscation of instrumentalities

121. Pursuant to section 22(1) of MLPA, following the conviction of a person of the offence of money laundering, the court can make a forfeiture or confiscation order against any property derived from, or instrumentalities connected with, or related to, the offence. "Instrumentality" is defined in section 2 of the MLPA as meaning a thing that is used in or intended for use in any manner in the commission of the offence of money laundering.

122. By virtue of section 16(1) of TA, a court may make a forfeiture order when a person is convicted of the offences of (a) using money or other property for the purposes of terrorist acts; (b) entering into arrangements to provide money or other property for the purposes of terrorist acts; and (c) entering into an arrangement which facilitates the retention or control of terrorist property (sections 9 to 11 of TA, respectively).

Property subject to confiscation

123. Grenadian law allows for property derived directly or indirectly from proceeds of crime to be confiscated and this applies equally to property held or owned by a third party. Section 5 of POCA 1992 permits the DPP to apply to the court, in respect of a convicted person, for a forfeiture order against property that is tainted property in respect of a scheduled offence and a confiscation order against the person in respect of benefits derived by the person from the commission of such scheduled offence. "Benefits" is defined in section 4(1) as including any property, services or advantage, whether direct or indirect.

124. Pursuant to section 6(1), where the DPP applies for a forfeiture order against property in respect of a person's conviction of a scheduled offence under POCA 1992, he must give no less than 14 days notice to the person and to any other person who the DPP has reason to believe may

have interest in the property. Even before the court makes a final determination of the application for forfeiture or confiscation, the DPP may apply under section 7 (1) to amend that application to include any other property or benefit upon satisfying himself that the property or benefit was not reasonably capable of identification when the original application was entered; or new evidence only became available after the original application was made.

125. Furthermore, the DPP under section 31 of POCA may apply to the court for a restraining order against realizable property held by a person other that the defendant who has either been convicted of a scheduled offence or charged with a scheduled offence. In making such an order, section 32(1)(e) requires that the court must be satisfied, among other things that there are reasonable grounds for believing that a forfeiture order or a confiscation order is likely to be made under the Act in respect of the property.

126. Section 47(3) of DAPCA permits the court, following a conviction of a drug trafficking offence, to make a forfeiture order against any person appearing to have an interest in or right over money or other property even if he is not convicted of such an offence. Before such an order is made, the person has the opportunity to show cause why the order should not be made.

Provisional measures to freeze property subject to confiscation

127. Measures to provisionally seize property can be exercised under the MLPA. When a person is charged or is about to be charged with the offence of money laundering, section 21(1) authorizes the DPP to apply to the High Court Judge for a restraining order to freeze property in the possession or under control of that person which is alleged or suspected, on reasonable grounds, to be the proceeds of crime, regardless of where that property is located. Upon being satisfied that property exists in respect of which an order may be made, he may under section 21(3) make an order '*prohibiting any person from disposing of, or otherwise dealing with any interest in, that property specified in the order otherwise than in such manner as may be specified in such order'.* The Judge may also order that the property be vested in the control or management of another person and consequently, that any person having possession of the property to give possession of said property to the person appointed by the Judge.

128. Section 47(4) of DAPCA also authorizes the court to make an interim detention order seizing and detaining articles used in connection with the commission of a drug trafficking or money laundering offence, if it is satisfied that failure to make such an order might result in the disappearance of the articles or in justice being obstructed.

129. While in the course of an investigation of an offence under POCA 1992, if police officers come across tainted property and reasonably believe that it is necessary to seize that property in order to prevent its concealment, loss or destruction or its use in committing, continuing or repeating an offence, section 28 authorises them to seize that property.

130. Under section 31 of POCA 1992, where a defendant has been convicted of a scheduled offence, or has been charged with a scheduled offence, the DPP may apply to the High Court for a retraining order against any realisable property held by any person other than the defendant.

131. Section 28 of POCA 2003 also authorises the court, upon application by the DPP, to make a restraint order prohibiting any person from dealing with any realizable property. "Realizable property" is defined in section 4(1) as any property held by the defendant and any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by

the Act. Section 28(8) also provides that where the court has made a restraint order, a police officer may seize any realizable property for the purpose of preventing its removal from Grenada.

132. Additionally, under section 29 of POCA 2003, the court may make a charging order on any interest in realizable property for securing the payment to the Crown –

> *'(a) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order; and*
>
> *(b) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged.'*

133. Interest in realizable property may be in the form of land in Grenada, certain types of securities (such as the stock of any company incorporated in Grenada), motor vehicles, vessels and aircrafts.

134. Restraining and freezing orders obtained under section 31 of POCA 1992, section 28 POCA 2003 and section 21 MLPA may be made *ex parte* to a judge in chambers.

Powers to identify property

135. Law enforcement agencies namely, the Police, FIU and Customs officers are given wide ranging powers of investigation under the MLPA, DAPCA, FIUA, POCA 1992 and POCA 2003.

MLPA

136. Part III of the MLPA contains provisions for Magistrates to grant warrants to police officers (above the rank of Sergeant) in order to search premises for the purposes of an investigation into an offence of money laundering. Police officers may then search any premises, vehicles, vessel or aircraft and equipment including computers, cash or securities or record voucher documents which may relate to an offence under the Act.

137. A police officer is also given special powers in cases where he has entered premises and come across any material, which is likely to be of substantial value, whether by itself or together with other material, to seize and detain such materials. If an application for a warrant is refused by the Magistrate, the police officer may apply to the Judge in Chambers for such a warrant. Section 25 expressly states that subject to the Constitution, secrecy or other restrictions upon the disclosure of information imposed by any law or otherwise are overridden therefore, law enforcement agencies, through the courts, can compel the disclosure of information regardless of any such restrictions.

DAPCA

138. Part VII of DAPCA outlines the authority under which police officers can search and obtain evidence, including the power to seize and detain anything which appears to be an article liable to seizure. Section 35 provides for such articles to include any controlled drug in respect of which an offence is being or has been committed; any money or thing liable to forfeiture under the Act or anything which is or contains evidence of an offence under the Act or a corresponding law. Section 36 authorises a member of the Police Force to arrest without a warrant a person who

has committed, or whom he, with reasonable cause suspects to have committed, an offence under the Act.

FIUA

139. Section 5 of the FIUA stipulates that police officers who are seconded to the FIU shall retain their powers of arrest, search and seizure under the Police Act and customs officers shall retain their powers of arrest, search and seizure under the Customs Act. To assist the other law enforcement agencies in money laundering investigations, the law provides for the FIU to require the production of any information that it considers necessary to fulfill its functions. Any person failing or refusing to provide such information commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both (s.6).

POCA 1992

140. Police officers are also empowered under section 42 of POCA 1992 to identify, locate or quantify any property if they have reasonable grounds to believe that they were derived as benefit from an offence committed by a convicted person. Additionally, under section 48, *ex parte* monitoring orders can be made by a Judge directing a financial institution to give information to a police officer.

POCA 2003

141. Similarly, under POCA 2003, a police officer can apply to the High Court for a production order in relation to particular material or material of a particular description, for the purpose of an investigation into drug trafficking, a relevant offence, whether any person has benefitted from criminal conduct, or the whereabouts of any proceeds of criminal conduct. Under section 37, a person who fails to comply with a production order commits an offence and is liable on summary conviction to imprisonment for two years or a fine of one hundred thousand, or both. Section 39 allows for search warrants to be obtained from a Magistrate in pursuance of a police officer's investigation into the offences referred to in section 37 above. Monitoring orders can be applied for *ex parte* in the High Court under section 41 compelling a financial institution to give a police officer information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

Protection of third party rights

142. Bona fide third parties are guaranteed protection of their rights by law. POCA 1992, by virtue of section 13 provides that where an application is made for a forfeiture order against property, a person claiming an interest in the property may apply to the Court before such order is made for an order that he was not involved in the commission of the offence and that he acquired the interest in the property for sufficient consideration and that he did not know or had any way of knowing that at the time of acquisition, the property was tainted property.

143. Section 34 of POCA 1992 allows the Court, before making a restraining order, to hear any person, who in the opinion of the Court, appears to have an interest in the property, unless the Court is of the opinion that the giving of such notice prior to the order being made may result in the disappearance, dissipation or reduction in the value of the property.

144. Section 21(5) of MLPA provides that notice of a restraining order made under the Act should be given to persons affected by the order who can then apply for a variation of the order.

145. Equally under section 16 of POCA 2003, a person who asserts an interest in realizable property may apply to the court, before the confiscation order is made, for an order declaring the nature, extent and value of his interest.

146. Section 29(4) of POCA 2003 states that charging orders may be made on property held by a person to whom the defendant has directly or indirectly made a gift caught under the Act. A gift is caught under the Act if it was made by the defendant at any time since the beginning of six years ending when proceedings were commenced for the drug trafficking offence against him or when an application for a restraint or charging order was made.

147. The Grenadian authorities contend that under POCA 2003 one can draw the inference that if someone got into an arrangement with another knowing or reasonably suspecting the property to be proceeds or involved in criminal conduct then action can be taken. One may get a restraint or charging order under sections 27 and 28 of POCA 2003 of realisable property which also includes a gift.

Additional Elements

148. Section 18(1) (b) of the TA provides for police officers to seize and detain any cash if they have reasonable grounds for suspecting that it forms the whole or part of the resources of a proscribed organisation. The laws of Grenada do not provide for civil forfeiture. Offenders are required to prove the lawful origin of their property pursuant to section 13 of the POCA 2003.

Statistics

Additional Elements

149. As at the date of the mutual evaluation three persons were convicted of money laundering and property confiscated in each case as follow;

a. EC$6,145.00
b. US$16,060 and EC$86.34
c. EC$61,000

The FIU maintains statistics on the number of cases and amounts of property frozen, seized and confiscated relating to the underlying predicate offences. There is presently EC$94,823 frozen at a financial institution. The underlying predicate offences are possession of a controlled drug and trafficking in a controlled drug. The number of cases and the amounts of property forfeited suggest ineffective implementation of the forfeiture and freezing regime.

2.3.2 Recommendations and Comments

150. The following is recommended;

- Given the high rate of drug-related offences occurring in Grenada, authorities should place greater emphasis on the automatic confiscation mechanism following conviction available to the DPP in accordance with POCA 1992 and 2003

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**LC**	**Ineffective implementation of the forfeiture and freezing regime.**

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

2.4.1 Description and Analysis

Special Recommendation III

Freezing of terrorist –related assets

151. The laws of Grenada do not allow for the freezing of 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).

152. Similarly, there is no provision for the freezing of terrorist funds or other assets of person designated in the context of S/RES/1373(2001).

Giving effect to freezing mechanisms of other jurisdictions

153. Grenada can give effect to the actions initiated under the freezing mechanisms of other jurisdictions in certain cases. Section 30 of the TA provides for restraint orders to be issued against a person where proceedings have been instituted in another jurisdiction for an offence under the TA. The restraint order prohibits a person who is given notice of it, subject to any conditions and exceptions specified in the order, from dealing with property but only in respect of which a forfeiture order has been or could be made in those proceedings. An application may be made *ex parte* to a judge in chambers. A police officer has the power to seize any property subject to a restraint order for the purpose of preventing it from being removed from the jurisdiction.

154. Section 39 of TA provides for international co-operation where information coming to the attention of a police officer, customs officer, immigration officer, the FIU or regulator concerning any provision of the Act to be exchanged to assist another country for the purposes of investigations in terrorist activities and financing. Such assistance will be permissible whether or not there is a mutual legal assistance treaty or other formal arrangement for exchange of information between Grenada and the other country.

Funds subject to freezing actions

155. As outlined in Section 2.2 of this report, the TA provides for definitions of "property", "terrorist property" and "cash". Pursuant to section 18, a police officer, customs officer or

immigration officer may seize and detain any cash if he has reasonable grounds for suspecting that:

a) it is intended to be used for the purposes of terrorist acts,
b) it forms the whole or part of the resources of a proscribed organisation, or
c) it is terrorist property.

156. The above applies to cash which is being imported into or exported from Grenada or being brought to any place in Grenada for the purpose of being exported from the jurisdiction. Subsection (4) however, only authorises the detention for a period of 48 hours. This period may be extended by order of the Magistrate for a further three months provided that there are reasonable grounds to suspect that the continued detention is justified pending completion of an investigation or determination whether to institute criminal proceedings.

Guidance to financial institutions

157. The Grenadian authorities stated that a procedure for circulating the list of the names of terrorists designated by the UN Security Council has been established.

158. The United States Embassy informs the Ministry of Foreign Affairs on a quarterly basis, through letters, of the approved additions to the UN Security Council 1267 Sanctions Committee, which covers individuals and entities associated with Al-Qaida, Osama bin Laden and/or the Taliban or any other specially designated global terrorists. This list is then sent to the FIU for circulation to financial institutions. The most recent letter was received on 15th August, 2008.

159. The FIU circulates the list to financial institutions requesting their assistance to determine whether the names or entities have account(s) held under their control. The authorities also admitted that the Taliban has not yet been included as a proscribed organisation under the TA.

160. Of note, is the fact that there are no express provisions in the FIUA conferring any authority to the FIU to circulate these names. Additionally, upon examination, a number of financial institutions stated that they were unsure of their obligations following the receipt of these circulars. Others stated that they would respond to the FIU confirming that there are no accounts in the names of the designated organisations and individuals. This situation would suggest the need for the authorities to issue clear guidance to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists.

De-listing of designated names

161. By virtue of section 3 of the TA, the AG has the exclusive authority to remove an organisation from the Schedule of proscribed organisations upon an application made by the organisation itself or any person affected by such proscription. If an application is refused by the AG, the affected party may appeal before the High Court. There has never been cause to remove any organisation from the Schedule. There is no specific provision which mandates the AG to ensure that the procedures for de-listing are publicly known. However, generally when laws are amended, including Schedules, the legislation is published in the *Gazette*.

Freezing, Seizing and Confiscation of terrorist related funds

162. The criteria in Recommendation 3 would apply in relation to the seizing and confiscation of terrorist-related funds or other assets. As mentioned earlier, by virtue of section 16(1) of TA, a court may make a forfeiture order when a person is convicted of the offences of (a) using money or other property for the purposes of terrorist acts; (b) entering into arrangements to provide money or other property for the purposes of terrorist acts; and entering into an arrangement which facilitates the retention or control of terrorist property (sections 9 to 11 of TA, respectively).

163. Furthermore, if a person is convicted of an offence under section 12 (not disclosing to the FIU, the belief or suspicion that another person has committed an offence under sections 9 to 12), not only can the court order the forfeiture of money or other property he had in his possession or control at the time of the offence, but also money or property he intended to use or had reasonable cause to suspect might be used or was likely to be used for the purposes of terrorist acts.

164. It should be noted that the TA does not provide for the confiscation of property used in connection with the commission of the terrorist financing offence of fund-raising under section 8 of TA.

165. Where proceedings are commenced in relation to any offence under TA, the DPP may apply under section 30, to the High Court for a restraining order against a person from dealing with property in respect of which a forfeiture order has been or could be made. A reference to dealing with property includes a reference to removing the property from the jurisdiction. Such application could also be made before a Judge in chambers without notice.

166. Pursuant to section 30 (4) of the TA an application for a restraint order against property liable to forfeiture may also be made before a Judge in chambers without notice.

167. Law enforcement agencies in particular, the Police and FIU have adequate powers of investigation under the FIUA (Part IV) as well as the general provisions under the Police Act.

Protection of bona fide third parties

168. In respect of restraint orders generally, section 30 (6)(b) of the TA provides for the High Court to consider applications by affected persons to have them varied or discharged. There are no explicit provisions under the TA authorising access to funds or other assets that were frozen via restraint orders, necessary for basic expenses and the payment of certain types of fees in accordance with S/RES/1452(2002).

169. Bona fide third parties also have protection under section 31(8) of the TA. They have an opportunity to be heard by the Court with regard to their ownership in or interest in the property subject of forfeiture following a defendant's conviction for the offence of weapons training. Pursuant to section 21(3) a magistrate may not grant an order forfeiting cash being detained unless a person who is not a party to the proceedings and who claims to be the owner of or otherwise has an interest in any of the detained cash is given an opportunity to be heard.

170. Forfeited cash is required to be paid to the Confiscated Assets Fund established under section 57 of POCA 2003. The law states that payments for the purposes of paying compensation or costs awarded under POCA can be made from this fund. It does not provide a mechanism

where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.

Monitoring of TA

171. The authorities informed the examiners that the Police are responsible for ensuring compliance with TA. However, sections 12-14 of the TA confer on the FIU powers to monitor and receive information disclosed by a person who believes or suspects that another person has committed an offence under sections 9-12. There is an indirect obligation to comply since an offence is committed if a person fails to disclose to the FIU his belief or suspicion. The penalty for non-disclosure is imprisonment for a term not exceeding 10 years, or a fine, or both, following conviction on indictment. If a person is convicted summarily, he will be liable to imprisonment for a term not exceeding five years or a fine not exceeding the statutory maximum, or to both. No statistics were given in relation to criminal sanctions imposed on persons who have breached the non-disclosure provisions. Furthermore, there are no civil or administrative sanctions that apply when these provisions are breached. Therefore, it is difficult to assess whether this mechanism of ensuring compliance is in fact effective.

Additional Elements

172. Not all measures set out in the Best Practices Paper for SR.III have been implemented. Among those that have, the High Court has an inherent jurisdiction to freeze funds upon application by a competent authority and the TA allows for competent authorities to share information for the purposes of an investigation into terrorist activity and financing with foreign counterparts.

Statistics

173. There are no reports or investigations relating to terrorist financing.

2.4.2 Recommendations and Comments

174. The following is recommended;

- The TA should be amended to allow for the freezing of terrorist funds or other assets of persons designated by the United Nations Al-Quaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999).

- The TA should be amended to provide for the freezing of terrorist funds or other assets of person designated in the context of S/RES/1373(2001).

- The Taliban should be added as a proscribed organisation under the TA.

- The authorities should issue clear guidance to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists.

- The TA should contain procedures for the de-listing of names of proscribed organisations and terrorists listed in the Schedule to the TA.

- The TA should be amended to provide for the authorising of access to funds or other assets that were frozen via restraint orders, necessary for basic expenses and the payment of certain types of fees in accordance with S/RES/1452(2002).

- The TA should be amended to provide for the confiscation of property used in connection with the commission of the terrorist financing offence of fund-raising under section 8 of TA.

- The TA should be amended to provide a mechanism where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**NC**	**No provision in TA for the freezing of property other than restraint orders** **No provision for freezing of terrorist funds or other assets of designated persons in accordance with S/RES/1267(1999) and S/RES/1373(2001).** **No provision in TA to provide for the confiscation of property used in connection with the commission of the terrorist financing offence of fund-raising under section 8 of TA.** **No mechanism available where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.** **No clear guidance issued to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists and/or terrorist organisations.** **No publicly-known procedure for the de-listing of names of proscribed organisations and terrorists listed in the Schedule to the TA** **No procedures for authorising access to funds or other assets that were frozen via restraint orders, necessary for basic expenses and the payment of certain types of fees in accordance with S/RES/1452(2002).** **Difficult to assess effectiveness of mechanism for ensuring compliance with TA due to lack of statistics**

Authorities

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

2.5.1 Description and Analysis

175. The FIUA provides for the establishment of a FIU to be the national centralised unit in Grenada for the collection, analysis and dissemination of suspicious transaction information to competent authorities. In 2003 the FIU was established with a complement of 5 persons inducted from the RGPF which included a Director.

Recommendation 26

Functions and responsibilities of the FIU

176. The FIU, Grenada was established as a statutory body pursuant to the FIUA. Under section 6 (1) of the FIUA, the FIU is responsible for receiving, analysing, obtaining and disseminating information which relates to or may relate to the proceeds of the offences created by the POCA.

177. Under Section 12 of the MLPA, the Supervisory Authority has similar powers but in practice the FIU is the designated authority. Section 12 of the TA also imposes a duty on persons to disclose information as it relates to ML and FT to the FIU.

178. Financial institutions and persons engaged in relevant business activities have prescribed forms, which are used to transmit SARs to the FIU by hand delivered mail. SARs are recorded in electronic and hard copy and acknowledgment of receipt is sent to the reporting party. Analysis is carried out and information is updated on its progress. Further information is sought from financial institutions where necessary. The FIU issues a final document to the financial institution as a form of feedback. An initial analysis of a SAR takes approximately two weeks. If there is a foreign dimension, analysis takes longer. SAR files with outstanding enquiries are kept open.

179. The FIU has good relationship with all government agencies. There exists a task force comprising FIU, Customs, Police, Inland Revenue, Drug Unit, Special Branch and other agencies where discussions are held on financial crimes etc. Information sharing also takes place at those meetings. The task force meets once a month. Information shared between domestic agencies is primarily for intelligence purposes.

Guidance and procedures for SAR reporting

180. The Supervisory Authority was established under section 11 of the MLPA and section 50 of the POCA to supervise financial institutions in accordance with the provisions of MLPA and POCA. The responsibilities of the Supervisory Authority include advising the Minister of Finance as to the participation of Grenada in the international effort against money laundering and providing financial institutions and other reporting parties with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting.

181. Financial institutions in general have been issued with guidelines including updates. Banks and credit unions are aware of their requirements to file SARs with the FIU. During the onsite visit many of the non-bank financial institutions seemed unaware of their obligations to file SARs even though they attended one of two workshops in September and October 2008 to sensitise them on their requirements.

Access to information from reporting parties and other sources

182. The FIU has the authority to request information from any source to fulfil its functions under section 6(2) of the FIUA. Any person failing or refusing to provide such information as is required as per the provisions of the FIUA is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

183. The FIU has access to all Government data bases including the following - Criminal Conviction Registry, Police Databases, Land Registry, Corporate Registry, Motor Vehicle Registry, Tax Filings Registry, and the Social Security Registry. The FIU can request information, either verbally or in writing, from the various domestic agencies. Financial institutions indicated that they comply with FIU information requests immediately. The FIU advised that they receive financial, administrative, and law enforcement information in a timely manner.

184. Under section 6(d) of the FIUA, the FIU may enter into any agreement or arrangement, in writing, with a foreign FIU which the director considers necessary for the discharge of the functions of the FIU. However, no such agreements exist.

185. Under section 6(2) (b) of the FIUA which empowers members of the FIU to request information that it considers necessary to fulfil its functions, the FIU has been able to obtain additional information from financial institutions. This was confirmed from interviews with the financial institutions.

186. Under section 12 (c) of the MLPA the Supervisory Authority has the power to enter into premises of any financial institution during normal working hours to inspect any business transaction record kept and ask questions relevant to such record, and make any notes or take copies of the whole or any part of any such record. While this provision enables the Supervisory Authority to access information from reporting institutions, in practice, the FIU is the agency that requests and obtains additional information from reporting parties. Prior to the establishment of the FIU, the Supervisory Authority was solely responsible for carrying out this function.

187. Section 6 (1) of the FIUA empowers the FIU to disseminate information which relates to or may relate to the proceeds of the offences created by the POCA. Additionally, section 6 (2)(d) of the FIUA authorises the FIU to provide information, subject to such conditions as may be determined by the Director, to the Commissioner of Police (COP) and to the DPP where the information may relate to the commission of an offence.

Operational independence and autonomy

188. The Office of Director of the FIU is established under section 4(2) (a) of the FIUA. The Director is the chief executive officer of the FIU and determines the operational activities of the FIU. The FIU is not a revenue-generating body and as such relies on government to provide funding for its operations. The FIU has no direct control over its budget allocations beyond initial submissions for funds to Parliament through the Supervisory Authority and the Ministry of Finance. Financial

allocations are to be paid out partly from the general budget of the Grenada Police Force, which is used for the payment of FIU staff salaries. The balance comes from other Government funds.

189. These allocations do not take into account the need for the current and future needs and workload. The budget is not sustainable as the FIU cannot take on projects, which were not allocated for in the estimates of government expenditure for the financial year. The FIU budget is generally left for the Director to administer but is subject to release by the Treasury Department. There is nothing to suggest that the budget could be withheld on grounds of misuse of public funds, inefficiency or as a tool to affect or interfere or influence the day to day functioning of the unit. The FIU gets assistance from donor agencies but there are conditions attached. If donors withdraw assistance then the FIU has to depend on their already insufficient estimates, which is likely to adversely affect current or future operation of the FIU.

190. There exists a Confiscated Asset Fund from which funds are used for education and training with respect to AML and CFT but disbursements is subject to approval of the Supervisory Authority and the Minister of Finance. Seizure of assets is being undertaken by the FIU along with the DPP.

191. The FIU is mandated under section 11 of the FIU Act to advise the Supervisory Authority of the work of the FIU, prepare and submit to them annual reports as well as interim reports of the work of the FIU. Nothing in these activities suggests that the Supervisory Authority has any undue influence or interference on the day to day functioning of the FIU.

192. Officers of the FIU are seconded from the Customs Department and the Police Force. They are dedicated to the FIU function, although two officers from the Customs Department left the FIU and were diverted to other functions within their parent organisation. Their new roles were not part of the FIU function. Examiners were informed during the onsite that these two customs officers were working along with the FIU but were not on secondment.

Protection of information

193. The FIU office is located on the second floor of a building which houses other government offices. Access to the office is restricted by an electronically locked door with a keypad. Members of staff enter a PIN into the electronic keypad to gain entry, and an intercom and monitor system allows for the identification of other persons before entry. The secretary has an electronic switch controlling the entrance into the general office and views persons through a monitor attached to a camera. The premises have motion detectors and an alarm system.

194. SARs are filed at the FIU in an electronic form and in hard copy. Records are kept in locked fireproof cabinets with access restricted to a limited number of key holders. Every office is secured with keypads so that electronic PIN access is maintained. Information on the database is secured by passwords. Only two officers have access. The database is in a locked room and is standalone. A back up is located onsite and a secondary backup is maintained at another secure location.

195. The computers are only accessible to FIU staff. Password and other security measures are installed on these computers as safeguards against unauthorised usage. Section 9(1) of the FIUA imposes a confidentiality obligation on any person who obtains information in any form as a result of his connection with the FIU except when disclosure is required or permitted under the FIUA or other written law. Additionally, section 9 (2) imposes a fine not exceeding $50,000 or

imprisonment for two years or both on anyone who wilfully discloses information in violation of the FIUA.

Periodic reports

196. Section 10 of the FIUA requires the FIU to provide periodic and annual reports to the Supervisory Authority which in turn submits them to the Minister of National Security. Annual reports are ultimately tabled by the Minister of National Security in the Houses of Parliament.

197. The FIU has released publicly annual reports which include statistics and trends as well as information on its activities. The 2004, 2005 and 2006 reports were tabled in Parliament. At the time of the mutual evaluation visit, the 2007 report was being printed for presentation to Parliament. The published reports do not include typologies used in TF and ML. No reason was offered to examiners for this omission.

198. The FIU became a member of the Egmont Group on the June 23, 2004. Being a senior member of the Egmont Group the FIU conforms to the principles of the Group. The Unit recently signed a commitment letter in adherence to the principles laid out in the Egmont Group Charter.

199. The FIU is aware of the Egmont Group Statement of Purpose and its Principles for Information Exchange and takes cognisance of them in its method of sharing information with foreign counterparts.

200. In 2003, Grenada passed the Exchange of Information Act (EIA), which strengthens the ability to share information. There are also a Mutual Legal Assistance in Criminal Matters Treaty (Government of Grenada and Government of the United States) Act, a Tax Information Exchange Agreement and an Extradition Treaty with the US.

201. There are no restrictions to sharing information with non-Egmont members. There is also no requirement to establish MOUs for information to be shared. Information sharing between FIUs is only for intelligence purposes. If information is required for judicial purposes, requests have to be made to the Central Authority via the MLAT.

Recommendation 30(FIU)

Structure, funding, staffing and other resources

202. Under the FIUA, the Minister for National Security is responsible for appointing the Director of the FIU, however the FIU reports to the Supervisory Authority which is accountable to the Minister of Finance. The Supervisory Authority is comprised of the Permanent Secretary in the Ministry of Finance, the DPP, The Permanent Secretary in the Ministry responsible for the Police, the COP, the Chairman of GARFIN, and other persons as the Minister of Finance may from time to time appoint. The board is comprised of six (6) persons drawn from the public sector.

203. The FIU has a total establishment of nine (9). This includes a Director, an officer in charge, five investigators, a secretary and an office attendant. The investigators are seconded from the Police and Customs Department. There are no customs officers at the FIU at present. All

investigators have been trained as financial investigators and are accredited as such by the Caribbean Anti-Money Laundering Programme (CALP).

204. At the time of the mutual evaluation visit, the post of the Director was vacant and the unit was being managed by the officer in charge. This has been the case since July 2008. The vacancy of this post in the structure of the FIU is critical because the Director has certain obligations to fulfil under the FIUA. It is the view of the examiners that the absence of the Director has the potential to create an adverse effect on the FIU's ability to function with efficacy.

205. The FIUA mandates that the appointments of the Director and consultants be made by the Minister of National Security. It is the view of the examiners that the appointment of the Director and any Consultants should be on the advice of the Public Service Commission. The present requirements of the law may be construed as an exertion of undue influence on the independence of the FIU.

206. The current structure of FIU needs to be reviewed. The absence of a Director may already be reducing the effectiveness of the FIU. Closely tied to this is that all operational staff have the designation of investigator. The functions to be effected by the FIU require that competent persons (analysts) verify information received by the FIU. Analysts add value to information received by uncovering leads and exposing unknown pieces of information. The absence of dedicated analysts means that investigators have to carry out both functions of analysis and investigation and run the risk of not fully exploring all avenues before passing on actionable intelligence. Therefore, the FIU should seek to increase its staff complement.

207. Staff at the FIU comprises senior police officers with experience in criminal investigations and extensive training in financial crime investigation. There is no requirement in the law as to specific qualifications. Examiners were advised that since FIU staffs are police officers they are subject to monitoring. There is no requirement for vetting and polygraph prior to selection for FIU. There is also no requirement for initial and periodic declaration of assets by staff. The team was unable to ascertain the basis for the removal of the Director from office.

208. The DEA has assisted in the investigation of certain matters and the US has provided material assistance on a few occasions. The FIU had a request for forensics with computers in one instance.

209. Payment of salaries for the FIU is made from allocations assigned to the Ministry of National Security, specifically to the Police Department by Parliament. Funds are also obtained from the Ministry of Finance via the same process. The Supervisory Authority also has access to the Consolidated Asset Fund where withdrawals can be made to assist the FIU with education and training. Examiners were advised that funding is also obtained from donor agencies. The budget once approved by Parliament becomes law in the form of an appropriations Act and cannot be withheld or withdrawn.

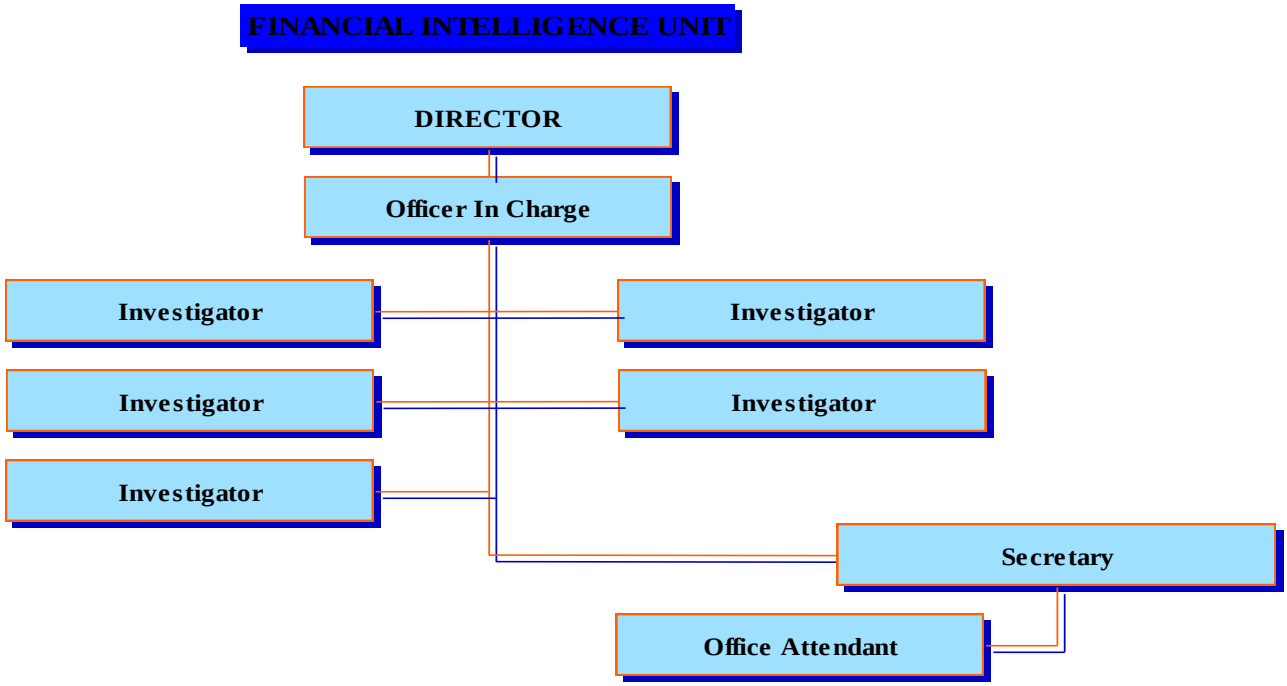
Table 4: FIU Budget

YEAR	BUDGETARY ALLOCATION
2007- 2008	EC $358,790
2006- 2007	EC $336,996
2005- 2006	EC $279,528

Source: FIU

The budgetary allocation for the FIU was not separately identified before 2006. The figures in the above table do not include salaries which as mentioned before are paid through the budgetary allocation of the Police Department.

Table 5: Organizational Chart of the FIU



210. At present the staff of the FIU comprises predominantly of officers seconded from the RGPF. Section 4(2) (b) of the FIUA provides for the appointment of police officers by the COP and customs officers by the Comptroller of Customs on the recommendation of the Director. There are presently no customs officers at the FIU. The assessment team was advised that entrance requirements involve selecting senior police officers generally from the CID who are experienced in financial crime investigation. There is no requirement for background checks, polygraphs and declaration of assets.

Integrity and confidentiality standards

211. Section 9(2) of the FIUA provides sanctioning for anyone who discloses information obtained in any form as a result of his connection with the FIU to any person except so far as it is required or permitted under the Act or other written law. Section 61(2) of the POCA provides specific sanctioning in relation to police officers. The MLPA also has sanctions for individuals who breach confidentiality in relation to a money laundering investigation. No one has been arrested, prosecuted or convicted in contravention of these laws. Part V of the Police Act CAP.244 provides for offences and discipline in relation to police officers.

212. The Personnel attached to the FIU are all financial investigators who are credited by CALP. Training has been regional and international and covered techniques necessary for the investigations of ML, TF and predicate offences. The training received includes financial crime investigation, cyber crime techniques, casino and money laundering, financing of terrorism and asset forfeiture/confiscation. Ongoing in house training is also conducted.

Statistics (FIU)

213. The FIU maintains statistics on SARs, which are included in their reports to the Supervisory Authority. These are published in the FIU's 2004, 2005 and 2006 Annual Reports.

Table 6: Breakdown of SARs received by FIU

Types of reporting entities	2004	2005	2006	2007
Banks	34	27	20	22
Credit unions	1			
Money remitters	18	12		1
Insurance companies	1		1	
Postal Corporation		3		
Customs		1		
Total	**54**	**43**	**21**	**23**

Source: FIU Annual Reports 2004, 2005, 2006 and information provided in MEQ.

214. The above table shows that the number of SARs declined by approximately half from 2006. Banks have been the significant source of SARs sent to the FIU during the period 2004 to 2007. Money remitters accounted for less than a third of SARs submitted for 2004 and 2005 combined. However, money remitters have only submitted one SAR since 2005. It is noted that no SARs have been submitted by DNFBPs.

Table 7: Breakdown of analysed SARs

Status of SARs	2004	2005	2006	2007
Number of SARs received	54	43	21	23
Number analysed	54	43	21	23
Number under investigation	42	21	16	19
Number closed	12	22	5	4

Source: FIU Annual Reports 2004, 2005, 2006 and information provided in MEQ.

215. The above table shows the number of closed investigations to have substantially declined by the end of the 2007. Additionally, there is no information as to the present situation regarding the ongoing investigations from former years. The above table suggests that as at the end of 2007 the FIU had a total of 98 investigations still open from the period 2004 to 2007. The decline in the number of closed investigations together with the total number of ongoing investigations suggests that the FIU is not effective in its function.

216. One SAR from the total submitted to the FIU resulted in a prosecution. The underlying predicate offence was fraud, the two suspects was convicted and sentenced to nine (9) months in prison and $61,470.00 EC was seized and forfeited.

2.5.2 Recommendations and Comments

217. The following is recommended;

- The authorities should act promptly in appointing a FIU Director. The absence of a director significantly hampers the functioning of the Unit.
- There should be specified grounds for the removal of the director.
- The annual report of the FIU should include an analysis of trends and AML/CFT typologies.
- The FIU along with the Supervisory Authority should consider undertaking an education drive in order to inform reporting parties and the general public on various typologies and trends and other matters related to AML/CFT.
- The FIU should consider reviewing its work processes so that there are unambiguous roles between analysts and investigators and in doing so consideration should be given to sourcing additional specialized training for financial intelligence analysts.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	**Annual reports do not include analysis of typologies and trends** **The increasing number of ongoing investigations suggests that the FIU is not performing effectively.**

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

219. The RGPF and the Office of the DPP are the law enforcement authorities (LEAs) responsible for the investigation of offences, seizure of evidence, and arrest of persons and prosecution of offenders relating to crime in Grenada. Grenada has an unofficial/informal group known as the 'Task Force' which meets monthly to co-ordinate efforts among the various LEAs.

These include the Criminal Investigation Department (CID), the Drug Unit, Special Branch, Customs Department, and other units.

220. Section 60 of the POCA 2003 empowers both police officers and officers of the Custom Department to arrest without warrant any person who is reasonably believed to have committed an offence under the Act. An officer of the Customs Department may, in any case relating to the commission of an offence under the POCA, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the CC.

221. Section 17 of the TA defines an "authorised officer" mentioned in sections 17 to 23, as a police officer, a customs officer or an immigration officer with powers to seize and detain cash, apply to a magistrates' court for an order to further detain cash seized and powers to deal with the cash in accordance with the Act.

222. By virtue of the above, officers of the Customs Department have a shared responsibility with the Police, FIU and the Office of the DDP for ensuring that ML and FT cases are properly investigated and prosecuted.

223. The Customs Department has worked together with the Police and FIU on cases where ML is suspected as well as on other investigations. Where cash is intercepted at the ports, the cases are referred to the Police and FIU for investigation.

224. There are no legislative measures to allow LEAs investigating ML cases to postpone or waive the arrest of suspected persons and/or seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. However, the assessors were advised that these techniques are used after consultation with the Office of the DPP for the purpose mentioned above. These measures are used in conjunction with international or regional LEAs where the goal is to establish the identities of additional members and obtain evidence in relation to investigations of major crime or criminal enterprise.

Additional elements

225. Grenada has no laws or regulations as it relates to matters of special investigative techniques, such as control delivery and undercover agents. Examiners were advised that law enforcement has an inherent power to employ these techniques.

226. The assessors were advised that the extent to which special investigative techniques are used is based on the degree it is needed and the magnitude of the investigation. Information as to the extent and the number of times such techniques were used was not available at the time of the onsite.

227. Section 4(2) of the FIUA law provides for the use of specialists which can be sourced locally or internationally. Such consultants with suitable qualifications and experience can be appointed by the Minister of National Security to the FIU when necessary. The DEA has

provided general assistance in crime investigations but no consultations have been hired for investigations of specific cases.

228. Some measure of co-operation exists with the use of special investigative techniques, however in most instances this is confined to the intelligence gathering process. LEAs co-operate in relation to intelligence sharing. Agencies co-operate through FIUs, INTERPOL and the Caribbean Customs Law Enforcement Council (CCLEC).

229. The FIU provides reports on its activities to the Supervisory Authority on a monthly basis. The Supervisory Authority reports the same to the Minister of Finance. These reports form part of an annual publication tabled in Parliament. The FIU informs the Police when new financial crime typologies are identified. This is done informally.

230. Trends do not form part of the reporting and discussions conducted by the two agencies. Information received during interviews with law enforcement authorities has indicated that money laundering and terrorist financing methods, techniques and trends are not reviewed on a regular basis by law enforcement agencies.

Recommendation 28

231. Under section 6 of the FIUA, the FIU may require the production of such information that it considers necessary to fulfil its function. Any person failing or refusing to provide such information as is required is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both.

Search Warrants

232. Powers of search and seizure of the police are outlined in the following provisions:

- Section 15 (1) (b) of the Criminal Procedure Code provides general powers to the police to search and seize evidence.
- Section 25 of The POCA 1992 makes provision for the police to apply for a warrant to search for tainted property suspected to be upon any land or in the premises within the next following 72 hours
- Section 47 of the POCA 1992 has similar powers to search in any premises, place or thing for any document relevant to identifying, locating or quantifying property where a person is convicted of a scheduled offence
- Under section 8 (1) of the MLPA, a police officer above the rank of Sergeant, for the purposes of an investigation into an offence of money laundering, under the Act, may apply to a magistrate for a warrant to search specified premises.

- Section 9 of the MLPA states that where an application for a warrant under section 8 is refused, a police officer referred to in section 8(1) may apply to a Judge in Chambers for such warrant.

- Under section 16 of the MLPA, the Supervisory Authority can apply to a Judge for a warrant to search where

  (a) a financial institution has failed to keep a business transaction record as required,
  (b) a financial institution has failed to report any business transaction as required,
  (c) an employee, director, manager, secretary or other officer of a financial institution has committed, is committing or is about to commit the offence of money laundering,

- Under Section 39 (1) of the POCA 2003, a police officer may apply to a magistrate for a warrant in relation to specified premises for the purposes of an investigation into,
  (a) drug trafficking,
  (b) a related offence
  (c) whether any person has benefitted from criminal conduct, or
  (d) the whereabouts of any proceeds of criminal conduct,

- Under section 28(1) of the TA, a magistrate may on the application of a police officer issue a warrant in relation to specified premises where a police officer reasonably suspects a terrorist is to be found.

- An authorised officer may seize and detain any cash to which section 18 of the TA applies if he has reasonable grounds for suspecting that
  (a) it is intended to be used for the purposes of terrorist acts,
  (b) it forms the whole or part of the resources of a proscribed organisation, or
  (c) it is terrorist property within the meaning given in section 7 of the Act.

  The section applies to cash which –
  (a) is being imported into or exported from the jurisdiction,
  (b)is being brought to any place in the jurisdiction for the purpose of being exported from the jurisdiction.

Production Orders

233. Under section 42 of the POCA 1992, where a person has been convicted of a scheduled offence, a police officer may apply to a Judge in Chambers for an order to compel production of:

(i) a document relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence,

(ii) a document relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,

234. Under section 37 (1) of the POCA 2003, a police officer may apply to the High Court for a production order in relation to particular material or material of a particular description for the purposes of an investigation into:

(a) drug trafficking,

(b) a related offence
(c) whether any person has benefitted from criminal conduct, or
(d) the whereabouts of any proceeds of criminal conduct,

Power to take witnesses' statements

235. During the onsite, police authorities advised examiners that they have the ability to take witness statements for use in any investigations and/or prosecutions related to any suspected criminal offence(s), as part of normal police powers. These powers are stipulated in the Police Regulations and the Evidence Act. The examiners were unable to verify the above mentioned since they were not provided with copies of the cited legislation.

Recommendation 30

Structure, funding, staffing and other resources

Law Enforcement

RGPF

236. The RGPF has an establishment of 994 police officers and strength of 975. According to police authorities, only 40% of the 975 are involved in actual policing. The structure is being examined to see whether it is appropriate. The Force is operating with the minimum standards and is working on improving internal co-operation. There is collaboration between entities including the Ministry of Finance, Customs, Fire, Coast Guard, Immigration, Special Services Unit and Port Security.

237. It is recognized that there is a need for more specialised training in financial investigation for the general body. The CID has primarily responsibility for the investigation of financial crime.

238. The Drug Unit is engaged in intelligence gathering and countering the illicit trade of drugs. They are hampered owing to the absence of qualified intelligence analysts within the Unit. Generally resource constraints pose challenges to the functioning of the RGPF. According to RGPF authorities resource constraints do not necessarily amount to shortages in the number of officers but extend to financial and technical expertise.

239. The Police Prosecution Unit investigates summary offences and work together with the office of the DPP in complex investigations and prosecutions. Examiners were informed that despite constraints, the Police Prosecution Unit has a phenomenal success rate. There are no lawyers within the unit but prosecutors take advantage of the Public Library to do research.

240. The Immigration Unit is an entity within the RGPF with the responsibility of policing the eight (8) ports of entry between Grenada, Petit Martinique and Cariacou. The unit has a staff compliment of forty-seven (47) officers stationed mainly at the airport. The Unit interacts with the Office of the DPP, the Office of the Attorney General, the Customs Department, the Department of Labour and the Drug Squad. They are a part of the Task Force, which meets monthly and discuss issues arising out of their daily operations. Immigration authorities informed examiners that there is a need for more staff in order to police the ports effectively. There have been no reported cases of human trafficking or smuggling.

241. According the police authorities, crime has been contracting for the past two years but there has been a spiral in violent crime (crime against persons). Upsurges in crime are seasonal

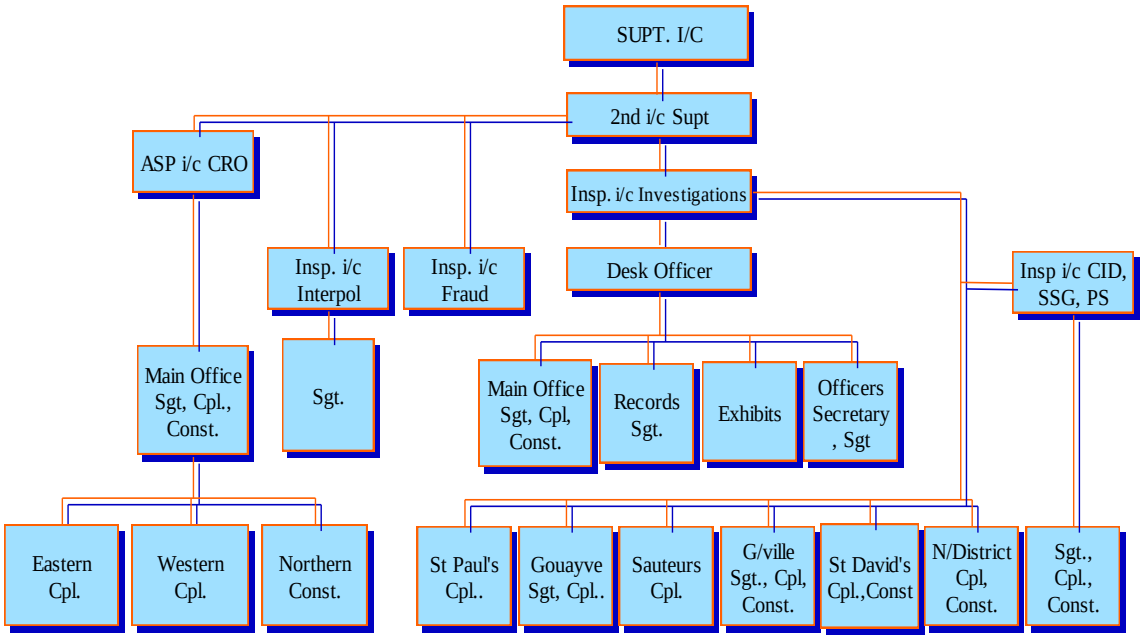
especially around the Carnival and Christmas season. It is generally attributable to social issues and general deterioration in moral values.

242. Police authorities believe that the current establishment is insufficient to deal with the crime situation. They have faith in the expressed commitment of the Government to improve the current situation. The police authority intimated that security planning should be considered an integral part of economic planning.

Table 8: Budget of RGPF

YEAR	BUDGETED AMOUNTS
2005	EC$33,510,573
2006	EC$34,906,828
2007	EC$38,477,424
2008	EC$43,845,408

Table 9: CID & Criminal Record Office Administrative Structure



Office of the Director of Public Prosecutions

243. The power of the DPP was originally vested under the 1967 Constitution of the Associated States. This power is reinforced under the 1974 Constitution. The DPP is appointed by the Governor General on the advice of the Judicial and Legal Services Commission of the

OECS. The Office of the DPP has four professional staff and two clerical. There is a vacancy for a Senior Crown Council.

244. It takes about fifteen (15) months from the time a case is lodged to its completion in the High Court. There is a backlog of cases and this is due to a spike in serious criminal offences within the last two years. At present there are two Judges who sit simultaneously in the two High Courts. Fridays are administrative days and this seriously reduces the timely completion of cases. There is a need for a third resident judge to deal with the backlog.

245. The majority (99.5%) of drug and money laundering offences are dealt with summarily. The Police Prosecution Unit deals with these cases. Money laundering cases generally stem from fraud and drug offences. There has been no successful case where a person has been convicted for money laundering. The Office of the DPP has a good relationship with the Police which seek advice from time to time during the investigation and the prosecution of cases. Examiners were informed that with the current workload the office is functioning quite satisfactorily. The Office of the DPP experiences high staff turn-over to private practice and the private sector. A contributing factor is comparatively low compensation packages. Three out of four officers have left in the past four years.

246. Entry requirements for legal officers as per the Constitution are five years of legal practice, experience, competence, high integrity and professionalism. Hiring of the officers is done by the Judicial and Legal Services Commission.

247. The Office of the Director Public Prosecutions has a separate budget in the annual estimates of expenditure. See table below.

Table 10: Budget of the Office of the DPP

YEAR	BUDGETED AMOUNTS
2005	EC$735,588
2006	EC$703,504
2007	EC$753,248
2008	EC$807,470

Integrity and standards

248. The Police Act governs the law enforcement agencies. The Public Service Regulations 1969 are designed to ensure that a high standard of integrity and confidentiality is maintained within the Public Service and accordingly the Prosecution Department.

249. Entry requirements for joining the RGPF are three (3) 'O' Levels passes or equivalent and the passing of an entrance and fitness exam. The trend is that most applicants have five (5) 'O' Levels. The Police Standing Orders and the Police Act provides for the organisation, administration, discipline, powers and duties of the RGPF. They are used in conjunction with the Public Service Regulations and apply to persons above the rank of Sergeant. The Police Force has a vetting procedure where officers in specialist units undergo drug testing and polygraphs. Lifestyle changes are observed and the Community Relations Branch and the Special Branch investigate when necessary.

250. Members of the Police Force have been disciplined, charged, suspended, terminated and prosecuted for breaches of discipline and the criminal law. The number of police officers disciplined rose from 25 in 2006 to 61 in 2007 and stood at 40 for 2008 at the time of the mutual evaluation visit. The numbers for police officers on suspension for criminal offences fluctuated from 13 in 2006 to none in 2007 to 15 in 2008 at the time of the assessors' visit. While these figures give cause for concern about the integrity of the RGPF, it should be noted that a large number of the disciplinary actions were minor in nature and reflect the RGPF's zero tolerance policy.

251. There has been no reason to discipline legal officers. Discipline is dealt with by the Judicial and Legal Services Commission. This allows for insulation from executive and political influence. Legal officers are appointed by the head of government on advice of the Judicial and Legal Services Commission.

Training

252. The RGPF conducts continuous training for staff in areas of financial crimes, cyber crimes, money laundering, asset freezing and mutual legal assistance. Training is sourced regionally and internationally. Recently training was carried out by the Commonwealth Secretariat in the area of financing of terrorism.

253. During the period 2006 to 2008 the staff of the Office of the DPP participated in regional and international conferences and workshops dealing in the techniques of enforcement, financial investigations and prosecutions and combating the financing of terrorism

254. The assessors were advised that training of judges and magistrate is conducted regionally. However, no information was presented about the type of training and the numbers of the judiciary that were trained.

2.6.2 Recommendations and Comments

255. The following is recommended;

- Competent authorities should consider developing a standard operating procedure, delineating the parameters within which they should operate when the decision is made to postpone or waive the arrest of suspected persons and/or the seizure of money or to use special investigative techniques.

- Grenadian authorities should consider providing additional financial and technical resources to law enforcement agencies.

- Authorities should consider reviewing the measures in place for ensuring that persons of high integrity and good moral character are recruited into the RGPF and that there is continuous monitoring of officers professionalism, integrity and lifestyle.

- Authorities should consider reviewing the training needs of the Office of the DPP as well as RGPF. The CID which is primarily responsible for investigating financial crime is inadequately trained in that area.

- Greater priority should be given to the investigation of ML / TF cases by the Police and the Office of the DPP.

- It is recommended that additional technical resources be dedicated to the compilation of statistical data to provide more comprehensive and timely presentation of statistics.

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**LC**	**The decision to postpone or waive the arrest of suspected persons and/or the seizure of money is taken on a case by case basis and is not laid down in any law or procedure**
R.28	**LC**	**Unable to assess whether the RGPF has specific legislative power to take witness statements.**

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

2.7.1 Description and Analysis

Special Recommendation IX

Disclosure system

256. Under section 20 of the MLPA 18 of 1999, a person who leaves Grenada with more than one hundred thousand dollars in cash or negotiable bearer instruments, in Eastern Caribbean currency or equivalent foreign currency, without first having declared same to the Supervisory Authority commits an offence and is liable on summary conviction thereof, to a fine of one hundred thousand dollars. According to Grenadian authorities, this provision was never implemented.

257. Even though the above does establish a framework for persons leaving Grenada to declare anything contained in his or her baggage, the threshold sum of EC$100,000 which is equivalent to US$37,000 is above the recommended EUR/USD15000.

258. At the time of the mutual evaluation visit, the Customs authorities advised that there was no declaration system but the inclusion of such a system in proposed legislation was being discussed.

259. In accordance with section 209 of the Customs Ordinance, 1960 the customs department has in place a disclosure system requiring persons making cross-border transportation of currency or bearer negotiable instruments to make a truthful disclosure upon request by a customs officer. The threshold of US$10,000 is applied in practice. Examiners were informed that questions are asked randomly or on the basis of suspicion or intelligence.

260. Examiners were informed that no statistics are maintained in respect of declarations made as a result of questions put to person travelling into and out of Grenada.

Powers of Police and Customs Department

261. In accordance with Section 3 of the Customs Ordinance the Customs Department has the authority to request further information from persons who are found to make false disclosures of currency.

262. Section 60 of the POCA 2003, states that a police officer includes any officer of the Customs Department and an officer of the customs department may, in any case relating to the commission of an offence under the Act, exercise all or any of the powers in relation to investigations into an offence which is arrestable without warrant conferred on a police officer by the Criminal Code.

263. Under section 51 of the POCA, 2003, "*a Police Officer may seize and detain any cash which is being imported into or exported from Grenada if the officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct. Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its continued detention is authorized by an order made by a Magistrate*". Cash is defined to include coins and bank-notes in any currency and negotiable instruments. Section 60 makes section 51 applicable to an officer of the customs department.

264. Where the suspicion is relative to TF, section 17 of the TA interprets 'authorised officers' as officers of the Customs Department, police officers and immigration officers for the purposes of acting under section 17 to 23 of the Act. Section 18 allows for the seizure and detention of any cash to which the section applies if the authorised officer has reasonable grounds.

265. Information on the amount of currency or bearer negotiable instruments disclosed or otherwise detected, and the identification data of the traveller are retained for use by the appropriate authorities.

266. In situations of false declarations where there is suspicion of money laundering or other criminal offence, the Police or FIU are called immediately. Where Customs decide to proceed administratively, the information is disseminated to the FIU subsequently

Coordination and cooperation

267. Regular meetings are held between Customs and Immigration officials who have traditionally worked together on related matters. No specific information was given regarding these meetings between Immigration and Customs. A joint action task force on money laundering and financing of terrorism was established including the Customs Department, Police, Drug Squad, Special Branch, Inland Revenue, the DPP, FIU and Immigration. Monthly meetings are held in furtherance of better cooperation and collaboration between units at the operational level; matters such as sharing of resources and information, and discussions on specific cases where a multi-agency approach is desirable as well as other matters are dealt with.

268. Although Customs, Immigration and other related authorities meet monthly to discuss issues, there is no indication of any organised or structured method of co-ordination on issues related to the implementation of this recommendation.

269. Examiners were informed that the Customs Department of Grenada is a member of CCLEC and shares information with other members of CCLEC. International co-operation occurs both formally and through networking.

Sanctions and penalties

270. According to section 209 (d) of the Customs Ordinance, a false disclosure or refusal to answer questions from a Customs officer or to answer evasively or falsely is an offence liable to a fine not exceeding two thousand five hundred dollars. The fine of EC$2,500 is equivalent to US$925.00. While the sanction provides for a proportionate penalty, the upper limit of EC$2,500 makes the sanction ineffective and not dissuasive.

271. Statistics were requested from the Customs Department as to the number of persons fined under this provision but this was not made available to examiners during the onsite. The examiners were informed that these matters are referred to the police officers of the FIU for investigation where there is a suspicion of ML or other offence. The sanctions would be applied by the court.

272. Money laundering or terrorist financing through the physical cross-border transportation of currency and bearer negotiable instruments is punishable under POCA, 2003 on conviction on indictment by an unlimited fine or a term of imprisonment not exceeding 10 years and under the TA on indictment by an unlimited fine and a term of imprisonment not exceeding twenty years (see sections 2.1 and 2.2 of this report).

Seizure, forfeiture and confiscation

273. Generally, the provisions regarding confiscation, freezing and seizing of proceeds of crime or funds for terrorist activities are also applicable to the cross-border transportation of currency and negotiable instruments. The freezing, confiscation and forfeiture provisions relating to the proceeds of crime under POCA 2003 in section 2.3 of this report would apply. Additionally, similar provisions under the TA relating to terrorist financing in section 2.4 are relevant. .

Unusual cross-border movements of gold, precious metals or stones

274. Whereas no specific provision was found as to the notification of other competent authorities of the discovery of unusual cross-border movement of gold, precious metals or stones, section 6(2)(d) of the FIUA and section 39 (1) of the TA allow for information sharing generally. No data was made available as to whether such information has been shared with other competent authorities.

275. Where the Customs Department has intercepted cross-border movement of currency and other bearer negotiable instruments and there is suspicion that same is connected to ML or other offences under the POCA, these matters have been reported to the designated authority the FIU.

276. While the FIU has internal processes to safeguard their information as detailed in section 2.5 of this report, no information as to the safeguards that Customs has in place for the records it maintains regarding disclosures of cross-border movement of currency and negotiable instruments was made available to the assessors.

277. The present X-ray and scanner equipment is inadequate to Customs' needs. The budget is not sufficient to provide for currency sniffing canines. No information was available on the following:

- The number and frequency of currency interdiction operations
- Whether passenger screening system extends to behavioural, appearance and communication analysis of potential carriers or the manner of interviewing or whether base-line questions have been developed to identify red flags.
- The method of examining identification/travel documents such as passports, visas, and tickets of individual passengers.
- The method of examining cargo documentation such as manifest, airway bills, declaration and invoice/packing list.
- The quantum and number of seizures of currency and other negotiable instruments
- Whether Customs officers with responsibility of intercepting currency have received training in detection of counterfeit currencies.

278. Whereas there are provisions under the Customs Ordinance for making false declarations or untrue disclosures with penalties, there is no specific requirement that these offences are strict in liability thereby shifting burden of proof on to the defendant. Co-operation with police and FIU as well as Customs authorities in other jurisdiction, according to the Customs Department is favourable.

279. No information as to the system or manner of storage of reports relating to cross-border transportation of currency was made available to the assessors.

Recommendation 30

Structure, funding, staffing and resources

Customs Department

280. The Customs Department has primary responsibility at the main points of entry into Grenada. It is responsible for border security. In furtherance of fulfilling this function, the department has a staff complement of 113 customs officers to service Grenada's eight (8) official ports of entry. The Customs Department has a good working relationship with other law enforcement authorities such as the Coast Guard, Immigration and the FIU and works jointly with the latter on investigations. The FIU and Customs work together in cases of commercial fraud as well as in matters where money laundering is suspected. Together with FIU, Immigration and other units Customs is part of the 'Task Force' which meets monthly to discuss major issues which affect members' operations.

281. Customs has an intelligence unit working actively to detect people, drugs and goods smuggling. The unit is driven by information from foreign agencies. International co-operation exists primarily with the island of Martinique and the United Kingdom. Customs is a member of CCLEC and request information from various countries such as Martinique and St Maarten through this regional organisation. Relationships also exist with St Lucia, Canada and the USA.

282. No specific allocations are made for training officers in AML/CFT; however general budgetary allocations for training are made. Funding and resources for the Customs Department are provided through the Government's consolidated fund. Customs officials are of the view that there is a need for additional funds to meet the demanding challenges that the agency faces. There is said to be a shortage of technical resources such as patrol boats and x-ray machines. The Coast Guard is currently assisting them in the patrol function. The table below shows the budget of the Customs Department for the last four years.

Table 11: Budget of the Customs Department

YEAR	BUDGETED AMOUNTS
2005	EC$4,739,993
2006	EC$4,721,477
2007	EC$4,890,309
2008	EC$5,218,235

Integrity and professional standards

283. Entrance requirements for the Customs Department include academic qualifications in four Caribbean Examination Council (CXC) subjects one of which must be English.

284. All new employees undergo training which includes orientation and completion of the junior basic officers' course. These measures help to ensure professional standards. There is a Code of Conduct as well as the Public Service Rules and Staff Orders which dictate the good conduct and actions of officers. The Customs Department advised examiners that management has no autonomy to dismiss or discipline officers. This responsibility rests with the Public Service

Commission. However they have not encountered any issues of discipline during the last four years.

Training

285. In recent years several officers have been trained in areas that have prepared them to combat money laundering and financing of terrorisms. Two officers are certified financial investigators. Training courses have covered financial investigation techniques, intelligence gathering, interdiction and anti-terrorism initiatives and border security.

Statistics

286. Statistics in relation Money Laundering at the Custom Department are as follows:

Table 12: Custom Department ML cases

Year	No. of suspicious cases investigated.	No. of cross-border cases detected
2006	3	1
2007	1	0
2008	2	0

287. No information on the total number of cross-border disclosures or the amount of currency involved was made available to the assessors.

2.7.2 Recommendations and Comments

288. The following is recommended;

- Customs should consider implementing a declaration system to be used in conjunction with the disclosure system for incoming and outgoing passengers. The threshold should not be higher than EUR/US15000.00

- Consideration should be given to the increased use of specific technical expertise such as canine units (that can sniff for concealed currency), x-rays and scanners. These activities should be well funded.

- Customs should explore the involvement of airline and vessel senior management in currency interdiction operations.

- Customs officials should be trained in the use passenger screening systems to analyse behaviour, appearance and communication style of potential currency carriers. In so doing baseline questions should be identified to identify red flags.

- Authorities should review legislation concerning the making of false disclosures/declarations to ensure that these are strict liability offences.

- Penalties under the Customs Ordinance should be amended with the aim of making them dissuasive

- Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of seizures; these statistics should be readily available for use by Customs and other LEAs.

- Consideration should be given for the provision of training in counterfeit currency identification to Customs Personnel, especially those working the ports.

- Customs should consider fostering closer relationships with the FIU, the RGPF and ODPP

- There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing.

- Customs Authorities should also give consideration to reporting all incidences of currency interdictions where untrue disclosures/declarations are made to the FIU, whether or not administrative or criminal proceedings are being considered.

2.7.3 Compliance with Special Recommendation IX & Recommendation **32**

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	**Penalty for false disclosure/declaration is not dissuasive** **Domestic cooperation between customs and other agencies is insufficient** **Information-sharing among Customs and other law enforcement authorities is inadequate.** **Customs' participation in AML/CFT is not sufficient** **Unable to assess whether systems for reporting cross-border transactions are subject to strict safeguards.** **Unable to assess effective of disclosure system due to insufficient statistics**

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

289. The AML/CFT framework is set out in POCA, 1992 and 2003, the Proceeds of Crime (Anti-Money Laundering) Regulations, 2003 (POCAMLR), the FIUA, the MLPA as well as the Anti-Money Laundering Guidelines ("Guidelines") issued by the Supervisory Authority in 2003 and updated in 2008. This framework sets out provisions to mitigate the risk of money laundering and terrorist financing to the operations of relevant businesses. POCA makes provisions for penalties and other enforcement actions that can be taken in relation to the proceeds of drug trafficking and money laundering and other related matters. The POCAMLR, among other things, sets out identification procedures and the requirements to maintain records (as well as the type of records), record-keeping procedures, internal reporting obligations, etc.

290. The POCA and ancillary POCAMLR impose obligations on financial institutions and persons engaged in relevant business activities as defined in the First Schedule to POCA. The financial institutions and relevant business activities in the First Schedule cover all listed FATF financial institution activities and also include real estate agents, casinos, internet gambling, pool betting, lottery agents, barristers-at-law and solicitors, accountants and notaries. The MLPA is applicable to financial institutions whose operations include activities listed in the First Schedule to the Act. While the list of activities is generally comparable to that of POCA, it includes offshore betting but omits casinos, internet gambling, pool betting, lottery agents, barristers-at-law and solicitors, accountants and notaries. The difference in the applicability of the POCA and the MLPA could result in inconsistent application of the AML/CFT requirements across the financial sector and the authorities should consolidate the statutes for consistency.

291. The Guidelines were issued pursuant to section 50(1) (b) of the POCA by the Supervisory Authority to provide guidance to financial institutions and persons engaged in relevant business activities and thereby assist with the enforcement of the POCA as well as the POCAMLR. The primary AML/CFT provisions outlined in the Guidelines reflect international best practice. The Guidelines have been circulated to the regulated financial services sector and some DNFBPs.

292. While regulation 8 of the POCAMLR requires a regulated institution to comply with the Guidelines the examiners were advised by the Attorney General that the Guidelines were not legally enforceable and paragraph 60 of the Guidelines states "these Guidelines are not mandatory or exhaustive". As such, the examiners have not treated the Guidelines as other enforceable means.

293. As at 31 July, 2008, the regulated financial services sector within Grenada comprised five commercial banks, four of which are subsidiaries or branches of large regional banks and one that is a locally owned public company, fifteen credit unions, twenty-four insurance companies, three money remittance entities, one building society, one Government owned Development Bank, one company registered under the International Betting Act, 1998, thirteen entities operating as registered agents under the Companies Act, 1994, one company operating under the Securities Act, 2001, and no casinos or internet gaming establishments. Accountants, Lawyers and Real Estate Agents are not professionally licensed in Grenada. Further, there are five dealers in precious metals and stones operating in Grenada.

294. The ECCB is responsible for the supervision of commercial banks that operate within the Eastern Caribbean, including Grenadian domiciled banks, as provided for in the BA. In an interview with officers of the ECCB, the examiners were advised that the ECCB is responsible

for the safety and soundness of banking organisations as well as their compliance with AML legislation. The examiners noted that the ECCB had issued Guidance Notes for Licensed Financial Institutions in May, 1995 which provides guidance for the development of AML programs and the minimum provisions such a program should contain. While these Guidance Notes are still applicable to Grenadian banks under the supervision of the ECCB, the requirements have been incorporated and superseded by the Guidelines issued by the Supervisory Authority.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

295. Grenada has not carried out a national risk assessment to ascertain the risk of money laundering and/or terrorist financing faced by relevant businesses operating within the country. As such, there is no documented basis for the application of reduced or simplified AML/CFT measures. However, the Examiners noted that in a few instances, some financial institutions utilized reduced or simplified CDD measures within subsets of their client base. In these instances, the decision to reduce or simplify CDD measures was based on the perceived level of risk, versus the risk determined from a structured risk framework.

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

3.2.1 Description and Analysis

Recommendation 5

Anonymous accounts

296. There are no specific legal provisions prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. However, regulation 4 (1) of the POCAMLR obligates all regulated institutions i.e. financial institutions defined in the First Schedule of POCA, to establish and maintain identification procedures which require any person seeking to form a business relationship or carry out a one-off transaction to produce satisfactory evidence of identity. This provision is duplicated in the Guidelines together with the requirement in paragraph 37.1 for institutions to immediately verify the beneficial ownership of all existing anonymous accounts and accounts in obviously fictitious names.

297. Financial institution confirmed in interviews that they did not maintain or open anonymous or numbered accounts for their clients or accounts in fictitious names. In addition, GARFIN, FIU, ECCB, ECSRC and other relevant authorities have not found any anonymous accounts or numbered accounts in the onsite inspections carried out.

When CDD is required

298. Regulation 4 (2) of the POCAMLR stipulates that the identification procedures referred to in regulation 4 (1) apply in the following cases:

a) The forming of a business relationship;

b) A one-off transaction where payment is to be made by or to the applicant of US$10,000 or more;

c) Two or more one-off transactions which appear to any person handling the transaction on behalf of the regulated institution to be linked and in respect of which the total amount payable by or to the applicant is US$10,000 or more.

d) Where in respect of any one-off transaction any person handling the transaction on behalf of the regulated institution knows or suspects that the applicant is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering.

299. It should be noted that regulation 4 (1) refers only to identification procedures rather than full CDD as required by criterion 5.2. The above provisions do not include one-off wire transfers of US$1,000 or more as required by the Interpretative Note to SR VII. The provision regarding knowledge or suspicion of money laundering is limited to one-off transactions thereby excluding other circumstances such as activity arising in the course of a business relationship and does not include suspicion or knowledge of terrorist financing. Finally the above provisions do not address the requirement to implement CDD measures when there are doubts about the veracity of previously obtained due diligence information.

300. The examiners noted that financial institutions require a source of funds declaration for transactions above USD$10,000, and in some cases, for transactions that do not fit the profile of the client. Some of the financial institutions indicated that one-off transactions were not handled, as their policy did not allow for persons who are not existing customers to perform such one-off transactions. Further, DNFBPs interviewed confirmed that declarations of source of funds were requested, in addition to other information requirements, and that their operations did not provide for one-off transactions.

301. Additionally, financial institutions advised that records are maintained on originators of wire transfers, including account numbers and source of funds declarations (which is requested by some institutions for incoming transfers). Institutions that permit wire transfers to be placed by non-clients retain copies of government issued identification records.

Customer identification and verification

302. Regulation 4 (1) of the POCAMLR requires regulated institutions to establish and maintain identification procedures which require that any applicant for business produce satisfactory evidence of identity. Regulation 4(7) states that satisfactory evidence of identity or reasonable measures for establishing the identity of a principal may be determined in accordance with the Guidelines issued by the Supervisory Authority. The Guidelines in paragraph 16 states that institutions perform their duty of vigilance by having in place systems which enable them to determine or receive confirmation of the true identity of customers requesting their services. Paragraphs 60 to 79 under the section headed "Methods of Verification" in the Guidelines provide details as to what the verification of identity should be including details for individuals

(in what ever capacity), companies, partnerships and unincorporated businesses, clubs, societies and charities, and trustees. These details include the use of reliable independent source documents, data or information. Additional guidance is provided in Part IV of the Guidelines for investment business, fiduciary services and insurance.

303. Details on the type of information and verification necessary for individuals are outlined in paragraphs 66 to 73 of the Guidelines. The information required include full name, date and place of birth, nationality, address, contact details, occupation and name of employer and specimen signature. The types of acceptable identification documents include current valid passport, national identity card, armed forces identity card and driver's licence, which bears a photograph. Documents which are easily obtainable in any name should not be accepted uncritically, such as credit cards etc. If information cannot be obtained from the above sources, a request may be made to another institution for confirmation of such information from its/their records.

304. While regulation 4 (4) requires regulated institutions to establish and maintain identification procedures which require that where an applicant for business appears to be acting otherwise than as principal, reasonable measures should be taken for the purpose of establishing the identity of the person on whose behalf the applicant for business is acting, there is no provision 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. As already noted the Guidelines outlines what the verification of identity should be including such as details for individuals (in what ever capacity), companies, partnerships and unincorporated businesses, clubs, societies and charities, and trustees.

305. In verifying the legal status of companies paragraph 75 of the Guidelines requires:

1) Certificate of Incorporation (duly notarized where such body is incorporated in Grenada)
2) The most recent annual return filed with the Registrar duly notarized where such body is incorporated outside of Grenada)
3) The names and addressed of the beneficial owner/s and/or the person/s on whose instructions the signatories to the account are empowered to act
4) Memorandum and Articles of Association
5) Resolutions, bank mandate, signed application form or any valid account opening authority, including full names of directors and their specimen signatures
6) Copies of identification documents obtained from at least two directors and authorized signatories
7) Copies of powers of attorney
8) A signed director's statement as to the nature of the company's business
9) A statement of the source of funds and purpose of the account

306. For partnerships, the verification procedure would include obtaining the partnership agreement, individual information on the partners and managers and a copy of the mandate authorising the establishment of the business relationship.

307. In the case of clubs, societies and charities, financial institutions should satisfy themselves as to the legitimate purpose of the organisation by requesting a copy of the

constitution and where there is more than one signatory; the identity of at least two signatories should be verified.

308. Trustees are required to verify the identity of a settlor/guarantor or any person adding assets to the trust in accordance with the procedures relating to the verification of identity of clients. Trustees are required to obtain the individual verification information at a minimum on settlors, beneficiaries, protectors, and information on the purpose and nature of the trust and source of funds.

309. During the account opening stage, financial institutions undertake reasonable measures to identify and verify the identity of new clients. For customers that are legal persons, constitutional documents, details of the directors and ultimate beneficial owners are requested during the account opening stage. While the Guidelines referenced documents that should be collected at the account opening stage as well as the steps to verify a customer, as previously noted, the Guidelines do not have the force of law.

Beneficial owner

310. As noted above regulation 4 (4) requires the identification of persons (principals) on whose behalf an applicant for business appears to be acting. The Guidelines require a financial institution undertaking verification to establish to its reasonable satisfaction that every verification subject, relevant to the application for business, really exists. Further, paragraph 33 of the Guidelines state that where there are underlying principals, the Guidelines require that the true nature of the relationship between the principals and the account signatories must also be established and appropriate enquiries performed on the former, especially if the signatories are accustomed to act on their instructions. In this context the Guidelines indicate that "principals" should be understood in its widest sense to include, for example, beneficial owners, settlers, controlling shareholders, directors, major beneficiaries, etc., but the standard of due diligence will depend on the exact nature of the relationship.

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

312. With regard to companies (including corporate trustees), paragraph 39 of the Guidelines stipulates that steps should be taken to verify a company's underlying beneficial owner/s – namely those who ultimately own or control the company. The expression underlying beneficial owners 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.

313. While there is a general requirement in the Guidelines for financial institutions to "know your customer" there is no explicit requirement for them to understand the ownership and control structure of the customer. The requirement to verify a company's underlying beneficial owner does not specifically entail determining the natural persons that ultimately own or control the customer.

314. The examiners noted that the mandated filing of annual returns is not completed as prescribed in interviews with Government officials as well as with DNFPBs. On this basis, companies may be operating in Grenada where the directors and shareholders are not appropriately identified. Additionally, interviews with financial institutions revealed that steps

are taken to ascertain the directors of a customer that is a company, partnership or other legal entity, and in some cases, the information for a minimum of 3 directors, as well as the shareholders of such a customer must be submitted during the account opening process.

315. Within the Guidelines, the verification of subjects / customers that are legal persons has been outlined. In addition, regulation 4 of the POCAMLR outlines the requirement for regulated institutions to establish and maintain identification procedures. It also stipulates that where satisfactory evidence of identification has not been obtained, the relationship should not be continued. It also provides for the handling of introduced business, such that written assurances are to be received from the introducing institution to the effect that evidence of the identity of the applicant has been obtained and recorded.

316. There is no specific requirement for a financial institution to obtain information on the purpose and intended nature of the business relationship. The Guidelines however requires that when verification is being conducted for companies a statement of the source of funds and purpose of the account should be completed and signed.

317. In interviews with financial institutions, the Examiners noted that information on the purpose or intended nature of the business relationship was sought in some cases; this type of information was captured in forms used by financial institutions upon the establishment of a business relationship. DNFBPs also indicated that information was gathered upon the establishment of a relationship with a client seeking services; however, it was unclear as whether this information was recorded.

Ongoing due diligence

318. There is no requirement in legislation that requires financial institutions and other relevant persons to apply ongoing due diligence measures to their client base. In addition, the Guidelines do not provide any guidance on the need to carry out ongoing due diligence measures. The lack of this requirement also extends to include associated criteria 5.7.1 and 5.7.2.

319. It was noted that ongoing due diligence was not being carried out on the client base of the financial institutions that were interviewed. In some cases, clients have had relationships with some financial institutions for a number of years, and at the time the business relationship was established, CDD measures did not capture all relevant information. While a trigger event (such as a loan application in a lending or banking institution, or a claim with an insurance company) would result in up-to-date information being collected, financial institutions do not have a retrospective CDD program to update the records held on their client base. As such, information collected under the CDD process of financial institutions is not kept up-to-date in most cases.

320. Continuous scrutiny is carried out by some financial institutions to ensure that customer transactions are being conducted in a manner that is consistent with that of the respective institution's profile of its customers.

321. The primary motivation of one financial institution for updating its records was commercial interest and it had nothing to do with AML requirements. In addition, the financial institution was not aware of any such guidance from relevant authorities of the need for retrospective due diligence. Within another financial institution, the process for obtaining up-to-

date due diligence on its client base was commenced within the last five years; within two financial institutions, the examiners were advised that up-to-date due diligence was outstanding for approximately 50% of each institution's active client base.

322. Within the context of ongoing due diligence of financial institutions, it was noted that the financial institutions interviewed confirmed that measures are taken to ensure that transactions are monitored and examined against the pattern established by the client and the risk profile (if any such profile has been applied) of the client. Where necessary, the financial institution may, according to its internal procedures, generate reports for further review and scrutiny of questionable transactions, request the completion of source of funds declarations and any other measures necessary to determine the nature of the transaction. If the transaction is deemed to be suspicious, further action, up to and including the filing of a suspicious transaction report to the FIU and/or the discontinuation of the business relationship may be taken.

323. The examiners noted that financial institutions did not perceive that their client base had persons that could be considered high risk, and as such, no reviews were done to ensure that CDD documents of such customers are kept up-to-date. It was also noted that while the commercial banks carried out more rigorous scrutiny of transactions and accounts, no established measures or practices to ensure up-to-date CDD are being maintained.

Risk

324. Except for specific instances in the Guidelines described below, there is no requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. Paragraph 86 of the Guidelines provides that a competent authority may determine that because a high incidence of money laundering is associated with persons from certain countries or regions, additional precautions are required to safeguard against use of accounts or other facilities by such persons, their immediate relatives, associates and representatives. The source of wealth and economic activities that generated the level of wealth should be substantiated. Under these circumstances, the guidelines recommend that it may be necessary to request a letter or reference (confirmed), in addition to other identification requirements, from a regulated bank, which is not from the countries or regions in question.

325. Section 2 of Appendix K of the Guidelines, which specifically deals with credit unions, outlines cases that require enhanced due diligence. Examples include the opening of accounts by PEPs, accounts sought by persons from high risk countries or persons known to be involved in activities susceptible to money laundering and accounts requested in the name of a person's alias. However, it was noted that there was no general requirement to conduct enhanced due diligence for financial institutions. Paragraph 25A of the Guidelines provides that special attention and increased monitoring should be paid to a list of particular types of accounts, including accounts to be opened for politically exposed persons, accounts sought by persons known or declared to be involved in activities known to be susceptible to money laundering, et al. Whilst there are specific details relating to PEPs, the examples outlined types of transactions and insufficiently cover the types of clients that may fall into high risk categories. For example, there is no provision for clients that are non-residents, clients that are legally constituted persons, etc.

326. The examiners noted only one instance in interviews with financial institutions where enhanced due diligence was carried out for PEPs. However, other financial institutions and DNFBPs did not have any instances of, or procedures to conduct enhanced due diligence.

Reduced due diligence

327. Except for specific cases described below there are no general legislative requirements to allow financial institutions to apply reduced or simplified CDD measures. Regulation 4 (3) of the POCAMLR stipulates that where an applicant for business is introduced by a local or foreign regulated institution, only a written assurance from the introducing institution asserting that evidence of the identity of the applicant has been obtained by the introducing institution is necessary. Regulation 4 (5) has similar requirements for financial institutions representing an underlying principal. The financial institutions referred to in the regulations are not required to be subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations.

328. The Guidelines lists a number of cases where customer identification is not required. Paragraph 46 of the Guidelines exempts financial institutions from verifying the identity of an applicant for business where such customer is an institution subject either to the Guidelines or their equivalent in another jurisdiction. Paragraph 39 does not require verification of the underlying beneficial owners of companies quoted on a recognised stock exchange. Paragraph 47 stipulates that verification is not needed for small one-off transactions whether single or linked. No threshold is stipulated for these one-off transactions. Paragraphs 49 to 51 detail certain accounts where payment is made via postal, telephonic and electronic means involving accounts or investment products which do not allow funds transfer and payment is made from an account held at another regulated institution. The receiving institution is entitled to rely on the CDD of the other regulated institution. A similar exemption is also applied to certain mailshots, off-the-page and coupon business conducted over the telephone or by other electronic media.

329. The examiners noted that some financial institutions that provided banking services to the government, waived the requirement for source of funds declarations for regular transactions. No other instances of simplified or reduced CDD measures had been applied to customers of financial institutions.

330. There is no requirement in legislation or the Guidelines requiring financial institutions to limit simplified or reduced CDD measures to non-resident customers from countries that Grenada is satisfied are in compliance with and have effectively implemented the FATF Recommendations.

331. Financial institutions confirmed that simplified or reduced CDD measures were not applied to non-resident customers. Further, the assessment team was advised by some financial institutions that it was their policy not to do business with non-residents.

332. There are no provisions prohibiting simplified CDD measures whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios. Paragraph 39 of the Guidelines provides for when identity is to be verified, and states that, "…*irrespective of the exemptions noted in paragraph 45 – 51, identity must be verified in all cases where money laundering is known or suspected."* This does not, however, address cases where there is a

suspicion of terrorist financing. The exemptions are those in the Guidelines already referred to in the discussion dealing with simplified or reduced CDD measures. .

333. The Guidelines does provide guidance where verification of customer identity can be exempted or reduced and limited instances requiring enhanced due diligence. However the basis for some exemptions is not clear with regard to the level of risk. Given the non mandatory nature of the Guidelines financial institutions risk measures do not have to be consistent with those of the Guidelines.

Timing of verification

334. Regulation 4 (1) of the POCAMLR requires financial institutions to establish identification procedures that require any applicant for business to produce satisfactory evidence of identity as soon as practicable after first making contact. While the phrase " as soon as practicable after first making contact" does not directly address the FATF requirement to verify the identity of the customer or beneficiary before establishing the relationship or conducting an occasional transaction, the Guidelines stipulate that verification should whenever possible be completed before any transaction is completed. Pursuant to paragraph 39 of the Guidelines, whenever an account is to be opened, or a significant one-off transaction undertaken, the prospective customer must be identified. Paragraph 60 states that the best time to undertake verification is not so much at entry as prior to entry. It further states that subject to exemption cases identified in the Guidelines, verification should whenever possible be completed before any transaction is concluded. The Guidelines also state that it would not be appropriate to complete settlement of the relevant financial transaction, to transfer or pay any money out to a third party, or dispatch documents of title before adequate verification is obtained.

335. Notwithstanding the above, paragraph 61 of the Guidelines provides that where it is necessary for sound business reasons to open an account or carry out a significant one-off transaction before verification can be completed, this should be subject to stringent controls which should ensure that any funds received are not passed to third parties. Alternatively, a senior member of key staff may give appropriate authority. This authority should not be delegated and any such decision should be recorded in writing. Additionally paragraph 63 of the Guidelines states that in case of telephone business, where payment is or is expected to be made from a bank or other account, the financial institution (the verifier) should ensure that the account is held in the name of the applicant for business at or before the time of payment and not remit the proceeds of any transactions to the applicant for business or his/her order until customer verification is completed.

336. In interviews with financial institutions, it appears that exemptions to verification of customers' identity and beneficial ownership are not applied, and that verification is undertaken at the account opening stage. As such, the examiners noted that financial institutions generally completed verification at the establishment of a business relationship.

Failure to satisfactorily complete CDD

337. Regulation 4 (1)(b) of the POCAMLR states that where satisfactory evidence of identity is not obtained in the process of forming a business relationship, the business shall not proceed

any further except in cases of one-off transactions where there is suspicion of money laundering and only in accordance with a police officer's directions.

338. Paragraph 86 of the Guidelines provides 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 in the form in which it was received, until verification is subsequently completed (if at all). The Guidelines also provide that funds should never be returned to a third party but only to the source from which they came. If failure to complete verification itself raised suspicion, a report should be made to the reporting Officer for determination as to how to proceed. It was noted that there is no requirement to terminate the business relationship in the event that verification could not be completed

339. The examiners cited one instance where an account was opened, and deposits accepted prior to the completion of verification. The interviewed financial institution advised that the verification process was not completed and the deposited funds returned via cheque. In this instance, no suspicious transaction report (or unusual transaction report) was generated.

Existing customers

340. There are no requirements in legislation, regulations or Guidelines that require CDD measures on existing customers at the time AML obligations were originally enacted on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Interviews with financial institutions indicated that CDD is updated when a customer seeks an additional service (such as a mortgage). Some financial institutions confirmed that a significant portion of their customer base have dated or inadequate due diligence.

341. Financial institutions have confirmed to examiners that they do not maintain anonymous accounts; however, the above captioned comments are relevant, as financial institutions are not required to perform CDD measures on their existing customer base.

Recommendation 6

342. There is no requirement for financial institutions to put in place an appropriate risk management system to determine whether a potential customer or the beneficial owner is a PEP. Paragraph 25A of the Guidelines requires politically exposed persons to be given "special attention" and be subject to "increased monitoring". Politically exposed persons are defined as persons in positions of public trust, such as government officials, their families and close associates. However, it does not specify any further details for politically exposed persons over and above the requirements of R5.

343. Financial institutions indicated that informal methods are used in making a determination of persons that may qualify as politically exposed persons, which are in all cases identified as persons who hold an elected office within the Government. In most cases, the application of

CDD measures does not differ from that of a normal customer; as such, there are no additional CDD requirements to be met by persons that would qualify as politically exposed persons.

344. Financial institutions, in some cases, do not provide services to foreigners or non-nationals. On this basis, many financial institutions may not encounter a foreign PEP. In cases, where a financial institution does carry on business activities with foreigners, there are basic measures in place to determine whether a potential customer is a PEP.

345. There is no provision within legislation or guidance that required financial institutions to obtain senior management approval for the establishment or continuation of a business relationship with a PEP.

346. Examiners noted that in one financial institution that provides banking services, it was confirmed that enhanced due diligence and monitoring is carried out on politically exposed persons' accounts, but no management or other senior approval is required to open the account.

347. In interviews with financial institutions, the examiners were advised of instances where management approval was not sought or required to continue the business relationship with existing customers who became politically exposed persons. Generally, when an existing customer becomes a (domestic) PEP, the customer is not required to provide any further details to financial institutions to continue the relationship.

348. Financial institutions are not required to take reasonable measures to establish the source of wealth and source of funds for customers that are PEPS.

349. The examiners were advised that financial institutions would only seek information on source of wealth and the source of funds of PEPs at the account opening stage and information on source of funds if a transaction is deemed to be outside of the normal activity that has been established.

350. As already noted, paragraph 25A of the Guidelines requires institutions to pay special attention and give increased monitoring to PEPs. However, the Guidelines are not enforceable and therefore this requirement does not comply with FATF standards.

Additional elements

351. The definition of PEPs in the Guidelines is general and is therefore applicable to both foreign and domestic customers who qualify as PEPs. While financial institutions indicated that they did not generally apply PEP measures to local PEPs, one financial institution that provided banking services advised that PEP measures are applied to local PEPs.

352. Grenada has not signed the 2003 United Nations Convention against Corruption.

Recommendation 7

353. None of the criteria for Recommendation 7 relating to cross-border correspondent banking have been addressed either in legislation or guidelines. These include gathering

sufficient information about a respondent institution to understand the nature of the respondent's business, assessing the respondent's AML/CFT controls, obtaining senior management approval for correspondent relationships, documenting respective AML/CFT responsibilities and being satisfied that respondents have performed all normal CDD obligations for "payable-through accounts

354. All commercial banks in Grenada except for one locally owned institution are either branches or subsidiaries of large regional banks and the establishment of correspondent banking relationships would be done by head offices. It was noted that one financial institution that provides correspondent banking services completed an annual questionnaire of existing correspondent relationships to assess any such relationships for their AML compliance measures, ongoing regulated status, etc.

355. Interviews with regulatory authorities confirmed that no requirements to address the need for CDD measures to be applied to correspondent relationships have been communicated to financial institutions. Further, financial institutions that have been subjected to onsite inspections have confirmed that such inspections did not include checking of correspondent banking relationships. In addition, financial institutions, including those that act as respondent institutions, have been found deficient in their AML and CFT measures during onsite inspections.

356. Based on comments received from financial institutions, the approval of senior management is required before establishing a new correspondent and/or respondent relationship. The examiners were advised by financial institutions that payable-through accounts are not used. However, it was noted that of the financial institutions interviewed, only one financial institution acted as both a respondent and correspondent bank.

Recommendation 8

357. No legislation has been enacted or guidance provided to financial institutions from relevant supervisory authorities (including the ECCB, Supervisory Authority and FIU) on the need to implement policies to prevent the use of technological developments, such as internet banking, ATM machines, et al for money laundering and terrorist financing activities.

358. Interviews with financial institutions evidenced that no specific policies or provisions were in place to address the risks associated with non-face to face transactions. In addition, the examiners noted a low level of awareness of the activities that constitute non-face to face transactions, as well as the associated risks.

359. The requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions is not addressed in the legislation or Guidelines. However, paragraphs 71 and 161 of the Guidelines provide that save in the case of reliable introductions, the institution should, whenever feasible, interview the verification subject in person. Further, any financial services provider offering services over the internet should implement procedures to verify the identity of its clients. Care should be taken to ensure that the same supporting documentation is obtained from internet customers as for other customers particularly where face to face verification is not practical. The Guidelines also provided that in view of the additional risks of conducting business over the internet, financial institutions should monitor activity in customer accounts opened on the internet on a regular basis. However, these requirements are not enforceable.

360. The examiners noted that financial institutions had general AML policies. Non-face to face transactions include the use of internet banking services, which is limited to inquiries and money management platforms that typically allow transactions for payment of established utilities and transfers between a customer's accounts as well as the use of ATM machines. However, the financial institutions interviewed did not have procedures or risk management frameworks to mitigate the risks associated with non-face to face transactions.

3.2.2 Recommendations and Comments

361. The following is recommended;

Recommendation 5

- Competent authorities may consider carrying out a national risk assessment to determine the risk of money laundering and terrorist financing to enable the application of reduced or simplified anti-money laundering and counter terrorist financing measures.

- Competent authorities should consider making the Guidelines mandatory and enforceable with effective, proportionate and dissuasive sanctions.

- Regulations or legislative amendments should be introduced to require CDD measures when there is suspicion of money laundering or terrorist financing and for occasional transactions over US$1,000 that are wire transfers.

- Regulations or legislative amendments should be introduced for financial institutions to be required to undertake CDD measures where there are doubts about the veracity or adequacy of previously obtained CDD.

- Regulations or legislative amendments should be introduced for financial institutions to be required 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.

- Financial institutions should be legislatively required to verify the identification of customers.

- Financial institutions should be required to understand the ownership and control structure of customers that are legal persons or legal arrangements

- Financial institutions should be legislatively required to determine the natural persons that ultimately own or control the customer

- Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship.

- Legislative amendments should be introduced to require that financial institutions and other relevant persons apply ongoing due diligence measures to their client base. This should include scrutiny of transactions and ensuring that CDD documents and information are kept up-to-date.

- Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers.

- Financial institutions should be required to limit the application of simplified or reduced CDD measures to non-resident customers from countries that the authorities in Grenada are satisfied are in compliance with FATF Recommendations.

- Simplified CDD measures should be prohibited whenever there is suspicion of money laundering or terrorist financing.

- Financial institutions should be required to terminate a business relationship if the verification of a customer cannot be completed.

- Financial institutions should be required to perform CDD measures on existing clients and to conduct due diligence on existing relationships at appropriate times. Financial institutions should also be required to review and consider closing existing accounts where due diligence is inadequate against the requirements of Recommendation 5.

Recommendation 6

- Financial institutions should be required to have appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.
- Financial institutions should be required to obtain senior management approval for establishing a business relationship with a PEP or continuing one with a customer who becomes a PEP.
- Financial institutions should be required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.
- Financial institutions should be required to conduct enhanced ongoing monitoring on relationships with PEPs.
- Grenada should undertake steps to sign the 2003 United Nations Convention against Corruption.

Recommendation 7

- Financial institutions should be fully aware and document a respondent institution's circumstances: - this should include details of its business, management, regulated status and other information that may be publicly available or available upon request for the purposes of establishing a relationship.

- Financial institutions should be required to have written procedures to obtain and assess the anti-money laundering procedures and CDD procedures of a respondent institution.

- Financial institutions should be required to obtain approval from senior management to establish new correspondent relationships in all cases.

- Financial institutions should document the respective AML/CFT responsibilities of each institution in cross-border correspondent relationships

- Financial institutions should be satisfied that respondent financial institutions have performed all the normal CDD obligations on customers who have access to" payable-through accounts" and can provide relevant customer identification data upon request.

Recommendation 8

- Financial institutions should be required to have policies in place that mitigate the misuse of technological developments by money laundering and/or terrorist financing schemes.

- Financial institutions should be required to have written procedures and a suitably robust risk management framework that mitigates the risks associated with non-face to face transactions. Measures for mitigating risks should include specific and effective CDD procedures that apply to non-face to face customers.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	**CDD measures are required when there is suspicion of money laundering and only with one-off transactions** **CDD measures for wire transfers are for occasional transactions over US$10,000 rather than over the FATF US$1,000 limit.** **CDD measures are not required when there are doubts about the veracity of previously obtained due diligence** **No provision 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** **No requirement in law or regulation for the verification of identification of customers** **No provision to understand the ownership and control structure of customers that are legal persons or legal arrangement** **No provision to determine the natural persons that ultimately own or control the customer** **No requirement for financial institution to obtain information on the purpose and intended nature of the business relationship** **No legislative provision for financial institutions to conduct ongoing due diligence to include scrutiny of transactions and ensuring that CDD documents and information are kept up-to-date**

		No requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer **The exemptions for reduced or simplified CDD measures are not justified on the basis of low risk** **No requirement for financial institutions to limit simplified or reduced CDD measures to non-resident customers from countries that the authorities are satisfied are in compliance with FATF Recommendations** **No provisions prohibiting simplified CDD measures whenever there is suspicion of money laundering or terrorist financing** **No requirement for financial institutions to apply CDD measures to existing customers on the basis of materiality and risk.**
R.6	**NC**	**No requirement for financial institutions to have appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.** **No requirement for financial institutions to obtain senior management approval for establishing a business relationship with a PEP or continuing one with a customer who becomes a PEP.** **No requirement for financial institutions to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.** **No requirement for financial institutions to conduct enhanced ongoing monitoring on relationships with PEPs**
R.7	**NC**	**No requirement for financial institutions to gather sufficient information about a respondent institution to understand the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision..** **No requirement for financial institutions to have written procedures to obtain and assess the anti-money laundering procedures and CDD procedures of a respondent institution.** **No requirement for financial institutions to obtain approval from senior management to establish new correspondent relationships in all cases.** **No requirement for financial institutions to document the respective AML/CFT responsibilities of each institution in cross-border correspondent relationships** **No requirement for financial institutions to be satisfied that respondent financial institutions have performed all the normal CDD obligations on customers who have access to" payable-through accounts" and can provide**

		relevant customer identification data upon request
R.8	**NC**	**No requirement for financial institutions to have policies in place that mitigate the misuse of technological developments by money laundering and/or terrorist financing schemes.** **No requirement for financial institutions to have written procedures and a suitably robust risk management framework that mitigates the risks associated with non-face to face transactions. Measures for mitigating risks should include specific and effective CDD procedures that apply to non-face to face customers**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

362. The requirement for financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process is not specifically addressed in legislation or Guidelines. A recommended form for a written introduction is provided in Appendix B to the non-mandatory Guidelines. The form requires only the name, address, telephone and facsimile number of the applicant for business. Additional requirements of criteria 5.3 to 5.6 such as independent verification of the client and details of the measures used to identify the client, explicit disclosure of the legal status, ownership and control of legal persons and legal arrangements, determination of the natural persons who own or exercise controlling interest or comprise the mind and management of legal persons and legal arrangements and information on the purpose and intended nature of the business relationship are not included

363. It was noted that financial institutions provide banking services to DNFBPs who act as introducers. DNFBPs accept monies of their clients for transactions, which are placed with financial institutions that provide banking services. However, DNFBPs are largely unaware of their obligations to collect and maintain CDD and implement measures that mitigate the risks of money laundering and terrorist financing. Financial institutions have not formalised the establishment of accounts for third parties introduced by DNFBPs nor have they reviewed the CDD measures in place, if any, to assess the effectiveness of said measures.

364. Paragraph 59 of the non-mandatory Guidelines provides that to qualify for exemption from verification, the terms of business between institution and introducer should require the latter to:

a. complete verification of all customers introduced to the institution or to inform the institution of any unsatisfactory conclusion in respect of any such customer;

b. keep records in accordance with these Guidelines; and

c. supply copies of any such records to the institution upon demand.

365. The Guidelines also indicate that in the event of any dissatisfaction with any of these, the institution should (unless the case is otherwise exempt) undertake and complete its own verification of the verification subjects arising out of the application for business either by:

a) carrying out the verification itself;

b) or relying on the verification of others in accordance with the Guidelines.

366. The Guidelines also provide that records held by third parties are not regarded as being in a readily available 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.

367. Paragraph 57 of the Guidelines states that verification may not be needed where a written introduction is received from an introducer who is:

(a) a professionally qualified person or independent financial advisor operating from a recognized foreign regulated institution; and
(b) the receiving institution is satisfied that the rules of his/her professional body or regulator (as the case may be) include ethical guidelines, which taken in conjunction with the anti-money laundering regulations in his/her jurisdiction include requirements at least equivalent to those in the Guidelines; and
(c) the individual concerned is reliable and in good standing and the introduction is in writing, including an assurance that evidence of identity would have been taken and recorded, which assurance may be separate for each customer.

368. The requirement for financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29), and has measures in place to comply with, the CDD requirements set out in R.5 and R.10 is not addressed in the legislation or Guidelines. The Guidelines provide that verification may not be needed in the case of a reliable introduction from a locally regulated institution, preferably in the form of a written introduction. The Guidelines also provide that judgement should be exercised as to whether a local introduction may be treated as reliable, utilising the knowledge which the institution has of local institutions generally, supplemented as necessary by appropriate enquiries.

369. The examiners noted that financial institutions indicated that no steps are taken to verify that third parties are regulated and supervised, and have measures in place to comply with CDD requirements as set out in FATF Recommendations 5 and 10. In addition, the examiners also noted that DNFBPs, such as law firms within Grenada, acted as introducers to financial institutions. These DNFBPs were not subject to supervision by competent authorities or self regulatory bodies that apply or enforce AML/CFT provisions, and do not apply CDD measures as set out in FATF Recommendations 5 and 10.

370. The Guidelines list a number of countries and territories that are recognised as adhering to an anti-money laundering regime which is at least equivalent to that of Grenada. According to paragraph 57 of the Guidelines, verification may not be needed where a written introduction is received from an introducer based in these countries. Information as to how this list of countries was compiled and whether the authorities had taken into account information available on whether these countries adequately applied the FATF Recommendations was not available to the team of assessors.

371. Paragraphs 56 through 59 of the Guidelines give guidance for the use of reliable introducers in the verification process. The examiners noted that these provisions, while setting out basic requirements for a person to be considered a reliable introducer, do not confirm that the ultimate responsibility for customer identification and verification should ultimately remain with the financial institution that is reliant on the third party. Interviewed financial institutions were generally not aware of the responsibility for customer identification and verification of clients introduced by a third party.

3.3.2 Recommendations and Comments

372. The requirements for introduced business are set out in the Guidelines which are not enforceable and therefore do not comply with FATF standards. As such, the following is recommended:

- Financial institutions should be required to immediately obtain from introducers the necessary information concerning certain elements of the CDD process (criteria 5.3 to 5.6).

- Financial institutions should be required to test agreements with third parties to ensure that CDD held satisfies the provisions of Recommendations 5 and 10. This testing should also confirm whether information can be provided by the third party without delay.

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

- Competent authorities should consider the issuance of a list of jurisdictions that adequately apply the FATF Recommendations, for third parties that may operate in foreign jurisdictions.

- Amendment to legislation or guidance to stipulate that the verification and identification of a client remains the responsibility of the financial institution, regardless of whether or otherwise it has relied on a third party to conduct the verification and identification of the client

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	**No requirement for financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process (criteria 5.3 to 5.6)** **No requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay** **No requirement for financial institutions to satisfy themselves that the third**

		party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in R.5 and R.10 **Unable to assess whether competent authorities in determining the list of countries that are recognised as having AML regimes equivalent to Grenada, used information as to whether these countries adequately applied FATF standards** **No specific provision that ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party.**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

373. There is no general law on secrecy in Grenada other than provisions in regulatory laws governing the operations of financial institutions and the enabling statutes of competent authorities. Competent authorities' ability to access and share information required by their functions is detailed in the EIA.

374. The EIA details conditions for accessing and sharing information between domestic and foreign regulatory authorities. Regulatory authorities are listed in a Schedule to the Act and comprise the Attorney General, the Registrar of Companies, the Grenada International Financial Services Authority (replaced by GARFIN), the Supervisor of Insurance, the Department of Co-operatives, the ECCB, and the Supervisory Authority. Foreign regulatory authorities are defined as a statutory authority, which in a country or territory outside Grenada exercises functions of a regulatory authority.

375. Section 3 of the EIA stipulates the conditions under which a regulatory authority can provide assistance to a foreign regulatory authority in connection with inquiries. Section 3 (2) lists these conditions as follows;

a) the assistance is necessary for the purpose of enabling or assisting a foreign regulatory authority in the exercise of its regulatory functions;

b) the assistance requested by the foreign regulatory authority may be granted under any agreement to which Grenada and the foreign state requesting authority are parties;

c) the foreign regulatory authority requesting the assistance has given a written undertaking to provide corresponding assistance to an authority exercising regulatory functions in Grenada;

d) the nature and seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in Grenada warrant disclosure of the information;

e) the assistance cannot be obtained by other means; or

f) the relevant country or territory has enacted similar laws with relation to the exchange of information.

376. Additionally, if there are public interest considerations in the giving of the assistance sought by the foreign regulatory authority, the regulatory authority must obtain written direction from the Attorney General before providing the information requested. The regulatory authority may determine the form of written undertaking from the foreign regulatory authority to provide corresponding assistance. Finally, a regulatory authority may decline to provide assistance unless the foreign regulatory authority undertakes in writing to make such contributions towards the cost of the assistance as a regulatory authority considers appropriate.

377. Section 4 of the EIA empowers a regulatory authority to request information on behalf of a foreign regulatory authority from any person with respect to any matter relevant to inquiries to which a bona fide request relates. This provision requires the requested party to produce relevant documents and provide any assistance in relation to the inquiries to which the bona fide request relates as a regulatory authority may specify.

378. Failure to comply with a request for information from a regulatory authority can result in the Attorney General at the request of the regulatory authority applying for a court order requiring the person to comply with the information request. Failure to comply with the court order is an offence liable on summary conviction to a fine of EC $100,000 or to imprisonment for two years or to both fine and imprisonment.

379. With regard to the FIU, section 6 of the FIUA allows the FIU to require the production of such information necessary to fulfil its functions and provide information subject to conditions to the COP and the DPP. The FIU is also able to share information relating to suspicious transactions or suspicious activity reports with any foreign FIU subject to conditions. Failure to provide information to the FIU as requested is an offence liable on summary conviction to a fine not exceeding EC$50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

380. In addition to the EIA, all the regulatory laws provide for confidentiality of information with gateways to the authorities. The BA is typical in that section 32 states that *"(1) No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the Central Bank, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except:*

(a) with the written authorization of the depositor or customer or of his heirs or legal personal representatives; or

(b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or

(c) when lawfully required to make disclosure by any court of competent jurisdiction within Grenada; or

(d) under the provisions of any law of Grenada or agreement among the participating Governments;

381. Sections 25 and 32 (i) of the Act provide gateways for the Central Bank (the ECCB) to either access or share information as required by its supervisory functions.

382. The examiners noted that section 12 of the Mutual Legal Assistance in Criminal Matters Act, 2001(MLACMA) also provides for sharing of information with designated countries. Specifically, section 12 of the MLACMA states that, *"Any –*

(a) evidence or information obtained or as the case may be, given or provided by any person pursuant to a request under section 6 or 9; or

(b) article, record or thing obtained pursuant to a request under section 6 or 8,

must be used by or on behalf of Grenada only for the purposes of the criminal proceedings to which the request relates or, as the case may be, any criminal proceedings resulting from the investigation to which the request relates, unless the designated country to which the request is made consents to the evidence or information being used for the purposes of any other criminal proceedings".

383. The examiners noted that no apparent barrier existed for information to be shared domestically amongst relevant authorities and internationally. The Attorney General acts as the central authority for all international information requests, which are processed as matters of priority. Financial institutions have confirmed that they communicate with the FIU to assist in any requests for information.

3.4.2 Recommendations and Comments
3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	**This recommendation is fully observed**

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

3.5.1 Description and Analysis

Recommendation 10

Transactions and customer identification records

384. Section 14 of the MLPA requires financial institutions to keep business transactions records for a period of seven years after the termination of the business transaction. Regulation 5 of the POCAMLR has a similar requirement with the additional provision that records relevant to an investigation are to be retained by a regulated institution pending the outcome of the investigation. Paragraph 103 of the non-mandatory Guidelines states that the FIU may request an institution to keep records relevant to an ongoing investigation until further notice, notwithstanding that the prescribed period for retention has elapsed.

385. With regard to section 14 of the MLPA, business transaction record is defined to include the identification record of all persons party to the transaction, a description of the transaction sufficient to identify its purpose and method of execution, details of any account used for the transaction, including bank, branch and sort code and the total value of the transaction. Regulation 5 (2) and (3) of the POCAMLR require regulated institutions to keep records or copies of records containing details relating to their business as may be necessary to assist an investigation into suspected money laundering and that these records should be retrievable in legible form within a reasonable period of time. Paragraphs 102-109 of the Guidelines specify that in order to facilitate the investigation of any audit trail concerning the transactions of their customers, financial institutions are required to maintain entry, ledger and supporting records, with details of each type of record to be retained being provided in the Guidelines. Details of transaction records to be retained are as follows;

a. the personal identity of the customer, including the names and addresses of the customer, the beneficial owner of the account or product, and any other counter party.

b. securities and investment transactions including the nature of such securities/investments, valuation(s) and price(s), memoranda of purchase and sale, and source(s) and volume of funds and bearer securities, destination(s) of funds and bearer securities, memoranda of institution(s) and authority(ies), book entries, custody of title documentation, the nature of the transaction, the date of the transaction, and the form (e.g. cash, cheque) in which funds are offered and paid out.

c. electronic transfers with sufficient detail to enable the institutions to establish the identity of the remitting customer, the origin of the funds, as far as possible the identity of the ultimate recipient, the form of instruction and authority and destination of the funds.

386. The examiners noted that all requirements stipulate that transaction records are to be maintained for a period exceeding the five years period outlined in the FATF Recommendations. Interviews with financial institutions confirmed that records were maintained for a period of seven years or more, as they were familiar with the statutory requirement.

387. Regulation 5 (1) of the POCAMLR requires regulated institutions to keep for a minimum period a copy of the evidence of a customer's identity or a record indicating the nature of the evidence and such information as would enable a copy to be obtained. The period specified in regulation 5 (4) is seven years after the termination of the relevant account. The Guidelines in detailing retention periods states that account opening records should be kept for at least seven years after termination or where an account has become dormant, seven years from the last transaction. The requirement relating to dormant accounts could result in situations where account opening records for accounts dormant for longer than seven years are destroyed in

contravention of FATF requirements. As already mentioned, records relevant to an investigation are to be retained by a regulated institution pending the outcome of the investigation.

388. Additionally, regulation 5 (2) of the POCAMLR requires regulated institutions to keep records or copies of records containing details relating to their business as may be necessary to assist an investigation into suspected money laundering. While this provision on the surface would appear to incorporate account files and business correspondence, this is not supported by the requirements for the retention periods of different types of records. With regard to retention of records regulation 5 stipulates that records relating to the opening of an account or to the renting of a deposit box are to be kept for seven years after the account is closed or the day the deposit box ceases to be used by the person respectively. All other records are to be kept for a period of seven years after the date of the relevant transaction. This list appears to only contemplate identification and transaction records and there is no requirement to keep account files and business correspondence for at least five years after the completion of an account or business relationship.

389. It was noted that some financial institutions would be unable to comply with any information requests from competent authorities, due to loss of information resulting from Hurricane Ivan. Generally, financial institutions maintained information indefinitely where possible.

Access to information

390. Regulation 5 (3) requires regulated institutions to keep all records or copies of such records in such a way as to allow for their retrieval in legible form within a reasonable period of time. Section 107 of the Guidelines also has a similar requirement for readily retrievable records able to be accessed without undue delay. It is specified that a retrievable form may consist of: (a) an original hard copy; (b) microform; or (c) electronic data.

Special Recommendation VII

391. The only provision for wire transfers is in paragraph 106 of the non-mandatory Guidelines which require that in the case of electronic transfers, institutions should retain records of payments made with sufficient detail to enable them to establish:

- The identity of the remitting customer;
- Origin of the funds;
- As far as possible the identity of the ultimate recipient;
- The form of instruction and authority; and
- Destination of the funds

392. The above requirements do not include the originator's account number or unique reference number if no account number exists or address as required by SRVII. The only legislative provision applicable to wire transfer is the requirement in regulation 4 of the MLPR for CDD measures for one-off transactions above US$10,000. This is well above the level of US$1,000 as required by criterion VII.1

393. In interviews with financial institutions and money or value services remitters, wire transfers contained full details of the originator; in some instances, source of funds declarations were also required for incoming wire transfers to customers' accounts.

394. The examiners noted that neither Guidelines nor legislation outlined requirements for the obtaining of relevant details in relation to wire transfers, such as originator information, information to accompany the transfer and to require that all wire transfers are fully traceable within the recipient country. Additionally, the examiners noted that there is no requirement within the Guidelines or legislation to require financial institutions to make available full originator information to appropriate authorities within three business days of receiving a request to produce this information.

395. Paragraph 29A states that enhanced monitoring should be paid to transactions, such as wire transfers that do not contain complete originator information. This does not mandate a financial institution to not complete a transaction where all originator information has not been received, nor do the Guidelines outline that originator information and details that accompany the transaction should be maintained for a period of no less than 5 years.

396. There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Financial institutions confirmed to the examiners during interviews that there were no risk-based procedures for the identifying and handling of wire transfers that are not accompanied by complete originator information.

397. Since the requirements of SRVII are not mandated by legislation or guidelines, there are no measures in place to monitor compliance with the requirements of SRVII. In the interview with the ECCB, the Examiners noted that onsite inspections encompass a review of transactions, amongst other things; however, the scope of the onsite inspections did not encompass the provisions of Special Recommendation VII. In addition, the onsite inspection undertaken by GARFIN of a non-bank financial institution did not encompass the provisions of Special Recommendation VII.

398. The examiners noted in interviews with financial institutions and a money remitter operating in Grenada, as well as with GARFIN, that there is no monitoring of non-bank financial institutions to assess their compliance with the provisions of Special Recommendation VII. A similar situation applies to the ECCB and banking institutions.

399. Since there are no specific enforceable requirements for wire transfers, there are no sanctions for non-compliance.

3.5.2 Recommendations and Comments

400. The following is recommended;

Recommendation 10

- Amend legislation to require financial institutions to maintain records of account files and business correspondence for a period of at least five years after the completion of a business relationship.

Special Recommendation VII

- The authorities should institute enforceable measures in accordance with all the requirements of SRVII and establish a regime to effectively monitor the compliance of the financial institutions with said enforceable measures.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	**No legislation to require financial institutions to maintain records of account files and business correspondence for a period of at least five years after the completion of a business relationship.**
SR.VII	**NC**	**No requirement for ordering financial institutions to obtain and maintain full originator information for all wire transfers of US$1,000 and above** **No requirement for ordering financial institutions to include full originator information along with cross-border and domestic wire transfers** **No requirement for intermediary and beneficiary financial institutions in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the wire transfer** **No requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.**

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

401. Section 48(2) of POCA, 2003, section 15(1) of the MLPA and paragraph 17 of the Guidelines require financial institutions to pay special attention to all complex, unusual or large transactions which have no apparent economic or lawful purpose, whether completed or not, and to all unusual patterns of transactions, or to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose.

402. The Examiners were informed by financial institutions and the money service remitters that technological platforms were in place to detect unusual patterns of transactions. Persons interviewed outlined the steps taken to assess the reports generated (unusual transaction reports) and where it has been deemed necessary, suspicious transaction reports are generated and filed with the FIA. Additionally, the ECCB also advised the examiners that banks in Grenada that had been subject to onsite inspections (in or around 2002) were required to implement such systems to detect unusual patterns of transactions.

403. There is no requirement in legislation or Guidelines mandating financial institutions to examine as far as possible the background and purpose of large complex and unusual transactions or unusual patterns of transactions and to set forth their findings in writing and keep such findings available for competent authorities for at least five years.

404. The examiners noted that financial institutions were not consistent in how information generated from unusual transaction reports were maintained. In some cases, these reports and the analysis of them were not retained, and in other cases, the information was retained indefinitely.

Recommendation 21

405. Section 25A of the Guidelines requires institutions to pay special attention and increased monitoring to accounts sought by persons including company directors and beneficial owners from high risk countries, that is, countries identified by the FATF to have inadequate regimes to combat money laundering. Further, the Guidelines provide that from time to time, the authorities or management may determine that because a high incidence of money laundering is associated with persons from certain countries or regions, additional precautions are required to safeguard against use of accounts or other facilities by such persons, their immediate relatives, associates and representatives. The source of wealth and economic activities that generated the level of wealth should be substantiated. As such, the Guidelines provide that under these circumstances, it may be necessary to request a letter of reference in addition to other identification requirements, from a regulated bank, which is not from the countries or regions in question.

406. Paragraphs 162 to 166 of the Guidelines also specify certain countries and territories where regulated financial institutions are recognised and may be treated as institutions which adhere to an anti-money laundering regime that is at least equivalent to that of Grenada. Further, it is stated that the acceptance of business from a financial institution not from the list of specified countries or territories is not precluded, but an introduction from an institution in such a jurisdiction may not, without more verification, be treated as a reliable introduction. Also, it is indicated in the Guidelines that when seeking to identify recognised foreign regulated institutions, discretion should not be outweighed by too heavy a reliance on the list of specified countries or

territories. The particular circumstances of the case, the prevailing political and economic circumstances in any of the listed countries or territories, and the changing commercial environment, may all signal a need for increased vigilance and scrutiny before relying on the specified list. The above requirements in the Guidelines are not enforceable and therefore do not comply with FATF standards.

407. During interviews, the examiners noted that some of the financial institutions interviewed confirmed that they do not do business with persons who are not Grenadian or residents of Grenada. However, there was a general awareness among financial institutions that do business with foreign non-residents about countries that may have weaknesses within their AML / CFT systems, but no established measure appears to be extant within Grenada. As such, the examiners noted that the provisions within the above captioned paragraphs of the Guidelines are not adhered to.

408. There are no measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. The examiner noted from interviews that no such advisement has been issued. In addition, interviews with financial institutions indicated that there was little awareness of the need to give special attention to persons from or in countries which do not or insufficiently apply FATF Recommendations.

409. There is no requirement for transactions from high risk countries, as defined above, which have no apparent economic or visible lawful purpose to be examined to ascertain their background and purpose and for the written findings of such examinations to be available to assist competent authorities.

410. The competent authorities within Grenada have not addressed or sought to apply and advise the regulated community of counter-measures in relation to countries that do not apply or insufficiently apply FATF Recommendations.

3.6.2 Recommendations and Comments

411. The following is recommended;

Recommendation 11

- Guidance and legislation should be amended to require financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing.

- Guidance and legislation should be amended to require financial institutions to retain written findings from the review of complex, unusually large or unusual patterns of transactions for no less than five years.

Recommendation 21

- Mandatory requirements should be imposed on financial institutions to pay special attention, to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

- Effective measures should be put in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.

- Financial institutions should be required to examine transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations and make written findings of such available to assist competent authorities.

- Authorities in Grenada should be empowered to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**NC**	**No requirement for financial institutions to examine the background and purpose of large, complex and unusual transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing.** **No requirement to maintain written records from the findings of reviews of complex, unusually large or unusual patterns of transactions for competent authorities for at least five years**
R.21	**NC**	**Requirement for financial institutions to pay special attention, to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is not enforceable.** **No measures to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.** **No requirement for financial institutions to examine transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations and make written findings of such available to assist competent authorities.** **Authorities in Grenada are not able to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations**

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

3.7.1 Description and Analysis

Recommendation 13/Special Recommendation IV

412. Section 48(3) of POCA, 2003 places a statutory requirement on financial institutions to report suspicious transactions to the FIU. Specifically, section 48(3) states that upon suspicion that a "*transaction or activity could constitute or be related to money laundering or the proceeds of criminal conduct, a financial institution or person engaged in relevant business activity shall report the suspicious transactions to the Financial Intelligence Unit in a form specified in the Regulations, as soon as reasonably practicable, and in any event, within fourteen days of the date the transaction was deemed to be suspicious as relating to money laundering or the proceeds of criminal conduct.*"

413. Criminal conduct is defined in section 3 of POCA, 2003 to mean drug trafficking or any relevant offence. Drug trafficking offences as well as relevant offences are also defined in section 3 of POCA, 2003. A drug trafficking offence "*means an offence,*

a. *defined under section 18 of the Drug Abuse (Prevention and Control) Act, 1992 (importation, exportation, production and supply of a trafficable quantity of a controlled drug, possession with intent to supply or handling of controlled drugs and cultivation of cannabis);*

b. *under section 32 of the Drug Abuse (Prevention and Control) Act, (assisting in or inducing outside of Grenada commission of an offence punishable under a corresponding law); or*

c. *under section 43,44 or 45 of this Act (money laundering) which relates to the proceeds of drug trafficking;*

414. A relevant offence *"means,*

a) *any indictable offence or offence triable both summarily or on indictment in Grenada from which a person has benefited as defined in section 10(3) of this Act, other than a drug trafficking offence*

b) *any offence listed in schedule 2 of this Act*

c) *any act or omission which, had it occurred in Grenada, would have constituted an offence as defined in subsection (a) or subsection (b)*

415. Section 2 of the MLPA states that money laundering "*means*-

a. engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime; or

b. receiving, possessing, managing, investing, concealing, disguising, disposing of or brining into Grenada any property that is the proceeds of crime, knowing or believing same to be the proceeds of crime;"

416. The FATF standard requires that, at a minimum, the obligation to make a suspicious transaction report should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. The definitions of drug trafficking and relevant offence would appear to include any indictable offence or offence triable both summarily or on indictment in Grenada from which a person has benefited. These definitions cover all the FATF designated categories that have been criminalised in Grenada. However, as noted in section 2.1 of this report, certain designated categories of offences have not been criminalised and therefore will not be covered in the suspicious transaction reporting obligation. The missing designated offences are trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy. It should also be noted that the terrorist financing offence of providing or receiving money or other property in support of terrorist acts is not criminalized under the TA and therefore cannot be considered a predicate offence (see discussion in 2.2.).

417. As noted in section 2.4 of this report the number of SARs has declined significantly since 2006. Only a total of 44 SARs were submitted to the FIU for the years 2006 and 2007. Banks are the main reporting institutions and no DNFBPs have submitted any SARs to the FIU. These figures suggest that the reporting system is ineffective.

418. Section 12 of the TA outlines all persons to whom the Act applies i.e. any person who believes or suspects that another person is involved in terrorist financing. Section 13 (1) of the TA states,

"A person may disclose to the Financial Intelligence Unit,

a) a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property;
b) any matter on which the suspicion or belief is based."

419. The term "may" allows persons to whom the Act is applicable, to comply with the provisions set out on a discretionary basis. As such, the legislative provision does not meet the requirement for the mandatory reporting of the suspicion of terrorist financing. It is noted that section 12 (2) of the TA makes it an offence for a person not to disclose to the FIU as soon as reasonably practicable belief or suspicion that another person is involved in terrorist financing. This 'indirect reporting' requirement as defined by the FATF standards is also not acceptable

420. Section 7(1) of the TA defines terrorist property to mean, "(a) money or other property however acquired which is likely to be used for the purposes of committing terrorist acts (including any resources of a proscribed organization), (b) proceeds of the commission of terrorist acts, and (c) proceeds of acts carried out for the purposes of terrorist acts. This definition does not include use for terrorism or by terrorist organisation or those who finance terrorism.

421. The examiners noted that no suspicious transaction reports had been filed in relation to terrorist financing activities

Attempted transactions and those related to tax matters

422. There are no reporting limits on suspicious transactions in legislation or Guidelines. Sections 48 (2) and (3) of POCA 2003, would suggest that attempted complex, unusual or large transactions that are suspicious should be reported to the FIU. While section 48 (3) requires that all suspicious transactions be reported and thereby include attempted transactions, this requirement is not explicit. The examiners noted that there was no specific provision requiring that all suspicious transactions be reported regardless of the amount of the transaction.

423. The Examiners noted that financial institutions did not submit suspicious transaction reports for attempted transactions; in some cases, the financial institution may call the FIU to verbally alert them of the attempted transaction. In addition, the examiners also noted that financial institutions were not all aware of the requirement to report attempted transactions.

424. In some cases, financial institutions that were interviewed confirmed that they undertake an internal process to review, analyse and assess transactions that are unusual in comparison to the profile of the customer. Following this process, the compliance officer for these institutions would then proceed with the filing of a STR if a reasonable explanation does not allay the suspicion of the transaction. However, the institutions do not maintain details of the process and the reasons for why a transaction was not deemed as suspicious.

425. The examiners noted that there is no requirement to report suspicious transactions regardless of whether they are thought to involve tax matters.

Additional elements

426. Section 15 of the MLPA considers the proceeds of crime from scheduled offences to be money laundering activity which is required to be reported to the Supervisory Authority. Proceeds of crime means any property or benefit derived from the commission of a scheduled offence specified in the Second Schedule of the Act. .

427. The examiners noted that the Second Schedule of the MLPA provides that the following are offences;

"

1. *The commission in Grenada of any offence under the Drug Abuse (Prevention and Control) Act.*
2. *The commission in Grenada of any offence which is punishable with imprisonment for a term of five years or any greater punishment.*
3. *An act that –*

    (a) occurred outside of Grenada; and
    (b) would, if it had occurred in Grenada, have constituted an offence under the Drug Abuse (Prevention and Control) Act.

4. *An act that –*
   (a) occurred outside of Grenada; and
   (b) *would, if it had occurred in Grenada, have constituted an offence which is punishable with imprisonment for a term of five years or any greater punishment*."

Recommendation 14

428. Section 48 (4) of POCA, 2003 stipulates that when a suspicious transaction report is "*made in good faith, the financial institution or persons engaged in relevant business activities and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted from criminal, civil or administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or any legislative, regulatory or administrative provision, regardless of the result of the communication*."

429. Section 15(4) of the MLPA states that;

,

"*Where a report such as referred to in subsection (2) is made in good faith, a financial institution that makes such report and any employee, director, manager, secretary or other officer of such financial institution shall be exempted from any criminal, civil or administrative liability, as the case may be, for making such a report or otherwise complying with the provisions of this section, or for breach of any restriction on disclosure of information*."

430. The report referred to above in subsection (2) is a suspicious transaction report.

431. Section 8 of the FIUA states that;

a) *"No proceedings for breach of banking or professional confidentiality may be instituted against any person or against directors or employees of a financial institution who in good faith submit suspicious transaction or suspicious activity reports to the Financial Intelligence Unit in accordance with the Proceeds of Crime Act 2003.*

b) *No civil or criminal liability action may be brought nor any professional sanction may be taken against any person or against directors or employees of a financial institution who in good faith transmit information or submit reports to the Financial Intelligence Unit."*

432. While the above provisions provide protection for the reporting of suspicious transactions, other provisions establish protection for the reporting of information relevant to any offence. Section 52 of POCA, 1992 states that;

1) "*Where a financial institution has information about an account held with the institution and the institution 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 this Act or any regulations made thereunder,

the institution may give the information to a police officer or the Director of Public Prosecutions.

2) An action, suit or proceedings does not lie against

a) A financial institution, or

b) An officer, employee or agent of the institution acting in the course of the person's employment or agency

In relation to an action taken by the institution or person pursuant to subsection (1)"

433. Section 46(1) of POCA, 2003 states that;

"(1) Where a person in good faith discloses to a police officer-

a) his suspicion or belief that another person is engaged in money laundering, or

b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any criminal, civil or administrative liability."

434. As a result of the above, financial institutions and their officers are protected by law from criminal and civil liability for any breach or restrictions on the disclosure of information that is reported on the grounds of suspicion made in good faith to the FIU.

Tipping-off offence

435. Section 47 of the POCA, 2003 provides for a tipping off offence as follows:

"(1) A person is guilty of an offence if-

(a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering or the proceeds of criminal conduct; and

(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if-

a) he knows or suspects that a disclosure has been made to a police officer or to an appropriate person under section 44, 45 or 46; and

b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure."

436. The above provision establishes a tipping off offence with regard to money laundering investigations and disclosures made to a police officer or to an appropriate person under sections 44, 45 or 46 of POCA, 2003. However, the requirement for suspicious transaction reporting is in section 48 (3) and therefore is not covered by the tipping off offence provision.

437. With regard to suspicious transactions reporting in relation to terrorist financing, section 25 of the TA states that, *"Subsection (2) applies where a person knows or has reasonable cause to suspect that a police officer or the Financial Intelligence Unit is conducting or proposes to conduct a terrorist investigation.*

(2) The person commits an offence if he–

(a) discloses to another anything which is likely to prejudice the investigation, or

(b) interferes with material which is likely to be relevant to the investigation.

(3) Subsection (4) applies where a person knows or has reasonable cause to suspect that a disclosure has been or will be made under any of sections 13 to 14.

(4) The person commits an offence if he–

a. discloses to another anything which is likely to prejudice an investigation resulting from the disclosure under that section, or

b. interferes with material which is likely to be relevant to an investigation resulting from the disclosure under that section.

(5) It is a defence for a person charged with an offence under subsection (2) or (4) to prove on the balance of probability –

a) that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation, or

b) that he had a reasonable excuse for the disclosure or interference.

(6) Subsections (2) and (4) do not apply to a disclosure which is made by a barrister or solicitor-

(a) to his client or to his client's representative in connection with the provision of legal advice by the barrister or solicitor to the client and not with a view to furthering a criminal purpose, or

(b) to any person for the purpose of actual or contemplated legal proceedings and not with a view to furthering a criminal purpose.

(7) A person guilty of an offence under this section shall be liable–

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding five years, to a fine up to the statutory maximum or to both.

438. The disclosures under section 13 referred to above are suspicious transactions reports regarding terrorist property. In addition to the above section 6 of the MLPA states that;*" Any person who knows or has reason to believe or suspect that an investigation into money laundering is taking place or about to take place, and discloses any information likely to prejudice such investigation to another person, commits an offence."*

439. Based on the foregoing, the examiners noted that while disclosures about suspicious transactions reporting regarding money laundering to the FIU are not offences those concerning terrorist financing are punishable.

Additional element

440. Section 9 of the FIUA imposes a duty of confidentiality on the staff of the FIU as follows; *"Any person who obtains information in any form as a result of his connection with the Financial Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or other written law."*

Recommendation 25

Feedback and guidance related to SARs

441. The FIU is mandated by law to inform financial institutions and other business institutions of their obligations to take measures to prevent, detect and deter the commission of offences under POCA, 2003. The FIU provides adequate and appropriate feedback to financial institutions and DNFBPs in accordance with FATF best practice guidelines. This feedback includes acknowledgement of the receipt of SARs, closure or completion of a case. This is done on a case by case basis. The FIU also furnishes financial institutions and DNFBPs with information on current techniques, methods and trends relating to money laundering.

442. In most cases, financial institutions confirmed that the FIU acknowledges receipt of the filing of suspicious transaction reports, as well as confirmation of the outcome of investigations in some cases. The FIU has also provided confirmation to some reporting institutions when an investigation has been closed. However, one financial institution stated that it had not received any acknowledgement from the FIU for the filing of suspicious transaction reports.

Recommendation 19

443. The Guidelines issued by the Supervisory Authority stipulates that a Source of Funds Declaration in a form prescribed therein be completed for every transaction over EC$ 10,000, as

well as for initial deposits received at the commencement of a business relationship if there are doubts of the source of the funds being collected and/or deposited. Financial institutions have complied with this provision in their day-to-day operations, however, it does not appear that records of these declarations are kept in a computerised database. On this basis, and based on the comments received from competent authorities within Grenada at the time of the mutual evaluation visit, no consideration has been evidenced for the utility of implementing a system where financial institutions report all transactions in currency above the threshold of USD$ 10,000 to a centralised national agency with a computerised database.

Statistics

444. The FIU maintains statistics and has provided information on the number of SARs received and disseminated during the last four years as shown in section 2.5 of this report. As already noted, no reports are filed on domestic or foreign currency transactions above a certain threshold to a centralised national agency.

3.7.2 Recommendations and Comments

445. The following is recommended;

Recommendation 13

- The authorities should extend the range of predicate offences for ML to include all the FATF designated categories of offences by criminalising trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy and the terrorist financing offence of providing or receiving money or other property in support of terrorist acts.

- The TA should be amended to make the reporting of suspicious transactions relating to financing of terrorism mandatory and include funds used for terrorism or by terrorist organisation or those who finance terrorism

- All suspicious transactions, including attempted transactions should be legislatively required to be reported regardless of the amount of transaction

- The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters.

Recommendation 14

- The POCA, 2003 should be amended to extend the tipping off offence to include disclosure of the fact that a STR concerning money laundering is being reported or provided to the FIU.

Recommendation 19

- Competent authorities should consider the feasibility and utility of implementing a system where financial institutions report transactions in currency above a prescribed threshold to a centralised national authority.

Recommendation 25

- The FIU should provide financial institutions and DNFBPs with consistent feedback on filed suspicious transaction reports.

Special Recommendation IV

- The TA should be amended to make the reporting of suspicious transactions relating to financing of terrorism mandatory and include funds used for terrorism or by terrorist organisation or those who finance terrorism.

- All suspicious transactions, including attempted transactions should be legislatively required to be reported regardless of the amount of transaction

- The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters.

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

	Rating	Summary of factors underlying rating
R.13	**NC**	**The obligation to submit suspicious transaction reports does not apply to the proceeds of all FATF predicate offences.** **Requirement to report STRs relating to the financing of terrorism is discretionary and does not include funds used for terrorism or by terrorist organisations or those who finance terrorism** **No requirement to report all suspicious transactions including attempted transactions regardless of the amount of the transaction.** **No requirement to report suspicious transactions regardless of whether they are thought, among other things to involve tax matters.** **The reporting of suspicious transactions is ineffective.**
R.14	**PC**	**Tipping off offence does not include disclosure of the fact that a STR concerning money laundering is being reported or provided to the FIU**
R.19	**NC**	**The authorities have not considered the feasibility and utility of**

		implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency.
R.25	**PC**	**The FIU has not provided consistent feedback on suspicious transaction reports filed by financial institutions.**
SR.IV	**NC**	**Requirement to report STRs relating to the financing of terrorism is discretionary and does not include funds used for terrorism or by terrorist organisations or those who finance terrorism** **No requirement to report all suspicious transactions including attempted transactions regardless of the amount of the transaction.** **No requirement to report suspicious transactions regardless of whether they are thought, among other things to involve tax matters.**

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

446. Paragraph 16 of the Guidelines provides specific requirements for financial institutions to develop programmes against money laundering including employee training. The Guidelines provide that a financial institution has a duty of vigilance which consists mainly of verification, recognition of suspicious transactions, record keeping, reporting of suspicious transactions and training. Further the Guidelines provide that institutions perform their duty of vigilance by having in place systems, which enable them to:

a) Determine or receive confirmation of the true identity of customers requesting their services;

b) Recognise and report suspicious transactions to the Supervisory Authority; in this respect any person who voluntarily discloses information to the Supervisory Authority arising out of a suspicion or belief that any money or other property represents the proceeds of crime is protected by law from being in breach of the duty of confidentiality;

c) keep records of all business transactions for the prescribed period of 7 years;

d) Train key staff;

e) Liaise closely with the Supervisory Authority on matters concerning vigilance policy and systems; and

f) Ensure that internal auditing and compliance departments regularly monitor the implementation and operation of vigilance systems.

447. The Guidelines specify that an institution should not enter into a business relationship or carry out a significant one-off transaction unless it has fully implemented the above systems.

448. Onsite inspections conducted by ECCB focus heavily on transaction testing during onsite inspections, versus a review of financial institutions' internal procedures, policies and controls that are aimed at mitigating the risk of money laundering and the financing of terrorist activities. Further, the ECSRC has confirmed that anti-money laundering and counter terrorist financing measures are not its primary responsibility. The assessment team was advised that the ECSRC, in the conduct of onsite inspections, reviews policies and procedures to ensure that they cover the requirements of the law as well as ensure that a financial institution has adequate staff. However, the ECSRC has not conducted an onsite inspection for the one institution domiciled in Grenada that would fall under its remit.

449. In addition, neither the FIU nor the Supervisory Authority, have conducted reviews of financial institutions' internal procedures and measures to mitigate the occurrence of money laundering and terrorist financing, nor have they conducted onsite inspections of financial institutions.

450. Financial institutions interviewed confirmed, in some cases, that internal procedures and other controls to mitigate the risk of money laundering and the financing of terrorism were extant and enforced in some key areas, such as record retention. The assessment team noted shortcomings within some financial institutions, which include: (i) some financial institutions not fully aware of their reporting obligations for unusual and suspicious transactions; (ii) insufficient training of staff in detecting money laundering and terrorist financing; and (iii) deficient CDD requirements.

Compliance officers and access to records

451. Part III of the Guidelines, and specifically paragraph 25 provides that financial institutions, "*should appoint a Reporting Officer as the point of contact with the Financial Intelligence Unit 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 these Guidelines*."

452. The Examiners noted that financial institutions had appointed compliance officers with sufficient autonomy and seniority to oversee the compliance functions. However, within two institutions, compliance officers also held other job designations, and in one case, carried out functions that the assessment team deemed as a conflict of interest to the role of a compliance officer.

453. There is no requirement for the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information in the Guidelines. However given the size of financial institutions in Grenada it is normal that compliance officers and other appropriate staff have access to customer information. Interviewed financial institutions confirmed that compliance officers had appropriate levels of access to client records and transaction records for the purpose of carrying out their functions.

Independent audit

454. Part III of the Guidelines, and specifically paragraph 19(g) provides that financial institutions, "*perform their duty of vigilance by having in place systems… that ensure that internal auditing and compliance departments regularly monitor the implementation and*

operation of vigilance systems". However, this provision is not adhered to by all financial institutions interviewed by the Examiners.

455. The Examiners noted that some financial institutions did not have an internal audit function, while others did not have an independent internal audit function. In some cases, it was noted that affiliated financial institutions (in cases where the financial institution is a part of a group) would commit to performing internal audits of associated financial institutions to test compliance against internal procedures, policies and controls.

Employee training and screening

456. Paragraph 117 of the Guidelines sets out guidance for training programmes to be provided to key staff; the duties of vigilance of key staff, their legal responsibilities, and the content of training to include details of: (i) the company's manual; (ii) a description of the nature and process of 'laundering'; (iii) an explanation of the legal obligations contained in relevant legislation and the Guidelines and other anti-money laundering and terrorist financing requirements. This paragraph also requires refresher training to be undertaken to ensure that key staff remain current with their responsibilities. The examiners noted, however, that there was no stipulated timeframe in which refresher training should take place.

457. In interviews conducted, the examiners noted that financial institutions have had varied application of AML / CFT training of their staff; some financial institutions had provided in-house training to key staff about AML / CFT provisions, as well as training facilitated by the Supervisory Authority and the FIU in October, 2008.

458. Relevant supervisory authorities also conduct review of the AML / CFT training undertaken by financial institutions, as a component of the onsite inspections conducted, and particularly, the ECCB. Non-bank financial institutions have not been subjected to onsite inspections that include a review of AML / CFT procedures within the last 4 years (with the exception of one credit union with whom an inspection was conducted within 12 months of the visit of the mutual evaluation team).

459. In interviews with some non-bank financial institutions, the examiners noted that AML / CFT training had not been undertaken. In one interview with a financial institution that provides insurance services, the examiners were advised that the institution was not aware that there was a need to apply AML / CFT measures immediately. As such, AML / CFT training had not been undertaken by persons within the institutions. In other interviews, the examiners noted that the sessions conducted by the Supervisory Authority and FIU in August, 2008 and October, 2008 were the sole AML / CFT training attended by some persons.

460. Section 133 of the Guidelines requires financial institutions to adopt proper screening procedures to ensure that only honest and law abiding persons are employed. Institutions should also monitor staff to ensure that no staff compromises take place.

461. It was noted that interviewed financial institutions have minimum academic qualifications and perform background checks or checks of references for persons seeking to be

employed within the institutions. Additionally, employees within some financial institutions are assessed on an ongoing basis.

Additional elements

462. Within Appendix L of the Guidelines that specifically relates to credit unions, the examiners noted that paragraph 9 states, in part, that, " *The Compliance officer will report directly to the board of directors of the Credit Union and staff are encouraged to discuss anti money laundering issues with him/ her*." However, as this provision only relates to credit unions, there was no similar provision for all other financial institutions to ensure that a compliance officer is able to act independently and to report to senior management or the Board of Directors.

463. The Examiners noted that the compliance officers within financial institutions interviewed had an appropriate level of access to the Board of Directors or other superior body. In addition, the Examiners noted that the functions of the Compliance Officer were not subject to influence by the management of the financial institution.

Recommendation 22

464. Paragraph 6 of the Guidelines provides specific requirements with regard to foreign branches or subsidiaries of groups headquartered in Grenada. The Guidelines provide that where a group whose headquarters are in Grenada operates branches or controls subsidiaries in another jurisdiction, it should ensure that:

a) such branches or subsidiaries observe these Guidelines or adhere to local standards if those are at least equivalent;

b) such branches and subsidiaries are informed as to current group policy; and

c) each such branch or subsidiary informs itself as to its own local reporting point, equivalent to the Supervisory Authority in Grenada and that it is conversant with the procedures for disclosure equivalent to those of the Guidelines.

465. The examiners noted that the financial institutions operating in Grenada were either indigenous with no branches in other countries, or part of a larger regional or international group of companies. In the instances where financial institutions were part of a larger group, the examiners noted that the group had stringent AML policies and internal audit functions; regular reviews were undertaken by the group of the affiliate or branch operations within Grenada. However, it was unclear of the level of review of, or implementation of CFT policies. The examiners were informed by the financial institutions that are part of a group about reviews of the Office of Foreign Assets Control (OFAC) lists and other circulars from head offices.

466. There is no requirement for financial institutions to pay particular attention to foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendation to ensure they observe measures consistent with home country requirements and the FATF Recommendations. There is no requirement for branches and subsidiaries in host countries to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ.

467. The legislation and Guidelines do not require 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 (i.e. host country) laws, regulations or other measures.

Additional elements

468. There is no requirement or guidance that specifically requires financial institutions subject to Core Principles to apply consistent CDD measures at the group level.

3.8.2 Recommendations and Comments

469. The requirements regarding Recommendation 15 and 22 that are stipulated in the Guidelines are not enforceable. Therefore these requirements do not comply with FATF standards. As such the following is recommended:

Recommendation 15

- All financial institutions should be required to establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism.

- The requirement for financial institutions to develop appropriate compliance management arrangements which include at a minimum the designation of an AML/CFT compliance officer at management level should be enforceable.

- The requirement for AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, etc should be enforceable.

- Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with the procedures, policies and controls.

- All financial institutions should be required to train all staff on an ongoing and regular basis to ensure that employees are aware of money laundering and terrorist financing mechanisms, as well as the requirements of anti-money laundering and counter-terrorist financing laws and their obligations under these laws.

- The requirement for financial institution to put in place screening procedures to ensure high standards when hiring employees should be enforceable.

Recommendation 22

- The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe anti-money laundering and counter terrorist financing measures consistent with Grenada should be enforceable.

- Financial institutions should be required to pay particular attention to foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendation to ensure they observe measures consistent with home country requirements and the FATF Recommendations.

- Branches and subsidiaries of financial institutions in host countries should be required to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ.

- Financial institutions should be required to inform their home supervisor when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering and counter-terrorist financing measures because it is prohibited by the host country's laws, regulations or other measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**NC**	**No requirement for financial institutions to establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism.** **The requirement for financial institutions to develop appropriate compliance management arrangements which include at a minimum the designation of an AML/CFT compliance officer at management level is not enforceable.** **The requirement for AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, etc is not enforceable.** **No requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with the procedures, policies and controls.** **No requirement for financial institutions to train all staff on an ongoing and regular basis to ensure that employees are aware of money laundering and terrorist financing mechanisms, as well as the requirements of anti-money laundering and counter-terrorist financing laws and their obligations under these laws.** **The requirement for financial institution to put in place screening procedures to ensure high standards when hiring employees is not enforceable.**
R.22	**NC**	**The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe anti-money laundering and counter terrorist financing measures consistent with Grenada is not enforceable.** **No requirement for financial institutions to pay particular attention to**

		foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendation to ensure they observe measures consistent with home country requirements and the FATF Recommendations. **No requirement for branches and subsidiaries of financial institutions in host countries to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ.** **No requirement for financial institutions to inform their home supervisor when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering and counter-terrorist financing measures because it is prohibited by the host country's laws, regulations or other measures.**

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

470. Based on the assessment of the examiners, the Offshore Banking Act, 2003 (OBA) does not prohibit shell banks. Sections 6 through 19 of the OBA provides for the requirements of licensing offshore banks.

471. Section 6 states that, "*No person shall engage in offshore banking and or trust business from within Grenada, whether such business is carried on within or outside Grenada, unless such a person is a company registered or incorporated in Grenada and has been granted a licence under this Act for the purpose.*" Section 7 makes it a requirement for any person seeking to operate as an offshore bank or trust business from within Grenada, to apply to the Minister. Section 8(5) provides that a body corporate is eligible for licensing if it has at least two natural persons as directors, one of which must reside in Grenada. Section 9 sets out the details that should be contained in an application for licensing under the OBA. Section 10 has specific provisions for applications for licences from foreign banks. Along with all the application requirements of section 9 of the OBA, a foreign bank must also submit a certificate from the primary banking supervisor in its home country stating that there is no objection to the foreign bank's application to conduct banking business in Grenada and also provide satisfactory evidence to the ECCB that it is subject to comprehensive supervision on a consolidated basis by the appropriate authorities.

472. Section 15 stipulates that no licence shall be granted unless a number of provisions are satisfied, including the establishment of a principal office in Grenada.

473. The examiners also noted that section 3 of the BA outlines the requirements for licences to carry on banking business. Under this Act, the Minister is responsible for granting a licence

and the application requirements are outlined in section 5. Section 8 states that, "*any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in Grenada at the place of business designated in the licence and at such other place as the Minister may after consultation with the Central Bank, in writing authorise."*

474. Based on the foregoing observations and the legislative requirements for licensing, there is effectively no prohibition on the establishment and licensing of a shell bank. The examiners noted that there was no requirement for an entity licensed under the OBA to have its mind and management within Grenada. The requirement to have a resident director, office and/or authorised agent does not constitute the presence of meaningful mind and management within Grenada.[3]

475. The examiners noted that there is no legislative provision applicable to financial institutions to prevent them from entering into or continuing correspondent relationships with shell banks.

476. There are no provisions that address the relationship between shell banks and financial institutions. On this basis, the examiners determined that there is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

477. The following is recommended;

- Legislative amendments should be effected to prohibit the establishment and licensing of a shell bank. The amendment should also require an entity licensed under the OBA to have its mind and management within Grenada.

- Amend legislative provisions to prevent financial institutions from entering into or continuing correspondent relationships with shell banks.

- Amend legislation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**NC**	**No provision to prevent the establishment of a shell bank.** **No provision applicable to financial institutions to prevent them from**

1. [3] Reference, Basel Committee on Banking Supervision - Working Group on Cross-border Banking (Shell banks and booking offices).

		entering into or continuing correspondent relationships with shell banks. **No requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.**

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Recommendation 23

Authorities' roles and duties

478. All financial institutions are subject to POCA, 1992 and 2003, the MLPA, and the Guidelines. The competent authorities are the FIU and with regard to the core principles the ECCB, GARFIN and the ECSRC. All non bank financial institutions fall under GARFIN including money transmission companies. Section 11 of the MLPA constitutes the Supervisory Authority with the responsibility for the supervision of financial institutions in accordance with the provisions of the Act. Section 50 of POCA, 2003 establishes the Supervisory Authority with the specific responsibilities of advising the Minister of Finance about detection and prevention of ML in Grenada, Grenada's participation in the international effort against ML and issuing guidelines for compliance with the Act and regulations. Pursuant to section 50 of POCA, 2003 the Supervisory Authority has issued the Guidelines.

479. While all financial institutions are subject to both POCA 1992 and 2003 and the MLPA 1999, contradictions were noted in the statutes as regards the role of the Supervisory Authority. For example under the MLPA 1999, the Supervisory Authority was given such functions and powers as receiving reports issued by financial institutions, entering the premises of the financial institution to inspect business transaction records and generally a more hands-on and direct involvement in the supervision of financial institutions. Under the POCA 2003, the Supervisory Authority was re-established in a more advisory capacity and to issue guidance.

480. The Supervisory Authority is aware that both the MLPA 1999 and POCA 2003 remain in force. However in discussions with them, it was admitted that while the MLPA has not been rescinded, the mandate being carried out by the Committee is that outlined in POCA 2003. There is no system or framework in place to gauge the level of implementation by institutions or assist the Supervisory Authority in ensuring that financial institutions are complying with the anti-money laundering core principles.

481. While the activities of DNFBP's have for some time been covered by the statutes and the Guidelines and would require that suspicious transactions be reported, DNFBP's have not

commenced reporting to the FIU and neither has any body been established to oversee them or carry out AML/CFT compliance monitoring.

482. While the Supervisory Authority has been given the overarching responsibility for combating and ensuring money laundering compliance, the discharge of this responsibility can best be achieved through a direct relationship/ contact with regulatory authorities such as the ECCB, GARFIN and the ECSRC.

483. The ECCB is the regulatory authority charged with the on and off-site supervision of banks in Grenada. The Supervisory Authority does not receive AML/CFT reports from the ECCB. Instead the ECCB advises Grenada's Ministry of Finance (MOF) on any concerns it may have and this information may be passed on to the Supervisory Authority via the Permanent Secretary in the MOF, who is a member of the Supervisory Authority.

484. The ECSRC, is an independent autonomous regulatory body charged to promote the development and regulation of the regional securities market, licence persons engaged in securities business and monitor and supervise such business. The ECSRC may delegate its duties and in this regard much of its functions are carried out by the ECCB. The ECSRC does not directly or through the ECCB, make reports to the Supervisory Authority.

485. The GARFIN, established in March 2008, is the entity charged with the regulation of the non-bank financial sector. The CEO of GARFIN sits on the Supervisory Authority and makes reports to this Authority. Additionally, the Chairman of the Supervisory Authority sits on GARFIN's Board of Directors, hence the nexus between the two bodies is maintained.

486. Being new, GARFIN has only conducted limited scope reviews on three small credit unions and a full scope inspection on a larger credit union. However GARFIN's examination focus to date has been on compliance and less so on AML/CFT. The GARFIN Act does not have requirements for licensees to comply with AML/CFT laws. GARFIN did however receive assistance from the FIU to conduct AML/CFT examinations of the large credit union.

487. The FIU receives SARs reports, where necessary, from the banking sector, credit unions, and money transmission businesses. The FIU submits reports to the Supervisory Authority however these are coded and sanitized before being sent. The Supervisory Authority is nonetheless made aware of emerging typologies. The Supervisory Authority also receives updates on operational activities and training.

488. Based on the foregoing it is seen that the Supervisory Authority's ability to both ensure the combating and guarantee adequate compliance by financial institution with anti-money laundering core principles is stymied by the factors outlined above. Note also that the Supervisory Authority has no sanction powers to ensure compliance.

Recommendation 30

Structure, funding, staffing and other resources

489. The Supervisory Authority established under the POCA, 2003, comprises of such members as stated in section 50(2) and any other person appointed by the Minister of Finance and is staffed with seven (7) members and any other person the Minister appoints. It is structured with heads and senior persons representing pertinent entities from the Ministry of Finance, Public Prosecutions, National Security and Law Enforcement. GARFIN was established by Act No.1 of 2008 and is responsible for administering all the legislation relating to non bank financial

institutions and is staffed with fifteen (15) persons. The ECCB is responsible for supervision of commercial banks. The ECSRC is responsible the supervision of securities business.

ECCB

490. The ECCB was established in 1983 as the Monetary Authority or Central Bank for a group of eight island economies, including Grenada. The ECCB has a Board of Directors which is responsible for policy and general administration of the Bank while the Governor is responsible for the day-to-day management and operations of the Bank. The Board comprises the Governor, Deputy Governor and one Director appointed by participating Governments. The Governor functions as Chairman of the Board. However the governing body of the ECCB is the Monetary Council. It is the highest decision-making authority of the Bank. It is comprised of a Minister appointed by each Government of the participating countries. Chairmanship is rotated among the members on an annual basis. The function of the Council is to provide directives and guidelines on matters of monetary and credit policy.

491. Part of the ECCB's mandate is to promote a sound financial structure and integrity in the financial system and this it does by conducting safety and soundness examinations. The Grenada Banking Act of 2005 gives the ECCB the powers to regulate banking business in that territory. Advisedly, the ECCB is not named as the competent authority in the BA, however it has assumed this function under its safety and soundness role. The number of staff in the Bank Supervision Department of the ECCB is eighteen (18).

492. A person/institution wishing to undertake banking business must first apply in writing to the Minister of Finance (Minister) and submit along with the application, the requisite documents and information. The Minister then requests the ECCB to review the documents, the financial condition, capital structure, earnings prospects, fitness and probity of proposed shareholders, directors and senior management, and whether the structures are transparent and/or will hinder effective supervision of the financial institution. Note that the ECCB also drills downs to natural persons in applying the fit and proper (F&P) criteria and any changes in shareholders are also subject to F&P checks. Following its due diligence exercise, the ECCB makes its recommendation to the Minister and on that basis the applicant will be granted/refused the banking licence.

493. There are six (6) licensees in Grenada – five (5) commercial banks and one (1) non-bank financial institution. The total asset size of the Grenadian commercial banking system was Eastern Caribbean $2.7bn as at 30 September 2008.

494. ECCB's modus operandi is to carry out risk based examinations based on the findings and signals from the off-site review. Advisedly, its inspection cycle is every twelve (12) months for institutions of concern (in practice, this has not been the case).

495. Advisedly, the number of full scope examinations conducted in Grenada in the last four years is two (2). Four (4) AML/CFT examinations were advisedly conducted in the last four years. The nature of the deficiencies found in the aforesaid examinations related to corporate governance and risk management, breaches of the BA and the absence of an automated system to detect the structuring of transactions. The scope of the AML review included:

- Customer Due Diligence/KYC
- Review of policies and procedures to see that they capture local laws plus the 40 + 9 recommendations
- Assessment of staff training
- Adherence to reporting requirements

- Adherence to record keeping requirements
- Transaction testing
- Conducting interviews with staff; and
- Reviewing monetary instruments such as wire transfers

496. The type of enforcement action applied by the ECCB on offending licensees was a Letter of Commitment.

497. Note that fixed penalties are stated in the BA but these are for non-submission/ late submission of returns/information requested by the ECCB.

498. The ECCB has signed a MOU with GARFIN regarding the sharing of information. All information sharing is done under a MOU and has to be on a reciprocal basis.

499. The ECCB issued Anti Money Laundering Guidance Notes for licensed financial institutions it supervises in May 1995. It also issued guidelines to external auditors which expanded the scope of the audit to include AML. The ECCB approves the auditor and financial institutions are required to submit to ECCB, their letters of engagement. The auditors are required to look at internal controls, risk management practices and any other thing the ECCB includes.

ECSRC

500. The ECSRC is the regulatory body for the Eastern Caribbean Securities Market, which facilitates dealing in securities in eight territories in the Eastern Caribbean. The highest decision making authority for the Commission is the Monetary Council, which is a monetary policy body comprising the Ministers of Finance of each participating government. It has the authority to appoint and remove member/members of the Commission.

501. The ECSRC is an independent and autonomous regulatory body established under the SA to:

- License any person engaged in securities business and to monitor and supervise the conduct of such business by a licensee;
- Promote the highest standards of professional and other activities within the securities market in order to improve investor protection;
- Maintain effective compliance and enforcement programmes supported by adequate statutory powers;
- Promote the growth and development of the capital markets.

502. The main duties of the ECSRC are to license, supervise and regulate the activities of securities exchanges, clearing agencies, securities depositories, securities registries, self regulatory authorities and collective investment schemes. One company is licensed as a broker/dealer under the SA. Presently, there are three Grenadian companies listed on the ECSRC.

503. The ECSRC may delegate any of its duties and in this regard the ECCB provides staff to undertake the technical work of the Commission.

504. There is no reporting relationship between the ECSRC and the Supervisory Authority.

GARFIN

505. GARFIN (or the Authority) was established in March 2008 for the purpose of:

- Maintaining public confidence in the financial system operating in Grenada;
- Promoting public understanding and awareness of the financial system operating in Grenada;
- Securing protection for consumers.

506. The Authority is responsible for the administration of the GARFIN Act as well as the following:

1. Building Societies Act
2. Company Management Act, 1996
3. Co-operative Societies Act, 1996
4. Friendly Societies Act
5. Insurance Act
6. International Betting Act, 1998
7. International Companies Act
8. International Insurance Act, 1996
9. International Trusts Act, 1996
10. Offshore Banking Act, 2003
11. Grenada Development Bank Act

507. GARFIN is the regulator for the non-bank financial system and has replaced the Grenada International Financial Services Authority, whose assets and liabilities were transferred to and vested in GARFIN. Although there is no legislation for money services as yet, the GARFIN Act gives GARFIN the authority to regulate the money services industry. Accordingly, GARFIN has authority to approve the issuance of licences (including conditional and limited licenses) to carry out money services business and may amend or revoke such licences.

508. GARFIN is headed by a Board of Directors comprising seven (7) members from whom the Minister of Finance will designate a Chairman and Deputy Chairman. The Minister of Finance may also revoke the designations.

509. The Authority is run by an Executive Director, approved by the Minister of Finance, who is an employee of the Authority and an ex-officio member of the Board. The expenses of GARFIN are paid out of money appropriated by Parliament and money collected as fees. GARFIN has three functional departments, namely:

1. Insurance Services Supervision
2. International Financial Services Supervision
3. Non-bank Credit and Money Services Supervision

510. Total staff complement of GARFIN is fifteen (15) and there currently exists a vacancy for the Head of Insurance. There are eight (8) examiners to carry out on and off site supervision of active licensees. There are also 73 IBCs registered via 13 registered agents. Six employees have been exposed to courses in AML/CFT.

511. Of the supervised population, 15 credit unions send in monthly balance sheet and profit and loss statements to GARFIN as well as information on loan delinquency. Insurance companies report quarterly, submitting balance sheets, profit and loss statements and data relating to claims and investments. Building Societies are not currently reporting as the returns are in the

draft stage awaiting feedback. Similarly, neither the money service business nor the betting company is reporting to GARFIN.

512. Since its inception, GARFIN has conducted focussed reviews of three (3) small credit unions and a full scope inspection of a larger credit union. The reviews largely looked at compliance with the governing laws. The FIU assisted in the review of the larger credit union and its focus was on AML/CFT.

513. As regards GARFIN's sanction powers, these come from each of the eleven (11) pieces of legislation for which it has oversight. As noted before, The GARFIN Act allows the Authority the power to grant or revoke a licence and monitor and inspect money services businesses. However, the only administrative penalties that GARFIN can apply on its own are fees and penalty for late filing of returns. It therefore has to move under the various other ACTS and the Proceeds of Crime Act. The GARFIN Act has no ladder of enforcement (e.g. order to cease and desist) and the sanctions under the various legislations are not thought to be dissuasive enough.

514. As regards market entry, the GARFIN Act only addresses these requirements from the standpoint of money service businesses.

515. From all indications the aforesaid regulatory entities are independent and free from undue influence or interference. There has been no communicated issue re inadequacy of staffing or lack of access to technical and other resources to fully and effectively perform their functions.

516. Supervisors maintain high professional standards since they represent senior positions within highly important entities. The personnel within the ECCB once employed sign a code of secrecy. The GARFIN Act section 32(1) demands confidentiality on the part of its directors, officers, employees, agents or advisors.

517. The GARFIN head is appointed by the Minister of Finance upon the recommendation of the Board of Directors. A sub-committee of GARFIN's Board conducts the interviewing and hiring of its other staff. Factors such as qualifications and experience are taken into account in the process.

518. As regards ECCB, recruitment of staff for Bank Supervision is done by the ECCB's Human Resource Department. Due diligence checks are carried out on the information provided by prospective staff. An interview is part of the process and prospective staff must possess at least a 1st degree in accounting, finance or a related discipline.

519. Supervisors undergo continuous in house and other external training. The Bank Supervision staff of the ECCB was exposed to regional AML/CFT training over the last four years. This training covered varied aspects of AML/CFT related to the financial sector.

520. As regards GARFIN, one officer advisedly did an Examiner Course as well as a Compliance Course. Four other individuals did 2 day courses in AML

Recommendation 29

Authorities and Powers

521. The BA and the POCA, 2003, provide power to conduct inspections and demand information from financial institutions. The GARFIN Act, 2008 also provides authority to demand information.

522. As regards the ECSRC, under section 135 of the SA, the Commission may from time to time inspect the records and documents of the securities business to ascertain compliance with the Act and the terms and conditions of the licence. The Commission can appoint an "authorised person" to exercise the powers of the Commission under this section. The authorised person may demand the production of records or other documents and may if necessary take possession of such records. There is no evidence of a requirement under the ECSRC Act to ensure compliance of securities companies with the AML/CFT provisions of the FATF.

523. Importantly, while the power exists in the various laws to conduct examinations and require information from financial institutions, it was found that the frequency of such examinations is a cause for concern.

524. The BA allows the ECCB to examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgement such examination is necessary or expedient in order to determine that such financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business. The Act further provides that a licensed financial institution shall produce for inspection by any examiner appointed by the ECCB at such time as the examiner specifies all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purposes of the Act. The failure of the institution or affiliate to provide the requested information or the provision of false information is an offence punishable by a fine. Under the GARFIN Act, 2008 (section 27) the Authority has the power to demand and be provided with such information at such time and in such form as it considers necessary in the exercise of its powers. Additionally the MLPA gives the Supervisory Authority the power to conduct on-site inspections of any financial institution.

525. GARFIN and ECSRC under their governing statutes have the power to compel access to all records. There is no need to require a Court Order.

ECCB

526. Licensees under the BA who fail to pay licence fees can be fined up to $10,000 after conviction. Licensees who fail to make disclosure or provide access to its books and records are liable to a fee not exceeding $50,000 upon conviction. As regards engaging in unsafe and unsound practices and violating laws, regulations or guidelines, the ECCB may issue a written warning, institute a program of remedial action, issue a cease and desist order or issue directions. The ECCB may recommend that the Minister of Finance restrict/vary or revoke the licence of the institution doing banking business.

GARFIN

527. A penalty may be applied to persons who file or return information late under the GARFIN Act. As already mentioned, The GARFIN Act has no ladder of enforcement (e.g. order to cease and desist) and the sanctions under the various legislations are not thought to be

dissuasive enough. Persons engaged in money service business without a licence from the Authority or fail to abide by guidelines for money service businesses are guilty of an offence and liable to be fined or imprisoned.

ECSRC

528. Under the SA, the ECSRC may establish a Disciplinary Committee which exercises the sanctions it deem appropriate in the circumstances. The Disciplinary Committee may:

- Issue a private warning or reprimand;
- Issue notice of public censure;
- Issue a cease and desist order
- Issue an order debarring a licensee from carrying on securities business
- Impose fines

529. The aforementioned Acts have no specific sanctions or enforcement powers for failure to comply with AML/CFT recommendations. The entities are however captured in the POCA. The Guidelines issued by the Supervisory Authority also cover the entities, but the Guidelines are not enforceable.

Recommendation 17

Sanctions

530. Section 49 of POCA, 2003 provides sanctions for the range of money laundering offences under the Act including the following:

Section 43 - concealing or transferring proceeds of criminal conduct

Section 44 - assisting another to retain proceeds of criminal conduct

Section 45 – acquisition, possession or use of proceeds of criminal conduct

Section 46 – disclosure of knowledge or suspicion of money laundering

Section 47 – tipping off and

Section 48 – reporting of suspicious transactions

531. Sections 5, 6 and 30 of the MLPA and sections 43 and 55 of POCA, 2003 impose sanctions on natural and legal persons who breach these Acts. A person guilty of an offence under POCA is liable upon conviction to:

- Imprisonment for a term not exceeding five years or a fine not exceeding $500,000, or both.
- On indictment to imprisonment not exceeding ten years or an unlimited fine, or both.

532. The sanctions are considered proportionate and dissuasive.

533. Under section 15 of the MLPA 1999, the Court has the power to apply sanctions. Advisedly, 99.5% of drug cases and 100% of AML cases are dealt with summarily, hence there is no need to take the matter to the high court. These cases are handled at the magistrate court level with the assistance of the police. The DPP does not need to get involved. If a complicated case comes up, especially if there is a need to freeze assets, the DPP will get involved.

534. Section 59 of the POCA, 2003, extends sanctions for breaches of the law by a company to its directors and officers. Section 15(5) of the MLPA also imposes sanctions on directors and officers for breaches by the company.

535 Once there is a criminal breach of the legislation and the person is found guilty then it is the Court that declares the punishment. Under the MLPA the Court may impose a fine of $250,000 on summary conviction and in addition the Court may revoke the license of the institution. The BA (section 12) also provides for sanctions.

536 As indicated above, the main sanctions available for AML/CFT deficiencies are criminal and are set out in the MLPA and POCA. 2003. The only supervisory authority which is able to impose enforcement actions for AML/CFT breaches is the ECCB under the BA. Neither GARFIN nor the ECSRC has similar powers that are applicable for AML/CFT breaches.

Recommendation 23

Market entry

537. All financial institutions are regulated and supervised under the BA, the GARFIN Act 2008 and the SA.

538. In accessing an application for an institution to be licensed under the BA (section 26) or for a shareholder to gain control of 20 per cent of the voting rights (section 9) of a licensed financial institution, due diligence checks are performed to establish that the individuals affiliated with the institution whether as a significant shareholder, director or senior management are fit and proper persons. In determining whether a person is fit and proper consideration will be given to:

- That person's probity, competence and soundness of judgement for fulfilling the responsibilities of that position;
- The diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position; and
- Whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by that person holding that position.

539. Consideration is also given to the person's involvement in fraud and other forms of impropriety as stated within the BA. The OBA provides that the Minister shall not approve a person to be a director unless he is satisfied that the person is fit and proper to hold such office. See section 36(2).

540. While there is a requirement that the ECSRC be notified about changes in Directors and substantial shareholders, there is no indication in the law that fitness and probity checks on directors, shareholders, management of licensees, is a requirement.

541. Similarly, the GARFIN Act appears silent on the conduct of "fit and proper" tests for licensees. However the personal questionnaire applicable to the grant of a licence for a money services business does require detailed information to conduct fit and proper testing.

542. All money transmission entities are required to be licensed under section 17 of the GARFIN Act and have been so licensed. Further, while the ECCB has regulatory oversight of licensed financial institutions, the Minister of Finance through the Supervisory Authority has specific oversight responsibility for anti-money laundering compliance. Also, GARFIN regulates all non banks financial institutions.

543. Apart from the money services business, GARFIN is responsible for licensing entities falling under the following Acts:

1. Building Societies Act
2. Company Management Act
3. Co-operative Societies Act
4. Friendly Societies Act
5. Insurance Act
6. International Betting Act
7. International Companies Act
8. International Insurance Act
9. International Trusts Act
10. Offshore Banking Act
11. Grenada Development Bank Act

544. Before a money services business can be licensed and registered, the following information, at minimum, must be received:

- Name and address of principal office and all other offices from which the business will be conducted;
- Name and address of persons owning and controlling the business as well as other detailed information including occupation, date of birth, citizenship, passport number, etc
- Name and address of agents etc of the business;
- Details of incorporation, along with certificate and articles of incorporation, bye laws etc;
- Structure of the organization including parent and subsidiary companies, if any;
- Two references for significant shareholder
- Details of directors, secretary, managers and officers;
- Annual accounts for last two years along with name and address of auditors;
- Police certificates on shareholders and directors;
- Details of the applicant system of controls;
- Personal questionnaire for each executive officer, director and key shareholder;

545. The ECCB supervises and monitors commercial banks in Grenada in compliance with the Core Principles of prudential regulation as well as for compliance with AML/CFT legislation. The regulatory and supervisory measures that apply for prudential purposes are also relevant to AML/CFT. With regard to GARFIN and the ECSRC, no information was available.

546. All licensed financial institutions which conduct the captioned activities are subject to effective systems for monitoring and ensuring compliance with the national requirements to combat money laundering and financing of terrorism as already indicated in paragraphs 478 to 488 of this report. . .

547. All other financial institutions are subject to regulation and supervision either by the GARFIN or the ECSRC.

Statistics

548. The ECCB maintains information on anti money laundering inspections undertaken. The number of AML/CFT inspections conducted by the ECCB in relation to commercial banks in Grenada within the last four (4) years is four (4). The issues detected related to deficiencies in the corporate governance and risk management systems, breaches of the Banking Act and the absence of a system to detect structuring. Enforcement action was in the form of Letters of Commitment.

549. In the time since its existence, GARFIN conducted one (1) AML/CFT examination on a credit union, with the assistance of the FIU.

Recommendation 25

550. The Supervisory Authority has authority by virtue of section 50 (1) (b) of the POCA, 2003, to issue "guidance as to compliance with the Act and regulations". They have done so by issuing "Anti Money Laundering Guidelines." At the time of mutual evaluation visit the Guidelines did not cover terrorist financing. However, the Guidelines are presently being reviewed to include specific instructions covering terrorist financing.

3.10.2 Recommendations and Comments

551. The following is recommended;

- Authorities should amended the POCA and the MLPA to ensure that sanctions are consistent and broad in range
- The ECCB should review its inspection program to ensure effective compliance of its licensees with AML/CFT obligations
- Legal provisions should be enacted for fitness and probity checks on directors, shareholders, and management of licensees of the ECSRC and GARFIN.
- Money value transfer service operators should be subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements
- The GARFIN Act should be amended to provide for ladder of enforcement powers

- The Guidelines should include specific instructions relating to the requirements for combating the financing of terrorism

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	**Sanctions under the POCA and MLPA are inconsistent in severity Additionally, the application of sanctions has to go through the courts and no broad range of sanctions are available for breaches of statute**
R.23	**PC**	**Limited number of inspections by ECCB in the last four years is ineffective to ensure compliance of its licensees.** **No indication in law that fitness and probity checks on directors, shareholders, management of licensees, is a requirement for the licensees of the ECSRC**. **No requirement in law that fitness and probity checks on directors, shareholders, management of licensees, is a requirement for the licensees of GARFIN** **No supervisory regime and by extension, no reporting obligations are in place for money service business.**
R.25	**PC**	**Guidelines do not include instructions covering terrorist financing.**
R.29	**LC**	**GARFIN's powers of enforcement and sanctions are inadequate since there are no ladder of enforcement powers**

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

552. GARFIN is the sole designated authority in Grenada for the licensing of MVT operators. A current list is available of the licensed MVT operators including names and addresses. GARFIN is responsible for ensuring compliance with licensing requirements under the GARFIN Act No.1 of 2008. The GARFIN Act requires all "money services businesses" to be licensed by the Authority (GARFIN). Section 17 of the GARFIN Act states that;

"

(1) Subject to subsection (2) of the Banking Act, 2005, a person shall not carry on a money services business in Grenada without a licence granted by the Authority.

(2) A person authorized to carry on money services business in Grenada at the time of the coming into force of this section shall be deemed to be the holder of a licence issued under this section and such licence shall be valid for a period of 90 days.
(3) On application by a person, the Authority may issue a licence authorising that person to carry on a money services business in Grenada.
(4) *An application for a licence to carry on a money services business in Grenada must be filed with the Authority together with such other information, material and evidence that the Authority may require."*

553. Money services business includes money transmission, and the business of operating as an agent or franchise holder of a money transmission entity. There are three money transmission companies in Grenada all of which have been duly licensed by GARFIN. The licensing process included a fit and proper test for the directors/ managers and assessing the financial viability of the company and assessing its anti money laundering programme.

554. Under section 18 of the GARFIN Act, GARFIN has the power to take action including revocation of a licence where a MVT operator contravenes any provision of the GARFIN Act or any Act "*dealing with the Proceeds of Crime*". Under the GARFIN Act any person who fails to comply with any directions given by GARFIN commits an offence and shall be liable on summary conviction. GARFIN also has the power to make guidelines concerning the operations of money services businesses. No guidelines have yet been issued. A separate Money Services Business Act is being finalised and is expected to be enacted by December 2008.

555. The MVT operator that was interviewed confirmed that it had been subjected to an extensive licensing process and had received licenses for all its locations.

556. Money or funds transmission services are listed in the Schedule 1 of POCA, 2003 which defines relevant business activities and are therefore subject to all the AML obligations of POCA, the MLPA and the Guidelines. The deficiencies noted in this report with respect to Recommendations 4-11, 13-15 and 21-23 will also be applicable to MVT operators.

557. MVT operators within Grenada are not subject to any reporting requirements or other prudential filings to GARFIN. Onsite inspections, subsequent to the licensing of MVT operators, have not been conducted by GARFIN. The examiners were advised that GARFIN anticipated the introduction of prudential return filings for MVT operators in December, 2008 and onsite inspections (in conjunction with the FIU) in 2009 after the passage of the Money Services Business bill.

558. While there in no specific requirement for MVT operators to maintain a current list of its agents which must be available to the designated competent authority i.e. GARFIN each licensed MVT operator has provided GARFIN with a list of its outlets and agents.

559. Sanctions under POCA, 1999, POCA, 2003 and the MLPA are applicable to MVT operators since they are subject to the requirements of these Acts. Section 49 (1) of POCA, 2003 states that;

"

(1) A person guilty of an offence under section 43, 44, 45 or 48(2) (money laundering, failure to report a suspicious transaction) shall be liable-

a) on summary conviction, to imprisonment for term no exceeding five years or a fine not exceeding $500,000 or both; and
b) on conviction on indictment, to imprisonment not exceeding ten years or an unlimited fine or both

.

(2) A person guilty of an offence under section 46 or 47 (failure to disclose knowledge or suspicion; tipping- off) shall be liable-

a) on summary conviction, to imprisonment not exceeding three years or a fine of $500,000or both; or
b) on conviction on indictment, to imprisonment for ten years or an unlimited fine or both

560. The GARFIN Act allows GARFIN the power to grant or revoke a licence and monitor and inspect money services businesses. However, the only administrative penalties that GARFIN can apply on its own are fees and penalties for late filing of returns

561. Based on the foregoing, the range of disciplinary and financial sanctions available is not sufficiently broad to encompass a variety of enforcement actions commensurable to the severity of the situation. GARFIN has been designated as the competent authority for supervision of MVT operators; however, the Supervisory Authority is detailed as the competent authority for the enforcement of the POCA, 2003. Additionally, it does not appear that sanctions available to the relevant authorities can be applied to the directors and senior management.

562. The measures set out in the Best Practices Paper for SR. VI have not been fully implemented. The examiners noted that while there was a licensing process and steps taken to identify all MVT operators and raise awareness in the public for the requirement for all MVT operators to be appropriately licensed or registered, there has been no compliance monitoring of their activities. As noted earlier, it is anticipated that the Money Services Business bill will be introduced in 2009.

3.11.2 Recommendations and Comments

563. The following is recommended;

- Legislation for money services providers that meets the FATF requirements should be enacted.

- Introduce systems for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations.

- Licensed MVT service operators should be required to maintain a current list of their agents to be made available to the designated competent authority.

- GARFIN's supervisory sanctions should be made proportionate and dissuasive.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	**No systems in place for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations** **Deficiencies noted with regard to Recs. 4-11, 13-15 and 21-23 are also applicable to MVT service operators** **No requirement for licensed or registered MVT operators to maintain a current list of their agents to be made available to the designated competent authority** **Sanctions applicable with regard to GARFIN's supervisory function are not proportionate or dissuasive.**

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General Description

564. DNFBPs are required to comply with the AML obligations of POCA, 2003, the MLPA and the Guidelines by being included in the list of relevant activities in Schedule 1 of POCA, 2003 The DNFBPs included are as follows; real estate agents, casinos, internet gambling, barristers-at-law and solicitors, accountants and notaries. Additionally, registered agents licensed under the International Companies Act, 1996 (ICA) are included in the list of financial institutions under Schedule 1. As can be noted, dealers in precious metals and precious stones are omitted from the lists. The examiners were advised that these are to be included shortly.

565. At the time of the mutual evaluation, Grenada had no casinos or internet gaming establishments. One company is registered under the International Betting Act. This company is not an internet betting company but simply processes bets placed in other international jurisdictions from entities which are duly licensed.

566. Thirteen persons were registered as agents under the ICA. Accountants, lawyers and real estate agents are not professionally licensed in Grenada. There were approximately five accounting firms, sixty eight legal firms and twenty one real estate operators in Grenada. There were also five dealers in precious metals and stones all of which were jewellery stores.

567. The customer due diligence requirements and measures, the record-keeping, transaction monitoring and reporting requirements applicable to financial institutions under the POCA, 2003, the MLPA and the Guidelines are also applicable to the DNFBPs. See section 3 of this report.

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

568. Customer due diligence and record-keeping requirements as outlined in POCA, 2003, the MLPA and the Guidelines are also applicable to DNFBPs. The deficiencies identified in relation to Recs. 5, 6, 8 to 11 are also applicable to the DNFBPs. Although it has been 6 years since DNFBPs were conferred with legal requirements under POCA, 2003, no framework has yet been put in place to ensure that they comply with these requirements or a designated regulatory/supervisory body appointed with the responsibility.

569. The examiners noted from interviews, that DNFBPs do not have appropriate AML and CFT measures to comply with the provisions of Recommendations 5, 6 and 8 – 11. Some DNFBPs expressed concerns and the need for further clarification from the Supervisory Authority and other competent bodies on the provisions of the Guidelines. Record keeping requirements and CDD measures were inconsistent among DNFBPs; however, the examiners were advised that DNFBPs did not engage in non-face to face transactions and relationships that were initiated by non-resident Grenadians were not fully established until the client in person completed the account opening stage. In relation to PEPs, the interviewed DNFBPs confirmed they had no PEP clients, and local PEPs were known, but not treated differently.

4.1.2 Recommendations and Comments

570. The following is recommended;

- Deficiencies identified for financial institutions with regard to Recs. 5, 6, 8 to 11 are also applicable to DNFBPs. Specific recommendations in the relevant sections of this report will also apply to DNFBPs.

- Authorities should consider specific training and/or awareness programs to educate DNFBPs about AML/CFT requirements

- Dealers in precious metals and precious stones should be subject to AML/CFT requirements in accordance with FATF standards

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	**Dealers in precious metals and precious stones are not included in the AML/CFT regime** **Deficiencies identified for financial institutions with regard to Recs. 5, 6, 8 to 11 are also applicable to DNFBPs.**

		Lack of awareness of requirements by DNFBP resulting in ineffective implementation of AML/CFT obligations

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

Recommendation 16

571. Requirements for implementation of the requirements of Recs. 13 to 15, and 21 in relation to financial institutions and the deficiencies identified as dealt with in section 3 of this report are also applicable to DNFBPs. As already noted there is no system for monitoring and ensuring compliance with AML/CFT requirements by DNFBP's.

572. The DNFBPs that were interviewed were not, in most cases, aware of any suspicious reporting requirements or obligations to develop AML and CFT policies and procedures to mitigate risks of money laundering and terrorist financing. It was noted that DNFBPs employ few if any of the mechanisms cited in the foregoing that would satisfy AML and CFT measures statutorily required within Grenada. Some DNFBPs advised that they were only recently made aware of some of the requirements through attendance at workshops completed within two months of the mutual evaluation visit. No SARs have been submitted to the FIU by DNFBPs.

4.2.2 Recommendations and Comments

573. The following is recommended;

- Deficiencies identified for financial institutions with regard to Recs. 13 to 15 and 21 are also applicable to DNFBPs. Specific recommendations in the relevant sections of this report will also apply to DNFBPs.
- Authorities should consider specific training and/or awareness programs to educate DNFBPs about AML/CFT requirements
- Dealers in precious metals and precious stones should be subject to AML/CFT requirements in accordance with FATF standards

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	**Dealers in precious metals and precious stones are not included in the**

		AML/CFT regime **Deficiencies identified for financial institutions with regard to Recs. 13 to 15 and 21 are also applicable to DNFBPs.** **Lack of awareness of requirements by DNFBP resulting in ineffective implementation of AML/CFT obligations**

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and Analysis

Recommendation 24

574. There are no casinos in Grenada. There is currently one company licensed under the International Betting Act, 1998 operating in Grenada; its operational mandate is to provide wagering services for horse racing to its majority shareholder and only client. GARFIN has reviewed its operations and granted a licence in 2006. The licence prevents the company from having customers based in the USA and Grenada.

575. The company is regulated and supervised by GARFIN which ensured that due diligence, fit and proper criteria and other licensing requirements were met before the issuance of a licence. On a quarterly basis, a report is produced for GARFIN which details activity and the level of commission earned. GARFIN has also been provided with a terminal to allow monitoring of all wagers placed by the single client. Beyond these measures, there are no other regulatory or supervisory requirements governing the operation of this company.

576. There are 11 members of staff at the company and there is a designated AML/CFT compliance officer at the management level. To date no SARs reporting has been made to the FIU.

577. There is no system or framework in place for monitoring and ensuring compliance with AML/CFT requirements by DNFBP's. While the Supervisory Authority is generally responsible for ensuring compliance with AML/CFT obligations it does not carry out AML/CFT supervision of DNFBP's. Additionally, the Supervisory Authority has had little contact with DNFBPs; no onsite inspections have been conducted of their operations. In some cases, DNFBPs are unaware of any reporting requirements under existing financial services legislation to competent authorities.

Recommendation 25

578. The Supervisory Authority established under the POCA, 2003 has issued comprehensive anti- money laundering Guidelines, under the authority of that Act. At the time of mutual evaluation visit the Guidelines did not cover terrorist financing. However, the Guidelines are presently being reviewed to include specific instructions covering terrorist financing.

4.3.2 Recommendations and Comments

579. The following is recommended;

- The authorities should designate a competent authority with the responsibility for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.
- Dealers in precious metals and precious stones should be subject to AML./CFT requirements in accordance with FATF standards

- The Guidelines should include specific instructions relating to the requirements for combating the financing of terrorism

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	**Dealers in precious metals and precious stones are not included in the AML/CFT regime** **There is no designated competent authority with responsibility for monitoring and ensuring compliance of the DNFBPs with the AML/CFT requirements.**
R.25	**PC**	**Guidelines do not include instructions covering terrorist financing.**

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

580. The authorities advised that consideration is presently being given to including the following businesses as DNFBPs – motor vehicle dealers, construction companies, all gaming and betting activities such as bingo and construction equipment and material suppliers. However, the assessors did not receive any documented evidence of such consideration.

581. As a small developing economy, Grenada continues to be cash intensive. The banking industry in diversifying their services through the provision of ATMs, credit and most recently debit cards has been most proactive in taking measures to encourage the development and use of modern and secure techniques for conducting financial transactions. None of the banks offer internet banking. The table below shows the growth in the number of ATMs and credit and debit cards.

Table 13: Growth in numbers of ATMs, Credit and Debit Cards

	2004	2005	2006	2007
ATMs Opened	0	1	2	4
Credit Cards Issued	312	393	548	554
Debit Cards Issued	0	0	0	20,193

582. The above table shows modest increases in the number of credit cards which given the size of the population of over 100,000 is insignificant. However, the number of debit cards is substantial and were due to one bank converting its ATM cards to debit cards. The largest bank note in use is the EC $100 (approximately US $37)

4.4.2 Recommendations and Comments
4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**PC**	**Unable to assess whether consideration has been given to apply FATF recommendations to non-financial businesses and professions other than DNFBPs**

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

System of Central Registration

583. The laws of Grenada provide for the incorporation of different types of entities. Domestic, external and non-profit companies are subject to the CA and international companies, i.e. companies that do not carry on business in Grenada with persons domiciled or resident in Grenada, are subject to the ICA.

CA

584. The Registrar of Companies is responsible for the administration of the CA. In Grenada, the Registrar is also the Registrar of the Supreme Court, Intellectual Properties and Lands and the Companies Registry is housed at the Supreme Court Registry.

585. Section 494 of the Act authorises the Registrar to maintain a register of companies incorporated under the Act. Section 495 provides for any member of the public upon payment of a prescribed fee to examine, make copies of or extracts from, any document that is required to be sent to the Registrar. The documents required to be filed with the Registrar will include those that have been sent as incorporation documents namely: the Articles of Incorporation; Request for Name Search and Reservation; Notice of directors (containing details on their full names, addresses and occupations); Notice of address of registered office and the By-laws. No information on beneficial owners is required to be filed upon incorporation.

586. Section 77 requires changes in the directorship of a company to be sent to the Registrar on the prescribed form within 15 days of such change. Section 194 requires every company to file an Annual Return not later than the 1st day of April in each year after its incorporation. The Annual Return includes details of directors and shareholders as of the date of filing. A director or officer of the company shall certify the contents of every return filed. If the company defaults in complying with this section, the company and the director and officer will be criminally liable.

587. Section 67 provides for the Registrar to apply to the Court to disqualify a director. The Court in making its decision shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Grenada or elsewhere for an offence involving fraud or dishonesty.

588. Section 177 of the Act places an obligation on the company to maintain records and registers of shareholders and the information maintained should include the names and addresses of each member, statement of shares held by each member and the date upon which each person became a member or ceased to be a member. Under section 177(3) a register of directors and secretaries must also be kept and a public company should maintain a register of "substantial shareholding" in the company. Section 182 requires a person who owns shares which gives him at least 10% of the unrestricted voting rights in a company (substantial shareholder) to give notice of that fact to the company within 14 days. Section 183 requires him to give notice when he ceases to be a substantial shareholder. The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall comply within 14 days. If the company defaults in complying, the company and every officer of the company who is in default is guilty of an offence under section 184.

589. The Act confers powers on the agents and legal representatives of a company to obtain, examine and retain records of the company, specifically the registers of member and directors. Section 190(1) states:

> *The directors and shareholders of a company, and their agents and legal representatives, may, during the usual business hours of the company, examine the records of the company referred to in section 177 and may take extracts therefrom free of charge.*

ICA

590. Section 3 of the ICA states that a person may singly or jointly with others by subscribing to a memorandum and articles incorporate an international company. Section 12 requires that the following information must be contained in the memorandum –

a. the name of the company

b. the address in Grenada of the registered office of the company

c. the name and address in Grenada of the registered agent of the company

d. the objects or purposes for which the company is to be incorporated

e. the currency in which shares in the company shall be issued

f. statement of the authorized capital of the company

g. statement of the number of classes and series of shares

h. statement of the designations, powers, preferences and rights, qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue

i. number of shares to be issued as registered shares and the number of shares to be issued as shares issued to bearer;

j. whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares;

k. if shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer; and

l. statement that the liability of members is limited.

591. None of the above requirements stipulates information on shareholders. Section 14 requires the Registrar to maintain a register of companies, which is located at the GARFIN headquarters. There is no requirement for the information kept by the Registrar to be available for inspection. There is no legal requirement for international companies to be incorporated by registered agents.

592. Section 28 requires international companies to keep share registers containing the names and address of all the persons who hold registered shares in the company, the number of each class and series of registered shares held by each person and the date on which the name of each person was entered in the share register. Under section 38 a copy of the share register must be kept at the registered office of the company which must be at an address in Grenada.

Access to records by competent authorities

CA

593. As mentioned earlier, the information kept by the Registrar of Companies under the CA is public and therefore competent authorities, including law enforcement agencies have unfettered access to companies' records. These agents can also access information from registered agents and companies pursuant to POCA 2003 and FIUA.

594. Section 188 of the CA provides that the records required to be kept under the Act be in a bound or loose-leaf form or in a photographic film form, or may be entered by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

595. The examiners noted that the Registrar is responsible for the functions of the Registry of Companies and Intellectual Properties, Registry of Courts, Registry of Lands and any other matters that must be formally registered. There is a staff compliment of 30 to 40 persons, with temporary persons being taken on for data entry purposes. Further, the Examiners were advised that there are plans to separate the sole Registry into 3 separate Registries, and that the primary work and resources address court matters. At the time of the mutual evaluation, there was 1 clerk assigned to the work for the registry functions of companies and intellectual property.

596. Approximately 200 companies are registered on an annual basis, and the Registrar advised the Examiners that there is no requirement to file the information of a company's beneficial owners at the time of its incorporation; information on the beneficial owners would be contained within the returns which are required to be filed on an annual basis. If there is a change in a beneficial owner, there is no requirement to notify the Registrar (outside of the filing of annual returns). Additionally, the Examiners were advised that a significant number of companies do not file annual returns as required. On this basis, there is no mechanism to ensure the transparency of the beneficial ownership of companies incorporated within Grenada.

597. The examiners were of the view that resources for the effective and efficient operations of the registry functions were inadequate. In addition, the Examiners noted that there had been instances of files being missing and a backlog of work that would impede the timely access to current information on particulars of companies, including the beneficial ownership. Further, the failure to ensure that companies file annual returns at the prescribed date, as well as the lack of a requirement to provide notification to the Registrar for changes to the beneficial ownership outside of the annual returns would prohibit access to current information on the beneficial ownership of companies.

ICA

598. Section 113 of the ICA authorises the Attorney General to apply to the Court for an order, at the request of any person, requiring the disclosure by a company incorporated under the Act of any facts or matters relating to the assets, liabilities, transactions, members or directors of, or any other information whatsoever in respect of, the company if he considers that the disclosure of such information is relevant to the investigation of any activity actually, or suspected to be, criminal under the law of Grenada.

Bearer Shares

CA

599. Companies incorporated under the CA are not allowed to issue bearer shares under section 29(2).

ICA

600. International companies, in accordance with section 28 of the ICA, are required to keep share registers containing, in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer and with respect to each certificate for shares issued to bearer-

(i) the identifying number of the certificate;
(ii) the number of each class or series of shares issued to bearer specified therein; and

(iii) the date of issue of the certificate.

601. The company may delete from the register information relating to persons who are no longer members or information relating to shares issued to bearer that have been cancelled.

602. The International Financial Services (Miscellaneous Amendments) Act No. 2 of 2002 stipulates that every bearer share certificate issued by a company formed under the ICA must be delivered to a bearer share agent. The International Companies (Amendment) Act, No. 12 of 2001 provides that a bearer share agent is required to be a licensed registered agent. The bearer share agent must keep the bearer share certificate in a safe place and hold same to the benefit of the owner of the share and must not transfer, deal with or otherwise dispose of the same unless authorized by the owner of the share. Additionally, IBCs that carry out financial services businesses are not allowed to issue bearer shares. However, the Grenadian authorities have failed to demonstrate that these measures have been adhered to and as such it is difficult to assess whether they are in fact adequate and effective to ensure that bearer shares are not misused for money laundering.

Additional Elements

603. There are no measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.1.2 Recommendations and Comments

604. The following is recommended;

- Appropriate measures should be taken to ensure that bearer shares issued under the ICA are not misused for money laundering.
- There should be statutory requirements for the provision of information on the beneficial ownership of companies.
- Adequate resources should be delegated to the functions of the Registrar of Companies and Intellectual Property.
- A mechanism should be developed to ensure the timely filing of annual returns as well as the timely access by competent authorities and other relevant parties to the current information on companies' beneficial ownership.
- Legislative amendments should be introduced to require the timely notification of any changes in the beneficial ownership of companies, along with changes to other particulars.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**NC**	**No measures in place to ensure that bearer shares issued under the International Companies Act are not misused for money laundering**

		No legislative requirement for the disclosure of beneficial ownership of companies **Insufficient resources delegated to the functions of the Registrar of Companies.** **No mechanism to ensure the timely filing of annual returns.** **No access to current information on companies' beneficial ownership by competent authorities due to the failure of companies to file annual returns.** **No legislation requires the filing or notification of changes to the particulars, including beneficial ownership, of companies.**

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Recommendation 34

605. The authorities informed the examiners that there is no central registry for the registration of domestic trusts. The incidents of trusts are extremely rare and the only piece of legislation relevant to these types of entities is the Trustees Act, Cap 329 which was passed in 1897. It is still in force in Grenada and it governs the activities of trustees as they relate to their investing in securities and stocks in Grenada. There is no provision for the registration of trust documents, trustees, settlors, beneficiaries or protectors. As cited previously, the Guidelines provide that trustees are required to verify the identity of a settlor/guarantor or any person adding assets to the trust in accordance with the procedures relating to the verification of identity of clients. Trustees are required to obtain the individual verification information at a minimum on settlors, beneficiaries, protectors, and information on the purpose and nature of the trust and source of funds. As the Guidelines are not enforceable, there is effectively no statutory requirement for trust service providers to obtain, verify and retain records of the details of the trust or other similar legal arrangements.

606. The examiners were advised that the occurrence of trusts is low, and was probably due to other jurisdictions offering more developed services in this area. Further, the examiners were advised that a secret trust would not be registered with the Registrar of Companies, but the documents would be maintained by the attorney.

607. Grenada has on its books an International Trusts Act which provides for the creation and regulation of international trusts and for related matters. An international trust is one where both the settler and the beneficiary are resident outside of Grenada and at least one of the trustees is a

trust corporation. There are no international trusts registered under the Act at the moment and none are envisaged until the legislation is completely reviewed within the next six months.

5.2.2 Recommendations and Comments

608. The following is recommended;

- Authorities should put in place measures for the registration and monitoring of local trusts in accordance with FATF requirements.

- Authorities should consider including adequate and accurate information on the beneficial ownership and control of trusts as part of the registration process for local trusts.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NC**	**No system of central registration or national registry where records of local trust are kept** **No requirement for the filing/keeping of adequate and accurate information on the beneficial ownership and control of local trusts** **The requirement for trust service providers to obtain, verify and retain records of the details of trusts or other similar legal arrangements in the Guidelines is not enforceable.**

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

609. The authorities in Grenada have informed the examiners that the country has not reviewed the adequacy of domestic laws in relation to non-profit organisations (NPOs) to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities. The authorities further advised that there has been no outreach to the NPO sector as it is very small and the risk is considered minimal. However, there is no evidence of any risk assessment undertaken to support this conclusion.

610. It is not mandatory that NPOs be required to be registered as companies under the CA. However, Part III allows for their incorporation. Section 328 states that no articles shall be acceptable for filing in respect of any non-profit company without the prior approval of the Attorney General. The approval process is essentially to determine whether the company qualifies for the status of a non-profit company. In order to qualify, the business of the company must be one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary,

historical, artistic, social professional, fraternal, sporting or athletic in nature or to the promotion of some other useful activity.

611. Section 329 outlines the registration process and documents required for filing with the Registrar. It specifies that the first directors shall become members of the company and that the company shall be carried on without pecuniary gain to its members. Any profits or other accretions to the company are to be used in furthering its business.

612. The provisions relevant to the identification of persons who own, control or direct the companies activities are the same as those for domestic companies outlined in 5.1.1 above. Further, the filing requirements for changes in directorship are also the same.

613. In relation to whether there are appropriate measures in place to sanction violations of oversight measures, section 530 of the CA provides that a person who makes or assists in making a report, return, notice or other document that is required to be sent to the Registrar or to any other person and that contains an untrue statement of material fact or omits to state a material fact in said report, return or notice is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of 18 months, or to both. There are no civil or administrative sanctions available. However, the Registrar's office does not conduct periodic checks on companies' filings to ensuring that the information is accurate.

614. There are no specific requirements for NPOs to maintain records of international transactions for a period of at least five years.

615. The FIU and law enforcement authorities generally have jurisdiction to investigate all financial crimes and have access to information under the FIUA (see 5.1.1. above). There is no investigative expertise with regards to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.

616. In practice, the point of contact to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support is through the FIU or the Attorney General for formal requests.

1.3.2 Recommendations and Comments

617. The following is recommended;

- The authorities should make the registration of NPOs mandatory.
- The authorities should undertake a review of the adequacy of domestic laws in relation to NPOs to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities.
- The authorities should undertake outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse.
- An effective supervisory regime should be established to monitor non-compliance and sanction violations of oversight measures of NPOs.
- Record keeping and retention requirements should extend to NPOs.

- Authorities should develop investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**NC**	**Registering of NPOs is not mandatory.** **No review has been undertaken of the adequacy of domestic laws in relation to NPOs to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities.** **No outreach to NPOs to protect the sector from terrorist financing abuse.** **No effective supervisory regime to monitor non-compliance and sanction violations of oversight measures.** **No record keeping and retention requirements for NPOs.** **No investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.**

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Recommendation 31

618. The main body which deal with money laundering and combating the financing of terrorism issues on a national level is the Supervisory Authority. While the Supervisory Authority initially was established to ensure compliance of financial institutions with AML obligations, its role has changed to being one of articulating Government's AML/CFT policies to relevant members of the public, reviewing the money laundering and financing of terrorism situation and giving advice for necessary action to the Minister of Finance.

619. The Supervisory Authority was established under the POCA, 2003, and comprises of such members as stated in section 50(2) and any other person appointed by the Minister of Finance and is staffed with seven (7) members and any other person the Minister appoints. It is structured with heads and senior persons representing pertinent entities. Members of the Supervisory Authority include the DPP and the COP, the Executive Director of GARFIN as well

as the Permanent Secretaries in the Ministry of Finance and the Ministry of National Security. The composition of the Supervisory Authority allows for some measure of consultation between competent authorities. It is noted that the Attorney General is not a member of the Supervisory Authority. According to the Supervisory Authority, the FIU and other agencies report deficiencies in the legislation to them. These are reported to the Minister of Finance so that corrective action can be taken.

620. In addition an action task force has been established including heads and representatives of all law enforcement and other pertinent entities involved in the fight against money laundering. The task force comprises the FIU, Customs, Police, Inland Revenue, Drug Unit, Special Branch and other agencies. Discussions are held on financial crimes etc. Information sharing also takes place at these meetings, which are held monthly. Information shared between domestic agencies is primarily for intelligence purposes. Although the task force is unofficial, its forms the basis for much action between Customs, the Drug Unit, Prosecution and the FIU.

621. GARFIN is a relatively new entity and has not met individually with all the institutions under its supervision. No information was provided as to whether there is any formal agreement to facilitate co-operation and information sharing between GARFIN, the FIU or the RGPF. However the FIU participated in an onsite inspection of one of the credit unions a few months ago and there is intention to continue to participate in future onsite inspections.

622. According to some financial institutions, GARFIN, the FIU and the Supervisory Authority conducted two workshops in August and September 2008 to create awareness of the obligations of DNFBPs and financial institutions in relation to AML and CFT. Some entities informed examiners that they are still unaware of their requirement under the law. The Examiners noted that there was no consultation with associations, where established, nor with regulated financial institutions, for the purpose of developing AML and CFT legislation. Based on interviews and other materials provided, the examiners were of the view that consultations with DNFBPs were at best sporadic. There seems to be no system in place to allow for greater and continuous consultation between the Supervisory Authority, GARFIN, the FIU and institutions subject to AML/CFT measures.

Review of effectiveness of AML/CFT systems

623. The Supervisory Authority empowered by POCA, 2003 meets monthly to review the money laundering and financing of terrorism situation and give advice for necessary action to the Minister of Finance. Examiners were informed of the recent collaboration that brought improved guidelines for financial institutions and DNFBPs. The guidelines are expected to be transformed into regulations in order that they have the force of law. Grenada authorities are of the view that there is sufficient and effective co-operation between policy-making bodies and other competent authorities and as such, the framework and composition facilitates co-operation and co-ordination of Grenada's AML/CFT regime. The FIU is required to report to the Supervisory Authority and the policy makers. Examiners are, therefore, of the view that some level of co-operation and co-ordination exists between the competent authorities of Grenada.

Resources and staffing (Recommendation 30)

624. No information was available as to the resources available to the Supervisory Authority to allow for the performance of its functions.

6.1.2 Recommendations and Comments

625. The following is recommended;

- The Supervisory Authority should be given the legal authority to bring together the various authorities on a regular basis to develop and implement policies and strategies to tackle ML and TF. The provision of public education on issues of ML and TF should be added to their responsibilities.

- The Supervisory Authority may wish to consider setting up a secretariat to monitor the implementation of Grenada's AML/CFT Regime.

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	**There are no effective mechanisms in place to allow policy makers to cooperate with each other**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

626. Grenada acceded to the 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 10th December, 1990 and has sought to incorporate most of the provisions in DAPCA, POCA 2003, the Extradition Act and the MLPA.

627. The United Nations Convention against Transnational Organised Crime (the Palermo Convention) was acceded to by Grenada on 21st May, 2004 and most of the provisions have been incorporated in the TA, MLPA, POCA 1992, POCA 2003.

628. The 1999 UN International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) was acceded to by Grenada on 13th December, 2001.

Special Recommendation I

629. The legislation criminalising terrorist activity and financing is the TA. However, the legislation does not cover all the activities required to be criminalised in accordance with the Convention and there is no evidence of implementation of the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (S/RES/1267(1999) and (S/RES/1373(2001).

630. The legislative provisions giving effect to relevant articles in the Conventions are as follows:

Table 14: Implementation of UN Conventions

Treaty	**Articles**	**Legislative provision in Grenada**
Vienna Convention (1988)	3 (Offences and Sanctions)	Sections 2-6, 9-14 DAPCA
	4 (Jurisdiction)	Section 4 DAPCA
	5 (Confiscation)	Section 9 POCA 2003
	6 (Extradition)	Section 4, Extradition Act
	7 (Mutual Legal Assistance)	Section 16-28 MLACMA
	8 (Transfer of Proceedings)	No legislative Provisions
	9 (Other forms of co-operation and training)	The competent authorities communicate with each other to exchange information.
	10 (International Co-operation and Assistance for Transit states)	
	11 (Controlled Delivery)	No legislation in place but practiced by law enforcement agencies
	15 (Commercial carriers)	Section 18 DAPCA
	17 (Illicit traffic at sea)	Section 18 DAPCA
	19 (Use of mail)	Section 18 DAPCA
Palermo Convention	5 (Criminalisation of participation in an organized	Sections 5 and 6 TA

	criminal group)	
	6 (Criminalisation of laundering proceeds of crime)	Section 3 MLPA, Section 43 POCA 2003
	7 (Measures to combat money laundering)	MLPA POCA 1999 POCA 2003
	10 (Liability of legal persons)	Section 4 MLPA Section 3 Interpretation and General Provisions Act
	11 (Prosecution, Adjudication and sanctions)	POCA 2003
	12 (Confiscation and Seizure)	Section 21 MLPA Part II POCA 2003
	13 (International Co-operation for the purposes of confiscation)	Sections 54 and 55 POCA 2003
	14 (Disposal of confiscated proceeds of crime or property)	Section 57 POCA
	15 (Jurisdiction)	Section 3 POCA
	16 (Extradition)	Section 24 MLPA
	18 (Mutual Legal Assistance)	Section 18-28 MLACMA Mutual Legal Assistance in Criminal Matters Treaty (Grenada and USA) Act
	19 (Joint investigations)	MLACMA
	20 (Special Investigative Techniques)	No legislative provision but techniques are practiced at the operational and investigative stages.
	24 (Protection of witnesses)	No legislative provision
	25 (Assistance and protection of victims)	Section 57 POCA
	26 (Measures to enhance co-	Establishment of the task force

	operation with law enforcement authorities)	consisting of heads/senior supervisors of the various law enforcement entities
	27 (Law enforcement co-operation)	See 26
	29 (Training and technical assistance)	Regular and ongoing training is conducted, eg. Electronic based training by the UNODC
	30 (Other measures)	Ongoing co-operation between FIUs, law enforcement, regulators and INTERPOL
	34 (Implementation of the Convention)	POCA
Terrorist Financing Convention	2 (Offences)	TA
	4 (Criminalisation)	Sections 8,9, 10 TA
	5 (Liability of legal persons)	Section 3 Interpretation and General Provisions Act
	6 (Justification for commission of offence)	Section 1(1), (2) TA
	7 (Jurisdiction)	Section 1 (5) TA
	8 (Measures for identification, detection, freezing and seizure of funds)	Sections 17 and 21 TA, Section 51-56 POCA
	9 (Investigations and the rights of the accused)	Prevention of Corruption Act 2007 and Integrity in Public Life Act 2007
	10 (Extradition of nationals)	Section 36 TA
	11 (Offences which are extraditable)	Section 36 TA
	12 (Assistance to other states)	Section 39 TA
	13 (Refusal to assist in the case of a fiscal offence	Section 39 TA
	14 (Refusal to assist in the	Section 39 TA

	case of a political offence	
	15 (No obligation if belief that prosecution based on race, nationality, political opinion, etc.)	Section 18 MLACMA
	16 (Transfer of prisoners)	Section 23 Extradition Act, Section 10 and 25 MLACMA Article 11, Mutual Legal Assistance in Criminal Matters Treaty (Grenada and USA) Act
	17 (Guarantee of fair treatment of persons in custody)	Section 8 Constitution of Grenada
	18 (Measures to prohibit persons from encouraging or organising the commission of offences and to facilitate STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions and facilitating information exchange between agencies)	Sections 5, 6, 8, 13 TA

Additional Elements

631. The 2002 Inter-American Convention against Terrorism has been signed and ratified by Grenada.

6.2.2 Recommendations and Comments

632. The following is recommended;

- The authorities should extend the range of predicate offences for ML to accord with the FATF Designated Categories of Offences.
- The authorities should amend relevant legislation to cover all the activities required to be criminalised in accordance with the Conventions
- The authorities should implement the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (S/RES/1267(1999) and S/RES/1373(2001).

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	**All designated categories of offences are not adequately addressed in the range of predicate offences** **Not all relevant articles of the Conventions have been fully implemented**
SR.I	**PC**	**No requirement to freeze terrorist funds or other assets of person in accordance with UN Resolutions (S/RES/1267(1999) and (S/RES/1373(2001).**

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

Mutual Legal Assistance in AML/CFT Investigations

633. MLACMA provides for a wide range of mutual legal assistance in investigations, prosecutions and related proceedings between Grenada and Commonwealth countries. Assistance can also be given to non-Commonwealth countries that have entered into bilateral agreements or multilateral schemes with Grenada for the provision of mutual legal assistance.

634. The Minister of Foreign Affairs is required to designate these countries for the purposes of MLACMA by order published in the *Gazette*. Section 2 of the Act speaks broadly to the provision of assistance where a criminal matter (an investigation or proceedings) has been instituted domestically or internationally.

635. Pursuant to section 5 provisions of the Act would not affect other types of co-operation in existence such as arrangements between law enforcement and prosecutorial agencies in Grenada and INTERPOL or similar agencies internationally.

636. Section 3 confers authority on the Attorney General to be the person responsible to transmit or receive requests in accordance with the Act (Central Authority). The Attorney General can also authorise this responsibility to another public officer. Section 17 stipulates that a request for assistance by a designated country must be granted and executed as expeditiously as possible and in the event of a refusal or delay in the granting of a request, the designated country must be so informed.

637. The law allows the Attorney General to provide, *inter alia*, the following assistance:

(a) taking evidence from a person;

(b) providing information;

(c) subjecting to examination or test any-

(i) person;

(ii) sample, specimen or other item from, or provided by a person;

(iii) remains which are, or may be, human;

(d) producing, copying or examining any judicial or official records;

(e) producing, copying or examining any record or article;

(f) taking, examining, or testing samples of any matter or thing;

(g) viewing or photographing any building, place or thing.

638. Likewise, the Mutual Legal Assistance in Criminal Matters Treaty (Government of Grenada and Government of the United States of America) Act ("MLA Treaty") was enacted to improve the effectiveness of the law enforcement authorities of both jurisdictions in the investigation, prosecution, and prevention of crime through co-operation and mutual legal assistance in criminal matters. The scope of assistance under the MLA Treaty mirrors that which is set out in the MLACMA. The Central Authority to make and receive requests pursuant to the Treaty is the Attorney General or a person designated by the Attorney General.

Nature of mutual legal assistance

MLACMA

639. By virtue of section 21 statements may be taken from persons who have information or evidence relating to any criminal matter in Grenada. Pursuant to section 21(4) records not publicly available may be produced, copied or examined but only to the extent that they could be produced to, or examined by law enforcement agencies or prosecuting or juridical authorities in Grenada. The examiners were informed that requests of this nature are done through interviews conducted by the DPP in conjunction with the FIU and Police and then the necessary information is forwarded to the Attorney General for further processing. On average, such requests are acted upon immediately and the whole process will normally take fourteen (14) days.

640. Under section 22 the Attorney General may provide assistance in identifying and locating a person believed to be in Grenada who (a) is or might be concerned in or affected by; or (b) could give or provide evidence or assistance relevant to any criminal matter in the designated country.

641. Section 23 of the MLACMA allows for the Attorney General to assist a requesting country in obtaining by search and seizure if necessary, any article or thing connected with a criminal matter in that country.

642. Assistance can be given in arranging the voluntary attendance of a person to give or provide evidence or assistance relevant to any criminal matter in that country, in accordance with section 24.

643. Section 25 facilitates requests for assistance in the transferring of a prisoner from Grenada to a designated country. In circumstances such as these, the Attorney General can attach certain conditions with respect to the custody, release or return of the prisoner.

644. Section 26 provides for assistance by Grenada to a requesting State for the service of documents in connection with a criminal matter in the requesting State.

645. The Attorney General has the authority to assist in tracing property and assessing the value of any such property in Grenada believed to have been derived or obtained directly or indirectly, from, or have been used in, or in connection with, the commission of an offence in a designated country, pursuant to s.27.

646. Section 28 gives authority for the making in Grenada of an order relating to the proceeds or instrumentalities of crime and the recognition or enforcement in Grenada of such an order made in a designated country.

647. MLACMA does not provide for refusal of assistance on the sole ground that the offence is also considered to involve fiscal matters.

648. The legislation speaks to the various conditions under which the Attorney General might refuse assistance including the absence of dual criminality and the fact that granting assistance might be contrary to the Constitution of Grenada or would prejudice national security or international relations (s.18). The examiners were informed that no restrictions have been placed on countries making requests and no request has been refused to date. The restrictions outlined in s.18 are not interpreted as unreasonable, disproportionate or unduly restrictive so as to prejudice the mutual legal assistance process.

MLA Treaty

649. Article 5 requires the Attorney General to promptly execute requests from the USA and do everything in his power to do so. The Judicial or other authorities shall also have powers to issue subpoenas, search warrants, or other orders necessary to execute requests.

650. Persons can be compelled, if necessary to testify or give evidence including documents and records, as provided for by Article 8.

651. Article 9 provides for the production of copies of documents that are publicly available and held by government departments and agencies. Such records may be authenticated by the official in charge of maintaining them and shall be admissible in evidence in the USA.

652. Article 10 provides for Grenada to facilitate the voluntary appearance of persons for the purpose of providing testimony in USA.

653. Effecting service of judicial documents is provided for in Article 13 and Article 14 deals with the Requested State executing requests for the search, seizure and delivery of any item to the Requesting State if the request includes the information justifying action under the laws of the Requested State.

654. Article 16 allows for the Contracting Parties to assist each other to the extent permitted by their own laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This would also include freezing or restraining the proceeds or instrumentalities pending further proceedings.

655. Neither the MLACMA nor MLA Treaty provides for the refusal to grant assistance on the grounds of laws that impose secrecy or confidentiality requirements. The Attorney General usually solicits the assistance of the FIU to obtain necessary information to satisfy requests from designated countries. The FIUA states in section 8 that no criminal or civil liability action could be instituted on any person who, in good faith transmits information to the FIU. The examiners were informed that the FIU has not met with any difficulties in obtaining any information requested by them.

656. In respect of the powers of competent authorities as they relate to the provision of assistance, section 19 of the MLACMA states as follows:

> *The Central Authority of Grenada must ensure that in executing a request under this Act, only such measures of compulsion as are available under the laws of Grenada in respect of criminal matters in Grenada are used.*

657. This provision can be interpreted to mean that the powers afforded to competent authorities (FIU and Police) to compel production, search person and premises, obtain and seize information under FIUA, POCA, Police Act and CC are also authorised under MLACMA. Further, section 3 mandates that the Attorney General may in writing authorise another public

officer to act as the Central Authority of Grenada generally or in respect of any particular requests. As mentioned above, the Attorney General has from time to time authorised the DPP, FIU and Police to take witness' statements and compel production of records in pursuance of a mutual legal assistance request.

658. The examiners were not advised that Grenada has in place or considerations have been made to have mechanisms for the determining of the best venue for the prosecution of defendants when issues of dual jurisdictional conflict arise. Such a situation has yet to occur.

Additional Element

659. The powers of competent authorities required under Recommendation 28 are available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts under the MLACMA

Recommendation 37

660. One of the major issues the competent authorities has to consider when determining whether to grant a mutual legal assistance request is dual criminality. Section 18 of the MLACMA states that the Attorney General may refuse to grant or to execute in whole or in part a request for assistance if the criminal matter appears to him to concern conduct which would not constitute an offence under the laws of Grenada.

661. Similarly, Article 3 (1)(e) of the MLA Treaty states that the Attorney General may deny assistance if the request is made for the search and seizure of any item or for assistance in forfeiture proceedings, and relates to conduct which if committed in the Requested State would not be an offense in that State. The Attorney General therefore has discretionary powers to grant assistance even in cases where dual criminality is not an issue.

662. The Extradition Act (EA) and the MLACMA require dual criminality to be a precondition for the granting of requests. However, it would not pose any impediment to either extradition or mutual legal assistance since the basis for granting requests would be whether the conduct in question is one that will be considered as a criminal offence in Grenada.

Recommendation 38

663. Sections 21 – 23 and 27 of the MLACMA previously outlined in 6.3.1 above set out the procedure for authorities in Grenada to provide mutual legal assistance to foreign countries in relation to the identification and restraining of laundered property from, proceeds from or instrumentalities use in the commission of any offence.

664. Authorities also have the power under section 27 to assist when the request relates to property of corresponding value. There is no provision for the tracing and restraining of instrumentalities intended for use in the commission of an offence.

665. The examiners were not informed of any arrangements for coordinating seizure and confiscation actions with other jurisdictions.

666. A Confiscated Asset Funds has been established under section 57 of POCA 2003. In it should be paid: (a) proceeds of criminal conduct recovered under a confiscation order; (b) cash

forfeited under POCA 2003; (c) money forfeited under DAPCA; and (d) money paid to the Government of Grenada by a foreign country in respect of confiscated assets.

667. The Fund is managed by the Accountant General and the seized or forfeited funds are authorised to be used for purposes related to law enforcement investigation and prosecution, treatment and rehabilitation and the public education of drug addicts and research. The examiners were informed that all funds forfeited or confiscated by order in the Magistrate's Court are paid into the Confiscated Assets Fund.

668. Section 57(3)(b) of POCA 2003, also authorises money to be paid out of the Confiscated Asset Fund "*to satisfy an obligation of the government of Grenada to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for Mutual Legal Assistance in Criminal Matters or otherwise*". Nonetheless, there are no asset-sharing arrangements in place between Grenada and other countries.

Additional element

669. Under the MLACMA only foreign criminal confiscation orders are enforceable in Grenada.

Special Recommendation V

670. Generally, the provisions set out in MLACMA will also apply to FT. However, in relation to FT offences as discussed under SR II, the provision/collection of funds for an individual terrorist is not criminalized. Therefore it will not be regarded as an offence for which mutual legal assistance could be sought.

Recommendation 30

Structure, staffing and resources

671. The Attorney General falls under the purview of the Ministry of Legal Affairs. The position of Attorney General was established by Article 70 of the Constitution of Grenada (Grenada Constitution Order 1973, No. 2155). His main function is to be the principal legal adviser to the Government of Grenada.

672. Apart from being the Central Authority in relation to mutual legal assistance, the Attorney General's office is responsible for providing legal opinions and representation in civil proceedings brought by and against the Government. The office is also responsible for drafting legislation for Cabinet's approval before enactment.

673. The Attorney General and all the attorneys in the office are appointed by the Judicial and Legal Services Commission in accordance with the Judicial and Legal Services Commission Regulations issued under section 19 of the West Indies Associated States Supreme Court (Grenada) Act 1967 – Cap 336.

674. As public servants, the staff members are also subjected to The Public Service Rules and Regulations, 1969 which are designed to ensure that a high standard of integrity and confidentiality is maintained. However, apart from the Attorney General, none of the attorneys

have sworn to an oath of confidentiality. Disciplinary proceedings in relation to the attorneys are pursued through the Judicial and Legal Services Commission and ultimately dispensed by two (2) High Court Judges. The examiners were not informed of any such proceedings instituted against any of the attorneys.

675. The Attorney General's office is staffed with twenty-four (24) persons consisting of three (3) Parliamentary Counsels and two (2) Crown Counsels. The post of Solicitor General is expected to be filled by 1st November, 2008. The office is currently being reorganised to ensure that it can fulfil its functions and efforts are made to fill vacancies left by two (2) Senior Crown Counsels and one (1) Crown Counsel. The position of Chief Parliamentary Counsel is currently being held by a Consultant.

676. No information on the annual budget for the office was obtained and there is no specific allocation for AML training. Such expenses are borne by international aid, GARFIN and disbursements from the Confiscated Assets Fund. The examiners have not been given any information as to the level of AML/CFT training the staff, in particular attorneys have received throughout the years. It appears that the staff members are competent in the handling of mutual legal assistance and extradition requests. However, examiners were informed that the office is generally understaffed and under-resourced.

677. The authorities are of the view that the Attorney General's office is independent and free from undue influence or interference. Nevertheless, the Minister responsible for Legal Affairs is also the Prime Minister of Grenada. This means that the Attorney General reports directly to the Prime Minister who makes the final determination of matters brought to his attention

Statistics

678. The Attorney General's office maintains very limited statistics on MLA requests for the period 2005-2007. However, the examiners were only provided with annual figures of MLA requests received. There are no statistics available for MLA requests or extradition requests granted generally. Examiners were also informed that the FIU also made 3 requests which were granted in a timely manner. There is no information available on which country made those requests, the time period over which they were made or the nature of the offence in relation to those requests.

Table 15: Mutual legal assistance requests received:

Year	Requests Received
2005	4
2006	6
2007	1

Additional element

679. Similarly, Examiners were presented with statistics in relation to formal requests made or received by law enforcement authorities. There is no information on whether these requests were granted or denied and it does not specify the nature of requests.

Table 16: Formal requests

Year	Requests Received	Requests Made
2005	28	3
2006	12	8
2007	5	9

6.3.2 Recommendations and Comments

680. The following is recommended;

- Grenadian authorities should consider putting in place mechanisms for the determining of the best venue for the prosecution of defendants when issues of dual jurisdictional conflict arise.
- The MLACMA should be amended to include provisions for the tracing and restraining of instrumentalities intended for use in the commission of an offence.
- The authorities should establish arrangements for co-ordinating seizure and confiscation actions with other jurisdictions.
- The authorities should consider making arrangements with other countries for the sharing of funds forfeited and seized.
- The authorities should maintain comprehensive statistics on MLA and extradition request received, made and granted.
- The authorities should consider providing additional staff and resources to the Attorney General's office
- The provision/collection of funds for an individual terrorist should be criminalized under the TA.

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
R.36	**C**	**This recommendation is fully observed**

R.37	**C**	**This recommendation is fully observed**
R.38	**LC**	**There is no provision under MLACMA for the tracing and restraining of instrumentalities intended for use in the commission of an offence.** **The authorities should establish arrangements for coordinating seizure and confiscation actions with other jurisdictions.** **There are no asset-sharing arrangements in place between Grenada and other countries.**
SR.V	**PC**	**Not all FT offences are covered by mutual legal assistance mechanisms.**

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

Recommendation 39

681. Money laundering is an offence for the purpose of any law relating to extradition or the rendition of fugitive offenders pursuant to section 24 of the MLPA. The relevant law with respect to extradition is the EA which sets out the procedure for extradition in Part IV of the Act.

682. Extradition requests by foreign states are made through diplomatic channels and cannot be pursued unless authority to proceed is given by Order of the Minister of Foreign Affairs. A warrant for the arrest of a person in Grenada will only be issued by a Magistrate or in limited circumstances a Justice of the Peace if he receives information from INTERPOL or any other credible source that the person subject to the request is or is believed to be in or on his way to Grenada. Requests are then routed to the Office of the DPP through the Attorney General's Chambers. Quasi-criminal proceedings (committal hearings) are then conducted by the DPP in the Magistrate's court to determine whether the person should be surrendered to the foreign state.

683. There are however, restrictions on the surrendering, committal or custody of persons if it appears that the extradition is in connection with offences of a political character; or on the basis of race, religion, nationality, political opinion, sex or status (section 8). The laws in Grenada are not subject to nationality restrictions.

Recommendation 37

684. Under the EA, dual criminality is required. Section 4 defines an "extraditable offence" as follows (in part):

> *"(a) conduct in the territory of a foreign State or a Commonwealth country which, if it occurred in Grenada, would constitute an offence which, on indictment, is punishable with imprisonment for a term of five years, or any greater punishment, and which, however described in the laws of the foreign State or Commonwealth country, is so punishable under those laws; or*

(b) an extra-territorial offence against laws of a foreign State or a Commonwealth country which, on indictment, is punishable under those laws with imprisonment for a term of five years, or any greater punishment…"

685. The authorities contend that although dual criminality is required for extradition and mutual legal assistance, technical differences between the laws in the requesting state and laws in the requested state would not pose any impediment to extradition since the basis for extradition would be the underlying criminal conduct

Special Recommendation V

686. The TA extends extradition to the section 9-12 offences involving terrorism and the financing of terrorism as the minimum penalty on indictment is to imprisonment for a term not exceeding twenty years. Section 36 extends to offences under the following conventions the status of extraditable offences for the purpose of the TA and any other act dealing with extradition (the EA).

687. As mentioned earlier, the terrorist financing offence of fund-raising does not attract a penalty and therefore cannot be considered as extraditable. Additionally, the provision/collection of funds to an individual terrorist is not an offence under TA. Consequently, it cannot be regarded as being subject to extradition proceedings

Additional Elements

688. Section 36 makes the offences under the TA extraditable offences subject to the EA and therefore the procedures under the Act would apply. There have been no extradition requests relating to terrorist activity or financing in Grenada.

6.4.2 Recommendations and Comments

689. The following is recommended;

- The TA should be amended to include penalties that are proportionate and dissuasive for the terrorist financing offence of fund-raising.
- The provision/collection of funds for an individual terrorist should be criminalised under TA.

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
R.39	**C**	**This recommendation is fully observed**
R.37	**C**	**This recommendation is fully observed**
SR.V	**PC**	**The terrorist financing offence of fund-raising is not an extraditable offence** **The provision/collection of funds for an individual terrorist is not an offence**

		and is not extraditable.

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Recommendation 40

690. There are several pieces of legislation; MLACMA, MLA Treaty, FIUA, EA which provide a comprehensive legal framework for cooperation.

691. The Attorney General is identified in law as the central authority through which requests are received or disseminated to international bodies. This does not exclude or prevent other authorities such as the police and the FIU to cooperate with other external authorities. The entire regime is able to provide a wide range of cooperation.

692. Pursuant to section 6(2) (d) of the FIUA, the FIU may provide information relating to the commission of an offence or information concerning suspicious transaction or suspicious activity reports to any foreign FIU.

693. Under section 54 of the POCA 2003, the Attorney General may direct that the POCA may apply to confiscation orders in respect to proceedings instituted outside Grenada; this includes the power to make amendments to the Act conferring upon a person power to exercise discretion. Section 24 of the MLPA identifies money laundering as an extraditable offence.

694. The TA confers powers under the following sections:

- Section 2(1) (a) and Schedule 1 identifies a list of international terrorist organisations and deems them terrorist organisations for the purposes of the Act.
- Section 30 grants the High Court power to make a restraint order where proceedings have been instituted in any jurisdiction, where an application has been made for an offence under the Act.
- Section 35 deems 'terrorism financing outside the jurisdiction' an offence if a person actions would have constituted an offence under section 9 to 12
- Section 36 deems corresponding offences under the conventions listed in Schedule 1 (should have been Schedule 2) of the Act as extraditable.
- Section 39 (1) makes it permissible for a police officer, customs officer, immigration officer, the FIU or the Regulator to exchange information with another country for the purposes of terrorist investigations and terrorist financing investigations whether or not there is an MLAT or other formal arrangement for the exchange of information. Subsection (2) states that requests received via MLAT shall not be refused on the grounds of bank secrecy, or grounds that the offences are fiscal or political in nature.

695. The authority to facilitate the effective corporation between Grenada and the international community is vested in the office of the Attorney General particularly for official request and request pursuant to the MLACMA. The FIU is also empowered to share information and cooperate with other agencies with or without memorandum of understanding. The Egmont Group of FIUs of which Grenada is a member provides an opportunity to share information with other FIUs. Examiners were informed that the FIU participates in information exchange between both Egmont and non-Egmont members. The FIU is allowed to share information with or without MOU. They have not entered into any MOUs with their counterparts but according to them, this has not hampered their ability to share information. In addition 39(1) of the TA instructs that any information coming to the attention of a Police Officer, a Custom Officer, an Immigration Officer or the FIU or the regulator concerning any provision of the Act can be exchanged to assist another country for the purposes of terrorist investigation and terrorist financing investigation.

696. Information supplied to examiners regarding countries sharing information with Grenada are all favourable. The RGPF authorities informed examiners that information is exchanged with other police forces via Interpol. The Drug Unit within the RGPF works closely with the US Drug Enforcement Agency (DEA) on many matters. Customs Authorities informed examiners that they are members of CCLEC and co-operate and share information with their counterparts via this organisation.

697. The FIUA empowers the FIU to share all relevant information spontaneously or upon official request, Section 6(2)(f) of the FIUA empowers the Director of the Unit to enter in agreement or arrangement in writing for the purposes of information sharing or other cooperation. Section 6(2)(e) of the FIUA empowers the unit to share information relating to the commission of an offence or information concerning suspicious transactions with foreign FIUs. Examiners learnt from the FIU that information sharing sometimes takes place as informally as over the phone or by formal means. Spontaneous information is also shared through the Interpol mechanism and other law enforcement entities such as the Police, Immigration and Customs.

698. Sections 3 and 4 of the EIA set out the conditions in which regulatory authorities are permitted to assist foreign regulatory authorities with inquiries. Section 2 and the Schedule appended to the Act lists the regulatory agencies to which the Act applies. The listed regulatory authorities are the Attorney General, the Registrar of Companies, the Grenada International Financial Services Authority (replaced by GARFIN), Supervisor of Insurance, Department of Co-operatives, the ECCB and the Supervisory Authority.

699. The FIU is empowered to share information from its own database with other databases including information on suspicious transaction reports. Section 6(2)(b) of the FIUA empowers the FIU to require the production of any information that the FIU considers necessary to fulfil its functions. This includes requiring information from law enforcement entities, financial institutions and any other source necessary. The FIU has access to all available information from all law enforcement entities.

700. Upon satisfaction of the conditions set out in section 3, section 4 of the EIA permits regulatory authorities to conduct investigations on behalf of foreign counterparts. The exchange of information is not made subject to disproportionate or unduly restrictive conditions. The

regulatory authority empowered under the EIA considers the following in relation to a request for assistance.

a) the assistance is necessary for the purpose of enabling or assisting a foreign regulatory authority in the exercise of its regulatory function.

b) the assistance request by the foreign regulatory authority may be granted under any agreement to which Grenada and the foreign state requesting authority are parties.

c) the foreign regulatory authority requesting the assistance has given a written undertaking to provide corresponding assistance to an authority exercising regulatory function in Grenada.

d) the nature and seriousness of the matter to which the inquires relate and the importance to the inquires of the information sought in Grenada warrant disclosure of the information.

e) the assistance can be obtained by other means or

f) the relevant country or territory have enacted similar laws with relation to the exchange of information. See section 3(2) of the EIA

701. Law enforcement authorities including the FIU have little or no restrictive conditions inhibiting the exchange of information with other parties.

702. The EIA, the FIUA, POCA 2003, do not have provisions inhibiting cooperation or exchange on the sole grounds that the offence is considered to involve fiscal offence. Section 39(2)(b) of the TA specifically states that a request for mutual legal assistance shall not be refused on the grounds that the offence under investigation is a fiscal offence.

703. Secrecy or confidentiality laws are not grounds for refusal for cooperation, except where information sought is held in circumstances where legal professional privilege apply. Section 4(5) of the EIA states that a person shall not under this section be required to disclose information or produce a document on grounds of legal professional privilege, except that a barrister or solicitor may be required to furnish the name and address of his client. Under section 39(2) of the TA, a request for mutual legal assistance shall not be refuse on the grounds of bank secrecy.

704. Controls and safeguards are established to ensure that information received by competent authorities is only used in an authorized manner. Provisions are in section 5 (1) of the EIA and section 39 of the Terrorism Act.

705. Section 7(3) of the EIA makes it an offence for a person to disclose information supplied by a foreign regulatory authority or information obtained under the provisions of the EIA. Section 9 of the FIUA makes unauthorised disclosure of any information an offence.

Additional elements

706. Section 39 of the TA makes it permissible for a police officer, customs officer, immigration officer, the FIU or the regulator to exchange information with another country for the purposes of terrorist investigations and terrorist financing investigations whether or not there is an MLAT or other formal arrangement for the exchange of information.

707. No information was provided during the onsite suggesting that there are mechanisms to permit prompt and constructive exchange of information with non-counterparts. In practice the

requesting authorities disclose to the requested authorities the purpose of the request and on whose behalf the request is made. Under section 6 (2)(b) and (f) of the FIUA the FIU can obtain information from other competent authorities or other persons relevant information requested by foreign counterparts FIU.

Special Recommendation V

708. The MLACMA provides for Grenada to co-operate with the USA, Commonwealth and non-Commonwealth countries. The EIA also makes provision for assisting foreign regulatory authorities in obtaining information from within Grenada. These two pieces of legislation allow in great measure assistance in connection with criminal, administrative investigations and inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations except for noted deficiencies The TA criminalizes terrorism and terrorism financing and has specific provisions for information exchange in relation to terrorism, terrorism financing and terrorist organisations.

709. Terrorism and financing of terrorism are extraditable offences under the TA. Grenada also has an EA which sets out the procedure and safeguards with regard to extradition. The above will be affected by the deficiencies identified in sections 6.3 and 6.4 of this report concerning the criminalization of all required terrorist financing offences.

Additional elements

710. The observations noted with regard to the additional elements under Recommendation 40 in paragraphs 705 and 706 are also applicable to the obligations under Special Recommendation .V.

Statistics

Table 17: Requests for Mutual Legal Assistance in Criminal Matters

Nature of Requests	2004	2005	2006	2007	TOTAL
Incoming		4	6	1	
Outgoing					

Table 18: Information sharing between Grenada FIU & other FIUs

Nature of Requests	2004	2005	2006	TOTAL
Incoming	9	21	12	42
Outgoing	7	8	8	23

Source: FIU Annual Reports 2004, 2005 & 2006 & FIU Records

711. The FIU maintains statistics as to the number of incoming and outgoing MLAT requests that they dealt with. Statistics in relation to MLAT and other forms international requests for co-operation were published in the FIU's Annual Report for the periods 2004 to 2006. No formal requests for assistance were made or received by supervisors relating to or including AML/CFT.

Additional elements

712. The following table shows the number of formal requests for assistance made or received by law enforcement authorities relating to ML or FT for the years 2005 to 2007. None of the requests involved financing of terrorism.

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Table 19: Law Enforcement Authorities' Formal Requests for Assistance

Type of requests	2005	2006	2007
Received	28	12	5
Sent out	3	8	9

6.5.2 Recommendations and Comments

713. The following is recommended;

- Consideration should be given to making amendments to FIUA and the EIA to state specifically that requests should not be refused on the sole ground that the request pertains to fiscal matters.

- 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

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	**The EIA and the FIUA do not address whether requests are refused on the sole ground that it is considered to involve fiscal matters..**
SR.V	**PC**	**See factors in sections 6.3 and 6.4**

7. OTHER ISSUES

7.1 Resources and Statistics

714. 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 report i.e. all of section 2, parts of section 3 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 s.6.5 underlying overall rating
R.30	**PC**	**The RGPF does not have adequate technical, financial and human resources** **Members of the RGPF and Office of the DPP involved in AML and CFT are not adequately trained.** **Integrity of RGPF is of concern due to number of officers involved in breaches of discipline and criminal activity** **Attorney General's office is understaffed and under-resourced**
R.32	**PC**	**No established mechanism for the review of the effectiveness of Grenada's AML/CFT systems** **No information about spontaneous referrals made by the FIU to foreign authorities** **Statistics on the total number of cross-border disclosures or the amount of currency involved were not available.** **Statistics submitted do not contain sufficient information on mutual legal assistance requests.**

7.2 Other relevant AML/CFT measures or issues

715. There are no further issues to be discussed in this section

7.3 General framework for AML/CFT system (see also section 1.1)

716. There are no elements of the general framework that significantly impair or inhibit the effectiveness of the AML/CFT system in Grenada.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[4]
Legal systems		
1. ML offence	**PC**	**The list of psychotropic substances in DAPCA is not in accordance with the list under the Vienna Convention** **The list of predicate offences for ML does not cover five (5) of the FATF's designated category of offences, particularly trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy or terrorist financing offence of providing or receiving money or other property in support of terrorist acts.** **The low number of ML convictions suggests ineffective use of ML provisions given the wide range of measures available under the legislation.**
2. ML offence – mental element and corporate liability	**LC**	**The low number of money laundering convictions suggest ineffective use of ML provisions**
3. Confiscation and provisional measures	**LC**	**Ineffective implementation of the forfeiture and freezing regime.**

2. [4] 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	**C**	**This recommendation is fully observed**
5. Customer due diligence	**NC**	**CDD measures are required when there is suspicion of money laundering and only with one-off transactions** **CDD measures for wire transfers are for occasional transactions over US$10,000 rather than over the FATF US$1,000 limit.** **CDD measures are not required when there are doubts about the veracity of previously obtained due diligence** **No provision 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** **No requirement in law or regulation for the verification of identification of customers** **No provision to understand the ownership and control structure of customers that are legal persons or legal arrangement** **No provision to determine the natural persons that ultimately own or control the customer** **No requirement for financial institution to obtain information on the purpose and intended nature of the business relationship** **No legislative provision for financial institutions to conduct ongoing due diligence to include scrutiny of transactions and ensuring that CDD documents and information are kept up-to-date** **No requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer**

		The exemptions for reduced or simplified CDD measures are not justified on the basis of low risk **No requirement for financial institutions to limit simplified or reduced CDD measures to non-resident customers from countries that the authorities are satisfied are in compliance with FATF Recommendations** **No provisions prohibiting simplified CDD measures whenever there is suspicion of money laundering or terrorist financing** **No requirement for financial institutions to apply CDD measures to existing customers on the basis of materiality and risk.**
6. Politically exposed persons	**NC**	**No requirement for financial institutions to have appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.** **No requirement for financial institutions to obtain senior management approval for establishing a business relationship with a PEP or continuing one with a customer who becomes a PEP.** **No requirement for financial institutions to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.** **No requirement for financial institutions to conduct enhanced ongoing monitoring on relationships with PEPs**
7. Correspondent banking	**NC**	**No requirement for financial institutions to gather sufficient information about a respondent institution to understand the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision..** **No requirement for financial institutions to have written procedures to obtain and assess the anti-money laundering procedures and CDD procedures of a respondent institution.**

		No requirement for financial institutions to obtain approval from senior management to establish new correspondent relationships in all cases. **No requirement for financial institutions to document the respective AML/CFT responsibilities of each institution in cross-border correspondent relationships** **No requirement for financial institutions to be satisfied that respondent financial institutions have performed all the normal CDD obligations on customers who have access to" payable-through accounts" and can provide relevant customer identification data upon request**
8. New technologies & non face-to-face business	**NC**	**No requirement for financial institutions to have policies in place that mitigate the misuse of technological developments by money laundering and/or terrorist financing schemes.** **No requirement for financial institutions to have written procedures and a suitably robust risk management framework that mitigates the risks associated with non-face to face transactions. Measures for mitigating risks should include specific and effective CDD procedures that apply to non-face to face customers**
9. Third parties and introducers	**NC**	**No requirement for financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process (criteria 5.3 to 5.6)** **No requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay** **No requirement for financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the**

		CDD requirements set out in R.5 and R.10 **Unable to assess whether competent authorities in determining the list of countries that are recognised as having AML regimes equivalent to Grenada, used information as to whether these countries adequately applied FATF standards** **No specific provision that ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party.**
10. Record keeping	**LC**	**No legislation to require financial institutions to maintain records of account files and business correspondence for a period of at least five years after the completion of a business relationship.**
11. Unusual transactions	**NC**	**No requirement for financial institutions to examine the background and purpose of large, complex and unusual transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing.** **No requirement to maintain written records from the findings of reviews of complex, unusually large or unusual patterns of transactions for competent authorities for at least five years**
12. DNFBP – R.5, 6, 8-11	**NC**	**Dealers in precious metals and precious stones are not included in the AML/CFT regime** **Deficiencies identified for financial institutions with regard to Recs. 5, 6, 8 to 11 are also applicable to DNFBPs.** **Lack of awareness of requirements by DNFBP resulting in ineffective implementation of AML/CFT obligations**
13. Suspicious transaction reporting	**NC**	**The obligation to submit suspicious transaction reports does not apply to the proceeds of all FATF predicate offences.**

		Requirement to report STRs relating to the financing of terrorism is discretionary and does not include funds used for terrorism or by terrorist organisations or those who finance terrorism **No requirement to report all suspicious transactions including attempted transactions regardless of the amount of the transaction.** **No requirement to report suspicious transactions regardless of whether they are thought, among other things to involve tax matters.** **The reporting of suspicious transactions is ineffective.**
14. Protection & no tipping-off	**PC**	**Tipping off offence does not include disclosure of the fact that a STR concerning money laundering in being reported or provided to the FIU**
15. Internal controls, compliance & audit	**NC**	**No requirement for financial institutions to establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism.** **The requirement for financial institutions to develop appropriate compliance management arrangements which include at a minimum the designation of an AML/CFT compliance officer at management level is not enforceable.** **The requirement for AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, etc is not enforceable.** **No requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with the procedures, policies and controls.** **No requirement for financial institutions to train all staff on an ongoing and regular**

		basis to ensure that employees are aware of money laundering and terrorist financing mechanisms, as well as the requirements of anti-money laundering and counter-terrorist financing laws and their obligations under these laws. **The requirement for financial institution to put in place screening procedures to ensure high standards when hiring employees is not enforceable.**
16. DNFBP – R.13-15 & 21	**NC**	**Dealers in precious metals and precious stones are not included in the AML/CFT regime** **Deficiencies identified for financial institutions with regard to Recs. 13 to 15 and 21 are also applicable to DNFBPs.** **Lack of awareness of requirements by DNFBP resulting in ineffective implementation of AML/CFT obligations**
17. Sanctions	**PC**	**Sanctions under the POCA and MLPA are inconsistent in severity Additionally, the application of sanctions has to go through the courts and no broad range of sanctions are available for breaches of statute**
18. Shell banks	**NC**	**No provision to prevent the establishment of a shell bank.** **No provision applicable to financial institutions to prevent them from entering into or continuing correspondent relationships with shell banks.** **No requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.**
19. Other forms of reporting	**NC**	**The authorities have not considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency.**
20. Other NFBP & secure transaction techniques	**PC**	**Unable to assess whether consideration has been given to apply FATF**

		recommendations to non-financial businesses and professions other than DNFBPs
21. Special attention for higher risk countries	**NC**	**Requirement for financial institutions to pay special attention, to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is not enforceable.** **No measures to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.** **No requirement for financial institutions to examine transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations and make written findings of such available to assist competent authorities.** **Authorities in Grenada are not able to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations**
22. Foreign branches & subsidiaries	**NC**	**The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe anti-money laundering and counter terrorist financing measures consistent with Grenada is not enforceable.** **No requirement for financial institutions to pay particular attention to foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendation to ensure they observe measures consistent with home country requirements and the FATF Recommendations.** **No requirement for branches and subsidiaries of financial institutions in host countries to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ.** **No requirement for financial institutions to**

		inform their home supervisor when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering and counter-terrorist financing measures because it is prohibited by the host country's laws, regulations or other measures.
23. Regulation, supervision and monitoring	**PC**	**Limited number of inspections by ECCB in the last four years is ineffective to ensure compliance of its licensees.** **No indication in law that fitness and probity checks on directors, shareholders, management of licensees, is a requirement for the licensees of the ECSRC**. **No requirement in law for fitness and probity checks on directors, shareholders, management of licensees, is a requirement for the licensees of GARFIN** **No supervisory regime and by extension, no reporting obligations are in place for money service business.**
24. DNFBP - regulation, supervision and monitoring	**NC**	**Dealers in precious metals and precious stones are not included in the AML/CFT regime** **There is no designated competent authority with responsibility for monitoring and ensuring compliance of the DNFBPs with the AML/CFT requirements.**
25. Guidelines & Feedback	**PC**	**The FIU has not provided consistent feedback on suspicious transaction reports filed by financial institutions.** **Guidelines do not include instructions covering terrorist financing**
Institutional and other measures		
26. The FIU	**LC**	**Annual reports do not include analysis of typologies and trends** **The increasing number of ongoing investigations suggests that the FIU is not performing effectively.**
27. Law enforcement authorities	**LC**	**The decision to postpone or waive the arrest of suspected persons and/or the seizure of money is taken on a case by case basis and is not laid down in any law or procedure**
28. Powers of competent authorities	**LC**	**Unable to assess whether the RGPF has specific legislative power to take witness statements.**

29. Supervisors	**LC**	**GARFIN's powers of enforcement and sanctions are inadequate since there are no ladder of enforcement powers**
30. Resources, integrity and training	**PC**	**The RGPF does not have adequate technical, financial and human resources** **Members of the RGPF and Office of the DPP involved in AML and CFT are not adequately trained.** **Integrity of RGPF is of concern due to number of officers involved in breaches of discipline and criminal activity** **Attorney General's office is understaffed and under-resourced**
31. National co-operation	**PC**	**There are no effective mechanisms in place to allow policy makers to cooperate with each other**
32. Statistics	**PC**	**No established mechanism for the review of the effectiveness of Grenada's AML/CFT systems** **No information about spontaneous referrals made by the FIU to foreign authorities** **Statistics on the total number of cross-border disclosures or the amount of currency involved were not available.** **Statistics submitted do not contain sufficient information on mutual legal assistance requests**
33. Legal persons – beneficial owners	**NC**	**No measures in place to ensure that bearer shares issued under the International Companies Act are not misused for money laundering** **No legislative requirement for the disclosure of beneficial ownership of companies** **Insufficient resources delegated to the functions of the Registrar of Companies.** **No mechanism to ensure the timely filing of annual returns.** **No access to current information on companies' beneficial ownership to competent authorities due to the failure of companies to file annual returns.**

		No legislation requires the filing or notification of changes to the particulars, including beneficial ownership, of companies.
34. Legal arrangements – beneficial owners	**NC**	**No system of central registration or national registry where records of local trust are kept** **No requirement for the filing/keeping of adequate and accurate information on the beneficial ownership and control of local trusts** **The requirement for trust service providers to obtain, verify and retain records of the details of trusts or other similar legal arrangements in the Guidelines is not enforceable.**
International Co-operation		
35. Conventions	**PC**	**All designated categories of offences are not adequately addressed in the range of predicate offences** **Not all relevant articles of the Conventions have been fully implemented**
36. Mutual legal assistance (MLA)	**C**	**This recommendation is fully observed**
37. Dual criminality	**C**	**This recommendation is fully observed**
38. MLA on confiscation and freezing	**LC**	**There is no provision under MLACMA for the tracing and restraining of instrumentalities intended for use in the commission of an offence.** **The authorities should establish arrangements for coordinating seizure and confiscation actions with other jurisdictions.** **There are no asset-sharing arrangements in place between Grenada and other countries.**
39. Extradition	**C**	**This recommendation is fully observed**
40. Other forms of co-operation	**LC**	**The EIA and the FIUA do not address whether requests are refused on the sole ground that it is considered to involve fiscal matters.**
Eight Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	**No requirement to freeze terrorist funds or other assets of person in accordance with UN Resolutions (S/RES/1267(1999) and**

		(S/RES/1373(2001).
SR.II Criminalise terrorist financing	**NC**	**Criminalisation of terrorist financing does not include all offences in the Annex to the Terrorist Financing Convention.** **The terrorist financing offences do not cover the provision/collection of funds for an individual terrorist.** **The terrorist financing offence of fund-raising is not subject to any sanctions and therefore is not a predicate offence for money laundering.** **The terrorist financing offence of fund-raising does not apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is or the terrorist act occurred/will occur.** **Effectiveness of terrorist financing regime is difficult to assess in light of the absence of investigations, prosecutions and convictions for FT**
SR.III Freeze and confiscate terrorist assets	**NC**	**No provision in TA for the freezing of property other than restraint orders** **No provision for freezing of terrorist funds or other assets of designated persons in accordance with S/RES/1267(1999) and S/RES/1373(2001).** **No provision in TA to provide for the confiscation of property used in connection with the commission of the terrorist financing offence of fund-raising under section 8 of TA.** **No mechanism available where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.** **No clear guidance issued to financial institutions concerning their obligations in taking action for freezing accounts in**

		relation to the circulated lists of terrorists and/or terrorist organisations. **No publicly-known procedure for the de-listing of names of proscribed organisations and terrorists listed in the Schedule to the TA** **No procedures for authorising access to funds or other assets that were frozen via restraint orders, necessary for basic expenses and the payment of certain types of fees in accordance with S/RES/1452(2002).** **Difficult to assess effectiveness of mechanism for ensuring compliance with TA due to lack of statistics**
SR.IV Suspicious transaction reporting	**NC**	**Requirement to report STRs relating to the financing of terrorism is discretionary and does not include funds used for terrorism or by terrorist organisations or those who finance terrorism** **No requirement to report all suspicious transactions including attempted transactions regardless of the amount of the transaction.** **No requirement to report suspicious transactions regardless of whether they are thought, among other things to involve tax matters.**
SR.V International co-operation	**PC**	**Not all FT offences are covered by mutual legal assistance mechanisms** **The terrorist financing offence of fund-raising is not an extraditable offence** **The provision/collection of funds for an individual terrorist is not an offence and is not extraditable.**
SR VI AML requirements for money/value transfer services	**NC**	**No systems in place for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations** **Deficiencies noted with regard to Recs. 4-11, 13-15 and 21-23 are also applicable to MVT service operators** **No requirement for licensed or registered**

		MVT operators to maintain a current list of their agents to be made available to the designated competent authority **Sanctions applicable with regard to GARFIN's supervisory function are not proportionate or dissuasive.**
SR VII Wire transfer rules	**NC**	**No requirement for ordering financial institutions to obtain and maintain full originator information for all wire transfers of US$1,000 and above** **No requirement for ordering financial institutions to include full originator information along with cross-border and domestic wire transfers** **No requirement for intermediary and beneficiary financial institutions in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the wire transfer** **No requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.**
SR.VIII Non-profit organisations	**NC**	**Registering of NPOs is not mandatory.** **No review has been undertaken of the adequacy of domestic laws in relation to non-profit organisations (NPOs) to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities.** **No outreach to NPOs to protect the sector from terrorist financing abuse.** **No effective supervisory regime to monitor non-compliance and sanction violations of oversight measures.**

		No record keeping and retention requirements for NPOs. **No investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.**
SR.IX Cross Border Declaration & Disclosure	**NC**	**Penalty for false disclosure/declaration is not dissuasive** **Domestic cooperation between customs and other agencies is insufficient** **Information-sharing among Customs and other law enforcement authorities is inadequate.** **Customs' participation in AML/CFT is not sufficient** **Unable to assess whether systems for reporting cross-border transactions are subject to strict safeguards.** **Unable to assess effective of disclosure system due to insufficient statistics**

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	• The authorities should consider pursuing ML as a stand-alone offence. • Schedules I to III of DAPCA should be amended to include all narcotic drugs and psychotropic substances listed in Tables I and II of the Vienna Convention. • The authorities should extend the range of predicate offences for ML to include all the FATF designated categories of offences i.e. trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy and the terrorist financing offence of providing or receiving money or other property in support of terrorist acts. • The authorities should consider consolidating the three pieces of legislation governing money laundering. Having the MLPA, POCA 1992 and POCA 2003 in force with differing penalties for ML and definitions for certain key terms will give rise to confusion and has affected the ability of law enforcement and prosecutorial authorities to aggressively pursue ML offences.
Criminalisation of Terrorist Financing (SR.II, R.32)	• Schedule 2 of the TA should be amended to include the treaties on the Convention on the Physical Protection of Nuclear Material and the International Convention for the Suppression of Terrorist Bombing. • The TA should be amended to include the terrorist financing offences of the provision/collection of funds for an individual terrorist. • The TA should be amended to provide sanctions for the terrorist financing offence of providing or receiving money or other property in support of terrorist acts. • The TA should be amended to provide for the terrorist financing offence of fund-raising to apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is or the terrorist act occurred/or will occur.

Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• Given the high rate of drug-related offences occurring in Grenada, authorities should place greater emphasis on the automatic confiscation mechanism following conviction available to the DPP in accordance with POCA 1992 and 2003
Freezing of funds used for terrorist financing (SR.III, R.32)	• The TA should be amended to allow for the freezing of terrorist funds or other assets of persons designated by the United Nations Al-Quaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). • The TA should be amended to provide for the freezing of terrorist funds or other assets of person designated in the context of S/RES/1373(2001). • The Taliban should be added as a proscribed organisation under the TA. • The authorities should issue clear guidance to financial institutions concerning their obligations in taking action for freezing accounts in relation to the circulated lists of terrorists. • The TA should contain procedures for the de-listing of names of proscribed organisations and terrorists listed in the Schedule to the TA. • The TA should be amended to provide for the authorising of access to funds or other assets that were frozen via restraint orders, necessary for basic expenses and the payment of certain types of fees in accordance with S/RES/1452(2002). • The TA should be amended to provide for the confiscation of property used in connection with the commission of the terrorist financing offence of fund-raising under section 8 of TA. • The TA should be amended to provide a mechanism where victims of offences committed under the TA are compensated consistent with Article 8 of the Terrorist Financing Convention.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• The authorities should act promptly in appointing a FIU Director. The absence of a director significantly hampers the functioning of the Unit. • There should be specified grounds for the removal of the

	director. • The annual report of the FIU should include an analysis of trends and AML/CFT typologies. • The FIU along with the Supervisory Authority should consider undertaking an education drive in order to inform reporting parties and the general public on various typologies and trends and other matters related to AML/CFT. • The FIU should consider reviewing its work processes so that there are unambiguous roles between analysts and investigators and in doing so consideration should be given to sourcing additional specialized training for financial intelligence analysts.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Competent authorities should consider developing a standard operating procedure, delineating the parameters within which they should operate when the decision is made to postpone or waive the arrest of suspected persons and/or the seizure of money or to use special investigative techniques. • Grenadian authorities should consider providing additional financial and technical resources to law enforcement agencies. • Authorities should consider reviewing the measures in place for ensuring that persons of high integrity and good moral character are recruited into the RGPF and that there is continuous monitoring of officers professionalism, integrity and lifestyle. • Authorities should consider reviewing the training needs of the ODPP as well as RGPF. The CID which is primarily responsible for investigating financial crime is inadequately trained in that area. • Greater priority should be given to the investigation of ML / TF cases by the Police and the DPP's Office. • It is recommended that additional technical resources be dedicated to the compilation of statistical data to provide more comprehensive and timely presentation of statistics
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including	• Competent authorities may consider carrying out a

enhanced or reduced measures (R.5 to 8)	national risk assessment to determine the risk of money laundering and terrorist financing to enable the application of reduced or simplified anti-money laundering and counter terrorist financing measures. • Competent authorities should consider making the Guidelines mandatory and enforceable with effective, proportionate and dissuasive sanctions. • Regulations or legislative amendments should be introduced to require CDD measures when there is suspicion of money laundering or terrorist financing and for occasional transactions over US$1,000 that are wire transfers. • Regulations or legislative amendments should be introduced for financial institutions to be required to undertake CDD measures where there are doubts about the veracity or adequacy of previously obtained CDD. • Regulations or legislative amendments should be introduced for financial institutions to be required 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. • Financial institutions should be legislatively required to verify the identification of customers. • Financial institutions should be required to understand the ownership and control structure of customers that are legal persons or legal arrangements • Financial institutions should be legislatively required to determine the natural persons that ultimately own or control the customer • Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. • Legislative amendments should be introduced to require that financial institutions and other relevant persons apply ongoing due diligence measures to their client base. This should include scrutiny of transactions and ensuring that CDD documents and information are kept up-to-date. • Financial institutions should be required to perform enhanced due diligence for higher risk categories of

	customers. • Financial institutions should be required to limit the application of simplified or reduced CDD measures to non-resident customers from countries that the authorities in Grenada are satisfied are in compliance with FATF Recommendations. • Simplified CDD measures should be prohibited whenever there is suspicion of money laundering or terrorist financing. • Financial institutions should be required to terminate a business relationship if the verification of a customer cannot be completed. • Financial institutions should be required to perform CDD measures on existing clients and to conduct due diligence on existing relationships at appropriate times. Financial institutions should also be required to review and consider closing existing accounts where due diligence is inadequate against the requirements of Recommendation 5. • Financial institutions should be required to have appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • Financial institutions should be required to obtain senior management approval for establishing a business relationship with a PEP or continuing one with a customer who becomes a PEP. • Financial institutions should be required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. • Financial institutions should be required to conduct enhanced ongoing monitoring on relationships with PEPs. • Grenada should undertake steps to sign the 2003 United Nations Convention against Corruption. • Financial institutions should be fully aware and document a respondent institution's circumstances: - this should include details of its business, management, regulated status and other information that may be publicly available or available upon request for the purposes of establishing a relationship.

	• Financial institutions should be required to have written procedures to obtain and assess the anti-money laundering procedures and CDD procedures of a respondent institution. • Financial institutions should be required to obtain approval from senior management to establish new correspondent relationships in all cases. • Financial institutions should document the respective AML/CFT responsibilities of each institution in cross-border correspondent relationships • Financial institutions should be satisfied that respondent financial institutions have performed all the normal CDD obligations on customers who have access to" payable-through accounts" and can provide relevant customer identification data upon request. • Financial institutions should be required to have policies in place that mitigate the misuse of technological developments by money laundering and/or terrorist financing schemes. • Financial institutions should be required to have written procedures and a suitably robust risk management framework that mitigates the risks associated with non-face to face transactions. Measures for mitigating risks should include specific and effective CDD procedures that apply to non-face to face customers. •
Third parties and introduced business (R.9)	• Financial institutions should be required to immediately obtain from introducers the necessary information concerning certain elements of the CDD process (criteria 5.3 to 5.6). • Financial institutions should be required to test agreements with third parties to ensure that CDD held satisfies the provisions of Recommendations 5 and 10. This testing should also confirm whether information can be provided by the third party without delay. • Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29. • Competent authorities should consider the issuance of a list of jurisdictions that adequately apply the FATF

	Recommendations, for third parties that may operate in foreign jurisdictions. • Amendment to legislation or guidance to stipulate that the verification and identification of a client remains the responsibility of the financial institution, regardless of whether or otherwise it has relied on a third party to conduct the verification and identification of the client
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	• Amend legislation to require financial institutions to maintain records of account files and business correspondence for a period of at least five years after the completion of a business relationship. • The authorities should institute enforceable measures in accordance with all the requirements of SRVII and establish a regime to effectively monitor the compliance of the financial institutions with said enforceable measures.
Monitoring of transactions and relationships (R.11 & 21)	• Guidance and legislation should be amended to require financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing. • Guidance and legislation should be amended to require financial institutions to retain written findings from the review of complex, unusually large or unusual patterns of transactions for no less than five years. • Mandatory requirements should be imposed on financial institutions to pay special attention, to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Effective measures should be put in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries. • Financial institutions should be required to examine transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations and make written findings of such available to assist competent authorities.

	• Authorities in Grenada should be empowered to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The authorities should extend the range of predicate offences for ML to include all the FATF designated categories of offences by criminalising trafficking in human beings and migrant smuggling, counterfeiting and piracy of products, environmental crime and piracy and the terrorist financing offence of providing or receiving money or other property in support of terrorist acts. • The TA should be amended to make the reporting of suspicious transactions relating to financing of terrorism mandatory and include funds used for terrorism or by terrorist organisation or those who finance terrorism • All suspicious transactions, including attempted transactions should be legislatively required to be reported regardless of the amount of transaction • The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters. • The POCA, 2003 should be amended to extend the tipping off offence to include disclosure of the fact that a STR concerning money laundering is being reported or provided to the FIU. • Competent authorities should consider the feasibility and utility of implementing a system where financial institutions report transactions in currency above a prescribed threshold to a centralised national authority. • The FIU should provide financial institutions and DNFBPs with consistent feedback on filed suspicious transaction reports. • The TA should be amended to make the reporting of suspicious transactions relating to financing of terrorism mandatory and include funds used for terrorism or by terrorist organisation or those who finance terrorism. • All suspicious transactions, including attempted

	transactions should be legislatively required to be reported regardless of the amount of transaction The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters
Cross Border declaration or disclosure (SR.IX)	• Customs should consider implementing a declaration system to be used in conjunction with the disclosure system for incoming and outgoing passengers. The threshold should not be higher than EUR/US15000.00 • Consideration should be given to the increased use of specific technical expertise such as canine units (that can sniff for concealed currency), x-rays and scanners. These activities should be well funded. • Customs should explore the involvement of airline and vessel senior management in currency interdiction operations. • Customs officials should be trained in the use passenger screening systems to analyse behaviour, appearance and communication style of potential currency carriers. In so doing baseline questions should be identified to identify red flags. • Authorities should review legislation concerning the making of false disclosures/declarations to ensure that these are strict liability offences. • Penalties under the Customs Ordinance should be amended with the aim of making them dissuasive • Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of seizures; these statistics should be readily available for use by Customs and other LEAs. • Consideration should be given for the provision of training in counterfeit currency identification to Customs Personnel, especially those working the ports. • Customs should consider fostering closer relationships with the FIU, the RGPF and ODPP • There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing.

	• Customs Authorities should also give consideration to reporting all incidences of currency interdictions where untrue disclosures/declarations are made to the FIU, whether or not administrative or criminal proceedings are being considered.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• All financial institutions should be required to establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism. • The requirement for financial institutions to develop appropriate compliance management arrangements which include at a minimum the designation of an AML/CFT compliance officer at management level should be enforceable. • The requirement for AML/CFT compliance officer and other appropriate staff to have timely access to customer identification data and other CDD information, etc should be enforceable. • Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with the procedures, policies and controls. • All financial institutions should be required to train all staff on an ongoing and regular basis to ensure that employees are aware of money laundering and terrorist financing mechanisms, as well as the requirements of anti-money laundering and counter-terrorist financing laws and their obligations under these laws. • The requirement for financial institution to put in place screening procedures to ensure high standards when hiring employees should be enforceable. • The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe anti-money laundering and counter terrorist financing measures consistent with Grenada should be enforceable. • Financial institutions should be required to pay particular attention to foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendation to ensure they observe measures consistent with home country requirements and the FATF Recommendations.

	• Branches and subsidiaries of financial institutions in host countries should be required to apply the higher standard where minimum AML/CFT requirements of the home and host countries differ. • Financial institutions should be required to inform their home supervisor of when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering and counter-terrorist financing measures because it is prohibited by the host country's laws, regulations or other measures.
Shell banks (R.18)	• Legislative amendments should be effected to prohibit the establishment and licensing of a shell bank. The amendment should also require an entity licensed under the Offshore Banking Act, 2003 to have its mind and management within Grenada. • Amend legislative provisions to prevent financial institutions from entering into or continuing correspondent relationships with shell banks. • Amend legislation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• Authorities should amended the POCA and the MLPA to ensure that sanctions are consistent and broad in range • The ECCB should review its inspection program to ensure effective compliance of its licensees with AML/CFT obligations • Legal provisions should be enacted for fitness and probity checks on directors, shareholders, and management of licensees of the ECSRC and GARFIN. • Money value transfer service operators should be subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements • The GARFIN Act should be amended to provide for ladder of enforcement powers • The Guidelines should include specific instructions relating to the requirements for combating the financing of terrorism

Money value transfer services (SR.VI)	• Legislation for money services providers that meets the FATF requirements should be enacted. • Introduce systems for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations. • Licensed MVT service operators should be required to maintain a current list of their agents to be made available to the designated competent authority. • GARFIN's supervisory sanctions should be made proportionate and dissuasive
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Deficiencies identified for financial institutions with regard to Recs. 5, 6, 8 to 11 are also applicable to DNFBPs. Specific recommendations in the relevant sections of this report will also apply to DNFBPs. • Authorities should consider specific training and/or awareness programs to educate DNFBPs about AML/CFT requirements • Dealers in precious metals and precious stones should be subject to AML/CFT requirements in accordance with FATF standards
Suspicious transaction reporting (R.16)	• Deficiencies identified for financial institutions with regard to Recs. 13 to 15 and 21 are also applicable to DNFBPs. Specific recommendations in the relevant sections of this report will also apply to DNFBPs. • Authorities should consider specific training and/or awareness programs to educate DNFBPs about AML/CFT requirements • Dealers in precious metals and precious stones should be subject to AML/CFT requirements in accordance with FATF standards
Regulation, supervision and monitoring (R.24-25)	• The authorities should designate a competent authority with the responsibility for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. • Dealers in precious metals and precious stones should be subject to AML/CFT requirements in accordance with

	FATF standards • The Guidelines should include specific instructions relating to the requirements for combating the financing of terrorism
Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• Appropriate measures should be taken to ensure that bearer shares issued under the ICA are not misused for money laundering. • There should be statutory requirements for the provision of information on the beneficial ownership of companies. • Adequate resources should be delegated to the functions of the Registrar of Companies and Intellectual Property. • A mechanism should be developed to ensure the timely filing of annual returns as well as the timely access by competent authorities and other relevant parties to the current information on companies' beneficial ownership. • Legislative amendments should be introduced to require the timely notification of any changes in the beneficial ownership of companies, along with changes to other particulars.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Authorities should put in place measures for the registration and monitoring of local trusts in accordance with FATF requirements. • Authorities should consider including adequate and accurate information on the beneficial ownership and control of trusts as part of the registration process for local trusts
Non-profit organisations (SR.VIII)	• The authorities should make the registering of NPOs mandatory. • The authorities should undertake a review of the adequacy of domestic laws in relation to non-profit organisations (NPOs) to determine whether they are (i) susceptible to being used by terrorist organisations or (ii) particularly vulnerable to terrorist activities. • The authorities should undertake outreach to the NPO sector with a view to protecting the sector from terrorist

	financing abuse. • An effective supervisory regime should be established to monitor non-compliance and sanction violations of oversight measures. • Record keeping and retention requirements should extend to NPOs. • Authorities should develop investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• The Supervisory Authority should be given the legal authority to bring together the various authorities on a regular basis to develop and implement policies and strategies to tackle ML and TF. The provision of public education on issues of ML and TF should be added to their responsibilities. • The Supervisory Authority may wish to consider setting up a secretariat to monitor the implementation of Grenada's AML/CFT Regime
The Conventions and UN Special Resolutions (R.35 & SR.I)	• The authorities should extend the range of predicate offences for ML to accord with the FATF Designated Categories of Offences. • The authorities should amend relevant legislation to cover all the activities required to be criminalised in accordance with the Conventions • The authorities should implement the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (S/RES/1267(1999) and S/RES/1373(2001).
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• Grenadian authorities should consider putting in place mechanisms for the determining of the best venue for the prosecution of defendants when issues of dual jurisdictional conflict arise. • The MLACMA should be amended to include provisions for the tracing and restraining of instrumentalities intended for use in the commission of an offence. • The authorities should establish arrangements for co-ordinating seizure and confiscation actions with other jurisdictions.

	• The authorities should consider making arrangements with other countries for the sharing of funds forfeited and seized. • The authorities should consider providing additional staff and resources to the Attorney General's office. • The authorities should maintain comprehensive statistics on MLA and extradition request received, made and granted. • The provision/collection of funds for an individual terrorist should be criminalized under the TA.
Extradition (R.39, 37, SR.V & R.32)	• The TA should be amended to include penalties that are proportionate and dissuasive for the terrorist financing offence of fund-raising. • The provision/collection of funds for an individual terrorist should be criminalised under TA.
Other Forms of Co-operation (R.40, SR.V & R.32)	• Consideration should be given to making amendments to FIUA and the EIA to state specifically that requests should not be refused on the sole ground that the request pertains to fiscal matters. • The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities.
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

ANNEXES

ANNEX 1

Abbreviations used

AML	Anti-Money Laundering
BA	Banking Act, 2005
CA	Companies Act, 1994
CALP	Caribbean Anti-Money Laundering Programme
CC	Criminal Code
CCLEC	Caribbean Customs Law Enforcement Council
CFT	Combating the Financing of Terrorism
CID	Criminal Investigation Department
COP	Commissioner of Police
DAPCA	Drug Abuse (Prevention and Control) Act, 1992
DEA	Drug Enforcement Agency
DNFBP	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
EA	Extradition Act, 1998
EC	Eastern Caribbean
ECCB	Eastern Caribbean Central Bank
ECSC	Eastern Caribbean Supreme Court
ECSRC	Eastern Caribbean Securities Regulatory Commission
EIA	Exchange of Information Act,2003
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIUA	Financial Intelligence Unit Act, 2003
F&P	Fit and Proper
FT	Financing of Terrorism
GARFIN	Grenada Authority for the Regulation of Financial Institutions
GDP	Gross Domestic Product
Guidelines	Anti-Money Laundering Guidelines
ICA	International Companies Act, Cap. 152
LEA	Law Enforcement Authorities
ML	Money Laundering
MLACMA	Mutual Legal Assistance in Criminal Matters Act, 2001
MLA TREATY	Mutual Legal Assistance in Criminal Matters Treaty (Government of Grenada and Government of the United States of America) Act, 2001
MLPA	Money Laundering (Prevention) Act, 1999
MOF	Minister of Finance
NPO	Non-Profit Organisation
OBA	Offshore Banking Act, 2003
OECS	Organisation of Eastern Caribbean States
OFAC	Office of Foreign Assets Control
POCA	Proceeds of Crime Act
POCAMLR	Proceeds of Crime (Anti-Money) Laundering Regulations, 2003
RGPF	Royal Grenada Police Force

SA	Securities Act
SAR	Suspicious Activity Report
TA	Terrorism Act, 2003

ANNEX 2

All Bodies Met During the On-site Visit

GOVERNMENT AGENCIES

Supervisory Authority
Financial Intelligence Unit
Royal Grenada Police Force
Customs & Immigration
Attorney General's Office
Director of Public Prosecutions' Office
Chief Magistrate
Ministry of Finance
Grenada Authority for the Regulation of Financial Institutions
Registrar of Companies
Eastern Caribbean Central Bank

FINANCIAL SECTOR

Bank of Nova Scotia
Republic Bank Grenada Ltd
Grenada Cooperative Bank Limited
Communal Cooperative Credit Union Limited
Public Service Cooperative Credit Union
Colonial Life Insurance Ltd
Trans-Nemwil Insurance Ltd
Netherlands Insurance Co Ltd
Sol Mutuel Ltd
Agostini Insurance Brokers
Grenada Properties Management
Terra Caribbean
Western Union Money Services (Renwick & Thompson)
Pannell-Kerr Foster
Winston Agostini

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