



# Mutual Evaluation Report

Anti-Money Laundering and  
Combating the Financing of  
Terrorism

Guyana

JULY 25, 2011

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

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Guyana 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<sup>1</sup>. The evaluation was based on the laws, regulations and other materials supplied by Guyana, and information obtained by the evaluation team during its on-site visit to Guyana from 18 – 29 January 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Guyana government agencies and the private sector. A list of the bodies met is set out in Annex to the mutual evaluation report.

2. Guyana joined the Caribbean Financial Action Task Force (CFATF) in 2002 and had its first mutual evaluation as part of the CFATF's second Round of Mutual Evaluations in October 2006. This report is the result of the third Round Mutual Evaluation of Guyana as conducted in the period stated herein above. The Examination Team consisted of : Mrs. Renee L.B. Foggo, legal expert (Bermuda), Mr. Alcedo D. Fahie law enforcement expert (Virgin Islands), Carson Eustatius, financial expert (Curacao), Russell Raman-Nair, financial expert (Trinidad and Tobago). The team was led by Mr. Roger Hernandez, Financial Advisor, CFATF Secretariat 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. The Team would like to express its gratitude to the Government of Guyana.

3. This report provides a summary of the AML/CFT measures in place in Guyana as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Guyana'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).

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1. <sup>1</sup> As updated February 2008.

## **Executive Summary**

### **1. Background Information**

1. The Mutual Evaluation Report (MER) of Guyana summarises the anti-money laundering /combating the financing of terrorism (AML/CFT) measures in place in Guyana at the time of the on-site visit (January 18<sup>th</sup> to 29<sup>th</sup> 2010). The Report sets out Guyana's level of compliance with the FATF 40 + 9 Recommendations which are contained in Table 1 of the Report.
2. Guyana is situated in northern South America. A former British colony, its economy consists largely of industries dependent on utilization of natural resources (e.g. agriculture, mining, fishing and timber). Guyana has significant levels of cash based transactions and emerging businesses. There is also an informal economy. The economy grew by 2.3 % in 2009, a decrease from 3.1% in 2008.
3. While information on methods, techniques and trends in money laundering (ML) and terrorist financing (TF) is limited there was an overall drop in serious crimes during the period 2006-2009. None of the reported predicate offences resulted in any ML or TF convictions. There is no evidence or indication of TF occurring in Guyana.
4. Guyana's financial sector is comprised of commercial banks, nonbank financial institutions, insurance companies, securities registrants, cambios, money transfer agents and co-operative societies. All financial activities listed in the FATF glossary are covered by the main AML/CFT legislation in addition to other types of activities. The designated non-financial businesses and professions (DNFBPs) subject to AML/CFT measures in Guyana include all the FATF categories. Several types of legal persons and legal arrangements can be established under the laws of Guyana. These include domestic and external companies, co-operative societies and friendly societies.
5. The main focus of the authorities' strategy to prevent money laundering and terrorist financing is the implementation of the recently enacted Anti-Money Laundering and Countering the Financing of Terrorism Act (AMLCFTA). This is to be done, firstly by establishing the institutional framework and providing resources necessary to facilitate the functions of this framework. Additionally, the development of subsidiary legislation such as regulations and guidelines is also being considered.
6. Guyana's ML/FT risk management framework is administered by the Ministry of Finance , the Office of the Attorney General, the Financial Intelligence Unit (FIU), the Guyana Police Force (GPF), Customs Anti-Narcotic Unit (CANU), the Office of the Director of Public Prosecutions, the Bank of Guyana (BOG), the Commissioner of Insurance (COI), the Guyana Securities Council (GSC), the Chief Co-operative Development Officer (CCDO) and the Guyana Revenue Authority (GRA). The Central Bank has adopted a risk-based approach in its supervision. Guyana has made significant progress since its last mutual evaluation through the enactment of comprehensive AML/CFT legislation.

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

7. Money laundering has been criminalized in Guyana under the provisions of the AMLCFTA in accordance with most of the relevant Articles of the Vienna and Palermo Conventions. The offence of money laundering includes converting, transferring, concealing, disguising,

acquiring, possessing or otherwise dealing with property that constitutes the proceeds of crime from a broad range of criminal activity i.e. serious crime. However, the ML offence of assisting any person involved in the commission of an ML offence or offences to evade the legal consequences of his actions is not criminalized. The FATF designated predicate offences of illicit trafficking in stolen and other goods and smuggling are not criminalized. Money laundering is applicable to both natural and legal persons and intent can be inferred from objective factual circumstances. The penalties for money laundering are deemed effective, proportionate and dissuasive. However the recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.

8. Terrorist financing has been criminalized in section 68 of the AMLCFTA in compliance with most of the requirements of Article 2 of the Terrorist Convention. The definition of property does not include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind. There is no provision for terrorist financing to extend to funds from legitimate or illegitimate sources or to apply regardless of whether persons alleged to have committed the offence is in the same country or in a different one from where the terrorist(s)/terrorist organization is located or the terrorist act(s) will occur. A range of ancillary terrorist financing offences have been criminalized in accordance with the Terrorist Convention and terrorist financing offences are predicate offences for money laundering. The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.
9. Part IV of the AMLCFTA provides for the confiscation of property that constitute proceeds from, instrumentalities used or intended to be used in connection with the commission of ML or TF. However the definition of property liable for confiscation does not include assets of every kind whether tangible or intangible or indirect proceeds of crime including income, profits or other benefits from proceeds of crime or property held by a third party. Provisional measures to restrain dealing, transfer or disposal of property include restraining orders under section 38 of the AMLCFTA. Section 37 of the AMLCFTA allows for the seizure and detention of cash in relation to the suspicious importing and exporting of currency. Measures to provide for the identification and tracing of property include production orders and search and seizure orders under sections 24 and 28 of the AMLCFTA. There are adequate provisions for the protection of the rights of bona fide third parties. The examiners were unable to assess effective implementation since there were no restraint, forfeiture or production orders or search warrants granted under the AMLCFTA due to its recent enactment.
10. The AMLCFTA does not include provisions for freezing funds of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001). There are also no procedures in place for delisting requests, unfreezing of funds or providing access to frozen funds or providing guidance to financial institutions in relation to S/RES/1267 or S/RES/1373. Guyana can give effect to the freezing mechanisms initiated in other jurisdictions. Section 71 of the AMLCFTA provides for the DPP to apply to the High Court to freeze any account or other property held by or on behalf of any terrorist or terrorist organization. There are measures for restraint orders and production orders and adequate provisions for the protection of the rights of bona fide third parties. The provisions in the AMLCFTA relating to the freezing, seizing and forfeiture of funds of terrorists or terrorist organizations have not been implemented.

11. The Financial Intelligence Unit (FIU) is responsible for the receiving, analyzing and assessing of reports of suspicious transactions from reporting entities. The FIU has the power to search, compel production of information and monitor and trace. It can access all information it needs to perform its functions and it can disseminate and share information with relevant authorities. The FIU is operationally independent. Additionally, the FIU also has the authority to investigate matters relating to ML and TF. There are minimal security arrangements for custody of information with the main vulnerability being IT support provided by personnel not in the employ of the FIU and no guidelines regarding the manner of STR reporting have been issued to financial institutions and other reporting entities. The FIU has not released any public reports with statistics, typologies and trends. No statistics on STRs were made available to the examiners. It is the view of the examiners that the efficient operation of the FIU has been significantly affected by lack of resources.
12. The GPF is the main agency responsible for conducting investigations relating to money laundering, proceeds of crime or terrorist financing. While the FIU also has investigative powers, at the time of the mutual evaluation there was no such capability. CANU also has powers under the Customs Act which allows it to be involved in the early stages of money laundering investigations. There are no written laws or measures authorizing the GPF to postpone or waive the arrest of suspected persons and/or the seizures of money for the purpose of identifying persons involved in money laundering or for evidencing gathering. Under the AMLCFTA, the GPF and the FIU have a broad range of powers including the ability to compel the production of , search persons or premises for and seize and obtain records or information for conducting investigations of ML, FT and predicate offences. However, there are no written provisions for the taking of witness statements for use in investigations and prosecutions of ML, FT and underlying predicate offences in Guyana.
13. Guyana has implemented a cross-border declaration system for both outgoing and incoming travelers for cash and negotiable instruments. As per provisions, declaration forms are required to be completed and submitted to the GRA which has the authority to seize and detain any currency suspected of being property derived from serious crime Information on all declarations are forwarded on a monthly basis to the FIU by the GRA. The system for cross-border declaration that was implemented at the time of mutual evaluation did not include bearer negotiable instruments. Penalties for making a false declaration do not extend to legal persons and are not dissuasive or proportionate. Deficiencies with regard to the absence of provisions for freezing of funds of persons pursuant to S/RES/1267(1999) and S/RES/1371(2001) are also applicable. Examiners were unable to assess effectiveness due to lack of relevant statistics.

## **2. Preventative measures – Financial Institutions**

14. The AMLCFTA detail the AML/CFT preventative measures applicable to Guyana's financial system. The scope of the activities and businesses subject to AML/CFT requirements are consistent with FATF definitions and include all financial institutions and DNFBPs. No regulations or guidance notes have been issued to supplement the AMLCFTA. The AMLCFTA stipulates account opening, customer identification and beneficial customer requirements. While individual customer identification requirements were adequate there are no requirements for reporting entities to obtain information on the ownership of customers who are legal persons or legal arrangements, to determine who are the natural persons who ultimately own or control the customer or to verify the legal status



of specific legal arrangements such as trusts. There is no definition of beneficial ownership with regard to legal entities.

15. There are provisions for establishing the identity of persons on whose behalf an applicant is acting, the monitoring of accounts and ongoing due diligence,. With regard to risk there is no requirement for reporting entities to perform enhanced due diligence for higher risk categories of customers. In relation to timing of verification there is no requirement for reporting entities to verify the identity of a customer or beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Additionally, there is no prohibition from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as required in criteria 5.3 to 5.6 and being required to consider making a suspicious transaction report.
16. Requirements for PEPs include domestic PEPs and are generally in accordance with FATF requirements except for no requirement for senior management approval for continuing a relationship with an existing customer who subsequently becomes or is found to be a PEP. At the time of the mutual evaluation, the provision of cross-border correspondent account facilities was minimal in Guyana since most banks are either branches or subsidiaries of international or regional groups with foreign headquarters. However, obligations governing cross-border correspondent banking relationships are incorporated in the AMLCFTA and include all FATF requirements except for no requirement to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action and financial institutions are not required to ascertain that the AML/CFT controls of a respondent institution are adequate and effective. With regard to conduct of financial business by electronic means there are no requirements for measures to prevent the misuse of technological developments in ML or TF schemes or address specific risks associated with non-face to face business.
17. Provisions for reliance on third parties and introduced business include immediately obtaining necessary information as detailed in FATF criteria 5.3 to 5.6 from the third party or intermediary and taking adequate steps to be satisfied that copies of identification data and other relevant documentation will be made available from the third party upon request without delay. However, authorities have issued no guidance in relation to which countries third parties that meet FATF condition can be based. Additionally, financial institutions are not required to satisfy themselves that third parties have measures in place to comply with the CDD requirements in Recommendation 5 and the requirement for third parties to be regulated and supervised was not specified in accordance with Recs. 23, 24 and 29. With regard to financial secrecy, there is a general provision in the AMLCFTA overriding any secrecy obligation subject to the Guyana Constitution. While some individual supervisory statutes allow for access to information in financial institutions there is no provision for the GSC to access information relevant to AML/CFT matters from registrants of the Securities Industry Act (SIA) and for the CCDO to share information with local and international authorities.
18. Recording keeping provisions are in compliance with FATF requirements except for explicit legal provisions requiring financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities. Obligations with regard to Special Recommendation VII applicable to both cross-border and domestic transfer are outlined in the AMLCFTA. There is no definition of originator information and no provision for a receiving intermediary financial institution

to keep for five years records of information on cross border wire transfers that cannot be forwarded with a related domestic wire transfer. Additionally, there is no requirement for beneficiary financial institution to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information and no measures to effectively monitor compliance with the requirements of SRVII..

19. Provisions enacting measures for the monitoring of unusual or large transactions or unusual patterns of transactions comply with most of the FATF requirements except for no requirement that findings on background and purpose of transactions should be kept available for at least five years or that findings on complex, unusual, large transactions or unusual patterns of transactions with no apparent or visible economic or lawful purpose should be available to all competent authorities and auditors.. There are no measures to ensure that financial institutions are advised about weaknesses in the AML/CFT systems of other countries or mechanisms to apply counter measures to countries that continue not to apply or insufficiently apply the FATF Recommendations.
20. Suspicious transaction reporting provisions do not apply to all FATF predicate offences as indicated in relation to Rec. 1 Reporting requirement for terrorist financing does not include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organizations. There is no provision specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought to involve tax matters. While there are measures providing general protection to staff of financial institutions for reporting STRs there is no specific requirement that protection should be available even if the staff did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity occurred. There is no documentary evidence that consideration has been given to the feasibility of a national system for the reporting of currency transactions above a fixed threshold to a central agency. There is no requirement for competent authorities or the FIU to provide feedback to financial institutions and DNFBPs.
21. There are provisions for internal procedures, policies and controls and the appointment of a compliance officer at management level with specific functions. However, individuals who carry on business solely or with a staff and management of less than five persons are exempt from the requirements of Recommendation 18. There is also no requirement for internal audit to be adequately resourced, independent and include sample testing for compliance. The AML/CFT compliance officer only has access to information for the reporting function and this access is not extended to all other appropriate staff. Finally, the training obligation of financial institutions is not ongoing and does not include new developments. While section 22 of the AMLCFTA requires the respective supervisory authorities to impose obligations on financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, this had not been done at the time of the mutual evaluation.
22. The licensing process of the BOG ensure that shell banks do not operate in Guyana. There is no requirement for financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.
23. The supervisory authorities in Guyana are the BOG, the COI, the GSC, the DCFS. While each supervisory authority has separate operating statutes, AML/CFT supervisory responsibilities, powers and sanctions are stipulated in the AMLCFTA. The office of the

COI has been merged with the BOG. Neither the COI, the GSC or the DCFS have implemented AML/CFT supervision for their relevant financial institutions. No designated supervisory authority has been assigned to ensure that co-operative societies adequately comply with AML/CFT requirements. The SIA and the CSA do not provide for their relevant authorities to take the necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in financial institutions or for directors and senior management of financial institutions to be evaluated on the basis of “fit and proper” criteria. Fines applicable to corporate bodies for breaches of AML/CFT obligations under the AMLCFTA are not dissuasive and sanctions of the designated supervisory authorities are not dissuasive, proportionate or effective and not applicable to directors and senior management of reporting entities. Additionally, no guidelines have been issued to financial institutions to assist in compliance with AML/CFT obligations. The powers of the GSC and the CCDO are limited since the GSC cannot compel the production or obtain access to all records, documents or information relevant to monitoring compliance and the CCDO does not have enforcement or sanctioning powers for failure of co-operatives to comply with AML/CFT obligations

24. At the time of the mutual evaluation, the Money Transfer Agencies (Licensing) Act (MTALA) had recently come into force and the BOG was assessing applications for licences under the MTALA.. All money transfers agencies or services including agents are subject to the AML/CFT obligations of the AMLCFTA and must be approved by the BOG. However, it was noted that there is no requirement for licensed or registered money transfer agencies to maintain a list of their agents which must be made available to the BOG or a system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements. Additionally, penalties under the MTALA are not dissuasive or proportionate and do not extend to the directors or senior management of money transfer agencies.

#### **4. Preventative Measures – Designated Non-Financial Business and Professions**

25. Casinos, real estate agents, dealers in precious metals and precious stones, lawyers, notaries, independent legal professionals, accountants, trust and company service providers are all reporting entities under the AMLCFTA and subject to the same AML/CFT requirements as financial institutions. The deficiencies noted with regard to Recs. 5, 6, 8-11, 13 to 15 and 21 in relation to financial institutions are also applicable to DNFBPs.
26. With regard to regulation and supervision, no comprehensive regulatory and supervisory regime to ensure effective implementation of AML/CFT measures has been instituted for DNFBPs . While casinos are required to be licensed, the provision for the Gaming Authority to assess the integrity of an applicant is discretionary, limited to licensing, does not include beneficial owners and does not specify fit and proper criteria. Additionally no designated supervisory authority has been appointed to oversee the compliance of the DNFBPs with AML/CFT requirements and sanctions of the designated supervisory authority under the AMLCFTA are not dissuasive, proportionate or effective and are not applicable to directors and senior management of DNFBPs.
27. While Guyana has a substantial cash based economy, the commercial banks have implemented modern and secure techniques for conducting financial transactions that are

less vulnerable to ML through the provision of ATM machines, credit and debit card services to their customers and internet banking facilities.

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

28. The registration of corporate entities in Guyana is regulated under the Companies Act (CA). Section 470 of the CA requires the Registrar of Companies to maintain a register of companies to contain information and documents required to be provided to the Registrar of Companies. While the CA requires the disclosure of the directors and shareholders of a company, information on shareholding is usually only submitted on incorporation and beneficial information on corporate shareholders is not required. There are no restrictions on the use of nominee shareholders and directors nor is it possible for the Registrar of Companies to determine if nominees are being used. Information on changes in directors and shareholders is required to be updated once a year with annual returns. Section 28(9) of the CA prohibits companies from issuing bearer shares or bearer share certificates. Given the above the Registrar of Companies does not have the legal authority to ensure that adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities
29. In Guyana, there is no central filing requirements for trusts and no register of all trusts. Private trusts can be established under common law with no requirement for registration. Commercial trust services are provided by licensed financial institutions subject to the AML/CFT obligations of the AMLCFTA. However, there is no legal requirement under the AMLCFTA for the verification of the legal status of trusts. Also, there is no standard requirement for the recording of beneficial ownership information on trusts, so the nature of information collected will vary. Finally, while lawyers and accountants are able to establish trusts, they have not been subject to monitoring for AML/CFT obligations and it is not clear how reliable their information on trusts would be.
30. Non-profit organizations (NPOs) can be incorporated or registered in Guyana either under the CA or the Friendly Societies Act (FSA). Registered charities have been included in the AML/CFT regime under the AMLCFTA but no supervisory authority has been designated as yet for these entities. Guyana has not reviewed the adequacy of its laws and regulations relating to NPOs or undertaken outreach to the NPO sector to raise awareness about the risks of terrorist abuse.
31. While the FSA provides for the appointment of a Registrar of Friendly Societies, supervision and monitoring of NPOs under the FSA is not effective. There is no requirement for NPOs other than registered charities to maintain for a period of at least five years, records of domestic and international transactions and make them available to appropriate authorities. There are limited measures for authorities to gather information and investigate NPOs and no appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs.

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

32. There is no structured co-ordination and co-operation between the policy makers, the FIU, law enforcement and supervisors and other agencies concerning the development and implementation of policies and activities to combat money laundering and terrorist financing and no regular review of the effectiveness of the AML/CFT systems.

33. Guyana has acceded to the Vienna Convention, the Palermo Convention and the Terrorism Financing Convention. While the Vienna Convention has been implemented to a large degree through domestic legislation, Article 1(q), Article 3(1)(b)(i) and (ii) and Article 7 have only been partially implemented and there is no legislation fully implementing Articles 8, 10 and 11 of the Vienna Convention. With regard to the Palermo Convention, Article 2(d), Article 6(1)(a) and Article 12(5) have been partially implemented and Articles 7, 18, 19, 20, 24, 25, and 29 have not been implemented. In relation to the Terrorist Financing Convention, Article 1(1) remains outstanding and there is no compliance with S/RES/1267(1999) and S/RES/1373(2001).
34. Mutual legal assistance in Guyana can be facilitated under section 76 of the AMLCFTA. It is limited to countries with whom Guyana has mutual legal assistance treaties on a bilateral or multilateral basis and include the UK. Additionally, the provisions of the Inter American Convention on Mutual Legal Assistance provides a basis for assistance in criminal matters with members of the Organisation of American States (OAS) including the United States and Canada. While the range of available measures is wide and include production, search and seizure of evidence, as well as the ability to identify, freeze, seize and confiscate assets, these do not include the freezing, seizure or confiscation of assets of corresponding value. There are no clear and efficient processes for the execution of mutual legal assistance requests in a timely manner. No provisions allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures. There are no measures for technical difference in categorization and denomination of offences in laws of other countries not to impede the provision of mutual legal assistance. Finally, there are no arrangements regarding co-ordination, seizure and confiscation actions with other countries/jurisdictions in relation to ML and FT matters.
35. Extradition in Guyana is governed by the Fugitive Offenders Act.. Under section 108 of the AMLCFTA, ML and FT offences are extraditable offences. There are no prohibitions against the extradition of Guyanese nationals. Extradition requests are handled by the Ministry of Home Affairs. There are no procedures or measures in place to facilitate the timely response to requests for extradition and proceedings relating to ML and FT and no provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures.
36. Section 14 of the AMLCFTA allows the FIU to share information with foreign jurisdictions. The DPP and the courts can conduct investigations on behalf of foreign counterparts under subsection 76(3) of the AMLCFTA. Specified supervisory authorities, the Governor of the Central Bank, the COI, the GSI and any supervisory authority appointed by the minister of Finance can co-operate, request and exchange information with similar agencies in other countries. However, there are no procedures for spontaneous exchange of information and the COI does not have confidentiality requirements that include exchanged information.

## **7. Resources and Statistics**

37. With regard to resources, there is need for additional staff in the FIU, the GSC and the DCFS, and trained financial investigators in the GPF and CANU. While staff of the DPP need ML training, staff of the GPF, CANU, BOG, GSC and the DFSC need both ML and FT training. Additionally, there is concern about the integrity of the GPF.

Generally, statistics were either not maintained or made available to the assessors. Statistics are not maintained on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals, extraditions, mutual legal assistance or other international requests for co-operation or the requirements of SRIX. While statistics on STRs were maintained, they were not made available to the assessors. Finally, there was no regular review of the effectiveness of the AML/CFT systems.

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Guyana

1. Guyana is situated in northern South America bordering the North Atlantic Ocean between Suriname and Venezuela. The country has a total area of 214,970 sq km and a population estimated at 765,283 in July 2005. Guyana is divided into three counties and ten administrative regions. The capital city is Georgetown which is situated on the coast. Ninety percent (90%) of the population live on the coastal strip, the Amerindians; Guyana's indigenous people mainly inhabit the savannahs and forest regions in the hinterlands.
2. Guyana is a sovereign republic within the Commonwealth with a form of government based on the Westminster system with an elected head of state. Guyana's head of state and supreme executive authority is the President who is elected by direct vote for a five year term. The President is limited to two consecutive terms. The legislative branch of the Government is the Assembly, a unicameral body of sixty-five (65) members elected through proportional representation. The President appoints a Prime Minister who must be an elected member of the Assembly and a Cabinet of Ministers, which may include nonelected members, and is collectively responsible to the legislature.
3. The Guyanese economy continued to grow in 2009, however at a slower pace of 2.3 % compared to 3.1 % in 2008.<sup>2</sup> The currency is the Guyanese dollar with an exchange rate of 205.75 per US dollar. Preliminary figures for the nominal Gross Domestic Product (GDP) for 2009 as reported by the International Monetary Fund (IMF) is G\$413.1 billion or approximately US\$2 billion. Preliminary per capita GDP for 2009 was US\$2,629.
4. Guyana's economy consists largely of industries dependent on the utilization of natural resources (e.g. agriculture, mining, fishing and timber). Agriculture – predominantly rice, sugar, fishing and forestry – accounted for approximately 28 % of GDP, while mining made up an approximate 7 %.<sup>3</sup> Most of the products are exported such that economic performance relies heavily upon international market conditions and weather, which can impact agriculture and access to mining and timber resources. As such, the Government has placed an emphasis on diversifying the economy resulting in a shift towards light manufacturing and services.
5. Guyana's relatively small population and low per capita income creates the appearance of a small domestic market. The per capita purchasing power of the population however, is estimated to be greater than its per capita income. This is due largely to remittances sent by Guyanese abroad particularly from the United States of America. Guyana also has

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2. <sup>2</sup> Bank of Guyana Annual Report 2009

3. <sup>3</sup> Ibid

significant levels of cash based transactions and emerging businesses. There is also an informal economy.

6. The Constitution is the supreme law of Guyana. It outlines the branches of government and their powers, establishes qualifications and times for elections, lists basic human rights and sets up independent institutions to protect these rights. All laws made by Parliament must be consistent with the provisions of the Constitution. Any law that conflicts with the Constitution is unconstitutional, and therefore invalid.
7. For the most part, Guyana's legal system is based on British common law. Vestiges of a Dutch legal system remain, particularly in the area of land tenure. There are two types of laws in Guyana; 1) common law made by Judges in Court cases: and 2) statute law, or law of the land made by Parliament. Enforcement of the law is carried out through a three-tier Court system which is made up of; a) eight (8) Courts of Summary Jurisdiction – commonly referred to as Magistrates Court – responsible for criminal cases and small claims civil suits; b) the High Court, which has general jurisdiction in both criminal, civil and land matters; and c) the Court of Appeals. The Court of Appeal was until recently the final court in Guyana, however, appeals can now be taken to the Caribbean Court of Justice.
8. There is a backlog of cases and the filing rate of new matters has increased. A justice sector modernisation strategy has been implemented to deal with among other things, the backlog, law reform, improving the operating system of the Director of Public Prosecutions, rehabilitating Court buildings and Court library services and providing material support for the functioning of the Courts.
9. The Integrity Commission Act 1997 (ICA) established the Integrity Commission whose main function is to receive, examine and retain declarations of assets and liabilities from persons in public life. Persons in public life include all elected government officials, heads and deputy heads of central and local government agencies, bodies, directors and managers of public corporations and public officers. Any person failing to submit the requisite declaration is liable on summary conviction to a fine of twenty-five thousand dollars (equivalent US\$121.) and to imprisonment for a term of not less than six (6) months or more than one (1) year.
10. The ICA also sets out a Code of Conduct for all persons in public life. Any breach of the Code of Conduct is liable to the same sanction as failure to submit a declaration of assets and liabilities. Complaints regarding breaches of the Code of Conduct are to be submitted to the Integrity Commission for investigation. However, the Team of Assessors was advised that the Integrity Commission has not been functioning for some time.
11. Attorneys are subject to a professional code of ethics and are governed by the Legal Practitioners Act, the latest amendment of which was tabled in the Assembly, and includes a Code of Ethics. A Legal Practitioners Committee housed in the Court of Appeal deals with issues of attorney misconduct based on client complaints. Issues of serious misconduct are referred to the full Court for a hearing and imposition of sanctions including disbarment. The Guyana Bar Association is a voluntary association with a main function to safeguard the systems which preserve the rule of law. This includes the independence of the profession including the judiciary from executive control, the protection of the individual from the arms of State and also includes educating the public about their rights so they can be protected by self help/awareness. All lawyers admitted to



the Guyana Bar are eligible for membership in the Association. At the time of the mutual evaluation there were about thirty (30) active subscribing members..

12. The Institute of Chartered Accountants is a statutory body created by legislation, membership of which is necessary to practice as an accountant in Guyana. There is a Code of Ethics for members and procedures for disciplining members for breaches.
13. Members of the law enforcement authorities are also subject to relevant codes of ethics. While a few incidents of high profile police excess has negatively effected public confidence in the police, the manner in which these and incidents of corruption were dealt with coupled with the effectiveness of the police in handling serious crimes has regained public confidence.

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

### The Money Laundering Situation

14. Guyana has 1,800 miles of border with Venezuela, Brazil and Suriname, most of which are situated in the forested hinterland. Routine patrols of the numerous land entry points are not possible due to lack of resources and inaccessibility. This together with the vast expanse of unpopulated forest and savannahs provide cover for drug traffickers and smugglers to operate. Guyana is a transit country for cocaine destined to North America, Europe, West Africa and the Caribbean. Marijuana is grown and imported for local use.
15. Information on methods, techniques and trends in money laundering and terrorist financing in the country is limited due to the Government's policy not to disclose statistics collected by the FIU with regard to the number and types of suspicious transaction reports (STRs) submitted or those disseminated to law enforcement for further action. Additionally, at the time of the mutual evaluation visit there had been only one conviction for money laundering in 2009. There have been no convictions for terrorist financing However, information on predicate offences was available and is presented in the table below.

**Table 1: Crimes committed during 2006-2009**

OFFENCE	2006	2007	2008	2009
Murder	153	115	158	117
Robbery	47	33	46	35
Armed Robbery	1433	1094	1253	920
Robbery with Violence	158	165	149	176
Aggravated Robbery	118	72	80	80
Larceny from the Person	252	233	214	244
Rape	113	90	69	71
Burglary	319	149	121	144
Break & Enter & Larceny	1693	1477	1562	1566
<b>Totals</b>	<b>4286</b>	<b>3428</b>	<b>3652</b>	<b>3353</b>

16. The information above and in subsequent tables concerning criminal offences was made available by the Guyana Police Force. During the period 2006 to 2009, a number of serious crimes plagued Guyana. The Police Force has been busy solving serious crimes related to robbery and murder. While the figures have fluctuated, there has been an overall drop in serious crimes during the period 2006-2009. The decline is most apparent in armed robbery offences. Additionally, the Police Force is faced with a number of drug related offences including cultivation of cannabis and drug seizures. The following tables provide details in relation to law enforcement's effort against the drug trade, one of the most likely sources of money laundering.

**Table 2: Number of persons charged for drug offences during the period 2006-2009.**

<b>Drug</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Cannabis	676	587	372	482
Cocaine	146	182	123	164
Heroin	0	0	1	2
Ecstasy	1	4	0	0
<b>TOTALS</b>	<b>823</b>	<b>773</b>	<b>496</b>	<b>648</b>

**Table 3: Drug seizures for the period 2006-2009**

<b>Drug</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Cannabis	18,290 kg, 312.25 grams	22,212 kg, 726 grams	34,949 kg, 430 grams	182, 934 kg, 648.75 grams
Cocaine	65 kg, 528.25 grams	188 kg, 621grams	48 kg, 582.5 grams	137kg, 648 grams
Heroin	0	0	112 grams	2 kg/ 44 grams
Ecstasy	45 grams	57 grams	0	0

**Table 4: Acreage of drug cultivation destroyed for the period 2006-2009**

	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Acreage Eradicated	60.75	20	44.5	160

17. In addition to the above, the Customs Anti Narcotics Unit (CANU) has also recorded the following drug seizures.

**Table 5: Drug seizures by CANU for the period 2007-2009**

<b>Drugs</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Cocaine	115 kg	7 kg	55 kg
Marijuana			57 kg
Heroin			2 kg

18. The figures in the above tables while fluctuating, demonstrate improved results in 2009 for law enforcement interdiction efforts. With regard to money laundering and terrorist financing, none of the reported predicate offences resulted in any money laundering or terrorist financing convictions.

### **Present Financing of Terrorism Situation**

19. The authorities have no evidence or indication of terrorist financing occurring in the country. Credible estimates as to the possible amount of money laundering would be extremely difficult. However, Assessors are of the view that the sizeable informal economy and the high level of cash transactions are serious vulnerabilities in relation to money laundering and terrorist financing.

## **1.3 Overview of the Financial Sector and DNFBP**

20. Guyana's financial sector comprises commercial banks, non-bank financial institutions, insurance companies, securities registrants, cambios, money transfers agents and co-operative societies. Guyana does not provide off-shore financial services.
21. **Commercial banks:** Commercial banks are licensed under the Financial Institutions Act, 1995 (FIA) and regulated by the Bank of Guyana (BOG). There are six (6) commercial banks with a combined network of twenty-seven (27) branches. As at the end of 2009, total assets of these commercial banks as reported by the BOG amounted to G\$253.7 billion or approximately US\$1.23 billion.
22. **Non-bank financial institutions:** Non-bank financial institutions are also licensed under the FIA and regulated by the BOG. There are eight (8) non-bank financial institutions comprising three (3) trust companies, one (1) stockbroker, one (1) merchant bank, one (1) investment company, one (1) finance company and one (1) microfinance company. Total assets of non-bank financial institutions at the end of 2009 as reported by the BOG was G\$22.4 billion or approximately US\$109.2 million.
23. **Insurance companies:** Insurance companies are governed by the Insurance Act, 1998 (IA) and regulated by the Commissioner of Insurance. The office of the Commissioner of Insurance has been incorporated into the BOG which is now responsible for the administration of the IA. There are thirteen (13) companies registered under the IA to conduct insurance business comprising of five (5) long term insurance companies and eight (8) general insurance companies. No figures on total assets of these companies were available for the end of 2009.
24. **Securities registrants:** Securities operations are licensed under the Securities Industries Act, 1998 (SIA) and regulated by the Guyana Securities Council (GSC). There are four (4) registered brokers, one (1) underwriter, and one (1) securities advisor all of whom are also licensees of the BOG under the FIA.
25. **Cambios:** Cambio operations are governed by the Dealers in Foreign Currency (Licensing) Act 1989 (DFCLA) and are also regulated by the BOG. The International Department of the BOG is responsible for monitoring of the non-bank cambios. There are

six (6) bank cambios and twelve (12) non-bank cambios. According to figures submitted by the BOG for 2009, total purchases and sales of cambios amounted to US\$1.2 billion and US\$1.1 billion respectively.

26. **Money Transfer Agents:** Money transfer agents are governed by the Money Transfer Agencies (Licensing) Act (MTALA) which became operational on January 2, 2010. The International Department of the BOG is also responsible for the monitoring of money transfer agencies. As at the time of the mutual evaluation eight (8) companies had applied for licences under the MTALA.
27. **Co-operative societies:** Co-operative societies are registered under the Co-operatives Societies Act (CSA) and include credit unions. While there are approximately 921 co-operative societies registered, only 525 are functioning. There are some forty-seven (47) registered credit unions with twenty-seven (27) of them active. The approximate asset size of the credit unions is GY\$11billion (US\$53.6 million). The regulator as appointed under the CSA is the Commissioner for Co-operative Development. The title of the regulator was changed to Chief Co-operative Development Officer (CCDO). The CCDO is located in the Ministry of Labour, Human Services and Social Security.
28. The following table sets out the types of financial institutions that are authorized to carry out financial activities that are listed in the glossary of the FATF 40 Recommendations:

**Table 6: 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 Guyana
<b>A.</b> Acceptance of deposits and other repayable funds from the public (including Private banking)	Banks, credit unions,
<b>B.</b> Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, credit unions, credit institutions (under the FIA), micro finance institutions
<b>C.</b> Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks
<b>D.</b> The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks, money transfer agents
<b>E.</b> Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's	Banks, credit unions

cheques, money orders and bankers' drafts, electronic money)	
<b>F.</b> Financial guarantees and commitments	Banks, Insurance Companies
<b>G.</b> 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 ,cambios (c) Banks Brokers , investment advisers
<b>H.</b> Participation in securities issues and the provision of financial services related to such issues	Brokers, underwriter, investment adviser
<b>I.</b> Individual and collective portfolio management	Brokers
<b>J.</b> Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks
<b>K.</b> Otherwise investing, administering or managing funds or money on behalf of other persons	Brokers
<b>L.</b> Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance companies
<b>M.</b> Money and currency changing	Banks,cambios

### 1.3 The DNFBP sector

29. DNFBPs subject to AML/CFT measures in Guyana include casinos, betting shops or lotteries, real estate agents, dealers in precious stones and dealers in precious metals, attorneys, notaries and other legal professionals, accountants and trust or company service providers. The AMLCFTA has provision for the appointment of a supervisory authority for DNFBPs with responsibility to ensure compliance with the requirements of the Act. At the time of the mutual evaluation no supervisory authority for DNFBPs has been appointed.
30. **Casinos:** At the time of the mutual evaluation, one casino had been recently licensed under the Gambling Prevention (Amendment) Act 2007(GPA) and was due to begin operations in

March 2010. The Gaming Authority was in the process of establishing its office to carry on its functions and responsibilities under the GPA. Information on betting shops and lotteries was not available.

31. **Attorneys, notaries and other legal professionals:** According to the Guyana Bar Association (GBA) there are approximately 300 practising attorneys in the country who operate under the Legal Practitioners Act (LPA).
32. **Accountants:** The Institute of Chartered Accountants which is responsible for all aspects of the accounting profession in Guyana advised that it has seventy (70) members.
33. **Real estate agents, dealers in precious stones and precious metals, trust or company service providers:** Real estate agents and dealers in precious stones and precious metals are not specifically regulated and there are no associations or representative bodies for either profession. As such there is no information as to the approximate numbers of either profession in Guyana at the time of the mutual evaluation. With regard to trust or company service providers, these activities would be carried out by financial institutions licensed under the FIA as part of the overall operations and are generally minimal.

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

34. No association, partnership, society, body or other group consisting of more than twenty (20) persons may be formed for the purpose of carrying on any trade or business for gain unless it is incorporated under the Companies Act 1991(CA).
35. Incorporation under sections 4 and 5 of the CA requires the submission to the Registrar of Companies, of signed articles of incorporation which should include the proposed name of the company, the address of the its registered office in Guyana, classes and any maximum number of shares that the company is authorised to issue, registration of shares if any, number of directors, restrictions on business if any, names, addresses, occupations and signatories of incorporators and names and addresses of directors and the secretary.
36. A company under section 16 of the CA has the capacity, rights, powers and privileges of an individual and thus can buy and sell property, sue and be sued, enter into contracts, hold assets including land in its own name and maintain bank accounts. A company is required under section 189 to maintain at its registered office, records containing the articles and bye-laws and all pertinent amendments, minutes of meetings and resolutions of shareholdings and a register of shareholders showing the name and latest address of each shareholder and a statement of the shares held by each shareholder not later than five (5) weeks after such particulars are available.
37. Section 194 of the CA provides for the directors and shareholders of a company and their agents and legal representatives to have access during business hours to examine the records referred to in section 189 free of charge. Section 153 of the CA requires each company to submit annual returns, financial statements and auditors' reports to the Registrar of Companies. The annual returns include a statement of the company's indebtedness secured by mortgages and charges and a list of the names and addresses of shareholders and the number of shares held by each at the date of the return.

38. **External company:** An external company i.e. any incorporated or unincorporated body formed under the laws of a country other than Guyana is required by section 312 of the CA to be registered to carry on any business or undertaking in Guyana. Section 316 stipulates that an external company must submit to the Registrar along with a copy of the corporate instruments of the company, information on the following:
- a) The name of the company;
  - b) The date, manner and jurisdiction of incorporation;
  - c) Particulars of corporate instruments;
  - d) The period if any, for the duration of the company;
  - e) The extent if any, of the liability of the shareholders or members of the company;
  - f) The undertaking that the company will carry out in Guyana;
  - g) The date of commencement of the company's undertaking in Guyana;
  - h) The authorised, subscribed and paid-up or stated capital of the company and the shares that the company is authorised to issue and their nominal or par value if any;
  - i) The address of the registered or head office outside Guyana;
  - j) The full names, addresses and occupations of the directors of the company.
39. Section 318 of the CA requires external companies to also file with the Registrar a fully executed power of attorney to empower a resident to act as attorney of the company with regard to the service of process in all suits and proceedings by or against the company. This provision allows for an external company to enter into contracts, to sue and be sued. The record keeping requirements under section 189 are not applicable to external companies. However, section 329 requires external companies to submit financial statements to the Registrar of Companies every year.
40. **Societies** – Co-operative societies can be formed under the CSA and operate for the mutual benefit of their numbers with any surplus usually being utilised to provide better services and facilities. Societies are owned by their members. Friendly societies are registered under the Friendly Societies Act (FSA) as voluntary mutual organisations whose main purpose can include, assistance of members and their immediate family during sickness, old age, provision of relief and maintenance of orphans, any benevolent or charitable purpose, purposes of social intercourse and rational recreation.

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

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

41. The Government of Guyana views the importance of the fight against money laundering and terrorist financing in the context of a deliberate strategy to strengthen and enhance the integrity of the financial sector. As such, along with introducing financial legislation to update and address specific supervisory issues, a consolidated AML/CFT statute, the Anti-Money Laundering and Countering the Financing of Terrorism Act (AMLCFTA) was enacted in April 2009.
42. The AMLCFTA was the result of a two year process with the final passage in the National Assembly consisting of considerable deliberation and strong support from both political parties. The main objective of the AMLCFTA was to revise the legislative framework to comply with AML/CFT international standards. The statute extends the AML/CFT regime to include DNFBPs and formally establishes a Financial Intelligence Unit (FIU).
43. With the enactment of the AMLCFTA, the main emphasis of the Government is to implement the provisions of the law. This is to be done, firstly by establishing the institutional framework and providing the resources necessary to facilitate the functions of this framework.
44. The main agency in the implementation process is the FIU. As such, priority has been given to providing the technical and human resources necessary for the FIU to fulfil its functions under the Act. One of the main functions of particular significance is the provision of training necessary to ensure that all relevant financial entities are aware of the provisions of the AMLCFTA. Additionally, the development of subsidiary legislation such as regulations and guidelines is also being considered. Given the limited resources available to the Government, consideration is also being given to access technical assistance and training to assist in capacity building.

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

45. Guyana's AML/CFT regime is administered by the following institutions:
46. **Ministry of Finance** – The Ministry of Finance is responsible for the supervisory agencies that oversee the financial sector. The Director of the Financial Intelligence Unit also reports to the Minister of Finance. The Ministry is an integral player in the formulation of Government's AML/CFT strategy and policies.
47. **Attorney General** – The Attorney General is the principal legal adviser to the Government of Guyana and is also responsible for all civil matter concerning the Government. The Attorney General also oversees the drafting and preparation of proposed laws and was actively involved in the passage of the AMLCFTA.
48. **Financial Intelligence Unit (FIU)** - Pursuant to the AMLCFTA, the FIU is the agency responsible for requesting, receiving, analyzing and disseminating STRs and other information relating to money laundering, terrorist financing or proceeds of crime. Additionally, the FIU has the power to access all information from reporting entities and local competent authorities necessary to carry out its functions, to share information with both local and international agencies, to inspect any record of a reporting entity onsite, to conduct investigations into money laundering, proceeds of crime or terrorist financing and create training requirements and provide such training to any reporting entity. The FIU was



formally established by the enactment of the AMLCFTA in 2009 and plans are being implemented to increase its capacity to perform its legislative functions.

49. **Guyana Police Force (GPF)** The GPF was established under the Police Act Chapter 16:01. Its main function is the prevention and detection of crime and preservation of law and order. While the Guyana Police Force is likely to be involved, it has not yet been determined whether or not it will be the body ultimately responsible for investigating money laundering and terrorist financing offences. Such cases will be handled by the Fraud Squad.
50. **Customs Anti Narcotic Unit (CANU)** The Customs Anti Narcotic Unit (CANU) was approved through a Cabinet decision in 1994. CANU was implemented in August 1995 and acts within the parameters of the Narcotic Drug and Psychotropic Substance (Control) Act, 1988 Act which was amended in 1999 to facilitate the legal operation of the Unit. A limited number of financial investigations in conjunction with the police have been conducted and joint operations carried out.
51. **The Office of the Director of Public Prosecutions (DPP)** is responsible for carrying out prosecutions on behalf of the State. The independence of the DPP is enshrined in the Constitution. The DPP is also the competent authority for investigating offences related to money laundering and terrorist financing under the AMLCFTA. However since the Office of the DPP has not been provided with investigative personnel, investigations are carried out by the GPF. The DPP can apply to the Court for restraining, forfeiture, pecuniary penalty and interception of communication orders under the AMLCFTA. The DPP is also directly involved in mutual legal assistance requests and extradition pursuant to the Fugitives Offenders Act. Extraditions require relevant treaties to allow for effective implementation.
52. **The Bank of Guyana, (BOG)** the main supervisory body in the AML/CFT regime is the supervisor/regulator of financial institutions licensed under the FIA, the DFCLA and the MTALA. The Governor of the BOG has been designated a supervisory authority under the AMLCFTA responsible for overseeing effective compliance by the relevant financial institutions with the customer due diligence, record keeping, monitoring, internal controls and wire transfer obligations of the AMLCFTA. This function will be undertaken by the Bank Supervision Department. The BOG's supervisory powers are provided for under the FIA and include licensing and revocation, access to all records documents and information of financial institutions under the FIA, conducting on-site inspections and issuance of cease and desist orders, directions and monetary penalties.
53. **Commissioner of Insurance, (COI)** under the IA is the supervisor of insurance companies and underwriters. The COI is responsible for the administration of the IA and has been designated a supervisory authority under the AMLCFTA responsible for overseeing effective compliance by its regulated financial institutions with the customer due diligence, record keeping, monitoring, internal controls and wire transfer obligations of the AMLCFTA. The COI has been merged with the BOG and operates in tandem with the Bank Supervision Department.
54. **The Guyana Securities Council (GSC)** under the SIA is the supervisor of self-regulatory organizations, securities companies and intermediaries, brokers, dealers, traders, underwriters, issuers and investment advisers. The Council is responsible for the implementation of the measures of the SIA and has also been designated a supervisory

authority under the AMLCFTA responsible for overseeing effective compliance by its regulated financial institutions with the customer due diligence, record keeping, monitoring, internal controls and wire transfer obligations of the AMLCFTA. At the time of the mutual evaluation the Council had not carried out any AML supervision with regard to its regulated entities.

55. **The Chief Co-operative Development Officer (CCDO)** is responsible for the supervision of co-operative societies under the CSA and friendly societies under the FSA. Friendly societies include non profit organisations. The CCDO is responsible for registration, dissolution and annual audits and has access to all books, accounts and papers of co-operative and friendly societies. At the time of the mutual evaluation the CCDO had not been designated a supervisory authority for the purposes of the AMLCFTA.
56. **The Guyana Revenue Authority (GRA)** is the agency responsible for administering all taxes in Guyana. Customs operations fall under the direction of the GRA as a department. As such, the GRA is responsible for the currency declaration system in Guyana.

*c. Approach concerning risk*

57. No national assessment of the ML and FT threats and vulnerabilities in the system has been undertaken. Additionally, there is no formal policy or procedures for applying a risk-based approach to compliance and supervision. With the recent enactment of the AMLCFTA the main emphasis at this time is to ensure implementation of the law. Section 17(1) of the AMLCFTA does provide for the Minister of Legal Affairs to issue regulations dealing with reduced or simplified customer due diligence measures (CDD), thereby allowing for the development and implementation of a risk-based approach. The BOG advised that it implements a risk-based approach in its supervision which is applied in testing AML/CFT compliance.

*d. Progress since the last mutual evaluation*

58. The last mutual evaluation report on Guyana was dated October 2006 and was carried out by the CFATF. The main criticisms in the report were: the lack of FT legislation, the lack of a formally established FIU, limited mutual legal assistance in AML matters and the exclusion of the insurance sector from the AML regime.
59. At the time of the mutual evaluation, the Authorities in Guyana were working on several draft pieces of legislation and guidelines. However, as a result of the deficiencies identified in the 2006 report, it was decided to consolidate the revisions into an omnibus piece of legislation – the AMLCFTA.
60. The AMLCFTA was enacted in April 2009 and its main objective was to improve the compliance of the legislative framework with international AML/CFT standards. The main provisions of the AMLCFTA include; criminalisation of FT, formal establishment of an FIU, extension of the AML/CFT regime to include banking, insurance, securities, non-banks, cambios, money remitters and DNFBPs, specific CDD, record-keeping, monitoring, reporting, internal controls and wire transfer requirements for reporting entities, appointment and empowerment of designated AML/CFT supervisory authorities, enhanced powers for law enforcement authorities and provision for civil forfeiture.

## **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***

61. Money laundering (ML) is criminalised by sections 3-7 of AMLCFTA. These sections define the offence of ML and include many of the substantive elements that make up the offence of ML under the Vienna and Palermo Conventions. Section 3(1) sets out the basic offence of ML ; a person commits the offence if he “knowingly or having reasonable grounds to believe”...that property represents any person’s proceeds of crime and converts or transfers property with the aim of concealing/disguising the illicit origin of the property; conceals or disguises the nature, origin, location, disposition, movement or ownership of the property; acquires, possesses or uses that property; and conspires to commit, attempts to commit or aids and abets, counsels or procures or facilitates any of the said acts. However the defined offences do not include “assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions” as required in Article 3(1)(b)(i) and (ii) of the Vienna Convention and Article 6(1)(a) of the Palermo Convention.
62. Property under the AMLCFTA extends to all types of property (as defined under section 2(1) AMLCFTA), and includes property wherever situated (in Guyana or elsewhere). The section also defines proceeds of crime as property derived directly or indirectly from a serious offence (crime). Further, “interest” in relation to property is defined as a legal or equitable interest in the property: or a right, power or privilege in respect of the property.
63. There is no requirement under the AMLCFTA for conviction of a serious offence in order to prove that property is the proceeds of crime (section 3(4)). However, there have been no ML prosecutions or convictions where there was no predicate offence. The Authorities are of the view that the legislation allows for conviction in such circumstances.

##### ***Predicate offences***

64. Section 3(5) of the AMLCFTA defines a predicate offence as a serious offence. The term serious offence is defined using a combined approach and includes offences punishable by death, life imprisonment, or imprisonment of six (6) months or more. This will include summary offences (Magistrates Court) and offences tried in the High Court where the punishment is captured by the definition of serious offence. It also covers the offences listed in the Second Schedule of AMLCFTA, which incorporates the offences listed in the designated categories of offences except for the offence of illicit trafficking in stolen and other goods and smuggling.

**Table 7: Criminalisation of designated categories of offences**

<b>DESIGNATED CATEGORIES OF OFFENCES</b>	<b>RELEVANT LEGISLATIVE PROVISIONS IN GUYANA</b>
Participation in an organised criminal group and racketeering	(s. 2(1) (d) under definition of terrorist in the <i>AMLCFTA</i> , no. 13 of 2009)
Terrorism, including terrorist financing	( <b>S. 68</b> of the <i>AMLCFTA</i> , no. 13 of 2009)
Trafficking in human beings and migrant smuggling	(s. 3 of the <i>Combating of Trafficking in Persons Act</i> no. 2 of 2005; no law for migrant smuggling.)
Sexual exploitation, including sexual exploitation of children	(There is no offence called sexual exploitation. However, under s. 21 of the <i>Sexual Offences Act</i> no. 7 of 2010, there is an offence called ‘arranging or facilitating commission of child sex offence’ which suggests sexual exploitation. Also under s. 3 of the <i>Combating of Trafficking in Persons Act</i> no. 2 of 2005, there is the offence of trafficking in persons whereby sexual exploitation is a purpose that has to be proved to establish the offence of trafficking in persons.)
Illicit trafficking in narcotic drugs and psychotropic substances	(s. 5 of the <i>Narcotic Drugs and Psychotropic Substances (Control) Act</i> no. 2 of 1988, as amended by Act no. 6 of 1997)
Illicit arms trafficking	No such offence but there is possession of firearm and ammo without licence offence under s. 16 of the <i>Firearm Act</i> , Cap. 16:05 as amended
Illicit trafficking in stolen and other goods	(Nil)
Corruption and bribery	(s. 332-337 of the <i>Criminal Law (Offences) Act</i> , Cap. 8:01)
Fraud	(s. 194-207 of the <i>Criminal Law (Offences) Act</i> , Cap. 8:01)
Counterfeiting currency	(s. 286 of the <i>Criminal Law (Offences) Act</i> , Cap. 8:01)
Counterfeiting and piracy of products	(s. 289 of the <i>Criminal Law (Offences) Act</i> , Cap. 8:01)
Environmental crime	(There is no environmental crime. But there is ‘damage to environment’ as an offence under s. 39 of the <i>Environmental Protection Act</i> no. 11 of 1996)
Murder, grievous bodily injury	(s. 100 of the <i>Criminal Law (Offences) Act</i> ,

	Cap. 8:01 and s. 52)
Kidnapping, illegal restraint and hostage-taking	(s. 5 for wrongful restraint; s. S. 9 for abduction, wrongful restraint or wrongful confinement for ransom, under the <b><i>Kidnapping Act</i></b> no. 6 of 2003.)
Robbery or theft	(s. 220 of the <b><i>Criminal Law (Offences) Act</i></b> , Cap. 8:01)
Smuggling	Nil
Extortion	(s. 225 of the <b><i>Criminal Law (Offences) Act</i></b> , Cap. 8:01)
Forgery	(s. 240 to 283 of the <b><i>Criminal Law (Offences) Act</i></b> , Cap. 8:01)
Piracy	(s. 319 of the <b><i>Criminal Law (Offences) Act</i></b> , Cap. 8:01)
Insider Trading, & Market Manipulation	(s. 305-309 under the <b><i>Companies Act</i></b> , no. 29 of 1991)

65. Where an offence occurred in a foreign state/country and the conduct of such offence would amount to a ‘serious offence’ had it occurred in Guyana, including the offences of money laundering and terrorist financing, the ‘serious offence’ would in effect constitute a predicate offence (s.2(1) “serious offence” (c)). Additionally, offences under AMLCFTA ‘shall’ be tried by Courts in Guyana irrespective of whether the serious offence occurred in Guyana or another jurisdiction (s. 7 AMLCFTA). This provision however does not preclude extradition where applicable. It is not clear whether this provision will be effective in practice as no offences in Guyana have been tried using this provision to date.
66. Section 3(5) of the AMLCFTA provides that a person who commits a predicate offence can commit a money laundering offence.

#### ***Ancillary offences***

67. Under the AMLCFTA the offence of money laundering includes offences of conspiracy, associating with, attempting to commit, aiding and abetting, and counselling or procuring or facilitating the commission of such offences (s. 3(1)(d)).

#### ***Additional elements***

68. In order for conduct that occurred overseas to constitute an offence under Guyana law such conduct would have to be an offence of the foreign state in order to be deemed a serious offence (predicate offence) pursuant to the AMLCFTA.

### **Recommendation 2**

#### ***Scope of liability***

69. The ML offence as stated in sections 3 to 7 of the AMLCFTA extends to natural persons since “person is defined in section 2 of the Act to include a natural person.

70. Section 3(3) of the AMLCFTA provides that knowledge, intent or purpose required as an element of the ML offence (under section 3(1)) “...may be inferred from objective factual circumstances”.
71. Criminal liability for ML extends to legal persons as ‘person’ is defined in section 2 of the AMLCFTA and includes “...any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations”.
72. Section 3(7) of the AMLCFTA provides that when a legal person (or body corporate) is “...subject to criminal liability for ML this shall not preclude the possibility of parallel criminal, civil or administrative liability”.
73. Section 3(6) of AMLCFTA provides sanctions for the offence of ML. Sanctions range from fines of one million to one hundred million Guyana dollars (\$1,000,000 - \$100,000,000) (US\$4,880 – US\$488,000) and imprisonment of up to seven (7) years for a natural person convicted of ML; and for a body corporate (legal persons) the Act provides for fines ranging from two hundred million dollars to five hundred million dollars (\$200,000,000 – \$500,000,000)(US\$976,000 – US\$2,440,000). The lower end of the range of fines for a natural person i.e. G\$1,000,000 – US\$4,880 within the context of Guyana with a per capita GDP of US\$2,629. can be considered dissuasive. As such penalties compare favourably with other CFATF jurisdictions in relation to dissuasiveness.

### **Recommendation 32 - Statistics**

74. At the time of the on-site visit there had been no investigations, prosecutions or convictions for ML either under the new or old AML regime.

### ***Effectiveness of Implementation***

75. Guyana’s legal framework for combating ML is robust as it has been significantly strengthened by the passage of the AMLCFTA in November 2009. However, the recent enactment of the Act does not provide sufficient time to assess the effectiveness of the implementation of the AML/CFT regime. It is noted that at the time of the mutual evaluation there was only one ML prosecution under the previous AML regime which was pending before the Courts.. Additionally, at the time of the mutual evaluation, the main agency responsible for the investigations of ML/TF offences was the FIU which had only one member of staff. Given the other functions of the FIU, this would severely limit the ability to carry on ML/TF investigations.

#### **2.1.2 Recommendations and Comments**

76. Amend the ML offences in the AMLCFTA to include “assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions” in accordance with the Vienna and Palermo Conventions.
77. Illicit trafficking in stolen and other goods and smuggling should be criminalized as a serious offence and a predicate offence to ML

78. Systems should be put in place to effectively implement the AMLCFTA and relevant Government entities made aware of the legislation and its applicability.

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

	Rating	Summary of factors underlying rating
<b>R.1</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>ML offences in the AMLCFTA are not consistent with the requirements of the Vienna and the Palermo Conventions.</b></li> <li>• <b>Illicit trafficking in stolen and other goods and smuggling are not criminalized as a serious offence and are therefore not predicate offences to ML</b></li> <li>• <b>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.</b></li> </ul>
<b>R.2</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation and minimal resources limit implementation.</b></li> </ul>

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

### 2.2.1 Description and Analysis

#### **Special Recommendation II**

##### *Characteristics of terrorist financing offences*

79. Financing of Terrorism (FT) is criminalised in section 68 of the AMLCFTA. Section 68 provides that FT offences extend to “...Any person who by any means directly or indirectly, willfully provides or collects funds or other property, with the intention that they should be used or in the knowledge that they are to be used in whole or in part...” to commit an act defined in the treaties listed in the appendix to the International Convention for the Suppression of the Financing of Terrorism or an act as set out in Article 2(1)(b) of the same Convention; by a terrorist or a terrorist organization.

##### *Definition of funds*

80. The AMLCFTA uses the terms ‘funds or other property’ and property “...includes money, investments, holdings, possessions, assets and all other property movable or immovable, including things in action and any other property wherever situated whether in Guyana or elsewhere and includes any interest in such property”. While the definition of property is mostly consistent with the definition of funds contained in the Terrorist Financing Convention as noted previously (see sec. 2.1 of the report above) there is no reference to assets of every kind, whether tangible or intangible “legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in” assets of every kind.

Further, the Act does not specify that FT offences include funds or property whether from a legitimate or illegitimate source.

81. Under section 68(2) of the AMLCFTA, FT offences do not require that the funds are actually used to carry out, attempt to carry out, or are linked to a particular terrorist act.
82. Section 68(3) of the AMLCFTA provides that any person who attempts to commit FT offences is guilty of an indictable offence. The offences set out in section 68(3) are consistent with the conduct noted in Article 2(5) of the Terrorist Financing Convention. Namely, a person commits an indictable offence if they: organize or direct others to commit; attempt to commit; conspire to commit; or act as an accomplice to a person committing, or attempting to commit a FT offence under section 68(1).

#### ***Predicate offences for money laundering and extraterritorial jurisdiction***

83. Under Guyana's law the AMLCFTA provides that all serious offences constitute predicate offences and FT is deemed a serious offence and as such is on the list of serious offences noted in the Second Schedule of the AMLCFTA and is therefore a predicate offence for ML.
84. Offences under the AMLCFTA 'shall' be tried by courts in Guyana irrespective of whether the serious offence occurred in Guyana or another jurisdiction (s. 7 AMLCFTA). It should be noted that the definition of 'serious offence' includes an offence that occurred in a foreign state/country and the conduct of such offence would amount to a 'serious offence' had it occurred in Guyana, including the offences of money laundering and terrorist financing, the 'serious offence' would in effect constitute a predicate offence (s.2(1) of the AMLCFTA "serious offence" (c)). There is no specific provision allowing for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or a different one from where the terrorist(s)/terrorist organisation is located or the terrorist act(s) occurred/will occur. Additionally, it is not clear whether this provision will be effective in practice as there have been no SARs filed or any offences tried in Guyana using this provision to date.

#### ***Scope of liability and sanctions***

85. Section 68(4) of the AMLCFTA provides that knowledge, intent or purpose required as an element of the FT offence (under sections 68(1)&(3)) "...may be inferred from objective factual circumstances".
86. The sanctions for criminal liability for FT offences are not specified in respect of criminal liability being applicable to both natural and legal persons, however the word 'person' is defined in section 2 of the Act and includes "...any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations". Sanctions under section 68(5)(b) of the Act provide for a fine of not less than one million five hundred thousand dollars where a body corporate commits a FT offence. Subsection 3(7) of the AMLCFTA allows for a body corporate to be subject to the possibility of parallel criminal, civil or administrative liability.
87. Sanctions for FT offences committed under section 68(1) of AMLCFT (provision and collection of funds or other property to be used to commit terrorist offences) include, where



death occurs as a result of the act, a fine of not less than GY\$1,500,000 (US\$ 7,320) and death,; and in other cases a fine of at least GY\$500,000 (US\$ 2,440) and imprisonment of 10 years minimum (s. 68(1)(d)(i)&(ii)). Additionally, FT offences committed under section 68(3) (organises, directs, attempts to commit, conspires to commit an offence under 68(1)): where death occurs as a result of the act, a fine of not less than GY\$1,500,000 (US\$7,320)and death,; and in any other case a fine of at least GY\$500,000 (US\$2,440) and imprisonment of 10 to 15 years. The terms of imprisonment for FT offences are proportionate and dissuasive when compared to ML offences in Guyana and FT offences in other CFATF jurisdictions. The fines as stated in legislation are minimum levels. At the time of the mutual evaluation there were no convictions for FT offences and therefore no case history of actual fines necessary to assess proportionality or dissuasiveness.

### **Recommendation 32 - Statistics**

88. At the time of the Mutual Evaluation visit there had been no investigations, prosecutions or convictions for FT offences in Guyana.

#### **2.2.2 Recommendations and Comments**

89. While the AMLCFT Act contains the salient elements of SR II with respect to the definition of terrorist and terrorist acts, there are deficiencies which should be remedied by amending the AMLCFTA as follows:
90. The definition of property should include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind
91. Terrorist financing offences should extend to any funds, whether from a legitimate or illegitimate source
92. A provision should be inserted allowing for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or a different one from where the terrorist(s)/terrorist organisation is located or the terrorist act(s) occurred/will occur.
93. It is difficult to assess effectiveness as there were no prosecutions with regard to the FT and the competent authorities should ensure that the relevant entities are aware and trained as to their obligations under the AML/CFT to report and investigate SAR's and where applicable prosecute those in breach of FT.

#### **2.2.3 Compliance with Special Recommendation II & 32**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.II</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Definition of property does not include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind.</b></li> <li>• <b>No provision in the legislation extending terrorist financing to funds whether from a legitimate or illegitimate source</b></li> </ul>

		<ul style="list-style-type: none"> <li>• <b>No specific provision allowing for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or a different one from where the terrorist(s)/terrorist organisation is located or the terrorist act(s) occurred/will occur.</b></li> <li>• <b>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.</b></li> </ul>
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## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

### 2.3.1 Description and Analysis

#### **Recommendation 3**

##### ***Forfeiture of laundered property***

94. The provisions for freezing and forfeiture of assets in respect of ML are contained in Part IV of the AMLCFT Act.
95. Section 46(1) of the AMLCFTA provides that the DPP can apply to the Court for a forfeiture order against tainted property in respect of a serious offence for which a person has been convicted. The definition of serious offence as noted in section 2.1 of this report would include ML and FT offences. Tainted property is defined as property “used in or intended for use in connection with the commission of a serious offence; or derived, obtained or realised as a result of or in connection with the commission of a serious offence. Additionally, the definition of property “...includes money, investments, holdings, possessions, assets and all other property movable or immovable, including things in action and any other property wherever situated... and includes any interest in such property”(section 2(1)). However, as previously noted, the definition of property does not include “assets of every kind, whether tangible, or intangible” in accordance with the definitional provision of the Terrorist Financing Convention (Art 1.1 fund definition).
96. According to section 46(2) of the AMLCFTA, with regard to forfeiture, tainted property in the absence of evidence to the contrary, is property that was in the person’s possession at the time of, or immediately after the commission of the serious offence. Additionally, it includes property derived, obtained or realised before, during or within six years after the commission of the offence that cannot be reasonably accounted for by the legitimate income of the person. Section 51 of the AMLCFTA allows for the payment of an amount equal to the value of forfeited property that cannot be subject to an order, located or has been lawfully transferred, commingled, substantially diminished in value or situated outside Guyana.
97. While the above definition of property covers instrumentalities used in or intended for use in the commission of any ML, FT or other predicate offences, indirect proceeds of crime

including income, profits or other benefits from the proceeds of crime are not specifically covered. Additionally, it should be noted that the above forfeiture provisions are predicated on restraint provisions allowing for the freezing of property prior to prosecution and conviction. These provisions are described below and include restraint of property held by third persons, however similar measures are not incorporated in the definition of property subject to forfeiture as detailed in the AMLCFTA

***Provisional measures for preventing any transfer or disposal of property subject to forfeiture***

98. Under Guyana law the DPP may apply to the court for a restraining order against any realisable property that is held by an accused or another person. The process for applying for a restraining order is set out in section 38 of the AMLCFTA. The application can be made ex-parte and the court must be satisfied that:

- i) the accused has been convicted of a serious offence, charged or about to be charged or is under investigation for a serious offence;
- ii) where the accused hasn't been convicted of a serious offence "...there is reasonable cause to believe that the property is tainted property in relation to a serious offence or that the accused derived a benefit directly or indirectly from the commission of the offence;
- iii) where the application for a restraining order is against the property of another person there are reasonable grounds for believing the property is tainted in respect of a serious offence and it "...is subject to the effective control of the accused or is a gift caught by the Act;
- iv) the property is held by the accused or a person other than the accused.;
- v) there are reasonable grounds to believe that it is likely that a forfeiture order or pecuniary penalty order will be made in respect of the property (AMLCFT Act s.39(d)).

99. Gift as defined in the AMLCFTA includes any transfer of property by a person to another person directly or indirectly for a consideration that is significantly less than that provided by the first person or a consideration less than the market value of the transferred property. Section 39(1)(e) provides that the court can make an order that prohibits the defendant or any other person from disposing of or dealing with the property or part of the property or interest in the property as set out or specified in the order. Further, under section 39(1)(f) the DPP can request the Court to appoint the Registrar of Deeds, Public Trustee, Official Receiver or any other person the Court deems appropriate to take custody of the property and manage the property in accordance with the Court's directions.

***Identifying and tracing property subject to forfeiture***

100. Under section 24 of the AMLCFTA a police officer or an authorised officer of the Financial Intelligence Unit (FIU) may apply *ex parte* to a Judge in Chambers for a production order where a person is under investigation for a serious offence, ML or FT offence, or has been charged with or convicted of a serious offence. Such application must be supported by an affidavit. The production order may be sought where the relevant officer suspects or has reason to suspect that any person has control/possession of a

document relevant to identifying, locating or quantifying property or locating a document necessary for transferring property of the accused/suspect or a document relevant to identifying, locating, quantifying tainted property in relation to an offence or locating a document necessary for transferring tainted property of the accused/suspect .

101. Section 28 of the AMLCFTA also gives a police officer the power to enter land or premises, search the premises for documents and seize documents or property found in the course of the search that the police officer deems/believes to be relevant documents or property in respect of a serious offence, ML or FT offence. The search and seizure must however be lawful under the Act or have the consent of the occupier. Under section 29, the police or an authorised officer of the FIU may also apply to a magistrate for a warrant to search land or premises for a document in relation to an individual being investigated or charged or convicted of a serious offence.
102. Under section 26 of the AMLCFTA an individual (natural person) contravenes a production order, on summary conviction he may be liable on summary conviction to a fine of a minimum of GY\$1,000,000s (US\$4,880) and maximum of GY\$2,000,000 (US\$9,760) or one year imprisonment. In the case of a body corporation the sanction on conviction is a fine of a minimum of GY\$2,000,000 (US\$9,760) and a maximum of GY\$3,000,000 (US\$14,640).
103. The competent authorities in Guyana also have the ability to seize and detain assets under section 37 of the AMLCFTA in relation to suspicious importing and exporting of currency into and out of Guyana (this is dealt with comprehensively at SR IX below).

#### ***Protection of rights bona fide third parties***

104. Section 49(2) of the AMLCFTA provides for the process by which a person claiming an interest in property subject to a forfeiture order may apply to the Court to declare his interest in the property before the forfeiture order is made. In order for such application to be successful the Court must be satisfied (on the balance of probabilities) that the individual making the application: was not involved in committing the serious offence in any way; and where the individual acquired the interest after the serious offence was committed they acquired the interest for sufficient consideration and without any knowledge or reasonable suspicion at the time of acquiring the property that it was tainted property. Where the criteria are met the Court can make an order declaring the nature, extent and value of the individual's interest as at the time of the order.
105. Additionally, sections 49(3) and 49(4) of the AMLCFTA provide that once a forfeiture order has been made by the Court an individual who wishes to declare an interest in the property subject to the forfeiture order may do so by making an application under section 49(2) of the AMLCFTA before the expiration of six months from the date of the forfeiture order provided the individual did not have knowledge of the forfeiture application order prior to it being made and did not appear at the hearing of the application for the forfeiture order.

#### ***Authority's power to void actions in respect of assets subject to forfeiture***

106. Section 48 of the AMLCFTA provides that the Court may before making a forfeiture order "...set aside any conveyance or transfer of the property that occurred after the seizure of the

property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice”.

#### ***Additional Elements***

107. The law does not expressly provide for the confiscation of property belonging to organisations that are found to be primarily criminal in nature.
108. Under section 82 of the AMLCFTA the court can make a civil forfeiture order requiring that the whole or where appropriate a specified part of the property be transferred in accordance with the terms and conditions set out by the Court. The applicant in such proceedings means an officer (who is a police officer not below the rank of Superintendent of Police, or a person authorised by the Director of the FIU). Where an application is made for civil forfeiture, before granting a civil forfeiture order the Court will give an individual claiming ownership of any of the property subject to the application the opportunity to be heard by the Court and show cause why a civil forfeiture order should not be made (section 82(6)).
109. There is no specific requirement under the legislation for an offender to demonstrate the lawful origin of the property where that property is subject to confiscation (reversed burden of proof).

#### **Recommendation 32 - Statistics**

110. No statistics were available in relation to the confiscation, freezing and seizing of proceeds of crime

#### **2.3.2 Recommendations and Comments**

111. Whilst the legislation with respect to restraining and forfeiture orders is comprehensive under the AMLCFTA, it is not possible to ascertain if there has been effective implementation as there have been no restraining orders, confiscation orders, production orders or search warrants issued/made under the AMLCFT. It is recommended that;
112. The definition of property liable for confiscation in the AMLCFTA be amended to include indirect proceeds of crime including income, profits or other benefits from proceeds of crime and property held by third persons and assets of every kind, whether tangible or intangible.
113. The competent authorities should provide resources to ensure the requisite agencies are trained under the recent legislation in order to enable effective implementation.

#### **2.3.3 Compliance with Recommendations 3 & 32**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.3</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The definition of property liable for confiscation does not include assets of every kind, whether tangible or intangible, or indirect proceeds of crime including income, profits or other benefits from proceeds of crime or property held by third persons.</b></li> </ul>

		<ul style="list-style-type: none"> <li>• Unable to assess effective implementation since there has been no restraint, forfeiture or production orders or search warrants granted under the AMLCFTA due to its recent enactment .</li> </ul>
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## 2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

### 2.4.1 Description and Analysis

#### **Special Recommendation III**

##### ***Freezing Terrorist Assets under S/Res/1267(1999)***

114. There are no provisions in the AMLCFT that specifically provides for the freezing of terrorists funds or other assets designated by the United Nations Al-Qaida and Taliban Sanctions committee in accordance with S/RES/1267(1999). Section 68(6) allows the Minister of Finance to publish by notice in the Gazette a list of terrorists or terrorist organizations as defined in the International Conventions on Terrorism; however the Act does not speak to the immediate or otherwise freezing of funds of individuals/organisations on the said list.

##### ***Freezing Terrorist Assets under S/Res/1373***

115. There is no provision in the AMLCFT that allows for immediate freezing of terrorist funds, without notice, by a designated or competent authority. Section 71 of AMLCFT provides that where the DPP has reasonable grounds to believe that any property is terrorist property or is held on behalf of a terrorist or terrorist organization, the DPP can apply to the High Court to freeze any account or other property held by any person on behalf of a terrorist or terrorist organization. This provision does not satisfy the freezing of assets requirement set out in S/RES/1373. Section 2(2)(1) gives the Attorney General authority to recommend to the Minister of Finance that an entity be a specified entity and if the Minister of Finance is satisfied he can make an order declaring the entity a specified entity, however this is in relation to the definition of a terrorist group and the Act does not deal with the freezing of funds for specified entities.

##### ***Freezing of funds***

116. Section 76 of the AMLCFT provides for the Court or other competent authority in Guyana to grant assistance to foreign countries/jurisdictions. The Court or competent authority is able to receive requests from a foreign court or competent authority in respect of identifying, tracing, producing, freezing, seizing or forfeiting "...the property, proceeds, or instrumentalities connected to money laundering offences, terrorist financing offences and serious offences. Such assistance "shall" only be provided to countries with whom Guyana has mutual legal assistance treaties in place (either bilateral or multilateral) and any assistance "shall" be governed by the terms contained within such treaties.

117. There is no provisions under Guyana law that relate to designated persons nor is there any mechanism in place to allow the competent authorities in Guyana to freeze funds of terrorist/ terrorist organisations without delay. It is not clear how the authorities in Guyana would give effect to a request from a foreign jurisdiction for freezing terrorist assets/funds without delay as there is no corresponding law in Guyana, and additionally such provisions would have to be contained in a mutual legal assistance treaty made between the parties.
118. Since there are no provisions for implementing the requirements of S/RES/1267(1999) and S/RES/1373(2001), there are no effective systems for communicating the actions under these requirements to financial institutions with respect to their obligations to freeze funds of designated terrorist or terrorist organisations; nor is there any law that directs the financial institutions to check their accounts against any terrorist list, including a national terrorist list or the UN terrorist list. In line with this situation, there is no clear guidance to financial institutions (or other persons or entities that may be holding terrorist funds) with respect to their obligations to have measures in place to comply with freezing mechanisms.

***Procedures for de-listing requests and unfreezing funds***

119. Section 2(2)(3) allows an individual/organisation to make an application to the Minister of Finance to reverse the order declaring them to be a specified entity (which falls under the definition of a ‘terrorist group’). The Minister shall notify the applicant of his decision within 60 days of receiving the written application. This process is in relation to the individual/organisation being taken off of the specified entity list and does not deal with unfreezing funds. Section 71(6) allows the Court to revoke a freezing order where it is satisfied that the account, property or the person’s interest in it is not owned or held by/on behalf of a terrorist organisation. This section relates to the unfreezing of funds by the Court where the freezing order was granted after an application for the same by the DPP. Under the AMLCFTA there are no procedures in place for publically dealing with de-listing requests and unfreezing of funds that were frozen without delay or prior notice given.
120. There are no provisions to freeze funds under Guyana law pursuant to S/RES/1267(1999) and therefore no need to provide access to such funds under Guyana law.
121. In Guyana the only mechanism in place to freeze funds is through an application to the Court by the DPP (no measures in place to freeze funds without delay), and any challenge of the Court issued freeze order is made via an application to the Court (section 71(5) AMLCFT).

***Freezing, seizing and confiscation of terrorist-related funds in other circumstances***

122. Section 67 of the AMLCFT provides that a police officer, customs officer or an individual authorised by the Director of the FIU may seize cash where, on reasonable grounds, he suspects that: the cash is intended to be used for terrorism purposes; belongs to or held in trust for a terrorist organisation; it represents property obtained via terrorism acts. Further, section 71 allows the DPP to make an application to the High Court to freeze any account or other property held by or on behalf of any terrorist or terrorist organisation, and the DPP can apply to the Court to extend the restraint or freeze direction issued by the Court. Section 72 provides that the DPP can apply to the court for a forfeiture order against terrorist property and the Court can grant such order pursuant to section 74. That is, if the Court is satisfied on the balance of probabilities that subject property to which the

application relates is terrorist property, the Court shall order the said property be forfeited. Terrorist property is defined to include proceeds from the commission of terrorism and money or other property which has been, or is likely to be used by a terrorist group or to commit terrorism. The definition does not specifically speak to confiscation (forfeiture) of instrumentalities used in and instrumentalities intended for use in.

123. Section 38 and 39 of the AMLCFTA provides for restraint orders against tainted property in relation to serious offences which includes FT offences as defined in the Act. An application for a restraining order pursuant to section 38 can be made ex-parte.
124. A police officer or an authorised officer of the FIU can apply to the Court for a production order where a person is under investigation for a serious offence, ML offence, a terrorist financing offence, or has been charged or convicted provided the officer has reasonable grounds for suspecting a person has possession or control of a document relevant to “identifying, locating or quantifying property of the person or to identifying or location a document necessary for the transfer of property of such person; or a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence.” An application for a production order may be made ex-parte to a Judge in Chambers (section 24). A police officer / authorised officer of the FIU also has powers to enter land or premises and search for and seize documents where they have obtained a search warrant pursuant to section 29; and FT offences are captured by section 29 therefore search warrants can be issued in relation to FT offences.
125. Section 48 provides that the Court may before making a forfeiture order “...set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice”. This provision should apply equally to forfeiture orders made pursuant to section 74 of the Act.

### ***Third party rights***

126. As noted with the freezing of terrorist property, a person affected by the order may apply for revocation of the order under section 71(5) of the AMLCFTA. Where a forfeiture order is made against terrorist property pursuant to section 74, a bona fide third party can successfully claim an interest in the subject property if the Court is satisfied that he has an interest in the property; has exercised reasonable care to make sure the property is not terrorist property; and that the applicant is not a member of a terrorist group. Where the Court is satisfied, the applicant’s interest in the property shall not be affected by the forfeiture order and the Court “...shall declare the nature and extent of the interest in question” (section 74(2)). Where a person obtains an interest after the property is deemed terrorist property the Court will only make an order under s. 74(2) in respect of that interest where that individual “...is a bona fide purchaser for value, without reason to suspect that the property is terrorist property” (section 74(3)).

### ***Effective implementation***

127. Presently the competent authorities in Guyana do not have legislation in place to support issuing orders pursuant to S/RES/1267(1999) and S/RES/1373(2001). As such, rules and regulations in respect to the above noted special resolutions have not been implemented to date.



### ***Additional Elements***

128. The measures set out in the Best Practices Paper for SR. III have not been implemented to date. There are no procedures in place to authorise access to funds frozen under S/RES/1267(1999) and S/RES/1373(2001) as there is no domestic legislation implementing these special resolutions.

### **Recommendation 32 – Statistics**

129. Since there are no measures in place to implement the requirements of the UN resolutions in relation to the freezing of terrorist property, there are no statistics for such.

#### **2.4.2 Recommendations and Comments**

130. The competent authorities in Guyana should amend the legislation to comply with the requirements of S/RES/1267(1999) and S/RES/1373(2001) for freezing funds of designated persons/organisations.
131. The authorities should develop and implement procedures for delisting requests, unfreezing of funds and providing access to frozen funds..
132. The competent authorities should provide or issue guidance to financial institutions with respect to obligations in taking action under the freezing mechanisms required by S/RES/1267/(1999) and S/RES/1373(2001).
133. There should be training for the relevant entities so that they are aware of their obligations under the legislation and in order for the legislation to be implemented effectively.

#### **2.4.3 Compliance with Special Recommendation III & 32**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.III</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• <b>The legislation does not include provisions for freezing funds of persons designated by the UN Al-Qaida and Taliban Sanctions Committee (S/RES/1267) or in the context of S/RES/1373;</b></li><li>• <b>There are no procedures in place for delisting requests, unfreezing of funds or providing access to frozen funds in relation to S/RES/1267 or S/RES/1373;</b></li><li>• <b>No guidance has been issued to FI's or the regulated sector in respect of obligations to comply with or implement measures concerning the freezing mechanisms required under S/RES/1267(1999) and S/RES/1373(2001)</b></li><li>• <b>The AMLCFTA as it relates to freezing, seizing and forfeiture of funds of terrorists or terrorists' organisations has not been implemented.</b></li></ul>

## *Authorities*

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

#### 2.5.1 Description and Analysis

#### **Recommendation 26**

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

134. Section 9(1) of the AMLCFTA formally establishes the Financial Intelligence Unit (FIU). Previous to this, the FIU had been operating since 2004 as the Supervisory Authority under the Money Laundering Prevention Act 2000. The functions and responsibilities of the FIU under the previous Act were similar to those incorporated in the AMLCFTA. Under section 9(1) the FIU is the agency responsible for requesting, receiving, analyzing, and disseminating suspicious transaction reports and other information relating to money laundering, terrorist financing or proceeds of crime. Pursuant to sections 8 and 9 of the AMLCFTA, the minimum organizational structure of the FIU includes a Director who is the chief executive officer, an attorney-at-law and an accountant all appointed by the Minister of Finance and personnel trained in financial investigation or other employees as the Director considers necessary and appointed by the Director. At the time of the mutual evaluation visit, the FIU consisted of only the Director, a retired banker. This situation has existed for some time,
135. Section 9(4)(e)(iv) of the AMLCFTA requires the FIU to issue guidelines to reporting entities and advise the Minister accordingly. At the time of the onsite inspection, the FIU Director had not issued any guidelines or guidance on reporting obligations. The FIU has a standard reporting form for submitting suspicious transaction reports (STRs), which has been distributed to all reporting entities however, more than one institution appeared to be using a different version of the reporting form. Additionally the examiners were advised by some institutions that they had yet to receive any guidance from the FIU.
136. Section 9(4)(g) of the AMLCFT Act authorizes the FIU to create training requirements and provide such training for any reporting entity with respect to its identification, record-keeping and reporting obligations. Due to the recent enactment of the AMLCFTA the Director has only held one training course with the Chartered Accountants Association on the obligations of reporting entities as mandated by the Act. In attendance were representatives from banks, accountants, and compliance officers from money remittance agencies.
137. At present reporting of STRs is done by hand directly to the Director. The Director signs a second copy of the report as acknowledgement of receipt. No other type of feedback appeared to be sent to reporting entities including advice on the quality of the reports. Under section 9(4)(l) of the AMLCFTA, the FIU may periodically provide feedback to other supervisory authorities and other relevant agencies regarding outcomes relating to the reports or information provided in accordance with the Act.

138. Section 9(4)(k) of the AMLCFTA authorizes the FIU to request and receive information from any reporting entity, any supervisory agency and any law enforcement agency, any other competent authority in Guyana or elsewhere for the purposes of the Act. At the time of the inspection, due to the recent enactment of the Act, such information had not been requested by the Director of the FIU from supervisory, law enforcement or other competent authorities..
139. In accordance with powers under previous legislation and pursuant to section 9(4)(k) of the AMLCFTA additional information on STRs has been and can be requested from reporting entities by letter. The deadline for the submission of requested information is usually within 14 days. The examiners were unable to ascertain the number of requests for information by the FIU, since this information was not provided..

#### ***Dissemination of information***

140. Section 9(4)(b) of the AMLCFTA allows the FIU to disseminate information relating to money laundering, terrorist financing or proceeds of crime to the competent authority, after conducting its analysis. Additionally, Section 9(4) (c) of the said Act authorizes the FIU to send to the appropriate law enforcement authorities, any information received from an inspection carried out by the designated supervisory authorities responsible for ensuring compliance by relevant reporting entities, if it has reasonable grounds to believe that a transaction involves money laundering, proceeds of crime or terrorist financing.
141. The FIU may disseminate information to other law enforcement authorities for intelligence purposes. Under the AMLCFTA, the DPP is the competent authority responsible for prosecuting offences related to information disseminated by the FIU. The Office of the DPP has not been provided with investigative personnel and therefore investigations will be carried out by the police force. It is noted that under section 9(4)(i) the FIU also has the authority to conduct investigations into money laundering, proceeds of crime or terrorist financing.
142. On receipt of STRs, the Director of the FIU conducts analysis of the report. However, to date, no information has been disseminated to law enforcement authorities or to the DPP for prosecution. Additionally, the examiners were unable to ascertain the method used to prioritize STRs for analysis.

#### ***Independence and autonomy of FIU***

143. Under the section 9(7) of the AMLCFTA, the Director is responsible for the control and use of the funds and resources of the FIU. The FIU is a semi-autonomous body within the Ministry of Finance. The budget of the FIU is part of the Government's annual budget which is approved by Parliament. The Director is afforded autonomy in purchasing equipment for the FIU once the budget has been approved. As already noted, except for an attorney-at-law and an accountant as required under the AMLCFTA, the Director has the authority to appoint personnel trained in financial investigations and other employees. With regard to the positions of the attorney-at-law and the accountant, the Director has already begun the process of recruiting and it is understood that the final appointment by

the Minister of Finance will be based on the Director's recommendations. As already mentioned the Director is appointed by the Minister of Finance. Under section 8(2) the Director can only be removed by the President of Guyana. No conditions for termination of the employment of the Director are stipulated in the Act.

144. Section 9(5) of the AMLCFT Act mandates the Director of the FIU to provide advice to the Minister of Finance on matters related to money laundering or terrorist financing, that may affect public policy and national security. However, there is no mention of supervision or oversight of the Director of the FIU.

### ***Protection of information***

145. Information held by the FIU is protected by law under section 12 of the AMLCFTA. The Act states that any person who obtains information as a result of his connection with the FIU shall not disclose that information to any other except as allowed by law. Any person who breaches this provision shall be subjected to dismissal from the FIU and is liable on summary conviction to a fine not exceeding two million dollars (US\$9,760.) and to imprisonment of a term not exceeding four years.
146. The FIU office is situated in the Ministry of Finance. A fully secured enclosed office is on a floor surrounded by desks and offices of Ministry of Finance personnel. Similar services are utilised by both the FIU and the Ministry of Finance. Security for the whole building is provided 24 hours by the Police Force. There are no alarms on the door of the FIU office. Access is controlled by the Director who possesses the only keys to the office and ensures the office is locked whenever he leaves the office. Cleaning and other services are shared with the Ministry of Finance and only allowed in the office when the Director is present.
147. The FIU does not maintain a general database at this time. STRs are kept on two computers within the director's office. No one has access to these files without prior consent from the director. Technical support for these computers is available from the Ministry of Finance IT personnel. The Director assured the examiners that the files are backed up offsite similar to those of the Ministry of Finance. Minimum hard copy files are stored in filing cabinets within the office. These cabinets do not appear to be fireproof. The physical arrangements as described above provide at best minimal security for information held by the FIU. The main vulnerability to FIU information is the fact that technical support is being provided by personnel not in the employ of the FIU.
148. There is no provision for the FIU to publicly release periodic reports which include statistics, typologies and trends as well as information regarding its activities. It is noted that section 9(4)(e)(i) requires the FIU to compile statistics and records while subsection 9(4)(f) states that the FIU may conduct research into trends and developments in the area of money laundering and terrorist financing and improved ways of detecting, preventing and deterring money laundering and terrorist financing. There is no requirement to present the findings in a publicly released report. The team of examiners was advised statistics regarding money laundering and terrorist financing generated by the FIU will not be released publicly.
149. Section 9(8) also requires the Director to keep proper accounts and other records in relation to the FIU and prepare in relation to each financial year, a statement of accounts within three months of the end of the financial year to be audited by the Auditor General. Section

110 of the AMLCFTA requires the Director of the FIU to submit to the Minister of Finance, no later than six months after the end of the financial year a report on the financial affairs, operations and performance of the FIU. The audited annual statements of accounts of the FIU prepared pursuant to section 9(8) must be submitted with the report. The Minister of Finance is required to present the report together with the annual statement of accounts and the Auditor General's report thereon to the National Assembly within one month of receiving it from the Director of the FIU. Due to the recent enactment of the AMLCFTA, the first report of the FIU to the Minister of Finance was scheduled later in 2010..

150. The FIU has started the process of applying for membership in the Egmont Group of Financial Intelligence Units. The FIUs of The Bahamas and the Virgin Islands have co-sponsored the application for the FIU of Guyana..
151. Section 9(4)(m) provides for the sharing of information with institutions or agencies of a foreign state which have powers and duties similar to those of the FIU. The FIU has exchanged information with other FIUs in the past. However, it was not clear how information was exchanged and which countries were involved. The director assured the examiners that the FIU will continue to exchange information with other FIUs on request.
152. The Director of the FIU was not aware of the Egmont Group's Principle of Exchange of Information between FIUs. However, Section 14 of the AMLCFT Act authorizes the FIU to enter into agreements to share information with other FIUs for intelligence purposes only.

### **Recommendation 30**

#### ***Resources – FIU***

153. As already mentioned at the time of the onsite, the only employee of the FIU was the Director, a retired banker. However, the examiners were informed that the director has access to relevant staff of the Ministry of Finance for support services such as IT, security, cleaning etc. As a result of the passage of the AMLCFTA formally establishing the FIU, the Director has begun to implement a plan for staffing the FIU. The plan requires the recruitment of four analysts, a database/IT manager, an investigator and an office administrator within a year. Additionally, plans are well advanced to move the office of the FIU to an adjacent building on the Ministry of Finance compound. The office while still sharing a floor with Ministry of Finance personnel will have a separate outside entrance consisting of a steel door. The office is designed to accommodate the staff planned to be recruited. Necessary equipment including computers have been acquired along with a server for an office network. IT expertise is still expected to be provided by Ministry of Finance personnel for the foreseeable future.
154. Qualifications for employment in the FIU were being developed and were incomplete at the time of the inspection. The Director plans to require successful candidates to sign an oath of confidentiality before employment with the FIU. Additionally as public officers they are expected to adhere to the rules of the Integrity Commission. It will be necessary for the Director to develop written policies and procedures with regard to screening measures for prospective employees and anti-corruption safeguards.

155. Since the Director is the only member of staff of the FIU, training has been predicated on his assessment of its relevance and availability in relation to his duties and responsibilities. During the last four years, the Director has undertaken the following training:
- a. Workshop for Caribbean Countries on Countering Terrorism Financing presented by the Secretariat of the Inter-American Committee against Terrorism held in Antigua & Barbuda from October 13-17, 2008.
  - b. Conference on the Prevention of Money Laundering & Terrorist Financing at Casinos and Remote Gambling Venues presented by CARTAC in The Bahamas from October 27-29, 2008.
156. The budget for direct expenditure plus overheads and other resources of the FIU for the period 2006 to 2009 was US\$125,000 for each year. As a result of planned increases in resources of the FIU, the budget for 2010 was increased by 100% to US\$250,000.

### **Recommendation 32 - Statistics**

157. As mentioned before, information regarding statistics on STRs was not provided to the examiners.

### ***Effectiveness of implementation***

158. The ability of the examiners to assess the effectiveness of the FIU is severely limited. The absence of public statistics concerning STRs, makes an assessment of the main function of the FIU – the receiving, analyzing and dissemination of STRs, extremely difficult if not impossible. However, the team was advised that STRs were only submitted by banks and money remitters and that no STR had been disseminated to law enforcement authorities or the DPP for prosecution since the establishment of the FIU. These facts raise concern as to the effectiveness of the reporting of STRs from financial institutions and the competence of the FIU in analyzing these STRs. However, assessment of these issues is credible only in the context of the total number of STRs received, and analyzed in relation to the number of reporting institutions.
159. It is the view of the examiners that the efficient operation of the FIU would have been significantly affected by the fact that the FIU has had only one member of staff for some time. The planned increase in staff and equipment should help in improving the functioning of the FIU.

### **2.5.2 Recommendations and Comments**

160. In accordance with the AMLCFTA requirement the FIU should issue guidelines on the manner of STRs reporting to all reporting entities. A circular to the wider public concerning money laundering and financing of terrorism could also be considered.
161. The FIU should establish safeguards to reduce the vulnerability of its database.

162. The FIU should urgently implement its plans for new personnel and facilities..
163. The authorities should reconsider their policy regarding the FIU releasing public reports and allow for the issuing of periodic reports which include statistics, typologies and trends.

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

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No guidelines regarding the manner of STRs reporting have been issued to financial institutions and other reporting entities.</b></li> <li>• <b>Minimal security arrangements for custody of information with the main vulnerability being IT support provided by personnel not in the employ of the FIU</b></li> <li>• <b>No requirement to publicly release periodic reports to include statistics, typologies and trends</b></li> <li>• <b>While lack of statistics limits assessment of effectiveness, the operations of the FIU are adversely affected by lack of resources</b></li> </ul>

## **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**

##### ***Chambers of the Director of Public Prosecutions***

164. The Chambers of the Director of Public Prosecutions (the Chambers) is the department responsible for all prosecutions involving criminal offences in Guyana. The Chambers is an independent office with no constitutional oversight. Section 113 of the AMLCFTA stipulates that any charges to be preferred against persons for money laundering or terrorist financing offences require the consent of the Director of Public Prosecutions (DPP).
165. Under section 9 of the AMLCFTA, the FIU can disseminate information to the DPP or appropriate law enforcement authorities which can result in investigations relating to money laundering, proceeds of crime or terrorist financing. Subsection 9(4)(b) requires the FIU to submit to the DPP, reports on STRs based on reasonable grounds that the reported transactions involve money laundering, proceeds of crime or terrorist financing. As such,

the DPP is responsible for investigating with a view to prosecuting these submitted reports. However, since the office of the DPP has not been provided with investigative personnel, the Guyana Police Force (GPF) is required to conduct investigations into alleged offences and report back to the DPP.

166. Additionally, under subsection 9(4)(c), the FIU can also send to the appropriate law enforcement authorities, information which give reasonable grounds to suspect that a transaction involves money laundering, proceeds of crime or terrorist financing. The information referred to is derived from inspections which designated supervisory authorities are required to perform on the relevant reporting entities.
167. It is noted that subsection 9(4)(i) provides for the FIU to conduct investigations into money laundering, proceeds of crime or terrorist financing. At the time of the mutual evaluation, the FIU had no investigative capability, however as mentioned in section 2.5 the Director of the FIU advised that he plans to recruit an investigator for the FIU within the year.

### ***The Guyana Police Force***

168. The GPF was established under the Police Act Chapter 16:01. The main functions of the GPF are the prevention and detention of crime, the preservation of law and order, preservation of the peace, the apprehension of internal disturbance, protection of property, the apprehension of offenders and the due enforcement of all laws and regulations within Guyana. ML/TF offences will be the responsibility of the Fraud Squad. This is a new venture to the Police, since their ability to effectively launch investigations into ML/TF offences has not been tested.

### ***Customs Anti Narcotics Unit (CANU)***

169. The Customs Anti Narcotics Unit (CANU) was created about 15 years ago. It was primarily formed to deal with Anti Narcotics Enforcement. CANU has the powers of Customs authorized under the Customs Act. Given the nature of its primary task, CANU can be involved in the early stages of money laundering investigations.
170. There are no written laws or measures authorising the GPF to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering or for evidence gathering. The GPF is authorized to use wire tapping and other covert operations in investigating serious crimes. However this has not been used to date, due to a lack of resources.
171. The act that covers wire tapping techniques is the “Interception of Communications Act No. 21 of 2008 (I/C Act). Under this act, an authorised officer includes the commissioner of Police; the Commissioner-General of the Guyana Revenue Authority; or the Chief of Staff of the Guyana Defence Force.
172. Section 4 (1) of the I/C Act, allows an authorised officer to apply ex parte to judge in Chambers for a warrant to intercept and record in the course of transmission by means of a public or private telecommunications system.

## **Recommendation 28**



173. Under the AMLCFTA, the GPF and the FIU have a broad range of powers for the investigation of money laundering, terrorist financing and predicate offences. Section 24 of the AMLCFTA provides for a police officer or an authorised officer of the FIU investigating a serious offence, money laundering or a terrorist financing offence, who has reasonable grounds for suspicion, to apply *ex parte* to a judge in chambers for a production order requiring a person to produce documents relevant to identifying or quantifying property of the person or tainted property in relation to the offence under investigation. Contravention of a production order without reasonable cause or provision of false or misleading documents in purported compliance of the order is liable on summary conviction, in the case of a natural person to a fine of not less than GYD\$1,000,000 (US\$4,880) nor more than GYD\$2,000,000 (US\$9,760) or for a term not exceeding one year and in the case of a body corporate to a fine of not less than GYD\$2,000,000 (US\$9,760) nor more than GYD\$3,000,000 (US\$14,640).
174. Section 29 of the AMLCFTA provides for a police officer or authorised officer of the FIU during an investigation of a serious offence to apply to a magistrate for a search warrant to enter and search any land or premises of which there is reasonable suspicion that a document relevant to the investigation may be found. Subsection 29(5) allows for the seizure of any document or property that is believed to be relevant or can afford evidence to the commission of a serious offence, money laundering or terrorist financing, found during the search authorised by the warrant.
175. Section 31 of the AMLCFTA allows for a police officer or an authorised officer of the FIU investigating a money laundering or terrorist financing offence to apply *ex parte* to a judge in chambers for a monitoring order directing a reporting entity to supply the information stipulated in the order. A monitoring order may direct a reporting entity to disclose information obtained by the institution about transactions conducted through an account held by a particular person. A monitoring order cannot be applied retrospectively and is only applicable for a maximum period of three months from the date of the order. Contravention of a monitoring order or provision of false or misleading information in response to a monitoring order by a reporting entity is liable to the same penalty as contravention of a production order.
176. With regard to the determination of whether property should be subject to a civil forfeiture order, a court on the application of a police officer not below the rank of Superintendent or a person authorised by the Director of the FIU can issue a customer information order or a disclosure order under section 95 of the AMLCFTA. A customer information order can require the CDD information and documentation for all accounts held by a particular customer from any financial institution or reporting entity. A disclosure order can require any person to answer questions, provide information or produce documents relevant to the investigation for the purposes of which the order was sought.
177. As already mentioned CANU has the powers of Customs. Under Section 55 of the Customs Act, a Customs Officer has the authority to board any ship or aircraft within Guyana. He can stay on board for any period, and shall have access to every part, with power to secure any part by such means as he considers necessary. Section 56 allows the officer to open any box or chest found on board such aircraft or ship in any manner, without the fear of prosecution. Additionally, any concealed goods found can be forfeited.

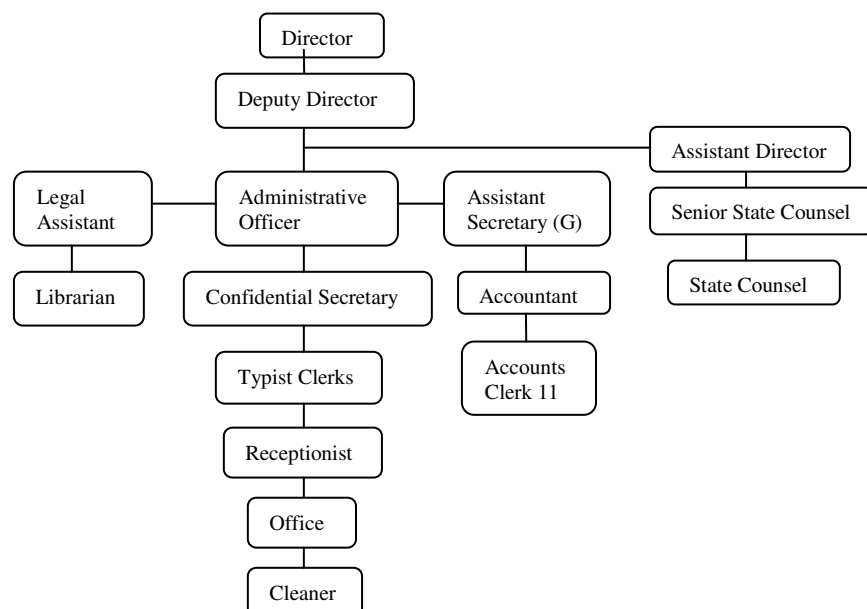
178. Under Section 59, of the Customs Act, a Customs Officer may search a person if he is informed that the person has landed from an aircraft or ship and is carrying or has any uncustomed or prohibited goods, or has reason to believe that a person may be in possession of uncustomed or prohibited goods on his person. If such person should refuse to answer any questions, or deny the possession of uncustomed or prohibited goods, any goods discovered in his possession or his baggage shall be forfeited. However, Section 60 of the said Act, allows the persons to be required to be taken before a magistrate or the Comptroller of Customs, before such search takes effect.
179. Additionally, the Customs Act under Section 3 delegates the same powers as members of the Police Force to Customs Officers. Under the Police Act Cap., 16:01 any police officer can arrest without warrant any person who commits an offence in his view, or any person suspected of committing a felony or misdemeanour, or is suspected by another of committing such offence.
180. While the GPF has the power to take witnesses' statements for use in investigations and prosecutions, the authority for such power has not been indicated to the assessment team. Section 25 of the Police Act gives the police authority to take measurements, photographs and fingerprints.

### **Recommendation 30**

#### ***Chambers of the Director of Public Prosecutions***

181. The DPP's Chambers consists of sixteen positions. They are one (1) Director, one (1) deputy director, two (2) assistant directors, two (2) senior state counsels, and ten (10) state counsels. There are four (4) state counsels that have more than two (2) years experience. There are vacancies for two (2) senior state counsels, one (1) assistant director and one (1) deputy director.

#### **Organisation Chart of the Chambers of the Director of Public Prosecutions**



182. There is no formal process for ensuring integrity among employees of the DPP Chambers. However, all public officers must adhere to the rules of the Integrity Commission.
183. The staff of the DPP chambers has been exposed to some training concerning the financing of terrorism, corruption, cyber crime, and interception of communications. However, staff has not been recently exposed to training courses in money laundering as can be seen in the following table on staff training.

**Table 8: AML/CFT training of staff of the DPP for 2006 to 2009**

YEAR	Name of Course	Location	Officers Trained
2006	OAS Sponsored seminar on Recovery of Proceeds of Acts of Corruption	Miami	2
2006	Commonwealth Project on Capacity Building in Combating Terrorism. Training of Specialists and Trainers Programme	Trinidad & Tobago	3
2006	Commonwealth Regional Meeting on Interception of Communications	St. Lucia	1
2007	Commonwealth Expert Working Groups on Interception of Communications and Mutual legal assistance	London	1
2007	Cyber crime security and cyber crime workshop	Miami	1
2008	Regional Consultation of Caribbean states on the promotion of the ratification of the United Nations Convention against corruption (UNAC) UN House, Barbados	Barbados	1
2008	Sub Regional Workshop for Caribbean territories on terrorist financing	Antigua & Barbuda	1
2009	Electronic Evidence in Criminal Investigations and Prosecutions	The Bahamas	1
2009	Workshop on the development of a national framework for cyber security.	Brazil	1

184. The Judiciary's ability to effectively adjudicate trials concerning money laundering and terrorist financing offences was never tested. Only one charge of money laundering was prosecuted under the previous AML/CFT legislation. At the time of the mutual evaluation the matter was still pending in the Courts.

### ***The Guyana Police Force***

185. The GPF has approximately 3,000 ranks (officers). There is a high turnover rate of officers. This high turnover is caused by migration, and dismissals. A number of officers have defected from the force due to better employment benefits offered elsewhere in the Caribbean. It must be noted that the starting salary for police officers is very low with some ranks receiving as low as \$30,000.00 Guyana Dollars per month, including allowances.
186. The Fraud Squad will be the unit within the Police Force that will be ultimately responsible for investigating ML/TF offences. The type of resources that will be allocated for this unit had not been worked out at the time of the onsite. However, the examiners were assured that the Police Force is ready and willing to work with the new legislation (The AMLCFT Act 2009).
187. The GPF has also maintained other specialized staff to assist them with their normal duties. The specialized staff members include finger print experts, handwriting experts and ballistics experts. Additionally, the GPF has a Canine unit with two (2) dogs trained for detecting narcotics and one (1) dog trained for ballistics purposes. However, there are no financial investigators or forensic accountants attached to the Force
188. The requirements for employment in the GPF are a sound primary education and a written exam. One must also be medically fit, with no criminal records. A security check is done on interested persons during the vetting process.
189. Officers and employees of the GPF are issued with a copy of the Standard Operating Procedures (SOP). The SOP is said to have incorporated a Code of Ethics by which officers must abide. Additionally, Section 13 of the Police Act mandates that every officer must sign an oath. Furthermore, government employees must sign on to the Integrity Commission. Any complaints against police officers are investigated by the Office of Professional Responsibility.
190. In addition to the afore-mentioned, the police force has also faced some challenges in terms of its officers. During the period 2006-2009, a number of officers were disciplined for various reasons. The following diagram shows the number of officers charged and dismissed from the force during the years 2006 to 2009.

**Table 9: No of officers charged and dismissed from the GPF for 2006 to 2009.**

Guyana Police Force	2006	2007	2008	2009
Ranks Charged Departmentally	660	721	503	649
Ranks Charged Criminally	18	20	30	37
Ranks Dismissed	17	8	15	14

191. As already mentioned the GPF has approximately 3,000 officers, while the numbers of ranks charged departmentally as shown in the table above at a minimum represent 16 % of the GPF, a figure which gives cause for concern. This concern is further increased when media reports about certain recent high profile cases of police brutality and use of excessive force are taken into consideration. One case in particular resulted in criminal charges being

brought against the officers involved. These cases have adversely affected public confidence in the GPF and raises concern about the integrity of the Force.

192. Police officers attend various courses related to their specific duties. Generally, when new legislation is passed, the DPP or counsel from the chambers would make presentations to the police. New rules and procedures are then formulated based on the presentations of the new legislation. Additionally, specialised training has been carried out in Canada and the Caribbean region.
193. The following diagram shows the courses attended by police ranks during the years 2006-2009.

**Table 10 : Staff training of GPF for 2006 to 2009**

YEAR	Name of Course	Location	Ranks Trained
2006	Advanced Drug & Organized Crime Workshop	Jamaica	1
2006	Narcotics Investigation Course	Jamaica	1
2007	Advanced Drug Investigation Techniques Seminar	Bahamas	1
2008	Euro Caribbean Seminar	Sainte Ann, Guadeloupe	2
2008	Regional Anti-Drug & Money Laundering Seminar	Suriname	1
2008	7 <sup>th</sup> Regional Anti Drug & Money Laundering Seminar	Paramaribo	2
2009	EU/LAC Intelligence Sharing Working Group	Cuba	1

194. The above table only shows a small number of persons trained in drug investigations. Training in financial and money laundering investigations techniques will be necessary for the GPF to carry out its function of investigating money laundering and terrorist financing offences.

#### **CANU**

195. CANU has a staff complement of about 40 persons. The head of CANU is also a member of the Task Force on Narcotics and Illicit Firearms. CANU's budget is provided by the Ministry of Finance. Accountability for CANU's operations rests with the Ministry of Home Affairs. The following table indicates the allocated budget for CANU for the past four (4) years. The figures show a substantial increase in 2008. However, the budget was reduced in 2009.

**Table 11: Customs Anti Narcotics Unit Budgetary Allocations**

Year	Amount
2006	G\$ 84,437, 000.00
2007	G\$ 84,437, 000.00
2008	G\$ 89,084, 000.00
2009	G\$ 85, 250,000.00

196. There are nine (9) vehicles and four computers attached to CANU. Regular files are kept in fire proof cabinets at the office, and the information is backed up off site.
197. The qualifications for employment in CANU include five (5) CXC subjects, a police clearance and a background check. In addition to the code of conduct in the Integrity Commission Act, officers are expected to adhere to ethics that are given to them as part of a Standard Operating Procedures Manual. The officers are hired on a contractual basis, and have to renew their contracts annually.
198. CANU has not been without problems. In the past, two senior officers were assassinated. Additionally, the Ministry of Home Affairs carried out an assessment of the staff. Poly graph tests were submitted and eight (8) staff members failed and were replaced.
199. To date, no training has been provided for CANU's officers concerning Money Laundering or Terrorist Financing.

#### 2.6.2 Recommendations and Comments

##### *Comments*

200. The competent authorities of Guyana appear to be well structured, but there are some areas that need attention. The most important factor concerning this evaluation is the training of the authorities to enable them to effectively investigate offences related to Money Laundering and the Financing of Terrorism. It has been stated by the authorities that the training capabilities and the new information offered will be seen as a new tool to effectively carry out their mandates.
201. Another matter of grave concern is the wages offered to employees of the competent authorities. The wages should be of an amount that attracts the skills and integrity necessary to avoid corruption in these key areas of combating money laundering and financing of terrorism. Some concerns were raised about corruption being present in the various offices.
202. The Integrity Commission Act requires that all public officers sign up with the Integrity Commission. However, it appears that the knowledge of this is limited, since only Heads of Departments and their deputies appear to be following the code of conduct in the act. Therefore, individual departments are instituting ethics codes as part of their Standard Operating Procedures.
203. There are some legitimate concerns about the investigative and judicial processes. It is said that files slip through the cracks sometimes. Additionally, there are claims that persons are not satisfied with the police and their investigations.
204. The police need to be stern with the officers who supervise the ranks. Many times files do not contain information on summons served on witnesses. Additionally, officers are not appearing in court to present cases with charges under their names.

205. There is some concern about the time it takes to adjudicate cases. Long adjournments are granted at times. Defendants are given bail and witnesses do not come to court due to frustration. After some time, the Magistrate dismisses the case for want of prosecution.
206. The courts need to hear matters more quickly and efficiently. Sometimes they are overburdened with too many matters at one time. Sometimes, the officers of the Court try to tell the prosecutors which cases are to be brought before the court.

### ***Recommendations***

207. There should be written laws or measures authorising the GPF to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering or for evidence gathering.
208. There should be a law or measure to allow for the taking of witnesses' statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences or in related actions.
209. The authorities should provide trained financial investigators for the GPF and CANU
210. The authorities should consider measures to deal with the integrity problems of the GPF
211. Staff of GPF and CANU should be provided with appropriate ML/FT training.
212. Staff of the DPP should be provided with ML training

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

	<b>Rating</b>	<b>Summary of factors relevant to s.2.6 underlying overall rating</b>
<b>R.27</b>	<b>NC</b>	<b>No written laws or measures authorising the GPF to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering or for evidencing gathering.</b> <b>Lack of trained financial investigators limits effective implementation of ML/FT investigations</b>
<b>R.28</b>	<b>PC</b>	<b>No written law or measure for the taking of witnesses' statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences or in related actions</b>

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

### **2.7.1 Description and Analysis**

#### **Recommendation SR IX**

213. Physical cross-border transportation of currency is subject in Guyana to the AMLCFTA and the Foreign Exchange (Miscellaneous Provisions) Act 1996 (FEMPA) which was enacted to regulate certain dealings in gold, foreign currency, money or securities, and the movement of foreign currency in and out of Guyana.
214. Section 36 of the AMLCFTA requires a person who enters or leaves Guyana with foreign currency amounting to more than US\$10,000, or its equivalent in another currency, to make a declaration to an authorised officer. Currency as defined in section 2 of the AMLCFTA includes monetary instruments that maybe exchanged and negotiable instruments in a form in which title passes on delivery. There is no direct indication in the AMLCFTA as to the agency responsible for receiving the declaration form. However, subsections 6(2) and 6(4) of FEMPA while stipulating a similar requirement specifies that the declaration should be made to the Comptroller of Customs who under subsection 6(6) is made responsible for administering this requirement as though it were part of the Customs Act with the provisions of that Act and its regulations being applicable where relevant. The merger of Customs and Inland Revenue Department has resulted in the Comptroller of Customs, function now being the Commissioner General's function and the responsible agency being the GRA. This had been formalised in the previous Money Laundering (Prevention) Act which had designated the Commissioner-General of the GRA as the competent authority to administer the declaration of currencies. It is suggested that a similar designation be included in the AMLCFTA.
215. It is noted that while the provision in the AMLCFTA with regard to currency includes bearer negotiable instruments, the provision in FEMPA is limited to foreign currency. At the time of the mutual evaluation only the FEMPA provision was being implemented by the GRA due to the recent enactment of the AMLCFTA,
216. Outgoing passengers are informed of the requirement to declare funds by posters on the airport. Incoming passengers are advised to declare any funds in excess of US\$10,000, as part of the Customs/Immigration Declaration form. Travellers at the airport are provided with the specified declaration form on which they are required to declare funds in excess of ten thousand (\$10,000.00) USD. The declarations are made to the Commissioner General of the Revenue Authority.
217. In accordance with subsection 6(7) of FEMPA which provides for the provisions of the Customs Act to be applicable where relevant to the cross-border transportation of currency, section 231 of the Customs Act empowers a customs officer to request and obtain further information from any person submitting a currency declaration form as to the origin and intended use of funds.
218. Section 37 of the AMLCFTA gives authority for a police officer or customs officer to seize or detain any currency which is being imported into, or exported from Guyana. The officer must have reasonable grounds to suspect that the currency came from a serious offence, is



intended to be used in committing a serious offence; was involved in money laundering or terrorist financing; or was being brought into or taken out of Guyana after a false disclosure or declaration.

219. The currency can be detained by the officer for 72 hours, after which time a judge in chambers can order its continued detention for up to three months. However, there must be reasonable grounds for suspicion and the continued detention is justified while among other things the origin or derivation of the currency is investigated.
220. The GRA advised that it keeps records of declarations that are made of currency in excess of US\$10,000. Information with regard to the details on the number of false declarations or where there was a suspicion of money laundering or terrorist financing is not kept. The GRA sends monthly reports to the FIU on all declarations over US\$10,000. These reports contain information on individual declarations such as values declared, passport identification, flight number etc.
221. The GRA, Immigration authorities and other related authorities apparently work close together in terms of cross border reporting. The Commissioner of Police is also the Chief Immigration Officer; therefore the police force is also involved in the process. Whenever a cross border offence is suspected, the suspect(s) are prevented from leaving the territory until the matter is finalized. The GRA is a member of the Joint Task Force on Smuggling together with CANU, GPF and the Guyana Energy Agency. The GRA shares information with the GPF, the DPP, the Auditor General and the FIU and can access information from any government agency as required.
222. The GRA is a member of the Caribbean Customs Law Enforcement Council (CCLEC). Customs attends regular meetings of CCLEC. While the CCLEC MOU allows for sharing of information between member custom authorities there is no additional information to suggest that the GRA shares information with its regional counterparts on cross-bordering reporting.
223. Under section 6(5) of FEMPA, a traveller, who fails to disclose, or wilfully makes a false declaration of currency, will be liable on summary conviction to a fine of two hundred and fifty thousand dollars (\$250,000.00) or approximately US\$1,250 and six months imprisonment. Additionally, any undeclared currency will be forfeited by the court. As a criminal offence, failure to disclose or make a false declaration will be prosecuted by the sole authority the DPP. It is noted that under section 274 of the Customs Act that the Comptroller has the discretion, in lieu of proceedings in a court of summary jurisdiction to impose a fine on any person suspected of a contravention of the Customs Act or any regulation there under once the person agrees to the settlement.
224. Section 6(5) of FEMPA refers specifically to a traveller which would suggest that liability for this offence is strictly limited to natural persons and cannot be extended to legal persons and their directors who have consented or connived in the offence. The penalty as stipulated in FEMPA dates from 1996 and given the current equivalence in US dollars and the short imprisonment term cannot be considered dissuasive, proportionate or effective.
225. Subsection 37(8) of AMLCFTA stipulates that currency seized as a result of a false declaration or failure to disclose will be forfeited if proven to represent the proceeds of

crime, money laundering or terrorist financing. Additionally, offences in section 3 of the AMLCFTA would apply in relation to ML and those in sections 68 to 70 relating to FT.

226. The criminal penalties for ML offences range from fines of one million to one hundred million Guyanese dollars (\$1,000,000 - \$100,000,000) (US\$4,880 – US\$488,000) and imprisonment of up to seven (7) years for a natural person; while a body corporate (legal persons) is liable to fines ranging from two hundred million dollars to five hundred million dollars (\$200,000,000 – \$500,000,000)(US\$976,000 – US\$2,440,000).
227. The sanctions for FT include, where death occurs as a result of the act, a fine of not less than one million five hundred thousand dollars (US\$ 7,320) and death,; and in other cases a fine of at least five hundred thousand dollars (US\$ 2,440) and imprisonment of 10 years minimum (s. 68(1)(d)(i)&(ii)). Additionally, FT offences committed under section 68(3): where death occurs as a result of the act, a fine of not less than one million five hundred thousand dollars (US\$7,320)and death,; and in any other case a fine of at least five hundred thousand dollars (US\$2,440) and imprisonment of 10 to 15 years.
228. Prosecution for the above offences can only be carried out by the DPP. The sanctions are applicable to legal persons, their directors and senior management. The penalties for the ML offences compare favourably with other CFATF jurisdictions in relation to dissuasiveness and proportionality. The terms of imprisonment for FT offences are proportionate and dissuasive when compared to ML offences in Guyana and FT offences in other CFATF jurisdictions. The fines as stated in legislation are minimum levels. At the time of the mutual evaluation there were no convictions for FT offences and therefore no case history of actual fines necessary to assess proportionality or dissuasiveness.
229. As already mentioned, section 37 of the AMLCFTA provides for the seizure and forfeiture of currency imported into or exported from Guyana on the basis of reasonable suspicion that the currency is involved with money laundering or terrorist financing. This provision is in accordance with the freezing and forfeiture of assets relating to money laundering in Part IV of the AMLCFTA. Under this regime, property subject to freezing and forfeiture is defined to include money, investments, holdings, possessions, assets and all other property movable or immovable. As such, provisions concerning confiscation of laundered property detailed in section 2.3 of this report would be applicable to persons who carry out physical cross-border transportation of currency.
230. While section 37 of the AMLCFTA authorises the seizure of currency on the basis of reasonable suspicion of involvement in terrorist financing, section 67 provides for seizure on reasonable grounds of suspicion that the cash is intended to be use for terrorist purposes, belongs to or is held in trust for a terrorist organisation or represents property obtained through terrorist acts. Section 67 allows for the renewal of the detention order until either the start of proceedings for an offence in relation to the detained currency or the termination of the original grounds for seizure. Offences referred to would be in relation to those under Part V of the AMLCFTA dealing with financing of terrorism. The provisions concerning confiscation of property related to terrorist financing as set out section 2.4 of this report would be applicable to persons who carry out physical cross-border transportation of currency. The deficiencies identified with regard to the absence of provisions for the freezing of funds of persons pursuant to S/RES/1267(1999) and S/RES/1373 (2001) would be applicable

231. There have been instances of unusual cross border movements of gold. The GRA advised that the resultant investigations would seek to identify point of origin and destination and where necessary contact the appropriate authorities in relevant countries to establish purpose and movement of smuggled material. Information was exchanged between neighbouring territories concerning the smuggling of gold.
232. Cross border reporting is recorded on forms. It is also logged into a database. Forms are kept in the filing room in the Customs Building. It is not clear whether this information is backed up offsite. Confidentiality of the information is protected as the staff members of the GRA have to abide by the provisions of section 4 of the Income Tax Act. This Act prohibits the disclosure of any information, unless it is authorised by the President of Guyana.
233. While the GRA can share information with other government agencies and other members of CCLEC, it is not clear whether details on declaration forms are directly available on supra-national level to other relevant authorities in other countries. However, it is noted that the FIU can be a gateway since it has the power to access information from any government agency and the ability to share such information with foreign relevant authorities.

### **Recommendation 30**

#### ***The Guyana Revenue Authority***

234. The GRA is the agency responsible for administering of all taxes in Guyana. The GRA was established in 1996 by the Revenue Authority Act (RAA). It became operational in the year 2000. The GRA is the result of a merger between Customs and Inland Revenue Departments. It has 13 divisions. These divisions include Internal Audit; Planning and Analysis; Internal Affairs; Tax Exemptions Processing and Verification; Project Management and Coordination; Intelligence & Risk Management; Law Enforcement & Investigations; Debt Management; Audit & Verification; Legal Services; Corporate Services; Customs; and Tax Operations and Services.
235. The GRA has a staff complement of approximately 1200 persons. It is headed by a governing board (the board), which consists of a Chairman appointed by the Minister; the Commissioner General; the Governor of the BOG; the Director of the Office of Budget, Ministry of Finance; and two other persons with knowledge and experience in taxation, finance, commerce, economics, law, or administration appointed by the Minister. The board is responsible for the approval and review of the policy of the Authority; the monitoring and performance of the Authority; and the discipline and control of all members of staff.
236. The Commissioner General is responsible for the day to day operations of the authority along with the management of the funds, property and affairs. He is also responsible for the administration, organisation and control of the staff. He can be removed by the board, with the approval of the Minister. A Deputy Commissioner General can be appointed by the board.
237. Under Section 9 of the Revenue Authority Act, 1996 , the Commissioner General may, with the approval of the board, hire professional persons and experts with such remuneration as the board determines.

238. Customs operations fall under the direction of the GRA as a department. Hence the Commissioner General of the GRA is the Comptroller of Customs. Customs has a staff complement of 204 persons. They are authorized to operate under the Customs Act Chapter 82:01. There are eight (8) Customs outposts in Guyana. This number in relation to the 1800 miles of mostly remote forested borders is inadequate.
239. Under Section 55 of the Customs Act, a Customs Officer has the authority to board any ship or aircraft within Guyana. He can stay on board for any period, and shall have access to every part, with power to secure any part by such means as he considers necessary. Section 56 allows the officer to open any box or chest found on board such aircraft or ship in any manner, without the fear of prosecution. Additionally, any concealed goods found can be forfeited.
240. Under Section 59, of the Customs Act, a Customs Officer may search a person if he is informed that the person has landed from an aircraft or ship and is carrying or has any uncustomed or prohibited goods, or has reason to believe that a person may be in possession of uncustomed or prohibited goods on his person. If such person should refuse to answer any questions, or deny the possession of uncleared or prohibited goods, any goods discovered in his possession or his baggage shall be forfeited. However, Section 60 of the said Act, allows the persons to be required to be taken before a magistrate or the Comptroller of Customs, before such search takes effect.
241. Additionally, the Customs Act under Section 3 delegates the same powers as members of the Police Force to Customs Officers. Under the Police Act Cap., 16:01 any police officer can arrest without warrant any person who commits an offence in his view, or any person suspected of committing a felony or misdemeanour, or is suspected by another of committing such offence.
242. Persons interested in employment at the GRA are subjected to an entrance examination. In addition, prospective employees must have passed at least five (5) Caribbean Examinations Council (CXC) subjects. For technical employees a Bachelor's Degree is preferred, or an ACCA qualification in accounts. Officers appointed at management level or higher than entry level, must complete a probationary period and Internal Training Courses. In addition, staff hired at management level must be interviewed by a member of the board.
243. Interested persons are interviewed by a management panel which forwards recommendations to the board. On employment, employees are required to swear an oath of confidentiality, before a magistrate. The Internal Affairs Division of the GRA investigates any claims of corruption involving staff members, including customs officers.
244. Section 23 of the RAA prohibits the disclosure of information to unauthorised persons. If a person unlawfully discloses any information which is known to him in the course of his duties, he shall be liable to a fine not exceeding two hundred thousand dollars (approx US\$975.), and to prison for a maximum of 5 years.
245. At the time of the interview, the staff members of the GRA were not provided with any type of training concerning money laundering or terrorist financing.

## **Recommendation 32 - Statistics**

246. No statistics on the number of declarations collected or the number of false declarations detected and the amounts of currency involved or resultant cash seizures were made available to the team of assessors. As such, it was not possible to determine the effectiveness of the system.

### **2.7.2 Recommendations and Comments**

#### ***Comment***

247. The AMLCFT Act only mentions the cross border movement of currency and bearer negotiable instruments under section 37. However, there are no sanctions as required under Recommendation 17, no measures for confiscation as required under Recommendation 3, and Special Recommendation III.

#### ***Recommendation***

248. The authorities should extend the implementation of the cross-border declaration system to include bearer negotiable instruments.

249. Sanctions for false declarations should be extended to legal persons, their directors and senior management and should be dissuasive, proportionate and effective.

250. Guyana should enhance its ability to freeze the assets of persons designated pursuant to S/RES/1267/(1999) and S/RES/1373(2001) as recommended in section 2.4 of this report, to ensure that it can do so effectively in the cross-border context.

251. The authorities should consider increasing the number of Customs outposts to ensure security at borders..

252. Relevant staff of the GRA should be provided with AML/CFT training

253. GRA should maintain statistics on the number of declarations collected and the number of false declarations detected and the amounts of currency involved or resultant cash seizures.

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

	<b>Rating</b>	<b>Summary of factors relevant to s.2.7 underlying overall rating</b>
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• <b>Requirements for cross-border declarations being implemented do not include bearer negotiable instruments</b></li><li>• <b>Sanctions for false declarations do not extend to legal persons and are not dissuasive or proportionate</b></li><li>• <b>Deficiencies with regard to the absence of provisions for freezing of funds</b></li></ul>

		<p>of persons pursuant to S/RES/1267(1999) and S/RES/1373(2001) as noted in section 2.4 are applicable</p> <ul style="list-style-type: none"> <li>• Unable to assess effectiveness due to lack of relevant statistics.</li> </ul>
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### 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

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

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

##### *General*

254. AML/CFT preventative measures in Guyana are contained in the AMLCFTA which was enacted in April 2009 and became enforceable in August 2009. The AMLCFTA incorporates provisions covering all aspects of the AML/CFT regime and replaced the Money Laundering (Prevention) Act 2000. It contains AML/CFT preventative and detection measures applicable to either “financial institutions” or “reporting entities” in the financial system in Guyana.

##### *Scope*

255. According to section 2 of the AMLCFTA, a financial institution is a bank or financial institution as defined in the Financial Institutions Act (FIA) or other financial institutions as specified in the First Schedule of the AMLCFTA. The First Schedule defines financial institution as any company or business that engages in any of the following activities-

- (a) acceptance of deposits and other repayable funds from the public, including, but not limited to, private banking;
- (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting;
- (c) financial leasing other than with respect to arrangements relating to consumer products;
- (d) the transfer of money or value;
- (e) issuing and managing means of payment, including, but not limited to, credit cards, travellers’ cheques, money orders and bankers’ drafts, and electronic money;
- (f) issuing financial guarantees and commitments;
- (g) trading in-
  - (i) money market instruments, including, but not limited to, cheques, bills, certificates of deposit and derivatives;
  - (ii) foreign exchange;
  - (iii) exchange, interest rate and index instruments;
  - (iv) transferable securities; and
  - (v) commodity futures trading;
- (h) participating in and underwriting securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons ;
- (k) investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment-related insurance, as well as insurance intermediation by agents and brokers;

- (m) money and currency changing; and
  - (n) such other activity, business or operation as may be prescribed by the Minister responsible for Finance.
256. The above includes all the business activities and operations listed in the FATF definition of a financial institution. Reporting entity as defined in section 2 of the AMLCFTA means any person whose regular occupation or business is the carrying on of –
- a) any activity listed in the First Schedule ; or
  - b) any other activity defined by the Minister responsible for Finance as such by an order published in the *Gazette* amending the First Schedule.
257. In addition to the definition of financial institution already referred to above, the First Schedule also includes a definition of designated non-financial business or profession incorporating activities in accordance with FATF requirements and a list of activities and businesses subject to the AMLCFTA covering additional activities. The definition of reporting entity is more expansive than financial institution since it includes all activities in the First Schedule and covers both financial institutions, DNFBPs and other businesses. Sections 15,16,18,19 and 20 of the AML/CFT act cover the obligations of reporting entities with respect to preventive measures.
258. Section 22 of the AMLCFTA designates supervisory authorities responsible for regulatory compliance of relevant reporting entities with the preventative measures of the Act. The supervisory authorities as designated in the AMLCFTA are the Governor of the Bank of Guyana, the Commissioner of Insurance and the Guyana Securities Council. Provision has also been made for the appointment of additional supervisory authorities since the present scheme does not provide for the DNFBPs, credit unions, registered charities or other businesses and activities. Section 22 also provides for the designated supervisory authorities to issue instructions, guidelines or recommendations. As at the date of the mutual evaluation no instructions, guidelines or recommendations regarding AML/CFT obligations had been issued by any designated supervisory authority
259. Section 17 of the AMLCFTA provides for the Minister of Legal Affairs, by regulations, to prescribe circumstances for reduced or simplified CDD measures regarding identification and verification of the identity of customers. These regulations are to be based on an assessment of the risks represented by the type of customer, business relationship or transaction. At the time of the mutual evaluation, no such regulations had been issued and no national risk assessment of AML/CFT vulnerabilities had taken place or was planned. As such, all preventative measures as stipulated in the AMLCFTA for reporting entities are applicable to all financial institutions, their products, services and customers. The only exemption permitted is for customers who are also reporting entities to which the AMLCFTA applies and which are licensed or registered and supervised for AML/CFT by a regulatory authority. Guyana should consider the feasibility of a comprehensive national risk assessment of AML/CFT vulnerabilities before issuing regulations for reduced or simplified CDD measures.



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

#### **3.2.1 Description and Analysis**

#### **Recommendation 5**

##### ***Anonymous accounts and accounts in fictitious names***

260. Anonymous accounts and accounts in fictitious names are prohibited in Guyana both explicitly under Section 15(1) of the AMLCFTA and through the implementation of the identification requirements stipulated in Section 15(2) of the AMLCFTA.. Additionally, section 16(2) requires that customer accounts of reporting entities be kept in the true name of the account holder. None of the interviewed financial institutions maintained or dealt with anonymous accounts or accounts in fictitious names.

##### ***CDD Requirements***

261. Pursuant to section 15(2) of the AMLCFTA, reporting institutions are required to ascertain and verify the identity of the customer when:

- establishing a business relationship;
- in the absence of a relationship, when a reporting entity conducts:
  - i. any transaction in an amount equal to or above the amount prescribed by the Minister, whether conducted as a single transaction or several transactions that appear to be linked and where the amount of the transaction is unknown at the time of the transaction, the identification and verification shall be undertaken as soon as the amount becomes known or the threshold is reached;
  - ii. any wire transfer;
- there is a suspicion of money laundering or terrorist financing;
- the reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data.

262. Due to the recent enactment of the AMLCFTA, at the time of the mutual evaluation visit, the threshold amount referred to in relation to transactions conducted in the absence of an account relationship had not yet been prescribed by the relevant Minister i.e. the Minister of Legal Affairs. In the absence of such prescription, the threshold limit for these transactions has been left to the discretion of the reporting entities. It is noted that the requirement for identification in relation to any occasional wire transfer is more stringent than the FATF requirement which is applicable only to all wire transfers of US\$1,000 and over.

### ***Required CDD measures***

263. As stated in section 15 (2) reporting entities shall establish the identity and verify the identity of any customer of the reporting entity by requiring the applicant to produce an identification record or such other reliable, independent source documents as the Financial Intelligence Unit may request. Identification record has been defined in section 2 of the AMLCFTA to mean any reliable and independent source documents, data or information or other evidence as is reasonably capable of establishing the true identity and verifying the identity of a person transacting business with a reporting entity, including, but not limited to, a driving licence, a national identification card, a passport and in the case of a body corporate, a certified copy of the Memorandum and Articles of Association, a certificate of incorporation, Articles of Incorporation and by-laws of the company together with the latest annual return to the Registrar of Companies.
264. All interviewed financial institutions indicated that they request identification information from a client before entering into a business relationship. While the AMLCFTA does not provide specifically for a threshold, financial institutions individually apply different thresholds.

### ***Identification and verification of natural person.***

265. Pursuant to section 15(4)(b) if a transaction is conducted by a natural person, a reporting entity is required to adequately identify and verify the person's identity including information relating to:
- the person's name, date of birth and address;
  - the national identification card, passport or other applicable official identifying document;
266. It is also noted that in addition to the above, reporting entities are required under subsection 16(3)(a) to maintain records for all transactions which include occupation or where appropriate business or principal activity of each person conducting the transaction.

### ***Identification and verification of legal persons and arrangements***

267. In relation to legal entities subsection 15(4)(c) requires reporting entities to adequately identify the beneficial owner, take reasonable measures to identify and verify its beneficial ownership and control structure, including information relating to:
- the customer's name, legal form, address and directors;
  - the principal owners and beneficiaries and control structure;
  - provisions regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons
268. While the above provision requires identification of beneficial owners of legal entities, there is no definition of beneficial owners in the AMLCFTA. It is noted that while information on the control structure is required, no similar requirement for ownership is stipulated. There is also no legal obligation to determine who are the natural persons that

ultimately own or control the customer including those who exercise ultimate effective control.

***Acting on behalf of another person***

269. Section 15(5) stipulates that if it appears to a reporting entity that an applicant requesting it to enter into any business relationship or transaction, whether or not in the course of a continuing business relationship or transaction is acting on behalf of another person, the reporting entity shall establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.
270. The above provisions deal with individuals and legal entities which while there is no definition in the AMLCFTA appears to indicate corporate bodies. There is no requirement to verify the legal status of legal arrangements such as trusts except for the requirement in section 15(5) for the identification of trustees.
271. All the interviewed financial institutions have procedures requiring new clients (natural persons and cooperate entities) to produce identification records. In the case of corporate entities some financial institutions require identification from all signatories and some also from the ultimate beneficial owner. In addition, the signatories are required to provide the financial institution with references. However, some interviewees had no written procedure in place dealing with CDD measures related to beneficial owners.

***Purpose and intended nature of the business relationship/ongoing due diligence***

272. Subsection 15(4)(a) requires a reporting entity when establishing a business relationship to obtain information on the purpose and nature of the relationship. Section 18(3) requires reporting entities to monitor their business relationships and transactions throughout the course of relationships to ensure that transactions are consistent with the information that the reporting entity has of its customer's business and risk profile and source of funds, where necessary. Additionally, section 16(5) requires reporting entities to ensure that documents, data or information collected under the customer due diligence process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.
273. The interviewed financial institutions indicated that they establish files on identifications and the nature of the business. While they try as much as possible to ensure that their data is up to date., some have no internal policy on conducting ongoing due diligence.

***Risk***

274. There is no provision in the AMLCFTA that requires financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction.
275. Not every interviewee had a specific classification system of higher/lower risk clients. However, the interviewees had thresholds in place where special attention is required from their employees when dealing with certain transactions. For instance some institutions

require approval from their compliance officers and others require the client to fill out a source of funds declaration.

### ***Reduced or simplified CDD measures***

276. Section 17(1) of the AMLCFTA provides for the possibility of reduced or simplified CDD measures by giving the Minister of Legal Affairs the power to prescribe by regulations the circumstances in which the CDD obligations of reporting entities shall be reduced or simplified with regard to the identification of the identity of the customer or the beneficial owner. At the time of the mutual evaluation no regulations concerning reduced or simplified CDD obligations had been issued.
277. It is noted that section 15(6) does allow for reduced CDD measures in not requiring the production of identity from customers who are reporting entities to which the AMLCFTA applies and which have been licensed or registered and are supervised by a regulatory authority. A similar exemption applies to a transaction or a series of transactions taking place in the course of a business relationship for which satisfactory evidence of identity has already been produced. Additionally, section 15(8) provides for financial institutions to rely on third parties to perform some elements of the CDD process for introduced business.
278. Section 17(2) stipulates that reduced CDD measures are not allowed whenever there is a suspicion of money laundering or terrorist financing or higher risk terrorist activities. Since there are no regulations permitting reduced or simplified measures, no reporting entity is allowed to apply simplified CDD measures to customers residing in another country.
279. Some interviewed financial institutions indicated that they do apply simplified or reduced CDD measures to customers resident abroad. These institutions did not particularly satisfy themselves that a country has effectively implemented the FATF recommendations. One interviewed financial institution indicated that its branches advise the compliance officer which clients they consider fit for simplified due diligence. The advice is based on their relationship and experience with similar clients. A database is kept to track all the necessary information of a client. Another financial institution indicated that the only customers resident abroad that it does business with are those resident in the USA and Canada.

### ***Timing of verification***

280. Financial institutions are required to verify the identity of an applicant customer and beneficial owner, when establishing a relationship (Section 15(2)). It is possible for financial institutions to complete verification of the identity of the customer and beneficial owner following the establishment of the business relationship. There is no provision governing this circumstance in accordance with the FATF requirements regarding timing of verification, and risk management procedures regarding the condition under which this may occur.

### ***Failure to satisfactorily complete CDD***

281. There is no provision in the AMLCFTA prohibiting financial institutions from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as stipulated in criteria 5.3 to 5.6 and being required to

consider making a suspicious transaction report. Except in the case of customers at the time of the enactment of the AMLCFTA, there is no requirement for financial institutions to terminate a business relationship due to the inability to obtain information set out in criteria 5.3 to 5.6 and consider making a suspicious transaction report.

282. All the interviewed financial institutions affirmed that the verification process had to be completed prior to the commencement of any business relationship.

### ***Existing customers***

283. Section 15(10) requires financial institutions to verify the identity of existing customers at the time of the Act coming into force within six months of the commencement of the Act. The provision allows for the Minister to extend this period for a further three months if necessary. Additionally, financial institutions are required at the end of the stipulated period to terminate all business relationships with any customer whose identity they are unable to verify. The requirements of the above provision and the prohibition of anonymous accounts negates the need for a provision for financial institutions to be required to perform CDD on existing customers who have anonymous accounts. .

### **Recommendation 6**

284. The requirements and definition of politically exposed persons are outlined in the AMLCFTA. A “politically exposed person” is defined as any individual who is or has been entrusted with prominent public functions on behalf of a state, including a Head of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, including family members or close associates of the politically exposed person whether that person is resident in Guyana or not. It is noted that the above definition is not limited to foreign PEPs as set out in the FATF definition.
285. Pursuant to section 15 (4)(d) financial institutions are required to identify and verify the identity of customers or beneficial owners who are PEPs. However, reporting entities are only required to put in place appropriate risk management systems to determine whether a customer is a PEP. While there is no reference in this requirement to potential customer or beneficial owner, the obligation to identify and verify beneficial owners who are PEPs and obtain senior management approval before establishing a business relationship with a PEP would of necessity require that risk management systems include determining whether a potential customer or beneficial owner is a PEP.
286. Subsection 15(4)(d)(iii) requires reporting entities to obtain the approval of senior management before establishing a business relationship with a PEP. There is no provision requiring reporting entities to obtain senior management approval to continue a business relationship with a customer who is subsequently found to be a PEP or becomes a PEP.
287. Subsections 15(4)(d)(iv) and 15(4)(d)(v) require financial institutions to take reasonable measures to establish the source of wealth and source of property of customers and beneficial owners identified as PEPs and conduct regular enhanced monitoring of the business relationships with PEPs.

### ***Additional elements***

288. While the above definition of a PEP does not preclude domestic PEPs, there has been no guidance to financial institutions specifically requiring that domestic PEPs be included as part of their AML/CFT procedures.
289. Due to the recent enactment of the AMLCFTA most of the interviewed financial institutions were not aware of its requirements. All interviewed financial institutions dealing with PEP's indicated that senior management approval is required before establishing business relationship. One of the interviewed financial institutions made clear that enhanced due diligence is performed on PEPs and that these business relationships are continuously monitored. However, this is not part of a written internal policy. Since the AMLCFTA has been implemented this particular financial institution has not established any new business relationship with a PEP.

### **Recommendation 7**

290. Section 15(7)(a) of the AMLCFTA requires a bank or a financial institution, in relation to its cross-border correspondent banking and similar relationships to:
- a) adequately identify and verify the person or entity with whom it conducts such a business relationship,
  - b) gather sufficient information about the nature of the business of the person or entity and
  - c) determine from publicly available information the reputation of the person or entity and the quality of supervision to which the person or entity is subject to.
291. The above provision does not include gathering information on whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action as set out in the criterion.
292. While section 15(7)(a) requires a bank or financial institution to assess a respondent's anti-money laundering and terrorist financing controls, there is no obligation to ascertain whether the controls are adequate and effective in accordance with the criterion. Additionally, section 15(7)(a) provides for approval from senior management before establishing a new correspondent relationship and requires that the responsibilities of the person or entity and the financial institution be documented..
293. Pursuant to section 15(7)(b) in the case of "payable-through accounts", financial institutions must ensure that the respondent institution has performed all the normal CDD measures set out in Rec. 5 on customers using the accounts of the correspondent and the respondent institution is able to provide relevant customer identification data upon request to the correspondent.

294. The provision of cross-border correspondent account facilities is minimal in Guyana since most of the banks are either branches or subsidiaries of international or regional groups with foreign headquarters. One financial institution indicated that limited correspondent business is conducted and correspondent institutions are required to annually submit a completed correspondent questionnaire.

### **Recommendation 8**

295. There are no provisions for financial institutions to have policies in place or to take such measures to prevent the misuse of technological developments in ML and TF or have policies and procedures to address the specific risks of non-face to face business relationships and transactions.
296. Most of the financial institutions do not allow non-face to face business relationships and transactions. Only one financial institution conducts non-face to face business relationships and transactions, which they have a policy in place for. A banking institution mentioned that they were contemplating the introduction of e-banking and another financial institution was offering limited e-banking services.

#### 3.2.2 Recommendations and Comments

### **Recommendation 5**

297. The competent authorities should consider the feasibility of a comprehensive national risk assessment for AML/CFT vulnerabilities.
298. A threshold for the application of CDD measures for occasional transactions should be prescribed in accordance with the FATF standard.
299. Reporting entities should be required to obtain information on the ownership of customers who are legal persons or legal arrangements.
300. Reporting entities should be required to determine who are the natural persons that ultimately own or control the customer
301. Reporting entities should be required to verify the legal status of specific legal arrangements such as trusts
302. A definition of beneficial ownership with regard to legal entities should be set out in the AMLCFTA.
303. Reporting entities should be required to perform enhanced due diligence for higher risk categories of customers
304. Reporting entities should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

305. Reporting entities should be prohibited from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as stipulated in criteria 5.3 to 5.6 and being required to consider making a suspicious transaction report.
306. Reporting entities should be required to terminate a business relationship due to the inability to obtain information set out in criteria 5.3 to 5.6 and consider making a suspicious transaction report.

#### **Recommendation 6**

307. Reporting entities should be required to obtain senior management approval to continue a business relationship with a customer who is subsequently found to be a PEP or becomes a PEP
308. The supervisory authorities should ensure that all financial institutions are aware of the legal requirements concerning PEPs.

#### **Recommendation 7**

309. Financial institutions should be required to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.
310. Financial institutions should have to ascertain for themselves that the AML/CFT controls of a respondent institution are adequate and effective.

#### **Recommendation 8**

311. Financial institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes.
312. Financial institutions should be required to have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and conducting ongoing due diligence.
313. Financial institutions should also be required to have measures for managing risks including 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	PC	<ul style="list-style-type: none"> <li>• <b>Threshold for the application of CDD measures for occasional transactions has not been prescribed, leaving such determination to the discretion of the reporting entities</b></li> <li>• <b>No requirement for reporting entities to obtain information on the ownership of customers who are legal persons or legal arrangements.</b></li> </ul>



		<ul style="list-style-type: none"> <li>• No requirement for reporting entities to determine who are the natural persons that ultimately own or control the customer</li> <li>• No requirement for the verification of legal status of specific legal arrangements such as trusts</li> <li>• No definition of beneficial ownership with regard to legal entities.</li> <li>• No requirement for reporting entities to perform enhanced due diligence for higher risk categories of customers</li> <li>• No requirement that reporting entities verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.</li> <li>• No requirement prohibiting reporting entities from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as stipulated in criteria 5.3 to 5.6 and being required to consider making a suspicious transaction report.</li> <li>• Except in the case of customers at the time of the enactment of the AMLCFTA, there is no requirement for financial institutions to terminate a business relationship due to the inability to obtain information set out in criteria 5.3 to 5.6 and consider making a suspicious transaction report.</li> </ul>
R.6	PC	<ul style="list-style-type: none"> <li>• No requirement for reporting entities to obtain senior management approval to continue a business relationship with a customer or beneficial owner who is subsequently found to be a PEP or becomes a PEP.</li> <li>• Limited awareness by financial institutions about legal requirements concerning PEPs.</li> </ul>
R.7	LC	<ul style="list-style-type: none"> <li>• No requirement for financial institutions to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.</li> <li>• No requirement for financial institutions to ascertain for themselves that the AML/CFT controls of a respondent institution are adequate and effective..</li> </ul>
R.8	NC	<ul style="list-style-type: none"> <li>• No requirement for financial institutions to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes.</li> <li>• No requirement for financial institutions to have policies and procedures</li> </ul>

		<b>in place to address specific risks associated with non-face to face business relationships or transactions.</b>
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### **3.3 Third parties and introduced business (R.9)**

#### **3.3.1 Description and Analysis**

#### **Recommendation 9**

314. Section 15(8)(a) of the AMLCFTA provides that where a reporting entity relies on an intermediary or third party to undertake its obligations in relation to CDD or to introduce business to it, it should immediately obtain the necessary information as detailed in subsections 15(2),(3) and (4) of the Act and documents required. The subsections referred to detail requirements similar to those specified in FATF criteria 5.3 to 5.6.
315. Section 15(8)(b) requires a financial institution to take adequate steps to be satisfied that copies of identification data and other relevant documentation relating to customer due diligence requirements will be made available from third party upon request without delay. Section 15(8)(c) requires a financial institution to satisfy itself that a third party or intermediary is regulated and supervised, and has measures in place to comply with the requirements set out in section 16.
316. The requirement in the above provision that a third party or intermediary is regulated and supervised is general and does not specify that supervision should be in accordance with FATF Recommendations 23, 24 and 29 as set out in the FATF criterion. Information with regard to the criteria of these Recommendations in assessing supervision could be detailed in guidelines to the financial institutions. The provision also refers to a third party or intermediary having measures in place to comply with the requirements set out in section 16. Section 16 of the AMLCFTA deals with record keeping and retention obligations similar to those of Recommendation 10. However, the criterion requires that measures should comply with CDD requirements set out in Recommendations 5 and 10.
317. While section 22(2) provides for designated supervisory authorities to issue guidelines, none have been issued in relation to which countries the third party that meets FATF conditions can be based. Pursuant to section 15(8)(c), the ultimate responsibility for customer identification and verification remains with the reporting entity including when relying on a third party.
318. Introduced business and reliance on third parties is minimal and in most instances is limited to third parties that are members of the same financial group as the financial institutions. According to the Guyana Bar Association lawyers occasionally perform some of the elements of the CDD process for a client. However, they are not familiar yet with requirements set out in the AMLCFTA as it was recently implemented (i.e. the requirements set out in Recommendation 5).

#### **3.3.2 Recommendations and Comments**

319. Financial institutions should be required to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with CDD requirements set out in Recommendation 5.
320. Competent authorities should determine and inform financial institutions in which countries third parties that meet the conditions can be based by taking into account information available on whether these countries adequately apply the FATF Recommendations.

### 3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
<b>R.9</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Authorities have issued no guidance in relation to which countries third parties that meet FATF conditions can be based.</b></li> <li>• <b>Financial institutions are not required to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with CDD requirements set out in Recommendation 5.</b></li> </ul>

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

### 3.4.1 Description and Analysis

#### **Recommendation 4**

321. Section 111 of the AMLCFTA overrides the secrecy obligations imposed by other legislation or common law. It provides that subject only to the Constitution, the provisions of the Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information.
322. Under subsection 22(2)(c) of the AMLCFTA specified supervisory authorities – the Governor of the BOG, the COI, the GSC and any supervisory authority whose member or members shall be appointed by the Minister of Finance - are able to cooperate and share information with other domestic competent authorities by requesting and providing assistance in investigations, prosecutions or proceedings relating to proceeds of crime, money laundering and terrorist financing. Also under subsection 22(2)(g), they may also cooperate, request and exchange information with agencies performing similar functions in other countries and territories in investigations, proceedings or prosecutions relating to proceeds of crime, money laundering or terrorist financing, and to violations of the laws and administrative regulations dealing with reporting entities.
323. While the above provisions permit the designated supervisory authorities to share information with local competent authorities and similar foreign authorities, there is no specific authorisation granting the supervisory authorities access to the books, accounts and other relevant records of their respective licensed reporting entities for the purposes of the Act. Subsection 22(2)(a) empowers the supervisory authorities to examine and supervise

reporting entities and regulate and oversee effective compliance with the CDD, record keeping, reporting, internal controls and compliance and wire transfer obligations of the AMLCFTA and any other preventive measures in relation to combating money laundering and terrorist financing. This provision would suggest that the supervisory authorities would have access at the time of examination to the relevant information, however this is not specified. It is assumed that the supervisory authorities will have to rely on their powers under their respective operating statutes to access the requisite information.

324. Pursuant to section 31(3) of the FIA, the BOG can request information from a financial institution licensed under the FIA, or any holding company, subsidiary or other affiliate of the financial institution necessary to ascertain the business of the financial institution. Section 38 of the IA empowers the COI to require any insurance company to supply information relating to any matter in connection with insurance business in Guyana. With regard to the GSC, the other designated supervisory authority, access to information of registrants of the SIA is limited to investigations and inquiries in relation to contravention of the SIA. There is no provision to access information similar to those of the BOG and the COI.
325. The list of designated supervisory authorities in the AMLCFTA also does not include the CCDO, the authority responsible for credit unions in Guyana. Due to this omission at the time of the mutual evaluation, the CCDO did not come under the provision of section 22 for the sharing of information. While section 36 of the CSA provides for the CCDO or any authorised person to have access at all times to all books, records, accounts, papers and securities of a registered society, there is no provision permitting the CCDO to share such information with other competent authorities locally or internationally.
326. Under subsections 9(4)(e), (k) and (m) of the AMLCFTA the FIU is entitled to:
  - to disseminate information within Guyana or elsewhere;
  - to request and receive information from any reporting entity, any supervisory agency and any law enforcement agency, any other competent authority in Guyana or elsewhere;
  - disclose any report, any information derived from reports or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU.
327. The above provisions would enable the FIU to share information with local and international competent authorities. Requirements in relation to Recommendation 7, 9, and SR VII are provided for in the AMLCFTA and are therefore covered by section 111 which effectively overrides any secrecy obligations imposed by other legislation or common law.

#### 3.4.2 Recommendations and Comments

328. The GSC should have the power to access information relevant to AML/CFT matters from registrants of the SIA.

329. The CCDO should be able to share information from a society registered under the CSA with local and international competent authorities.

#### 3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"><li>• No provision for the GSC to access information relevant to AML/CFT matters from registrants of the SIA.</li><li>• No provision for the CCDO to share information from a society registered under the CSA with local and international competent authorities.</li></ul>

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

#### 3.5.1 Description and Analysis

##### **Recommendation 10**

330. Pursuant to section 16(4) of the AMLCFTA reporting entities are required to keep records of all transactions relating to financial activities for a period of at least seven years from the date the relevant transaction was completed, or termination of business relationship, whichever ever is the later. This provision exceeds the FATF requirement for a five year period following the completion of a transaction.
331. Section 16(1)(3) requires aforementioned records to contain sufficient particulars to permit reconstruction of individual transactions including name ,date of birth, address and occupation of each person conducting the transaction, nature and date of transaction, type and amount of currency and type and identifying number of any account with the reporting entity involved in the transaction..
332. Subsections 16(1)(b)and (1)(c) requires the retention of evidence of a person's identity obtained as a result of the identification requirements of the AMLCFTA and records of the account files and business correspondence. Section 16(4) as already mentioned is also applicable to identification data, account files and business correspondence which would result in a seven year retention period from the termination of the account.
333. While the BOG , the FIU, the COI and the GSC have the authority to access the records of the financial institutions they are responsible for supervising under their individual statutes, there is no explicit legal provision requiring financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
334. All the interviewed financial institutions indicated that they maintain all necessary records for transactions at least 7 years. Identification records are retained for the lifetime of an account and for a minimum of seven years after termination of the relationship.

## **Special Recommendation VII**

335. Section 20(1) of the AMLCFTA requires an institution or a person licensed as a financial institution under the FIA or a money transfer agency to include accurate originator information and other related messages on electronic funds transfer and that the information should remain with the transfer. Section 20(2) stipulates that the information should be included in the message or payment form accompanying the transfer and if there is no account number, a unique reference number should accompany the transfer.
336. The above provisions are applicable to all wire transfers both cross-border and domestic. Subsections 20(3) and 20(4) stipulates that the provisions shall not apply to :
- a) “an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card provided that the credit or debit card number is included in the information accompanying such a transfer “:
  - b) “wire transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf”.
337. The above provisions as noted are applicable to all wire transfers while the FATF requirements are limited to those over US\$1,000. There is no specific definition of “originator information” in the AMLCFTA or any indication other than a reference to account number in section 20(2) as to what type of information is intended. Pursuant to subsection 15(3)(iii) all reporting entities are required to identify and verify the identity of originators of any wire transfer.. The FATF criterion only requires verification of the identity of the originator of all wire transfers of EUR/US\$1,000 and more.
338. The exemptions to the requirements as stated in sections 20(3) and 20(4) are unclear and not in compliance with FATF standards. Section 20(3) suggests that the wire transfers provisions are applicable to “a money transfer effected from the use of a credit card or debit card as means of payment that results from a transaction carried out using a credit or debit card provided that the credit or debit card number is included in the information accompanying such a transfer.” The Methodology stipulates that SRVII requirements are not applicable to any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction. However, money transfers effected from the use of credit or debit cards as a payment system are covered by the requirements of SRVII.
339. With regard to wire transfers and settlements between financial institutions, section 20(4) refers to the originator and beneficiary of the funds transfer acting on their own behalf while the FATF requirements stipulates that both the originator and the beneficiary should be financial institutions acting on their own behalf. Subsections 20(3) and 20(4) should be amended in accordance with the exemptions in SR VII
340. The requirement under section 20(1) for accurate originator information to remain with a wire transfer would oblige each intermediary and beneficiary financial institution in a payment chain to ensure that all originator information that accompanies a wire transfer is

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

341. There is no requirement for financial institutions to have effective risk-based procedures in place to identify wire transfers lacking complete originator information as mentioned in the FATF criterion. Due to the recent enactment of the AMLCFTA there are currently no measures in place to effectively monitor the compliance of the financial institutions with rules and regulations implementing wire transfers obligations.
342. Sanctions for breaches of the wire transfer provisions in section 20 are those available under section 23 of the AMLCFTA for the designated supervisory authorities to apply for breaches of sections 15, 16, 18 – 20 of the AMLCFTA. The sanctions are primarily instructions with the only penalty for failure to comply being a recommendation of suspension, restriction or revocation of the licence of the reporting entity.. There is no provision for graduated sanctions for failure to comply with instructions, such as administrative fines. The sanctions cannot therefore be considered dissuasive or proportionate. Additionally there is no indication as to whether the sanctions are applicable to directors and senior management of the reporting entities. It is noted that these sanctions can only be imposed by designated supervisory authorities. At the time of the mutual evaluation no supervisory authority for money transfer agencies had been appointed and the sanctions were therefore not enforceable for these entities.

### 3.5.2 Recommendations and Comments

#### **Recommendation 10**

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

#### **Special Recommendation VII**

344. Originator information should be defined in the AMLCFTA in accordance with SRVII.
345. Subsections 20(3) and 20(4) of the AMLCFTA should be amended in accordance with the exemptions in SR VII
346. Receiving intermediary financial institution should be required to keep a record for five years of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related domestic wire transfer.

347. Financial institutions should be required to have effective risk-based procedures in place to identify wire transfers lacking complete originator information.
348. Measures should be put in place to effectively monitor compliance with the requirements of SR VII.
349. Sanctions for breaches of wire transfer provisions in section 20 of the AMLCFTA should be dissuasive and proportionate and applicable to directors and senior management of reporting entities.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No requirement for financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.</li> </ul>
<b>SR.VII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No definition of originator information in the AMLCFTA.</li> <li>• No requirement for a receiving intermediary financial institution to keep a record of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related domestic wire transfer.</li> <li>• No requirement for financial institutions to have effective risk-based procedures in place to identify wire transfers lacking complete originator information.</li> <li>• No measures in place to effectively monitor compliance with the requirements of SR VII.</li> <li>• Sanctions for breaches of wire transfer provisions in section 20 of the AMLCFTA are neither dissuasive or proportionate and are not applicable to directors and senior management of reporting entities</li> </ul>

### **Unusual and Suspicious Transactions**

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

### 3.6.1 Description and Analysis

#### **Recommendation 11**

350. Subsection 18(1)(a) of the AMLCFTA provides for reporting entities to pay special attention to all complex, unusual, large business transactions, whether completed or not, that have no



apparent economic or lawful purpose and are inconsistent with the profiles of the persons carrying out the transactions.

351. Pursuant to subsection 18(2)(a), a reporting entity is required to verify the background and purpose of the transactions or business relations in section 18(1) and record its findings in writing. In accordance with subsection 18(2)(b) the reporting entity is also required to make available findings on the background and purpose of transactions to the FIU upon request. No mention is made as to whether this information should be made available to the auditors or other competent authorities. Notwithstanding the fact that reporting entities keep copies of their client's transactions and written findings on file for at least 7 years, the FATF requirement to maintain records of client's data for at least five years is not addressed in the AMLCFTA.
352. The interviewed financial institutions indicated that they monitor the size and volume of transactions and the history of an account to observe the background and purpose of any complex, unusual or large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Clients are required to fill out a source of funds declarations for these transactions and written findings are kept on file for at least 7 years.

### **Recommendation 21**

353. Subsection 18(1)(b) requires reporting entities to pay special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing. However, the implementation of this provision is undermined by the lack of effective measures to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries.
354. The provision in subsection 18(2)(a) to verify the background and purpose of all complex, unusual large transactions with no apparent economic or visible lawful purpose would include those from countries which do not or insufficiently apply the FATF Recommendations. However the FATF standard mandates that this requirement be extended to all transactions with no apparent economic or visible lawful purpose from these countries and written findings be made available to assist competent authorities...
355. There are no provisions in Guyana to allow the authorities to put appropriate counter-measures in place to deal with countries that do not apply FATF recommendations.

#### **3.6.2 Recommendations and Comments**

### **Recommendation 11**

356. Guyana should amend its legislation so as to require financial institutions to make the findings on complex, unusual, large transactions or unusual patterns of transactions with no apparent or visible economic or lawful purpose available to all competent authorities and auditors for at least five years.

### **Recommendation 21**

357. Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.
358. The background and purpose of all transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations should be examined and written findings made available to assist competent authorities and auditors.
359. There should be provisions to allow for the application of countermeasures to countries that do not or insufficiently apply the FATF Recommendations.

#### 3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none"><li>• Findings on complex, unusual, large transactions or unusual patterns of transactions with no apparent or visible economic or lawful purpose are available only to the FIU and not all competent authorities and auditors.</li><li>• No requirement that findings on background and purpose of transactions should be kept available for at least five years.</li></ul>
R.21	NC	<ul style="list-style-type: none"><li>• There are no measures in place to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.</li><li>• Only complex, unusual large transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations are examined and written findings kept.</li><li>• There are no provisions in place that allow the authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations</li></ul>

### **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**

360. Subsection 18(4) states that “Whenever a reporting entity suspects or has reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to the proceeds of criminal activity, money laundering or terrorist financing offences it shall as

soon as possible but not later than three days after forming that suspicion and wherever possible before the transaction is carried out:

- (a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary; and
- (b) prepare a report of the transaction in accordance with subsection (8) and send the report to the Financial Intelligence Unit in such other form as the Director, may approve.

361. Subsection 18(8) requires the report to contain particulars of the transaction as set out in 4(a) above and section 16, a statement of the grounds for the suspicion and a signature or other authentication from the reporting entity. Section 16 itemises details of transactions required to be recorded by reporting entities. Furthermore subsection 18(15) states that “A natural person who contravenes this section commits an offence and shall on summary conviction be liable to a fine of not less than one million dollars nor more than two million dollars and to imprisonment for a term not exceeding three years, and in the case of a body corporate to a fine of not less than two million dollars nor more than three million dollars”.
362. The requirement in subsection 18(4) for the submission of a STR on terrorism financing based on suspicion or reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to terrorist financing does not fully comply with FATF standards. The FATF standard stipulates that funds should be suspected of being linked or related to, or be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.
363. For the purposes of reporting “proceeds of criminal activity” are defined as any property derived or released directly or indirectly from a serious offence. Furthermore “serious offence” is defined to include offences punishable by death, life imprisonment or imprisonment of six (6) months or more and offences listed in the Second Schedule of the AMLCFTA. The listed offences incorporate the offences in the designated categories of offences except for the offence of illicit trafficking in stolen and other goods and smuggling.
364. There is no provision in the AMLCFTA specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.

### ***Effectiveness***

365. As noted in section 2.5, the team of assessors was not provided with statistics on the numbers and the types of institutions submitting STRs to the FIU. While the FIU is required to maintain statistics on STRs there is no legal requirement for them to be publicized. As such the team was not able to assess the effectiveness of the reporting system. The team was advised that only banking institutions and money transfer companies have been submitting STR’s to the FIU. Other reporting entities like insurance companies and credit unions have never submitted a STR. This raises questions as to whether the non reporting institutions are complying with the reporting requirements

### **Recommendation 14**

366. According to subsections(11)(1) and (11)(2) of the AMLCFTA, no proceedings for breach of professional confidentiality may be instituted against any person or against directors, officers or employees of a reporting entity who in good faith transmits or submits suspicious transactions or suspicious activity reports to the FIU in accordance with the Act. Furthermore, no civil or criminal liability action may be brought nor may any professional sanction be taken against any person or agent of any reporting entity for breach of any restriction on disclosure who in good faith transmits information or submits reports to the FIU.
367. While the above provision provides general protection to staff of financial institutions for reporting STRs there is no specific requirement that the protection should be available even if the staff did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
368. With regard to tipping off, subsection 5(1) makes it an offence for a person who knows or suspects that a suspicious transaction report or related information is reported to the FIU, or that an investigation into money laundering, terrorist financing or the proceeds of crime has been, is being or is about to be made, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced. A person who commits an offence under the aforementioned section is liable on summary conviction to a fine of one million dollars (US\$4,880) and to imprisonment for three years. Additionally subsection 18(14) stipulates that any person who knows or suspects that a STR is being prepared or has been sent to the FIU or any additional information requested by the FIU has been prepared or sent shall not disclose to another person, other than a court, or other person authorised by law, any information or other matter in relation to the report. Contravention of this section is liable on summary conviction to a fine of not less than one million dollars (US\$4,880.) nor more than two million dollars (US\$9,760.) and to imprisonment for a term not exceeding three years, and in the case of a corporate entity to a fine of not less than two million dollars (US\$9,760.) nor more than three million dollars(US\$14,640.).
369. While there is no specific provision in the AMLCFTA to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU, the confidentiality obligation in section 12 of the AMLCFTA requiring all staff of the FIU not to disclose any information obtained as a result of their connection with the FIU should be adequate.

### **Recommendation 19**

370. The authorities advised that a system for the reporting of all currency transactions above a fixed threshold to a national central agency was considered and rejected for state security reasons in Parliament. However, no documentary evidence of this decision was presented to the examiners..

### **Recommendation 25 (only feedback and guidance related to STRs)**

371. Subsection 9(4)(l) of the AMLCFTA states that the FIU “may periodically provide feedback to other supervisory authorities and other relevant agencies regarding outcomes relating to the reports or information given under the Act”. The above provision falls short of the FATF requirement in that it does not include reporting entities and it is discretionary

rather than mandatory in nature. As such, the FIU is not directly required to provide general feedback i.e. statistics on STRs with appropriate breakdowns and results on disclosures, information on current techniques, methods and trends or specific feedback to reporting entities and other persons.

372. The interviewed financial institutions indicated that the only feedback provided at present is acknowledgement of the receipt of the STR. The FIU indicated that due to lack of resources it has not been in the position to provide adequate and appropriate feedback to financial institutions.

### 3.7.2 Recommendations and Comments

#### **Recommendation 13**

373. Illicit trafficking in stolen and other goods and smuggling should be criminalized as a serious offence and a predicate offence to ML
374. Reporting requirement for terrorist financing in the AMLCFTA should include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations
375. The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.

#### **Recommendation 14**

376. The protection of staff of financial institutions for reporting STRs should be explicitly available even if the staff of financial institutions did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

#### **Recommendation 19**

377. The authorities should provide documentation recording the decision not to implement a system for the reporting of all currency transactions above a fixed threshold to a national central agency.

#### **Recommendation 25**

378. The AMLCFTA should be amended to require either competent authorities or the FIU to provide financial institutions and DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback having regard to the FATF Best Practices Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

#### **Special Recommendation IV**

379. Reporting requirement for terrorist financing in the AMLCFTA should include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations

380. 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	<ul style="list-style-type: none"> <li>• Requirement to make a STR does not apply to funds from the designated predicate offence of illicit trafficking in stolen or other goods and smuggling.</li> <li>• Reporting requirement for terrorist financing does not include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations</li> <li>• No provision specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.</li> <li>• Unable to assess effectiveness of the reporting system due to the unavailability of statistics on suspicious transaction reporting</li> </ul>
R.14	LC	<ul style="list-style-type: none"> <li>• No specific requirement that the protection of staff of financial institutions for reporting STRs is available even if the staff of financial institutions did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.</li> </ul>
R.19	NC	<ul style="list-style-type: none"> <li>• No documentary evidence of the decision not to implement a system for the reporting of all currency transactions above a fixed threshold to a national central agency.</li> </ul>
R.25	NC	<ul style="list-style-type: none"> <li>• No requirement for competent authorities or the FIU to provide financial institutions and DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback</li> </ul>
SR.IV	PC	<ul style="list-style-type: none"> <li>• Reporting requirement for terrorist financing does not include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.</li> <li>• No provision specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.</li> <li>• Unable to assess effectiveness of the reporting system due to the unavailability of statistics on suspicious transaction reporting</li> </ul>

### **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**

381. Subsection 19(1)(b) of the AMLCFTA requires reporting entities to establish and maintain internal policies, procedures, controls and systems to:

- i. implement the customer identification requirements;
- ii. implement record keeping and retention requirements;
- iii. implement the monitoring requirements;
- iv. implement the reporting requirements under section 18;
- v. make its officers and employees aware of the law relating to combating money laundering and terrorist financing;
- vi. make its officers and employees aware of the procedures and policies adopted by it to deter money laundering and terrorist financing ; and
- vii. screen persons before hiring them as employees.

382. Pursuant to subsection 19(1)(a) reporting entities are required to appoint a compliance officer who is responsible for ensuring that the reporting entity complies with the requirements set out in the AMLCFTA. The appointed compliance officer should be at management level responsible for establishing and maintaining compliance with the requirements of section 18 which deals with the reporting of suspicious business transactions .(subsection 19(3)).

383. Subsection 19(2)(a) of the AMLCFTA enables the compliance officer to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report a matter pursuant to section 16. While the intent of the provision appears to provide access to information necessary for reporting STRs, the reference to section 16 is confusing since this section deals with recording keeping requirements rather than reporting obligations. The proper reference should be section 18 which deals with suspicious transaction reporting. Additionally, access to information is restricted to the reporting function and only to compliance officers appointed at management level pursuant to section 19(3) rather than extending it to all appropriate staff engaged in the compliance function..

384. It is noted that section 19(4) provides an exemption from the internal controls requirements of sections 19(1) and 19(2) for individuals who carry on business solely or with a staff and management of less than five persons. While the intent of this provision is to take into consideration the resource constraints of small reporting entities, this exemption effectively removes any internal control requirements from these entities which is not in accordance with FATF standards. .

385. While section 19(1)(c) requires a reporting entity to establish an audit function to test its anti-money laundering and combating of terrorist financing procedures and systems, the

provision does not include a requirement for the audit function to be adequately resourced and independent and for compliance testing to include sample testing in accordance with the FATF criterion.

386. The training obligation as stipulated in section 19(1)(d) is not ongoing and is limited to training of officers, employees and agents of a reporting entity to recognise suspicious transactions, and does not include new developments, including information on current ML and FT techniques, methods and trends; clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD as required by the FATF criterion.
387. As noted above under section 19(1)(b) reporting entities are required to establish and maintain policies, procedures and systems for screening persons before hiring them as employees.

### ***Effectiveness of Implementation***

388. As already noted the enforcement of the AMLCFTA in November 2009 precludes any effective assessment of its provisions by January 2010, the time of the mutual evaluation. However, interviewed financial institutions indicated that they had written AML policies. Some of these policies were limited to KYC procedures and were based on the provisions of the previous Money Laundering (Prevention) Act 2000. While compliance officers had been appointed at management level, some of them also held operational responsibilities which could result in conflicts of interest. Guidance on the importance of the core function of the compliance officer and the need for the function to be separate from operations should be provided to the financial institutions. The compliance officer of the interviewed financial institutions indicated that they have timely access to all systems and records. The Commissioner of Insurance indicated that some insurance companies had compliance officers.
389. The interviewed financial institutions have screening procedures for hiring employees. Prior to a job interview an applicant is required to submit a police clearance and references from reputable persons or entities (school or last employer). These references are verified and a background check is conducted by the financial institution. Each of the interviewed financial institutions has some kind of internal training procedure (predominantly based on internal guidelines) presented by a senior officer to the new employees. Ongoing training to ensure that the employees are kept informed of new developments is uncommon.

### **Recommendation 22**

390. Section 22(1) of the AMLCFTA, designates the Governor of the Bank of Guyana, the Commissioner of Insurance and the Guyana Securities Council as supervisory authorities responsible for ensuring compliance by their relevant reporting entities with the AMLCFTA. As part of their responsibilities and powers the supervisory authorities under section 22(2) are required to impose obligations on reporting entities to ensure that their foreign branches and subsidiaries adopt and enforce measures consistent with the Act to the extent that local laws and regulations so permit. The wording of this provision suggests that although the requirement has been enacted in law, implementation needs the respective supervisory authorities to directly impose this requirement. At the time of the mutual



evaluation none of the designated supervisory authorities had issued any notice imposing this obligation on their respective reporting entities. It is noted that the provision does not incorporate compliance with the FATF Recommendations along with measures in the AMLCFTA as stated in the criterion.

391. There is no requirement for financial institutions to pay particular attention that the principle stated in section 22(2) is observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. Additionally, there is no requirement for branches and subsidiaries in host countries to apply the higher standard where minimum AML/CFT obligations of home and host countries differ..
392. Section 22(2) along with the required imposition by supervisory authorities of the above condition also includes reporting entities disclosing to the designated or regulatory or competent disciplinary authority when foreign branches and subsidiaries are unable to adopt and observe measures consistent with the Act. As already noted this provision in order to be implemented has to be imposed by the designated supervisory authorities which at the time of the mutual evaluation had not been done. .
393. At the time of the mutual evaluation, there were no financial institutions headquartered in Guyana with foreign branches and subsidiaries. Most financial institutions were either branches or subsidiaries of financial groups with headquarters or parent companies abroad. Two of the interviewed financial institutions were of this type and indicated where there is a difference between the AML/CFT measures of foreign branches and subsidiaries the most stringent measures are applied.

### 3.8.2 Recommendations and Comments

#### **Recommendation 15**

394. The competent authorities should ensure that all financial institutions update their current policies and that the updated versions are based on the AMLCFTA.
395. The requirements of Rec. 15 should be applicable to individuals who carry on business solely or with a staff and management of less than five persons.
396. The AMLCFTA should provide that the compliance officer and appropriate staff have timely access to customer identification data and other CDD information, transaction records and other relevant information necessary to carry out all their functions.
397. Financial institutions should be required to ensure that their audit function is adequately resourced and independent and compliance testing of procedures, policies and controls include sample testing.
398. The training obligation of financial institutions should be ongoing and include new developments, including information on current ML and FT techniques, methods and trends; clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD.

#### **Recommendation 22**

399. Designated supervisory authorities should impose the obligations stipulated in section 22(2) of the AMLCFTA on their respective reporting entities.
400. Financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations to the extent that host country laws and regulations permit.
401. Financial institutions should be required to pay particular attention that the principle stated in section 22(2) of the AMLCFTA is observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.
402. Financial institutions should be required to ensure that branches and subsidiaries in host countries apply the higher standard where minimum AML/CFT obligations of home and host countries differ.

### 3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> <li>• No requirement for individuals who carry on business solely or with a staff and management of less than five persons to comply with the requirements of Rec. 15.</li> <li>• Access to information is restricted to the reporting function and only to compliance officers appointed at management level rather than to all appropriate staff engaged in the compliance function..</li> <li>• No requirement for the audit function of financial institutions to be adequately resourced and independent and compliance testing of procedures, policies and controls to include sample testing.</li> <li>• The training obligation of financial institutions is not ongoing and does not include new developments, including information on current ML and FT techniques, methods and trends; clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD.</li> </ul>
R.22	NC	<ul style="list-style-type: none"> <li>• Supervisory authorities have not imposed the requirements for foreign branches and subsidiaries of section 22(2) of the AMLCFTA on their respective reporting entities..</li> <li>• No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations to the extent that host country laws and regulations permit.</li> <li>• No requirement for financial institutions to pay particular attention that the principle stated in section 22(2) of the AMLCFTA is observed with respect to branches and subsidiaries in countries which do not or</li> </ul>

		<p><b>insufficiently apply the FATF Recommendations.</b></p> <ul style="list-style-type: none"> <li>• <b>No requirement for financial institutions to ensure that branches and subsidiaries in host countries apply the higher standard where minimum AML/CFT obligations of home and host countries differ.</b></li> </ul>
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### 3.9 Shell banks (R.18)

#### 3.9.1 Description and Analysis

##### **Recommendation 18**

403. While not explicitly prohibiting the establishing of shell banks in Guyana, the licensing provisions of the FIA effectively precludes the establishment of shell banks. Only companies licensed by the Bank of Guyana can conduct banking or financial business in Guyana. Section 5(1) of the FIA provides that prior to conducting a banking or financial business in Guyana, an applicant shall submit to the Bank of Guyana an application, together with an application fee of twenty-five thousand dollars, for a licence in such form, and having due regard to the types of banking or financial business the applicant proposes to conduct, containing such information as the Bank of Guyana may require including:

- (a) the name, permanent address and nationality of the applicant or, in the case of an applicant group, each member of the applicant group;
- (b) the proposed memorandum and articles of association of the applicant;
- (c) the applicant's proposed home office address, and the address of every proposed branch;
- (d) the name, permanent address and nationality of every person who owns, or proposes to subscribe to, more than ten percent of any class of shares to be issued by the applicant;
- (e) the name, permanent address and nationality of every proposed director and officer;
- (f) the amount of the applicant's proposed capital;
- (g) a full description of the types of deposit-taking, lending and other financial business the applicant proposes to conduct;
- (h) a detailed business plan or plan of operation, with projections, for at least the first three years of operations;
- (i) if available, financial statements for the last two years of operations audited in accordance with the requirements of the law for the time being in force regarding the audit of the accounts of companies or, in the case of a foreign company, in accordance with accepted auditing standards of that company's country of incorporation; and

(j) such additional information as the Bank may require.

404. Upon receipt of the application the Bank of Guyana conducts an investigation to determine whether the applicant is fit and proper to be granted a licence. Banks are required to maintain their principal business office in Guyana and any change of location of any office requires approval. While certain business decisions of branches and subsidiaries of foreign banks may require approval from their parent or regional office, substantial mind and management reside in Guyana. However, it is noted that the Company Act has provision for the registration of shell banks with the Registrar of Companies.
405. Section 15(7)(c) prohibits banks or financial institutions from maintaining any business relationship with other banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision.
406. There is no requirement that financial institutions should satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
407. The interviewed financial institutions advised that correspondent services were not generally offered since most of them were respondent institutions. Additionally, the financial institutions and their correspondent banks did no business with shell banks.

### 3.9.2 Recommendations and Comments

408. Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
409. In order to remove any ambiguity with regard to the possible establishment of shell banks in Guyana, provision allowing for the registration of shell banks in the Company Act should be repealed.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	LC	<ul style="list-style-type: none"><li>• No requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks</li></ul>

## **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

## **Designated supervisory authorities**

### **Authorities/SROs roles and duties & Structure and resources - R.23, 30**

#### **Recommendation 23**

410. There are three supervisory authorities that regulate the financial sector in Guyana. Each authority operates under specific statutes which provide for licensing or registration and supervision of the relevant entities. These authorities are the BOG, the GSC and the Division of Co-operatives and Friendly Societies. Additionally, section 22 of the AMLCFTA designates the supervisory authorities responsible for supervising compliance with the CDD, record-keeping, monitoring, reporting and wire transfer requirements of the AMLCFTA. The supervisory authorities designated by the AMLCFTA are the Governor of the BOG, the Commissioner of Insurance, and the GSC. Provision is made for the appointment of another supervisory authority by the Minister of Finance.

#### ***The Bank of Guyana (BOG)***

411. The BOG is responsible for the supervision of all financial institutions licensed or registered under the FIA, the DFCLA and the MTALA. This includes 6 commercial banks, 8 non-bank financial institutions, 18 cambios and money transfer agencies/agents. As already mentioned, section 22 of the AMLCFTA appointed the Governor of the BOG as the designated authority responsible for compliance of the institutions under the FIA and the DFCLA with the AML/CFT obligations of the AMLCFTA. At the time of the mutual evaluation, no designated supervisory authority has been appointed for money transfer agencies/agents. However, under subsection 11(1)(e) of the MTALA, the BOG has the power to suspend or revoke the licence or registration of a money transfer agency or agent respectively for contravention of the any provision of the AMLCFTA. This provision effectively makes the BOG the supervisory authority responsible for ensuring compliance of money transfer agencies/agents with AML/CFT requirements.

#### ***Commissioner of Insurance (COI)***

412. Under section 4 of the IA, the COI is responsible for the general administration of the Act and for ensuring compliance of all licensed entities under the IA with the requirements of the Act. The office of the COI was merged with BOG thereby incorporating the responsibility for the supervision of 13 insurance entities under the IA within the remit of the BOG to be carried out by the Insurance Supervision Department. With the appointment of the COI as the designated supervisory authority under the AMLCFTA, the BOG also assumed that role for the insurance sector.

#### ***Guyana Securities Council (GSC)***

413. Section 5 of the SIA makes the GSC responsible for maintaining surveillance, controlling and supervising the activities of the 6 registrants of the SIA i.e. participants in the securities market. While the functions of the GSC as itemised in the SIA are specific to the requirements of the Act and do not include AML/CFT obligations since the SIA was enacted prior to the first Money Laundering (Prevention) Act 2000. The appointment of the GSC as the designated authority for entities in the securities market in the AMLCFTA deals with this shortcoming.

#### ***Division of Co-operatives and Friendly Societies (DCFS)***

414. The Division of Co-operatives and Friendly Societies in the Ministry of Labour, Human Services and Social Security is headed by the Chief Co-operative Development Officer (CCDO). The CCDO is responsible for carrying out the supervision and regulation of co-operatives including credit unions and friendly societies under the CSA and the FSA respectively. Friendly societies are non-profit organisations formed mainly for benevolent or charitable purposes. At the end of 2009, there were approximately 921 co-operative societies registered, but only 525 were functioning. There were some 47 registered credit unions with 27 of them active. Additionally, there were 1,054 registered friendly societies with 635 functioning. The CSA and the FSA have no requirements for the CCDO to ensure compliance with AML/CFT obligations. Additionally, no designated supervisory authority has been assigned under the AMLCFTA for co-operative societies.

### **Recommendation 30**

#### ***BOG***

415. The BOG was established by virtue of the Bank of Guyana Ordinance No. 23 of 1965 as an “autonomous institution”. The supervisory and regulatory responsibilities for 14 financial institutions under the FIA rest with the Bank Supervision Department (BSD). The BSD comprises of two divisions: Supervision; Policy, Regulatory & Issuance. The total number of staff of the BSD at the time of the mutual evaluation was 17 with 11 in Supervision and the remainder in Policy, Regulatory and Issuance. The staff of the BSD as part of the BOG is required to maintain high ethical and professional standards. All members of staff of the BSD have either a university degree or professional accreditation in accounting or finance related studies. The AML/CFT training of the BSD staff is presented in the following table.

**Table 12: BSD AML/CFT TRAINING (2004-2009)**

<b>Date</b>	<b>Name of Course</b>	<b>Facilitators/Sponsors</b>	<b>Location</b>	<b>No. of Participants</b>
May 24 – 28, 2004	Anti-Money Laundering Seminar	CALP /Bank of Guyana	Guyana	57*
October 13 -15, 2004	Anti-Money Laundering Inspections for Bank Examiners - Seminar	CALP /Bank of Guyana	Guyana	27**
October 25 - 29, 2004	Anti-Money Laundering Examination Seminar	Federal Reserve USA /Bank of Jamaica	Jamaica	2

June 2 - 6, 2008	AML-CFT Program	Toronto Centre /World Bank	Trinidad	1
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\* Of the 57 persons who attended the Seminar (including representatives from banks, non-banks and their External Auditors) 23 were BOG staff, with 22 from BSD

\*\* Of the 27 BOG staff in attendance, 22 were from BSD

416. Cambios and money transfer agencies/agents are supervised and regulated by the International Department of the BOG. The International Department comprises Operations & Administration, Examinations Unit and Exchange Market & Reserve Management. The Examinations Unit is primarily responsible for the supervision of cambios and money transfer agencies/agents. Staff qualifications and requirements similar to those of the BSD would apply to the staff of the International Department. Information on the number of staff and AML/CFT training was not available to the team of assessors.

417. The Insurance Supervision Department has the responsibility for the supervision and regulation of insurance companies under the IA. At the time of the mutual evaluation, there were 6 members of staff in the Department consisting of 4 professional and 2 administrative personnel. As staff of the BOG, similar ethical and professional standards are applicable. No member of staff had received AML/CFT training.

### **GSC**

418. The GSC was established by the SIA. Members of the GSC are appointed by the Minister of Finance and the Council is funded through the appropriation of funds by Parliament. . At the time of the mutual evaluation the staff of the Guyana Securities Council comprised the General Manager, an attorney and a clerical officer. None of the staff had received AML/CFT training.

### **DCFS**

419. The DCFS is a part of the Ministry of Labour, Human Services and Social Security and is funded from the Ministry's budget. At the time of the mutual evaluation the DCFS was in transition with regard to its staff which comprised the CCDO and a secretary. The team was advised that 10 officers were due to be assigned to the DCFS in the short term. Qualifications for officers range from pre-university diploma to undergraduate degree in social work or related studies and accountancy. AML/CFT training was not part of staff training.

## **Recommendation 29**

### **BOG**

420. The BOG has various supervisory and sanctioning powers over entities licensed under the FIA, the DFCLA and the MTALA. While most of the supervisory and sanctioning powers are specific to breaches of the provisions of the statutes, the BOG utilises these powers under the aegis of enforcing safe and sound practice to ensure compliance with AML/CFT

requirements. This position has been strengthened with the designation of the BOG under section 22 of the AMLCFTA as the supervisory authority responsible for entities licensed under the FIA and the DFCLA. No supervisory authority has yet been designated for entities under the MTALA.

421. Subsection 22(2) of the AMLCFTA requires a supervisory authority to examine and supervise the relevant reporting entity, and regulate and oversee effective compliance with the obligations set out in sections 15, 16, 18, 19 and 20 and any other preventive measures in relation to combating money laundering and terrorist financing.
422. The BOG operates a supervisory regime consisting of off-site monitoring and on-site inspections focused on the safety and soundness of the institutions. Under section 25 of the FIA, the BOG can demand any data necessary to carry out its functions from any licensed financial institution. Off-site monitoring comprises regular prudential reporting on the main operational areas of financial institutions. These reports are used in the scheduling of on-site examinations. No AML/CFT reports are presently required by the BOG from its licensed financial institutions.
423. Under section 31 of the FIA, the BOG has the power to conduct inspections of every licensed financial institution under the FIA and access to all books, records, accounts and documents of the examined institution. On-site examinations are performed on a risk-focused basis and can range from full-scope to targeted examinations. The type of examination depends on the results of the off-site monitoring. Full scope examinations encompass review of all policies and procedures, and major areas of operation with appropriate sample testing.
424. Examinations may incorporate testing for compliance with AML/CFT requirements. Heavy reliance is placed on an AML/CFT questionnaire which the institution is required to complete at the beginning of the examination. This is followed by interviews with relevant personnel and random sampling of records, accounts and files to test compliance. The scope of the AML/CFT examination is limited at best, with the questionnaire only generally covering ML and FT legislative obligations.
425. Section 33 of the FIA provides enforcement powers for the BOG to impose sanctions against a financial institution, any of its affiliates, directors, officers, employees or agents for committing, pursuing or about to pursue any act or conduct that is unsafe or unsound practice or a violation of any law, regulation, order, direction, notice or condition imposed by the BOG. The sanctions include directions from the BOG for financial institutions to;
  - a) cease the unsafe and unsound practice or violation;
  - b) refrain from adopting or pursuing a particular course of action or restrict/limit the scope of its business in a particular way;
  - c) require the revision of any contract to which the financial institution is a party or;
  - d) require the suspension or removal of any director, officer or other person.
426. In addition to the above, the BOG can impose a monetary penalty not to exceed G\$1,500,000 (US\$7,320) in the case of a licensed financial institution or G\$500,000 (US2,440) in the case of an individual person for failure to comply with any order or direction



under section 33. Provision is also made for a final criminal penalty of a fine of not more than G\$3,000,000 (US\$14,640) and imprisonment of not more than 2 years for failure of any financial institution or person to comply with any written order or direction or pay any penalty imposed by the BOG under section 33. The proviso that these sanctions are liable for the violation of any law makes them applicable for breaches of the AML/CFT requirements of the AMLCFTA.

### ***COI***

427. As already noted the office of the COI has been merged with the BOG. Section 4 of the IA charges the COI with the general administration of the IA and the supervisory regime was limited to ensuring compliance with the requirements of the IA.
428. While section 38 of the IA gives the COI the power to request from any insurance company, information relating to any matter in connection with its insurance business in Guyana, there is no provision for routine on-site inspection of insurance companies. Sections 39 and 40 of the IA allow for investigations of insurance companies on the basis of specific criteria which do not include AML/CFT requirements and provide access to securities, books, accounts, documents or statistics of the company under investigation. With regard to enforcement and sanctioning powers, these are applied for breaches of the IA and limited to cancellation of registration.
429. While the legal framework of the IA does not provide for a supervisory structure for AML/CFT, as already noted with the BOG, the COI has been designated a supervisory authority under section 22 of the AMLCFTA with power to examine and supervise the relevant reporting entity, and regulate and oversee effective compliance with the obligations set out in sections 15, 16, 18, 19 and 20 and any other preventive measures in relation to combating money laundering and terrorist financing. While section 22 gives the COI the power to examine relevant reporting entities there is no ancillary provision giving access to all records, books, accounts, files, documents and information necessary to conduct such examinations.

### ***GSC***

430. Section 5 of the SIA stipulates the functions of the GSC to include, among other things, maintaining surveillance over the securities market, registering, authorising, regulating, controlling and supervising the activities of the registrants of the SIA. No reference to AML/CFT requirements is made and the supervisory regime as implemented by the GSC is limited to ensuring compliance with the requirements of the SIA.
431. While there are requirements under the SIA for the submission of particular reports and information by registrants to the GSC, there is no specific provision giving the GSC power to compel production or obtain access to all records, documents, or information relevant to the monitoring of compliance. Additionally, there is no provision for routine inspection except in relation to self-regulatory organisations under subsection 42(2) of the SIA.
432. With regard to enforcement and sanctioning powers, the SIA provides for the GSC to censure, limit the activities, functions or operation of a self-regulatory organisation or suspend or revoke its registration for any contravention of the SIA. With regard to other registrants, suspension or revocations are the only options available to the GSC.

433. As noted above with the COI, the GSC has been designated a supervisory authority under section 22 of the AMLCFTA with power to examine and supervise the relevant reporting entity, and regulate and oversee effective compliance with the obligations set out in sections 15, 16, 18, 19 and 20 and any other preventive measures in relation to combating money laundering and terrorist financing. The concerns with regard to the limits of section 22 of the AMLCFTA in appointing a designated authority for AML/CFT as noted in relation to the COI is also applicable to the GSC, i.e. that while there is the power to examine relevant reporting entities there is no ancillary provision giving access to all records, books, accounts, files, documents and information necessary to conduct such examinations.

### ***DCFS***

434. The CCDO has responsibility for the administration of the CSA. Section 35 of the CSA requires the Commissioner to have each registered society audited annually. Section 36 allows for the CCDO or his authorised person to have access at all times to all books, accounts, papers and securities of a registered society. Under section 37 of the CSA, the CCDO can hold an inquiry at any time into the constitution, working and financial condition of a registered society. All officers and members of the society are obliged to furnish any information or such books, accounts, papers and securities of the society required by the CCDO or authorised person doing the inquiry. While there are no provisions for sanctioning powers for the CCDO, the CCDO can take over co-operative societies that are poorly managed.

### **Recommendation 17**

435. Sanctions for AML/CFT breaches in the AMLCFTA are of two types: those applicable to general ML and FT offences and those applicable to breaches of the AML/CFT obligations of reporting entities. General ML and FT offences include commission of ML and FT, tipping off, destroying or concealing evidence, breaches of confidentiality, failure to produce requested documents and failure to comply with a monitoring order..
436. Section 3(6) of AMLCFTA provides sanctions for the offence of ML. Sanctions range from fines from one million to one hundred million dollars (US\$4,880 – US\$488,000) and imprisonment of up to seven (7) years for a natural person convicted of ML; and for a body corporate (legal persons) the Act provides for fines ranging from two hundred million dollars to five hundred million dollars (US\$976,000 – US\$2,440,000). These penalties compare favourably with other CFATF jurisdictions in relation to dissuasiveness and proportionality.
437. Sanctions for FT offences defined in section 68(1) of AMLCFT include, where death occurs as a result of the act, a fine of not less than one million five hundred thousand dollars (US\$ 7,320) and death,; and in other cases a fine of at least five hundred thousand dollars (US\$ 2,440) and imprisonment of 10 years minimum (s. 68(1)(d)(i)&(ii)). Additionally, FT offences defined in section 68(3): where death occurs as a result of the act, are liable to a fine of not less than one million five hundred thousand dollars (US\$7,320)and death,; and in any other case a fine of at least five hundred thousand dollars (US\$2,440) and imprisonment of 10 to 15 years. The terms of imprisonment for FT

offences are proportionate and dissuasive when compared to ML offences in Guyana and FT offences in other CFATF jurisdictions. The fines as stated in legislation are minimum levels. At the time of the mutual evaluation there were no convictions for FT offences and therefore no case history of actual fines necessary to assess proportionality or dissuasiveness.

438. Penalties for tipping off are provided for under subsection 3(5)(2) and 18(15) of the AMLCFTA. Subsection 3(5)(2) stipulates a penalty on summary conviction of a fine of one million dollars (US\$4,880) and imprisonment for three years. Subsection 18(15) states that a natural person on summary conviction is liable to a fine of not less than a million dollars (US\$4,880) nor more than two million dollars (US\$9,760) and imprisonment for a term not exceeding 3 years and in the case of a body corporate to a fine of not less than two million dollars (US\$9,760) nor more than three million dollars (US\$14,640). While these penalties do not conflict, they should be reviewed to ensure more consistency. Additionally while the terms of imprisonment appear proportionate and dissuasive, the fines, particularly those applicable to corporate bodies, are not.
439. The penalty for destroying or concealing evidence under subsection 6(2) is on summary conviction a fine of one million dollars (US\$4880) and imprisonment for three years. Breach of confidentiality with regard to staff members of the FIU is punishable with dismissal from the FIU and on summary conviction a fine not exceeding two million dollars (US\$9,760) and imprisonment for a term not exceeding four years.
440. Failure to comply with a production or a monitoring order or provide false documentation is liable under sections 26 and subsection 31(5) in the case of a natural person to a fine of not less than one million dollars (US\$4,880) nor more than two million dollars (US\$9,760) or imprisonment for a term not exceeding one year and in the case of a body corporate to a fine of not less than two million dollars (US\$9,760) nor more than three million dollars (US\$14,640). While the terms of imprisonment above appear proportionate and dissuasive, the fines, particularly those applicable to corporate bodies, are not.
441. The sanctions in the AMLCFTA are applicable to both natural and legal persons as evidenced in the wording of the relevant penalties. Additionally, section 2 of the AMLCFTA stipulates that “person” includes any corporate entity. While penalties are applicable to legal persons, there is no provision for liability to extend to the directors and senior management of reporting entities. Since the above penalties are criminal, the DPP is the authority responsible for prosecuting the related offences.
442. In addition to the sanctions aforementioned, there are penalties in the AMLCFTA for breaches of AML/CFT obligations by reporting entities. These obligations detailed in sections 15, 16, 18, 19 and 20 include CDD, record-keeping, monitoring, reporting, internal controls and wire transfer requirements. Subsection 23(1) enables the supervisory authority, any regulatory authority or competent disciplinary authority that discovers a breach of any obligation under sections 15, 16, 18, 19 and 20 by a reporting entity it supervises to impose any one of the following sanctions:
  - a) written warnings;
  - b) order to comply with specific instructions;
  - c) order regular reports from the reporting entity on the measures it is taking;

- d) prohibit convicted persons from employment within the sector
  - e) recommend to the appropriate licensing authority of the reporting entity that the reporting entity's licence be suspended, restricted or withdrawn.
443. The above sanctions can be imposed by the designated supervisory authorities, the BOG and GSC over financial institutions licensed or regulated under the FIA, IA, DFCLA and the SIA. With regard to co-operatives and money transfer agencies/agents the reference to "any regulatory authority" being able to apply these sanctions should be extended to these powers to their relevant regulatory authorities i.e. the BOG and the CCDO.
444. The above sanctions are primarily instructions with the only penalty for failure to comply being a recommendation of suspension, restriction or revocation of the licence of the reporting entity.. There is no provision for graduated sanctions for failure to comply with instructions, such as administrative fines. Additionally there is no indication as to whether the sanctions are applicable to directors and senior management of the reporting entities. The sanctions cannot therefore be considered dissuasive, proportionate or effective. While the BOG, the GSC have supervisory enforcement powers under their specific governing legislation, these powers are not specific to breaches of AML/CFT legal obligations.

### **Recommendation 23 – Market entry**

#### ***BOG***

445. Section 3 of the FIA requires all institutions to acquire a valid licence from the BOG to carry on banking or financial business in Guyana. The licensing regime as set out in section 5 of the FIA requires applicants to submit details on the following:
- a) The name, permanent address and nationality of the applicant or, members of an applicant group
  - b) Proposed memorandum and articles of association of the applicant
  - c) Applicant's proposed home office address and address of every proposed branch
  - d) Name, permanent address and nationality of every person who owns, or proposes to subscribe to, more than ten percent of any class of shares to be issued by the applicant
  - e) The name, permanent address and nationality of every proposed director and officer
446. In addition to the above, an applicant is required to furnish information on the types of services and products to be offered to customers, a detailed business plan, audited financial statements for the last two years if available and any further information that the BOG may need.
447. In evaluating an application for a licence for banking or financial business, the Bank of Guyana has the authority under subsection 5(5) of the FIA to conduct such investigations necessary to determine whether an applicant is fit and proper to be granted a licence. These investigations consider the background, experience, integrity, the financial resources,

history, proposed management and adequacy of capital of the applicant and the effects on competition with other financial institutions. Licences are only issued once the applicant fully complies with all the requirements of the FIA

448. While the above conditions are applicable at licensing, similar requirements are in place for acquisition of control of financial institutions. Section 9 of the FIA stipulates that no person may acquire control of any licensed financial institution without the prior written approval of the BOG. Control is defined under the FIA as the power, directly or indirectly, to direct the management or policies of a company, or to vote twenty-five percent or more of any class of shares of such a company.
449. Any person seeking to acquire control has to submit under section 9(2) information on identity, personal history including financial history, background and experience, terms of acquisition, amount, identity and source of funds used for acquisition, plans or proposals for significant changes in the business and such other information as the BOG may require. Investigations similar to those used to determine whether a licensing applicant is fit and proper is also carried out in assessing whether approval should be granted for acquisition of control.
450. While there is no direct requirement under the FIA for financial institutions to obtain prior approval from the BOG for the appointment of directors or officers, the wording of specific prohibitions against appointing particular persons which require the BOG's assessment would suggest that prior approval is necessary as is the case. This is evident in section 26, in particular subsections (f) and (g) which prohibits persons who have engaged in any business practice appearing to the BOG to be deceitful, oppressive or otherwise improper or has an employment record which leads the BOG to believe that the person committed an act of impropriety in conducting business. Section 27 of the FIA stipulates that every director or officer of a licensed financial institution should be a fit and proper person in relation to probity, competence, sound judgment, and diligence.

### *COI*

451. The registration requirements and process for insurance companies and associations of underwriters under the IA in sections 10, 11, 49 and 50 are basic. Insurance companies are required to only submit the address of the head office of the company, names of directors, auditors, principal representative, actuary, class or classes of insurance business to be undertaken. Incorporation documents along with financial statements and statements of shareholders' equity are also required to be submitted. With regard to assessing applications for registration by insurance companies and associations of underwriters, subsection 24(1)(e) of the IA requires the COI to be satisfied that the managing director, or controller of the company or person in charge of the association is a fit and proper person. Section 2(f) of the IA defines a controller as a 'person having the power directly or indirectly to either direct the management of an insurer or if the insurer is a body corporate with shares to exercise or control, the exercise of twenty-five percent or more of any class of voting shares.'
452. In compliance with Section 24(1)(e) of the IA, Part II of the Schedule to the Insurance (Company Registration) Regulations, 2007 (the ICR Regulations), stipulates as a condition of registration that the principal representative (main representative, if the insurance company is an external company), all controllers, and chief executive officers (CEOs) of insurance companies must submit to a fit and proper assessment. The members of the board

of directors of an insurance company must collectively complete and individually sign off a fit and proper declaration form as set out in the Regulations. Managing directors or CEOs and shareholders with twenty-five percent or more of any class of voting shares must complete and sign off a personal declaration form as set out in the Regulations. The above requirements do not extend to beneficial owners.

453. It is a condition of registration that persons who manage associations submit to a fit and proper assessment from the COI. According to Section 115 (1) (d) of the IA where the COI, after appropriate inquiry or after documentary evidence, or both is satisfied that the persons who manage the association are of good character and are otherwise fit and proper to manage the association, the COI shall either unconditionally or subject to such conditions as he may specify register the association and notify the applicant accordingly
454. Changes in management of insurers i.e. insurance companies and members of association of underwriters are dealt with in Part XIII of the IA. Section 79 of the IA states that no insurer shall appoint a person as its CEO, chief actuary or controller unless the insurer has advised the COI in writing that it proposes to appoint such a person. In such circumstances, the COI may serve notice of objection if it appears to him that the CEO, chief actuary or controller is not a fit and proper person to be appointed to the position in question. Since insurance companies have to always be in a position where they are fit for registration [Section 63(2)(d) of the IA], new CEOs and controllers are subject to the fit and proper test as set out in the ICR Regulations.

### ***GSC***

455. Under the SIA, anyone carrying on business as a securities exchange or clearing agency, an association of securities companies and intermediaries, or as a market participant including being a broker, a dealer, a trader, an underwriter, an investment adviser, a securities intermediary or securities company must be registered with the GSC.
456. The registration requirements and processing of applications for a securities exchange or association of securities companies and intermediaries is set out in section 33 of the SIA. The stipulated criteria deal with the evaluation of the rules, organisation, capacity and resources of the applicant to meet the requirements of the SIA. No specific fit and proper criteria is required in the registration process. The GSC does have the power to refuse an application if a director or officer of the applicant is unable to meet the registration requirements of a market participant as set out in section 47 of the SIA.
457. The requirements for registration as a market participant are basic and include an age limit, local incorporation, no outstanding bankruptcy orders, no direct or indirect conflict of interests with proposed securities business, no suspension or expulsion from any stock exchange or self-regulatory organisation etc. There is no specific fit and proper criteria assessment. Additionally there is no provision in the SIA for the GSC to approve shareholders, and changes in management of registered self-regulatory organisations or market participants.

### ***DCFS***

458. Under the CSA, a society may apply to the CCDO to be registered. Requirements for registration are minimal and do not include any fit and proper criteria or assessment of

background, integrity or experience of the proposed officers of the society. Additionally, the CSA has no provision for prior approval by the CCDO of management of a society.

459. The MTALA requires persons desirous of operating a money transfer agency to obtain a licence while money transfer agents have to be registered. The MTALA came into force on January 2, 2010 and the licensing and registering authority is the BOG. The conditions for granting a licence under section 4 of the MTALA requires the BOG to consider an applicant's experience, financial resources, character, soundness and feasibility of business plan, competence and experience for operating a money transfer agency. Licences are to be issued on an annual basis with renewal dependent on compliance with the MTALA and conditions of the licence.
460. With regard to registering a money transfer agent, section 8 of the MTALA requires the BOG to assess whether the applicant is fit and proper, has the requisite professional reputation and experience and the agreement to provide money transfer services is suitable. As with licences for money transfer agencies, registration as a money transfer agent is annual with renewal based on similar criteria. Due to the recent enforcement of the MTALA at the time of the mutual evaluation the BOG was in the initial stages of evaluating 8 applications under the MTALA.
461. The DFCLA requires persons who provide money or currency changing services to be licensed by the BOG after appropriate consultation with the Minister of Finance. Section 4 of the DFCLA requires the BOG to consider the experience, financial resources, character and antecedents of an applicant in deciding to grant a licence. At the time of the mutual evaluation there were 18 licensed cambios in Guyana.

### **Recommendation 23 – Ongoing supervision and monitoring**

#### ***BOG***

462. The BOG's supervisory regime has been designed in accordance with the Basel Core Principles. As already noted, the licensing process involves extensive due diligence. Information on the management and ownership structure is carefully evaluated and the feasibility of proposed business and financial plans assessed. Supervision is done on a risk-based approach through a combination of off-site surveillance and on-site examinations.
463. Off-site surveillance involves assessment of prudential and other reports on the operations of licensees, in order to update relevant risk profiles of institutions. This process forms the basis for prioritising institutions by risk as a preliminary to determining on-site examinations. The frequency of on-site examinations is based on off-site risk assessment. Institutions ranked with the greatest risk are subject to more frequent examinations than those with low risk. The inspection cycle for low risk institutions is no longer than 18 months.
464. Inspections can incorporate an AML/CFT component involving the completion of an AML/CFT questionnaire, interviews with relevant personnel and random sampling of accounts to test compliance with AML/CFT obligations.

#### ***COI***

465. The powers of the COI under the present IA are limited with regard to implementing the Basel Core Principles. There is no provision in the IA permitting routine on-site inspection. This shortcoming is due to be dealt with by amendments to the IA. In an attempt to implement an on-site inspection programme, the COI advised that two on-site inspections had been recently completed with the approval of the relevant companies. These inspections did not include any AML/CFT component.
466. Ongoing supervision is generally performed through regular reporting on the financial position of companies, in a format prescribed by the COI. Additionally, the COI may request supplementary information or have meetings with various company representatives among other available options.

### ***GSC***

467. GSC's supervision regime is similar to that of the COI. Licensing requirements do not include fit and proper criteria and there is no provision for on-site inspection. Ongoing supervision is based primarily on assessing prudential returns on various operational areas of registrants.
468. The International Department of the BOG is responsible for monitoring of cambios and money transfer agencies/agents. Cambios are governed by the DFCLA and pursuant to the AMLCFTA, the BOG is the supervisory authority for AML/CFT purposes. There are 6 bank cambios and 12 non-bank cambios. All cambios are required to submit daily reports showing the volumes and rates for the previous day's transactions. Weekly and monthly reports are also compulsory.
469. Examination and oversight are focused on the operations of the non-bank cambios, but occasionally, the bank cambios have been inspected, in conjunction with the Bank Supervision Department. The non-bank cambios are inspected at least once yearly, and follow-up inspections are sometimes necessary, depending on the findings of the inspection team. These inspections focus on ensuring that the cambios comply with the requirements of the DFCLA.
470. At the time of the mutual evaluation, a supervisory regime for money transfer agencies/agents was being put in place to meet the requirements of the MTALA which had come into force at the beginning of 2010. The BOG was in the process of evaluating applications for licences and registration under the MTALA. Additionally, there is provision in the MTALA for the BOG to ensure compliance of the money transfer agencies/agents with the requirements of the AMLCFTA.

### ***DCFS***

471. Supervision by the DCFS in relation to credit unions is focussed on ensuring compliance with the requirements of the CSA. This includes annual audits of the finances of co-operatives, providing assistance in relation to the management of finances and formulation of economic and business plans. Due to resource constraints and the number of societies, the CCDO can and has contracted persons to carry out audits of societies.



**Recommendation 25 - Guidance for financial institutions (other than on STRs)**

472. At the time of the mutual evaluation none of the competent authorities had issued guidelines to assist financial institutions to implement and comply with their respective AML/CFT requirements.

**Recommendation 32 - Statistics**

473. The table below shows the number of inspections conducted by the Bank Supervision Department of the BOG for the period 2006 to 2009 and the results with regard to AML/CFT findings.

**Table 13: Number of inspections completed by the BOG for 2006 - 2009**

Year	Number of Examinations	Examinations with AML Focus	Findings
2009	6	5	Source of funds declaration forms were either incomplete or not completed in some instances.
2008	5	4	
2007	7	6	Insufficient details on records to satisfy Know Your Customer (KYC) requirements.
2006	6	0	

474. The figures in the table above include inspections of commercial banks and non-bank financial institutions. The BOG is responsible for supervising 6 commercial banks and 8 non-bank financial institutions. The above figures indicate a decline in the number of inspections from 13 for the years 2006 to 2007 to 11 for the years 2008 to 2009. While the BOG had advised that the inspection cycle was 18 months, the figures suggest a period slightly more than 2 years. This was corroborated by interviewed financial institutions. As mentioned already, the COI, in attempting to implement an on-site inspection regime had completed two on-site examinations which did not include AML/CFT testing.
475. Due to a lack of resources ,the GSC has been unable to conduct any onsite investigations of its registrants. During 2009, the DCFS had arranged for 150 societies to be audited.

***Effectiveness***

476. At present, only the BOG is implementing any supervisory regime to ensure compliance of financial institutions under the FIA with AML/CFT obligations. However, on-site AML/CFT inspections appear limited at best in their scope. While the BOG appears to

have adequate resources to carry out its functions, its staff has not received recent AML/CFT training. The other supervisory authorities the COI, the GSC and the DCFS do not actively supervise their licensees and registrants for compliance with AML/CFT requirements. Additionally, the resources available to the GSC and the DCFS are inadequate for them to carry out their functions in relation to the numbers of institutions they are responsible for supervision. It is noted that the situation in relation to the GSC is ameliorated by the fact that all their institutions are also supervised by the BOG.

### 3.10.2 Recommendations and Comments

#### **Recommendation 17**

- 477. Fines applicable to corporate bodies for breaches of AML/CFT obligations under the AMLCFTA should be dissuasive
- 478. Sanctions of designated supervisory authorities under the AMLCFTA should be dissuasive, proportionate and effective and should be applicable to directors and senior management of reporting entities

#### **Recommendation 23**

- 479. A designated supervisory authority should be assigned to ensure that co-operative societies adequately comply with AML/CFT obligations.
- 480. The SIA and the CSA should be amended to provide for their relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in financial institutions.
- 481. The IA, should be amended to provide for the relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest in financial institutions.
- 482. The SIA and the CSA should be amended to provide for directors and senior management of financial institution to be evaluated on the basis of “fit and proper” criteria.
- 483. The COI, the GSC and the DCFS should implement AML/CFT supervision for their relevant financial institutions

#### **Recommendation 25**

- 484. Guidelines to assist financial institutions to implement and comply with their respective AML/CFT requirements should be issued

#### **Recommendation 29**

485. GSC should have the power to compel production or obtain access to all records, documents or information relevant to monitoring of compliance

486. The CCDO should have enforcement or sanctioning powers for failure of co-operatives to comply with AML/CFT obligations

### **Recommendation 30**

487. Adequate staff and resources should be provided to the GSC and DCFS to carry out their functions

488. Adequate and relevant AML/CFT training should be provided to the staff of GSC, the DCFS and the BOG

#### 3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Fines applicable to corporate bodies for breaches of AML/CFT obligations under the AMLCFTA are not dissuasive</li> <li>• Sanctions of designated supervisory authorities under the AMLCFTA are not dissuasive, proportionate or effective and are not applicable to directors and senior management of reporting entities</li> </ul>
<b>R.23</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No designated supervisory authority has been assigned to ensure that co-operative societies adequately comply with AML/CFT requirements</li> <li>• The SIA and the CSA do not provide for their relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in financial institutions.</li> <li>• The IA does not provide for necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest in financial institutions</li> <li>• The SIA and the CSA do not provide for directors and senior management of financial institution to be evaluated on the basis of “fit and proper” criteria.</li> <li>• Neither the COI, the GSC or the DCFS have implemented AML/CFT supervision for their relevant financial institutions</li> </ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No guidelines to assist financial institutions to implement and comply</li> </ul>

		<b>with their respective AML/CFT requirements have been issued</b>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>GSC does not have power to compel production or obtain access to all records, documents or information relevant to monitoring of compliance</b></li> <li>• <b>CCDO does not have enforcement or sanctioning powers for failure of co-operatives to comply with AML/CFT obligations</b></li> </ul>

### **3.11 Money or value transfer services (SR.VI)**

#### **3.11.1 Description and Analysis (summary)**

#### **Special Recommendation VI**

489. Natural and legal persons that perform money or value transfer services in Guyana i.e. money transfer agencies/agents are subject to the MTALA. The MTALA was enacted in May 2009 and came into force on January 2, 2010. The BOG is the competent authority responsible for the administration of the MTALA and ensuring compliance of its licensees and registrants with the requirements.
490. Subsection 3(1) of the MTALA requires any person who is desirous of operating a licensed agency i.e. authorised to carry on the business of money transfer, to apply to the BOG for a licence. Persons who desire to be money transfer agents are required under section 8 of the MTALA to apply to the BOG.
491. In accordance with the definition of financial institution in the AMLCFTA which includes businesses listed in The First Schedule, money transfer agencies or services are subject to the requirements of the AMLCFTA. Additionally, subsection 10(3) of the MTALA stipulates that every licensed agency and money transfer agent must comply with the AMLCFTA. An assessment of the legal framework of the AMLCFTA with FATF standards is presented in sections 3.2 to 3.10 of this report.
492. At the time of the mutual evaluation, the MTALA had recently come into force and the BOG was in the process of assessing 8 applications for licences under the MTALA. As such, a system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements was still to be developed. It is noted that under section 16, the BOG has the authority to inspect the premises of any money transfer agency/agent and access any accounts, books, records, documents, electronic data and any other relevant information.
493. There is no requirement for licensed or registered money transfer agencies to maintain a current list of their agents which must be made available to the BOG. However, as noted above all money transfer agents are required to apply for a licence from the BOG under section 8 of the MTALA.
494. Under the MTALA there are three sanctions for breaches. Section 11 provides for the BOG to suspend or revoke a licence or certificate of registration for contravention or failure to comply with any provisions of the AMLCFTA or the MTALA. Additionally, subsection

17(2) stipulates that any person who contravenes any provision of the Act for which no penalty has been specified is liable on summary conviction to a fine of G\$500,000 (US\$2,440) and imprisonment for one year. The only provision that has a specific sanction is subsection 17(1) which imposes a penalty on summary conviction of a fine of G\$250,000 (US\$1,220) and imprisonment for 6 months for the failure of any licensee, money transfer agents or any of their directors, managers, officers or employees to submit any accounts, books, records, documents, electronic data or other relevant information requested during an examination by the BOG. The above sanctions are limited and include only minimal fines and terms of imprisonment to suspension, or revocation of the licence or certificate of registration. There is no provision for graduated sanctions. Additionally there is no indication as to whether the sanctions with regard to money transfer agencies are applicable to directors and senior management of these entities. The above sanctions cannot therefore be considered dissuasive, proportionate or effective.

495. In addition to the above, money transfer agencies/agents will also be subject to the penalties available under the AMLCFTA. These penalties are discussed in section 3.10.

### 3.11.2 Recommendations and Comments

496. As already noted, the BOG had started implementing a supervisory regime for money transfer agencies/agents at the time of the mutual evaluation. Given the fact that money remitters along with the commercial banks were the only institutions submitting STRs to the FIU and the importance of remittances in the economy it is recommended
497. A system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements be implemented as soon as possible.
498. Money or value service providers should be required to maintain a current list of its agents, which must be made available to the designated competent authority.
499. Penalties under the MTALA should be amended to be dissuasive and proportionate and applicable to the directors and senior management of money transfer agencies

### 3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	<ul style="list-style-type: none"> <li>• <b>No requirement for licensed or registered money transfer agencies to maintain a current list of their agents which must be made available to the BOG.</b></li> <li>• <b>No system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements</b></li> <li>• <b>Penalties under the MTALA are not dissuasive or proportionate and do not extend to the directors or senior management of money transfer agencies.</b></li> </ul>

#### **4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

##### **4.1 Customer due diligence and record-keeping (R.12)** (applying R.5, 6, 8 to 11, )

###### **General Description**

500. DNFBPs are defined on the basis of entities carrying out certain activities in the First Schedule of the AMLCFTA as follows:

- (a) casinos, betting shops or lotteries, including a person who carries on such a business through the internet, when their customers engage in financial transactions equal to or above five hundred thousand dollars or such lower amount as may be prescribed by the Minister responsible for Finance;
- (b) real estate agents, when they are involved in transactions for their client relating to the buying and selling of real estate and real estate brokers;
- (c) dealers in precious metals and dealers in precious and semi-precious stones, including, but not limited to those covered when they engage in any cash transaction with a customer equal to or above two million dollars or such lower amount as may be prescribed by the Minister responsible for Finance;
- (d) Attorneys-at-law, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client relating to the following activities-
  - (i) buying and selling of real estate;
  - (ii) managing of client money, securities or other assets;
  - (iii) management of bank, savings or securities accounts;
  - (iv) organisation of contributions for the creation, operation or management of companies; or
  - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (e) a trust or company service provider not otherwise covered by this definition, which as a business, provide any of the following services to third parties-
  - (i) formation or management of legal persons;
  - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
  - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person; and
- (f) such other business or profession as may be prescribed by the Minister responsible for Finance.

501. The above businesses and professions are incorporated in the definition of reporting entities in section 2 of the AMLCFTA which includes any activity listed in the First Schedule and therefore subjects them to the same AML/CFT requirements as reporting entities. It is noted that the above definition for DNFBPs incorporates thresholds for casinos and dealers in precious metals and precious stones of five hundred thousand dollars (US\$2,440) and two million dollars (US\$9,760) respectively. These thresholds are well within the FATF limits of US\$3,000 and US\$15,000. At the time of the mutual evaluation, Guyana had one licensed casino which was due to begin operations in March 2010.
502. The evaluation team was able to interview officers from one accounting firm, a trust company the Institute of Chartered Accountants, the Registrar of Co-operatives and Friendly Societies as well as the Bar Association

#### 4.1.1 Description and Analysis

### **Recommendation 12**

503. DNFBPs as part of the definition of reporting entities are required to comply with the requirements of Recommendations 5, 6 and 8 to 11. A full discussion with regard to the level of compliance with these Recommendations can be found in sections 3.2, 3.3, 3.5 and 3.6. Deficiencies identified in relation to financial institutions as noted for Recommendations 5, 6 and 8 to 11 in the relevant sections of this report are also applicable to DNFBPs.
504. It is noted that with regard to the first criterion of Recommendation 5 concerning the prohibition against the establishment or keeping of anonymous accounts or accounts in fictitious names that subsection 15(1) of the AMLCFTA only imposes this prohibition on financial institutions rather than all reporting entities as is done for the other AML/CFT requirements under Recommendations 5, 6 and 8 to 11. However, while there is no explicit prohibition against DNFBPs establishing or keeping anonymous accounts or accounts in fictitious, the CDD requirements detailed in section 15 which are applicable to all reporting entities and therefore include DNFBPs would effectively outlaw anonymous accounts or accounts in fictitious names. It is recommended for consistency that subsection 15(1) be amended to extend the prohibition against anonymous accounts and accounts in fictitious names to all reporting entities. .
505. DNFBPs were first incorporated into the AML/CFT regime under the AMLCFTA which was enacted in April 2009. Section 22 of the AMLCFTA provides for the appointment of a supervisory authority responsible for ensuring compliance with the obligations of the Act. No such supervisory authority has been appointed for the DNFBPs so there has been no monitoring of the DNFBPs for compliance. Among the DNFBPs interviewed only the accountants were aware of the provisions of the AMLCFTA due to a training seminar conducted by the FIU for the Institute of Chartered Accountants late in 2009.

#### 4.1.2 Recommendations and Comments

506. It is recommended that a designated supervisory authority be appointed as soon as possible for the DNFBPs to oversee compliance with the of requirements of the AMLCFTA.

#### 4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
<b>R.12</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The deficiencies identified in section 3 in relation to Recs. 5, 6 and 8 – 11 are also applicable to DNFBPs</li> </ul>

## 4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

### 4.2.1 Description and Analysis

#### **Recommendation 16**

#### ***Recommendation 13***

507. As stipulated in subsection 18(5) to 18(7) of the AMLCFTA, dealers in precious metals and precious stones, dealers in high value goods, real estate agents and casinos are required to report suspicious transactions in accordance with subsection (1). The reporting requirement for dealers in precious stones and precious metals and dealers in high value goods is limited to cash transactions equal to or above GYD\$2,000,000 (US\$4,880). However, subsection 18(1) deals with reporting entities paying special attention to complex, unusual large business transactions etc, while the reporting of suspicious transactions is dealt with in subsection (4) . The inaccurate reference appears to be a typographical error. It is noted that the requirement in subsection 18(4) for suspicious reporting to the FIU covers all reporting entities and therefore extends to DNFBPs. The inaccurate reference in subsections 18(5) to 18(7) should be corrected.

508. Lawyers, notaries, other independent legal professionals and accountants are required to report directly to the FIU. Subsection 18(12) of the AMLCFTA provides for attorneys not to disclose privilege communication which is defined as a disclosure;

a) to or to a representative of a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

b) to any person in connection with legal proceedings or contemplated legal proceedings.

509. With regard to Recommendations 14, 15 and 21 the deficiencies identified in relation to financial institutions in the relevant sections of this report are also applicable to DNFBPs.

### 4.2.2 Recommendations and Comments

510. It is recommended that a designated supervisory authority be appointed as soon as possible for the DNFBPs to oversee compliance with the requirements of the AMLCFTA.

### 4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
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<b>R.16</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>The deficiencies identified in section 3 in relation to Recs. 13, to 15, and 21 are also applicable to DNFBPs</b></li> </ul>
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### **4.3 Regulation, supervision and monitoring (R.17, 24-25)**

#### **4.3.1 Description and Analysis**

511. At the time of the mutual evaluation, Guyana did not have a comprehensive regulatory and supervisory regime to ensure that casinos were effectively implementing the AML/CFT measures required under the FATF Recommendations. Casinos as part of the DNFBPs listed in the First Schedule of the AMLCFTA are subject to AML/CFT obligations and pursuant to section 22 of the AMLCFTA; a supervisory authority is as yet to be designated to oversee their compliance with the requirements of the Act. The functions of the supervisory authority are dealt with later in this section of the report.
512. At the time of the mutual evaluation, the Gaming Authority of Guyana issued a premises licence and an operator's licence for the operation of the first casino in Guyana. The casino is located in a hotel complex and began operations in March 2010. The granting of the licence was done under the provisions of the Gambling Prevention (Amendment) Act 2007, Act No. 5 of 2007. While a copy of this Act was not made available to the assessment team, the following information was obtained. The Gambling Prevention (Amendment) Act 2007 allows the Gaming Authority to issue two (2) licences, viz., casino premises licences and casino operator's licences. No more than three (3) casino premises licences can be issued in any one of the ten (10) administrative regions of Guyana. Further, a casino premises licence can only be issued to a new hotel or resort complex that has a minimum of one hundred and fifty (150) rooms reserved for accommodation and has a minimum rating as allowed by regulations. Only workers employed at the casino, paying accommodated guests and any other person or classes of persons authorised by regulations may be admitted to casinos.
513. The Gaming Authority was established by regulations made pursuant to section 32 (a) of the Gambling Prevention Act as amended by the Gambling Prevention (Amendment) Act 2007. The Gambling Prevention (Establishment of Gaming Authority) Regulations 2008, Regulation No. 21 of 2008, came into operation on 31<sup>st</sup> October 2008. These regulations endow the Gaming Authority with powers to:
- 1) Issue licences under section 32 of the Act;
  - 2) Monitor casino operations in Guyana;
  - 3) Administer regulations under the Act; and
  - 4) Advise the Minister with respect to administering regulations or any other relevant matter
514. These regulations also provide for, among other things, the composition of the Gaming Authority; matters which the Gaming Authority should consider when deliberating over an application for a casino premises licence or a casino operator's licence; and the structure and content of an application for and validity of such licences. Regulation 13 of the Gambling Prevention (Establishment of Gaming Authority) Regulations 2008 allows the Gaming Authority to request and inspect financial information relating to the licensed activities (on a quarterly basis) of a casino operator. Further, the casino operator is

compelled to provide audited financial statements of the casino operator and those relating to the licensed activities. At the time of the mutual evaluation, the Gaming Authority was establishing its office and other than the five members of the Authority there were no members of staff. As such, procedures with regard to licensing and monitoring were still to be documented.

515. The team was advised that the initial licence application was subject to due diligence by the Guyana Office for Investment (GO Invest). GO Invest was established as a semi-autonomous body under the Office of the President. GO Invest's main goal is to promote and facilitate local and foreign private sector investment and exports. Since the applicant for the licence was a foreign consortium, GO Invest performed the due diligence on the basis of which the Gaming Authority granted the licence. Information on the criteria used by GO Invest to conduct due diligence on the principals involved in the application was not available although the team was informed that background checks for criminal records were conducted.
516. Regulation 11 of the Gambling Prevention (Establishment of Gaming Authority) Regulations 2008 states that the Gaming Authority when granting a casino premises licence or a casino operator's licence must, among other things, "... have regard to the applicant's suitability to carry on the licensed activities." In so doing, the Gaming Authority may have to consider:
- i. The integrity of the applicant, partner, shareholders, the directors, office holders of an applicant;
  - ii. The competence of the applicant; and
  - iii. The financial capability of the applicant
517. The above provision appears to give the Gaming Authority discretion in considering the integrity of the applicant, partner, shareholders, the directors and office holders of the applicant. There is no reference to assessing the integrity of beneficial owners and no basis on which integrity will be tested. Additionally there is no indication as to whether assessment of the integrity of an applicant would be done on a regular basis or just at the application for a licence. As already mentioned the Gaming Authority was establishing its office and procedures with regard to licensing and monitoring were still to be documented.

#### ***Designated Competent Authority for DNFBPs***

518. Section 22 of the AMLCFTA provides for the designation and functions of a supervisory authority to oversee compliance with the requirements of the Act. In accordance with the Fourth Schedule of the AMLCFTA, a supervisory authority for the DNFBPs is to be appointed by the Minister of Finance. At the time of the mutual evaluation, no such supervisory authority had been appointed for the DNFBPs.
519. Subsection 22(2) allows for the supervisory authority to examine and supervise the reporting entities and regulate and oversee effective compliance with CDD, record-keeping, monitoring, reporting and wire transfer requirements of the AMLCFTA and any other preventive measures in relation to combating money laundering and terrorist financing. Additionally, the supervisory authority can issue instructions, guidelines and co-operate and share information with other domestic and competent authorities. However, the above

provisions do not include access to all records, books, account files, documents and information necessary to carry out supervision.

520. With regard to sanctions, the supervisory authority under subsection 23(1) of the AMLCFTA can only impose the following sanctions:

- a) written warnings;
- b) order to comply with specific instructions;
- c) order regular reports from the reporting entity on the measures it is taking;
- d) prohibit convicted persons from employment within the sector
- e) recommend to the appropriate licensing authority of the reporting entity that the reporting entity's licence be suspended, restricted or withdrawn.

521. The above sanctions are primarily instructions with the only penalty for failure to comply being a recommendation of suspension, restriction or revocation of the licence of the reporting entity.. There is no provision for graduated sanctions for failure to comply with instructions, such as administrative fines. Additionally there is no indication as to whether the sanctions are applicable to directors and senior management of the reporting entities. The sanctions cannot therefore be considered dissuasive, proportionate or effective.

522. At the time of the mutual evaluation none of the competent authorities had issued guidelines to assist the DNFBPs to implement and comply with their respective AML/CFT requirements.

#### 4.3.2 Recommendations and Comments

##### **Recommendation 24**

523. Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.

524. The Gaming Authority should be required to assess the integrity of an applicant, partner, shareholder, directors office holders of an applicant and beneficial owners on the basis of fit and proper criteria on a regular basis..

525. A designated supervisory authority should be appointed for DNFBPs to oversee compliance with AML/CFT requirements as soon as possible

526. Sanctions of designated supervisory authorities under the AMLCFTA should be dissuasive, proportionate and effective and applicable to directors and senior management of DNFBPs

##### **Recommendation 25**

527. Competent authorities should establish guidelines to assist DNFBPs to implement and comply with their respective AML/CFT requirements.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
<b>R.24</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.</b></li> <li>• <b>The provision for the Gaming Authority to assess the integrity of an applicant is discretionary, limited to licensing, does not include beneficial owners, and does not specify fit and proper criteria.</b></li> <li>• <b>No designated supervisory authority appointed for DNFBPs to oversee compliance with AML/CFT requirements.</b></li> <li>• <b>Sanctions of designated supervisory authorities under the AMLCFTA are not dissuasive, proportionate or effective and are not applicable to directors and senior management of DNFBPs</b></li> </ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No guidelines to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT requirements have been issued</b></li> </ul>

## 4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

### 4.4.1 Description and Analysis

528. As listed in the First Schedule attached to the AMLCFTA, Guyana has extended AML/CFT requirements to non-financial businesses and professions other than DNFBPs. These include pawn-broking, exporters and importers of valuable items and used car dealers or car part dealers.

529. Guyana has a substantial cash based economy and a significant number of people who do not have bank accounts. However, modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering are increasingly being used by the public. These measures are being implemented by the commercial banks with provision of ATM machines and credit and debit card services to their customers. One bank advised that it was considering introducing basic e-banking services. At the time of the mutual evaluation the largest denomination bank note was G\$1,000 equivalent to US\$4.80.

### 4.4.2 Recommendations and Comments

### 4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
<b>R.20</b>	<b>C</b>	• <b>This recommendation is fully observed</b>

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS**

### **5.1 Legal Persons – Access to beneficial ownership and control information (R.33)**

#### **5.1.1 Description and Analysis**

530. Corporate entities under section 3 of the CA are required to be incorporated. Section 470 of the CA requires the Registrar of Companies to maintain a register of companies to contain information and documents required to be provided to the Registrar. The CA requires the submission of documents and information to the Registrar of Companies at the time of incorporation and on an annual basis. At the time of incorporation, section 4 of the CA requires the submission of signed articles of incorporation to the Registrar. Among the information required to be submitted at incorporation are the names, addresses, occupations and signatories of incorporators and the names and addresses of directors and the secretary. Section 153 requires the submission of annual returns, financial statements and auditors' reports. The annual returns include a list of the names and addresses of shareholders and the number of shares held by each at the date of the return.
531. The above provisions have no restrictions on companies being shareholders or prohibition on the use of nominee shareholders or directors or any requirement that the use of such nominees be disclosed to the Registrar, or indicated in the Company Registry. Notification of changes in the list of shareholders beyond what is submitted with the annual returns is not required.
532. Under section 189 of the CA, companies are required to maintain a register of shareholders showing the name and address of each shareholder and a statement of the shares held by each shareholder. Additionally, section 198 requires companies to maintain a register of substantial shareholders i.e. those that control at least 10 percent of the unrestricted voting rights. The register includes the names, addresses and particulars of the shares held by each substantial shareholder or nominee (nominees are named).
533. While the Registrar does not verify the information submitted under the CA, any omission or obvious misstatement can be investigated under section 514 which allows for the Registrar to make inquiries of any person in relation to compliance with the CA. Additionally, section 518 provides a criminal penalty on summary conviction of a fine of G\$5,000 (approximately US\$24.00) and imprisonment for six months. The Registrar advised that a substantial number of companies did not comply with the requirement to submit annual returns. Section 487 provides for the Registrar to strike off a company for failure to submit required returns, notices or documents under the CA. At the time of the mutual evaluation, an exercise was underway to remove from the register those companies that had not submitted the required outstanding returns.

534. Section 471 of the CA provides for public access on payment of a fee to copies of any document received by the Registrar under the Act. This allows for financial institutions to obtain information on beneficial owners as attested to by the Registrar, subject to the restrictions on the type of information available. Subsection 28(9) prohibits companies from issuing bearer shares or bearer share certificates.
535. At the time of the mutual evaluation, most of the records of the Registry had been transferred to an electronic database with read only access available to most staff members. The Registrar had signed memoranda of understanding with other government agencies, such as the GRA, the Guyana Office for Investment and the National Insurance Scheme to allow for the sharing of information.
536. While the maintenance of incorporation information is expected to be enhanced with computerisation, the availability of shareholder information depends on the submission of annual returns which has been problematic. The Registrar is making a concerted effort to improve the reliability of such information by applying the relevant section of the CA for non submission of returns i.e. striking off the offending companies.

#### 5.1.2 Recommendations and Comments

537. The CA should be amended to provide the Registrar of Companies with the requisite legal authority to ascertain the beneficial ownership of all companies and to ensure that information about beneficial ownership in the register of companies is adequate, accurate and current.
538. The authorities should consider the prohibition of the use of nominee shareholders and directors unless measures are taken to ensure that adequate, accurate and complete beneficial information is made available to the Registrar of Companies.

#### 5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The Registrar of Companies does not have legal authority to ensure that adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities</b></li> <li>• <b>No restrictions on the use of nominee shareholders and directors in the Companies Act nor is it possible for the Registrar of Companies to determine if nominees are being used</b></li> </ul>

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

539. The only extant piece of legislation dealing with trusts is the Civil Law of Guyana Act which stipulates that the Trustee Act 1893 of the United Kingdom is a part of the law of Guyana so far as it is applicable. The main requirements for trustees as stipulated in the

Civil Law of Guyana Act concern the types of securities, a trustee can invest trust monies in, and a trustee's entitlement to fair and reasonable compensation. Additionally, section 265 of the CA requires a public company to execute a trust deed in respect of any debentures the company plans to issue. The requirements stipulated in the CA are specific to the duties and obligations of the trustee and the rights of the debenture holders. There is no requirement for companies to submit information on these trust deeds to the Registrar of Companies.

- 540. The other law applicable to trusts in Guyana would be common law which allows for the creation of private trusts with no requirement for registration or notification. Trustee obligations under common law would consist of maintaining accurate records of the trust property, allowing a beneficiary or his lawyer to inspect trust accounts and supplying the beneficiary with details of investments on request. There is no central filing requirement for trusts and no register of all trusts in Guyana. Commercial trust services would be provided by the commercial banks and their subsidiaries as licensed under the FIA. These activities would be governed by the requirements of the AMLCFTA. However, as noted in section 3.2 of this report, there is no requirement for the verification of the legal status of specific legal arrangements such as trusts.
- 541. The power of law enforcement, regulatory, supervisory and other competent authorities to obtain or get access to beneficial information in relation to trusts would be applicable to trusts held by AML/CFT regulated businesses or private companies and individuals. With regard to AML/CFT regulated business, provisions under the AMLCFTA allow access by law enforcement, regulatory and supervisory authorities to information held by reporting entities. However, as already noted there is no legal requirement under the AMLCFTA for the verification of the legal status of specific legal arrangements such as trusts.
- 542. The case of private companies and individuals can be divided into lawyers and accountants who provide trust services and other companies and individuals. Lawyers and accountants are subject to the requirements of the AMLCFTA with the shortcoming referred to above also being applicable. It should also be noted that no supervisory authority has been designated as yet for lawyers and accountants, so they have not been subject to supervision for compliance with AML/CFT requirements. Since there are no legal requirements stipulating the retention of details of trusts, information held by other companies and individuals may vary considerably. The above factors would seriously affect the scope and reliability of available beneficiary information on trusts.

#### 5.2.2 Recommendations and Comments

- 543. It is recommended that Guyana should implement measures to ensure that its commercial laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.
- 544. Measures should also be implemented to ensure that adequate, accurate and timely information is available to law enforcement authorities concerning the beneficial ownership and control of trusts.

#### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
<b>R.34</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No legal requirement under the AMLCFTA for the verification of the legal status of trusts</b></li> <li>• <b>No standard requirement for the recording of beneficial ownership information on trusts, so the nature of information collected will vary</b></li> <li>• <b>Lawyers and accountants are not subject to monitoring for their AML/CFT obligations and it is not clear how reliable their information on trusts would be.</b></li> </ul>

### **5.3 Non-profit organisations (SR.VIII)**

#### **5.3.1 Description and Analysis**

545. NPOs can be incorporated or registered in Guyana either under the CA or the FSA. According to the website of the Ministry of Labour, Human Services and Social Security, there were 1,054 registered friendly societies with 635 functioning at the end of 2009.

546. Concerns about transparency and accountability have resulted in the authorities planning to table amendments to the FSA in the National Assembly in 2010. There is no plan to review the CA for a similar purpose. The NPO sector has not been subject to any sort of review to obtain timely information on the activities, size and other relevant features for the purpose of identifying the features and types of NPOs that are at risk of being misused for terrorist financing.

547. While registered charities have been included in the AML/CFT regime under the AMLCFTA, no supervisory authority has been designated as yet for these entities. Additionally, due to the recent enactment of the AMLCFTA, no outreach to the NPO sector with regard to terrorist financing abuse has been undertaken.

548. As already noted, NPOs can be incorporated under the CA. The requirements are similar to those of ordinary companies as discussed in section 5.1 of this report. The FSA is applicable to the following:

- a) Societies established to provide by subscription of the members, with or without donations for the relief of the members and their immediate family during sickness, old age, widowhood, relief and maintenance of orphans etc;
- b) Societies for any benevolent or charitable purpose
- c) Societies for purposes of social intercourse, mutual helpfulness, mental and moral improvement and rational recreation
- d) Societies for any purpose authorised by the Minister.



549. Before accepting any subscriptions or fees from any members, the above societies are required by section 11 of the FSA to make an application to the Registrar of Friendly Societies to take necessary steps for the formation of a society. Along with the application, the rules of the society and a list of officers must be submitted. The rules of a society comprise the objects of the society, the purposes and investment of the funds to be collected, the terms of admission of members, etc.
550. The Registrar as part of the application process reviews the rules to ascertain whether they are calculated to carry into effect the intentions and objects of the persons who desire to form the society. Once the Registrar is satisfied that the provisions of a registration under the Act have been met, the society is entered on the register.
551. There is no requirement in the FSA for the Registrar to vet the list of officers submitted with the initial application to ascertain whether they are fit and proper to manage the society.. However, there are prohibitions in section 33 against an undischarged bankrupt or any person who has been convicted in the past ten years of any offence involving dishonesty becoming officers or management of a society.
552. Section 26 of the FSA requires registered societies to keep accounts in prescribed books with separate accounts being kept of all moneys received or paid on accounts of every particular fund or benefit assured by the society for which a separate table of contributions is adopted. Separate accounts of the expenses of management of the society and of all contributions on account thereof are to be maintained.
553. Section 26 also requires all registered societies to submit their accounts to the Registrar for audit on an annual basis including a general statement of receipts and expenditure, funds and effects of the society and expenditure in respect of the several objects of the society. Societies are also required to have their assets and liabilities valued by a public valuer every five years and a copy of the report submitted to the Registrar. Copies of the accounts submitted to the Registrar are to be made available free of charge to any member of the society or any interested person. Failure to submit the requisite accounts to the Registrar is liable under section 59 of the FSA to a fine of GYD\$4,875 (US\$23.80). Offences under the FSA attributable to societies can also apply to the relevant officers of the society. The range of sanctions under the FSA is criminal except for suspension and cancellation of registration and consist mostly of fines which are minimal.
554. There are no requirements in the FSA for friendly societies to maintain records of domestic and international transactions for at least five years and make them available to appropriate authorities. However, as already mentioned registered charities are subject to the requirements of the AMLCFTA which includes record-keeping obligations of at least seven years for all transactions.
555. There are no mechanisms in place that allow for effective co-operation, co-ordination and information sharing between the Registrar of Friendly Societies, the Registrar of Companies and other relevant authorities about potential terrorist financing concerns in relation to NPOs.
556. As part of the functions of the Registrar of Friendly Societies section 27 requires the Registrar to annually audit the accounts of every society and provides for access to all books and accounts of the society. Pursuant to section 49 of the FSA, the Registrar can appoint an accountant to inspect and if necessary audit the books of a society at any time

and also has the authority to enter and inspect any of the premises of a registered society. Additionally, section 51 provides for the holding of inquiries into the constitution, working or financial condition of the society. The above provisions would allow for access to information on the administration and management of a particular society during the course of an investigation carried out by the Registrar.

- 557. There are no provisions in the FSA for the sharing of information by the Registrar with other competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a registered society is being exploited for terrorist financing purposes or is a front for terrorist fundraising.
- 558. There are no appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorism financing or other forms of terrorist support.
- 559. The functions of the Registrar of Friendly Societies as stated in section 9 of the FSA are to keep a register of all societies registered under the Act and to discharge all the duties required under the Act. These functions are carried out by the Division of Co-operatives and Friendly Societies in the Ministry of Labour, Human Services and Social Security. As already noted in section 3.10, this division is inadequately resourced to deal with the numbers of entities it has to regulate. Additionally, a significant number of the entities under the FSA do not submit the required annual returns as noted in a press conference held by the Minister of Labour, Human Services and Social Security at the end of 2009

### 5.3.2 Recommendations and Comments

- 560. The only type of NPO subject to the AML/CFT regime in Guyana is registered charities. However, the legal framework under the CA and the FSA allows for the incorporation and registration of different types of NPOs with registered charities coming under the designation of benevolent societies. The present regime has minimum requirements for registration and incorporation and maintenance and submission of financial statements and accounts to the relevant authorities. As such, the following is recommended:
- 561. The authorities should review the adequacy of laws and regulations that relate to NPOs and the activities, size and other relevant features of NPOs in order to identify features and types of NPOs at risk of being misused for terrorist financing
- 562. An outreach programme to NPO sector with a view to protecting the sector from terrorist financing abuse should be implemented
- 563. The authorities should implement a system of effective supervision and monitoring of all NPOs.
- 564. All NPOs should be required to maintain for a period of at least five years, records of domestic and international transactions and make them available to appropriate authorities

565. Measures should be established to ensure that competent authorities can gather information and investigate NPOs;
566. Appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support should be designated.

### 5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
<b>SR. VIII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No review of the adequacy of laws and regulations that relate to NPOs or of the activities, size and other relevant features of NPOs in order to identify features and types of NPOs at risk of being misused for terrorist financing</li> <li>• No outreach to NPO sector with a view to protecting the sector from terrorist financing abuse</li> <li>• Supervision and monitoring of NPOs under the FSA is not effective</li> <li>• No requirement for NPOs other than registered charities to maintain for a period of at least five years, records of domestic and international transactions and make them available to appropriate authorities</li> <li>• Limited measures for authorities to gather information and investigate NPOs;</li> <li>• No appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.</li> </ul>

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 National co-operation and coordination (R.31 & 32)

#### 6.1.1 Description and Analysis

#### **Recommendation 31**

#### *Mechanisms in place for domestic cooperation and coordination:*

567. There do not appear to be any formal arrangements in place to facilitate co-operation and coordination of efforts domestically, although the FIU indicated that it shares information

with the Guyana Police Force on a limited basis; the GRA which include Customs; the BOG; and CANU. The FIU has limited communication with these entities. Additionally, the National Security Council meets weekly and is made up of various intelligence units' heads of departments and they deal with matters concerning national security. The sharing of information by the above noted entities is not primarily for the purpose of developing and implementing policies to combat money laundering and terrorist financing. Additionally the above mechanisms do not include any of the financial regulatory authorities.

### ***Additional elements***

568. There are no fixed or firm mechanisms in place that address consultation between competent authorities such as the financial sector, DNFBP's or other entities subject to AML/CFT laws, regulations, guidelines or other measures.

### **Recommendation 32**

569. Subsection 9(4) of the AMLCFTA requires the Director of the FIU to advise the Minister of Finance on matters relating to money laundering or terrorist financing that may affect public policy and national security. While this function could entail reviewing the effectiveness of the AML/CFT regime on a regular basis, this requirement is not specified. A national body responsible for facilitating co-ordinating and co-operating among the AML/CFT agencies could also perform this function.

#### **6.1.2 Recommendations and Comments**

570. The authorities should consider the establishment of a national body comprised of relevant AML/CFT agencies to facilitate co-operation and co-ordination in implementing AML/CFT policy and to provide advice to Government and guidance to private entities in relation to AML/CFT obligations.
571. The competent authorities should consider establishing explicit mechanisms for consultation between competent authorities, the financial sector and other sectors (including DNFBP) that are subject to AML/CFT laws, regulations, guidelines or other measures.
572. The authorities should implement a regular review of the AML/CFT systems in Guyana.

#### **6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>NC</b>	<b>• There is no structured coordination and cooperation between the policy makers, the FIU, law enforcement and supervisors and other agencies concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.</b>
<b>R.32</b>	<b>NC</b>	<b>• No regular review of the effectiveness of the AML/CFT systems</b>

## **6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)**

### **6.2.1 Description and Analysis**

#### **Recommendations 35 and SR I**

573. Guyana acceded to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 19 March 1993, the United Nations Convention against Transnational Organised Crime (Palermo Convention) on 14 September 2004 and the International Convention for the Suppression of the Financing of Terrorism (FT Convention) on 12 September 2007.

#### ***Implementation of the Vienna Convention (Articles 3-11, 15, 17 & 19)***

574. The Vienna Convention has been implemented to a large degree through domestic legislation in Guyana. The legislation includes The Narcotic Drug and Psychotropic Substance (Control) Act 1988; the Criminal Law (Offences) Act; the AMLCFTA and the Fugitive Offenders Act 1988. The laws in Guyana do not provide for mutual legal assistance (Article 7); transfer of proceedings (Article 8); International co-operation and assistance for transit states (Article 10); and controlled deliveries [at the international level] (Article 11). Additionally as noted in sections 2.1, the implementation of the criminalisation of the ML provision is deficient as follows:

- i. Defined ML offences in the AMLCFTA do not include “assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions” as required in Article 3(1)(b)(i) and (ii) of the Vienna Convention and Article 6(1)(a) of the Palermo Convention.

#### ***Implementation of the Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34)***

575. The Palermo Convention has been enacted to an extent through the Criminal Law (Offences) Act; the AMLCFTA and the Fugitive Offenders Act 1988. However, there are gaps in the legislative framework that reduce the level of implementation of the Palermo Convention. These gaps include lack of a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other entities susceptible to ML; no effective systems to facilitate cooperation and exchange of information internationally and domestically (Article 7); no legislation mandating the creation of a Central Authority with responsibility for facilitating and providing the widest measure of mutual legal assistance (Article 18); no bilateral or multilateral agreements to assist in joint investigations in one or more states and to allow for special investigative techniques such as controlled deliveries (Articles 19 & 20); no measures that offer effective protection of witnesses and assistance to and protection of victims (Articles 24 & 25); and lack of specific training programmes for law enforcement personnel from the relevant entities (Article 29). In addition, as indicated in section 2.3 the definition of property in the AMLCFTA liable for confiscation does not include indirect proceeds of crime including income, profits or other benefits from proceeds of crime or property held by third persons. (Article 12(5) of Palermo Convention)

#### ***Additional element***

576. Guyana has either signed or acceded to all 13 terrorism related UN Conventions and Protocols. Guyana is a member of the Organisation of American States and ratified the 2002 Inter-American Convention against Terrorism.

### **Special Recommendation I**

#### ***Implementation of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) (Articles 2-18)***

577. The Terrorist Financing Convention has been implemented to a large extent by the AMLCFTA. However, as noted in section 2.2 the definition of property in the AMLCFTA with regard to terrorist financing does not include legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind. (Article 1(1) of the FT Convention.

#### ***Implementation of United Nations Security Council Resolutions relating to the prevention and suppression of FT – S/RES/1267(1999) and S/RES/1373(2001)***

578. There are no procedures in place to authorise funds frozen under S/RES/1267(1999) and S/RES/1373(2001) as there is no domestic legislation implementing these special resolutions.

### **6.2.2 Recommendations and Comments**

579. The competent authorities in Guyana should take steps to fully implement the Vienna, Palermo and Terrorist Financing Conventions.

580. The AMLCFT legislation should be amended to provide compliance with S/RES/1267(1999) and S/RES/1373(2001) for freezing funds of designated persons/organisations, and also develop and implement procedures for delisting requests and unfreezing of funds.

581. The competent authorities should provide or issue guidance to financial institutions with respect to obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU.

582. There should be training for the relevant entities so that they are aware of their obligations under the legislation and in order for the legislation to be implemented effectively.

### **6.2.3 Compliance with Recommendation 35 and Special Recommendation I**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.35</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The Vienna, Palermo and Terrorist Financing Conventions have not been fully implemented</b></li> </ul>
<b>SR.I</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The Guyana Authorities have not implemented S/RES/1267(1999) and S/RES/1373(2001)</b></li> </ul>

### **6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)**

#### **6.3.1 Description and Analysis**

#### **Recommendation 36 and Special Recommendation V**

##### ***Range of mutual legal assistance***

583. Measures to provide assistance in matters concerning money laundering offences and terrorist financing offences to the authorities in other countries are set out in Part VI of the AMLCFTA. Subsection 76(1) of the AMLCFTA enables the Court or the competent authority in Guyana to co-operate with the Court or other competent authority of another state. The competent authority as defined in the AMLCFTA is the DPP. However, the team was advised that proposed mutual legal assistance legislation will designate the Minister of Home Affairs as the Central Authority.
584. Subsection 76(3) stipulates that the assistance that can be provided is related to a civil, criminal or administrative investigation, prosecution or proceedings, as the case may be involving money laundering offences and terrorist financing offences or the proceeds of crime or violations of any provision of the AMLCFTA.
585. As listed in subsection 76(4), assistance can include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, obtaining testimony in the requested states, facilitating the voluntary presence or availability in the requesting state of persons, including those in custody, to give testimony, locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items and provisional measures. Additionally, subsection 76(2) provides for requests to identify, trace or produce, freeze, seize or forfeit the property, proceeds or instrumentalities connected to money laundering offences, terrorist financing offences and serious offences. The above list does not include assets of corresponding value.
586. Pursuant to subsection 76(6), the above measures are limited to countries with whom Guyana has entered into mutual legal assistance treaties on a bilateral or multilateral basis, and any assistance is governed by the terms set out in the respective treaty. At the time of the mutual evaluation, the 1991 Guyana – UK Agreement provided the basis for co-operation in relation to narcotics and money laundering. Guyana also ratified in July 2008 the Inter-American Convention on Mutual Legal Assistance which provides a legal basis for assistance in criminal matters between Guyana and the signatories which comprise most of the members of the Organisation of American States including the United States and Canada
587. Guyana does not have set guidelines or procedures in place in regard to responding in a timely constructive and effective manner to MLA requests. Similarly there are no clear and efficient processes for the execution of mutual legal assistance requests. Under the AMLCFTA, the DPP is responsible for dealing with mutual legal assistance request. However, as already mentioned proposed mutual legal assistance legislation will designated

the Minister of Home Affairs as the Central Authority and would include provisions dealing with the execution of mutual legal requests.

588. With regard to a request for mutual legal assistance in relation to an offence involving fiscal matters, there is no provision to reject such request and it is noted that cases involving proceeds of crime are included in the measure for the provision of assistance. It is assumed that offences involving fiscal matters will come under the category of cases involving proceeds of crime.
589. Subsection 76(5) of the AMLCFTA stipulates that any provision referring to secrecy or confidentiality shall not be an impediment to compliance with providing assistance, when the information is requested by or shared with the Court or other competent authority. It is noted that subsection 18(12) of the AMLCFTA states that nothing in the Act requires an attorney-at-law to disclose any privileged information.
590. Sections 27 and 30 of the AMLCFTA allows for the use of the provisions of sections 28 and 29 concerning the granting of search warrants for the location of documents relevant to locating property for foreign state requests for assistance. The powers under these sections are discussed in section 2.6 of this report. It is noted that the powers in relation to production orders as stated in section 24 of the Act have not been made available for foreign state requests for assistance.
591. No information was available as to whether the authorities in Guyana had considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

### **Recommendation 37 and Special Recommendation V**

#### ***Mutual legal assistance in the absence of dual criminality***

592. There is currently no legislation that comprehensively provides for MLA in Guyana save for the international cooperation provisions contained in sections 76 to 78 of the AMLCFTA. These provisions are limited to assistance to money laundering offences, terrorist financing offences and serious offences. Serious offences as defined in the AMLCFTA includes a serious offence against a provision of a law of a foreign state, in relation to an act or omission which had it occurred in Guyana would have constituted an offence. This definition incorporates dual criminality in the granting of MLA. There are no provisions which allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures.. As such MLA in the absence of dual criminality does not exist in Guyana

#### ***Extradition and dual criminality***

593. No information was provided to the assessors as to whether technical differences in the categorisation and denomination of offences in the laws of other countries would impede the authorities in Guyana from providing mutual legal assistance.

### **Recommendation 38 and Special Recommendation V**



### ***Response in mutual legal assistance requests***

594. Subsection 76(2) of the AMLCFTA provides for the Court or competent authority to take appropriate actions including those contained in sections 38 to 64 in response to requests from the Court or other competent authority of another state to identify, trace, produce, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, terrorist financing offences and serious offences. The actions in sections 38 to 64 include restraining, forfeiture, and pecuniary penalty orders and the appointment of receivers.
595. Guyana does not have set guidelines or procedures in place in regard to timelines to facilitate expeditious response to MLA requests from foreign jurisdictions and this includes requests to identify, freeze, seize and confiscate laundered property, proceeds from ML or predicate offences, instrumentalities used in commission of these offences or for FT related requests. Any MLA request can only be facilitated where there is a mutual legal assistance treaty in force between the jurisdictions and the fulfilment of the MLA request will be governed by the terms of any treaty (section 76 AMLCFT).
596. Guyana legislation does not specifically address requests relating to property of corresponding value. There are no provisions under Guyana law regarding co-ordinating seizure and confiscation actions with other countries/jurisdictions in relation to ML or FT matters.
597. The AMLCFTA does not establish an asset forfeiture fund. Under the AMLCFT monies collected via forfeiture and confiscation orders “shall” be paid into the consolidated fund (section 109). There is no provision under Guyana law that provides for sharing of confiscated assets where confiscation directly or indirectly results from co-ordinated law enforcement efforts between jurisdictions.

### ***Additional elements***

598. Under section 77(1) of the AMLCFT a foreign government that has entered into a mutual legal assistance treaty with Guyana can apply to the Court to register and enforce an external confiscation/forfeiture order provided the requirements are satisfied. The Act does not explicitly prohibit the registering of civil or non-criminal confiscation orders and this may be an available option if the applicant country fits the criteria. Also, section 76 provides that the Court or competent authority can act on requests concerning assistance related to civil matters.

### **Recommendation 30**

599. As already noted the DPP as the defined competent authority under the AMLCFTA is responsible for responding to MLA requests. A review of the staff and resources of the DPP can be found in section 2.6 of this report.

### **Recommendation 32 – Statistics**

600. No statistics on mutual legal assistance or other international requests for co-operation are maintained.

### 6.3.2 Recommendations and Comments

#### **Recommendation 36**

601. Range of possible mutual legal assistance should include freezing, seizure or confiscation of assets of corresponding value
602. Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delay should be developed and implemented.

#### **Recommendation 37**

603. There should be provisions which allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures
604. There should be measures to ensure that technical differences in categorisation and denomination of offences in laws of other countries do not impede the provision of mutual legal assistance.

#### **Recommendation 38**

605. Guidelines or procedures in regard to timelines to facilitate an expeditious response to MLA should be developed and implemented
606. There should be provisions allowing for requests relating to property of corresponding value
607. The authorities should put in place arrangements regarding co-ordinating seizure and confiscation actions with other countries/jurisdictions in relation to ML or FT matters.
608. The authorities in Guyana should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.
609. Authorities should consider a provision under Guyana law that provides for sharing of confiscated assets where confiscation directly or indirectly results from co-ordinated law enforcement efforts between jurisdictions
610. The authorities should maintain statistics on mutual legal assistance or other international requests for co-operation.

### 6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
<b>R.36</b>	NC	<ul style="list-style-type: none"><li>• Range of MLA provided for under Part VI of the AMLCFTA only applies to countries that have in force a bi-lateral or multi-lateral MLA Treaty with</li></ul>

		<p><b>Guyana, thus Guyana does not provide the widest range of mutual legal assistance.</b></p> <ul style="list-style-type: none"> <li>• <b>Range of possible mutual legal assistance does not include freezing, seizure or confiscation of assets of corresponding value</b></li> <li>• <b>No clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delay.</b></li> <li>• <b>Unable to assess effectiveness due to lack of statistics and the recent enactment of the AMLCFTA.</b></li> </ul>
<b>R.37</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No provisions which allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures</b></li> <li>• <b>No measures for technical differences in categorisation and denomination of offences in laws of other countries not to impede the provision of mutual legal assistance.</b></li> </ul>
<b>R.38</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No guidelines or procedures in regard to timelines to facilitate an expeditious response to MLA.</b></li> <li>• <b>No provisions dealing with requests relating to property of corresponding value</b></li> <li>• <b>No arrangements regarding co-ordinating seizure and confiscation actions with other countries/jurisdictions in relation to ML or FT matters.</b></li> <li>• <b>Unable to assess effectiveness due to lack of statistics and the recent enactment of the AMLCFTA.</b></li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>The deficiencies noted with regard to Recs. 36, 37 and 38 are applicable in relation to terrorist financing.</b></li> </ul>

## **6.4 Extradition (R.37, 39, SR.V, R.32)**

### **6.4.1 Description and Analysis**

#### **Recommendation 39 and Special Recommendation V**

##### ***Extraditable offences***

611. The AMLCFT provides that ML and FT offences are offences for the purpose of extradition (section 108). Extradition is handled by the Minister of Home Affairs. The process for extradition to Commonwealth countries and treaty territories is governed by the Fugitive Offenders Act 1988. The US is a treaty territory and extradition is dealt with in

accordance with the 1931 UK-USA Extradition Treaty inherited from the time when Guyana was a colony of the UK..

612. Section 8 of the Fugitive Offenders Act sets out general restrictions on extradition. These restrictions include prohibitions on the following:
- a) The offence on which the extradition request is made, is of a political character;
  - b) The purpose of the request is to prosecute, punish on account of race, tribe, sex, religion, nationality or political opinions.
  - c) The extradited person might be prejudiced at trial or punished, detained or restricted in personal liberty due to race, tribe, sex, religion, nationality or political opinions.
613. Unless the person consents to be extradited he or she will not be extradited if they are entitled to be released according to any law dealing with previous acquittal or conviction if the person was charged with the same offence in Guyana. Additionally, a person cannot be extradited unless provision is made in the law or treaty of the Commonwealth country or treaty territory (respectively) that the person will not be extradited to a third country by the government of the requesting country unless the Minister consents. This rule is to be implied into the law or treaty if there is no express provision for this rule.
614. Section 9 allows for extradition requests to come from consular offices located in Guyana, Heads of State, Heads of Government, any Minister of Government or any other person approved by the Minister of Home Affairs. Extradition requests by the Heads of State, Heads of Government and any Minister of Government would have to be made through the diplomatic representative of Guyana in or for that Commonwealth country or treaty territory. Requests are to be accompanied by either a warrant for arrest or a certificate of conviction and sentence, particulars of the person whose extradition is requested and facts of the case and pertinent law and evidence which is tendered in support of the request for extradition that justifies the issue of a warrant for arrest of the person as if the offence was committed in Guyana.
615. Pursuant to section 12 of the Fugitive Offenders Act, on receipt of a request, the Minister may issue an order requiring a magistrate to proceed with the case. The magistrate can, on due consideration of presented evidence, issue a warrant for arrest. A magistrate can also issue a provisional warrant under section 13 (2) of the Fugitive Offenders Act 1988 where the magistrate receives information (including any document bearing the seal of INTERPOL which was issued to the Commissioner of Police) relating to any person in Guyana who is accused of or unlawfully at large after the conviction of an extraditable offence. Upon issuing a provisional warrant the magistrate will have to notify the Minister of the issue of the provisional warrant and send to him the information or evidence upon which the warrant was issued. The Minister will then decide whether or not to issue an authority to proceed or cancel the warrant. Section 14 stipulates that once arrested, the person whose extradition is sought can agree to be extradited and request the Minister to order his return to the country requesting his extradition. Challenges to a decision of a magistrate regarding extradition requests can be made to the High Court with a subsequent right of appeal to the Court of Appeal on any question of law

616. Section 5 of the Fugitive Offenders Act provides for extradition of persons found in Guyana accused of an extraditable offence. There are no provisions under the act that prohibit the extradition of Guyana nationals. Section 7 of the Fugitive Offenders Act 1988 stipulates that if a person is *found* in Guyana and is accused of an extraditable offence or is alleged to be unlawfully at large after conviction of any extraditable offence in any Commonwealth country or treaty territory, that person may be arrested and extradited to that country or territory. This applies to ML and FT offences.
617. While there are no specific measures to deal with money laundering and terrorist financing offences, the authorities advise that the same measures or procedures that exist under the Fugitive Offenders Act 1988 will be applied to money laundering and terrorist financing offences to ensure that these matters are handled without undue delay.

***Additional element***

618. Existence of simplified procedures for extradition: There are no simplified procedures under the Fugitive Offenders Act that provides direct transmission of extradition requests between appropriate ministries. This is true for extradition proceedings relating to ML and FT or terrorist acts.

**Recommendation 37 and Special Recommendation V**

619. Under section 5 of the Fugitive Offenders Act an extraditable offence is one of which a person has been accused or convicted where the act or omission constituting the offence, however described, constitutes an offence and is punishable with death or imprisonment for life or for a term of not less than two years under the law of Guyana and of the Commonwealth country or treaty territory making the extradition request. This provision specifies dual criminality for extradition purposes. There are no provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures.
620. The definition of an extraditable offence in section 5 of the Fugitive Offenders Act in referring to the offence as “however described” suggests that technical differences between the laws in the requesting country and Guyana should not pose an impediment to extradition. This provision is applicable to ML and FT offences since section 108 of the AMLCFT provides that ML and FT offences are extraditable.

**Recommendation 32 – Statistics**

621. No statistics on extradition are maintained.

**6.4.2 Recommendations and Comments**

**Recommendation 39**

622. Procedures or measures should be put in place to facilitate the timely response to requests for extradition and proceedings relating to ML and FT and to ensure such requests are handled without undue delay.

### **Recommendation 37**

623. There should be provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures

624. The authorities should maintain statistics on extradition.

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.39</b>	<b>PC</b>	• <b>Unable to assess effectiveness due to the lack of statistics on extradition</b>
<b>R.37</b>	<b>NC</b>	• <b>No provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures.</b>
<b>SR.V</b>	<b>NC</b>	• <b>The deficiencies noted with regard to Recs. 39 and 37 are applicable in relation to terrorist financing.</b>

## **6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)**

6.5.1 Description and Analysis

### **Recommendation 40/ SR V**

625. The overarching provision which generally allows for the international exchange of information is section 111 of the AMLCFTA which overrides the secrecy obligations imposed by other legislation or common law. It provides that subject only to the Constitution the provisions of the AMLCFTA shall have effect notwithstanding any obligation as to secrecy or other restriction upon disclosure of information. The AMLCFTA has provisions which allow for the DPP, the FIU and the designated supervisory authorities to provide a wide range of international co-operation to their foreign counterparts. These provisions cover both ML and FT matters. However, due to the recent enactment of the AMLCFTA, procedures and guidelines in relation to these provisions are not in place and no information regarding instances of requests for information from foreign counterparts was provided to the team of assessors.

#### ***Gateways, mechanisms or channels for exchange of information.***

626. Section 14 of the AMLCFTA allows the FIU through the Attorney General on behalf of the Government to enter into an agreement or arrangement with the government of a foreign state or on its own to enter into such agreement with an international organisation or body established by the governments of foreign states regarding the exchange of reports or information between the FIU and any institution or agency of that state or organisation that has powers and duties similar to those of the FIU. The information to be exchanged is to be relevant to investigating or prosecuting a serious offence or a money laundering or terrorist financing offence or an offence that is substantially similar to either offence.

627. Additionally, agreements or arrangements entered into are to include restrictions on the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence, a terrorist financing offence or an offence that is substantially similar to either offence and that the information is to be treated in a confidential manner and not be disclosed further without the express consent of the FIU. Due to the recent enactment of the AMLCTA, no formal agreement or arrangement for the sharing of information with other governments, FIUs or foreign competent authorities have been signed. The FIU is currently in the process of applying for membership in Egmont.
628. In addition to the above, subsection 9(4)(m) of the AMLCFTA also provides for the FIU to disclose any report or any information to other FIUs on the basis that sharing such information is relevant to investigating or prosecuting a money laundering offence or terrorist financing or an offence that is substantially similar to either offence. The FIU advised that it has shared information with other FIUs prior to the enactment of the AMLCFTA, but no information on the details of such sharing was forthcoming.
629. In addition to the FIU, subsection 22(2)(m) provides for supervisory authorities to exchange information with agencies performing similar functions in other countries and territories. Supervisory authorities under the AMLCFTA are designated to examine and supervise relevant reporting entities to ensure effective compliance with the AML/CFT requirements of the AMLCFTA and include the BOG, the COI and the GSC. While the above provisions allow for exchange of information on request, there are no procedures for spontaneous exchanges of information

### ***Conducting inquiries***

630. As noted above, subsection 9(4)(m) of the AMLCFTA provides for the sharing of information to other FIUs. The information that can be shared is information the FIU either receives or has access to, through its main functions and responsibilities as set out in sections 9, 13, 14 and 15 of the AMLCFTA. Additionally, subsection 9(4)(k) gives the FIU the authority to request and receive information from any reporting entity, any supervisory agency, any law enforcement agency and any other competent authority in Guyana or elsewhere for the purposes of the AMLCFTA. These provisions enable the FIU to request information from any database on behalf of foreign counterparts.
631. The courts and the DPP can conduct investigations on behalf of foreign counterparts under subsection 76(3) of the AMLCFTA which stipulates that assistance with respect to a request from a Court or other competent authority of another state can be provided in relation to a civil, criminal or administrative investigation, prosecution or proceedings, as the case may be involving money laundering offences and terrorist financing offences or the proceeds of crime or violations of any provision of the AMLCFTA.
632. Additionally under subsection 22(2)(g) of the AMLCFTA, specified supervisory authorities – the Governor of the BOG, the COI, the GSC and any supervisory authority whose member or members shall be appointed by the Minister of Finance can also cooperate, request and exchange information with agencies performing similar functions in other countries and territories in investigations, proceedings or prosecutions relating to proceeds of crime, money laundering or terrorist financing, and to violations of the laws and administrative regulations dealing with reporting entities.

633. The provisions in place with regard to the exchange of information do not impose any disproportionate or unduly restrictive conditions and there is no prohibition on requests for information involving fiscal matters.
634. As already mentioned section 111 of the AMLCFTA overrides any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise. This provision effectively removes secrecy or confidentiality legal requirements as grounds for refusal to requests for co-operation. It is noted that subsection 18(12) of the AMLCFTA provides for attorneys not to disclose privilege communication.
635. There is no clause in the AMLCFTA which explicitly provides for the confidentiality of exchanged information received by competent authorities. However, it is assumed that section 12 which imposes a confidentiality requirement on any person who obtains information in any form as a result of his connection with the FIU would extend to exchanged information. However, section 12 applies only to information held by the FIU. With regard to the designated supervisory authorities, the BOG, the COI and the GSC, it is assumed that the confidentiality requirements in their respective governing statutes would apply. A review of the relevant laws revealed that while subsection 31(6) of the FIA imposes confidentiality requirements on the staff of the BOG, the confidentiality requirements in section 41 of the IA limits confidentiality to any investigation conducted by the COI on the affairs of an insurance company. Section 14 of the SIA 1998 imposes a duty of confidentiality on any Member or person employed or retained by the GSC and on any person who receives confidential information from any Member or person employed by the GSC.

#### ***Additional elements***

636. No information was available on measures in place that permits prompt and constructive exchange of information with non-counterparts, including information relating to FT inquiries.

#### **Recommendation 32 - Statistics**

637. No statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals are maintained

#### **6.5.2 Recommendations and Comments**

#### **Recommendation 40**

638. Procedures for spontaneous exchange of information should be developed
639. The COI should have confidentiality obligations that include exchanged information
640. Statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals should be maintained.

#### **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
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No procedure for spontaneous exchange of information</li> <li>• The COI does not have confidentiality requirements that include exchanged information</li> <li>• Unable to assess effectiveness of international co-operations due to lack of statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals and the recent enactment of the AMLCFTA</li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The deficiencies noted with regard to Rec. 40 are applicable in relation to terrorist financing.</li> </ul>

## **7. OTHER ISSUES**

### **7.1 Resources and statistics**

641. 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. The ratings box in this section of the report consolidates all of the deficiencies identified elsewhere in the report.

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of trained financial investigators in the GPF and CANU</li> <li>• No ML training of staff of the DPP</li> <li>• NO ML/FT training of staff of GPF and CANU</li> <li>• Integrity of GPF is in doubt</li> <li>• GSC and DCFS do have adequate staff and resources to carry out their functions</li> <li>• Staff of GSC and DFSC have not received AML/CFT training</li> <li>• Insufficient AML/CFT training of staff of BOG</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>The FIU is inadequately staffed.</b></li> <li>• <b>Inadequate number of Customs outposts to ensure security at the borders</b></li> </ul>
<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No regular review of the effectiveness of the AML/CFT systems</b></li> <li>• <b>No statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals are maintained.</b></li> <li>• <b>No statistics on extradition are maintained</b></li> <li>• <b>No statistics on mutual legal assistance or other international requests for co-operation are maintained.</b></li> <li>• <b>No statistics in reference to any of the requirements in SR IX were available.</b></li> <li>• <b>No statistics on the number of STRs received or disseminated by the FIU or the number of times information was exchanged with authorities in other countries were available</b></li> </ul>

## **7.2 Other relevant AML/CFT measures or issues**

642. There are no further issues to be discussed in this section

## **7.3 General framework for AML/CFT system (see also section 1.1)**

643. There are no elements of the general framework that significantly impair or inhibit the effectiveness of the AML/CFT system in Guyana.

## **TABLES**

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>4</sup></b>
<b>Legal systems</b>		
1. ML offence	<b>PC</b>	<p><b>ML offences in the AMLCFTA are not consistent with the requirements of the Vienna and the Palermo Conventions.</b></p> <p><b>Illicit trafficking in stolen and other goods and smuggling are not criminalized as a serious offence and are therefore not a predicate offences to ML</b></p> <p><b>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.</b></p>
2. ML offence – mental element and corporate liability	<b>LC</b>	<p><b>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation and minimal resources limit implementation.</b></p>
3. Confiscation and provisional measures	<b>PC</b>	<p><b>The definition of property liable for confiscation does not include assets of every kind, whether tangible or intangible, or indirect proceeds of crime including income, profits or other benefits from proceeds of crime or property held by third persons.</b></p> <p><b>Unable to assess effective implementation since there has been no restraint, forfeiture or production orders or search warrants</b></p>

4. <sup>4</sup> These factors are only required to be set out when the rating is less than Compliant.

		granted under the AMLCFTA due to its recent enactment
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	PC	<p>No provision for the GSC to access information relevant to AML/CFT matters from registrants of the SIA.</p> <p>No provision for the CCDO to share information from a society registered under the CSA with local and international competent authorities</p>
5. Customer due diligence	PC	<p>Threshold for the application of CDD measures for occasional transactions has not been prescribed, leaving such determination to the discretion of the reporting entities</p> <p>No requirement for reporting entities to obtain information on the ownership of customers who are legal persons or legal arrangements.</p> <p>No requirement for reporting entities to determine who are the natural persons that ultimately own or control the customer</p> <p>No requirement for the verification of legal status of specific legal arrangements such as trusts</p> <p>No definition of beneficial ownership with regard to legal entities.</p> <p>No requirement for reporting entities to perform enhanced due diligence for higher risk categories of customers</p> <p>No requirement that reporting entities verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.</p> <p>No requirement prohibiting reporting entities from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as</p>

		<p>stipulated in criteria 5.3 to 5.6 and being required to consider making a suspicious transaction report.</p> <p>Except in the case of customers at the time of the enactment of the AMLCFTA, there is no requirement for financial institutions to terminate a business relationship due to the inability to obtain information set out in criteria 5.3 to 5.6 and consider making a suspicious transaction report.</p>
6. Politically exposed persons	PC	<p>No requirement for reporting entities to obtain senior management approval to continue a business relationship with a customer or beneficial owner who is subsequently found to be a PEP or becomes a PEP.</p> <p>Limited awareness by financial institutions about the legal requirements concerning PEPs.</p>
7. Correspondent banking	LC	<p>No requirement for financial institutions to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.</p> <p>No requirement for financial institutions to ascertain for themselves that the AML/CFT controls of a respondent institution are adequate and effective.</p>
8. New technologies & non face-to-face business	NC	<p>No requirement for financial institutions to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes.</p> <p>No requirement for financial institutions to have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions.</p>
9. Third parties and introducers	PC	<p>Authorities have issued no guidance in relation to which countries third parties that meet FATF conditions can be based.</p> <p>Financial institutions are not required to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23, 24 and 29 and</p>

		have measures in place to comply with CDD requirements set out in Recommendation 5.
10. Record keeping	PC	No requirement for financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
11. Unusual transactions	LC	Findings on complex, unusual, large transactions or unusual patterns of transactions with no apparent or visible economic or lawful purpose are available only to the FIU and not all competent authorities and auditors.  No requirement that findings on background and purpose of transactions should be kept available for at least five years.
12. DNFBP – R.5, 6, 8-11	NC	The deficiencies identified in section 3 in relation to Recs. 5, 6 and 8 – 11 are also applicable to DNFBPs
13. Suspicious transaction reporting	NC	Requirement to make a STR does not apply to funds from the designated predicate offence of illicit trafficking in stolen or other goods and smuggling.  Reporting requirement for terrorist financing does not include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations  No provision specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.  Unable to assess effectiveness of the reporting system due to the unavailability of statistics on suspicious transaction reporting
14. Protection & no tipping-off	LC	No specific requirement that the protection of staff of financial institutions for reporting STRs is available even if the staff of financial institutions did not know precisely what the

		<b>underlying criminal activity was, and regardless of whether illegal activity actually occurred.</b>
15. Internal controls, compliance & audit	<b>PC</b>	<p><b>No requirement for individuals who carry on business solely or with a staff and management of less than five persons to comply with the requirements of Rec. 15.</b></p> <p><b>Access to information is restricted to the reporting function and only to compliance officers appointed at management level rather than to all appropriate staff engaged in the compliance function..</b></p> <p><b>No requirement for the audit function of financial institutions to be adequately resourced and independent and compliance testing of procedures, policies and controls to include sample testing.</b></p> <p><b>The training obligation of financial institutions is not ongoing and does not include new developments, including information on current ML and FT techniques, methods and trends; clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD.</b></p>
16. DNFBP – R.13-15 & 21	<b>NC</b>	<b>The deficiencies identified in section 3 in relation to Recs. 13, to 15, and 21 are also applicable to DNFBPs</b>
17. Sanctions	<b>PC</b>	<p><b>Fines applicable to corporate bodies for breaches of AML/CFT obligations under the AMLCFTA are not dissuasive</b></p> <p><b>Sanctions of designated supervisory authorities under the AMLCFTA are not dissuasive, proportionate or effective and are not applicable to directors and senior management of reporting entities</b></p>
18. Shell banks	<b>LC</b>	<b>No requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks</b>
19. Other forms of reporting	<b>NC</b>	<b>No documentary evidence of the decision not to implement a system for the reporting of all currency transactions above a fixed</b>

		<b>threshold to a national central agency.</b>
20. Other NFBP & secure transaction techniques	<b>C</b>	<b>This recommendation is fully observed</b>
21. Special attention for higher risk countries	<b>NC</b>	<p><b>There are no measures in place to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.</b></p> <p><b>Only complex, unusual large transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations are examined and written findings kept.</b></p> <p><b>There are no provisions in place that allow the authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations</b></p>
22. Foreign branches & subsidiaries	<b>NC</b>	<p><b>Supervisory authorities have not imposed the requirements for foreign branches and subsidiaries of section 22(2) of the AMLCFTA on their respective reporting entities..</b></p> <p><b>No requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations to the extent that host country laws and regulations permit.</b></p> <p><b>No requirement for financial institutions to pay particular attention that the principle stated in section 22(2) of the AMLCFTA is observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.</b></p> <p><b>No requirement for financial institutions to ensure that branches and subsidiaries in host countries apply the higher standard where minimum AML/CFT obligations of home and host countries differ.</b></p>
23. Regulation, supervision and monitoring	<b>NC</b>	<b>No designated supervisory authority has been assigned to ensure that co-operative societies adequately comply with AML/CFT requirements.</b>



		<p>The SIA and the CSA do not provide for their relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in financial institutions.</p> <p>The IA does not provide for necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest in financial institutions.</p> <p>The SIA and the CSA do not provide for directors and senior management of financial institution to be evaluated on the basis of “fit and proper” criteria.</p> <p>Neither the COI, the GSC or the DCFS have implemented AML/CFT supervision for their relevant financial institutions</p>
24. DNFBP - regulation, supervision and monitoring	NC	<p>Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.</p> <p>The provision for the Gaming Authority to assess the integrity of an applicant is discretionary, limited to licensing, does not include beneficial owners, and does not specify fit and proper criteria.</p> <p>No designated supervisory authority appointed for DNFBPs to oversee compliance with AML/CFT requirements.</p> <p>Sanctions of designated supervisory authorities under the AMLCFTA are not dissuasive, proportionate or effective and are not applicable to directors and senior management of DNFBPs</p>
25. Guidelines & Feedback	NC	<p>No requirement for competent authorities or the FIU to provide financial institutions and DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback</p>

		No guidelines to assist financial institutions and DNFBPS to implement and comply with their respective AML/CFT requirements have been issued
<b>Institutional and other measures</b>		
26. The FIU	NC	<p>No guidelines regarding the manner of STRs reporting have been issued to financial institutions and other reporting entities.</p> <p>Minimal security arrangements for custody of information with the main vulnerability being IT support provided by personnel not in the employ of the FIU</p> <p>No requirement to publicly release periodic reports to include statistics, typologies and trends</p> <p>While lack of statistics limits assessment of effectiveness, the operations of the FIU are adversely affected by lack of resources.</p>
27. Law enforcement authorities	NC	<p>No written laws or measures authorising the GPF to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering or for evidencing gathering.</p> <p>Lack of trained financial investigators limits effective implementation of ML/FT investigations</p>
28. Powers of competent authorities	PC	No written law or measure for the taking of witnesses' statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences or in related actions
29. Supervisors	PC	<p>GSC does not have power to compel production or obtain access to all records, documents or information relevant to monitoring of compliance</p> <p>CCDO does not have enforcement or</p>

		<b>sanctioning powers for failure of co-operatives to comply with AML/CFT obligations</b>
30. Resources, integrity and training	NC	<p><b>Lack of trained financial investigators in the GPF and CANU</b></p> <p><b>No ML training of staff of the DPP</b></p> <p><b>NO ML/FT training of staff of GPF and CANU</b></p> <p><b>Integrity of GPF is in doubt</b></p> <p><b>GSC and DCFS do have adequate staff and resources to carry out their functions</b></p> <p><b>Staff of GSC and DFSC have not received AML/CFT training</b></p> <p><b>Insufficient AML/CFT training of staff of BOG</b></p> <p><b>The FIU is inadequately staffed.</b></p>
31. National co-operation	NC	<b>There is no structured coordination and cooperation between the policy makers, the FIU, law enforcement and supervisors and other agencies concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.</b>
32. Statistics	NC	<p><b>No regular review of the effectiveness of the AML/CFT systems.</b></p> <p><b>No statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals are maintained.</b></p> <p><b>No statistics on extradition are maintained</b></p> <p><b>No statistics on mutual legal assistance or other international requests for co-operation are maintained.</b></p> <p><b>No statistics in reference to any of the</b></p>

		<p>requirements in SR IX were available.</p> <p>No statistics on the number of STRs received or disseminated by the FIU or the number of times information was exchanged with authorities in other countries were available.</p>
33. Legal persons – beneficial owners	PC	<p>The Registrar of Companies does not have legal authority to ensure that adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities</p> <p>No restrictions on the use of nominee shareholders and directors in the Companies Act nor is it possible for the Registrar of Companies to determine if nominees are being used</p>
34. Legal arrangements – beneficial owners	NC	<p>No legal requirement under the AMLCFTA for the verification of the legal status of trusts</p> <p>No standard requirement for the recording of beneficial ownership information on trusts, so the nature of information collected will vary</p> <p>Lawyers and accountants are not subject to monitoring for their AML/CFT obligations and it is not clear how reliable their information on trusts would be.</p>
<b>International Co-operation</b>		
35. Conventions	PC	<p>The Vienna, Palermo and Terrorist Financing Conventions have not been fully implemented</p>
36. Mutual legal assistance (MLA)	NC	<p>Range of MLA provided for under Part VI of the AMLCFTA only applies to countries that have in force a bi-lateral or multi-lateral MLA Treaty with Guyana, thus Guyana does not provide the widest range of mutual legal assistance.</p> <p>Range of possible mutual legal assistance does not include freezing, seizure or confiscation of assets of corresponding value</p>

		<p>No clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delay.</p> <p>Unable to assess effectiveness due to lack of statistics and the recent enactment of the AMLCFTA</p>
37. Dual criminality	NC	<p>No provisions which allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures</p> <p>No measures for technical differences in categorisation and denomination of offences in laws of other countries not to impede the provision of mutual legal assistance.</p> <p>No provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures.</p>
38. MLA on confiscation and freezing	NC	<p>No guidelines or procedures in regard to timelines to facilitate an expeditious response to MLA.</p> <p>No provisions dealing with requests relating to property of corresponding value</p> <p>No arrangements regarding co-ordinating seizure and confiscation actions with other countries/jurisdictions in relation to ML or FT matters.</p> <p>Unable to assess effectiveness due to lack of statistics and the recent enactment of the AMLCFTA.</p>
39. Extradition	PC	<p>Unable to assess effectiveness due to the lack of statistics on extradition</p>
40. Other forms of co-operation	PC	<p>No procedure for spontaneous exchange of information</p> <p>The COI does not have confidentiality requirements that include exchanged information</p> <p>Unable to assess effectiveness of</p>

		international co-operations due to lack of statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals and the recent enactment of the AMLCFTA
<b>Eight Special Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating</b>
SR.I Implement UN instruments	PC	The Guyana Authorities have not implemented S/RES/1267(1999) and S/RES/1373(2001)
SR.II Criminalise terrorist financing	PC	<p>Definition of property does not include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind.</p> <p>No provision in the legislation extending terrorist financing to funds whether from a legitimate or illegitimate source.</p> <p>No specific provision allowing for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or a different one from where the terrorist(s)/terrorist organisation is located or the terrorist act(s) occurred/will occur.</p> <p>The recent enactment of the AMLCFTA precludes assessment of effective implementation of the legislation.</p>
SR.III Freeze and confiscate terrorist assets	NC	<p>The legislation does not include provisions for freezing funds of persons designated by the UN Al-Qaida and Taliban Sanctions Committee (S/RES/1267) or in the context of S/RES/1373;</p> <p>There are no procedures in place for delisting requests, unfreezing of funds or providing access to frozen funds in relation to S/RES/1267 or S/RES/1373;</p> <p>No guidance has been issued to FI's or the regulated sector in respect of obligations to comply with or implement measures concerning the freezing mechanisms</p>

		<p>required under S/RES/1267(1999) and S/RES/1373(2001)</p> <p>The AMLCFTA as it relates to freezing, seizing and forfeiture of funds of terrorists or terrorists' organisations has not been implemented.</p>
SR.IV Suspicious transaction reporting	PC	<p>Reporting requirement for terrorist financing does not include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.</p> <p>No provision specifying that the requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.</p> <p>Unable to assess effectiveness of the reporting system due to the unavailability of statistics on suspicious transaction reporting</p>
SR.V International co-operation	NC	<p>The deficiencies noted with regard to Recs. 36, 37 and 38 are applicable in relation to terrorist financing.</p> <p>The deficiencies noted with regard to Recs. 39 and 37 are applicable in relation to terrorist financing.</p> <p>The deficiencies noted with regard to Rec. 40 are applicable in relation to terrorist financing</p>
SR VI AML requirements for money/value transfer services	PC	<p>No requirement for licensed or registered money transfer agencies to maintain a current list of their agents which must be made available to the BOG.</p> <p>No system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements</p> <p>Penalties under the MTALA are not dissuasive or proportionate and do not extend to the directors or senior management of money transfer agencies.</p>
SR VII Wire transfer rules	NC	<p>No definition of originator information in the AMLCFTA.</p>

		<p>No requirement for a receiving intermediary financial institution to keep a record of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related domestic wire transfer.</p> <p>No requirement for financial institutions to have effective risk-based procedures in place to identify wire transfers lacking complete originator information.</p> <p>No measures in place to effectively monitor compliance with the requirements of SR VII.</p> <p>Sanctions for breaches of wire transfer provisions in section 20 of the AMLCFTA are neither dissuasive or proportionate and are not applicable to directors and senior management of reporting entities</p>
SR.VIII Non-profit organisations	NC	<p>No review of the adequacy of laws and regulations that relate to NPOs or of the activities, size and other relevant features of NPOs in order to identify features and types of NPOs at risk of being misused for terrorist financing</p> <p>No outreach to NPO sector with a view to protecting the sector from terrorist financing abuse</p> <p>Supervision and monitoring of NPOs under the FSA is not effective</p> <p>No requirement for NPOs other than registered charities to maintain for a period of at least five years, records of domestic and international transactions and make them available to appropriate authorities</p> <p>Limited measures for authorities to gather information and investigate NPOs;</p>



		<b>No appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support</b>
<b>SR.IX Cross Border Declaration &amp; Disclosure</b>	<b>PC</b>	<p><b>Requirements for cross-border declarations being implemented do not include bearer negotiable instruments</b></p> <p><b>Sanctions for false declarations do not extend to legal persons and are not dissuasive or proportionate</b></p> <p><b>Deficiencies with regard to the absence of provisions for freezing of funds of persons pursuant to S/RES/1267(1999) and S/RES/1373(2001) as noted in section 2.4 are applicable</b></p> <p><b>Unable to assess effectiveness due to lack of relevant statistics.</b></p>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
<b>1. General</b>	<b>No text required</b>
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of Money Laundering (R.1, 2 & 32)	<p>Amend the ML offences in the AMLCFTA to include “assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions” in accordance with the Vienna and Palermo Conventions.</p> <p>Illicit trafficking in stolen and other goods and smuggling should be criminalized as a serious offence and a predicate offence to ML</p> <p>Systems should be put in place to effectively implement the AMLCFTA and relevant Government entities made aware of the legislation and its applicability</p>
Criminalisation of Terrorist Financing (SR.II, R.32)	<p>The definition of property should include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in assets of every kind</p> <p>Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.</p> <p>A provision should be inserted allowing for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or a different one from where the terrorist(s)/terrorist organisation is located or the terrorist act(s) occurred/will occur.</p> <p>It is difficult to assess effectiveness as there were no prosecutions in regard to the FT and the competent authorities should ensure that the relevant entities are aware and trained as to their obligations under the AML/CFT to report and investigate SAR's and where applicable prosecute those in breach of FT.</p>
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	<p>The definition of property liable for confiscation in the AMLCFTA be amended to include indirect proceeds of crime including income, profits or other benefits from proceeds of crime and property held by third persons and assets of every kind, whether tangible or intangible.</p> <p>The competent authorities should provide resources to</p>

	<p>ensure the requisite agencies are trained under the recent legislation in order to enable effective implementation.</p>
Freezing of funds used for terrorist financing (SR.III, R.32)	<p>The competent authorities in Guyana should amend the legislation to comply with the requirements of S/RES/1267(1999) and S/RES/1373(2001) for freezing funds of designated persons/organisations.</p> <p>The authorities should develop and implement procedures for delisting requests, unfreezing of funds and providing access to frozen funds..</p> <p>The competent authorities should provide or issue guidance to financial institutions with respect to obligations in taking action under the freezing mechanisms required by S/RES/1267/(1999) and S/RES/1373(2001).</p> <p>There should be training for the relevant entities so that they are aware of their obligations under the legislation and in order for the legislation to be implemented effectively.</p>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<p>In accordance with the AMLCFTA requirement the FIU should issue guidelines on the manner of STRs reporting to all reporting entities. A circular to the wider public concerning money laundering and financing of terrorism could also be considered. .</p> <p>The FIU should urgently implement its plans for new personnel and facilities and consider safeguards to reduce the vulnerability of its database.</p> <p>The authorities should reconsider their policy regarding the FIU releasing public reports and allow for the issuing of periodic reports which include statistics, typologies and trends.</p>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<p>There should be written laws or measures authorising the GPF to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in money laundering or for evidencing gathering.</p> <p>There should be a law or measure to allow for the taking of witnesses' statements for use in investigations and prosecutions of ML, FT and other underlying predicate offences or in related actions</p>

<b>3. Preventive Measures – Financial Institutions</b>	
Risk of money laundering or terrorist financing	The competent authorities should consider the feasibility of a comprehensive national risk assessment for AML/CFT vulnerabilities
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>A threshold for the application of CDD measures for occasional transactions should be prescribed in accordance with the FATF standard.</p> <p>Reporting entities should be required to obtain information on the ownership of customers who are legal persons or legal arrangements.</p> <p>Reporting entities should be required to determine who are the natural persons that ultimately own or control the customer</p> <p>Reporting entities should be required to verify the legal status of specific legal arrangements such as trusts</p> <p>A definition of beneficial ownership with regard to legal entities should be set out in the AMLCFTA.</p> <p>Reporting entities should be required to perform enhanced due diligence for higher risk categories of customers</p> <p>Reporting entities should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.</p> <p>Reporting entities should be prohibited from opening an account or commencing a business relationship or performing a transaction in the absence of satisfactory evidence of identity as stipulated in criteria 5.3 to 5.6 and being required to consider making a suspicious transaction report.</p> <p>Reporting entities should be required to terminate a business relationship due to the inability to obtain information set out in criteria 5.3 to 5.6 and consider making a suspicious transaction report.</p> <p>Reporting entities should be required to obtain senior management approval to continue a business relationship with a customer who is subsequently found to be a PEP or becomes a PEP</p> <p>The supervisory authorities should ensure that all</p>

	<p>financial institutions are aware of the legal requirements concerning PEPs.</p> <p>Financial institutions should be required to ascertain whether a respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.</p> <p>Financial institutions should have to ascertain for themselves that the AML/CFT controls of a respondent institution are adequate and effective.</p> <p>Financial institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML or TF schemes.</p> <p>Financial institutions should be required to have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and conducting ongoing due diligence.</p> <p>Financial institutions should also be required to have measures for managing risks including specific and effective CDD procedures that apply to non-face to face customers.</p>
Third parties and introduced business (R.9)	<p>Financial institutions should be required to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with CDD requirements set out in Recommendation 5.</p> <p>Competent authorities should determine and inform financial institutions in which countries third parties that meet the conditions can be based by taking into account information available on whether these countries adequately apply the FATF Recommendations</p>
Financial institution secrecy or confidentiality (R.4)	<p>The GSC should have the power to access information relevant to AML/CFT matters from registrants of the SIA.</p> <p>The CCDO should be able to share information from a society registered under the CSA with local and international competent authorities.</p>
Record keeping and wire transfer rules (R.10 & SR.VII)	<p>All financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.</p>

	<p>Originator information should be defined in the AMLCFTA in accordance with SRVII.</p> <p>Subsections 20(3) and 20(4) of the AMLCFTA should be amended in accordance with the exemptions in SR VII</p> <p>Receiving intermediary financial institution should be required to keep a record for five years of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related domestic wire transfer.</p> <p>Financial institutions should be required to have effective risk-based procedures in place to identify wire transfers lacking complete originator information.</p> <p>Measures should be put in place to effectively monitor compliance with the requirements of SR VII.</p> <p>Sanctions for breaches of wire transfer provisions in section 20 of the AMLCFTA should be dissuasive and proportionate and applicable to directors and senior management of reporting entities.</p>
Monitoring of transactions and relationships (R.11 & 21)	<p>Guyana should amend its legislation so as to require financial institutions to make the findings on complex, unusual, large transactions or unusual patterns of transactions with no apparent or visible economic or lawful purpose available to all competent authorities and auditors for at least five years.</p> <p>Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.</p> <p>The background and purpose of all transactions having no apparent economic or visible lawful purpose with persons from or in countries which do not or insufficiently apply the FATF Recommendations should be examined and written findings made available to assist competent authorities and auditors.</p> <p>There should be provisions to allow for the application of countermeasures to countries that do not or insufficiently apply the FATF Recommendations.</p>
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p>Illicit trafficking in stolen and other goods and smuggling should be criminalized as a serious offence and a predicate offence to ML</p>

	<p>Reporting requirement for terrorist financing in the AMLCFTA should include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations</p> <p>The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.</p> <p>The protection of staff of financial institutions for reporting STRs should be explicitly available even if the staff of financial institutions did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.</p> <p>The authorities should provide documentation recording the decision not to implement a system for the reporting of all currency transactions above a fixed threshold to a national central agency.</p> <p>The AMLCFTA should be amended to require competent authorities or the FIU to provide financial institutions and DNFBPs that are required to report suspicious transactions with adequate and appropriate feedback having regard to the FATF Best Practices Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons. .</p> <p>Reporting requirement for terrorist financing in the AMLCFTA should include funds suspected of being linked, or related to, or to be used for terrorism, terrorist acts or by terrorist organisations</p> <p>The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things, to involve tax matters.</p>
Cross Border declaration or disclosure (SR.IX)	<p>The authorities should extend the implementation of the cross-border declaration system to include bearer negotiable instruments.</p> <p>Sanctions for false declarations should be extended to legal persons, their directors and senior management and</p>

	<p>should be dissuasive, proportionate and effective.</p> <p>Guyana should enhance its ability to freeze the assets of persons designated pursuant to S/RES/1267/(1999) and S/RES/1373(2001) as recommended in section 2.4 of this report, to ensure that it can do so effectively in the cross-border context.</p>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>The competent authorities should ensure that all financial institutions update their current policies and that the updated versions are based on the AMLCFTA.</p> <p>The requirements of Rec. 15 should be applicable to individuals who carry on business solely or with a staff and management of less than five persons.</p> <p>The AMLCFTA should provide that the compliance officer and appropriate staff have timely access to customer identification data and other CDD information, transaction records and other relevant information necessary to carry out all their functions.</p> <p>Financial institutions should be required to ensure that their audit function is adequately resourced and independent and compliance testing of procedures, policies and controls include sample testing.</p> <p>The training obligation of financial institutions should be ongoing and include new developments, including information on current ML and FT techniques, methods and trends; clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD..</p> <p>Designated supervisory authorities should impose the obligations stipulated in section 22(2) of the AMLCFTA on their respective reporting entities.</p> <p>Financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations to the extent that host country laws and regulations permit.</p> <p>Financial institutions should be required to pay particular attention that the principle stated in section 22(2) of the AMLCFTA is observed with respect to branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.</p> <p>Financial institutions should be required to ensure that branches and subsidiaries in host countries apply the</p>



	higher standard where minimum AML/CFT obligations of home and host countries differ.
Shell banks (R.18)	<p>Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p> <p>In order to remove any ambiguity with regard to the possible establishment of shell banks in Guyana provision allowing for the registration of shell banks in the Company Act should be repealed..</p>
<p>The supervisory and oversight system - competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 &amp; 25)</p>	<p>Fines applicable to corporate bodies for breaches of AML/CFT obligations under the AMLCFTA should be dissuasive</p> <p>Sanctions of designated supervisory authorities under the AMLCFTA should be dissuasive, proportionate and effective and should be applicable to directors and senior management of reporting entities.</p> <p>A designated supervisory authority should be assigned to ensure that co-operative societies adequately comply with AML/CFT obligations.</p> <p>The SIA and the CSA should be amended to provide for their relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in financial institutions.</p> <p>The IA, should be amended to provide for the relevant authorities to take necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest in financial institutions.</p> <p>The SIA and the CSA should be amended to provide for directors and senior management of financial institution to be evaluated on the basis of “fit and proper” criteria.</p> <p>The COI, the GSC and the DCFS should implement AML/CFT supervision for their relevant financial institutions</p> <p>Guidelines to assist financial institutions to implement and comply with their respective AML/CFT requirements should be issued</p>

	<p>GSC should have the power to compel production or obtain access to all records, documents or information relevant to monitoring of compliance</p> <p>The CCDO should have enforcement or sanctioning powers for failure of co-operatives to comply with AML/CFT obligations</p>
Money value transfer services (SR.VI)	<p>A system for monitoring money transfer agencies/agents for compliance with AML/CFT requirements be implemented as soon as possible.</p> <p>Money or value service providers should be required to maintain a current list of its agents, which must be made available to the designated competent authority.</p> <p>Penalties under the MTALA should be amended to be dissuasive and proportionate and applicable to the directors and senior management of money transfer agencies</p>
<b>4. Preventive Measures –Non-Financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	It is recommended that a designated supervisory authority be appointed as soon as possible for the DNFBPs to oversee compliance with the of requirements of the AMLCFTA
Suspicious transaction reporting (R.16)	It is recommended that a designated supervisory authority be appointed as soon as possible for the DNFBPs to oversee compliance with the of requirements of the AMLCFTA
Regulation, supervision and monitoring (R.24-25)	<p>Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.</p> <p>The Gaming Authority should be required to assess the integrity of an applicant, partner, shareholder, directors, office holders of an applicant and beneficial owner on the basis of fit and proper criteria on a regular basis.</p> <p>A designated supervisory authority should be appointed for DNFBPs to oversee compliance with AML/CFT requirements as soon as possible</p> <p>Sanctions of designated supervisory authorities under the</p>

	<p>AMLCFTA should be dissuasive, proportionate and effective and applicable to directors and senior management of DNFBPs</p> <p>Competent authorities should establish guidelines to assist DNFBPs to implement and comply with their respective AML/CFT requirements</p>
Other designated non-financial businesses and professions (R.20)	
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<p>The CA should be amended to provide the Registrar of Companies with the requisite legal authority to ascertain the beneficial ownership of all companies and to ensure that information about beneficial ownership in the register of companies is adequate, accurate and current.</p> <p>The authorities should consider the prohibition of the use of nominee shareholders and directors unless measures are taken to ensure that adequate, accurate and complete beneficial information is made available to the Registrar of Companies.</p>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<p>It is recommended that Guyana should implement measures to ensure that its commercial laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.</p> <p>Measures should also be implemented to ensure that adequate, accurate and timely information is available to law enforcement authorities concerning the beneficial ownership and control of trusts.</p>
Non-profit organisations (SR.VIII)	<p>The authorities should review the adequacy of laws and regulations that relate to NPOs and the activities, size and other relevant features of NPOs in order to identify features and types of NPOs at risk of being misused for terrorist financing</p> <p>An outreach programme to NPO sector with a view to protecting the sector from terrorist financing abuse should be implemented</p> <p>The authorities should implement a system of effective supervision and monitoring of all NPOs.</p>

	<p>All NPOs should be required to maintain for a period of at least five years, records of domestic and international transactions and make them available to appropriate authorities</p> <p>Measures should be established to ensure that competent authorities can gather information and investigate NPOs;</p> <p>Appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support should be designated.</p>
<b>6. National and International Co-operation</b>	
National co-operation and coordination (R.31 & 32)	<p>The authorities should consider the establishment of a national body comprised of relevant AML/CFT agencies to facilitate co-operation and co-ordination in implementing AML/CFT policy and to provide advice to Government and guidance to private entities in relation to AML/CFT obligations.</p> <p>The competent authorities should consider establishing explicit mechanisms for consultation between competent authorities, the financial sector and other sectors (including DNFBP) that are subject to AML/CFT laws, regulations, guidelines or other measures.</p>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>The competent authorities in Guyana should take steps to fully implement the Vienna, Palermo and Terrorist Financing Conventions.</p> <p>The AMLCFT legislation should be amended to provide compliance with S/RES/1267(1999) and S/RES/1373(2001) for freezing funds of designated persons/organisations, and also develop and implement procedures for delisting requests and unfreezing of funds.</p> <p>The competent authorities should provide or issue guidance to financial institutions with respect to obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU.</p> <p>There should be training for the relevant entities so that they are aware of their obligations under the legislation and in order for the legislation to be implemented effectively.</p>
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	Range of possible mutual legal assistance should include freezing, seizure or confiscation of assets of

	<p>corresponding value</p> <p>Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delay should be developed and implemented.</p> <p>There should be provisions which allow for the granting of mutual legal assistance in the absence of dual criminality for less intrusive and non-compulsory measures</p> <p>There should be measures to ensure that technical differences in categorisation and denomination of offences in laws of other countries do not impede the provision of mutual legal assistance.</p> <p>Guidelines or procedures in regard to timelines to facilitate an expeditious response to MLA should be developed and implemented</p> <p>There should be provisions allowing for requests relating to property of corresponding value</p> <p>The authorities should put in place arrangements regarding co-ordinating seizure and confiscation actions with other countries/jurisdictions in relation to ML or FT matters.</p> <p>The authorities in Guyana should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</p> <p>Authorities should consider a provision under Guyana law that provides for sharing of confiscated assets where confiscation directly or indirectly results from co-ordinated law enforcement efforts between jurisdictions</p>
Extradition (R.39, 37, SR.V & R.32)	<p>Procedures or measures should be put in place to facilitate the timely response to requests for extradition and proceedings relating to ML and FT and to ensure such requests are handled without undue delay.</p> <p>There should be provisions which allow for extradition in the absence of dual criminality for less intrusive and non-compulsory measures</p>

Other Forms of Co-operation (R.40, SR.V & R.32)	<p>Procedures for spontaneous exchange of information should be developed</p> <p>The COI should have confidentiality obligations that include exchanged information</p>
<b>7. Other Issues</b>	
Resources and statistics (R. 30 & 32)	<p><b>Recommendation 30:</b></p> <p>The FIU should urgently implement its plans for new personnel and facilities</p> <p>The authorities should provide trained financial investigators for the GPF and CANU.</p> <p>The authorities should consider measures to deal with the integrity problems of the GPF</p> <p>Staff of the GPF and CANU should be provided with appropriate ML/FT training</p> <p>Staff of the DPP should be provided with ML training.</p> <p>The authorities should consider increasing the number of Customs outposts to ensure security at borders</p> <p>Relevant staff of the GRA should be provided with AML/CFT training.</p> <p>Adequate staff and resources should be provided to the GSC and DCFS to carry out their functions</p> <p>Adequate and relevant AML/CFT training should be provided to the staff of the GSC, the DCFS and the BOG</p> <p><b>Recommendation 32:</b></p> <p>GRA should maintain statistics on the number of declarations collected and the number of false declarations detected and the amounts of currency involved or resultant cash seizures.</p> <p>The authorities should implement a regular review of the AML/CFT systems in Guyana.</p> <p>The authorities should maintain statistics on mutual legal assistance or other international requests for co-operation.</p> <p>The authorities should maintain statistics on extradition.</p>

	Statistics on formal requests for assistance made or received by the FIU or the supervisory authorities or spontaneous referrals should be maintained.
Other relevant AML/CFT measures or issues	
General framework – structural issues	

**Table 3: Authorities' Response to the Evaluation (if necessary)**

<b>Relevant sections and paragraphs</b>	<b>Country Comments</b>

## **ANNEXES**

- Annex 1: List of abbreviations**
- Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
- Annex 3: Copies of key laws, regulations and other measures**
- Annex 4: List of all laws, regulations and other material received**



## ANNEXES

### Annex 1

#### List of Abbreviations

AML	Anti-money Laundering
AMLCFTA	Anti-Money Laundering and Countering the Financing of Terrorism Act
ATM	Automated Teller Machines
BOG	Bank of Guyana
BSD	Bank Supervision Department
CA	Companies Act
CANU	Customs Anti Narcotics Unit
CCD	Customer Due Diligence
CCDO	Chief Co-operative Development Officer
CCLEC	Caribbean Customs Law Enforcement Council
CFATF	Caribbean Financial Action Task Force
CFT	Combating the financing of terrorism
COI	Commissioner of Insurance
CSA	Co-operatives Societies Act
DCFS	Division of Co-operatives and Friendly Societies
DFCLA	Dealers in Foreign Currency (Licensing ) Act
DNFBP	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
FATF	Financial Action Task Force
FEMPA	Foreign Exchange (Miscellaneous Provisions) Act
FIA	Financial Institutions Act
FIU	Financial Intelligence Unit
FSA	Friendly Societies Act
FT	Financing of terrorism
GBA	Guyana Bar Association
GO Invest	Guyana Office for Investment
GPA	Gambling Prevention (Amendment) Act
GPF	Guyana Police Force
GRA	Guyana Revenue Authority
GSC	Guyana Securities Council
IA	Insurance Act
ICA	Integrity Commission Act
IMF	International Monetary Fund
LPA	Legal Practitioners Act
ML	Money Laundering
MLA	Mutual legal assistance
MTALA	Money Transfer Agencies (Licensing) Act
NDPSCA	Narcotic Drugs and Psychotropic Substance (Control) Act
NPOs	Non-profit organisations
PEPs	Politically Exposed Persons
RAA	Revenue Authority Act
SIA	Securities Industry Act
STRs	Suspicious Transaction Reports

**Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**

**1. Government**

Ministry of Finance

- Minister of Finance

Attorney General's Office and Ministry of Legal Affairs

**2. Operational Agencies**

Office of the Director of Public Prosecutions

Guyana Revenue Authority

Financial Intelligence Unit

Guyana Police Force

Customs Anti Narcotics Unit

**3. Financial Sector – Government**

Bank of Guyana

Commissioner of Insurance

Guyana Securities Council

Guyana Stock Exchange

Gaming Authority

Chief Co-operative Development Officer

Registrar of Companies and Deeds

**4. Financial Sector – Associations and Private Sector entities**

Republic Bank

Guyana Bank for Trade and Industry

New Building Society

Hand in Hand Trust

Western Union (Grace Kennedy Remittances)

Guyana Association of Bankers

**5. DNFBPs**

Jack Alli & Son Auditors

Institute of Chartered Accountants of Guyana

Guyana Bar Association

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