CARIBBEAN FINANCIAL
ACTION TASK FORCE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

St. Kitts & Nevis

JUNE 22 2009

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

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PREFACE - information and methodology used for the evaluation of St. Kitts & Nevis

1. The Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of St. Kitts & Nevis was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by St. Kitts & Nevis, and information obtained by the Evaluation Team during its on-site visit to St. Kitts & Nevis from September 22nd to October 3rd 2008, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant St. Kitts & Nevis government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. St. Kitts & Nevis had its first CFATF Mutual Evaluation in February 1999 and the second round Mutual Evaluation in September 2003. This Report is the result of the third Round Mutual Evaluation of St. Kitts & Nevis as conducted in the period stated herein above. The Examination Team consisted of Mrs. Wanda Blair, Legal expert (Barbados), Mr. Robin Sykes, Financial Expert (Jamaica) Mr. Francis Arana, Financial Expert, (Cayman Islands) and Mr. Pedro Harry, Law Enforcement Expert, (St Vincent & the Grenadines). The Team was led by Ms. Dawne Spicer, Deputy Executive Director, CFATF Secretariat. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of St. Kitts & Nevis.

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

[1] As updated February 2008.

EXECUTIVE SUMMARY

1. Background Information

1. The Mutual Evaluation Report of St. Kitts and Nevis summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in St. Kitts and Nevis at the time of the on-site visit (September 22 to October 3, 2008). The Report also sets out St. Kitts and Nevis' level of compliance with the FATF 40 + 9 Recommendations, which are contained in Table 1 of the Report.

2. St. Kitts and Nevis is a common law jurisdiction which has a stable and democratic system of government. It became an independent nation on September 19th, 1983. St Kitts and Nevis has a unicameral legislature consisting of fourteen (14) members, of which, eleven (11) members are popularly elected at general elections due every five (5) years and three (3) are appointed. The present constitution provides for the separation of powers under the Governor General, Parliament, the Executive, the Judiciary and the Public Service. The Federation's economy has traditionally depended on sugar cane but decreasing world prices have negatively affected the industry. Tourism, export-oriented manufacturing, international financial services and construction activity have consequently assumed greater importance in the economy. Although growth has varied at times, overall St. Kitts and Nevis has had fairly good economic growth. The financial services sector has been a critical resource for economic diversification and job creation in the areas of banking & trust, insurance and international business corporations. The predicate offences from which unlawful proceeds originate at the local level are principally the trade in illegal drugs and fraud. Over the past four (4) years crime was dominated by offences of breaking, larceny, robbery and illegal drugs. There is almost no indication that the financing of terrorism (FT) is taking place through the facilities of the jurisdiction's financial institutions.

3. As at June, 2008, St. Kitts and Nevis had six (6) commercial banks, one (1) international bank (a subsidiary of a commercial bank), and one (1) finance company. As at 2007, the total asset size of commercial banks was E.C. $3.7 Billion. With regard to persons carrying on securities business, there were ten (10) broker dealers (traders & underwriters) with eleven (11) registered offices; six (6) issuers (including one for the Government of St. Kitts-Nevis and five (5) Securities Companies at December 31, 2007. For this same period, there were also 157 exempt insurance companies, twelve (12) Insurance Managers and sixteen (16) domestic insurance companies and one Association of Underwrites. The Cooperatives Department is charged with the administration of Cooperatives Societies and as at December 31, 2008 there were three (3) credit unions whose asset size totalled E.C. $117.5 Million. At the time of the Evaluation, no department or regulatory agency was officially charged with the regulation of the Money Services sector. There are two (2) land-based casinos in St. Kitts & Nevis. With regard to real estate agents, dealers in precious metals and stones, notaries and accountants, the Authorities are of the view that these sectors do not present a proven material AML/CFT risk.

4. A consultative approach has been adopted with industry associations in the development of policy, including guidelines. The supreme law of the Federation is the Constitution which is supported by a body of legislation (primary and subsidiary) and case law. The Federation is served by the multi-state Eastern Caribbean Supreme Court comprising a High Court of Justice, and a Court of Appeal. The Judicial Committee of the Privy Council in London serves as the final appellate court. At the international level, the Government of St. Kitts and Nevis has ratified all of the UN Conventions dealing with money laundering (ML) and financing of terrorism (FT). Another critical institution in the AML framework is the Financial Services Commission (FSC), which is given overall regulatory responsibility for financial services in the Federation. Other important agencies in the AML/CFT regime are the Police, FIU, Customs and Defence Force. The Attorney General is the competent authority for receiving mutual legal assistance requests. The Regulator of Domestic Banks and a specific category of non-bank financial institutions is the Eastern Caribbean Central Bank (ECCB). Domestic insurance and cooperatives, which are

subject to Core Principles, are regulated respectively by the Registrar of Insurance and the Registrar of Cooperatives. The Supervisory bodies have indicated the intention for a more robust shift to a risk-based approach in AML/CFT as advocated by the FATF, the IMF and World Bank.

2. Legal System and Related Institutional Measures

5. St. Kitts and Nevis ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention) on the 19th April, 1995 and the 21st May, 2004, respectively. Money laundering has been criminalized by section 4 of the Proceeds of Crime Act, No. 15 of 2000 as amended (POCA. Money laundering extends to any type of property which is the proceeds of a serious offence. This includes property which is derived from an act or commission which occurred outside of St. Kitts and Nevis which would have constituted a serious offence had it occurred in St. Kitts and Nevis. Property is given a wide definition to include movable or immovable, vested or contingent property, whether located in St. Kitts and Nevis or any other part of the world.

6. Under the definition of "proceeds of crime", all predicate offences except the financing of terrorism are adequately captured under the designation "serious crime". A 'serious offence' is defined in section 2 of the POCA as being '*any offence triable on indictment or any hybrid offence that attracts a penalty of imprisonment for more than one year.'* It should be noted that the offence of financing of terrorism under the ATA has a maximum penalty of 14 years imprisonment on conviction on indictment and/or a fine. However on summary conviction a person cannot be sentenced to a term of imprisonment exceeding 6 months. It means therefore that only the indictable offence of financing of terrorism can be described as a serious offence under the POCA. A person who is charged for a predicate offence can also be charged with the offence of money laundering provided there is sufficient evidence to do so. However a person who is charged with a predicate offence is not automatically charged with money laundering. Provision is also made for the ancillary offences of conspiring, attempting, inciting another, facilitating, aiding, abetting, counselling and procuring. The ML offence applies to both natural and legal persons.

7. Section 12 of the Anti-Terrorism Act No. 21 of 2002 (ATA) creates the offence of financing of terrorism which includes the provision and collection of funds, whether directly or indirectly to be used to carry out terrorist acts. The definition of 'funds' provided in the ATA conforms to the definition in the Terrorist Financing Convention. There are also ancillary offences under the ATA, which cover the same areas as those noted above for money laundering. TF is a hybrid offence in St. Kits and Nevis in that it can be brought either summarily or on indictment. As noted above the threshold of the summary penalty means that the offence does not meet the requirement to be considered as a predicate offence to ML. The offence of TF is applicable to both natural and legal persons; however the Examiners found that there were inadequate stipulated penalties for legal persons in the ATA.

8. The POCA and the ATA make provision for the confiscation of property which constitutes the proceeds of crime. Provision for the confiscation of instrumentalities with regard to predicate offences is only applicable where the person has absconded. There are forfeiture provisions in the POCA with regard to tainted property. The tainted property can be forfeited on the basis that it represents the proceeds of the offence or where a person is charged but does not show up to answer the charge. The ATA also provides for the forfeiture of property where a person has been convicted of an offence. There is no specific procedure in the ATA for the application of confiscation or forfeiture orders; however the Examiners were of the view that the same procedures used in the POCA would be applicable. Provision is made in both the POCA and the ATA for provisional measures to avoid the disposal, depletion or transfer of property which is subject to a confiscation or forfeiture order. Restraint orders can be applied for ex parte under

both the POCA and the ATA. Law enforcement is given the authority to identify and trace property under the POCA, ATA and the FIU Act. There is adequate protection for the rights of bona fide third parties under the AML/CFT legislation. To date, there have been no convictions of ML or TF and accordingly no property has been seized, frozen or confiscated.

9. St. Kitts and Nevis does not have any provisions in its legislation to immediately freeze terrorist funds or other assets of persons designated under UNSCR 1267. With regard to UNSCR 1373, section 3 of the ATA provides for a person or group to be deemed a terrorist or a terrorist group; however it does not appear that the mere designation would result in funds being frozen as required by the Resolution. The ATA does not expressly provide for the freezing of funds jointly owned by designated persons. There is no provision in the ATA for the immediate communication of actions taken under the freezing mechanism to the financial sector. There is also no programme in place for informing the public about the procedures for de-listing or the unfreezing of funds. The FSC and the FIU however provide guidelines and reminders to the financial institutions and other regulated entities with regard to their AML/CFT obligations and as such there is an existing medium that will provide clear guidance. Funds have not been frozen under the ATA.

10. The Financial Intelligence Unit (FIU) of St. Kitts-Nevis was established in 2001 under section 3 of the Financial Intelligence Unit Act No. 15 of 2000 as amended to 2008. The FIU is the designated competent authority to receive suspicious reports relating to money laundering and terrorist financing. The St. Kitts and Nevis FIU is a member of the Egmont Group. In addition to the core functions, the FIU is also responsible for establishing a database for the purpose of detecting ML and TF and liaising with intelligence agencies and other competent authorities outside of St. Kitts and Nevis as it pertains to ML and TF. Suspicious transaction reports (STRs) are delivered to the FIU either by hand or through the post. The FIU is authorized to receive reports of TF under the ATA. Financial institutions are required to file quarterly reports to the FIU and the Financial Services Commission (FSC) stating whether or not they have any terrorist property in their possession as stipulated with under section 19(4) of the ATA. The FIU is of the opinion that the quality of the STRs filed by reporting entities has been improving as a result of training provided to the reporting entities. While there is no specific period noted in law for the filing of STRs, the FIU has notified reporting entities that reports should be made within 3 days of discovering the suspicion. While training has been provided to some entities with regard to the provisions of the amended AMLR; not all entities required to report under the POCA have received training.

11. The FIU has direct access to its own database and to a wide range of administrative data including the Land, Supreme Court, Bills of Sale; Intellectual Property and Corporate Registries. The present structure of the FIU allows for autonomy and sufficient operational independence. However, the Examiners noted that the FIU's independence and autonomy can be unduly influenced by the Director's inability to recruit appropriate and independent staff and the Minister is given too much authority under the FIU Act with regard to the FIU's policy making functions. The FIU has also not been fully constituted in accordance with the FIU Act. Pursuant to the FIU Act, the FIU is required to prepare an annual report which reviews the work of the Unit highlighting statistics and activities undertaken for the given year.

12. The Royal St. Christopher and Nevis Police Force is responsible for investigating all offences relating to ML and FT under the FIU Act, the POCA and the ATA. There are two police officers presently attached to the FIU who are responsible for the investigation of STRs. There are presently 396 Police Officers in the Police Force; seven of these officers are accredited financial investigators under the Caribbean Anti Laundering Program "CALP". The jurisdiction's legislative framework provides for various investigative techniques to be used by competent authorities when pursuing ML and FT matters and other underlying predicate offences. These include search warrants, production orders, restraint orders, and seizure at borders. The POCA also authorises the FIU and the DPP to receive requests from a Court or other competent authority

of another State for the identification, tracing, freezing, seizing and forfeiture of the property, proceeds or instrumentalities of a money laundering offence.

13. With regard to detecting and deterring the cross border movement of cash or other negotiable instruments related to ML and the FT, the POCA provides for a Customs Officer or a member of the Police Force to seize and detain currency valued at US$10,000 or more into or out of the country where there are reasonable grounds to suspect that the currency is the proceeds of unlawful activity. There is no declaration form in place for persons travelling with monies over the stated threshold when leaving St. Kitts and Nevis. However persons are expected to disclose this information orally to the St. Kitts and Nevis Customs Officials. Three seizures of currency and bearer negotiable instruments based on passenger declarations have occurred. In each instance the cash was returned. There is a MOU signed between the FIU, Customs and the Royal St. Kitts and Nevis Police Force in relation to the sharing of information. The Examiners found that despite the MOU, there was no coordination domestically between the relevant authorities in relation to the implementation of SR. IX and that no proper records were kept on seizure of cross border cash and bearer negotiable instruments.

3 Preventive Measures - Financial Institutions

14. St. Kitts and Nevis' financial regulatory structure comprises laws, regulations and guidelines. With regard to the Guidance Notes (GN) issued under the AMLR, the Examiners determined that subject to the limitations (reference in the Guidance notes to FT and ability to determine effectiveness due to recent enactment), that these Notes were 'other enforceable means' (OEM). It should also be noted that the specific obligations considered throughout the report with regard to the GN were of a mandatory nature. Accordingly, all of these provisions have been deemed to be enforceable. With regard to the Nevis International Insurance Ordinance and the St. Kitts Captive Insurance Act, the Examiners had concerns relating to whether the Regulators in the Federation, particularly Nevis, were able to verify that these entities were meeting their AML/CFT obligations in a number of key operational areas.

15. It should be noted that the recent enactment of the ML Regulations and GN means that many of the financial institutions were not fully aware of the contents of the new Regulations. There were also no examinations since the passage of the reforms and as a result, the institutions were still studying the new changes and making adjustments to their existing internal AML/CFT systems.

16. The AMLR provides comprehensive CDD measures for financial institutions. The regulations specifically prohibit the maintenance of anonymous accounts; require the identification and verification (including timing) of customers; requires regulated businesses to obtain information on the purpose and intended nature of the business relationship; enhanced and reduced due diligence procedures based on risk; the source of customers' funds and for instances where verification cannot be completed. The Examiners found however that the AMLR does not extend to terrorist financing obligations and that some of the requirements with regard to occasional transactions; verification of the authority of persons acting on behalf of principals is not available. Additionally, the requirement for verifying the legal status of parties involved in trusts/legal arrangements and originator information for banks that carry out wire transfers are some of the matters that need to be addressed. The GN also makes provision for similar matters including issues that should be put in law or regulations such as the treatment of occasional transactions.

17. PEPs are adequately covered except for the applicability of source of funds requirements where the PEP is found to be a beneficial owner and not the customer with whom the financial institution is transacting. With regard to correspondent banks, the GN does not cover TF issues and accordingly cannot properly cover correspondent banks carrying out assessments of TF measure in respondent jurisdictions. Neither the AMLR nor GN provides for effective CDD measures that institutions should apply in the case of non face-to-face business. There are also limitations on the requirements for third parties and introducers including lack of the need to

follow appropriate CDD measures; no requirement to be subject to CFT obligations and ambiguity as to whether they should be supervised under FATF requirements. In St. Kitts and Nevis, there are sufficient legal provisions that can circumvent secrecy laws that bind financial institutions

18. Record keeping requirements are addressed by regulation 8 of the AMLR and the GN and the only concerns noted by the Examiners were those as it pertains to verifying the levels of compliance with regard to Captive and International Insurance Companies. With regard to wire transfers, the GN has measures for both domestic and cross border wire transfers. However, there is no guidance given to funds transfer business and banks as it pertains to the treatment of the transfer where there is insufficient originator information; detailed originator information is not required for all types of transfers and there is also no requirement for financial institutions to take appropriate measures where they receive a transfer accompanied with inadequate originator information. The sanctions under the AMLR and the FSCA are also not proportionate.

19. The AMLR makes provision for the monitoring of complex or unusually large transactions and unusual patterns of transactions. There is ambiguity between the AMLR and the GN with regard to the requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to put those findings in writing. There is no indication in the GN as to who these records should be kept for, however the Examiners found that the requirement at regulation 8 (transactions to be kept for a period of at least 5 years) of the AMLR pertained to these types of transactions. With regard to paying attention to transactions from high risk countries, the AMLR makes provisions for this requirement under regulation 5, which deals with enhanced due diligence. Both the St. Kitts and Nevis Regulators have issued advisories regarding countries that do no appropriately apply the FATF standards. However, the Examiners still expressed concerns with regard to Captive insurers and felt that there should be a wider range of counter measures that could be taken against countries that fail to apply appropriate AML/CFT standard.

20. In St. Kitts and Nevis, pursuant to the AMLR, financial institutions are required to report suspicious transactions where there is knowledge or reasonable grounds to suspect that another person is engaged in money laundering. Additionally, the AMLR also requires persons to report where a complex, unusual or large business transactions whether completed or not, where there are unusual patterns of transactions, where transactions are insignificant but periodic and have no apparent economic or lawful purpose. With regard to the reporting of STRs related to the financing of terrorism, the ATA provides for the filing of such transactions but the person must have committed a terrorist offence or terrorist act. The Examiners found that both these reporting requirements were not in keeping with the FATF requirements. Further, sanctions under the AMLR were found to be not proportionate and those relating to the reporting of possession of terrorist property were less severe than other sanctions under the ATA. Statistics were provided with regard to the number of STRs filed. There is protection for persons who make reports under the FIU Act, the ATA and the AMLR. With regard to the offence of tipping-off both under the AMLR and the ATA, the offence relates to ML and TF investigations. There is no requirement not to disclose with regard to the reporting of the STR or for information that is being reported or provided to the FIU.

21. St. Kitts and Nevis has done a feasibility study to consider threshold reporting by all financial institutions. A summary of the study was presented to the Examiners and it concluded based on feedback from countries currently using threshold reporting and the resources of the Federation that the reporting regime would focus on suspicious transaction reporting. With regard to providing feedback to reporting entities, the FIU does acknowledge receipt of STRs although not mandated by law and provide quarterly reports and an annual report to the Ministers of Finance for the Federation. However, no feedback is given with regard to AML/CFT trends and typologies.

22. The requirement for financial institutions with regard to internal AML/CFT audit and testing, compliance officers and staff training may only be applicable to ML under the AMLR and not TF issues. There is also no requirement for financial institutions to maintain an adequately resourced and independent audit function. The AMLR and the GN make provisions for the requirements to be met by regulated businesses as they relate to the activities of branches and subsidiaries that operate in countries that do not or insufficiently apply the FATF Recommendations. At the time of the Evaluation, the Examiners did not note any cases where a regulated business in the Federation had branches or subsidiaries outside of the Federation.

23. Licensing requirements in the Banking Act (BA) at section 8 and the Nevis Offshore Banking Ordinance at section 10 are designed to ensure that the Authorities will not license institutions that do not have a substantial physical presence within the jurisdiction. There is one offshore bank in Nevis, however based on the legislation offshore banks would be affiliated with regulated banks and would not qualify as shell banks as defined by The FATF. Both the AMLR and the GN prohibit relevant persons from conducting business with shell banks.

24. The Financial Services Commission Act (FSCA) provides that the Financial Services Commission (FSC) shall act as the ultimate regulatory body for all financial services in St. Kitts and Nevis. The supervisory responsibilities of the FSC are administered by the Regulators who have wide powers under section 13 of the FSCA. The effectiveness of the FSC's supervision is limited by resources. Responsibility for both the domestic and offshore banking sector resides with the ECCB. The Eastern Caribbean Securities Regulatory Commission (ECSRC) is responsible for the day to day supervision of the on shore securities sector. The ECCB's powers to inspect for AML/CFT are not expressed in the BA and the ECSRC also lacks power to inspect for AML/CFT measures; accordingly the Examiners were of the view that the ECCB/ECSRC should be vested with examination and sanction powers with regard to AML/CFT. Fit and proper requirements do not apply to all financial sectors. With regard to sanctions, the key offences under the AMLR carry homogenous penalties and are considered to be not proportionate, dissuasive or effective. Additionally, the FSC has not applied the range of sanctions that have been provided to it and the ECCB can only sanction for breaches uncovered via an examination while the ECSRC does not have the power to sanction for AML/CFT breaches.

25. The Money Services Business Act has not yet been fully implemented and full and effective implementation was advised by the Examiners as soon as possible. Money service providers are also not required to maintain current lists of agents. Compliance obligations under the Money Services Business Act do not extend to TF issues. The Examiners also noted that the effectiveness of the supervisor regime for money service providers would be affected by the broader system issues such as the limited scope of the AMLR/GN to ML issues and not to TF.

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

26. DNFBPs that fall under the remit of the POCA 2000 and by extension the AMLR are required to adhere to all requirements provided in such legislation. The Schedule to the POCA includes all DNFBPs as required by the FATF and also charities and other non-profit organisations. Guidelines, Advisories and Letters of Instructions are sent to all DNFBPs on a regular basis. There is no evidence of effective supervision of casinos for AML/CFT purposes. AML/CFT training is provided to all DNFBPs and assistance is available to them upon request.

27. The deficiencies identified for all financial institutions with regard to CDD (Recs. 5, 6, 8-11) are also applicable to DNFBPs. Similarly, the deficiencies noted with regard to the filing of SARs, the limitations of the tipping-off offence, internal policies and controls and higher risk countries are pertinent to DNFBPs.

28. Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures. It should also be noted that the FSC Act does not explicitly give powers to the FSC for the supervision and regulation of non-financial services. Additionally, at the time of the Evaluation, lawyers were questioning the FSC's authority to conduct on-site inspections for AML/CFT purposes. The FIU has not provided feedback with respect to disclosures and sanitized cases to DNFBPs.

29. With regard to non-financial business and profession other than DNFBPs, the POCA has included in the Schedule of Regulated Business Activity pawning and any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

5. Legal Persons and Arrangements & Non-Profit Organisations

30. The main types of legal persons and arrangements used in St. Kitts and Nevis to own property, hold bank accounts, own shares or to conduct financial transactions are companies, international business corporations, trusts, trust corporations and partnerships.

31. There are obligations on the service providers under the AMLR (Reg. 4) to understand the ownership and control structure to understand beneficial owners and controllers. Each offshore company is also required to have a domestic service provider that is licensed by the FSC. Trust and corporate service providers are regulated by the FSC under the POCA for AML/CFT purposes. However, there is no provision in the Companies Act with regard to beneficial ownership or control for domestic companies.

32. Trust business carried out under the Trust Act is a regulated business activity under the POCA. The FSC Act also defines 'financial services' to include trusteeship. The trustee of a trust also has record keeping obligations under the Trust Act. There are also obligations on the service providers under the AMLR to understand the ownership and control structure and to identify beneficial owners and controllers. Each offshore trust must have a local service provider that is regulated by the FSC. These provisions however are not monitored where private domestic trusts are involved due to the very nature of such trusts.

33. The Federation regime for NGOs is governed by the Non Governmental Organisation Act, 2008 (NGOA), the St. Kitts Companies Act and the Nevis Companies Ordinance. The NGOA requires all NGOs to be registered. The GN contains guidelines against the misuse of charities and guidelines and notices are also provided concerning the UN sanctions and the persons on such lists. The purposes and objectives and identity of persons who control the activities of NPOs are publicly available and may be obtained from the Companies Registry.

6. National and International Co-operation

34. The Attorney General is the competent authority for St. Kitts and Nevis with regard to international cooperation. The FIU, the DPP and the Police Force signed a MOU to facilitate the free flow of information. Despite the MOU, there appears to be some uncertainty on the part of the police as to what charges should be preferred under the POCA and the ATA. There is also insufficient cooperation and consultation between the DPP and the Police when investigating possible ML and TF offences. The Examiners also found that there should be a more proactive role taken by the DPP with regard to AML/CFT investigations.

35. St. Kitts and Nevis has ratified the Vienna, Palermo and Terrorist Financing Conventions and there is enacted legislation that implements substantial portions of these Conventions. However, Articles 20 and 29 of the Palermo Convention and Articles 11 and 16 of he Terrorist Financing Convention have not been implemented. With regard to the Security Council resolutions the ATA does not provide for the freezing of funds belonging to Al Qaida, the Taliban or their associates or other persons designated by the Resolutions. There have been no designations made

under UNSCR 1373 and there is no legislative provision for any aircraft belonging to Al Qaida, the Taliban or their associates to be denied permission to land.

36. The Mutual Legal Assistance in Criminal Matters Act (MACMA) provides the mechanism for mutual legal assistance in criminal matters to Commonwealth countries and other countries other than Commonwealth countries. St. Kitts and Nevis may request assistance in all those matters for which they are willing to grant assistance. With regard to the financing of terrorism, the Examiners found that although it is not a predicate offence to ML, it would not impact on the Federation's ability to provide mutual legal assistance in this area. With regard to freezing, seizing and confiscation, this is conducted in an expeditious manner and there are no major difficulties. Mutual legal assistance is not prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions. Mutual legal assistance would not be denied on the grounds that the offence involves fiscal matters. The Act does not provide for the refusal of mutual legal assistance on the grounds of secrecy or confidentiality.

37. There are appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests with regard to the identification, freezing, seizure or confiscation of laundered property from proceeds from instrumentalities that are used or intended for use in the commission of any ML, FT, or other predicate offences. There are arrangements in place for coordinating seizure and confiscation actions with other countries. St. Kitts and Nevis does have a Forfeiture Fund which is required to be used for the purpose of AML activities and to compensate victims of offences committed under the POCA or the Organised Crime (Prevention and Control) Act. There are no provisions in place for the sharing of assets under the ATA and there are also no provisions in the MACMA with regard to the instrumentalities used in or intended for use in the commission of an offence. These deficiencies are also applicable to SR. V.

38. St. Kitts and Nevis follow the provision of the 1870 U.K. legislation on Extradition. This legislation operates on the basis of an extradition treaty. St. Kitts and Nevis has an extradition treaty with the USA. The Fugitive Offenders Act (FOA) provides for the return of persons accused of certain specified offences to Commonwealth countries. St. Kitts and Nevis extradites its nationals. There are systems in place to process extradition requests expeditiously. The basis for mutual legal assistance is dual criminality. In addition to the MACMA, the ATA provides for the possibility of a counter terrorism convention to be used as a basis for mutual assistance in criminal matters between St. Kitts and Nevis and the requesting State. St. Kitts and Nevis has a Mutual Assistance Treaty with the USA. Most requests for mutual legal assistance emanate from the USA.

39. With regard to other forms of international cooperation, law enforcement is not authorised to conduct investigations on behalf of its foreign counterparts. Additionally, the ECSRC cannot share information about AML issues as it does not supervise for AML purposes.

7. Resources and Statistics

40. The Examiners found that there was a need for more AML/CFT training for staff in the Office of the DPP, the Police and Customs and also a lack of technical and human resources in the Police Force, the FIU and Customs and Excise (Enforcement Division). There is also inadequate staff in the Office of the DPP.

41. There are no complete statistics kept by the FIU on production orders, monitoring order and restraint orders. Additionally, there are no comprehensive and independent statistics maintained by the FIU with regard to international wire transfers. Customs and Excise does not maintain any statistics on matters that are referred to other agencies and they also do not keep comprehensive statistics on cross border seizures.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on St. Kitts & Nevis

1. St Kitts and Nevis is a Federation of two islands with a combined area of about 261 sq km and a population of 50, 675 (June 2007 estimate), of which roughly seventy-six (76 %) per cent resides in St. Kitts. The Federation is situated about 225 miles southeast of Puerto Rico in the Eastern Caribbean. Basseterre is the capital of St Kitts and the administrative capital of the Federation. The currency is the EC dollar which has been pegged to the US dollar at a rate of $2.70 EC to $1.00 US since 1976.

2. St. Kitts and Nevis is a common law jurisdiction which has a stable and democratic system of government. It became an independent nation on September, 19th, 1983. St Kitts and Nevis has a unicameral legislature consisting of fourteen (14) members, of which, eleven (11) members, are popularly elected at general elections due every five (5) years and three (3) are appointed. The present constitution provides for the separation of powers under the Governor General, Parliament the Executive, the Judiciary and the Public Service. The country is a constitutional monarchy with a parliamentary system of government. The head of state is the British monarch who is represented in St Kitts by a Governor General. The Prime Minister is appointed by the Governor General as the member of the House of Assembly best able to command the support of the majority of the members. Executive authority is vested in the Prime Minister and Cabinet, which is usually selected from his party members in the legislature. The constitution grants significant autonomy to the island of Nevis which has a semi-autonomous Nevis Island Administration and a Deputy Governor-General who names the Premier.

3. The Federation's economy has traditionally depended on the growing and processing of sugar cane but decreasing world prices have negatively affected the industry. Tourism, export-oriented manufacturing, international financial services and construction activity have assumed greater importance in the economy. The main focus of taxation includes withholding, capital gains and land and house taxes. According to the Eastern Caribbean Central Bank (ECCB), nominal GDP was provisionally estimated at US$420m for 2007 having increased by 6.9% over 2006. Real GDP, which is adjusted for inflation, grew by 2.9% to US$245.2 million in 2007. Although growth has varied at times, overall St. Kitts and Nevis has had fairly good economic growth, which was in most part due to a buoyant tourism industry, an impressive construction sector, and an increasingly significant services sector that resulted in considerable private sector led growth.

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

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

place and are constantly being strengthened. The international financial services sector provided revenue from licensing fees of E.C. $8 million.

6. The St. Kitts Investment Promotion Agency (SKIPA) and the Nevis Investment Promotion Agency (NIPA) were established to provide a 'One Stop Shop" for investors thereby providing a focused and coordinated mechanism for the promotion and facilitation of investment. These agencies together with the new Investment Code will 'ensure greater transparency in the granting of concessions to investors, and provide full protection and security to investors in accordance with international standards.'

7. The Government has also passed the Finance Administration Act, 2007 to provide for the control and management of public finance, the operation and control of the Consolidated Fund and for the governance of statutory bodies.

8. As of June 2008, the financial services sector in St. Kitts consisted of five (5) commercial banks, two (2) credit unions, sixteen (16) domestic insurance companies, seventy (70) captive insurance companies, four (4) money remitters, and twenty-nine (29) trust and company service providers (five (5) being trust service providers). There are approximately twenty-five (25) trusts and 1582 exempt companies. A regional stock exchange, common to the members of the Organisation of Eastern Caribbean States (OECS), is supervised by a regional regulator, the Eastern Caribbean Securities Regulatory Commission, and is located in St. Kitts.

9. As of June 2008, the financial services sector in Nevis consisted of six (6) commercial banks (four) 4 of which are branches), one (1) offshore bank (a wholly owned subsidiary of a Nevis onshore bank), one (1) Credit Union, five (5) domestic insurance companies (all branches of St. Kitts insurance companies), two (2) money remitters and fifty-six (56) trust and company service providers and eleven (11) insurance managers. There are 3,800 trusts and approximately 33,595 international business companies.

10. The Court system is generally unbiased and reasonably efficient. The structure of the court system is made up of Magistrates' Courts, spread across the islands; the High or Supreme Court; the Court of Appeal and the Caribbean Court of Justice. The Caribbean Court of Justice exercises jurisdiction in two significant areas: interpretation or application of the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy; and as the island's ultimate court of appeal only with respect to the aforementioned matters. Her Majesty's Privy Council is the ultimate Court of Appeal for all other judicial matters.

11. There are no recognized Self Regulating Organizations for Anti-Money Laundering/Counter Financing of Terrorism purposes. However, professional associations exist amongst whose goal is that of preserving the highest level of ethics and professional behaviour. The goals of the St. Kitts and Nevis Bar Association include supporting and protecting the character, status and interest of the Legal Profession. The Legal Professions Bill, 2008, which has had its first reading promotes honourable practice and provides for the settlement of disputed points in practice as well and questions of professional conduct, discipline and etiquette.

12. The St. Kitts and Nevis chapter of the Institute of Chartered Accountants of the Eastern Caribbean "ICAEC" seeks to maintain the highest standards of professional etiquette and ethics among its members and encourages the observance of such standards amongst non-members.

1.2 General Situation of Money Laundering and Financing of Terrorism

The Money Laundering Situation

13. The predicate offences from which unlawful proceeds originate at the local level are principally the trade in illegal drugs and fraud. In terms of the potential of funds to be laundered, the illegal drugs trade seems more significant than any other source of criminal proceeds.
14. Over the past four (4) years crime was dominated by offences of breaking, larceny, robbery and illegal drugs. Of the categories of crime that could be labelled crimes of profit, the offences mentioned above constituted on average 80.1% of all crimes reported.

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Table 1: Crime Statistics in the Federation of St. Kitts and Nevis

Major Crimes	**2003**	**2004**	**2005**	**2006**	**2007**
Murder	10	11	8	17	16
Robbery	54	52	90	75	119
Burglary	106	62	80	82	74
Firearms and Drugs	116	98	136	188	115

15. The Financial Intelligence Unit received ninety nine (99) Suspicious Transaction Reports "STRs" in 2007 which contained over EC$ 200 million involved in suspicious transactions/activities (approximately EC$ 117 million identified as 419 scams) in which eighty one (81) individuals and six (6) entities were featured subjects.

16. From November 2004 to October 2006, the Financial Intelligence Unit forwarded eighty seven (87) matters to law enforcement for appropriate action of which seventy nine (79) were closed and captioned, "nothing indicating criminal activity". In 2007, of the ninety nine (99) Suspicious Transaction Reports "STRs" forwarded to the FIU, forty (40) disclosures were sent to the Royal St. Christopher and Nevis Police Force for appropriate action. These disclosures featured approximately EC$ 12.8 million involved in suspicious transaction/activities, frequent large cash deposits and wire transfers which involved 40 individuals and one (1) international business company.

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

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

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

20. With the growing concern that the efforts to implement stricter standards to restrict the movement of value through the financial system (banks and other financial institutions), as well

as to curb the physical movement of illicit money (cross border currency through cash couriers) there has emerged a realisation that these efforts "may have the unintended effect of increasing the attractions to criminals of the international trade system for ML and FT." The vulnerabilities of the international trade system to things such as over-and under-invoicing of goods and services, over-and under-shipment of goods and services and multiple invoicing of goods and services are of real concern to the Supervisory Bodies.

Present financing of terrorism situation

21. There is almost no indication that the financing of terrorism (FT) is taking place through the facilities of the jurisdiction's financial institutions. The policy of the Government has been to identify financial institutions which may be susceptible to this type of activity and to ensure that proper advisories are issued to heighten awareness to the possible misuse of corporate vehicles for terrorist financing.

1.3 Overview of the Financial Sector and DNFBP

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

Table 2: Number of Domestic Financial Institutions

Types of financial Institutions	No.
Banks	6
Insurance	16
Credit Unions	3
Money Transfer Services	4
Real Estate	21
Casinos	1
Jewellers	12
Development Bank	1

The International Financial Sector is summarized in the tables below:

Table 3: Number of incorporated and active IBC's

Year No.	No, IBC's incorporated	Total No. of active IBC's
2005	3180	30,560
2006	2187	32,742
2007	2415	35,136

Table 4: Number of licensed financial institutions in the International Financial Sector at the end of 2003 to 2007

Types of financial institution	2003	2004	2005	2006	2007
Banks	1	1	1	1	1
Trusts	3052	3234	3441	3605	3725
Insurance	0	1	40	75	157

Gaming Companies	0	0	0	0	0

[redacted]

Table 5:

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

23. Commercial banks as well as finance companies are regulated and supervised by the Eastern Caribbean Central Bank. The sole international bank in the Federation is a subsidiary of a commercial bank and is therefore supervised by the Eastern Caribbean Central Bank as well.

24. As at June, 2008, there were six (6) commercial banks, one (1) international bank (a subsidiary of a commercial bank), and one (1) finance company. As at 2007, the total asset size of commercial banks was E.C. $3.7 Billion.

25. The Eastern Caribbean Securities Regulatory Commission administers the Securities Act 2001. A securities company is defined under the Securities Act to include companies carrying on securities trading business, brokers, dealers, underwriters, and investment advisers. At December 31, 2007 there were ten (10) broker dealers (traders & underwriters) with eleven (11) registered offices; six (6) issuers (including one Government (St. Kitts-Nevis) and five (5) Securities Companies.

26. The Supervisor of Insurance administers the Insurance Act, 1968 (Domestic Insurance) for the Federation, whilst the Registrar of Captive Insurance Companies and the Registrar of International Insurance administer the Captive Insurance Act, No. 12 of 2006 and the Nevis International Insurance Ordinance of 2004, amended to 2006, respectively. As at December 31, 2007 there were 157 exempt insurance companies, twelve (12) Insurance Managers and sixteen (16) domestic insurance companies.

27. The Cooperatives Department is charged with the administration of the Cooperatives Societies Act, No. 2 of 1995 as amended. As at December 31, 2008 there were three (3) credit unions whose asset size totalled E.C. $117.5 Million

28. At present, there is not a department or regulatory agency officially charged with the regulation of the Money Services sector. However, as it falls within the schedule of regulated business activities in the Proceeds of Crime Act, 2000 as amended, the sector is regulated for Anti-Money Laundering/Counter Financing of Terrorism compliance with the laws. Such companies are licensed under the Business and Occupations License Act and at present there are five (5) licensed money services business companies.

29. The St. Christopher and Nevis Gaming Board is charged with the administration of the Betting & Gaming Control Act, No. 20 of 1999. There are two (2) land-based casinos in St. Kitts-Nevis.

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

31. Dealers in precious metals and precious stones are considered by the authorities to pose no proven material AML/CFT risk. As customers of financial institutions licensed under Banking Act, 2004, these businesses would be subject to the requirements contained in the AML/CFT Regulations and Guidelines.

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

33. Licensees under the Financial Services Regulations Order, No. 25 of 1997 and the Nevis Business Corporation Ordinance of 1984 as amended engage in the business of trust and company service providers as defined in the FATF Forty Recommendations.

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

34. ‘Legal persons and arrangements’ are collective organizations considered by the law as having a legal personality distinct from the natural individuals who create them or cause them to function. They are subject to the law with the attribution of legal capacity and may possess both rights and duties. Recognized associations, recognized committees, companies with share capital and public bodies are all legal persons.

35. The main types of legal persons and arrangements used in St. Kitts and Nevis to own property, hold bank accounts, own shares or to conduct financial transactions are:

    • Companies
    • International Business Corporations
    • Trusts
    • Trust Corporations
    • Partnerships

Companies

36. The Companies Act 1996 (as amended) was enacted, in St. Kitts to replace the Companies Act (CAP. 335) and the International Business Companies Act with new provisions for the incorporation, regulation and winding up of limited liability companies, and generally to provide purpose connected therewith and incidental thereto. The Nevis Business Corporation Ordinance provides for the establishment of business corporations in the island of Nevis and to provide for matters incidental or consequential thereto.

37. In the island of St. Kitts, incorporation requires one or more persons signing and subscribing to the Memorandum of Association and along with this document, submit to the Registrar of Companies, standard tables and Articles of Association. The Memorandum shall state the name of the company, whether the liability of the members of the company is to be limited by shares or by guarantee, the period (if any) fixed for the intended duration of the company, whether the company is a public company and the full names and addresses of the subscribers who are individuals and the corporate names and addresses of the registered or principal offices of the subscribers which are bodies corporate. These documents shall be accompanied by a Statutory Statement setting out the company’s name and address of its registered office, whether the company is public or private, ordinary or exempt, the nature of the business and the directors involved.

38. In the island of Nevis, incorporation requires one or more persons signing and sending Articles of Incorporation to the Registrar of Companies. The Articles of Incorporation must set out the proposed name of the company, the classes and maximum number of shares authorized to issue, the number of directors and maximum allowed, right to transfer shares and any restrictions on the business of the company. The Articles of Incorporation must be accompanied, inter alia, by a notice of directors and a notice of address of the registered office.

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

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

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

Exempt Company/International Business Corporation (IBC)

42. Exempt Corporations are governed by the Companies Act, 1996 in St. Kitts and IBC's are governed by the Nevis Business Corporation Ordinance, 1984, in Nevis. The provisions of the each Act set out the requirements for incorporation of an IBC/exempt company. It establishes rules on corporate governance and contains specific provisions relating to corporate capabilities, financial reporting, fundamental changes, civil remedies, creditor protection, licensing requirements, investigations, offences and penalties and winding up provisions.

43. Incorporation requires licensed service providers in St. Kitts and Nevis to act as Incorporators. In the case of St. Kitts, the service providers must file the Memorandum of Association, Articles of Association and the Statutory Statement of the company which bears the names of the registered office, the directors and shareholders, with the Registrar of Companies. In the case of Nevis, the service providers are required to file Articles of Incorporation, Notice of Directors and Notice of Address to the Administrator, among other things. The Articles of Incorporation/Memorandum of Association must set out the classes and maximum number of shares, and the minimum and maximum number of directors allowed.

44. Ownership is governed by share holdings and shareholders may be natural or other legal persons. IBC's cannot conduct or engage in local business (or within the CARICOM Region) and must have an international element. IBC's are useful for carrying out specific investment activities and attract substantial tax advantages under the Nevis Business Corporation Ordinance, 1984.

Trusts

45. Trusts can be either local or international and are governed by the Trusts Act, No. 23 of 1996. Trusts can be set up using a trust document drafted by authorized service providers licensed by the Financial Services Regulatory Department or the Nevis Financial Services Regulation and Supervision Department. Property of any sort can be held in trust. The uses of trusts are many and varied. Trusts can be created during a person's life (usually by a trust instrument) or after death in a Will.

46. Trusts can be created by written document (express trusts) or they can be created by implication (implied trusts). Typically, a trust is created by one of the following:
    - a written trust document created by the settlor and signed by both the settlor and the trustees
    - an oral declaration
    - the Will of the settlor
    - a court order (for example in family proceedings)

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

47. Both Ordinary and Exempt Trusts must be registered by the Registrar of Companies. The Register is not open for inspection except that a trustee of a trust may authorize a person to inspect the entry of that trust on the register.

48. An ordinary and exempt trust must have a registered office, which is the office of the trust company or corporation that is a trustee.

Partnerships

49. Partnership arrangements are still common in St. Kitts and Nevis and are governed by the Limited Partnership Act, No. 24 of 1996.

Mutual Funds

50. The Nevis International Mutual Funds Ordinance, 2004 provides the regulation, authorization and control of Mutual Funds and their managers and administrators carrying on business from within Nevis. This Ordinance, in conjunction with the Nevis International Mutual Funds Regulations are used in the supervision of this industry.

Captive Insurance

51. In the island of St. Kitts, captive insurance companies are licensed and regulated by the Registrar of Captive Insurance in accordance with the Captive Insurance Companies Act, 2006. The Nevis International Insurance Ordinance, 2004 amended in 2006, provides for the regulation of persons establishing and carrying on off-shore insurance business from within Nevis.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

52. St. Kitts and Nevis remains committed to ensuring that it conforms to international standards as they relate to AML/CFT. The Financial Services Commission, as part of its mandate, maintains oversight of the national framework and collaborates with the Financial Intelligence Unit and other domestic regulators and law enforcement agencies on an ongoing basis.

53. Emphasis continues to be placed on furthering collaboration and co-operation between regulators and stakeholders. A consultative approach has been adopted with industry associations in the development of policy, including guidelines.

54. A White Collar Crime Unit will be established with four (4) individuals accredited by the Caribbean Anti-Money Laundering Program (C.A.L.P) as Financial Investigators who will investigate all Money Laundering and Financing of Terrorism predicate offences. Significant resources have been dedicated to this Unit. Much emphasis has been put on the concept of "seamless integration" with the FIU. Money Laundering matters are automatically pursued at the appropriate juncture in parallel with concerted financial investigations by the FIU into the financial background of alleged money laundering. The suppression of money laundering and crime associated with such, is a high objective of the Government in consideration of the devastating effects such activity can have socially.

55. The St. Christopher and Nevis Gaming Board has newly constituted board members. This Board will ensure effective monitoring and licensing of the casino industry in accordance with the AML/CFT framework and ensure that the casinos are aware of their reporting obligations to the Financial Intelligence Unit. The St. Kitts and Nevis Gaming Board will cooperate with the Financial Services Regulatory Department, St. Kitts and the Financial Services Regulation and Supervision Department, Nevis to ensure efficient supervision of this industry.

56. The review and assessment of statistics kept in accordance with FATF Recommendations has allowed a data-driven appraisal of the effectiveness of the implementation of the AML/CFT regime. Most significantly, after years of lag, the reporting of suspicious transactions has risen, clearly because of more effective training and sensitization that has been better communicated to financial institutions. The necessity, obligation, purpose and filing of Suspicious Activity Reports are emphasized, as evidenced by the results.

57. The Money Services Business Act, 2008 is designed to bring a strong regulatory regime to license and supervise money remitters. Presently, money remitters are required to be registered with the Ministry of Finance. Also, the Draft Insurance Bill, 2008 is due to go before Parliament in the near future.

58. The National Crime Commission Act was passed in 2004 as Act No. 3 of 2004. The Act sets up a Commission to conduct investigations and inquiries into criminal activity within the Federation with special emphasis on

    - Drugs and narcotics
    - Fraud
    - Money laundering
    - Organised crime
    - Other serious offences

59. The Act also aims to facilitate greater cooperation between law enforcement agencies to combat the prevalence of crime and recommend appropriate policies to the Government. Additional objectives are to maintain a database on crime, to liaise with and cooperate with other Crime Commissions within the region and the international community and to monitor and evaluate actions or programmes intended to prevent or reduce crime levels within the Federation. The Commission has been officially constituted and is operational.

60. St. Kitts and Nevis ratified the Convention on the Prohibition of Chemical Weapons in 2004 and the Chemical Weapons Act was passed in 2006 to give effect to the provisions of that Convention. The act criminalises the development, production, stockpiling and use of chemical weapons and their destruction. The act empowers the Government to seize any item suspected of being a chemical weapon and once so identified that item is subject to be forfeited to the Crown. Regulations are in the process of being prepared and should be completed by November of this year. Training of experts in this area has commenced and is ongoing. The Federation considers that the enactment of legislation in this area is an important instrument in constructing a complete network against acts of terrorism. To further strengthen this network, the Nuclear Test Ban Treaty was ratified in April of 2005.

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

61. The supreme law of the Federation is the Constitution which is supported by a body of legislation (primary and subsidiary) and case law. The Federation is served by the multi-state Eastern Caribbean Supreme Court comprising a High Court of Justice, and a Court of Appeal. The Judicial Committee of the Privy Council in London serves as the final appellate court.

62. The country has become known for its investments and offshore financial services sector, the bulk of which is located in Nevis. As a result of having vibrant offshore and investment sectors, St. Kitts and Nevis' susceptibility to money laundering has increased.

63. At the national level, the principal pieces of AML/CFT legislation enacted with a view to implementing the country's continued obligation under the Conventions and UN Resolutions are the Drugs (Prevention of Misuse) Act 1986, as amended in 1993; the Proceeds of Crime Act, 2000, as amended to 2008; the Anti-Money Laundering Regulations, 2008; the Anti-Terrorism Act, as amended to 2008; the Organised Crime (Prevention & Control) Act, 2002, as amended to 2008; the Mutual Assistance in Criminal Matters Act, 1993; the Financial Intelligence Unit Act, 2000, as amended to 2008; the Financial Services (Regulations) Order, 1997. The specific provisions of each piece of legislation have been addressed individually

within the descriptive sections of this assessment. In addition to these legislations, the Guidance Notes on the Prevention of Money Laundering and Terrorist Financing were revised and issued pursuant to the Anti-Money Laundering Regulations, 2008.

64. At the international level, the Government of St. Kitts and Nevis has ratified all of the UN Conventions dealing with money laundering (ML) and financing of terrorism (FT).

65. The policy of Government has been to identify financial institutions and other entities susceptible to exploitation by money launderers, and to require them to establish internal procedures and controls to deter and detect laundering activity. A wide range of institutions and entities are prescribed in the Schedule to the Proceeds of Crime Act, 2000 as amended. Among the significant duties imposed by the Regulations is the requirement for these regulated persons to report to the competent authority those transactions which are reasonably suspected to be connected to money laundering. In making a report in good faith, the institutions/entities will enjoy statutory immunity against any criminal, civil or other liability occasioned by the disclosure.

66. The competent authority for receiving these reports is the statutorily established Financial Intelligence Unit (FIU), which is given an array of powers to facilitate proper analysis and investigation of suspicious transactions under the Financial Intelligence Unit Act, 2000, as amended in 2001 and 2008. This extends to cooperation with foreign counterparts.

67. Another critical institution in the AML framework is the Financial Services Commission (FSC), which is given overall regulatory responsibility for financial services in the Federation. Separate regulators for St. Kitts (Financial Services Regulatory Department) and Nevis (Financial Services Regulation and Supervision Department) carry out the actual supervision of institutions on behalf of the Commission. The FSC has statutory authority to liaise and cooperate with foreign competent authorities on supervisory issues.

68. Other important agencies in the AML/CFT regime are the Police, Customs and Defence Force, and legislation authorizes their personnel to seek judicial approval for search warrants, production and monitoring orders and other evidence – gathering tools.

69. The Director of Public Prosecutions, as the state officer responsible for mounting prosecutions and seeking property restraint orders against suspects under the Proceeds of Crime Act, 2000 as amended, is also vital to the whole process.

70. The Anti-Terrorism Act is designed to deter terrorist activity and the financing of such acts and terrorist groups. The legislation makes provision for both mandatory and permissive reporting of suspicion of terrorist financing to Police, as well as investigative tools to enhance the ability of law enforcement to counter terrorism.

71. The Attorney General is the competent authority for receiving mutual legal assistance requests under the Mutual Assistance in Criminal Matters Act 1993. Virtually all requests for assistance in relation to money laundering and the financing of terrorism are submitted to the Supervisory Authority to exercise his powers under the Proceeds of Crime Act, 2000 as amended to obtain production orders for service on financial institutions, to immobilize the proceeds of crime by administrative directive or court order, and to institute proceedings for the confiscation of laundered property. In a narrower range of offences, particularly those relating to drug trafficking and official corruption, the Police can compel production of documents.

72. The Financial Services Commission (FSC) with the assistance of the St. Kitts Regulator (Financial Services Regulatory Department) and the Nevis Regulator (Financial Services Regulation and Supervision Department) has responsibility for issuing guidelines and training financial institutions in relation to their obligations under the Anti-Money Laundering

Regulations and the Guidance Notes on the Prevention of Money Laundering and Financing of Terrorism. The outcome of that training should be and has been a more intelligent assessment by financial institutions of what constitutes a suspicious transaction. This is already noticeable in the increased filing of suspicious transaction reports over the period of the last four (4) years.

73. The Regulator of Domestic Banks and a specific category of non-bank financial institutions is the Eastern Caribbean Central Bank (ECCB). The ECCB has over the past four (4) years examined all financial institutions it regulates with special attention to ensuring that there is in place the required internal policies, procedures and controls to counter money laundering and the financing of terrorism.

74. In the offshore sector and the area of non-bank financial institutions, the Regulator is the Financial Services Commission. The regulatory duties are conducted by the Financial Services Regulatory Departments of St. Kitts and Nevis. The broad intention and design of the Government is to constitute the Regulatory Departments of St. Kitts and Nevis as the overall regulators for most of the financial institutions listed in the Proceeds of Crime Act, 2000 as amended. This would bring a consistency to the style of regulation and create a one-stop shop for most regulatory matters, which should increase efficiency markedly. It is the intention that many of the domestic financial institutions should be overseen by the Financial Services Commission.

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

76. The money remitters are examined by the Financial Services Commission which assesses compliance with the requirements of the Money Laundering & Financing of Terrorism Guidelines which are issued and amended from time to time.

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

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

c. Overview of policies and procedures

79. The Supervisory Bodies have indicated the intention for a more robust shift to a risk-based approach in AML/CFT as advocated by the FATF and the IMF/World Bank, with the intention of creating adequate provisions adopted to address new areas of uncertainty that arise out of the increase in complexity that such an approach brings to the system. Financial sector regulators also stratify their licenses, based on risk profiling and would therefore pay particular attention

to products, services and geographic penetration in shaping a risk-based approach to supervision.

80. Consistent with the risk-based approach, the AML/CFT guidelines issued by Regulators contain both advisory and obligatory requirements. Advisory matters permit financial institutions to implement alternative but effective measures. Obligatory requirements are aligned with legal obligations found in the Proceeds of Crime Act, 2000 as amended, the Anti-Money Laundering Regulations and the Anti-Terrorism Act, as amended.

81. The Financial Services Commission has issued The Guidance Notes on Prevention of Money Laundering and Financing of Terrorism. These were revised to provide detailed guidance on how financial institutions should deal with risk-assessment. In particular, increased emphasis has been placed (specifically in the revision of the Guidance Notes and the Anti-Money Laundering Regulations, 2008) for risk assessment in the customer due diligence process.

d. Progress since the last mutual evaluation

82. The last mutual evaluation of the Federation of St. Kitts and Nevis by the Caribbean Financial Action Task Force took place in 2003. The main recommendations consisted of: Ratifying Conventions and Protocols cited in the Anti-Terrorism Act, which had not yet been ratified; Removing the provision in legislation for two separate forfeiture funds; Strengthening co-ordination between law enforcement agencies; The need for further initiatives to complement competent administrative measures in the area of international co-operation and implementing the draft Guidance Notes on the Prevention of Money Laundering and Terrorist Financing.

83. In response to the primary recommendations of the CFATF in 2003, the Organized Crime Prevention and Control Act and the Proceeds of Crime Act were amended to enhance the transparency of the management of funds in the forfeiture fund and to dispose of the duplicity of the two forfeiture funds.

84. The revised Guidance Notes were included in a schedule to the Anti-Money Laundering Regulations, 2001 as amended in order to ensure that adherence to same were required by law. In addition, the Anti-Money Laundering Regulations, 2001 were repealed and replaced with Regulations which embodied the requirements of the Financial Action Task Force's 40 plus 9 recommendations.

85. All Conventions and Protocols listed under the Anti-Terrorism Act, 2002 have now been ratified.

86. The Government of St. Kitts and Nevis has entered into discussion with the British High Commission to explore the possibility of establishing a Financial Investigations Program which would provide mentorship to the law enforcement agencies thereby enhancing their capacity to investigate and prosecute financial crimes including Money Laundering and Terrorist Financing.

87. The Federation of St. Kitts and Nevis has made considerable progress in correcting most of the deficiencies identified in 2003. In addition, the Single Regulatory Unit will be established to strengthen the regulation and monitoring of all non bank financial institutions.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis2

Recommendation 1

88. St. Kitts and Nevis ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention) on the 19th April, 1995 and the 21st May, 2004, respectively.

89. Money laundering has been criminalized by section 4 of the Proceeds of Crime Act, Cap. 4.22 (POCA). Section 4(2) states that "a person engages in money laundering where that person (a) engages directly or indirectly in a transaction that involves money or other property that is the proceeds of crime; (b) the person receives, possesses, disguises, conceals, disposes of or brings into or transfers from Saint Christopher and Nevis any money or property that is the proceeds of crime or (c) conspires to commit, or attempts, incites another, aids, abets, counsels, facilitates or procures the commission of any of the activities in (a) and (b); and the person knows or ought reasonably to have known that the money or other property is derived, obtained or realised directly or indirectly from some form of serious offence.

90. Money laundering extends to any type of property which is the proceeds of a serious offence. This includes property which is derived from an act or commission which occurred outside of St. Kitts and Nevis which would have constituted a serious offence had it occurred in St. Kitts and Nevis. "Property" refers to all property whether movable or immovable or vested or contingent, no matter where it is located "Proceeds of Crime" is defined in section 2 of the POCA as *"(a) proceeds of a serious offence or (b) any property that is derived, directly or indirectly, by an person from any act or omission that occurred outside of St. Kitts and Nevis that would, had it occurred in the Federation, have constituted a serious offence."*

91. The offence of money laundering extends to any type of property regardless of its value once it represents the proceeds of crime. It is irrelevant whether the property directly or indirectly represents the proceeds of crime. Property is given a wide definition to include movable or immovable, vested or contingent property, whether located in St. Kitts and Nevis or any other part of the world.

92. In order to prove that property is the proceeds of crime it is not a prerequisite for a person to be convicted of a predicate offence. This is explicitly stated in section 4(2)(a) of the POCA.

93. Under the definition of "proceeds of crime", all predicate offences except the financing of terrorism are adequately captured under the designation of "serious crime". There are provisions in law for all of the twenty designated categories of offences within the domestic law as set out below.

Table 6 Designated Categories of Offences

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

FATF 20 DESIGNATED CATEGORY OF OFFENCES	ST. KITTS & NEVIS' EQUIVALENT LEGISLATION
Participation in an organized criminal group and racketeering	Organized Crime Prevention and Control Act, No 22 of 2002. (section 3)
Terrorism including Terrorist Financing	Anti-Terrorism Act, No. 21 of 2002. (section 2)
Trafficking in human beings and migrant smuggling.	Immigration Act, No. 10 of 2002. Trafficking in Persons (Prevention) Act, 2008 (section 5)
Sexual exploitation including sexual exploitation of children	Offences against the Person Act, Cap 56; (sections 46 & 47). Criminal Law Amendment Act, Cap 19. (sections 3-7)
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	Drugs Prevention and Misuse Act, No. 11 of 1986. (sections 4,5,17 &21); Precursor Chemicals Act, No. 20 of 2007 (sections 23-26).
Illicit Arms Trafficking	Firearms Act, No. 23 of 1967. (section 4).
Illicit trafficking in stolen and other goods	Larceny Act, Cap 41. (section 35).
Corruption and Bribery	Organized Crime Prevention and Control Act, No. 22 of 2002. (section 4).
Fraud	Criminal Law Amendment Act, Cap 19. Forgery Act. (sections 4,5 &7); Larceny Act (sections 17-25).
Counterfeiting currency	Forgery Act, Cap 31. (sections 11-13)
Counterfeiting and Piracy of products	Copyright Act, No. 8 of 2000 (sections 36 & 145); Patents Act, No. 9 of 2000, (section 62); Protection of Layout Design (Topographies) of Integrated Circuits Act) – No. 19 of 2007 (sections 6 & 25); the Marks, Collective Marks and Trade Names Act, No. 10 of 2000 (section 28).
Environmental crime	Pesticides and Toxic Chemicals Control Act, No. 18 of 1999, (section 47); Maritime Areas Act (sections 15, 18 23&24); Chemical Weapons (Prohibition and Control) Act, No. 20 of 2006 (sections 2 & 5);
Murder, Grievous bodily injury	Offences Against the Person Act, Cap 56 (section 2).
Kidnapping, illegal restraint and hostage taking	Offences Against the Person Act, Cap 56 (sections 50, 51 & 62); Taking of Hostages Act No. 3 of 1993, (section 3).
Robbery or theft	Larceny Act, Cap 41 (sections 31 & 33)
Smuggling	Customs (Control and Management) Act, 1992 (sections 109 &111); Merchant Shipping Act, No. 24 of 2002 (sections 15 & 18).
Extortion	The Larceny Act – Cap. 41 (section 32(1)).
Forgery	Forgery Act, Vol. 1 Cap 41 (sections 4, 8 & 10).
Piracy	Merchant Shipping Act, no. 24 of 2002, Merchant Shipping (Ship and Port Facility Security) Regulations, 2004; Maritime Areas Act, No. 3 of 1984 (section 15 (1)(a)).
Insider trading, market manipulation	Securities Act, No. 12 of 2001 (sections 115, 116 &118).

94. St. Kitts and Nevis applies the threshold approach for predicate offences and offences which fall into categories (a) and (b) in particular are included. The POCA sets out in section 3(2) that

a person is taken to be convicted of a serious offence if the person is convicted, whether summarily or on indictment, of the offence. A 'serious offence' is defined in section 2 of the POCA as being '*any offence triable on indictment or any hybrid offence that attracts a penalty of imprisonment for more than one year.'* It should be noted that the offence of financing of terrorism under the ATA has a maximum penalty of fourteen years imprisonment on conviction on indictment and/or a fine. However on summary conviction a person cannot be sentenced to a term of imprisonment exceeding six months. It means therefore that only the indictable offence of financing of terrorism can be described as a serious offence under the POCA. Hence the summary charge for financing of terrorism does not qualify as a serious offence and therefore does not meet the requirement to be a predicate offence for money laundering.

95. Under Section 2 of the POCA predicate offences for money laundering extends to conduct which occurred in another country and would have constituted an offence both in that country and St. Kitts and Nevis.

96. A person who is charged for a predicate offence can also be charged with the offence of money laundering provided there is sufficient evidence to do so. However a person who is charged with the predicate offence is not automatically charged with money laundering.

97. Under section 4(2)(c) of the ATA provision is made for ancillary offences to the offence of money laundering. It is an offence for a person to conspire, attempt, incite another, facilitate, aid, abet, counsel or procure the commission of a money laundering offence.

Additional Element

98. The definition of "proceeds of crime" in section 2 of the POCA provides for this. The definition of "proceeds of crime" in section 2 of the POCA applies to proceeds derived from conduct which occurred in another country but is not an offence in that country nevertheless had that conduct occurred in St. Kitts and Nevis it would have been considered a money laundering offence, therefore that person can be charged in St. Kitts and Nevis for that offence.

Recommendation 2

99. Pursuant to section 2(1) of the POCA the word 'person' is defined to include both a body corporate and an unincorporated body. The money laundering offence under the POCA therefore applies to natural persons. Persons are liable under the Act where they know or ought to have reasonably known that the money or other property is derived, obtained or realised directly or indirectly from some form of serious offence.

100. Section 4 (2) of the POCA provides that a person engages in money laundering where that person *"knows or ought to reasonably have known"* that the money or property in question was derived (among other things), from a serious crime. Therefore the mens rea for the crime of money laundering can be inferred from objective factual circumstances.

101. As previously stated, the word "person" under the POCA is defined to include a body corporate and unincorporated body. Therefore a legal person can be charged for the offence of money laundering.

102. The Interpretation and General Clauses Act provides in section 39 that the imposition of a penalty or fine by any law does not operate as a bar to civil action.

103. Under section 4(1) of POCA, ML is an indictable offence. On conviction, offenders are liable as follows:

(a) "in the case of a natural person, to a fine not exceeding XCD$250,000.00 or imprisonment for a term not exceeding twenty years, or both;

(b) in the case of a corporate body, to a fine not exceeding XCD$700,000.00."

104. The penalties for these offences should be dissuasive to criminals since they are comparable to penalties imposed for the more serious offences in St. Kitts and Nevis, for example, the penalty for the offences of burglary and robbery is between fifteen to twenty years. However since no penalties have been imposed under this Act one cannot test the effectiveness of the penalties.

Statistics

105. There are statistics kept on matters forwarded to the Police by the FIU for investigation (FIU is administrative in nature). Statistics are also kept on the results, due to feedback from the Police, of the outcome of these forwarded matters. However, statistics are not kept on ML prosecutions and convictions solely due to the fact that there have not been any instances of ML prosecutions and convictions in the Federation. Were such situations to rise, the proper measures are in place for the related statistics to be kept.

106. The Director of Public Prosecutions indicated that since she had been appointed to that office she has never received any files from the police in relation to investigations conducted into money laundering offences. She however stated that there are two pending matters engaging her attention for which money laundering charges are being considered. On the other hand there is conflicting information from the police which suggests that no money laundering offences are presently being investigated. The DPP has indicated that her predecessor did not advise on any money laundering charges since no files were forwarded to him by the police for advice.

107. Although the POCA has been in force since 2000, to date no one has been charged under this Act. Based on our interviews it is clear that the relevant parties are unsure or are reluctant to charge persons under this Act. Instead persons are charged with predicate offences with which the authorities are more familiar. There were a number of recent amendments to this Act which were made in order to fully comply with the relevant international conventions. However this means that there has been little time to assess the effectiveness of its implementation.

Additional Element

108. To date no one has been charged for the offence of money laundering in St. Kitts and Nevis, it therefore follows that no statistics are available on sanctions applied to anyone convicted for that offence. However assurances were given that there is a system in place for keeping the necessary statistics.

2.1.2 Recommendations and Comments

109. The recent amendments to the POCA have resulted in little time to assess the effectiveness of its implementation.

110. The penalty for financing of terrorism on summary conviction should be amended so that the offence falls within the definition of a serious offence.

111. Training should be provided to all the relevant parties who are responsible for investigating and prosecuting ML and FT offences with the aim of increasing the number of investigations and prosecutions for these offences.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[3]
R.1	**PC**	• **Recent amendments have affected ability to assess effectiveness of implementation.** • **Terrorist financing is not a predicate offence for money laundering.**
R.2	**LC**	• **No one has been charged or prosecuted under the POCA.**

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

112. Section 12 of the Anti-Terrorism Act No. 21 of 2002 (ATA) creates the offence of financing of terrorism which includes the provision and collection of funds, whether directly or indirectly to be used to carry out terrorist acts. A person who knowingly deals with any property owned or controlled by or on behalf of terrorists, or knowingly enters into any transaction in relation to the said property or provides financial or other services in respect of property at the direction of a terrorist or terrorist group commits an offence.

113. 'Terrorist act' is given a wide definition in the ATA (Amendment) Act of 2005. It covers an act or threat of action in or outside of St. Kitts and Nevis which involves causing serious bodily harm to persons, endangering the lives of persons, causing serious damage to property, environmental crime, disruption of essential services including services provided by the banking sector and involves the threat to national security and is intended to intimidate the public or compel a government or international organisation to do or to restrain from doing any act..

114. Whereas initially "funds" was not defined in the ATA, the ATA has recently been amended to include such a definition. "Funds" has been given the same definition as in the Terrorist Financing Convention.

115. Section 107 (1) of the ATA as amended by section 4 of the ATA (Amendment) Act, No. 2 of 2008 makes it an offence for a person to conspires to commit an offence under this Act. A person is also liable if s/he attempts, incites another, aids, abets, facilitates, counsels or procures the commission of an offence under this Act.

116. Terrorist financing offences do not require that the funds were actually used to carry out or attempt a terrorist act or to be linked to a specific terrorist act.

117. Proceeds of Crime is defined in the POCA as proceeds of a serious offence. As previously stated, a serious offence is defined in the POCA as any offence triable on indictment or any hybrid offence that attracts a penalty of imprisonment for more than one (1) year. Section 12 of

the ATA deals with fund raising activities for terrorists. Section 12(6)(a) of the ATA states that, "a person convicted of an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or both or on summary conviction to imprisonment for a term not exceeding six months or to a fine or both." Since Section 12(6) provides for summary conviction which is limited to a six months sentence then it can be argued that the offences under Section 6 are not strictly serious offences as defined by POCA and cannot therefore be defined as predicate offences for money laundering.

118. A person who commits an offence outside of St. Kitts and Nevis which would have been an offence under the ATA had it occurred in St. Kitts and Nevis would be liable for prosecution in St. Kitts and Nevis, if he is found there. Hence a person is liable to be prosecuted for a terrorist act whether committed in St. Kitts and Nevis or any other part of the world. Equally where a person conspires to commit a terrorist act while in or away from St. Kitts and Nevis that person is liable to be prosecuted in St. Kitts and Nevis.

119. Under the ATA a person is liable for an offence of terrorist financing if he does the act intentionally, with knowledge or if he has reasonable cause to suspect certain acts are being done to commit the offence of terrorist financing. It is a general common law principle that intention can be inferred from objective factual circumstances. Since the offence of FT is a criminal matter then intention can be inferred form the facts as is done in all other criminal matters where intention is an element of the offence which must be proved.

120. The ATA does not define the word "person" It therefore means that the definition of person as defined in the Interpretation and General Clauses Act, Cap. 166 will have to be applied. "Person" is defined as any corporation, either aggregate or sole, and any club, society, association or other body of one or more persons. Hence legal persons are subject to criminal liability for terrorist financing. However whereas the penalties for natural persons are clearly stipulated in the ATA the penalties for legal persons are not given similar treatment. This is a different approach taken from that in the POCA where the penalties for legal persons are clearly stated. For example, a person convicted on indictment for an offence under section 12 of the ATA is liable to imprisonment for up to fourteen years or to a fine or both. Since a legal person cannot be imprisoned it has to be fined. However since the fine has not been quantified one cannot assess whether the penalty would be adequate or dissuasive.

121. The fact that a legal person has been found criminally liable does not preclude that company from being subjected to civil or administrative proceedings. Section 39 of the Interpretation and General Clauses Act provides that "the imposition of a penalty or fine by any law, in the absence of express provision to the contrary, shall not relieve any person from liability to answer for damages to a person injured."

122. Under section 12(6) of ATA, the offence of terrorist financing can be tried either on indictment or summarily. On conviction, offenders are liable as follows:

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

(b) On summary conviction, to imprisonment for a term not exceeding six months or to fine or both

The penalty for the offence of terrorist financing on indictment is lighter than the penalty for money laundering and comparable offences. The penalty for summary conviction is not dissuasive. Since no one has been convicted or punished under the ATA then one cannot assess the effectiveness of these penalties.

Recommendation 32 (terrorist financing investigation/prosecution data)

123. No one has been charged or convicted for any offence under the ATA. This is understandable since the risk of the threat of terrorism and terrorist financing has been low in the Region as a whole. In fact no suspicious activity report has been filed relative to terrorist financing nor has any investigation been conducted into any such matters. However assurances have been given that there are measures in place to record statistics forwarded to the police from the FIU and cases prosecuted by the DPP.

Additional Element

124. Since no one has been convicted of a terrorist financing offence, it follows that no sanctions have been imposed and hence there is no such statistics available.

2.2.2 Recommendations and Comments

125. The penalty for summary conviction of terrorist financing under Section 12 of the ATA should be at least one year in order for terrorist financing to be considered a predicate offence.

126. St. Kitts and Nevis needs to amend the ATA in order to clearly reflect the liability of legal persons by quantifying the fines where necessary.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• **Terrorist financing does not meet the requirements to be considered a predicate offence.** • **There are inadequate stipulated penalties for legal persons under the ATA.** • **Effectiveness cannot be determined since there are no prosecutions, convictions or STRs filed with regard to FT.**

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

2.3.1 Description and Analysis

Recommendation 3

127. Both the Proceeds of Crime Act and the ATA make provision for the confiscation of property which constitutes the proceeds of crime. Section 43 of the POCA also provides for the confiscation of instrumentalities used in the commission of crimes of money laundering; however there is no provision for confiscation of instrumentalities intended for use in the commission of that crime. The ATA does not make any specific mention of confiscation of instrumentalities or tainted property used in or intended for use in the commission of terrorist financing or predicate offences. However, given the wide definition of property under this Act and the provisions of section 34 it is clear that the ATA provides for the forfeiture of instrumentalities used in and intended for use in terrorist financing.

128. Under the POCA (sections 38 to 58) where a person has been convicted of a serious offence the DPP is entitled to apply for a forfeiture order against tainted property and/or a confiscation order against the person for benefits derived from the offence. "Tainted property" refers to property used in, or in connection with the commission of a serious offence or property derived,

obtained or realized, directly or indirectly, from the commission of the offence. Before the application can be heard the DPP is required to give notice to the convicted person and any other person who may have interest in the property. Third parties have the right to be heard at the hearing of the application.

129. Pursuant to section 42 of the POCA, where a person commits a serious offence and absconds after information has been laid and an arrest warrant has been issued against him or her, the DPP can apply for a forfeiture order in accordance with section 43 of the POCA. Further with regard to absconding where the offence is money laundering (section 43 of the POCA) the Court may order forfeiture of any property, proceeds, or instrumentalities derived from or connected with, or related to the offence. It should be noted that there are no provisions for the confiscation of instrumentalities with regard to all predicate offences except where the person absconds pursuant to section 42 of the POCA as noted above.

130. After a person has been convicted for a money laundering offence and the Court is satisfied that the property is tainted property, then the Court may order that the proceeds, or instrumentalities derived from or connected to the offence be forfeited to the Government of St. Kitts and Nevis. The tainted property of a person who has been charged and does not appear to answer the charge after a prescribed time can also be forfeited.

131. Section 43 of the POCA lists three factors the Court may use to determine whether property is tainted property. These are 1.) Whether the property was in the person's possession at the time s/he committed the offence or immediately thereafter, 2.) Whether the property especially money was found in the person's possession or under his control in a vehicle, building, place or receptacle during the course of investigation into the offence and 3.) Whether the value of the person's property has increased after the commission of the crime and it cannot be accounted for based on an assessment of the person's legitimate income.

132. Property of a corresponding value can be forfeited where property, proceeds or instrumentalities cannot be forfeited due to the actions of the convicted person. Section 48 of the POCA also allows the Court to order a person to pay an amount equal to the value of property which should be forfeited if for certain stated reasons it is more expedient to make such an order.

133. A Confiscation order can be issued against a person who has been convicted of a serious crime once the court is satisfied that s/he has benefited from that offence. The Court has discretion to order that person to pay an amount equal to his or her benefits or a lesser value. The word "benefit" is defined in section 2 of the POCA to include "any property, service or advantage, whether direct or indirect. Further a benefit extends to that which is derived or obtained by or otherwise accruing to another person being a third party.

The ATA

134. The ATA provides for forfeiture of property where a person has been convicted of an offence committed under sections 12, 13, 14 or 15. Property includes money, real or personal; anything in action, intangible or incorporeal property or any interest a person holds or has in a property.

135. The Court may issue forfeiture orders for property which a person had in his or her possession or control at the time of the commission of the offence and at the time s/ he intended to use it or had reasonable grounds to believe it might be used for terrorist purposes. The Court may also order forfeiture of property which the convicted person received as payment or reward for the commission of the offence whether it was wholly or partly, or directly or indirectly received.

136. While there is no procedure stated in the ATA for the application of forfeiture or confiscation orders one may infer that the same procedure would be used as is used in the POCA for similar applications.

137. "Terrorist cash" refers to cash intended for terrorist purposes or belongs to a designated group, or is obtained through terrorism or is marked as terrorist property. A police, customs or immigration officer is entitled to apply to a Magistrate to issue an order for the forfeiture of the cash. The Court must be satisfied that the cash is terrorist cash before granting the application.

138. The Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.16, provides that where a person has been convicted for an offence, other than a drug related offence, the Court may order forfeiture of the opium pipe or other article or of the controlled drug, and all receptacles which contained the drug, whether this be a ship, boat, aircraft or any other means of conveyance.

139. However where a person has been convicted of a drug trafficking offence, the Court on passing sentence may order any article, money or any valuable consideration relating to the offence to be forfeited to the Government of St. Kitts and Nevis. The proceeds of crime are subject to forfeiture whether it consists of property acquired directly or indirectly from the commission of an offence under this Act (i.e. Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act)

140. Section 38 of the POCA provides that where a person has been convicted of a serious offence the DPP may apply to the Court for a forfeiture order against the tainted property or a confiscation order against the person in respect of the benefits derived by the person from the commission of the serious offence.

141. The word "benefit" is defined in section 2 of the POCA to include "any property, service or advantage, whether direct or indirect. Further a benefit extends to that which is derived or obtained
by or otherwise accruing to another person being a third party.

142. By virtue of section 43 of the ATA, upon the conviction of a person of a money laundering offence if the Court is satisfied that the property is tainted property, the Court shall, upon the application of the DPP order that the property, proceeds, or instrumentalities derived from, or connected, or related to the offence be forfeited to the Government.

143. It has extensive jurisdiction in that it recognizes and gives the Court power to enforce overseas freezing, forfeiture and confiscation orders as well as creating new offences and procedures for the forestalling and preventing of money laundering. It also provides a framework for the exchange of information and cooperation with other countries.

144. Anti-Terrorism Act, No. 21 of 2002 provides in section 2 a definition of property that includes money, any form of property, real or personal, heritable or moveable; anything in action or other intangible or incorporeal property or any interest a person holds or has in the property.

145. The expression "terrorist property' is defined as "money or other property which is likely to be used for the purpose of terrorism. This definition goes on to include *"any resources of a designated terrorist group as well as the proceeds of acts carried out for the purposes of terrorism."*

146. As pertains to the freezing of funds in general and other related actions, in Part V of the Anti-Terrorism Act, provision is made for the freezing of terrorist property. Part V of the Bill deals with:-

(i) Restraint Orders;

(ii) Forfeiture Orders;

(iii) Seizure and Detention of Terrorist Cash etc.;

(iv) Freezing Orders; and

(v) Property earmarked as Terrorist Property.

147. A restraint order may, as is set out in section 32 of the ATA operate by preventing the person to whom notice is given from dealing with any property in respect of which a forfeiture order has been or is likely to be made in the proceedings referred to in subsection (1) or (2).

148. Provision is made in both the POCA and the ATA for provisional measures to avoid the disposal, depletion or transfer of property which is subject to a confiscation or forfeiture order. A police officer is entitled to obtain a warrant to search and seize property which he suspects to be tainted property. Where other property is discovered during the search the police is further authorised to seize that property if he suspects it to be tainted property in relation to any other criminal offence unrelated to the warrant he was executing and he reasonably believes his action is necessary to prevent the property from being destroyed.

149. The Court may also issue a restraining order where such an application is made by the DPP in relation to the realisable property of a person who has been convicted of a serious offence or who is charged or about to be charged in St Kitts and Nevis or any other country or specific property held by another person which is suspected to be tainted. The Act also provides for the registration of foreign restraining orders which affect immovable property in St. Kitts and Nevis. In order to ensure its orders are carried out both legal and natural persons can be subjected to heavy penalties for contravening the orders.

150. Under section 32 of the ATA a police officer may apply to the High Court for a restraint order where a person has been charged under sections 12, 13, 14 and 15 and a forfeiture order has been made in the proceedings or a person is to be charged under those sections and it appears that a forfeiture order may be made in the proceedings. Additionally a freezing order can be issued where an application is made by the DPP and the Court is satisfied that a person has been charged or is about to be charged with an offence under this Act or a request has been made by a foreign State on similar grounds or on the grounds that there are reasonable grounds for believing that a person has committed an offence under the Act. In both instances, the restraint order can be made ex parte.

151. Contravention of a freezing order by an individual or body corporate makes them liable to imprisonment and fines respectively. A police officer is also authorised to seize cash which he suspects to be terrorist cash.

152. Additionally, upon the receipt of a suspicious transaction report the FIU is allowed to issue an order to persons restraining them from completing certain transactions for a period not exceeding seventy-two hours. Where a request has been made from a foreign FIU, the FIU can order a bank to freeze a person's bank account for not more than five (5) days if the request relates to the proceeds of crime.

153. Similarly in section 33 of the ATA, a police officer may seize property which is the subject of a restraint order, to prevent it from being moved from the jurisdiction. Additionally, in section 36

an authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash. The Order operates to prohibit any person named in the Order form making available funds (i.e. financial assets and economic benefits of any kind) to or for the benefit of any person specified in the Order.

154. Section 14 of the POCA provides for an ex parte application to be made by the DPP for a freezing order in respect of realizable property of a person convicted of a serious offence, charged with a serious offence or about to be charged with a serious offence in Saint Christopher and Nevis or any other jurisdiction. The freezing order may also be in respect of specified property that is tainted property in relation to a serious offence. Applications for restraint orders and freezing orders can also be made ex parte under section 43 of the ATA.

155. The POCA, the ATA, the FIU Act and other pieces of legislation give the law enforcement agencies in the Federation the authority to identify and trace property which may be the subject of a confiscation or forfeiture order or is suspected to be the proceeds of crime.

156. Under section 8 of the POCA a Magistrate may issue a warrant to a police officer to allow him to search any land or premises for tainted property. In the event that a person is convicted of a serious offence, a police officer is allowed to apply to a judge in chambers for an inspection order or production order which would allow him to inspect or be given documents relevant to identifying, locating or quantifying property of the convicted person. However where such documents are located on certain premises where persons have failed to comply with production orders or for several reasons such an order cannot be issued or enforced the Court may issue a warrant to a police officer to search those premises.

157. The POCA also provides for property tracking and monitoring orders to be issued on financial institutions. The FIU shall on reasonable grounds, apply to a Judge for an order enabling the FIU to identify, locate or quantify any property or document necessary for the transfer of property belonging to a person suspected of committing or about to commit a money laundering offence. Additionally, the DPP may apply ex parte to a Judge in Chambers for a monitoring order directing a financial institution to give information to a police officer in respect of transactions conducted through an account held by a particular person with the institution over a specific period of time.

158. The DPP is also entitled to apply for disclosure of income tax information where it is relevant to the investigation of a serious offence. It should be pointed out that sanctions could be issued where there are breaches of any of these orders.

159. The ATA provides for the recovery of property which has been earmarked as terrorist property. However such property shall cease to be so earmarked where a person acting in good faith, obtains it for good value and without notice that it was earmarked property. Generally this Act allows for more measures to be taken for the identification and tracing of property. The police are entitled to search warrants to search premises, to intercept wire, oral or electronic communications relating to terrorism, production orders in relation to specified materials and in relation to government departments and orders for access to specified businesses. However only the DPP or a police officer authorised by him can apply for a monitoring order in relation to a person's bank account.

160. The POCA, the Drugs (Prevention and Abatement of the Misuse and abuse of Drugs) Act and the ATA have made adequate provisions for the protection of third parties rights in keeping with the requirements of the Palermo Convention. While the Acts do not specify bona fide third parties, under the ATA, as well as under the POCA where third parties rights are addressed those parties inevitably have to apply to the Court to assert that right and the inference can clearly be drawn where this is not expressly stated that the Court must be satisfied that they are

bona fide third parties. Where applications are made by third parties to vary orders the DPP is entitled to be served notices and to be represented at such applications which would further ensure that only bona fide third parties are recognised. See section 46 of the POCA and section 47A of the ATA.

The POCA

161. There are several safeguards designed for the protection of third parties as it relates to the issuing and enforcement of various orders. Where a police officer has executed a warrant and seized tainted property, he is duty bound to preserve the property and make a written report about the location and condition of the property. That report is forwarded to the Magistrate in the jurisdiction where the property is detained and any person who has an interest in the property is entitled to a copy of that report on satisfying the Magistrate of his/her interest. There are also procedures for a person who has interest in the property seized to apply for the return of the property.

162. Before a restraint order can be granted, the Court must be satisfied by affidavit evidence that there is sufficient evidence to justify the issuing of such orders. Although a restraint order can be issued on an ex parte application the Court has a discretion to hear any person who may have interest in the property before issuing the order. Of course this course of action would only be adopted if the Court is of the opinion that the notice would not cause any disappearance, dissipation or reduction of the value of the property. The DPP may also be required to give an undertaking as it relates to damages and or cost to protect the rights of a third party.

163. There is also a review mechanism in relation to search warrants and restraining orders. Third parties can ask the Court to vary or revoke such orders or to allow persons access to the property for purposes of reasonable living expenses.

164. Applications for production, inspection and monitoring orders are only issued after the Judge is satisfied that there is sufficient legal basis for issuing such orders. These systems are in place to ensure that third parties rights are not trampled.

The ATA

165. Where a restraint order has been issued under section 32 of the ATA, the Court is required to make provisions in the order for notice to be given to any person who may be affected by it. A person so affected by the order has the right to apply for the order to be discharged. Similar provisions are made in relation to the seizure and detention of terrorist cash. The fact that the cash must be placed in an interest bearing account is another measure in place for protection of third parties. Failure to put the cash in an interest bearing account could result in the awarding of damages.

166. In relation to forfeiture proceedings where a person claims to be the owner or someone with interest in any property which may be forfeited, that person has a right to be heard before a final order is issued. Generally, if a person who has an interest in any property which has been the subject of a forfeiture or restraint order suffers loss then that person is liable to compensation in certain circumstances.

167. There appears to be a wider scope for third party rights to be safeguarded where freezing orders are made. There are certainly more details available for the conditions which must be satisfied in order to secure that right. The Act provides for notice to be given to third parties except where there is concern that efforts would be made to frustrate the order. Provision is made for the subsistence of the person who has been charged or convicted and that person's family.

168. Where a person acted in good faith relative to the frozen property or any interest in the same, a freezing order should not prejudice that right. The Court is also required to issue orders in relation to the proper management of the fund. Additionally persons who have an interest in the fund may apply to the Court to revoke or vary the order, or in any event make provision for the reasonable living, legal and business expenses of that person and his/her dependents and of the person who was in possession of the fund at the time it was frozen. The Crown may also be called upon to give an undertaking in relation to cost or damages before a freezing order is issued.

The FIU Act

169. The only safeguard for third parties under the FIU Act appears to be the fact that the orders made under this Act can only be made for a very limited period.

The Drugs Act

170. Under section 27 of the Drugs Act, where a person claims to be the owner or has an interest in the property to be forfeited that person has a right to be heard before the order is issued. Where such an order has been granted the court may revoke that order if it prejudices a third party.

171. There are provisions under both the POCA and the ATA for nullifying any action which was done in an attempt to frustrate confiscation or forfeiture orders. Under section 45 of the POCA the Court may set aside any conveyance or transfer of property which occurred after the property was seized or a restraining order was issued unless the transaction was done for valuable consideration and the person was acting in good faith and without notice.

172. Under section 47 of the ATA where a freezing order was made against property and that property was disposed of against that order then if the person who acquired the property did so without sufficient consideration or was not acting in good faith in that s/he had notice of the order then the Court may order that that transaction be set aside.

Additional Element

173. The POCA provides for the confiscation of property of a person where the word "person" is defined as including a legal person or body corporate. The meaning of the word embraces a wide category of persons both natural and corporate and therefore would also extend to cover the property of a wide category of organisations including those that are primarily criminal in nature. The definition of "proceeds of crime" in section 2 includes proceeds from a serious offence which is where the real thrust of the legislation is – vis-à-vis the tainted property.

174. In other words, irrespective of who holds the property, the focus is on what the property is used for, has been used for or is likely to be used for. The definition of "tainted property" uses this very principle which captures the spirit of the Act i.e. property used in, or in connection with, the commission of the offence; or property derived, obtained or realised, directly or indirectly, from the commission of the offence. Once the property of an organisation that is primarily criminal in nature falls within these categories for the purposes of the Act then that property may be subject to confiscation upon conviction of a serious offence by persons involved in that organisation. A confiscation order may be made by the Court against the person in respect of the benefits derived by the person from the commission of the serious offence.

175. Like most other countries in the region there is no civil confiscation in St Kitts and Nevis. A person must be convicted of an offence before his property is confiscated. There are only two

situations where property can be confiscated without a conviction. One scenario applies to terrorist cash which has been seized and which belongs to a group which has been designated as a terrorist group. The second scenario applies where a person is charged with a serious offence or a money laundering offence and that person absconds from the Federation without being tried, then the property that would have been subject to confiscation may be forfeited.

176. Section 43 of the POCA, sets out the tests to be used in determining whether property is in fact tainted property. In the absence of evidence to the contrary the Court would draw inferences from the possession of the property within a certain time frame, as well as other evidence that the property was derived from, used in, connected or related to the commission of a serious offence. The Court would also consider an unusual increase in the income or assets of the offender around the time of the commission of an offence to be incriminating.

177. In the latter case, the person must be able to satisfy the Court that the value of such increase after the commission of an offence was derived from the income of that person from sources unrelated to criminal activity and which can reasonably account for the increase in the person's income or assets.

178. Section 2 of the ATA defines "terrorist cash" as including cash which represents the resources of a group which is a designated terrorist group. Under section 36 of the ATA, an authorised officer may seize and detain any cash that he suspects to be terrorist cash. An authorised officer may subsequently apply to the Court for the forfeiture of that detained cash to the State. This provision has applicability not only to the cash of an individual, but to that belonging to a terrorist group,

Statistics

179. To date, there have been no cases where persons have been convicted of money laundering or terrorist financing. Hence no property was seized, frozen or confiscated relative with regard to these two offences. Only one boat has been forfeited relative to the conviction for a predicate offence. The effectiveness of the system or the keeping of statistics must be questioned since one would reasonably expect more forfeitures or confiscations to be recorded especially as it relates to the predicate offence of drug trafficking. In fact one person in authority suggested that insufficient effort was being made to confiscate the proceeds of crime.

180. It should be noted however, that statistics are maintained by the Customs department on the number of cases and the amount of property seized and confiscated relating to criminal proceeds. In some cases these proceeds are auctioned and the funds transferred to the forfeiture fund established in the POCA.

181. Statistics are maintained by the Attorney General's Chambers with regard to the number of cases and the amount of property seized and confiscated relating to criminal proceeds.

182. Statistics are maintained by the FIU with regard to the number of cases and the amount of property frozen and forfeited.

Additional Element

Table 7

CUSTOMS DEPARTMENT
PROPERTY SEIZED 2006-2008

DESCRIPTION	SITUATION	AUCTION

28 ft Go Fast Boat	Abandoned at Friars Bay, due to drugs or illegal immigrants.	Highest Bid - $38,000
El Angel (Boat)	173 Bales of Marijuana drugs found off coast of Nevis	Highest Bid - $8,000
Windsong (Yacht)	Illegal Immigrants	Highest Bid - $3,500
Louana 2[4]	Drugs found of coast of Nevis, Captain with 2 crew members, each convicted in jail (3 years each) and fined $30,000, this item was also forfeited by the court.	Will be Auctioned Shortly

Requesting Country – United States of America (MLATs)

(Amounts reflected in Eastern Caribbean Country)

1. $ 384,945.89
2. $ 21,505.94
3. $ 412,300.71
4. $ 506,898.98

2.3.2 Recommendations and Comments

183. Amendments should be made to the POCA so that there would be clear provision for the seizure of instrumentalities intended for use in the commission of an offence under the Act and a predicate offence.

184. An amendment to the ATA should be made so that there would be provision for the seizure of instrumentalities used in or intended for use in the commission of an offence in the ATA.

185. The ATA should be amended to provide a stated procedure for the forfeiture and confiscation of property.

186. The POCA should be amended to include provisions for the confiscation of the instrumentalities of all predicate offences.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• **No provision in the POCA for the confiscation of instrumentalities intended for use in the commission of an offence.** • **No provision in the ATA for the seizure of instrumentalities used in or intended for use in the commission of an offence.**

[4] The Louana 2 was forfeited after the captain and his two crew members were convicted of drug related offences. The confiscation was in accordance with section 38 of the POCA.'

		• **No stated procedure under the ATA for the forfeiture and confiscation of property.** • **No seizures, freezing or confiscation of property relative to the offences of ML and FT therefore unable to determine how effective the Recommendation has been implemented.** • **Provision for the confiscation of instrumentalities for predicate offences is only applicable where the person has absconded.**

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

2.4.1 Description and Analysis

Special Recommendation III

187. St. Kitts and Nevis does not have any provisions in its legislation to immediately freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee. Section 43 of the ATA makes provisions for the freezing of funds where a person is charged or about to be charged with an offence under the Act, or a request has been made by a competent authority or a foreign State in respect of a person *about whom there are reasonable grounds for believing that the person has committed an offence specified in this Act; or (ii) who has been charged or is about to be charged with an offence specified in this Act. Under Special resolution 1267(1999) it is mandatory for all countries which are members of the United Nations to provide for the freezing without delay of funds owned or controlled by Al-Qaida and the Taliban or persons associated with them once they are so designated by the United Nations Al-Qaida and Taliban Sanctions Committee. This is required to be done whether the person has been charged, is about to be charged or a request has been made by a foreign State or competent authority.*

188. In addition, the FIU Act makes provision for the freezing of funds. Section 4(2)(c) states that the FIU –*"may, upon receipt of a request from a Foreign Intelligence Unit, or law enforcement authority order any person to freeze a person's bank account for a period not exceeding five days if the Intelligence Unit is satisfied that the request relates to the proceeds of any crime."*

189. Under section 3 of the ATA a person or a group can be deemed a terrorist or a terrorist group. However it does not appear that the mere designation of a person as a terrorist or a group as a terrorist group would result in their funds being frozen as is envisaged by special resolution 1373. Domestically it appears that a person's assets can only be frozen if he is charged or about to be charged for an offence under the ATA. On the other hand if the competent authority of a foreign state requests that the funds of a person whom there are reasonable grounds to believe that that person has committed an offence under this Act or that person is charged or about to be charged, then the DPP can apply for an order to have his funds frozen. There is therefore clear provision for co-operation between states to give effect to the freezing mechanisms of other countries. See above. In addition, the international cooperation under the Mutual Assistance Treaty and the Proceeds of Crime Act section 59 are also viewed as being means by which the Federal Government can facilitate foreign requests in dealing with terrorist related freeze orders as terrorist activities are criminal matters.

190. Additionally, section 43(1)(b) of the ATA makes provision for the freezing of funds upon receipt of a request from a "Competent Authority of a foreign State."

191. Where a request is made by a foreign State or competent authority for the freezing of terrorist funds, the Court must be satisfied with the description of the funds in respect of which the order

is sought, the grounds for believing that the funds are related to or are used to facilitate the offence and the name of the person who is believed to be in possession or control of the funds. It should be pointed out that under section 2 (d) of the ATA there is an additional requirement of which the Judge should be satisfied, however it is not clear what it is because the section is contradictory. The section states "where the person has not been charged, the offence for which he is charged", if the person has not been charged how can one state the offence for which he is charged? However once the Court is satisfied by the requirement then the Court is entitled to issue the freezing orders. If however the country who request the order does not have reciprocal arrangement with St. Kitts and Nevis for freezing orders then the Court is precluded from making that order pursuant to section 43(8) of the ATA.

192. Sections 43(b) and 43(8) of ATA speak to a foreign request to freeze terrorist funds and section 46 speaks to the freezing orders which must be registered in the Federation to take effect.

193. The term 'funds' is given the same definition as in the Terrorist Financing Convention. A freezing order can be issued for any offence committed under the ATA. See section 50 of the ATA. The freezing of funds refers to any financial assets and economic benefits of any kind.

194. The ATA provides in section 2 a definition of property that includes money, any form of property, real or personal, heritable or moveable; anything in action or other intangible or incorporeal property or any interest a person holds or has in the property.

195. The ATA also defines "Terrorist property" as: *(a) money or other property which is likely to be used for the purpose of terrorism (b) any resources of a designated terrorist group which is applied or made available, or is to be applied or made available , for use by the terrorist group; (c) proceeds of acts carried out of the purposes of terrorism and for the purposes of this definition a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act, including payments or other rewards in connection with its commission"*

196. Section 33 of the ATA states that (1) A police officer may seize any property, which is subject to a restraint order for the purpose of preventing the property from being removed from Saint Christopher and Nevis; (2) Property seized under this section shall be dealt with in accordance with the directions of the High Court.

197. The ATA does not expressly provide for the freezing of funds jointly owned by designated persons. Rather, section 43 of the ATA provides for the freezing of funds which are in the possession of or under the control of a person who has been charged under the Act. There are also no provisions in the ATA with regard to the freezing of fund or other assets derived or generated form funds or other assets owned or controlled directly or indirectly by designated persons, terrorist, those who finance terrorism or terrorist organizations.

198. Section 36 of the ATA states that (1) An authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash; (2) An authorized officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

199. There is no provision in the ATA for the immediate communication of actions taken under the freezing mechanism to the financial sector. The Act however provides for the order to be served on every person named by the Court within 21 days. The order has to be published within a prescribed time as determined by the Court. However if the Court is of the opinion that the giving of the notice will result in the disappearance, dissipation, or reduction of the funds then such notice is not required to be given. However when one considers that the application is made ex parte then there must be some domestic arrangement for giving effect to these orders in order to avoid the orders being frustrated. In fact although no freezing order has been granted

under the ATA freezing orders have been issued under the Mutual Legal Assistance Treaty. The Examiners have been assured that since the FIU has the authority under its legislation to order financial institutions to freeze funds, then the FIU can be used to facilitate the communication of actions taken under the freezing mechanism.

200. There have been no instances where the freezing of funds have occurred within St. Christopher and Nevis under the ATA.

201. Section 19(4) of the ATA stipulates that a financial institution shall report, every three (3) months to the Financial Services Commission and the FIU that it has or does not have terrorist property under its control.

202. As the Financial Services Commission and the Financial Intelligence Unit provide guidelines and issue reminders to financial institutions and other regulated entities with regard to their obligations under the AML/CFT framework, there is an existing medium that can facilitate the provision of clear guidance if and when the need arises.

203. While Part II of the ATA makes provision for de-listing requests, this information is only publicly known to the extent that the legislation has been gazetted and therefore available to the public. However the DPP has stated that she is not aware of any programme or arrangement in place to sensitise the public on this issue as is required by the international conventions The Minister responsible for national security, based on the advice of the Attorney-General may designate any person or group of persons as a terrorist or a terrorist group. He has the discretion based on the advice of the Attorney-General to remove persons from that list. A person so designated is entitled to apply to the Minister to have his name removed from the list, but although section 4 (2) states that the Minister shall by regulations make the procedure for making such applications; no such regulation has been made. It must be borne in mind that no such designation has been made to date hence` no one has been able to test the effectiveness of the system in place. There are provisions for appeals to the Court if an applicant is dissatisfied with the decision of the Minister.

204. There are procedures for the unfreezing of funds under section 47 of the ATA. This is not specifically restricted to the unfreezing of funds of a de-listed person. Apart from the discretion to vary an order to allow for reasonable living, business and legal expenses of the applicant, the Court may order that funds be returned to the Applicant if the Court is of the opinion that such an order should not have been made in the first place or that the applicant is lawfully entitled to the funds or that the funds will no longer be required for any investigatory or evidential purpose. However again there has been no programme in place to inform members of the public of the procedures in place for unfreezing of funds. It must be stated here again that since no funds have been frozen under the ATA then the effectiveness of the procedure has not been tested.

205. Section 47A(5) of the ATA states: *"For the purposes of subsection (4), the Court may order that the funds or any part thereof be returned to the applicant, or revoke the freezing order or vary it to exclude the funds or any interest therein or any part thereof from the application of the order or make the order subject to such conditions as the Court thinks fit".*

206. There are provisions in the ATA (Sec. 47A(6))to facilitate the unfreezing of funds of persons or entities inadvertently affected by the freezing order. *"An order under subsection (5) in respect of funds may be made if the court is satisfied that(a) a freezing order should not have been made in respect of the funds;(b)the applicant is the lawful owner, or lawfully entitled to possession of the funds and appears innocent of any complicity in a terrorism offence or of any collusion in relation to such an offence;"*

207. The procedures for authorising the access to funds for basic expenses, the payment of certain types of fees and service charges all comply with the requirements of S/RES/1452(2002) except that there is no provision for extraordinary expenses. However section 43 (4) does not apply to a freezing order made under United Nations Security Council Resolution (UNSCR) 1267 (1999) since the ATA does not specifically address the freezing of assets and funds of Al-Qaida and the Taliban. Furthermore whereas under section 43 (4) an applicant can make an application for access to the frozen funds for the payment of reasonable expenses and the Court may grant the order if so satisfied, funds and assets frozen under UNSCR 1267 can only be accessed after the relevant State notifies the Committee established under UNSCR 1267 and that Committee approves such a request. On careful analysis of section 43 of the ATA it is clear that St. Kitts and Nevis does not have any procedure in place for authorising access to funds or other assets frozen under UNSCR 1267 and determined for basic expenses.

208. Section 47A of the ATA provides for persons whose funds or assets have been frozen to apply to the Court to revoke or vary the order. Such an application can be heard once the DPP has been given notice in writing three (3) days prior to the matter being heard. The Court after hearing from the applicant, the DPP and any other interested party may then grant the order.

209. There is provision in the ATA for terrorist related funds. See definition of 'Terrorist property' above.

210. As previously stated under section 2.3 of this Report, there are no provisions in the ATA for dealing with the seizure of instrumentalities and no stated procedure for the forfeiture and confiscation of property. Applications for restraint and freezing order can be made by ex parte application under the ATA. Law enforcement has adequate powers with regard to the identification and tracing of property. Provisions for nullifying transactions are contained in section 47 of the ATA. See. Discussion above in section 2.3.

211. The rights of bona fide third parties are protected under the ATA and the POCA. Under section 28(5) of the ATA the Court is entitled to forfeit any record or documents in possession of a person who has been convicted of being in possession of these documents which is likely to be useful to a person committing or preparing an act of terrorism. However if a third party has an interest or is claiming ownership of these records or documents, then that person is given a right to be heard before such an order is made. The order is also stayed until all rights to appeal have been exhausted. Where a person has been convicted of an offence under sections 12, 13, 14, or 15 of the ATA the Court may grant forfeiture orders for property which that person has in his possession or control for certain specified purposes.

212. However where a third party claims to be the owner of that property or claims to have some other interest in the property, the Court shall give him an opportunity to be heard before it issues the order. In addition, the freezing order granted by section 43 of the ATA should not prejudice the rights of third parties who have acted in good faith in respect of the frozen property. Section 47A also preserves the rights of third parties who are entitled to apply to the Court to have a freezing order varied or revoked. In order to preserve the rights of third parties the Court is entitled to secure an undertaking from the DPP in relation to damages or costs which may be incurred before a freezing order is issued under section 43.

213. Section 43(7) states: "A freezing order granted by the Court under this section shall not prejudice the rights of any third party acting in good faith in respect of the frozen assets or any interest therein"

214. Under the ATA, it is necessary to register a copy of the freezing order which affects registered land with the Registrar of Titles, who is then obligated to make a notation on the certificate of title. The reason for this is to give notice to any one who subsequently attempts to dispose of the registered land which has been frozen. Anyone who knowingly contravenes any freezing

order is liable to a fine and imprisonment. In addition the Court may set aside any disposition or dealing with the property which took place contrary to the freezing order, once the Court is satisfied that the person did not pay sufficient consideration, nor acted in good faith and without notice.

215. These sanctions can be imposed on individuals as well as on a body corporate. In addition every financial institution is required to report every three months to the FIU and FSC, with regard to possession or control of terrorist funds by or on behalf of a terrorist or a terrorist group (ATA Sec. 19(4)). The report which is required to be filed includes the particulars of the persons, accounts, transactions involved and the total cost of the property. The financial institutions are also required to state whether or not it is in possession of terrorist property. Since these financial institutions are mandated to file these reports every three months then it follows that by these measures one is able to monitor effectively compliance with the relevant freezing orders, since if an order is breached then that should be reflected in the report filed by the financial institution. Failure to comply with section 19 (4) is an offence punishable with fines and or imprisonment. The FIU issues reminders to financial institutions per submissions of quarterly reports.

Additional Elements

216. These procedures have been partially implemented but does not deal specifically with funds frozen pursuant to S/RES/71373 but they are consistent with the spirit of S/RES/1452(2003)

Recommendation 32 (terrorist financing data)

217. There are no statistics available relative to the freezing of assets or funds pursuant to U.N resolutions pertaining to terrorist financing. This is so because to date, there have been no cases where persons have been charged or convicted of terrorist financing. Neither has any suspicious transaction report relative to terrorist financing been filed. The Examiners were however assured that proper systems are in place for the keeping of statistics.

2.4.2 Recommendations and Comments

218. Provision ought to be made for the freezing without delay of the funds or other assets of the Taliban and Al-Qaida.

219. The regulations for de-listing terrorist and terrorist groups should be published by the Minster of National Security.

220. There ought to be a programme in place to sensitise the public of the procedure for de-listing of terrorist and terrorist organisation.

221. Members of the public should be made aware of the procedure for applying to have funds and or assets unfrozen.

222. The St. Kitts and Nevis Authorities should establish the procedure for authorizing access for basic expenses to funds or other assets that are frozen pursuant to UNSCR 1267.

223. St Kitts and Nevis should put in place the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002)

224. While there is provision for basic living, legal and business expenses there are no provisions for extraordinary expenses. These ought to be included under the ATA.

225. Measures should be enacted to provide for the freezing of funds or other assets that are jointly owned and also the funds or assets derived form funds or assets owned by designated persons terrorist, terrorist organisations, or those who finance terrorism or terrorist organisations.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• **Section 43 of the ATA does not satisfy the requirement of S/RES/1267 for the freezing without delay of funds belonging to the Taliban and Al-Qaida.** • **No regulations made with regard to the procedure for an application for de-listing as a terrorist or terrorist group.** • **There is no programme in place for informing the public of the procedure for de-listing.** • **There is no programme in place to inform the public about the procedure for unfreezing funds or assets.** • **No procedure in place for authorizing access to funds or other assets that are frozen under UNSCR 1267 and that are to be provided for basic expenses.** • **There is no legislation in place to provide for the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452(2002).** • **There is no provision for extraordinary expenses.** • **There has been no implementation of SR. III provisions and accordingly the effectiveness of the measures cannot be determined.** • **Freezing of funds does not extend to assets that are jointly owned or to assets derived from funds or other assets controlled by designated persons, terrorists, terrorist organisations or those who finance terrorism.**

Authorities

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

2.5.1 Description and Analysis

Recommendation 26

Functions of the FIU

226. The Financial Intelligence Unit (FIU) of St. Kitts-Nevis was established in 2001 under section 3 of the Financial Intelligence Unit Act No. 15 of 2000 as amended to 2008. The FIU is the designated competent authority to receive suspicious reports relating to money laundering and terrorist financing. The FIU is a unit within the Ministry of Finance (formerly within the Ministry of National Security).

227. The FIU has been functioning in accordance with its mandate as set out under section 4(1) of the Act to – (a) collect, receive, analyse and act upon suspicious transaction information; (b) disseminate information on suspicious transactions referred to in paragraph (a) to competent authorities; (c) establish a database for the purpose of detecting money laundering and financing of terrorism; (d) liaise with money laundering intelligence agencies as well as with competent authorities and agencies involved in combating financing of terrorism outside St. Christopher and Nevis and (e) do anything that is related or incidental to the functions enumerated in paragraphs (a), (b), (c), and (d).

228. Section 4(2) of the FIU Act indicates that the FIU's specific powers extend to receiving all disclosures of information required to be made pursuant to the Proceeds of Crime Act (POCA) No. 16 of 2000; and the Anti-Terrorism Act (ATA) No. 21 of 2002.

229. Suspicious transaction reports (STRs) are delivered to the FIU either by hand or through the post. Some STRs are also sent via fax although there hasn't been many reported via fax. The information is extracted from the STR and placed into the database. All STRs received are analysed. Analysis includes cross-checking the FIU's database; and other open and closed sources of information which contain financial, law enforcement and administrative information.

230. The FIU is authorized to receive reports of TF under the ATA. Section 4 (a) of the ATA makes provision for disclosure of information or other matter relating to offences committed under sections 12, 13, 14 or 15 of the ATA, that come to a person in the course of business in a regulated sector to to the FIU as soon as practicable after it comes to him.

231. There is no specific time period in which regulated entities are required to file reports in relation to terrorist financing to the FIU, as there is no meaning given to the phrase 'as soon as practicable' in section 17 (6) (b) of the ATA.

232. The Royal St. Christopher and Nevis Police Force is the authorised authority for the receiving of reports relating to TF. This is outlined in section 17(1) of the ATA, which states that a person who believes or suspects that another person has committed an act under sections 12,13,14 or 15[5] and bears his belief or suspicion on information that comes to his attention in the course of his trade, profession, business or employment shall as soon as reasonably possible, disclose his belief or suspicion to and the information on which it is based to a Police Officer, except that this subsection should not apply to information which comes to a person in the course of a business or regulated sector.

233. Financial institutions are required to file quarterly reports to the FIU and the Financial Services Commission (FSC) stating whether or not they have any terrorist property in their possession as stipulated with the under section 19(4) of the ATA. The report must state whether or not (a) it is not in possession of or control of any property owned or controlled by terrorist or terrorist group and (b) it is in the possession of any property referred to in (a) and in that case it shall give the particulars relating to the person, accounts, transactions involved and total value of the property.

Analysis of STRs

[5] Section 12, 13, 14, and 15 of the ATA pertains to TF offences, including fundraising for terrorist activities, use and in possession of terrorist property entering into funding arrangement for terrorist purposes and engage in ML for terrorist purposes.

234. The FIU has adopted a departmental Standard Operational Procedure for receiving, analysing, and the dissemination of STRs since 2001. STRs are usually received by the Administrative Executive Officer, who forwards the STRs to the Director, for her perusal. The Director then returns the STRs to the Administrative Executive Officer for the assignment of a file number. The STR with an assigned file number is returned to the Director for dissemination to the Analyst. The Analyst analyses the STRs and makes a recommendation. The recommendation may be that the STRs should be forwarded to law enforcement for investigation or that there is insufficient information on the file to warrant a further investigation and therefore the file should be closed. The STRs with the recommendation attached are forwarded by the Analyst to the Director. The Analyst's recommendation is discussed with the Director. The Director has the final say as to whether the STR should be closed or forwarded for investigation.

235. The FIU is of the opinion that the quality of the STRs filed by reporting entities has been improving. They view this as a result of training provided to the reporting entities. In one particular case, there was a report made to the competent authority that included information on the person's body language.

236. There is no specific time period in which reporting entities are required to file STRs with the FIU, as there is no meaning given the word 'prompt' in the AMLR 2008. However the Examiners were informed that based on training conducted by the FIU, reporting entities were informed that all STRs should be filed within three (3) days of its discovery and if the matter requires urgency, it can be referred via telephone.

237. Section 10 (3) (a) of the AMLR states a regulated person should pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to the insignificant but periodic transactions which have no apparent economic value. Section 10(3) (b) of the regulation further states upon reasonable suspicion that the transaction described in sub-regulation (3) (a) could constitute an offence of ML a relevant business shall promptly report the suspicious transaction to the Reporting Authority.

238. The AMLR at regulation 10 (3) (d), states, a relevant person or its employees, staff, directors, owners or other authorized representative who wilfully fail to comply with the obligations in this regulation, or who wilfully make a false or falsified report referred to above commits an offence. Section 3 (e) further states that a relevant person or its employees staff , directors , owners or other authorized representative who wilfully discloses the fact that a STR or related information is being reported or provided to the designated reporting authority commits an offence.

239. Where data gathering leads to a reasonable suspicion that the STR is related to money laundering, proceeds of crime, terrorist financing or related criminal activities, the FIU submits/disseminates a report to the Commissioner of Police for appropriate action.(Section 5(1) of the FIU Act). Whilst the legislation states that a report should be forwarded to the Commissioner of Police this is not the case as STRs are forwarded to the police officers attached to the FIU and to the officer in Nevis who are acting on the behalf of the Commissioner of Police.

240. The FIU would also forward a list of STRs to the regulators of the entities that filed the STRs, basically informing them of how many STRs were filed by the institution. This is not mandatory and there is no legal requirement for such, however the Unit sees this as a way of being efficient.

241. Also, upon the receipt of the STRs; and information from any foreign FIU or competent authority involved in combating money laundering and terrorist financing, the FIU may order

any person, in writing, to refrain from completing any transaction for a period not exceeding seventy-two hours (Section 4(2)(b)).

242. The FIU may order any person to freeze a person's bank account for a period not exceeding five (5) days if it is satisfied that the request from a foreign FIU, or law enforcement authority relates to the proceeds of any crime. (Section (2)(c).

243. The FIU has served as member and chair of the CFATF Cricket World Cup Working Group; and a member of the CFATF IT Working Group; and Typology Working Group.

Guidance/training

244. The AMLR at regulation 10 sets out the reporting procedures and requirements which relevant persons should establish in relation to their businesses including identifying a Reporting Officer to whom a report is to be made of any information or other matter which comes to the attention of the person handling that business and which in that person's opinion gives rise to knowledge or suspicion that another person is engaged in money laundering

245. These regulations were enacted and issued in 2008 and accordingly it is difficult to ascertain their level of effectiveness. Training was provided to some of the reporting entities in relation to the revised AMLR. However, not all entities that are required to report under the POCA have been provided with training. As previously stated, the Anti Money Laundering Regulations 2000 which was scheduled to the POCA was repealed and replaced with the AMLR No 25 of 2008. The Assessors were informed that not all entities that are required to file STRs to the FIU have been issued with the new AMLR 2008 and the Guidance notes on the Prevention of ML and TF. Accordingly, some reporting entities are unaware of their responsibilities and the reporting requirements.

246. The Examiners were not provided with a schedule of upcoming training for the reporting entities that were not previously provided with training. Neither was there a continuous training programme outlined by the FIU. The Examiners were however informed that training would be provided to reporting entitles in 2009 on a continuous basis.

247. AMLR regulation 10 (3)(b) ; and section 17(6)(b) of the ATA require the reporting of all suspicious transactions to the FIU. There is a standard reporting form in use.

248. St Kitts and Nevis does not have any regulations in place including reporting guidelines on TF, as the AMLR 2008 only applies to ML and not TF.

249. The Guidance Notes on the Prevention of Money Laundering and Terrorist Financing, in particular paragraphs 97-115 and Appendix H, are particularly instructive in relation to the manner of reporting, including the specification of reporting forms. This standard reporting form has not been issued to all reporting entities that have been listed in the POCA's schedule of reporting entities.

250. In addition, the FSC and the FIU both provide reporting guidance to financial institutions and other reporting entities in the form of meetings, seminars; and the issuance of literature.

251. Not all entities that are obligated to report suspicious activities under the POCA have been issued with literatures or have been provided with training in relation to the prevention of money laundering and counter terrorist financing. However, the major components of the financial sector, such as the banking industry and insurance sectors have been provided with training and literature on money laundering and counter terrorist financing.

252. During the period 2004-2007 there were four (4) AML/CFT training workshops conducted by the FIU and seven (7) regular meeting held with the sectors that includes financial institutions, insurance companies and credit card companies.

253. There was one recorded training session held with the Royal St. Christopher and Nevis Police Force in 2006. A meeting was also held with casinos and discussions were held with the St. Kitts and Nevis Gaming Board.

254. Within the period 2004-2006 there were ten (10) pieces of literature written by the FIU ranging from its Annual Reports to STR reminder letters and reporting guidelines. The reminder letters were distributed to different regulated institutions however, there is no record to show whether the Annual Reports and reporting guidelines were disseminated to all regulated entities.

Access to information

255. The FIU has direct access to its own database. There is also direct access to a wide range of administrative data including the Land; Supreme Court; Bills of Sale; Intellectual Property and Corporate Registries.

256. The FIU has indirect access to Financial, Law Enforcement, Traffic, Inland Revenue, Immigration, Births/Deaths and Marriages; and Customs databases; and the Social Security Register.

257. In accessing financial records section 4(2)(d) FIU Act stipulates that the FIU "shall apply to the Court for an order requiring the production of financial records that the intelligence unit considers relevant to the fulfilment of its functions". However, the FIU does not require a Court order to make any enquiry as to whether an account exists or not or for the number of an account. (Section 4(1A) FIU Act.).

258. More than seventy (70%) of the information sought via indirect routes is provided to the FIU within seven (7) working days from the date of receipt of the request for information by the requested institution.

259. The Royal St. Christopher and Nevis Police Force also provides the FIU with a copy of its daily intelligence bulletin highlighting reports on serious offences and arrests made.

260. The FIU can also gain access to information via the Regulators in accordance with its mandate.

261. Section 4 (1) (e) of the FIU Act makes provision for the FIU to (e) do anything related to or incidental to the functions enumerated in paragraphs (a), (b), (c) and (d), (discussed above) which is interpreted to mean that the FIU can obtain additional information from reporting entities so that it can properly undertake its functions.

262. Section 4(2)(d) states that the FIU may also require the production of such information that it considers relevant to the fulfilment of its functions.

263. The FIU Act at section 5(1) states that the FIU shall, upon receiving any information on a suspicious transaction connected with a regulated activity or other person, and on being satisfied that there are reasonable grounds that a money laundering or terrorist financing offence has been committed or is being committed or is about to be committed submit its report to the Commissioner of Police for necessary action.

264. Section 5(2) of the FIU Act further states that the Commissioner of Police shall, upon receipt of the report provided by the FIU, forward it to a police officer for investigation of the transaction and to take any other necessary steps.

265. As previously stated, the disseminated information is passed to police officers who have been identified by the Commissioner to accept receipt of the reports on his behalf.

266. Matters that appear to be related to the illicit drug trade are simultaneously forwarded to the Drug Squad, to expedite the information sharing process. The Drug Squad is also under the command of the Commissioner of Police.

Independence and autonomy

267. The present structure of the FIU allows for autonomy and sufficient operational independence. The FIU is established under section 3(1) of the FIU Act and is comprised of – (a) a representative from the Attorney General's Chambers (b) a representative from the Ministry of Finance, Saint Christopher (c) a representative from the Ministry of Finance, Nevis (d) a Director appointed in writing by the Minister (e) a representative from the Legal Department, Nevis (f) such number of consultants, having suitable qualifications and experience relevant to the functions of the Intelligence Unit, as are necessary, to be appointed in writing by the Minister (g) such number of police officers to be appointed by the Commissioner on the recommendation of the Director (h) such other personnel as the Director may consider necessary. This supervisory body has however not been appointed and there was no specific time period given to the Examiners as to when this supervisory body would be appointed.

268. This body serves as the technical advisory arm of the FIU. The operational staff of the FIU is comprised of the Director, one (1) Analyst, One (1) Executive Officer, a messenger, and a cleaner.

269. Section 3(2) of the FIU Act provides that the Director, appointed under section 3(1)(d) is responsible for managing the day-to-day activities of the Unit.

270. The FIU has demonstrated sufficient operational independence in the direct receipt of suspicious reports from the reporting sector; and also the direct submittal of suspicious matters to the Commissioner of Police for necessary action.

271. In addition section 6 of the FIU Act, states that the Minister may give directions of a general nature as to the policy to be followed by the FIU in the performance of its functions as appear to the Minister to be requisite in the public's interest, and the FIU shall give effect to those directions.

272. With regard to the appointment of staff, this is done in accordance with the general Civil Service procedures. The Minister upon receiving a request from the FIU for the hiring of a consultant is directly responsible for the appointment of such consultant. The Directors recommendation of the consultant need not be followed by the Minister. While this situation has never occurred, it does place a substantial amount of power within the hands of the Minister and could affect the autonomy of the FIU.

273. The FIU can make recommendations for the amendment of laws. In keeping with the general practice done by all government departments, the recommendation is forwarded to the Minister for approval and onward transmission to the Attorney General. Where there is a need for additional funding for the FIU, the request would also be forwarded to the Minister.

Dissemination and security of information

274. Section 9(1) of the FIU Act provides that a person who obtains information in any form as a result of his connection with the Intelligence Unit shall not disclose that information to any person except as far as it is required or permitted under this Act or other written law. The data base of the FIU is restricted and each officer is assigned a password in order to gain access.

275. The FIU Act section 9(2) states that a person who violates section 9(1) commits an offence, and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

276. Section 5 of the POCA (No. 16 of 2000) states a person who knows or suspects that an investigation into money laundering has been, is being, or is about to be made, divulges that fact or other information to another person whereby the disclosure of the fact or other information is likely to prejudice the investigation commits and offence, and shall be liable on conviction, to a fine not exceeding $100,000.00 and imprisonment for a term not exceeding three years. (Tipping Off).

277. Sections 77 & 78 of the Anti-Terrorism Act No. 21 of 2002 make provision for unauthorised communication and disclosure of information respectively.

278. Personnel of the FIU are governed by the General Orders of the Civil Service; and are expected to conform to the highest possible standard in the execution of their various duties within the Government service. Failure to do so could lead to disciplinary actions by the Public Service Commission ranging from suspension to dismissal.

279. The FIU is accessible only by FIU staff. The building that houses the FIU is not adequately secured. Each member of staff is allocated a key for the office with the exception of the messenger and the cleaner. STRs and requests for information are stored in a computer data base with password access only. In addition, the paper files are secured in locked-fireproof filing cabinets.

280. Information received is also stored on DVD and thumb drive as a back up process. The Executive Officer is responsible for securing the drives and DVDs. These are also stored in fireproof cabinets. The information stored on the thumb drive is stored on a weekly basis before being transferred to the DVDs.

281. There is an IT person who is responsible for checking the computers of the FIU and installing software. This person works with the Ministry of Information and Technology but provides services to the FIU.

282. The IT person is also responsible for the Police computer software. There has been no background check conducted on this individual with regard to his additional functions at the FIU and in the police service. An oath of secrecy has however been administered to the IT consultant. The FIU is of the view that it needs to recruit it own IT specialist and has made that recommendation to the Financial Secretary.

283. The Executive Officer has complete access to the STRs database and is primarily responsible for the management of the database. The analyst and the officers attached to the Unit are given limited access to the database so as to assist in the proper analysis of STRs. This database is password protected and for any other member of staff to gain access they must first seek the clearance from the Executive Officer.

284. To gain access to the compound of the FIU, there is a five feet high wall which is, next to the public road and can be easily scaled. The FIU is easily recognisable as there is a sign that states Financial Intelligence Unit.

285. The building occupied by the FIU is a ground level building that is shared with another entity. There are burglar bars on each window. These windows are however easily reachable from the ground as they are about five feet off the ground. To gain access into the actual office of the FIU, there is a metal panel door with a lock that is the main entrance to the building, followed by a burglar bar (door) before you can access a wooden and glass door that leads to the office of the FIU. This wooden and glass door is secured by two locks however one of the handles for the door appeared to be broken from the inside. An adjacent door that leads from the FIU to the office occupied by the other institution remains locked and is also secured by burglar bars.

286. There is no security officer stationed on the compound of the FIU, neither are there any other security measures such as cameras or electronic keypads for gaining access to the building.

287. In general, the building currently housing the FIU seems to be in need of significant repairs and certain security measures need to be in place for it to be considered adequately secured. The burglar bars on the windows can be easily cut through as they are not complex and the windows are glass. There is also a need for more operational space within the FIU location. For example there are filing cabinets located within the hallways of the FIU office.

Public reports

288. Section 10 of the FIU Act, states that the FIU is to prepare an annual report and to submit it to the Minister on or before the 30th day of November in each year.

289. The annual report reviews the work of the Unit highlighting statistics and activities undertaken for the given year. It also sets out the goals to be pursued for the upcoming year. The Assessors examined the reports submitted by the FIU for the past four (4) years (2004-2007) and observed that the reports did not contain any information on trends and typologies as it relates to money laundering and terrorist financing.

290. Upon receipt of the annual report from the FIU, the Minister shall lay or cause to be laid a copy of the report on the table of the National Assembly, thereby making it accessible to the general public since Parliament is broadcast via the local radio stations. Additionally, the annual report is circulated to all Ministers of Government and to relevant persons within the AML/CFT regime and several of the FIU's regional and international counterparts and strategic partners. The general public can also access the annual report, by visiting the FIU and requesting the report. The FIU is also considering, creating a website to have the reports published. Consultation on the creation of this website has already been initiated and it is expected to be completed by the end of 2008.

291. While there is a great deal of access to the FIU's annual reports, with regard to the relevant entities listed under the POCA, the reports are only sent to the major financial institutions and not to the other listed entities who are obligated to file suspicious reports under the POCA.

Egmont membership

292. The FIU became a member of the Egmont Group in June 2004 and has served on the Outreach Working Group and the Training Working Group of the Egmont Group.

293. The FIU has regard for the Egmont Group Statement of Purpose and its Principles of Information Exchange between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases.

294. The FIU participates in the exchange of information via the Egmont Secure Website (ESW); and has also signed MOUs with the Egmont Group FIUs that require an MOU to share

information – Netherlands Antilles; Panama; Canada; Australia; Taiwan; Thailand; and Honduras.

Recommendation 30

Resources-FIU only

295. The Financial Intelligence Unit (FIU) is governed by the FIU Act, No. 15 of 2000. The FIU is established under section 3(1) of the FIU Act, which states that it should be comprised of – (a) a representative from the Attorney General's Chambers (b) a representative from the Ministry of Finance, Saint Christopher (c) a representative from the Ministry of Finance, Nevis (d) a Director appointed in writing by the Minister (e) a representative from the Legal Department, Nevis (f) such number of consultants, having suitable qualifications and experience relevant to the functions of the Intelligence Unit, as are necessary, to be appointed in writing by the Minister (g) such number of police officers to be appointed by the Commissioner on the recommendation of the Director (h) such other personnel as the Director may consider necessary. The representatives noted at (a) to (c) above are intended to serve as the technical advisory arm of the FIU. However, this compliment of persons has not been appointed in the formation of the FIU. The Examiners were however informed that the identification of relevant persons to be members of the FIU was being considered with the view of fully establishing the FIU.

296. The operational staff of the FIU is comprised of the Director, one (1) Analyst, one (1) Executive Officer (EO), a messenger, and a cleaner. The Director is responsible for managing the day-to-day affairs of the Unit. In the absence of the Director, the Executive Officer is responsible for managing the day to day affairs of the Unit.

297. The Analyst is responsible for data gathering, analysis of STRs; and compiling statistics. The EO is responsible for the administrative as well as some analytical functions. The EO enters all information from the paper STR forms in the database; and also assists with analysing STRs and processing requests for information.

298. The FIU has an organisational chart and personnel are aware of their functions and duties as required. There are no written jobs descriptions for employees. Employees are made aware of their duties via word of mouth.

299. There are currently two (2) financial investigators (police officers) housed at the FIU. Their primary role is to investigate STRs forwarded from the FIU to the Police and the investigation of ML and TF. These officers are required to adhere to the standards of the FIU and also the standards of the Royal St. Christopher and Nevis Police Force.

300. Due to limited staff at the FIU, one of the financial investigators, in addition to investigations, also performs the FIU's analysis functions. This officer also plays a major role in the compilation of the FIU's statistics.

301. The i2 Analyst Notebook Software; Smart Draw; and World Check are used in the analysis process. There is however a need for more technical resources, such as another analyst notebook, as there is only one available at the moment. The current level of STRs that are being processed would also suggest that there is the need for another. The FIU also sees the need for specialized software that would allow them to keep the addresses and other information of individuals suspected of being involved in money laundering.

302. There is sufficient office equipment to meet the mandates of the Unit. Each operational FIU staff is assigned a computer and working space. Also the office is equipped with other adequate office equipment including photocopier, fax machine etc.

303. The Assessors were informed that there is a need for additional staffing at the FIU to effectively carry out the functions and mandate of the Unit. Such staffing includes a Deputy Executive Officer to assist the Executive Officer of the FIU as the administrative work load has increased at the Unit and also because there is the need to deputize when the Executive Officer is out of office. There is also a need for another Analyst, as the number of STRs received by the FIU have been increasing significantly, thus increasing the workload of the FIU and the Analyst resulting in the financial investigators performing analytical duties.

304. The present structure of the FIU allows for autonomy and sufficient independence of operation. Since the establishment of the FIU in 2002, the Unit's budget has steadily increased to meet its demands.

305. The FIU is funded by the Central Government. The budget for the FIU is prepared by the FIU and forwarded to the Financial Secretary. There have been instances where the budget proposed by the FIU has not been forthcoming. Listed below is a table of the budgetary allocations to the FIU for the period 2004-2007.

Table 8

Budget 2004-2007

YEAR	AMOUNT (EC$)	Training	Professional Consultancy
2004	143,832	8,000	Nil
2005	152,093	8,000	Nil
2006	208,799	12,000	Nil
2007	262,605	12,000	1,000

306. Whilst the Central Government is the sole provider of funding for the Financial Intelligence, the Unit is presently looking forward to access the asset forfeiture fund for finance to meet its AML/CFT obligations.

307. With regard to the qualifications of the FIU staff, the Analyst must have a university degree and/or at least five (5) years experience in the AML/CFT field. There is also provision to receive on the job-training in financial analysis; statistical analysis; financial sector and payment systems and practises; and ML and FT indicators, methods and typologies. In addition, there is heavy emphasis on the awareness of the various internet sites, literature and associations related to AML/CFT; and how to use the FIU's database and i2 Analyst Notebook software. There is also exposure to AML/CFT data gathering intelligence sites. E.g. World Check.

308. The current Analyst has a master's degree in business administration and a bachelor's degree in finance.

309. The EO has been with the FIU since 2001. The EO is equipped with knowledge of corporate, Court and land processes as a result of her previous experience as an administrative clerk in a law firm. The EO is also a member of the Association of Certified Anti-Money Laundering Specialists (ACAMS) and is pursuing studies to acquire the CAMS designation.

310. The Director has a diploma in financial crime prevention and compliance; a master's degree in public administration; a certified para-legal *(Accredited by the Council of Legal Education of the West Indies*); and CAMS designation. The Director is also a member of ACAMS and ACFE (Association of Certified Fraud Examiners).

311. The procedure for the recruitment of staff entails the Director writing to the Financial Secretary informing her of the need for additional staff and the vacancy available for such staff member. Staffs are not directly appointed by the FIU but by the Human Resource Department of the Central Government. The FIU are however afforded with some of the responsibility for interviewing such staff. There has been only one instance where an individual did not possess the required competencies the FIU had requested was sent to the FIU. As the individual was not requested to perform any of the core functions of the FIU, the Unit did not pursue the matter. There are also no comprehensive vetting procedures in place for the recruitment of staff at the FIU.

312. Similarly with regard to the dismissal of staff, the Director of the FIU does not have the capacity to dismiss any member of staff, as staff are employed under the Central Government, however she can recommend that the person be removed from the Unit.

313. All the police officers housed at the FIU are accredited Financial Investigators by CALP.

314. As previously stated, section 9 of the FIU Act provides for the improper disclosure of information by members of the FIU. Additionally, the General Orders of the Civil Service require employees to perform to the highest possible standard in the execution of their duties.

315. Sections 77 of the ATA states that: (1) *A person who is bound by secrecy commits an offence in he unlawfully communicates any special operational information relating to a terrorist investigation to an unauthorized person (2) A person who is convicted of an offence under this section is liable to imprisonment for a term not exceeding ten years.*

316. Since the inception of the FIU, the staff is continuously exposed to various training in money laundering and financing of terrorism e.g. financial analysis, tracing of assets; intelligence gathering; and use of technology (e.g. i2 Analyst Notebook).

317. Training is offered in-house; and on the local, regional and international levels. At least one overseas training opportunity is extended to all staff members each year.

318. Staff members are also encouraged to keep abreast with and pursue courses in ML and FT trends on the regional and international levels; current practices in the banking, securities, insurance, money remittance and casino sectors.

319. During the period 2003 to 2007, Investigators and Analyst of the FIU received a total of twelve (12) training courses on AML/CFT matters and other related matters such as intelligence gathering and analysis and i2 Analytical Software programme just to name a few. The training courses were facilitated by CALP, REDTRAC and other agencies whilst some training was conducted in house.

320. However, it was noted that the training allocated to the FIU Investigators and Analyst seems to be declining, as in 2003 there were a total of seven (7) training courses provided; in 2004 there were three (3) and in 2005 there were a total of two (2) training courses. There was no training allocated to persons in 2006 and in 2007 there were only two (2) training courses provided.

Recommendation 32(FIU)

Statistics

321. The FIU maintains statistics on the number of STRs received; forwarded to police; and closed or no further action.

322. Statistics are also held on the number of requests for assistance received and submitted (local and international); and spontaneous sharing.

323. The FIU also publishes an annual report containing the foregoing statistics. A breakdown of STRs by institutions; and those analysed and disseminated is also kept.

Table 9: Number of STRs received by each type of reporting entity – 463 STRS

Type of reporting entity	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008 (Aug. 31)**	**TOTAL**
Financial Institutions	11	14	13	29	27	20	109	**223**
Money Remitters	14	59	90	19	21	74	346	**623**
Casinos	0	0	0	0	0	0	0	**0**
Lawyers, Accountants Insurance	0	0	0	2	0	0	0	**2**
Service Providers	51	4	0	2	2	5	22	**86**
Others	2	2	1	1	0	0	0	**6**
TOTAL	**78**	**79**	**104**	**53**	**50**	**99**	**477**	**940**

Table 10: No. of STRs disseminated **to Police:**

2002	**2003**	**2004**	**2005**	**2006**	**2007**	**TOTAL**
44	2	12	67	20	40	**185**

324. There are no recorded independent statistics on wire transfers kept by the FIU. Neither are there any provisions in place at the FIU to record statistics on wire transfer. All STRs received by the FIU between the period 2004 to 2007 were analysed and the necessary recommendations were made by the Director, including disseminating STRs to law enforcement for investigation or closure of the file.

325. Comprehensive statistics provided to the Assessors by the FIU during the onsite visit shows that there were a total of fourteen (14) STRs submitted by credit unions between the period January 1 2004, to August 31, 2008. A total of nine (9) of these reports were forwarded to the Royal St. Christopher and Nevis Police Force for investigations. Four (4) of these reports were

closed with no further action. and one (1) of the two reports filed in 2005 is presently undergoing analysis.

326. Within this same period January 1, 2004 to August 31, 2008 a total of 550 STRs were filed by the Money Services Businesses. There were significant increases in the filing of STRs in 2008 as reflected for the period January 1, to August 31 there was a total of 346 STRs. Of that amount, a total of 189 reports were forwarded to the Royal St. Christopher and Nevis Police Force. Of those, 109 were closed without further action and a total of 252 STRs are presently under analysis.

327. The domestic banks within the Federation have filed a total of eighty three (83) STRs within the period 2004 to August 31 2008. Thirty one (31) reports were forwarded to the Royal St. Christopher and Nevis Police Force for investigations, fourteen (14) STRs were closed without further action and thirty eight (38) STRs are presently under investigation.

328. The offshore bank was responsible for the filing of twelve (12) STRs for the period 2004 to August 31, 2008; none of these reports were forwarded to the Royal St. Christopher and Nevis Police Force since they are presently under analysis.

329. Corporate Service Providers have filed a total of twenty two (22) STRs with the FIU between the period 2004 and August 31, 2008. Three (3) of these STRs were forwarded to the Royal St. Christopher and Nevis Police Force, nine (9) of the reports were closed without further actions while ten (10) of these STRs are presently under analysis.

330. The Insurance sector was responsible for the filing of three (3) STRs with the FIU, one (1) report was forwarded to the Royal St. Christopher and Nevis Police Force for investigations and two (2) of these reports are presently under analysis.

331. There were no STRs submitted to the FIU by lawyers, accountants or casinos as required pursuant to the schedule of reporting entities in the POCA and the ATA including. The Team is of the view that STRs were not filed by these persons due to a lack of training.

Additional Elements

332. No STRs relating to TF have been received by the FIU, therefore statistics have not been kept. There are measures in place to capture such data in the event that there are ML or FT prosecutions or convictions.

333. Statistics are maintained on the number of individuals and entities involved in the report; the gender of the individuals; age range and occupation; type of corporation and where registered; nationality and residence of individuals; and also the addresses; and countries involved in the transactions.

334. Statistics are also kept on the feedback that is relayed to respective reporting entities; and the number of feedback to entities is also stored.

335. Statistics are also maintained on the number of requests for assistance, countries and agencies making requests.

336. The FIU also holds statistics on the number of letters of request that the FIU submits to local institutions to assist in the data gathering process; and the response time to these requests.

2.5.2 Recommendations and Comments

Recommendation 26

337. St. Kitts and Nevis Authorities should consider amending section 17 (6) (b) of the ATA as amended to give reporting entities a specific time period to submit reports of terrorist financing to the FIU.

338. St. Kitts and Nevis should consider establishing a structured training schedule, in the short term, to target those entities that have not received training in the manner of reporting and identifying suspicious transactions. Continuous dialogue and training should be maintained with reporting bodies with the view of evaluating their reporting pattern so that weaknesses can be identified and addressed accordingly.

339. The St. Kitts and Nevis Authorities may need to review the manner in which staff is recruited at the FIU to allow the Director to have some form of authority as to the quality of the staff that is recruited.

340. The St. Kitts and Nevis Authorities may need to review the powers given to the Minister, such as policy making and the recruitment of consultants to the Financial Intelligence Unit, without the consensus of the Director of the FIU, as this does not reflect enough independence and autonomy.

341. The FIU needs to prepare and circulate ML and TF trends and typologies to the reporting entities, so that they can adapt appropriate measures and strategies. These trends and typologies should also be included in the Annual Report.

342. The building that presently houses the FIU needs to be more adequately secured through the use of security features such as electronic security systems.

343. A data back-up system for the storage of information should be implemented both on site at the FIU and at an offsite secure location and reconsideration given to the storage of information on memory sticks and DVDs as these items can sometimes be easily misplaced.

344. St. Kitts and Nevis Authorities should consider amending section 15 (1) of the AMLR as it relates to the reporting of STRs to give reporting entities clear directives as to the time in which they are required to transmit STRs to the FIU.

345. The FIU should provide guidance with regard to filing STRs with regard to TF.
346. St. Kitts and Nevis should move quickly to establish the FIU in accordance with section 3(1) of the FIU Act.

Recommendation 30

347. St. Kitts and Nevis should put adequate mechanisms in place to ensure that staff recruited at the FIU maintains a high level of integrity and confidentiality.

348. The FIU should be provided additional human and technical resources for it to adequately and efficiently carry out its functions.

349. More training should be sourced and provided to the personnel of the FIU.

Recommendation 32

350. The FIU should implement procedures for keeping statistics on international wire transfers, as these statistics are not kept by any other agency.

351. The FIU should move to establish a system whereby proper records relating to the investigation of ML & TF are properly recorded; the system could include proper records of production orders, monitoring orders and restraint orders.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• **No specified time period for the making of reports on TF.** • **A number of reporting entities have not received training in relation to the reporting guidelines and are unaware of their obligations under the POCA.** • **The FIU's independence and autonomy can be unduly influence by its Director's inability to recruit appropriate and competent staff.** • **The Minister is given too much authority under the Act as he is responsible for the Policy making and the appointment of consultants to the FIU decision making functions. (Sec 6 FIU Act).** • **The FIU does not prepare and disseminate trends and typologies to relevant reporting entities.** • **Information held by the FIU is not sufficiently secured and protected.** • **There is no standard reporting time in which reporting entities are required to file STRs to the FIU.** • **No guidance on the filing of STRs in relation to TF has been issued by the FIU.** • **The FIU has not been fully constituted in accordance with the FIU Act.**

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

2.6.1 Description and Analysis

Recommendation 27

352. There is an established and fully functioning Police Force which adequately meets the requirements of the Federation.

353. The Royal St. Christopher and Nevis Police Force is responsible for investigating all offences relating to ML and FT (Section 5(2) of the FIU Act; Part II of the POCA; and Part VI of the ATA.

354. There are two police officers presently attached to the FIU who are responsible for the investigation of STRs. These officers although attached to the FIU, are usually required to perform other Police duties as mandated by the Commissioner of Police besides the investigation of money laundering, terrorist financing and STR.s.

355. There is a Police Inspector on the Island of Nevis who has dual functions, as he is responsible for the Criminal Investigation Department and also the investigation of STRs and potential money laundering and terrorist financing investigations, which are usually complex crimes and accordingly require concentrated attention.

356. The senior officer attached to the FIU is also responsible for liaison with the Commissioner of Police in matters relating to the investigation of ML and TF.

357. There are presently 396 Police Officers in the Police Force; seven of these officers are accredited financial investigators under the Caribbean Anti Laundering Program "CALP".

358. The Royal St. Christopher and Nevis Police Force informed the Examiners that one of their greatest challenges with regard to investigating and prosecution money laundering is the fact that the legislation is not easily satisfied because based on interpretation of the law; one has to prove the crime from which the proceeds were derived.

359. Another challenge for law enforcement is there is a lack of communication between the Office of the Director of Public Prosecutions and the Police, as the Police keep awaiting instructions from the DPP as to whether a person should be charged and prosecuted for ML or TF. This has been so especially in cases where an individual would had been prosecuted and convicted for one of the designated FATF Offences. The Examiners were informed by law enforcement Authorities that there were no investigations presently taking place in the jurisdiction in relation to ML or TF.

360. The relevant competent authorities are equipped with the necessary legal requirements to pursue ML and TF investigations.

361. The police indicated that there is no legislation in place to waive or postpone the seizure of cash. However they can postpone the charge. The police did not indicate whether these measures would be implemented in the near future.

Additional Elements

362. Section 5 of the Police Act No. 6 of 2003 sets out the duties of the Police, which include the power to investigate infractions of the law and bring perpetrators to justice before a competent Court.

363. The Federation's legislative framework provides for various investigative techniques such as searches, tracing and monitoring, port and border controls and detention. Investigative techniques such as controlled delivery and electronic surveillance are not practised by the Police and there is no legislation which deals with these special investigative techniques. The Examiners were informed that wire tapping as an investigative technique is restricted under the Telecommunications Act. Additionally, care is exercised so as not to bring about instances of entrapment.

364. The Police have however made recommendations for the use of such techniques in their investigations. There are measures for wiretapping under the Interception of Communication Bill of 2006. The FIU is unaware as to whether that Bill would be enacted into law.

365. Due to the fact that the Federation has a relatively small population with close communities, the Police rely heavily upon community policing methods and the use of informants in their investigative techniques.

366. The Police may also receive assistance in investigative techniques from the Customs & Excise Department and the Defence Force. (The Defence Force assumes the coastguard as well as security and defence duties). There has been no investigation within the Federation where such special investigative techniques were used.

367. There are seven (7) Police Officers who are accredited financial investigators. Two of the Financial Investigators who are responsible for investigating ML and FT are housed at the FIU.

368. A ML and FT investigative Unit within the Police; along with the creation of a National network of Electronic Crime Task Force pursuant to section 62 of ATA, are also expected to be established.

369. The FIU and its Director is authorized to cooperate with competent authorities in another State who are in pursuit of money laundering investigations within the limit of the States' legal system pursuant to section 59 of the POCA. The police also receive and process request for assistance from foreign law enforcement officials through several different measures such as Interpol. Requests for assistance from foreign law enforcement officers, received by the Police are processed and investigated in accordance with the scope and limitations set out in the Treaty or MOU between St. Kitts & Nevis and the foreign State as well as obligations under domestic law.

370. Similar undertakings are done by the DPP (Proceeds of Crime Act section 59) and the Attorney-General's office (MLAT).

371. The Customs and Police meet to discuss matters but these meetings are not related to trends and studies in ML and FT. Also the FIU is not a part of this interagency activity.

372. Regular interagency meetings with the FIU, Customs, and Police relating to ML and FT should be encouraged.

373. Predicate offences are investigated by the Criminal Investigation Department and the Special Branch of the Police Force. The Special Branch shares information on a regular basis with Regional intelligence counterparts. Assistance can also be sought from regional and international Police agencies.

374. The Police Force has recently committed to the establishment of a White Collar Crime Unit which will be set up within the near future to better facilitate investigations into ML, FT and related predicate offences. The White Collar Crime Unit is expected to be established and functional by the end of October 2008, as the space and persons have already been identified and law enforcement are just awaiting furniture and other equipment for the Unit to become operational.

Recommendation 28

375. The jurisdiction's legislative framework provides for various investigative techniques to be used by competent authorities when pursuing ML and FT matters and other underlying predicate offences – the Proceeds of Crime Act (POCA) No. 16 of 2000 as amended; the Anti-Terrorism Act (ATA) No. 21 of 2002 as amended ; and the Financial Intelligence Unit Act No. 15 of 2000 as amended.

376. Section 7(1) of the POCA states that a Customs Officer or a member of the Police Force may seize, and in accordance with this section, detain any money which is being imported into or exported from Saint Christopher and Nevis of a value exceeding US$10,000.00 or its equivalent in Eastern Caribbean or other currency once he has reasonable grounds for suspecting that it

directly or indirectly represents any person's proceeds of , or is intended by any person for use in, money laundering, drug trafficking or any other unlawful activity.

377. Section 7 (4) of the POCA states money seized by virtue of this section shall not be detained for more than seventy-two (72) hours unless its continued detention is authorised by an order of the Magistrate upon an application made by the Comptroller of Customs or a member of the Police Force, and no such order shall be made unless the Magistrate is satisfied (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and (b) that continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Saint Christopher and Nevis or elsewhere, of criminal proceedings against any person for an offence with which the money is connected.

378. Pursuant to section 8(1) and (2) of the POCA where a police officer has reasonable grounds to suspect that there is, or there may be within the next following seventy-two (72) hours, tainted property upon any land or upon or in any premises the police officer may lay before a Magistrate an information on oath setting out the grounds and apply for the issue of a warrant to search the land or premises for tainted property. The Magistrate can then issue a warrant to enter the land with such force that is necessary and reasonable; to search the land and premises for tainted property and to seize any property found that is believed by the police officer to be tainted property.

379. Pursuant to section 14(1) of the POCA, a Judge may, on an application made by the DPP, grant a restraining order freezing any: (a) realisable property of a person convicted of a serious offence, or charged, or about to be charged with a serious offence in Saint Christopher and Nevis or any other jurisdiction; (b) specified property of a person, other than the person referred to in paragraph (a), if the Judge is satisfied that the property is tainted property in relation to a serious offence The DPP can also apply for a restraining order in respect of a person convicted of a serious offence in a jurisdiction other than Saint Christopher and Nevis. The application for a restraining order may be made ex parte.

380. Further, section 23(1) of the POCA provides that where, (a) a person is convicted or a serious offence and a police officer, on reasonable grounds, suspects that a person has possession or control of (i) a document relevant to identifying , locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence; (ii) a document relevant to identifying, locating or quantifying 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 offences; or (b) a police officer, on reasonable grounds, suspects that a person has committed a serious offence and that a person has possession or control of any document referred to in paragraph (b.) An application made under the POCA at section 23(1) shall be made ex parte.

381. Furthermore, section 23 (5) of the POCA provides where an application is made under subsection 23 (1) for an order against the person, the Judge may, subject to subsection (6) and (7) make an order requiring the person to (a) produce to a Police Officer any document of any kind referred to in subsection (1) that are in the persons possession or control or (b) make available to a Police Officer for inspection any documents of any kind referred to in subsection (1) that are in the persons possession or control.

382. A police officer under section 28 of the POCA may also obtain a warrant from a Judge to search premises where, (a) a person is convicted of a serious offence and a police officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in Section 23; or (b) a police officer has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises any document of the type specified in Section 23(discussed above). This section of the POCA also provides for the police

officer to seize and retain any documents that in the opinion of the officer is likely to be of substantial value to the investigation.

383. Under section 29(2) of the POCA the FIU shall, where there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence apply to the Judge for an order specified in subsection (3) directing that (a) any document relevant to (i) identifying, locating or quantifying any property; or (ii) identifying or locating any document necessary for the transfer of any property; belonging to or in the possession or under the control of that person, be delivered forthwith to the Intelligence Unit; (b) that a financial institution forthwith produces to the Intelligence Unit all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order, as the Judge may direct.

384. The POCA also authorises the FIU and the DPP to receive requests from a Court or other competent authority of another State for the identification, tracing, freezing, seizing and forfeiture of the property, proceeds or instrumentalities of a money laundering offence.

385. The DPP can also apply for a monitoring order which would direct a financial institution to give information to a police officer. Income tax information can also be sought by the DPP through and application to a Judge.

386. Under section 4 (e) of the FIU Act, the FIU has a general power to do anything that is related or incidental to its functions set out in subsection (1) of the Act. In addition section 4(2)(d) indicates that the Unit shall apply to the Court for an order requiring the production of financial records that the Intelligence Unit considers relevant to the fulfilment of its functions. The FIU has powers to order a person in writing to refrain from completing any transaction for a period of seventy-two (72) hours and can also freeze a person's bank account upon the request of a foreign FIU.

387. The Police can also make application to the Judge for a production order to obtain information. This is done under the authority of the DPP. As previously noted, the police do encounter difficulty as it relates to these orders as there is only one resident Judge in the Federation of St. Kitts and Nevis that has to deal with all criminal and civil matters. Additionally, the process is usually long, as these production orders are not given any priority. Law enforcement considered these issues to be deterrents in the implementation of the legislation.

388. Despite the difficulties noted above, production orders have been granted by the Court to law enforcement authorities. However, no statistics are kept on production orders issued by the Court. Law enforcement did note however that in the majority of instances where production orders were granted by the Court this was more in relation to telephone records and not financial data or investigations into ML or TF.

389. An application for a restraint order can also be made under section 32 of the ATA. This order can be made ex parte.

390. A police officer may also seize any property, which is subject to a restraint order for the purpose of preventing the property from being removed from Saint Christopher and Nevis. The property that is seized is dealt with in accordance with the directions of the High Court (section 33 of the ATA).

391. Where a person is convicted of a terrorism offence, the Court may grant a forfeiture order.

392. Pursuant to section 36 of the ATA an authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash. An authorized officer may also seize cash

part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

393. Section 37 of the ATA further states that an authorised officer may, as long as he continues to have reasonable grounds for his suspicion, detain cash seized by him under section 36, initially, for a period of forty-eight (48) hours. The period referred to in subsection (1) may be extended by an order made by a Magistrate's Court upon an application by an authorised officer. Subsection 37(4) of the ATA states that an extension may be granted if the Court is satisfied that one of the following conditions is met: (a) that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing, in Saint Christopher and Nevis or elsewhere, proceedings against any person for an offence with which the cash is connected,(ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; etc.

394. Section 43(1) of the ATA deals with an application for freezing terrorist funds. Subject to subsection (4) the Court may, where it is satisfied on the application of the DPP hat (a) a person has been charged or is about to be charged with an offence under this Act; or (b) a request has been made by a competent authority of a foreign State in accordance with section 103, in respect of a person (i) about whom there are reasonable grounds for believing that the person has committed an offence specified in this Act; or (ii) who has been charged or is about to be charged with an offence specified in this Act, make an order freezing the funds in the possession of or under the control of that person.

395. Pursuant to section 64(1) of the ATA states a police officer may, for the purposes of a terrorist investigation, apply to a Court for an order requiring a specified person (a) to produce to the police officer, within a specified period, for seizure and retention any material which he has in his possession, custody or power and to which the application relates; (b) to give the police officer access to any material referred to in paragraph (a), within a specified period. (c) to state, to the best of his knowledge and belief , the location of material to which the application relates if it is not in, and it will not come into , his possession, custody or power within the period specified under paragraph (a) or (b).

396. A police officer may also on the application of a court order receive a warrant for the purposes of a terrorist investigation, which will authorize the police officer to (a) enter the premises specified in the warrant; (b) search the premises and any person found on the premises; and (c) seize and retain any relevant material which is found as a result of the search carried out under paragraph (b).

397. The ATA at section 71 (1) also provides for the receipt by a police officer of a customer's financial information. The officer must apply to the High Court for an order that requires the specified relevant business to provide the requested documents.

398. There are also provision in the ATA (sections 80, 81 and 82) which make provision for the searching of premises and persons; and stopping and searching vehicles and pedestrians. Additionally, chapter 181 of the laws of the Federation enables the police to use traditional means of securing documents by means of search warrants.

399. The POCA at section 59(6) (a) authorises the DPP to take witness statements in satisfaction of a request from a competent authority of another State.

400. There are the traditional general police powers under the Police Act, section 22 (No. 6 of 2003). This sets out the duties of the police, which include the power to obtain witness statements when conducting investigations in general for infractions of the law to bring perpetrators to justice before a competent Court.

Recommendation 30 (Law enforcement and prosecution authorities only)

The Royal St. Christopher and Nevis Police Force

401. Pursuant to section 5 of the FIU Act, The Royal St Christopher and Nevis Police Force is the competent authority identified to conduct ML and FT investigations in the Federation.

402. The Commissioner of Police has command and superintendence of The Royal St. Christopher-Nevis Police Force and is responsible to the Minister of National Security for the efficient management, administration and good governance of the Police Force. There is one (1) Deputy Commissioner of Police.

403. The Commissioner of Police is appointed by the Police Service Commission on the advice of the Prime Minister; the same process also applies to the Deputy Commissioner of Police. The Commissioner of Police can be terminated by way of lack of Public confidence however there would have constitutional queries if such a situation was to arise. Law enforcement is of the opinion that there is sufficient operational independence within the organisation.

404. The Ministry of Finance is responsible for the preparation of the budget of the Royal St. Christopher and Nevis Police Force with the consultation of the law enforcement officials; however the police are of the opinion that sufficient finances are not being allocated to this sector to adequately carry out its functions and more can be done in this regard.

405. In the absence of the Commissioner of Police, the Deputy Commissioner of Police shall exercise the powers and discharge the duties of Commissioner of Police. There are two (2) Assistant Commissioners of Police (one has responsibility for Operations and the other responsibility for Crime), five (5) Superintendents of Police with current responsibilities for Division 'A', Division 'C', Police Training School, Special Branch and Special Services Unit respectively. There are nineteen (19) Inspectors of Police, two (2) Station Sergeants, thirty eight (38) Sergeants, thirteen (13) Corporals, two hundred and eighty eight (288) Constables and twenty six (26) Special Constables. The current total strength of the Police Force is 396.

406. For the purposes of administration, the St. Christopher and Nevis Divisions created pursuant to section 3(4) of the Police Act 2003, No. 6 of 2003 are divided into districts and sub-districts. The Basseterre District comprises the Traffic Department, the Criminal Investigations Department, Criminal Records Office, Local Intelligence Office, Special Services Unit, Drug Unit (including Canine Section), Court & Processes, Immigration Department and the Police Stores.

407. The Royal St. Christopher and Nevis Police is presently under staffed and contributes this state to the fact that the traditional roles of the police have changed as there are other peace keeping functions that law enforcement has to carry out. The police are also responsible for Immigration duties. Law enforcement is of the view that for them to efficiently carry out their functions there is need for the recruitment of one hundred (100) new officers. Whilst new members have been recruited these are not sufficient as they only fill the vacancy of other staff members that have resigned.

408. The number of police officers attached to each Division, Branch or Section is regulated by the Commissioner of Police in Orders issued to the Police Force. Relevant technical and other resources include the following: One (1) police officer has completed the Counter Terrorist Bomb Disposal Training Course which was held at the Army School of Ammunition in England, May 9 – 27, 2005. An Inspector and three (3) other police officers also completed the Explosives Counter Measure Training Course which was held in the United States of America in 2006. Completion of the training has qualified the officers as Bomb Technicians.

409. The bomb technicians possess some of the relevant equipment to effectively execute their functions which includes the following: x-ray camera used to allow technicians to view articles inside closed packages, disrupter used to effect dismantling of suspect devices inside closed packages, rigging tools used to effect remote access to closed vehicles and closed rooms, assorted tools used in the dismantling process of suspect devices.

410. There are two (2) Explosives sniffing Dogs and presently four (4) police officers trained in dog handling. However, based on interviews the Examiners have ascertained that some of the additional resources needed by the Royal St. Christopher and Nevis Police Force to adequately undertake its functions include crime scenes equipment, crime prevention tools and training, drug detection and analysis equipment and firearms and ammunition.

411. There are seven (7) accredited financial investigators to investigate ML and FT matters. Of the seven, there are two (2) police officers who are assigned full time to the FIU office to conduct investigations of Suspicious Activity Report. These officers submit reports on their activities to the Commissioner of Police on a regular basis.

412. The Police Department is in the process of setting up a full time dedicated Unit within the main structure of The Police Force from where the financial investigators can carry out their functions of investigating financial crimes, financing of terrorism and organized crimes and which will also allow for utilization of the specialized skills of the accredited financial investigators.

The Ministry of Legal Affairs

413. The Ministry of Justice and Legal Affairs has several departments, one of which is the office of the Director of Public Prosecutions. The Ministry is headed by the Attorney-General. The Ministry of Justice is responsible for managing the budget, hiring staff supplying technical resources, training and other administrative matters. However the DPP is solely independent of the Attorney-General since she is not accountable to him in the execution of her duties.

414. The DPP's appointment is established under section 81 of the Constitution of Saint Christopher and Nevis. The position is entrenched and therefore the DPP can only be removed from office if she is unable to exercise the functions of the office as a result of mental or physical disability or for misbehaviour. The Constitution sets out the procedure for taking this action. The DPP has oversight of all indictable criminal matters within the Federation of St. Kitts and Nevis.

415. Apart from the DPP, the Director of Public Prosecution's office at present has one Senior Crown Counsel and one Crown Counsel. There are two (2) clerical staff. The DPP is responsible for prosecuting all criminal matters in the High Courts in St. Kitts and Nevis.

416. Based on the constitutional independence of her office the DPP has the autonomy to guarantee freedom from undue influence or interference. However there is a need for increased staff in the Department so that police files which are forwarded to the Department for advice can be dealt with in a more expeditious manner. The DPP has indicated that she has requested additional staff. It has been pointed out that certain high profile cases have been outsourced to lawyers from other jurisdictions. This indicates a lack of resources and possible lack of experience in the staff to deal with supposedly complex matters. There is also the need to consider making remuneration for law officers more attractive since there appears to be a high turnover in staff at the Department.

417. The Police Force has eight (8) police officers that are responsible for the prosecution of offences of summary matters in the Magisterial Court. With regard to indictable matters, the police prosecutors are only involved in the Preliminary Inquiries. The Police have a high level

of convictions as it relates to predicate offences such as drug trafficking offences, however there is a view that more training needs to be provided to these officers especially in the area of forfeiture.

418. The Police Act No. 6 of 2003; The Police Regulations No. 23 of 1962 (which were replaced by the Police Regulations No. 17 of 2008) ; The Police Service Commission Regulations No. 46 of 1974; and Force Standing Orders made by the Commissioner of Police are all documented policies of standards and professional codes of conduct governing police officers.

419. These documents address matters such as the efficient performance of Police duties; disciplinary procedures, training; rules of conduct; safety and security of Police premises; prosecution of Police cases; and general administration of all Police matters. Also included are qualifications for promotion, promotion, resignations, retirement and termination of appointments in the Police Force.

420. There are also Judges Rules with associated Administrative Directions to the Police which govern interrogation, and admissibility of Statements made by suspects. The Judges Rules are not rules of law but rules of practice drawn up for the guidance of Police Officers engaged in taking Statements from suspects. The Administrative Directions address matters such as affording reasonably comfortable conditions for suspects, adequate breaks for rest and refreshment during interrogation, special procedures in the case of persons unfamiliar with the English language or of immature age or feeble understanding.

421. Breaches of the aforementioned professional codes of conduct will attract disciplinary action against the offending police officer. Hearing, determination and penalties for such breaches are addressed through Part V (Sections 26 to 30) of The Police Service Commission Regulations No. 46 of 1974.

Confidentiality

422. In accordance with section 21 and the First Schedule of the Police Act No. 6 of 2003, every member of the Police Force on first appointment takes and subscribes to an Oath of Allegiance which is administered by a Magistrate or Justice of the Peace.

423. Police Officers are also to pay attention to the Confidential Relationships Act No 2 of 1985; section 5 of the POCA (re - Tipping Off) relating to ML investigations; and section 78 of the ATA (re - unauthorized disclosure of information) that pertains to FT.

424. Added to these there are also frequent in-house lectures reiterating the confidentiality principles and policies and highlighting the significance for Officers to uphold high levels of confidentiality.

Integrity and Skills

425. Prior to enlistment into the Police Force, the candidates are subjected to a comprehensive background verification to satisfy the requisite high standard of integrity and character before they are accepted to become a member.

426. Members of the Police Force, especially those in key intelligence areas such as the Narcotics section are taught on an ongoing basis the rules of confidentiality and integrity. There is also an oath of confidentiality that is administered to personnel of the Special Branch; the main intelligence branch within the St. Kitts and Nevis Police upon attachment to that Unit.

427. At present, the public has a high level of trust in the Police Force, which was not the case about two (2) years ago. The public confidence was regained through measures initiated by the management of the organisation such as town hall meetings and the establishment of a Police Public Relations Department.

428. There have been reported cases of corruption within the Police Force. The matters were dealt with disciplinarily by the Police Force and also the St. Kitts and Nevis judicial system. There is no independent body that deals with discipline within the organisation. There is however a generally good level of discipline within the Police Force.

429. For serving members there exists the Royal St. Christopher-Nevis Police Force Appraisal System which is designed to assist managers and supervisors with carrying out the functions of appraising each of their staff against a predetermined set of criteria which focus on the skills and abilities of the respective Officer. Formal appraisals are carried out on an annual basis but informal appraisals and feedback on their performance are given to staff as often as possible. There is a satisfactory budgetary allocation for training.

DPP

430. Lawyers (prosecutors) are generally governed by legal professional conduct and ethics within the legal profession. The law officers by virtue of their training are aware of the general need for confidentiality towards their client. However under section 2 of the Promissory Oaths Act, No. 9 of 1998, every law officer is required to take an oath before or immediately after assuming the duties of his or her office. That oath is an oath of confidentiality in which the officer swears that he or she will not disclose certain information received during the course of his or her duties except in certain circumstances. Although there is a penalty in the Act for not taking the oath there is no penalty in the act for breaching the oath. However by virtue of this oath not only is the law officer made aware of his or her duty to maintain confidentiality but takes an oath to do the same. The law officers by virtue of the Legal Profession Act (LPA), which was passed in 2008 and was circulated to the local Bar Association for comments; provides guidance for the proper professional conduct and ethics of lawyers in the Federation.

431. The LPA seeks to regulate the legal profession which includes a number of measures for disciplining its members. While section 7(1) of the General Guidelines to the Act states that, "An attorney at law shall endeavour to uphold standards of integrity, capability, dedication to work, fidelity and trust," the Attorney General and law officers are exempted from disciplinary proceedings under sections 34 and 35 of the said Act. Therefore although the Attorney General opined that the LPA would assist in regulating the conduct of all lawyers, no sanction can be imposed on Law officers for professional misconduct which includes breach of confidentiality. The Attorney General stated that all law officers are required to take an oath under the Promissory Oath Act on joining the Civil Service.

432. The Confidential Relationships Act, Cap. 18:02 seeks to protect the non-disclosure of confidential information given to a professional person during the conduct of business of a professional nature. "Professional person" includes any public officer or other government official or employee. Any person who divulges such information is liable on summary conviction, in the case of an individual, to a fine of EC$5,000.00 or to twelve (12) months imprisonment or to both fine and imprisonment. A body corporate is liable to a fine of EC $25,000.00. If a professional individual commits this offence then he is liable to a fine of EC $10,000.00 while the professional body corporate is liable to EC $50,000.00.

433. The POCA makes it an offence for a person who knows or suspects that an investigation into money laundering is being or has been made and discloses that fact to another person thereby

prejudicing the investigation. The maximum penalty is EC$100.000.00 and three (3) years imprisonment.

434. Under section 9 of the FIU Act, a person who obtains information as a result of that person's connection with the FIU is legally bound to keep that information confidential except where the law permits otherwise. A person who is summarily convicted of breaching this section is liable to a fine not exceeding $10,000.00 or to a maximum term of one (1) year imprisonment or to both. This section is wide since it refers to "any person" therefore a law officer would be liable for a breach of confidentiality under this Act.

435. It is an offence under section 77 of the ATA, for a person who is bound by secrecy to unlawfully communicate any special operational information pertaining to a terrorist investigation to an unauthorised person. The penalty for such an offence is ten (10) years imprisonment and is harsher than the penalty imposed on unauthorised disclosure of information by persons who are not so bound by secrecy.

436. Every Law Officer in the Office of the DPP has to be qualified as an Attorney-at-Law and therefore should be adequately skilled to perform his or her duties in the Department. The Attorney-General has stated that he personally interviews prospective law officers thus ensuring that his staff is suitably qualified.

POLICE

437. More training, education and mentorship is needed for the proper investigation and prosecution of Money Laundering and Terrorist Financing. There has been training in Forensic Financial Investigations which was conducted by the Caribbean Anti-Money Laundering Program (CALP). - Sept. 2002: Seven (7) Police Officers satisfied CALP's acceptable level and earned the designation accredited Financial Investigation Officers. -July 2004: Terrorist Financing, Money Laundering and HIFCA Conference - St. Croix, (organized by the United States Department of Homeland Security Federal Law Enforcement Centre, U.S. Department of Justice and U.S. Department of The Treasury.) - 2006 - Corporate and land registration systems – FIU, St. Kitts-Nevis - June 2007: Advanced Financial Crime Prevention Course - The Cayman Islands (Organized by the International Financial Crime Prevention & Compliance Training (IFCCT). - Sept. 2007: O.A.S Regional Cyber Crime Workshop on Computer Forensics and International Legal Cooperation - Barbados - Oct 2007: i2 Analyst Notebook Training – FIU, St. Kitts-Nevis-Nov. 2007 – Intelligence Gathering Techniques – REDTRAC, Jamaica- March 2008: Commonwealth Project on Capacity Building in Combating Terrorism Justice Training Institute Training of Trainers and Specialists Programme- Jamaica. -March 2008: Financial Analysis Course – Canada-April 2008: IT Training – Taiwan- May 2008: Intelligence Gathering Techniques – REDTRAC, Jamaica - One (1) Police Officer has completed the Counter Terrorist Bomb Disposal Training Course which was held at The Army School of Ammunition in England, May 9 – 27, 2005. - Four Police Officers also completed the Explosives Counter Measure Training Course which was held in the United States of America sometime in 2006. Completion of the training has qualified the Officers as Bomb Technicians.

438. Law enforcement officials are of the opinion that more and continuous training is needed especially in the area of investigations and prosecutions of money laundering and terrorist financing.

439. There was no training statistics provided by the Police, in relation to the number of persons who have received training in ML and TF, however statistics are maintained by the FIU in relation to the number of training courses attended by the police officials presently housed at the FIU.

DPP

440. The current Director of Public Prosecutions assumed her position in 2006. She stated that she has had training in anti-money laundering and terrorist financing. She attended the Advanced Financial Crime Prevention Course in The Cayman Islands in June 2007. She also attended the O.A.S Regional Cyber Crime Workshop on Computer Forensics and International Legal Cooperation in Barbados. However apart from the Director of Public Prosecutions, none of the other two Law Officers in her department have had the relevant training in AML/CFT. The DPP also stated that she does not have any experience in forfeiture procedures. This would clearly affect the effectiveness of these officers to charge and prosecute AML/CFT matters and to apply for forfeiture and other ancillary orders.

441. The office of the DPP has adequate access to the internet and cases online. As previously stated there is a need for a proper law library.

Additional Elements

442. There are only two Judges in the Federation of St. Kitts and Nevis. One is located in St. Kitts and the other in Nevis. It is not clear whether these judges have received training concerning money laundering and terrorist financing offences and the freezing and confiscation of property that is the proceeds of crime or is to be used to finance terrorism. The Examiners have been informed that previous Judges may have benefited from such training.

2.6.2 Recommendations and Comments

Recommendation 27

443. St. Kitts and Nevis Authorities should consider implementing legislation or measures that would allow law enforcement authorities, to postpone or waive the arrest of suspected person and /or the seizure of cash so as to identify other persons involved in the offence.

444. The FIU Royal St. Christopher and Nevis Police Force should put measures in place to ensure that persons responsible for the proper investigation of ML & TF have sole responsibility in this regard, as ML & TF are usually complex crimes and require dedication and comprehensive investigation with utmost circumspect.

Recommendation 28

445. The Royal St .Christopher and Nevis Police Force, the Office of the DPP and the FIU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more aggressive approach to generate ML and TF investigations, prosecutions and possible convictions and utilizing the investigative tools such as production orders provided for in the POCA.

446. There is a need for speedier granting of orders by the Court, in particular production orders.

Recommendation 30

447. St. Kitts and Nevis should consider filling the vacant posts within the Police Force in order to strengthen its human resource capabilities, so that there would be an adequate allocation of human resources for the proper investigation of crimes in general and ML and FT specifically.

448. The budgetary resources of the Police Force should be increased to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its functions

449. The Police Force should consider providing more training particularly in the area of ML investigation and other relevant areas. This could also be done in-house and provision should be made to have it inducted within the regular police training programme for new recruits.

450. There is a need for more law officers in the office of the Director of Public Prosecutions

451. There is an urgent need for AML/CFT training of all officers in the Office of the DPP. This Training should include the seizing, freezing, forfeiture and confiscation of assets.

452. A law library in the Office of the DPP should be considered as a matter of priority since this would greatly assist the Office of the DPP as well as the Officers in the Ministry of Legal Affairs in accessing reference materials.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**NC**	• **St. Kitts and Nevis have not considered enacting legislation or putting measures in place to waive or postpone the arrest of suspected persons and/or the seizure of cash with the view to identify persons involved.** • **No clear indication that money laundering and terrorist financing are properly investigated.**
R.28	**LC**	• **The level of enforcement and effectiveness of implementing the tools available to law enforcement cannot be clearly ascertained.**

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

Disclosure/Declaration system

453. The Proceeds of Crime Act, 2000 (the POCA) section 7 (1) states that 'A Customs Officer or a member of the Police Force may seize, and in accordance with this section, detain any money which is being imported into or exported from St Christopher and Nevis of a value exceeding U.S.$10,000 or its equivalent in Eastern Caribbean or other currency and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, money laundering, drug trafficking or any other unlawful activity. Money is defined at section 2 of the POCA as 'cash (that is to say, coins or notes in any currency) or negotiable instrument.'

454. The POCA at section 7 (2) states that 'On informing any person of the provisions of subsection (1), a Customs Officer or a member of the Police Force shall require the person to sign a declaration as to the amount of money being imported into or exported from Saint Christopher and Nevis."

455. The St. Kitts and Nevis Customs and Excise Department is mainly responsible for cash seizure at ports of entry in the Federation as one of their primary roles is border security which includes the prevention of the smuggling of contraband goods and cash.

456. The St. Kitts and Nevis Customs and Excise Department relies primarily on the intelligence provided by law enforcement, its own internal Intelligence Section and intelligence from its foreign counterparts as it relates to identifying persons involved in the physical cross border transportation of cash and bearer negotiable instruments.

457. The Customs Declaration form also requires passengers to declare cash or cash equivalents in excess of US$ 10,000.00. This requirement is made known to passengers via the customs declaration form as well as notices which are strategically placed in the customs area.

458. There is no declaration form in place for persons travelling with monies over the stated threshold when leaving St. Kitts and Nevis. However persons are expected to disclose this information orally to the St. Kitts and Nevis Customs Officials.

459. The declaration system is not enforced at all points of entry into St. Kitts and Nevis. Whilst customs officers are stationed at for example the main Post Offices in St. Kitts and Nevis, to examine packages and mails, persons using this service are unaware that they are required to disclose or declare any monies or bearer instrument in excess of US$10,000.

460. The Customs and Excise Department has an Intelligence Section within the department but also relies on intelligence from the Police Force, in particular the Narcotics Section. The Unit also relies on the St. Kitts and Nevis Defence Force as a source of intelligence.

461. There have been several joint operations conducted by the Customs and Excise Department, in conjunction with the Police and the Coast Guard services, however these operation were centred around the importation of contraband items by smugglers and drug trafficking. There have been no seizures of cash or bearer instruments in the Federation based on intelligence from local or foreign agencies.

462. The Examiners were informed that there have been approximately three (3) seizures relating to the physical cross border transportation of currency and bearer negotiable instruments in St. Kitts and Nevis by the Customs and Excise Department. These seizures were not as a result of intelligence received or random searches but were derived from passengers filling out the declaration form and indicating that they were travelling with an amount of cash in excess of US$10,000. The Examiners were however unable to verify that there has been any seizure of the physical cross border transportation of currency or bearer negotiable instruments, as no statistics in this regard were provided by the Customs and Excise Department or the FIU.

463. The Examiners were further informed that information in relation to the three (3) seizures was forwarded to the FIU for investigation. The monies were returned to the individuals from whom it was seized within two (2) days of the seizure, as the initial investigations revealed that there were no valid suspicions or criminal conduct.

464. The POCA at section 7 (3) states that for the purposes of subsection (4) (money seized and detained), if the person who is importing or exporting the money signs a declaration under subsection (2) that is untrue in any material particular, a Magistrate shall receive the untrue declaration as prima facie evidence of the matters and further detain such money on the basis of (a) that there is reasonable grounds for suspicion, for the seizure of the money and (b) the continued detention of the cash is justified while its origin or derivation is further investigated.

465. The POCA at section 7 (4) states that money seized by virtue of this section shall not be detained for more than seventy-two (72) hours unless its continued detention is authorized by an order of the Magistrate upon an application made by the Comptroller of Customs or a member of the Police Force. In the making of such an order, the Magistrate must be satisfied that (a) and (b) noted in the paragraph above have been satisfied. The Magistrate can also give consideration to the institution of criminal proceedings either in St. Kitts and Nevis or elsewhere against any person for an offence connected to the funds.

466. St. Kitts and Nevis Customs and Excise are also authorized under section 86(2) of the Customs (Control and Management) Act to obtain additional information from persons entering and leaving the Jurisdiction with regard to their luggage and anything contained therein.

Restraint of currency

Information sharing and cooperation

467. The POCA at sections 3 and 4 make provision for the appropriate authorities to retain the amount of currency or bearer negotiable instruments declared/disclosed or otherwise detected. Further provisions are made in subsequent sections 5, 6, 7 & 8 regarding the continued detention of the currency or bearer negotiable instruments.

468. In addition, the Customs department is required to file a report of suspicious activity to the FIU when there is a suspicion of money laundering or when a false declaration is filed. Section 14 of the MOU states *"Customs will immediately notify FIU of individuals and/or entities suspected and/or charged with money laundering and/or money laundering predicate offences.*

469. The Customs and Excise Department in St. Kitts is aware of the procedure to retain and keep records of the photos and passports of individuals who have been arrested with monies and other bearer instrument for future reference. The customs officers attached in Nevis are however unaware of this procedure.

470. Section 4(2)(a) of the FIU Act states that 'Without limiting the generality of subsection (1) and notwithstanding any other law to the contrary, other than the Constitution, the Intelligence Unit *(a)"shall receive all disclosures of information as are required to be made pursuant to the Proceeds of Crime Act, 2000 or the Anti-Terrorism Act, 2002 as long as such disclosure is relevant to its functions, including information from any Foreign Intelligence Unit;"*

471. Provisions have been made for the exchange of financial intelligence as it relates to money laundering and terrorist financing between the FIU, Customs, DPP and the Police by way of a signed MOU as discussed above.

472. There are no standard STRs filed with the FIU by the Customs and Excise Department, however in all cases where cross border currency or bearer negotiable instruments were seized and detained, the information was forwarded to the FIU. However there are certain personnel within the Customs and Excise Department and more specifically the Enforcement Section that are unaware of the existence of the MOU between the Customs and Excise Department and the FIU and accordingly are unaware of their obligations to the FIU in such matters.

473. The Examiners were unable to test the level of effectiveness of the MOU based on the fact that there were no statistics to show there have been any disclosures to the FIU in relation to the seizure of cross border currency and bearer negotiable instruments.

474. The Coast Guard and the Customs and Excise Department have conducted many joint patrols together and have held regular meetings along with the Police. However these meeting are held in relation to the drug interdiction and the smuggling of contraband items.

475. The MOU signed between the FIU, Customs and The Royal St. Kitts and Nevis Police Force is in relation to the sharing of information. There is no provision or committee that has been established at the domestic level among Customs and Excise Department, Immigration and other competent authorities on issues related to the implementation of Special Recommendation IX. The competent authorities did acknowledge there is a need for cooperation as it relates to the implementation of Special Recommendation IX.

476. Part V of the POCA, which is titled Miscellaneous Provisions – outlines guidelines and provisions for Cooperation with Foreign Jurisdiction.

477. Section 59 Subsection (1) states "The Financial Intelligence Unit and the Director of Public Prosecutions shall cooperate with the competent authority of another State in matters relating to money laundering offences, in accordance with this Act and within the limits of that State's legal system."

478. In addition, the Financial Services (Exchange of Information) Regulations issued in accordance with section 16 of the Financial Services Commission Act, No 17 of 2000 provides for the exchange of information between the regulatory authority in the Federation and regulatory authorities outside of the Federation.

479. There is no signed MOU between St. Kitts and Nevis Customs and Excise Department and other Regional and International Customs Agencies. St. Kitts and Nevis' Customs is a member of the Caribbean Customs Law Enforcement Council (CCLEC) and the World Customs Organisation (WCO) and is subject to CARICOM agreements and in that context cooperates with both its regional and international Customs Agencies.

480. Information shared by St. Kitts and Nevis Customs with its regional and international counterparts using the channels listed previously is done for intelligence purposes only. However should the requesting country require that information for prosecutorial purposes, a Mutual Legal Assistance Treaty (MLAT) would have to be executed for that purpose. St .Kitts and Nevis Customs and Excise Department do not directly share financial information with foreign counterparts, should one of its counterparts require such information, they would be referred to the FIU.

481. The Assessors were informed that when there is a seizure as it relates to cross border cash and bearer negotiable instrument, the matter is usually forwarded to the FIU for investigation and analysis. The St. Kitts and Nevis Customs and Excise officials are unaware if the information, in relation to the previously mentioned seizures of cash were forwarded to its foreign counterparts.

Sanctions

482. Section 113(1) of the Customs (Control and Management) Act 1992 (CCMA) states, where a person makes or signs a false declaration, notice, certificate or other document or makes a false statement that person shall be guilty of an offence and liable to a fine of EC$5,000 and the goods in relation to which the document or statement was made shall be forfeited. There is also a penalty of EC$10,000 or imprisonment for two (2) years or both where a person knowingly or recklessly signs a false declaration, notice etc or makes a false declaration. The goods pertaining to these offences may also be forfeited.

483. The Customs Declaration card states that a fine of EC$10,000 and/or a prison term for a false declaration or disclosure can be imposed. In addition, the relevant criminal sanctions applicable to ML and TF offences under the POCA, ATA and OCPCA are applicable.

484. The sanctions listed in sections 113 (1) and 113(2) of the CCMA applies to person who carry out physical cross-border transportation of currency or bearers negotiable instruments, as cash and bearers negotiable instrument are interpreted as goods under the CCMA.

485. There is provision under section 36 (1) of the ATA for any authorised officer (Customs and Police Officers) to seize and detain cash, once there is reasonable grounds to suspect such cash is terrorist cash, furthermore section 40 (1) of the ATA makes provision for an authorised officer to make an application before a magistrate for the forfeiture of the whole or part of the cash that is reasonably believe to be terrorist cash. St. Kitts and Nevis does not have any civil forfeiture and confiscation procedures under the POCA.

486. The Examiners were informed that there is no provision for the seizure of cross border currency or bearer negotiable instrument, that falls below the threshold of US$10,000 or its foreign equivalent, even if an officer has reason to suspect that the cash directly or indirectly represent proceeds of crime or was intended to be used for criminal conduct, unless it is terrorist cash. The Examiners are of the view that the sanctions are not proportionate and that effectiveness cannot be assessed since no sanctions have been implemented. It is noted however that there is an element of dissuasiveness in that property can be forfeited.

487. Section 118 of the Customs (Control and Management) states *"If any person violates the provisions of any customs law or of any Regulation, Rule, Proclamation, Order, notice or directive in the Gazette relating to customs, for which violation no specific penalty is enacted such person shall be liable to a fine of five thousand dollars."*

488. Criteria 3.1 to 3.6 does apply to persons carrying out physical cross border transportation of currency and bearer-negotiable instruments that are related to ML or TF. As previously stated, sections 7 (1) and 7(4) (a) (b) of the POCA give any member of the Police Force and the Customs and Excise Department the authority to seize and detain currency and other bearer negotiable instruments. The continued detention of the cash under this section prevents the suspect from dealing, transferring and disposing of the property subject to confiscation or forfeiture. This provision further allows for the investigation into the source of the monies whilst the origin and the intended use of the money are determined.

489. Section 43(5) of the POCA provides for bona fide third party rights. The Court in considering whether a forfeiture order should be made under this section will consider the rights and interest of third parties.

490. There is legislative provision legislation or measures that allows for the initial application to freeze or seize cross border currency and bearer negotiable instruments subject to confiscation to be made ex parte or without prior notice.

491. The ATA Part V, Section 36 (1) and (2) state: "An authorized officer may seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash." The authorized officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part."

492. Customs and Excise Department can liaise with its foreign counterparts through CCLEC and WCO so as to determine the identity of the sender; where the goods were destined to or originated and the nature and purpose of the transaction.

493. The Customs and Excise Department however acknowledges that they lack the necessary skills and expertise to identify precious stones and metals and other valuable items and acknowledge this as a deficiency of the Department as these items may easily be transported through the border. Training is required in this area by the Department.

494. The Examiners were informed that information on the seizure of cross border currency and bearer negotiable instruments is forwarded to the FIU for investigations. The information received by the FIU is kept in a data-base system which has adequate safe guards against breaches. In addition, strict security of all financial intelligence received by the FIU is ensured.

495. Information or data obtained by Customs and Excise Department in St. Kitts is presently being stored in fire proof cabinets in the Enforcement Division to which only the Comptroller and the Assistant Comptroller have access to that department besides persons stationed in that Department.

496. There is however a need for the same resources to be implemented in both Enforcement Units in St. Kitts and in Nevis. At present, there are no fire proof cabinets for the storing of information as it relates safeguarding of information and to ensure proper use of the information or data recorded in Nevis.

497. The St. Kitts and Nevis Customs and Excise Department does not have a secure computer database for storing and safe guarding information. However, the Department in St. Kitts presently has a database under construction for the storing of such information. The Authorities did not indicate when this database would be ready for use.

Additional Elements

498. The St. Kitts and Nevis Customs and Excise Officials have seen the need to implement measures as it relates to the Best Practice Paper for SR.IX. There is more training needed for staff in the area of search techniques, especially staff placed at strategic areas such as the airports and the Enforcement Units.

499. The Customs and Excise Department does not have a Canine Unit and relies on the Police Force for assistance in this area, however the assistance is not always available to the Customs Department as the police have other functions to perform. The canines used by the police are not specifically trained to detect currency.

500. The Customs and Excise Department does not have any X-Ray machines, scanners or other sophisticated equipment to assist the administration of their functions in the detection of the smuggling of cross border currency and bearer negotiable instrument.

501. The seizures of cross border currency and bearer negotiable instruments previously made by Customs and Excise Department were as a result of individuals declaring, by ticking yes on the Customs Declaration form when asked if they were travelling with US$10,000 or its foreign currency equivalent. There is no case where there was an intelligence driven seizure as it relates to cross border cash or bearer instruments. There is a greater need for more intelligence driven seizures.

502. The Customs and Excise Department is of the opinion that there is a need for the targeting of individuals suspected to be cash couriers. There is also a need to target specific routes and greater emphasis should placed on specific and prevalent concealment methods use by cash couriers to smuggle.

503. Reports received by the FIU are kept in a computerized data base and available on request to competent authorities.

504. There are computers kept at the Customs and Excise Department; however the information as it relates to the amount of seizures made by the Customs and Excise Department was not made

available to the Examiners. Accordingly, the availability of that information for AML/CFT purpose could not be determined.

Recommendation 30 (Customs authorities)

General

505. The Customs and Excise Department falls within the Ministry of Finance of the Government Civil Service. The Department is headed by the Comptroller of Customs who reports directly to the Financial Secretary in the Ministry of Finance. His responsibilities entail but are not limited to *the Management of the department, Advisor to the Ministry of Finance, Implementation of Government policies* etc. The current chain of command in the organization is, one(1) Deputy Comptroller of Customs, who is responsible for supervising the affairs of the Customs department in Nevis; five(5) Assistant Comptrollers who head the various divisions of the Department, one(1) Accountant , one (1) Administrative Research Assistant and one (1) Executive officer / Supervisor office of strategic Development and internal Audit. This group comprises senior management. The second level is middle management which comprises the section supervisors who are Executive and Senior officers that manage the day to day operations then there are the operational staff comprising junior officers and Customs Guard, Drivers/ Messengers.

506. The Comptroller of Customs is appointed by the Governor General on the advice of the Prime Minister, who would forward his nominee to the Public Service Commission.

Customs – St. Kitts

507. The Customs Department in St. Kitts comprises ninety one (91) staff members, who are guided by the Customs and Excise Act.

508. Since the Customs Department may not encounter cases of Money laundering or Finance Terrorism often, the Department does not have a specific unit designated to deal solely with this function. However border security is one of the primary functions of the Customs Department and this critical function is undertaken by the Enforcement Division. It has been noted that with the rise in gun and narcotic related crimes in the Federation, there is the potential for Money Laundering.

509. In recent times the Department has suffered a shortage of officers in the Enforcement Division of the Department. This is mainly due to the type of work that is done by Customs enforcement officers. These duties include but are not limited to drug interdiction, coordination of Anti-Smuggling activities, prosecution of offenders, Anti Money Laundering activities, case management, major fraud investigations, NJCC Liaison, surveillance activities and the management and coordination of border security activities.

510. Prior to 2003 persons were assigned to the Enforcement Division even where it was against their wishes. However in 2003 a memorandum was circulated within the Department and only two (2) persons readily accepted the challenge to work in the Enforcement Section. The St .Kitts and Nevis Customs and Excise Department attributes the low level of response to work in this area to the type of work the Enforcement Division Section engages in which is considered to be of high personal risk.

511. As a part of its strategic plans and budgeting initiatives over the past five years the Customs Department has sought to rectify some of the issues facing this Unit by re-assigning more suitably qualified officers and then building on their capacity by exposing them to local

regional and international training in the areas mentioned previously. The Unit is staffed as indicated on the attached organisational chart. Currently they are actively pursuing the recruitment of a suitably seasoned Law Enforcement Agent to ultimately strengthen the unit.

512. St. Kitts and Nevis Customs and Excise officials are of the opinion that their work has become more challenging and dangerous and has accordingly made a proposal to the Ministry of Finance to have monies allocated to the Department to purchase firearms. These monies have been approved with a view to purchasing firearms and ammunition for the Enforcement Division within 2009.

513. The staffing of the Enforcement Division in St. Kitts is as follows: One (1) Assistant Comptroller, One (1) Customs Supervisor, One (1) Senior Customs Agent, Three (3) Senior Customs Officers and One (1) Junior Officer.

Customs – Nevis

514. The Customs and Excise Branch in Nevis comprises a staff of thirty seven (37) personnel and is generally supervised by a Deputy Comptroller, who reports to the Comptroller of Customs in St. Kitts and the Ministry of Finance in Nevis. There is an Enforcement section located in Nevis. There are presently four (4) persons attached to the enforcement section in Nevis, with a need for seven (7) additional officers to complete the staffing of that Department.

515. The Deputy Comptroller is responsible for the supervision of the Branch in Nevis and is appointed on the recommendation of the Permanent Secretary of Finance in Nevis. This information is forwarded to the Human Resource Department and then onwards to the Public Service Commission and finally to the Governor General for approval.

516. The budget for the Nevis Section of the Customs and Excise Department is prepared by the Ministry of Finance technocrats in the Nevis Island Administration, who would allocate monies to the Customs and Excise Department in Nevis. The Deputy Comptroller, in charge of the Nevis Customs Branch is responsible for the management of the funds that are allocated to the Branch.

517. The budget for Customs and Excise Department in Nevis has been increasing over the past three (3) years, with the amount of EC$12,000 allocated for training remaining the same. In 2005 the sum of EC$1,137,580.00 was projected as the estimated budget, with the sum of EC$1,000,386.81 being actually used by the Section. In 2006 the sum of EC$1,254,082.00 was projected as the estimated budget, however the sum of EC$1,054,331.32 was actually used by the Branch and in 2007 the sum of EC$1,287,436.00 was allocated and the sum of EC$1,184,843.51 was actually used by the Branch.

518. The staffing of the Enforcement Section in Nevis is headed by an Executive Officer, with a staff of three (3) persons under his supervision.

519. The Enforcement section has similar responsibility to that of St .Kitts and includes the boarding of vessels, post imports audits and drug interdiction and cash smuggling, which is its main priorities.

520. The Enforcement Section in Nevis is considered to be under-staffed and is in need of ten (10) persons to adequately complete it full complement of staff. The section in Nevis does not have the resources that are available to its St. Kitts counterparts.

521. Some officers considered their job to be risky and stated that they were not being paid any additionally money to undertake such risks. The officers attached to the Enforcement Section are being paid on the same level as regular customs officers, recommendation to have officers given addition cash incentives have so far proven futile.

522. There is no special criterion that persons attached to the Enforcement Section in Nevis must meet other than to be willing to work in that section and have some level of trustworthiness. However no detailed assessment of that individual's background is obtained.

523. The Unit also receives assistance from the accountant and the Administrative/Research assistant within the Customs Department.

Technical expertise and training

524. The Customs Department has four (4) accredited financial investigators. Two (2) are permanently stationed in the Unit one advises senior management on policy issues and one is stationed at the airport. The Unit has a compliment of officers that is extensively trained in enforcement matters. They have also been trained to understand appreciate and respect the need for confidentiality, integrity and objectivity in their work.

525. There are no trained personnel in ML and CFT attached to the Department in Nevis. Customs officials in Nevis are of the opinion that there is a need for training, especially for those officers working in the Enforcement Section.

526. The Unit is given adequate support in its initiatives by the senior management and ultimately the Ministry of Finance. They are funded to the maximum extent allowed by the Ministry and the Department requests for equipment and training are supported and pursued vigorously. When there is a funding problem a suitable compromise has always been reached. The Department has always taken seriously the need to have this Unit (Enforcement Section) trained protected and equipped with the most advanced technological equipment that the department is able to provide.

527. The current structure of the organization allows for some autonomy and independence of operation as far as the Comptroller is permitted by the Customs Control and Management Act No. 4 of 1992.

528. The St. Kitts section of the Customs and Excise Department relies on the Police Department and the Defence Force to render some means of assistance to the Unit such as the K-9 Unit. However the Department is of the view that it is adequately resourced, although there may be some minor short coming. The Department believes that the Ministry of Finance cannot be blamed for any shortcomings in resources as they usually receive what has been requested and any shortfalls may be the result of an internal problem in the Customs Department that resulted in an inadequate budget proposal.

529. There is a need for more financial resources to be allocated in the budget for the Nevis section of the Customs and Excise Department. The authority is of the opinion that the Department is in need of two vehicles and additional computers.

530. Section 6 of the Customs Control and Management Act, No. 4 of 1992 addresses the matter of obligation of secrecy and unauthorized disclosures by Customs' Officers.

531. The Customs Department maintains high professional standards and through the law enforcement network they been able to ensure a high level of integrity amongst its staff. Relevant staff is constantly exposed to the necessary training.

532. There is no comprehensive vetting of individuals to work in the Enforcement Division at the Customs and Excise Department. In some instances persons are still being detached to the Enforcement Division on the directives of the relevant authority within Customs.

533. The Customs Department has provided training to its officers in relation to money laundering and counter financing of terrorism over the last eight (8) years. This training has produced more competent and efficient staff members who are able to detect and deter instances of money laundering and terrorist financing.

534. Training for new recruits into the systems in relation to ML and TF are provided by personnel of the Customs and Excise Department who were accredited by CALP. Junior Customs Officers coming into the service are usually given an eight (8) week basic training course.

535. Two (2) officers have received training in the CFT from the Customs Department in St. Kitts. Customs Authorities are of the opinion that there is a need for more comprehensive and continuous training in the areas of ML and TF.

536. Between the years 2004 to 2008, there were five (5) training courses allocated to the Customs and Excise Department in relation to ML and TF. A total of five (5) officers attended these training courses. The training included Financial Investigators course in 2004 hosted by CALP; in 2005 a Financial Investigators Advance Course and Carib, Security Sector Senior Command Training Programme; in 2006, a Msc. National Security and Strategic studies Capacity building in Combating Terrorism; in 2007 a CFATF 4th Annual AML Compliance Conference and in early 2008 a Capacity building in Terrorism.

537. No training has been provided to any of the officers attached to the Customs and Excise Department in Nevis, in relation to ML and CFT. The Coast Guard Services has provided some specialised training to the members of the Enforcement Unit.

Recommendation 32

538. The Examiners were unable to ascertain whether or not statistics are properly kept by the Customs and Excise Department in relation to reports filed on cross border transportation of currency and bearer negotiable instruments, as there were no statistics provided to the Team in this regard.

539. The Customs officials in St. Kitts informed the Examiners that STRs or disclosures relating to the cross border seizure of currency and bearer negotiable instruments, are filed with the FIU, however there were no statistics kept by the FIU to reflect the validity of this claim. The Team was also informed by the FIU that while there were no STRs filed with the FIU; the information was disclosed to the FIU.

540. In the event that the Customs Department becomes aware that a passenger is travelling with cash and/or negotiable instruments in excess of EC$27,000.00, measures are in place for the Department to record such instances and determine whether possession of such instruments reasonably gives rise to suspicion. *Other Statistics* -Terrorist reports are also compiled.

2.7.2 Recommendations and Comments

SR.IX

541. Customs, the FIU and the Police should work closely together to investigate cases of cross border transportation of cash and bearer negotiable instruments in order to determine its origin, bearing in mind that such currency or instrument may be the proceeds of criminal conduct in the said country.

542. There is a need for regular inter-agency meetings between Customs, the Police, the FIU and other competent authorities as it relates to the implementation of Special Recommendation IX.

543. Proper records and statistics should be kept by the Customs and Excise Department in relation to the seizure and disclosure of cross border transportation of cash and bearer negotiable instruments.

544. There is need for training of customs officer in relation to identification of, precious metals and precious stones, as customs officer are unable to detect such objects if they are being smuggled.

545. There is a need for customs officials in St. Kitts and Nevis to inform and liaise with their counterparts in the originating country when there has been a seizure in relation to the transportation of cross border cash and bearer negotiable instruments and not solely rely on the FIU to disseminate such information.

546. The Enforcement Section in Nevis should be given adequate resources including fireproof filing cabinets and the same procedure be implemented as in St. Kitts as it relates to the security of the Section.

547. Information obtained as a result of the seizure of cross border currency and bearer negotiable instruments should be maintained in a computerized database and be readily available for AML/CFT purposes.

Recommendation 30:

548. The St. Kitts and Nevis Authorities should consider providing the Customs and Excise Department with adequate resources to undertake it functions; such resources should include vehicles, firearms and computers.

549. The St. Kitts and Nevis Customs and Excise Department should put adequate measures in place so as to ensure staffs are properly vetted so as to maintain a high level of integrity and confidentiality, more specifically staff in key areas such as the Enforcement and the Intelligence Divisions/Units.

550. The St. Kitts and Nevis Customs and Excise Department should ensure that staffs are provided with adequate training in relation to ML and TF, especially persons in key areas and in particular officers attached to the Nevis Department.

Recommendation 32

551. The Customs and Excise Department should keep adequate and comprehensive statistics in relation to cross border seizure of currency and bearer negotiable instruments and the number of these reports that were forwarded to the FIU.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	• **Cases of cross border seizures of cash and bearer instruments are not properly investigated.** • **There is no coordination domestically between the relevant authorities in relation to the implementation of SR IX.**

		• **There are no records kept on the seizure of cross border cash and bearer negotiable instruments.** • **Need for greater information sharing and liaison between Customs Officials in St. Kitts and the originating country when there is a report of seizure.** • **No proper maintenance of records for the availability for AML/CFT purposes.** • **Sanctions are not proportionate and difficult to assess effectiveness since there has been no implementation.**

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

552. According to the FATF Recommendations a country may decide not to apply AML/CFT requirements or to reduce/simplify the measures being taken on the basis that the financial activity is carried out occasionally or there is little or no risk of ML or FT in relation to a particular sector.

553. As stated below, there are a number of entities that are deemed to be regulated businesses for the purpose of the Proceeds of Crimes Act (POCA) and consequently the Financial Services Commission Act (FSCA) and the Anti Money-Laundering Regulations (AMLR). Importantly, the law prescribes that businesses under the St. Kitts Companies Act and the Nevis Business Corporation Act would be deemed regulated businesses and therefore subject to AML obligations. This means that virtually all businesses in the Federation are as a matter of law subject to these statutes.

554. In practice, however, there is an acknowledgement by the Authorities that a number of the activities/persons listed in the Schedule to the POCA are not expected to carry out the full range of anti-money laundering measures contained in the POCA and the AMLR This framework suggests however that the Authorities, in using this blanket approach, have not carried out detailed risk assessments in this area in coming to a legislative determination as to which are the key areas of risks within the jurisdiction. The observation is balanced by the fact that the operational examination and monitoring regime is applied mainly to the financial sector entities, which is also an indication of the implied determination as to the key areas of risk.

555. With regard to supervisory approaches, there is evidence that regulatory bodies do carry out their activities on a risk sensitive basis insofar as there has been greater focus on the AML/CFT compliance supervision of entities that are considered as being at greater risk for ML and FT. Thus the authorities treated the AML/CFT supervision (as opposed to the recently assumed day to day supervision) of Money Services Businesses as a priority in establishing its schedule of AML/CFT examinations.

556. Similarly the Examiners were advised that the ECCB in establishing its examination work (which includes an AML/CFT component) seeks to utilise their resources on a risk sensitive manner, by targeting institutions where deficiencies have been identified previously or those which may be systemically important.

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

3.2.1 Description and Analysis

557. The Anti-Money Laundering Regulations and the Guidance Notes on the Prevention of Money Laundering and Terrorism Financing impose customer due diligence obligations on a number of financial institutions. These obligations apply to operators of regulated businesses, which include:

REGULATED BUSINESS ACTIVITY per POCA

1. Banking business carried on under the Banking Act;
2. Offshore banking carried on under the Nevis Offshore Banking Ordinance;
3. Trust business carried on under the Trust Act, and the Nevis International Trust Ordinance;
4. Business corporations under the Nevis Business Corporation Ordinance;
5. Finance business carried on under the Financial Services Regulations Order 1997;
6. Company business carried under the Company Act, and the Nevis Limited Liability Company Ordinance;
7. Insurance business carried on under the Insurance Act;
8. Venture risk capital;
9. Money transmission services;
10. Issuing and administering means of payment (e.g., credit cards, travellers' cheques and bankers' drafts);
11. Guarantees and commitments;
12. Trading for own account or for account of customers in:
    (a) money market instruments (e.g., cheques, bills, certificates of deposits, commercial paper, etc.);
    (b) foreign exchange;
    (c) financial and commodity-based derivative instruments (e.g., futures, options, interests rate and foreign exchange instruments, etc.);
    (d) transferable or negotiable instruments;
13. Money brokering;
14. Money lending and pawning;
15. Money exchange (e.g. *casa de cambio*);
16. Real property business;
17. Credit unions;
18. Building societies;
19. an activity in which money belonging to a client is held or managed by
    (i) a Barrister or a Solicitor;
    (ii) an accountant or a person who, in the course of business, provides accounting services;
20. the business of acting as company secretary of bodies corporate; and
21. any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

558. Although there are multiple categories of persons named in the POCA as regulated persons, several of the activities named in the Schedule (e.g. building societies) do not take place in the Federation. In addition, there is an acknowledgement by the Authorities that in practice a number of the activities/persons listed in the Schedule to the Act are not expected to carry out the full range of anti-money laundering measures contained in the Act and the AMLR (e.g. Company business carried under the Company Act and the Nevis Limited Liability Company Ordinance).

Guidance Notes as OEM

559. The Guidance Notes are issued under the AMLR and are a Schedule to those Regulations. The Guidance Notes purport to deal with a number of operational areas that are central to

AML/CFT preventative measures for financial institutions. These include customer due diligence and verification requirements, record keeping requirements, staff training requirements, and internal controls and systems.

560. Section 15(1) of the AMLR specifies that a person may be liable to criminal sanctions for a failure to meet the requirements of the Regulations, the requirements of the Guidance Notes or any directive issued by the Commission under section 16 of the Regulations. The Regulations state at regulation 17 that in preparing the requirements under the Regulations, financial institutions should adopt and have regard to the Guidance Notes.

561. Recent amendments to the FSCA also provide the Commission with certain powers to enforce the AMLR and the Guidance Notes (GN). These sanction powers include the power to issue warning letters, directions for remedial action, and in extreme cases, where all other avenues have been exhausted, making recommendations for the revocation of a regulated business' license.

562. In addition, the Guidance Notes also provide that the Financial Services Commission (FSC) is also entitled to take a failure to comply with the terms of the GN into account in the exercise of its supervision and in particular its judgment as to whether persons, directors and managers are fit and proper persons.

563. The FATF requirements for determining whether materials such as Guidance Notes may be deemed enforceable is whether the Guidance under consideration meets the following criteria:

(a) Is the Guidance issued by a competent authority?
(b) Is it framed to make it clear that the requirements are mandatory and that sanctions apply for non-compliance?
(c) Are the sanctions effective, proportionate and dissuasive?

564. The fact that the AMLR specifically states that breaches of the requirements attract a criminal penalty (namely the same penalty for breaches of the Regulations themselves) suggests that the Guidance Notes are (with regard to enforcement) directly a part of the criminal law. The Examiners do consider that the language of the Guidance Notes however does seem to contradict this interpretation. They are described as being issued *"... to assist financial institutions and other businesses to comply with the requirements of the provisions of the Anti-Money Laundering Regulations"* and as *"best industry practice" and as "a statement of the standard expected by the Commission" of all regulated business under the Proceeds of Crimes Act".* The Notes further state that *"Financial Institutions and other regulated business are therefore advised to adopt these Guidance Notes or to adopt and implement internal systems and procedures which are of an equivalent standard".* These statements suggest that certain aspects of the Guidance Notes are discretionary and not mandatory requirements as required by the FATF's definition of "*law and regulations*". It is the view of the Examiner's that in the circumstances the Guidance Notes are not law or regulation, within the FATF's definition notwithstanding the offences section contained in the Anti-Money laundering Regulations. The Examiners consider that the Authorities would have considerable difficulties in enforcing the Guidance Notes as regulations. Given that there have not been any successful convictions in this area; there is no objective evidence that would contradict this view.

565. The question then arises as to whether the Guidance Notes then satisfy the criteria relating to Other Enforceable Means.

(i.) The Notes are issued by the Minister of Finance under powers contained in the POCA;
(ii) As indicated above, the language of the Regulations and the Notes are not clear as to whether they are mandatory. The Regulations do indicate that relevant persons should *"adopt and have regard to the provisions of the Guidance Notes ..." ,* however there

are equally other provisions of the Notes that suggest that *"systems and procedures that are of a equivalent standard"* can be adopted as an alternative to the standards in the Guidance Notes.

(iii) The sanctions relating to breaches of the Guidance Notes range from the measures contained in the Financial Services Commission Act (e.g. Memorandum of Understanding, Directives, recommendations for revocation of licences), the offences under the AMLR section 15 and the fit and proper consequences set out in the Notes. The sanctions do appear on their face, proportionate and dissuasive. The St. Kitts Authorities have indicated that they have issued warning letters and have recommended sanctions. One licence suspension has occurred in Nevis relating to a Trust and Company Service provider. However, no revocation of licences has taken place based on these recommendations.

The Examiners considered that in the case of the Guidance Notes, there was sufficient evidence to support a finding of OEM insofar as the specific obligations considered throughout the report were of a mandatory nature.

566. Examiners do consider that there is support for a finding that the Guidance Notes do constitute Other Enforceable means, but this finding is subject to two important considerations:

(a) The Notes are issued under the AMLR, which are in turn issued pursuant to powers granted to the Minister under the POCA. However, the powers of the Minister under that Act are expressly limited to the issue of regulations that relate to the prevention of money laundering. Thus the Examiners take the view that the Guidance Notes cannot properly relate to terrorism financing as that issue would be ultra vires the terms of the governing statute (i.e. the POCA);

(b) The enforcement powers under the Financial Services Commission statute were passed into law two months before the Examiners visited the jurisdiction. As a consequence, the Commission had not (save for the limited cases indicated above) yet exercised these powers. The Examiners were therefore not in a position to fully assess the effectiveness of these measures, although there were noted instances of financial institutions maintaining many key measures as a result of the preceding laws, the directives of the regulatory authorities and their own internal risk management measures.

567. Subject to these two limitations, the Examiners took the view that the Guidance Notes would constitute OEM.

Nevis' International Insurance Ordinance and St. Kitts' Captive Insurance Act

568. The above Statutes cover the activities of Captive Insurance Companies (in St. Kitts) and International Insurance Companies (in Nevis). A brief description of the regimes which govern each type of entity follows:

(a) In the case of the St. Kitts captive insurers, the only type of business covered is captive insurance, where the licensed company is only allowed to accept business from specific related parties, (save for a 10% of total business maximum, which may be accepted from third parties in the case of group captive insurance companies). However the Registrar has not given any approval for any group captive to offer insurance to third parties. Companies licensed under this Act are required to maintain a registered office in the State and to maintain records within the State. However, the operations of captive insurers are in the main, carried out

by Insurance Managers, who are licensed under the Financial Services Order, but who offer management services to the insurance companies but are not employees. In St. Kitts, one insurance manager (a body corporate) has been so licensed and manages the affairs of over 60 captive insurers. It is resident in the jurisdiction. It is acknowledged that the captive insurers have little operational presence in the jurisdiction, save and except the presence of the insurance manager, who is responsible carrying out the substantive business of the company (e.g. investment and claims activities as well for compliance with requirements under the Insurance laws and the AML/CFT laws). Neither the operations of the captive insurers nor the Insurance Manager have been examined by the FSC for AML/CFT compliance. The authorities in St. Kitts are of the view that because of the limited clientele being served, this is a low risk area and therefore not a priority with regard to the Commission's inspection schedule in St. Kitts.

(b) Under the Nevis Ordinance, the Nevis Authorities licence a variety of businesses including general, long term and captive business, which are all collectively included in the term "off-shore insurance business". The Examiners noted that "offshore insurance business" could as a matter of law be conducted either within or outside of Nevis. Although the law does require the offshore insurance company to have a registered office in Nevis, the principal place of business may or may not be situate in Nevis. Under the statute, business records should be maintained at the principal place of business, and if such a place is outside of Nevis, then copies must be kept at the registered office in Nevis. Again in Nevis, these companies rely to a large extent on the services of Insurance Managers to carry out their affairs with regard to compliance with the governing statute and the AML/CFT laws. The Examiners were directly advised that whilst these companies maintained offices in the jurisdiction, the bulk of their activities including investment and other key transactions appeared to occur overseas. The Examiners were advised that these Insurance Managers were not required to be resident in the Federation, although the laws did require that copies of all records were to be retained in the Island by resident directors. The Authorities in Nevis had not up to the date of the examination conducted AML/CFT examinations of either the operations of these companies or the operations of the Insurance Managers.

569. Given the foregoing, the Examiners had concerns relating to whether the regulators in the Federation and particularly in Nevis were able to properly verify that these entities were meeting their AML/CFT obligations in a number of key operational areas. For example, the Examiners thought that there would be a fundamental difficulty in the Authorities being able to ascertain that the records maintained in the jurisdiction accurately reflect the entirety of the transactions carried out at a principal place of business overseas. Also whereas the laws relating to AML/CFT place key legal obligations on the entities (and their directors), these responsibilities are more or less placed/operationally delegated to the Manager, who may or may not be situate within the jurisdiction. The Examiners believe that this type of structure can lead to ambiguity with regard to ascertaining the parties who are legally responsible for preventing ML/FT and to difficulties in enforcing the requirements upon the parties who are under law responsible. The FIU also indicated that it had not up to the time of the Evaluation received any reports from Insurance Managers or from Captive/International Insurance companies. This concern thus impacts on the ratings of several recommendations which impose obligations on these entities.

Recent enactment of the ML Regulations and Guidance Notes

570. Finally it should be noted that whilst most financial institutions had their own internal measures to combat ML and FT, many were not fully aware of the contents of the new Regulations and

legislative amendments. There had been no examinations since the passage of these reforms and therefore the institutions were still studying the new changes and making adjustments to their systems.

Recommendation 5

571. Section 4(10) of the Anti-Money Laundering Regulations 2008 specifically prohibit the maintenance of anonymous accounts and accounts in fictitious names. Sections 3 and 4 of the Regulations state that identification procedures must be conducted whether a relevant person enters into a business relationship with a client or conducts a significant one-off transaction. There is however no reference to numbered accounts and to how they should be dealt with by the financial institutions.

572. Industry sources have indicated that they do not and have not in the past maintained anonymous accounts or numbered accounts.

When CDD is required

573. Regulation 4(1)(a) of the AMLR state that a relevant person shall apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction.

574. One-off transactions are defined as transactions that exceed EC$40,000 (the equivalent of US$15000) in the case of non-money service business, or two or more transactions (other than in the case of money services businesses) where it appears that the transactions are linked and the value is less than EC$40,000. In the case of money services business, a one-off transaction is established where it involves EC$2700 or involves two or more linked transactions that involve EC$2700 or more.

575. In addition, AMLR regulation 4(1)(c) also requires that identification procedures must be applied in cases where the relevant person suspects money laundering or where there are doubts about the veracity of previously obtained documents or information. However the law does not impose a requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism.

576. In the case of occasional wire transfers, these would be captured broadly under the general requirement that in the AMLR which provide that identification procedures are required to be carried out before the establishment of a business relationship or before carrying out a one-off transactions (which would include occasional transactions).

577. The specific procedures to be carried out in the case of occasional wire transfers are contained in the Guidance Notes, which provide at paragraph 202 that Money Services Businesses (excluding banks) should ensure that all documentation is duly completed and signed before each new business relationships and that originator information (name address routing number and account number of the customer) is included on all incoming and outgoing transfers. The Guidance Notes are not law or regulation. The requirements also do not relate to the banks and therefore they are not subject to the specific requirements.

Identification of customers

578. Section 4 of the AMLR outlines the obligations of the relevant person (being the operator of a regulated business) to apply identification procedures to customers. This includes cases where the customer may be acting on behalf of a third party (in which case this third party should be identified) and cases where the customer is a body corporate (in which case, the relevant person

should ascertain the ownership and control structure). In other cases, where the customer is not an individual, the relevant person must apply identification procedures to any person purporting to act for that customer and the beneficial owners and controllers of that entity.

579. Under the Regulations, the definition of identification also includes obtaining evidence that is reasonably capable of verifying that the person is one and the same as the customer or the third party being identified and satisfies the relevant person that the evidence of identification is conclusive.

580. The Guidance Notes (which are not deemed to be law or regulations) at paragraphs 80 and 81 specifies the types of independent documentation that should be used to verify the identity of an individual. It was also noted that while the documentary requirements established by the Guidance Notes are in keeping with the FATF requirements, and the Guidance Notes discusses some methods of verification (such as using "best possible documentation" and using various supervisory websites), the Notes did not discuss the specific methods of verifying an individual's identity that are recommended in the Basel CDD Paper]. Paragraphs 86, 87, 88 – 89 and 92 specifies the documentation requirements for companies, clubs/societies, charities and partnerships respectively.

581. Identification requirements are not required for "one off" transactions below EC $40,000 unless they are suspicious (save for the exceptions applicable to money services businesses).

582. Breaches of the GN are specifically stated to be an offence under the AMLR. The FSC is also empowered to take regulatory action where a regulated business breaches the Regulations or the Guidance Notes.

583. The AMLR provide that a relevant person should apply identification procedures for ascertaining whether a customer is acting for a third party and to identify that third party. The definition of identification under the Regulations includes verifying the identity of a person or entity.

584. The GN at paragraph 42 provides that where there are underlying principals, the true nature of the relationship between the signatories and the principal(s) should be ascertained and appropriate enquiries performed on the principals. However, the Guidance Notes are not considered to be law or regulations and are therefore not applicable with regard to compliance with the Criterion. The Guidance Notes also do not refer to a direct obligation to verify the authority of the person to act on behalf of the principal.

585. The GN do provide for the verification of identification for companies and outlines the information and related documentary evidence that is necessary to properly identify the company, which are in keeping with the Basel standards. On the issue of trusts, there is a general identification and verification requirement applicable where one party is acting on another's behalf. The Guidance Notes also provide that an individual trustee, settlors and where appropriate the beneficiaries should be treated as verification subjects for the purposes of the Guidance Notes. However, the GN does not directly address the requirements for verifying the legal status of the parties involved in a trust/legal arrangement.

586. The AMLR specifies that in the case of a customer that is not an individual; a financial institution should apply identification procedures (including verification procedures) to any person acting on the entity's behalf as well as the individuals who are the customer's beneficial owners. There is also a legal obligation to understand the ownership and control structure of that customer.

587. The definition of identification under the Regulations includes obtaining evidence that is reasonably capable of verifying the identity of the customer or third party (referred to as the verification subject) being identified. The GN (which are not deemed to be law or regulations) specifies the type of information required for identification of these verification subjects as well as the documentation require for verification, but the requirement for using data from a reliable source is not contained in the law or regulations.

588. In the specific case of trusts, the GN require that the trustee, settlor and beneficiaries should be treated as verification subjects and therefore they are subject to identification and verification procedures. The Notes indicate that these parties should be targeted when there are changes in management, trustees and beneficiaries.

589. In the case of other legal arrangements like partnerships, the GN indicate that the partners (in an unlimited partnership) should be treated as verification subjects in a similar manner to directors and shareholders of a company. The GN also establish the documentary requirements necessary to support verification. Monitoring should be ongoing with attention being paid to new partnership appointments. In the case of a limited partnership, only the general partner is subject to this scrutiny.

590. In the case of clubs and charities, the GN require that the regulated business ascertain the purpose of the organisation by examining its constitution. It should ensure that its purpose is legitimate. In such cases, persons who are signatories on the accounts should be treated as verification subjects. Where however, in the case of an investment club, where the objective is the purchase of securities, all members should be treated as verification subjects.

591. The Examiners did raise with the interviewed businesses the question as to the identification procedures that would be applied in cases where a body corporate (which was an applicant for business) is in turn owned by another body corporate. The Regulations do speak to ascertaining the persons with beneficial ownership and control of an entity, which is further defined as referring to the ultimate beneficial ownership and control (whether direct or indirect) exercised by an individual over that entity. However most entities did indicate that they have never experienced applications for business that include this more complex type of structure, but that they would require information on ultimate owners and controllers.

592. With regard to the purpose and intended nature of the business relationship, the AMLR at regulation 4(2)(d) requires regulated businesses to obtain information on the nature and purpose of the applicant's business relationship or one off transaction as part of its identification policies. These policies are required to be adapted to the degree of risk of money laundering, based on types of customers, business relationships, products and transactions with the regulated business.

593. Further, Paragraph 86 of the GN requires financial institutions to obtain from companies a signed director's statement as to the nature of the company's business. Also, a financial institution is expected to know enough about a customer's business to recognise whether a transaction or a series of transactions are unusual.

594. Section 4 of the AMLR indicates that a relevant person shall apply (1)(b) *"on-going identification procedures during a business relationship."*

595. In section 4(3) of the AMLR, these procedures are described as entailing:

> "(*a) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the relevant person's knowledge of the customer, including the customer's business and risk profile; and*

(b) ensuring that documents, data or information obtained under identification procedures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been discovered as a result of applying the procedures described in sub-paragraph (a)."

596. The interviewed regulated businesses did indicate that they did have systems in place to ensure that customer identification information was kept up to date. These included the use of letters/questionnaires, update alerts that are placed on customer files, "getting to know you better" brochures, and renewal notices (in the case of insurance companies).

597. The GN also highlights the importance of understanding a customer's source of funds in performing customer due diligence and to assist in establishing the audit trail for investigators. Regulated businesses are required by the Notes to take reasonable measures to establish source of funds for applicants and for third parties (where third parties provide funding) in cases of lower and standard risk.

Risk

598. On the issue of enhanced Customer Due Diligence, regulation 5(2) of the AMLR defines enhanced customer due diligence procedures as those that involve appropriate measures to compensate for the higher risk of money laundering.

599. According to the Regulations, enhanced due diligence procedures should be applied in the following circumstances:

(a) where the customer has not been physically present for identification purposes.
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(b) where the relevant person intends to conduct business with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

(c) where the relevant person has a foreign branch or subsidiary in countries which do not or insufficiently apply the FATF Recommendations.

600. The Guidance Notes provide guidance on the factors that should be taken into account in determining whether a customer should be considered as high risk and therefore subject to enhanced customer due diligence, if his or her business is accepted. The Notes also refer to another example where enhanced customer due diligence should be applied, namely where an applicant for business has been turned away by another regulated business situated either within or outside of the Federation;

601. The Examiners did not note any reference in either the Regulations or the Guidance Notes to private banking, trusts that operate as personal asset holding vehicles, nominee as cases in which it is recommended that enhanced due diligence should be applied.

602. Reduced CDD measures must be applied under certain circumstances. According to regulation 6 of the AMLR, the identification (and verification) requirements that are set out in regulation 4 do not apply in the following circumstances:

(a) where the person whose identity is to be verified is a public authority, and is acting in that capacity;
(b) where the relationship or transaction relates to a pension, superannuation or similar scheme and where the contributions are made by way of salary deductions and members interests are not assignable;

(c) where the transaction relates to a life assurance policy which arises out of a contract of employment, which cannot be used as security and has no surrender clause;
(d) where the transaction relates to insurance business, where the single premium payable does not exceed $5000.

603. Regulated businesses are allowed to apply lesser CDD measures where they are dealing with another regulated business or an equivalent business. An equivalent business is a business that would be a regulated business if it carried out operations in the Federation, is subject to registration/authorisation and to the requirements of the FATF 40+9 Recommendations. In such cases, regulated businesses do not have to carry out procedures to identify persons purporting to act for such customers.

604. Where the customer is not a regulated person, but is represented by a person who is acting in the course of a financial services business and is either a regulated business or an equivalent business, then the regulated business does not have to ascertain the identity of parties purporting to act on behalf of the customer.

605. The Guidance Notes outline other "exempted" cases, where verification procedures may not apply. These include:

(a) in the case of a reliable local introduction from a regulated business;
(b) in the case of written introductions (which should include an assurance that identification information will be taken and recorded) from appropriate introducers (professionals in financial services law or accountancy, regulated business, where the introducers regulations/ethical co guidelines are equivalent to the requirements of the Guidance Notes and the introducer is in good standing;
(c) where the introducer is either a branch or members of the same group as the regulated business;

To qualify for the exemption, the introducing party must meet certain obligations in relation to verification, recordkeeping and providing copies to the regulated business.

606. Section 6(8)(d) of the AMLR states that reduced customer due diligence for low risk situations may be permitted where (iv) the financial services business is either a regulated business or equivalent business to a regulated business.

607. To qualify as an equivalent business, the business should be subject to requirements to prevent money laundering consistent with the FATF Recommendations and be supervised, for compliance with the requirements. Appendix K of the GN specifies those countries that the Authorities consider to be in compliance with the FATF requirements. The Notes at Part VII specify the requirements for equivalent businesses, and the related requirements for determining whether a jurisdiction is meeting FATF standards. Institutions are directed to look at the laws of the jurisdiction with particular reference to important FATF Recommendations as well as international reports.

608. Regulation 6(9) of the AMLR states that reduced customer due diligence for low risk situations will not apply in the circumstances, where "the relevant person suspects money laundering". However the Regulations do not specifically prohibit reduced due diligence in circumstances where the relevant person suspects the financing of terrorism.

609. The AMLR allow for reduced due diligence measures in low risk situations that are outlined in the Regulations at regulation 6. The Assessors noted that the AML policies of the financial

institutions that were evaluated did allow for reduced due diligence measures in keeping with the circumstances outlined in the Regulations.

Timing of verification

610. As previously stated, the AMLR at regulation 4(1)(a) states that a relevant person shall apply identification procedures before the establishment of a business relationship or before carrying out a one-off transactions. This includes verifying the identity of the customer, any person purporting to act on behalf of the customer or beneficial owners or controllers

611. Paragraphs 65 – 69 of the GN state that verification should be undertaken where possible prior to entry and should be exercised on all verification subjects arising out of the application for a business relationship or a significant one-off transaction before any transaction is completed. Further, the Regulations specify that a financial institution's procedures should require that where satisfactory evidence or verification of identity is not obtained a business relationship and transactions will not proceed any further.

612. As stated previously, regulation 4(4) of the AMLR states that the term "identification" includes obtaining evidence that is reasonably capable of verifying the identity of a person. Regulation 4(5) specifies that this verification process may be completed as soon as reasonably practicable after the establishment of a business relationship if this course is necessary not to interrupt the normal conduct of business and there is little risk of money laundering occurring.

613. The Regulations provide for the regulated entity to include in its identification procedures, obtaining evidence to support an assessment of the risk that any business relationship or one-off transaction will involve money laundering. . Although regulation 4(1) of the ALMR state that a regulated business must apply identification procedures before the establishment of a business relationship or a one-off transaction, regulation 4(5) states identification may be completed after the establishment of the business relationship (which would enable the customer to utilise services before full identification). Additionally, the regulations or guidance notes do not refer to special risk management procedures that should take place where a customer is allowed to utilise a business relationship prior to verification.

Inability to complete CDD

614. Regulation 4(9) of the AMLR outlines the actions that financial institutions should take when they are unable to apply the identification (which includes verification) procedures, including the refusal to establish the business relationship or carry out the one off transaction. Where the relationship has been established, but verification cannot be completed, the relationship or transaction should be terminated.

615. The AMLR also specifies that in cases, where verification cannot be completed and the transaction/relationship does not proceed or is terminated, the regulated business should consider making a suspicious transaction report, unless the FIU consents to the transaction/relationship moving forward. Also the GN require that if failure to complete verification itself raises a suspicion, a report should be made to the Compliance Officer or guidance sought from the FIU for determination as to how to proceed.

Existing Customers

616. The AMLR requires regulated business to apply ongoing identification procedures during the business relationship. This entails scrutinizing transactions undertaken during the course of the relationship to ensure that transactions are consistent with the relevant persons knowledge of the customers business and risk profile. In addition, regulated businesses are required to ensure

that documents, data or information under identification procedures are kept up to date and relevant by conducting reviews of existing records, including cases where inconsistencies are discovered.

617. The AMLR specifically prohibits the operation or opening of anonymous accounts or accounts in fictitious names. In addition, the Regulations require that identification procedures must be applied in the case of all customers, including both new and existing. The records that result from the application of these identification procedures are available to the compliance officer other appropriate staff and competent authorities.

618. As a general comment, the Examiners are concerned that with regard to the Captive and International Insurance Businesses, the fact that in some cases, the bulk of the transactions involving these entities may take place abroad. Given that the main contact between regulators and these entities are the insurance managers (who in the case of international insurance, may not be resident in the jurisdiction) suggests that the regulators may experience difficulty in verifying compliance with key operational requirements as they are not able to interface with the persons that carry out these transactions.

Recommendation 6

619. Regulation 3(1)(a)(i) of the AMLR states that "In conducting relevant business, a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person unless the relevant person (a) maintains appropriate policies for the application of (i) identification procedures in accordance with regulation 4. Regulation 3 (3)(c) states that policies referred to in sub-regulation (1) include policies which determine whether a customer is a politically exposed person (PEP).

620. Regulation 5 (1) and 5 (6) of the AMLR provides that a relevant person must apply enhanced customer due diligence procedures on a risk-sensitive basis in a number of cases, one of which is in the event that the relevant person proposes to have a business relationship or carry out a one-off transaction with a PEP. Regulation 5(7) provides an appropriate definition of a politically exposed person.

621. Regulation 5(9) of the AMLR requires that a relevant person should obtain senior management approval for establishing business relationships with PEPs. The Regulation also goes further to provide that relevant persons should also obtain senior management's approval to continue a business relationship once a customer or beneficial owner has been found to be or subsequently becomes a PEP.

622. Regulation 5(9) of the AMLR also requires that a relevant person should take reasonable measures to establish the source of wealth and source of funds when establishing business relationships with PEPs. The Regulation however is not clear as to whether the requirement for establishing source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting. The Guidance Notes at Part III provides definitions of the terms "source of funds" and "source of wealth", although these are not directly stated to relate to PEPs.

623. Regulation 5(9) of the AMLR further requires that the relevant person should also conduct ongoing monitoring on business relationships with PEPs.

624. The Examiners did find that there was a strong appreciation among financial institutions regarding issues relating to PEPs. The Examiners are satisfied that appropriate measures including (source of funds) would be taken if the beneficial owner of a customer was found to

be a PEP. Some of the larger regulated businesses subscribed to services such as World Check and Lexis Nexus to assist in identifying PEPs. Other businesses used specific due diligence services, when suspected PEPs were involved. The Regulators have also held discussions with regulated businesses as to the issues surrounding the identification and treatment of PEPs.

Recommendation 7

625. Regulation 4(12) of the AMLR addresses the requirement for correspondent banks to conduct proper due diligence on respondent banks. A relevant person that is a correspondent bank must gather sufficient information about the respondent to understand fully the nature of its business and determine the reputation of the respondent and the quality of its supervision.

626. Paragraph 142 of the GN provides detailed information as to this requirement, including the factors to be considered in assessing the nature of the respondents business and the measures put in place by the Respondent institution to combat money laundering and the financing of terrorism. Such measures include obtaining information about management, AML/CFT measures and the quality of supervision in that jurisdiction**.** The Examiners as noted above do consider the GN to be OEM. However in this case, the Notes cannot properly cover issues relating to CFT because of the fact that they are issued under the AMLR. Thus in this case the Guidance Notes are not applicable to the TF issues relating to a respondent institution's business.

627. Regulation 4(12) of the AMLR addresses the requirement for correspondent banks to conduct proper due diligence on respondent banks. A relevant person that is a correspondent bank must assess the respondent's systems and controls to combat money laundering and the financing of terrorism in order to determine whether they are consistent with the requirements of the FATF Recommendations. Additionally, a relevant person that is a correspondent bank must: document the respective responsibilities of the correspondent and the respondent banks to combat money laundering and the financing of terrorism so that they are clearly understood.

628. Regulation 4(12)(j) of the AMLR further provides that a correspondent bank must not enter into a banking relationship where it has knowledge or suspicion that the respondent, or any of its customers, is engaged in money laundering or the financing of terrorism."

629. Regulation 4(12)(d) of the AMLR addresses the requirement for correspondent banks to conduct proper due diligence on respondent banks. The Regulation requires new correspondent relationships to be approved by a correspondent bank's Board.

630. Regulation 4(11) of the AMLR addresses the requirement for correspondent banks to conduct proper due diligence on respondent banks. A correspondent bank must be satisfied that, where there are customers of the respondent bank who have access to the accounts of correspondent bank, the respondent has performed CDD procedures in line with those set out in the AMLR, or those required by FATF Recommendation 5, and is able to provide relevant CDD information and documents evidencing verification of identity on request to the correspondent bank.

631. The Examiners noted that the banks operating in the Federation did not carry out correspondent banking activities and that payable-through-accounts are not offered by the institutions in the jurisdiction. Banks did however express some misgivings with regard to the feasibility of obtaining detailed information with regard to the AML policies and procedures that were in place regarding their correspondent banks.

Recommendation 8

632. Regulation 3(1) of the AMLR specifies that regulated businesses should maintain appropriate policies and procedures relating to the identification, record keeping, internal reporting and internal control and communications measures as specified in the Regulations for the purpose of forestalling money laundering. The maintenance of these policies and procedures are prerequisites to the establishment of a business relationship or the conduct of a one-off transaction by the regulated business.

633. Regulation 3(2)(d) states that policies above referred to should include policies which prevent the misuse of technological developments in money laundering or terrorist financing schemes.

634. The Examiners have noted that regulation 3(1) of the AMLR has stated that the policies and procedures therein mentioned should be for the purpose of *"forestalling money laundering*", whilst regulation 3(2)(d) refers to both money laundering and the financing of terrorism. In addition the POCA at section 67 also provides that the Minister may make regulations to give effect to the provisions of that Act regarding procedures to be maintained by a person carrying on regulated business for the purpose of forestalling and preventing money laundering. The Examiners do have some concerns with regard to whether the regulation making power in the POCA is wide enough to empower the Minister to promulgate regulations which deal with the additional issue of the financing of terrorism.

635. Regulations 3(1) and 3(2)(e) of the AMLR require that regulated businesses should, among other things, maintain identification policies in keeping with the provisions of the regulations, including such policies which address any specified risks associated with non face-to-face business relationships or transactions.

636. In addition, regulation 3(2)(b) states that such policies should specify the taking of additional procedures, where appropriate, to prevent the use for money laundering of products and transactions which are susceptible to anonymity.

637. Regulation 5(3) of the AMLR also requires enhanced customer due diligence measures for some cases where customers who have not been physically present for identification purposes. Paragraph 74 of the GN provides that *"a regulated business offering internet services should implement verification procedures for such customers and ensure that the verification procedures have been met. The same supporting documentation should be obtained from internet customers as from telephone or postal customers.*

638. The Examiners did note that participants in the domestic banking sector indicated that all business relationships required the customer to appear in person. The main sector that did not require the face-to-face interaction with the customer was the incorporation of exempt companies as carried out by companies and trust services providers (particularly in Nevis) where greater reliance was placed on introducers. There is also a minor element of non-face to face business in the offshore banking sector, the risks of which are dealt with by more comprehensive identification documentary requirements, independent references as well as use of specific software such as the World Compliance database.

639. Although regulation 5(2) of the AMLR provides that "*enhanced due diligence procedures*" means appropriate CDD procedures that takes into account higher risks of money laundering, the Regulations do not specify that non face-to-face transactions qualify as cases where enhanced customer due diligence should be applied. Neither the Regulations nor the Guidance Notes provide for the specific and effective CDD measures that financial institutions should apply to cases of non face-to-face business.

3.2.2 Recommendations and Comments

Recommendation 5

640. The Authorities should resolve the issue as to whether the AMLR can legally refer to matters relating to the financing of terrorism. As a consequence, there may be valid challenges that may be mounted against several of the measures in the Regulations or Guidance Notes which seek to address the financing of terrorism.

641. The Guidance Notes are not considered to be law or regulations and thus the requirements in the Guidance Notes relating to the treatment of occasional transfers should be placed in the law.

642. The Regulations or Guidance Notes should either prohibit numbered accounts or specify how they are to be treated.

643. The important issue of using independent documentation to verify identity should be inserted into the law.

644. The requirement to identify and verify beneficial owners using data from a reliable source should be inserted into the law.

645. The Authorities should amend the laws appropriately to deal with the requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism.

646. For clarity the requirements applicable to money services businesses that relate to originator information should extend to banks that carry out wire transfers.

647. The Regulations or Guidance Notes should impose a requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism.

648. The Regulations or Guidance Notes should refer to a direct obligation to verify the authority of the person to act on behalf of the principal.

649. The Regulations or Guidance Notes should address the requirements for verifying the legal status of the parties involved in trust/legal arrangements.

650. The Regulations should specifically prohibit reduced due diligence in circumstances where the relevant person suspects the financing of terrorism.

Recommendation 6

651. The Regulations or the Guidance Notes should make it clear as to whether the requirement for establishing of source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.

Recommendation 7

652. As the Regulations or the Guidance Notes cannot cover issues relating to terrorism financing, the measures relating to assessing a respondent's institutions measures to combat TF would have to be provided for in the appropriate law or regulation.

Recommendation 8

653. The Regulations or the Guidance Notes should provide for the specific and effective CDD measures that financial institutions should apply to cases of non face-to-face business.

654. The Authorities should take greater steps in familiarising their supervised constituents with the new requirements of the law to ensure a smoother transition to the new regime.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• **The AMLR may not extend to terrorism financing obligations.** • **No requirement for CDD on de minimis transactions if TF is suspected.** • **Guidance re: money transfer business does not apply to banks.** • **Requirements re: occasional transfers are not in law or regulations.** • **Requirements for the use of independent documentation are not in law or regulations.** • **The requirement to identify and verify the beneficial owner using data from a reliable source not in law or regulations.** • **No direct requirement to verify authority of person purporting to act for a principal.** • **Enhanced due diligence measures do not take into account cases and circumstances cited in the Basel CDD paper.** • **No direct obligation to ascertain legal status of party to legal arrangement/ trust arrangement.** • **There is no prohibition of the use of reduced due diligence where there is a suspicion of TF.** • **No reference to special risk management procedures that should take place where a customer is allowed to utilise a business relationship prior to verification.** • **Effectiveness cannot be assessed due to the recent passage of the Regulations and Guidance Notes and the limited knowledge of the supervised constituents about the new requirements.** • **Concern relating to verification of compliance with this recommendation by Captive and International Insurers, given the fact that the bulk of their activities occur offshore.**
R.6	**LC**	• **The Regulation is not clear as to whether the requirement for establishing source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.**
R.7	**LC**	• **The GN whilst considered OEM for ML purposes does not cover TF issues. Thus cannot properly cover correspondent banks carrying out assessments of TF measures in respondent jurisdictions.**
R.8	**PC**	• **The AMLR do not extend to TF obligations.** • **Neither the Regulations nor the Guidance Notes provide for specific and effective CDD measures that financial institutions should apply to cases of non face-to face business.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

655. Regulation 7(4) of the AMLR outlines the conditions that must be met before a relevant person (i.e. the operator of a regulated business) may rely on an introducer. Those provisions state that the introducer must be either a regulated business itself or an equivalent business (i.e. a financial business conducted abroad which would have been a regulated business if it were conducted in the Federation and which is subject to the FATF Recommendations and which is duly authorised and supervised as required by the FATF).

656. In addition regulation 7(4) also requires that the relevant person should obtain adequate assurance in writing from the introducer that he has applied identification procedures and that he or she is required to keep (and does keep) records of the evidence of identification relating to the introduced business and that the introducer will provide the information in the record to the relevant person upon request. Further, the introducer should confirm in writing that the customer is an established customer of that person and provide to the relevant person sufficient information about each customer to enable the relevant person to assess the money laundering risk.

657. The identification processes that the introducer is required to undertake includes the identification of the customer, identifying any third party principals or beneficial owners that may be involved and identifying the ownership and control structure that is involved in the case of corporate customers. However, although the Regulations allow the regulated business to rely on a written assurance from the introducer that he/she has applied identification procedures and does maintain appropriate recordkeeping procedures, neither the Regulations nor the Guidelines require the regulated business to immediately obtain the key information specified in Recommendation 5.

658. The GN provide at paragraph 62 that verification may not be needed where a written introduction is received from an introducer who is a professionally qualified person in financial services, law or accountancy. These provisions seem to have the potential effect of conflicting with the requirements of regulation 7(4), if these professionals are not directly under an AML/CFT regime in their home country. The agreed terms of business between the regulated business and the introducer should require the introducer to complete verification procedures on all introduced business (including advising of cases where such procedures cannot be completed), keep records in accordance with the Guidance Notes and supply copies of such records to the regulated business upon demand.

659. Additionally, the Guidance Notes at paragraph 62 provides that the regulated business/person should be "*satisfied that the rules of the introducer's professional body or regulator (as the case may be) include ethical guidelines, which taken in conjunction with the money laundering regulations in the introducer's jurisdiction include requirements at least equivalent to those in these Guidance Notes",* when receiving verification information from introducers.

660. Whilst the Regulations and/or Guidance Notes do provide the regulated business with certain standards that are required to be met with regard to general identification procedures (e.g. the use of independent documents, verification of persons acting on behalf of another, verifying legal status of the customers who are legal arrangements and the details of persons acting on behalf of owning/having a beneficial interest in/controlling these legal persons or arrangements, the use of reliable data to identify beneficial owners and the nature of the business relationships), not all of these standards are expressly required from introducers. The Laws or Guidance Notes do not require for instance that introducers use independent documents to verify identification information, or that the introducers should ensure that the

authority of a person purporting to act for another is valid, or that the nature of the customers business should be ascertained.

661. The issue of conflict between the requirement for introducers to be "*equivalent businesses*" that are regulated for AML/CFT purposes and the provision in the Guidance Notes that allows introducers to be legal or financial professionals manifested itself in cases where the Examiners noted particular regulated businesses rely to a great extent on introduced business from, in particular, lawyers in the United States. Whilst the regulated business did check as to the current state of the licensing of these lawyers and did require standard undertakings that the introducer did carry out customer due diligence and record-keeping measures on introduced business, the financial institutions did acknowledge that these legal professionals were not legally subject to the Recommendations, and thus would not have been equivalent businesses for the purpose of the AMLR.

662. The Examiners observed that regulated businesses that relied on introducers did regularly test the willingness of the introducers to provide information, and where such willingness was not evident or where the information provided was below the required standard, the regulated business had either carried out its own customer due diligence or terminated the business relationship including relations with the introducer.

663. According to regulation 7 of the AMLR, a relevant person is allowed to rely on an intermediary or introducer if, inter alia, that introducer or intermediary undertakes in writing to provide the record of the evidence of identification to the relevant person at that person's request. The regulation is silent with regard to whether this information must be provided to the requesting relevant person without delay as required under the Recommendation.

664. As stated above, there is some uncertainty with regard to the interpretation of the AMLR and the GN as to the parties who can properly act as introducers. However as stated, the Regulations do provide that introducers and intermediaries should either be regulated businesses or equivalent businesses (which means that the business be subject to the FATF Requirements to forestall money-laundering). It is the view of the Examiners that a Court would rely on the terms of the regulations in preference to the terms of the GN where there is a perceived conflict, as the GN derive from and are therefore subsidiary in law to the Regulations. Hence, there appeared to be substantial evidence of non-compliance with this requirement insofar as financial institutions do rely on overseas introducers (such as attorneys) that are not supervised for compliance under the FATF Recommendations. The additional fact that equivalent businesses are not required to be subject to CFT requirements means that their supervision would not meet the standards of Recommendations 23 and 29.

665. One of the conditions that must be met with regard to an introducer or intermediary is that the person should carry on an equivalent business. Among the features of an equivalent business is that it is subject to measures to forestall money laundering consistent with FATF standards and supervised for compliance with respect to the requirements of the FATF. However, the definition does not require that these equivalent businesses be subject to measures to combat the financing of terrorism. The Guidance Notes does provide guidance in determining a country's level of compliance with FATF standards, by reference to reports and the laws of that State.

666. Regulation 7(1)(b) of the AMLR provides that notwithstanding the relevant person's reliance on another person (the introducer/intermediary), the relevant person remains liable for any failure to apply the appropriate identification procedures by the said introducer/intermediary.

667. With regard to Recommendation 9, the Examiners note that there are some elements of the Recommendation that are not specifically met as it relates to the power to obtain CDD information immediately and making sure that documentation will be provided without delay.

Additionally, while it is noted that introducers are subject to similar standards as regulated businesses, there is no reference to independent documentation as it pertains to them.

3.3.2 Recommendations and Comments

668. Regulated businesses should be required to obtain information on introducers/intermediaries' CDD processes. Where undertakings are given to provide information, financial institutions should be satisfied that the information will be provided without delay.

669. The Authorities should ensure that introducers and intermediaries are required to use independent documents to verify identification information, and to ensure that the authority of a customer purporting to act for another is valid, and ascertaining the nature of the customers business.

670. Introducers and Intermediaries should be subject to CFT measures.

671. The Authorities should clarify the identified inconsistencies between the Regulations and the Guidance Notes with regard to whether introducers are to be subject to the FATF Recommendations.

672. The inconsistencies in the regime are evidenced by reliance on introducers that are not subject to the FATF requirements as required by the Regulations. These inconsistencies should be resolved.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• **No requirement for regulated business to immediately get necessary information from introducers re: elements of the CDD process.** • **No requirements for Introducers and intermediaries to follow appropriate CDD measures (e.g. using independent evidence for verification).** • **No requirement for financial institutions be satisfied that information undertaken to be provided will be provided without delay** • **Introducers are not required to be subject to CFT obligations.** • **Ambiguity regarding whether introducers are required to be supervised under FATF requirements.** • **Lack of industry compliance to requirements relating to ensuring that introducers and intermediaries are subject to AML/CFT supervisory regime.**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

673. There are sufficient legal provisions that can circumvent any secrecy laws that bind financial institutions. One such provision is contained in the POCA (section 62), which provides that subject to the provisions of the Constitution, the provisions of

that Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other enactment. The POCA provides extensive means for law enforcement to obtain information relevant to investigations. These include: search and seizure powers, production orders, property tracking and monitoring orders, orders for disclosure of income tax information, access to documents held by departments of Government. (Discussed above in section 2 of the Report). The POCA also provides for wide powers for the FIU to assist with foreign requests for assistance.

674. Although the Confidential Relationships Act criminalizes the divulgence of confidential information by banks and other financial institutions with respect to business of a professional nature, regulation 3(2) of the AMLR provides that the Act does not apply to information given to or received by:

a. Persons in the course of taking or giving evidence in a trial for a criminal offence

b. Police officers in the execution of their duties in the investigation of a criminal offence

c. The Minister or person exercising powers of examination or investigation under the Banking Act

675. Section 13 (g) of the Financial Services Commission Act (FSCA) gives the Regulator power to enter into any premises of any regulated business during normal working hours to inspect any business transaction record kept by that regulated business and ask any questions relevant to the record, and to make any notes or to take any copies of the whole or any part of the record. In addition, the Financial Services Exchange of Information Regulations provides for the exchange of information between the FSC and its counterparts outside of the Federation.

676. The POCA lists in its Schedules the various types of regulated businesses. See list above in section 3.2 of the Report.

677. The Banking Act (BA) similarly empowers the Eastern Caribbean Central Bank (ECCB/Central Bank) to enter the premises of a bank operating in the Federation to examine the books and records of that institution. The Central bank also receives important information via prudential returns submitted by banks to the ECCB. The ECCB is also empowered to share information relating to supervised banks with overseas Authorities for regulatory purposes. The Nevis Off-Shore Banking Ordinance similarly ensures that the ECCB has appropriate access to the books and records of these institutions.

678. The Co-operative Societies Act (CSA) permits the Registrar of Co-operatives power to access the records of co-operative societies during business hours.

679. With respect to the sharing of information, section 4 (1) of the FIUA provides that in addition to other functions, it is mandatory for the Unit to

a. Disseminate information on suspicious transactions
b. Liaise with money laundering intelligence agencies outside of St. Kitts and Nevis

680. The Mutual Assistance in Criminal Matters Act 1993 (MACMA 1993) allows for information sharing between the Federation and countries in the Commonwealth especially in relation to matters such as assistance in obtaining evidence (section 7), assistance in locating or identifying a person (section 8) and assistance in tracing property derived from the commission of a criminal offence (section 15). There is also a Treaty in effect between the Government of St. Kitts and Nevis and the Government of the United States of America for mutual assistance in criminal matters. See. Section 6 of the Report.

681. With regard to the sharing of information between financial institutions for the purposes of correspondent banking, intermediary and introduced business and wire transfers, the AMLR and the attached Guidance Notes makes specific provisions for financial institutions in the Federation to obtain information from their domestic and international counterparts on these matters in order to satisfy the requirements of the Regulations and Guidance Notes.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	**This Recommendation has been fully observed.**

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

3.5.1 Description and Analysis

Recommendation 10

682. Regulation 8(1) of the AMLR requires a relevant person to maintain a record containing details of each transaction carried out by the relevant person in the course of any business relationship or one off transaction. The regulation also requires that a relevant person should keep the records in relation to each transaction for a period of five (5) years commencing on the date of the completion of all activities taking place in that transaction. The regulation also grants the power to the FSC to direct a relevant person to maintain the said transaction records for a longer period where required.

683. The GN, at paragraph 118 specifies the time limits on record keeping of transactions on customers. Entry and ledger records, deposit boxes and supporting records such as credit and debit slips should be kept for a period of at least five (5) years - after termination or where the account has become dormant, five (5) years from the last transaction, in the case of entry records; following the date on which the relevant transaction or series of transactions is completed in the case of ledger records; after the day on which the deposit box ceased to be used by the customer and following the date on which the relevant transaction or series of transactions is completed in the case of supporting records.

684. Guidance Notes paragraphs 120 to 121 outline the content of records to be kept as required by sub-regulation 6 of the AMLR.

685. Regulation 8(3) of the AMLR prescribes that the records relating to every transaction carried out by the relevant person in the course of any business relationship or one-off transaction which are required to be maintained must include sufficient information to enable the reconstruction of individual transactions and in such a manner that these records can be made available on a timely basis to the Authorities for the purpose of complying with the law.

686. The Guidance Notes amplifies this provision by stating what is considered to be "a retrievable form": Records can be either an original hardcopy microfilm or electronic data. However, regulated businesses should periodically check the condition of electronically retrievable records and disaster recovery in connection with these records should be periodically monitored (paragraph 124). *"Records that are held by a third party are not in a readily retrievable form unless the regulated business is reasonably satisfied that the third party is itself a regulated business which is able and willing to keep such records and disclose them to it when required." (paragraph 128).*

687. Paragraphs 120 to 121 of the GN provide additional information pertaining to the contents of the records to be kept. In the case of transactions, these are:

a. details of personal identity, including the names and addresses of the customer, the beneficial owner and any other counterparty,

b. details of financial services product transacted, including the nature of the service or product, valuations and prices, memoranda of sale and purchase, source and volume of funds and bearer securities, destination of funds and bearer securities, memoranda of instruction and authority, book entries, custody of title documentation, nature and date of the transaction and the form in which the funds were offered or paid out.

688. The AMLR at regulation 8 specifies that relevant persons should maintain records including a copy of the evidence of identity obtained pursuant to the application of CDD procedures or such information that enables such evidence to be obtained. In addition the relevant person should maintain records of all supporting documents, data or information in respect of the business relationship or one off transaction that is the subject of the CDD procedures. There is some issue as to whether these requirements would be wide enough to include the 'identification data, account files and business correspondence'**.** In the Examiners view, the existing provisions would capture this information**.**

689. The regulations specify a record retention period of five (5) years commencing from the date of the termination of the relationship and in the case of a one-off transaction, the identification records should be kept for five (5) years commencing from the date of the completion of those transactions. The FSC is empowered to require that relevant persons retain these records for a period exceeding the five (5) year limits.

690. The GN at paragraph 119 stipulates that records of certain transactions should be kept, after they have been completed or terminated for a period of at least five (5) years.

691. Paragraph 119 of the GN also makes provision for records to be retained for a longer period where the FIU is investigating a suspicious customer or a suspicious transaction.

692. Regulation 8(4) of AMLR requires that the relevant person shall keep the customer identification and transaction records in such a manner that those records can be made available on a timely basis to the FSC, police officer or customs officer for the purposes of complying with a requirement under any enactment.

693. The Team was satisfied that the regulated businesses interviewed (which did not include international or captive insurance companies or insurance managers) were aware of the requirements for record keeping and did in fact ensure that proper identification and transactions records were kept for the appropriate time periods and in some cases even longer.

694. As an overall comment, there is a fundamental issue of concern relating to properly ascertaining the level of compliance with regard to recordkeeping requirements that is achieved by the resident Insurance Manager operating under the captive Insurance Act and the Nevis International Insurance. Given that the vast majority of these transactions occur offshore, there is an issue as to how the Regulators are able to properly and independently verify that all transactions are being captured and comply with domestic requirements. The Examiners are concerned that supervisory authorities would only have sight of such records that are in the possession of the Insurance Manager/resident director or agent. There would be no way of independently knowing if all transactions are being recorded.

Special Recommendation VII

695. Guidance Notes (which the Examiners have concluded constitute OEM) at paragraph 122 states: "*In the case of wire or electronic transfers, regulated businesses should include accurate and meaningful originator information on fund transfers and related messages that are sent. Such information should remain with the transfer or related message through the payment chain. Regulated businesses should retain full records of payments made with sufficient detail to enable them to establish*

i. the identity of the remitting customer, and

ii. as far as possible the identity of the ultimate recipient."

The Notes do provide greater detail on the components of originator information at paragraph 123 (which deals with cross border transactions) to include the name of the originator, an account number or unique reference number, the originators address and either a national identity number, customer identification number or date and place of birth .

Cross-border wire transfers

696. In the case of cross border wire transfers of all sizes, the Guidance Notes require that the following information must be retained by financial institutions

- *Name of originator;*

- *An account number (where an account exists) or, in the absence of an account, a unique reference number;*

- *The address of the originator; and*

- *One of the following details: A national identity number, customer identification number or date and place of birth."*

697. Money services businesses, in particular, are also required by the GN at paragraph 202 to include the name, address, routing number and account number of the customer on all transfers sent from the Federation and abroad. The Notes further require that the appropriate sources of information include passports, drivers' licence and other national identification cards.

698. Checks with the main remittance operator revealed that in practice, the following basic information was recorded for every transaction, namely name, address, telephone number and the details of a nationally issued identification card. The Assessors were advised that the information system used by the operator did not allow transactions to commence unless this basic information was imputed into the system. Thus each transaction is treated separately and batching of transactions is not permitted either in law nor can these transactions be carried out in practice.

699. It is also worth noting that the GN also provide that non-routine transactions should not be batched, as this would increase the risk of laundering.

Domestic wire transfers

700. Domestic wire transfers would appear to be governed by the terms of paragraph 122 of the GN, which although referring to the requirement to include accurate and meaningful originator information on fund transfer or related messages through the payment system, does not specify the details of what constitutes accurate and meaningful originator information save that the information recorded should enable the business to establish the identity of the remitting customer, and as far as possible the identity of the ultimate recipient.. Accurate and meaningful originator information is however defined in paragraph 123, which relates to cross border wire transfers.

701. The GN provide that wherever possible the originator's details should remain with the transfer or related message throughout the payment chain. In all cases, full records of the originating customer and address should be retained by the originating financial institution.

702. All financial institutions, including receiving intermediary financial institutions must comply with the record keeping provisions as stipulated in regulation 8 of the AMLR. Therefore, they are required to keep records of each transaction for at least five (5) years.

703. Sections 24(1) and (2) of the Payment System Act, 2008 (PSA 2008) also provides that the Central Bank and system participants must retain all records obtained by them during the course of operation and administration of a funds transfer system or settlement system for a period of at least five (5) years from the date of creation of each particular record. This may be effected by electronic means.

704. Neither the GN nor the Regulations appear to indicate the actions that a financial institution is expected to take in cases where it receives a transfer that has not been accompanied by the required originator information, although there are broader references to cases where the customer's supporting information does not have the appropriate details.

705. In general, the financial institutions in the Federation have adopted a policy that they will not authorise transfers if there is incomplete information on payment/recipient wire transfers. The Examiners did note however, in discussions with licensees engaged in this type of business, that in some cases, the software used by these companies would not permit the company to process transactions unless the full originator information is provided. The banking entities interviewed also indicated that their international counterparts would also not accept transactions where the bank in the Federation does not provided the required level of information in conducting transfers.

706. Although both the PSA 2008 and the Money Services Businesses Act (MSBA) have been passed into law in the Federation, the Assessors were advised by the ECCB, the regulators and money transfer operators that these Acts were not implemented due to their recent passage. However, in the case of banks, their funds transfer activities were covered by the ECCB's inspections (which include an AML/CFT component) on a risk based cycle. In the case of Money Services Businesses, these firms are currently inspected for compliance by the regulators pursuant to the FSA and are tested against the requirements of the AMLR (and the related Guidance Notes) and the Anti-Terrorism Act (ATA).

707. The ECCB is also required to conduct examinations of offshore banks established in Nevis under the Nevis Offshore Banking Ordinance. However the Team did note that the focus of these examinations are stated by the statute to be to determine whether the bank is in sound financial condition and that it is in compliance with the requirements of the Ordinance. The law does not specifically allow these examinations to test compliance with other applicable laws such as the AMLR or the ATA.

708. However the Team was advised that the ECCB had carried out examinations of the single offshore banking institution and the examination included an AML/CFT component. The Team was also advised that the offshore bank entered into a Memorandum of Understanding (MOU) with the ECCB for remedial action arising out of this inspection.

Sanctions

709. Under the AMLR, regulation 15 indicates the criminal penalties that attach for breaches of the Regulations and the Guidance Notes, which would apply to all regulated businesses including

those involved in the funds transfer business. The penalty stipulated is EC $50,000.00 for all breaches, with an additional penalty of $5000 for every day that that the contravention continues. The Regulations also provide for directors (but not senior managers) to be liable for the offences committed by the relevant body corporate. In cases, where the affairs of the institution are managed by members, then these members will be treated as directors for the purposes of the offence creating regulation.

710. Recent 2008 amendments to the FSCA allows for the FSC to impose certain sanctions on a financial services business or a regulated business where it is found to be acting in a manner prejudicial to the provisions of the POCA, the ATA, or any other enactment or guideline which regulates the conduct of financial firms for the purposes of ML or FT. These sanctions include the issue of a written warning, concluding a written agreement for remedial action and the issue of a cease and desist Order. The FSC may also where these measures have been exhausted make recommendations for varying the terms of licences or the revocation of these licences. Breaches of these measures constitute a summary offence which attracts a fine of EC$50,000 in the case of a business or its affiliate, with a continuing fine of $5,000 per day. In the case of an individual (director, officer, employee or significant shareholder) who breaches these requirement, the penalty is EC$25,000, with a further penalty of EC$1000 for each day that the breach continues. At the time of the Evaluation, the St. Kitts regulator had issued warning letters to regulated businesses and made recommendations relating to these entities. No revocations had however resulted. In Nevis, there was one revocation of the licence of a trust and corporate service provider.

711. In the case of offences under the AMLR and the offence of breaching a directive under the FSCA (for an organisation), the statutory penalty is a fine of $50,000. In the view of the Examiners, the offences under the AMLR lack proportionality, and probably as a result, dissuasiveness. Given the fact that there have been no prosecutions or convictions under either the AMLR or the FSCA, there is little basis to judge the effectiveness of these criminal sanctions. The range of supervisory sanctions, on the other hand, do appear to be more varied with the capacity to be more proportionate and possibly more dissuasive and effective (given the speed with which these administrative sanctions can be applied). The FSC did indicate that upcoming reform in the financial services sector (namely the establishment of single regulatory units) would assist in granting to the FSC stronger enforcement powers. The recently granted powers under the FSC Act had not been exercised by the FSC at the time of the assessment.

712. The FSC may also issue directives to regulated businesses under the AMLR. These powers have not been utilized to date.

713. The ECCB indicates that it can impose regulatory sanctions on banks that fail to meet the requirements of the AMLR (including those obligations referring to funds transfer business) pursuant to section 22 of the Banking Act. The basis for such action includes *"...violating any law, regulation or guideline issued by the Central Bank to which the institution or person is subject".* The Examiners did note however that such action can only be taken under section 22 where an examination authorised under section 21 reveals that the bank or its directors, officers, employees or significant shareholder is violating any law regulation or guideline issued by the Central Bank to which the institution or person is subject. However section 21 specifies that examinations are to be carried out for the specific purpose of ascertaining financial condition and compliance with the Banking Act. The ECCB did indicate that it is the usual practice to conduct an examination to verify a breach situation prior to imposing statutory sanctions. The sanctions range from the issue of a written warning, conclude a written agreement for remedial action, issue a cease and desist order or statutory directions. The ECCB can also recommend the variation of the term of a licence or the revocation of same.

714. In the case of offshore banks operating in Nevis, the position is governed by the Nevis Offshore Banking Ordinance. Under that Ordinance the ECCB is named as the supervisory body

responsible for examining the operations of these institutions. The Ordinance allows the central bank to take regulatory action where an examination reveals that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition. The actions that may be taken by the ECCB include requiring that the licensee take remedial action, the appointment of a suitably qualified advisor, or the suspension of the licence for three (3) months. The Team noted that the ECCB could also recommend that the Minister revoke the licence of the offshore banking entity. However the stated statutory grounds for such a revocation do not include breaches of other statutes other than the Nevis Offshore Banking Ordinance.

Additional Elements

715. Financial institutions are required to obtain full and accurate originator information on all incoming and outgoing wire transfers regardless as to the amount sent in such transfers. (see paragraphs 122 and 123 of the Guidance Notes).

3.5.2 Recommendation and Comments

Recommendation 10

716. The Authorities should consider measures to ensure that supervisory authorities are able to verify that captive insurance and international insurance companies are properly complying with the record keeping obligations established in the law.

Special Recommendation VII

717. Both the Money Services Act and the Payment Systems Act should be brought into effective implementation.

718. The full detailed originator information required for cross border transfers should be expressly required for all types of transfers.

719. There needs to be appropriate guidance provided to funds transfer businesses and banks with regard to the appropriate treatment of funds transfers transactions where sufficient originator information is not available.

720. The Authorities may wish to consider amending the Banking Act to definitively grant to the ECCB the power to inspect and sanction banks for breaches of AML/CFT obligations.

721. The Nevis Offshore Banking Ordinance should provide for sanctions, including revocation, for breaches of AML/CFT obligations;

722. The Nevis Offshore Banking Ordinance should expressly allow for examinations by the ECCB to deal with AML/CFT issues.

723. The criminal sanctions under the FSCA and the AMLR should be proportionate to the actual offence committed, which can affect dissuasiveness and effectiveness.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• **Concerns re: verifying levels of compliance with the record-keeping obligations established in the law by Captive and**

		International Insurance Companies.
SR.VII	**PC**	• **Money Services Act and Payment System Act not implemented.** • **Detailed originator information not expressly required for all types of transfers.** • **No appropriate guidance to funds transfer businesses and banks with regard to treatment of fund transfer transactions that do not have sufficient originator information.** • **Ambiguity regarding inspection and sanction powers against banks and offshore banks for AML/CFT issues.** • **No requirements for financial institutions to take appropriate action when they receive a transfer accompanied with inadequate originator information.** • **Criminal sanctions under AMLR and FSCA not proportionate.**

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

724. Regulation 3(1) of the AMLR states that a relevant person must maintain appropriate policies. Such policies are defined in regulation 3(2) as policies which provide for the identification and scrutiny of complex or unusually large transactions; unusual patterns of transactions which have no apparent economic or visible lawful purpose, and any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering.

725. The AMLR at regulation 10(3) also requires that a regulated person must pay special attention to all complex, unusual or large business transactions, whether completed or not and to all unusual patterns of transactions and to insignificant but periodic transactions which have no apparent economic purpose.

726. The GN, at paragraphs 97 to 100 stipulates that regulated business "*should be alert to the implications of the financial flows and transaction patterns of existing customers, particularly where there is a significant, unexpected and unexplained change in the behaviour of a customer in his use of an account or other financial services product".*

727. A list of areas to monitor are provided and include:

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

728. The Regulations do not provide for the requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing. Regulation 11 actually provides that if these unusual transactions are reasonably suspected to constitute or be related to money laundering, the relevant business must promptly report these transactions to the Designated Authority.

729. Guidance Note paragraph 72 provides that regulated businesses must pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, to examine the background and purpose of those transactions record the findings in writing and to keep such findings available.

730. Thus the Examiners consider that there is ambiguity with regard to the treatment of these types of transaction with the Regulations prescribing one treatment and the Guidance Notes prescribing another (more correct) treatment

731. Paragraph 72 of the GN does not indicate the parties for whom these records relating to unusual transactions should be kept available for.

732. The AMLR at regulation 8 provides that institutions are to keep supporting records pertaining to the establishment and maintenance of the account and all transactions should be kept for a period of at least five (5) years. The Examiners consider that this requirement would similarly apply to transactions that are complex and unusual.

733. If an investigation were initiated, the FIU may request that the records be kept for as long as may be required. Further, if the institution is aware that an investigation is proceeding, no records should be destroyed without approval of the FIU. The FSC is also empowered under the AMLR to require that records be maintained for a period exceeding five (5) years

734. The GN at paragraph 118 addresses the nature of records to be kept. Supporting records specifically includes information indicating the background and purpose of transactions.

735. There is an issue of concern relating to properly ascertaining the level of compliance with regard to unusual transaction requirements that is achieved by the resident Insurance Directors/Agents/Manager operating under the Captive Insurance Act and the International Insurance Ordinance. Given that especially in the case of Nevis institutions, the vast majority of these transactions could occur offshore, there is an issue as to how the Regulators are able to properly and independently verify that all unusual and complex transactions are being captured and appropriately dealt with.

Recommendation 21

736. The AMLR make provision for this requirement under the section "Enhanced Due Diligence." Under regulation 5 "Identification procedures in relation to business relationships and one-off transactions", sub-regulation (4) states that enhanced due diligence measures should be taken when the relevant person :*"(a) intends to conduct business transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations."*

737. The Team noted that the St. Kitts Regulator did issue timely advisories to its constituents on various countries about whom concerns had been raised by the FATF with regard to their levels of compliance with the FATF Recommendations, including concerns arising from the FATF's

International Cooperation Review Group. In Nevis, the Regulator has issued advisories on its private services webpage regarding information on countries that do not meet global AML/CFT standards.

738. The GN also provide listings of countries that are deemed to have AML/CFT standards that are equivalent to those in the Federation. However, the Notes also do point out that no conclusion should be drawn from the omission of a particular country from the listing.

739. The AMLR at sub-regulation 5(4) state that enhanced due diligence measures should be taken when the relevant person intends to conduct business transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

740. The sub regulation goes further to provide that if the business transactions referred to in sub-regulation (4)(a) has no apparent economic or visible lawful purpose, the background and purpose of such a transaction should, as far as possible, be examined, and written findings should be available to assist competent authorities.

741. The AMLR make provision for the application of enhanced customer due diligence procedures in cases where the regulated business intends to conduct businesses with an entity from one of these jurisdictions. Enhanced due diligence means customer due diligence procedures that involve appropriate measures to compensate for the higher risk of money laundering. The Regulations or Guidelines do not provide for any further or alternative countermeasures that should be taken in these circumstances.

3.6.2 Recommendations and Comments

Recommendation 11

742. The Authorities should consider measures that would allow the FSC to properly verify that captive and international insurance companies are fully complying with the requirements relating to complex and unusual transactions specified in the laws. .

743. The Authorities should resolve the ambiguity between the treatment of unusual and complex transactions in the law and in the Guidance Notes.

744. The Authorities should consider specifying that financial institutions should make their unusual transaction records available for competent authorities and auditors.

Recommendation 21

745. The Authorities should consider measures to ensure that the FSC is able to verify the level of compliance by International and Captive Insurers with the requirements of Recommendation 21.

746. The Authorities should consider a wider range of countermeasures that should be taken against countries that fail to apply appropriate AML/CFT Standards.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• **There is ambiguity between the GN and the Regulations with regard**

		to the appropriate treatment of unusual transactions. • **The law does not state that unusual transactions should be available for competent authorities or auditors.** • **There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements for treating with unusual transactions.**
R.21	**PC**	• **There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements.** • **Financial institutions only required to apply enhanced CDD regarding dealings with and transactions with countries with weak AML/CFT systems.** • **Apparent inability to enforce measures as they relate to CFT issues.** • **Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards.**

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

3.7.1 Description and Analysis[6]

Recommendation 13& Special Recommendation IV

Reporting of suspicious transactions

747. Regulation 10(1) of the AMLR requires the making of a suspicious transaction report where any information or other matter that comes to the attention of any person handling financial services business and, in the opinion of the person handling that business, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering. This is fundamentally different from the FATF requirement which requires the making of a report where there is a reasonable suspicion that the funds involved are the proceeds of a criminal activity. The provision in fact places a higher burden on the person who has to report because they must have specific knowledge or suspicion that the person is involved in money laundering and could affect the level or amount of STRs that are filed.

748. Additionally, regulation 10(3) of the AMLR requires the making of a suspicious transaction report upon the formation of a reasonable suspicion that a complex, unusual large transaction or an unusual pattern of transactions, or insignificant but periodic transactions that have no apparent economic basis could constitute or be related to money laundering. These circumstances that are prescribed in this regulation are too narrow to properly reflect the requirements of Recommendation 13.

Sanctions

749. The penalties prescribed for breaching regulation 10(3) of the AMLR relating to the reporting of transactions are on summary conviction a fine of $50,000. An additional fine of $5000 a day applies in the case where the breach continues after conviction. The Examiners note that all

[6] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

obligations under the Regulations (e.g. record keeping, internal reporting, customer identification procedures, etc.) carry the same sanction. This suggests that the sanctions under these Regulations are not proportionate and particularly with regard to more serious breaches such as a failure to report suspicious transactions, not effective.

Reporting of STRs related to FT

750. The ATA has two requirements for making suspicious activity reports, including section 17 (disclosure relating to a person who has committed a terrorist act), and section 18 (discretionary disclosure). This is in addition to the reporting requirement relating to property owned or controlled by terrorist or terrorist groups (section 19). However, in such cases, the suspicion must relate to a person having committed a terrorist offence. This requires a very specific suspicion and is again fundamentally different from the FATF requirement which requires reasonable grounds for suspicion that funds are suspected to be linked or related to terrorism, terrorist acts or to be used by terrorists or terrorist groups.

Sanctions

751. Penalties under the ATA for failing to report under section 17 is fourteen (14) years and/or a fine upon conviction on indictment and in the case of summary conviction to a term of six (6) months or a fine not exceeding $7000. There are no penalties for failing to make a voluntary disclosure under section 18. In the case of a failure by a financial institution to disclose information about property that may belong to a terrorist or terrorist group, upon summary conviction, the guilty party is liable to a fine not exceeding $30,000 and/or a term not exceeding one (1) year. Where the conviction is on indictment the guilty party is liable to a fine not exceeding $60,000 or to imprisonment for a term not exceeding three (3) years. The Examiners consider that failing to report possession of property belonging to terrorists is just as important as a suspicion that funds are related to terrorist activities and as such the offences under section 19 should be closer to the more severe penalties per section 17.

752. Sub-regulations 10(3) of the AMLR make provision for the reporting of transactions (whether completed or not) regardless of the amount of the transaction. All suspicious transactions are to be reported. However the basis for the reporting as indicated previously is predicated on a specific suspicion of money laundering and not to a suspicion that the funds may be related to criminal activity.

753. There does not appear to be any exclusion that would apply in the cases of tax matters. But the effectiveness of the provisions for reporting in all cases would be affected by the deficient statutory basis for reporting under the AMLR and under the ATA.

754. ATA section 17 requires that all persons who suspect (in the course of their business in the regulated sector) that another person has committed certain offences under the ATA is required to report this to the FIU.

755. The deficiency in the reporting requirements in the ATA (i.e. being based on a suspicion of a person rather than focussing on the transaction and its possible linkage with terrorism financing) would affect the effectiveness of the reporting of attempted transactions.

Recommendation 14

756. The FIU Act provides protection from civil or criminal suit or professional sanctions at section 8 with regard to reports made in good faith to the FIU by directors, officers and employees of financial institutions. The AMLR provide similar relief with regard to reports made in good

faith by a relevant person (i.e. the operator of a regulated business), its employees, directors, owners or other representatives.

757. The ATA at section 17(13) does provide protection to reporting persons regarding any claim that may be made against these persons in relation to breaches relating to non-disclosure.

758. Section 5 of the POCA makes it an offence to divulge the fact that an investigation has started or is about to start where the disclosure is likely to prejudice the investigation. The AMLR at regulation 10(2) (e) creates an offence where a relevant person, its employees, directors, owners or other authorised representatives make a disclosure of the fact that a suspicious transaction is being reported.

759. Tipping-off offences are provided for under section 78 of the ATA in relation to proposed terrorism investigations, and disclosures made or to be made under the ATA.

760. It should be noted that both under the POCA and the ATA, the offence of tipping-off relates to disclosure with regard to an investigation that has started or is proposed. There is no requirement not to disclose with regard to the reporting of an STR or related information that is being reported or provided to the FIU. As noted, the requirement is limited either to ML or TF investigations under the POCA and ATA respectively.

Additional Elements

761. The FIU does not disclose the name of compliance officer to law enforcement when forwarding relevant reports from STR. Also, the name of the reporting entity is only disclosed on a need to know basis.

Recommendation 25 (only feedback and guidance related to STRs)

762. The following provisions are contained in the FIU Act: Section 4(2)(h) "*The Intelligence Unit shall inform the public and the financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of money laundering offences."*

763. Section 5(3) "*The Intelligence Unit shall submit to the competent authorities reports of its operations on a quarterly basis"(the competent authorities being the Ministers of Finance for Nevis and St. Kitts.)**

764. Section 10 *"The Intelligence Unit shall prepare and submit to the Minister on or before the 30th day of November in each year an annual report reviewing the work of the Intelligence Unit, and upon receipt of the report the Minister shall lay or cause to be laid a copy of the report on the table of the National Assembly."*

765. Although not mandated by law, in practice the FIU sends formal acknowledgement of all STRs to persons submitting same and formal notification of the final disposition of the STR.

766. During the period 2005–2008, the FIU utilized the following avenues to provide information to reporting institutions on methods, trends and typologies: Nevis Financial Services Regulation and Supervision Department Annual AML/CFT Seminars (2005, 2006, 2007, 2008). St. Kitts Financial Services AML/CFT Seminar (2007).

767. Meetings with reporting entities 2005 (0), 2006 (0), 2007 (9) – Marriott Casino, Development Bank, Western Union, Insurance Agent, 2 Money Remitters, Royal Bank of Canada and Bank of Nova Scotia. Presentations to reporting individual entities 2005 (2), 2006 (0), 2007 (2) – one financial institution and one insurance agency.

768. Based on interviews however, it was determined by the Examiners that there was no feedback as required by the FATF with regard to the provision of trends, typologies and other statistics to the financial institutions and DNFBPs that are subject to AML/CFT regulation.

Recommendation 19

769. The Examiners were presented with a summary of a feasibility study carried out by the Authorities of the Federation. The documentation presented indicated that based on the feedback from different countries that employed threshold reporting as well as considerations relating to the available resources at the Federation's FIU, the reporting regime should focus on suspicious transaction reporting.

Recommendation 32

Statistics

770. The Examiners were provided with statistics which showed that the domestic banks within the Federation filed a total of fifty eight (58) STRs within the period 2004 to August 31 2008. Offshore banks filed twelve (12) STRs for the same period. The insurance sector has filed a total of three (3) STRs.

771. With regard to money remitters, during the period January 1, 2004 to August 31, 2008 a total of 550 STRs were filed by the Money Services Businesses. Of this amount 346 were filed during the period January 1, to August 31 2008. This significant increase shows the increase level of awareness in this sector with regard to their obligation to file STRs.

772. Corporate Service Providers have filed a total of twenty two (22) STRs with the FIU between the period 2004 and August 31, 2008. With regard to credit unions, a total of fourteen (14) STRs were submitted between the period January 1, to August 31, 2008.

773. The Examiners impression was that the institutions had a strong appreciation for their reporting responsibilities. In the onshore insurance sector, this appreciation was at a more embryonic stage and the institutions were only now enhancing their capabilities in this area. However, in respect to Captive and International Insurance (including insurance mangers) the lack of reporting is a matter of major concern.

3.7.2 Recommendations and Comments

Recommendation 13

774. The requirement for suspicious transaction reporting under the AMLR needs to be aligned with the issue of funds being the proceeds of criminal activity in accordance with the requirements of Recommendation 13.

775. The Authorities should de-link the connection between unusual transactions and suspicious transactions, as they represent two separate obligations under the FATF Recommendations.

776. The requirement for suspicious transaction reporting under the ATA needs to be aligned with the issue of funds being linked to or related to terrorism, terrorist acts or terrorist organisations or financiers in accordance with the requirements of Special Recommendation IV.

777. All offences under the AMLR carry the same penalty of EC$50,000. The Authorities should re-examine this, as a "one-size" fits all approach to sanctions under the regulations could inhibit effectiveness especially for the more serious offences.

Recommendation 14

778. Section 5 of the POCA (tipping-off offence) should be amended to provide for information about a STR or general information and not just ML investigations.

779. The POCA and ATA should be amended to provide for the tipping-off offence as it relates to reporting of STRs or related information to the FIU which would lead to a ML or FT investigation.

Recommendation 25

780. The FIU should provide feedback in the form of AML/CFT trends and typologies to regulated sectors.

Special Recommendation IV

781. Sanctions for failing to report possession of terrorist property should be more stringent.

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

	Rating	Summary of factors underlying rating
R.13	**NC**	• **The suspicious transaction reporting requirements under the AMLR and the ATA are not in keeping with the FATF requirements.** • **Sanctions under the AMLR are not proportionate and may affect effectiveness for more serious offences.** • **Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA.**
R.14	**PC**	• **Requirement limited to ML investigations** • **No requirement with regard to the reporting of a STR or related information to the FIU which could lead to a ML or FT investigation.**
R.19	**C**	**This Recommendation has been fully observed.**
R.25	**PC**	• **No feedback given with regard to AML/CFT trends and typologies.**
SR.IV	**NC**	• **The suspicious transaction reporting requirements under the ATA are not in keeping with the FATF requirements.** • **Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA.**

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

782. There are regulations that govern the establishment and maintenance of procedures, policies and controls to prevent ML. Regulation 3(1)(a)(iv) of the AMLR provides that persons conducting relevant business must maintain internal controls and communication procedures as may be appropriate or the purposes of forestalling and preventing money laundering.

783. Regulation 3(2)(a) of the AMLR conveys the relevant person's duty to ensure that staff members are adequately informed of such policies – *"For the purposes of sub-regulation (a), "appropriate policies" means policies that are appropriate having regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned. A relevant person shall, at least once in every year, make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to money laundering and the internal procedures of the relevant person;"*

784. The Examiners have noted that the AMLR were specifically promulgated pursuant to section 74 of the POCA, which provides in part for the issue of regulations relating to procedures to be maintained by any person carrying on regulated business for the purpose of forestalling and preventing money laundering. In this context, the AMLR may only deal with anti money laundering measures. The Regulations cannot in the Team's view be extended to deal with the separate area of terrorism or terrorism financing. Thus the internal control procedures required by the AMLR do not extend to terrorism financing.

785. Regulation 11(1) of the AMLR requires *a relevant* person to appoint or designate one of his staff, as may be approved by the Commission as a Compliance Officer for the purpose of these Regulations. The Regulation goes further to require that the compliance officer should be a senior officer, with sufficient qualifications and experience to respond to queries about the organisation and the conduct of its business.

786. Under the Regulations, the compliance officer is responsible for establishing and maintaining a manual with compliance procedures and ensuring compliance by staff with the Regulations. He or she is also required to act as a liaison between the relevant person and the Regulator in compliance matters and may be required to submit written reports to the Regulator on the measures taken by the institution to effect compliance with the Regulations or other directives relating to money laundering.

787. The Team again notes that the compliance officer is required to be designated *"…for the purpose of these Regulations*". The purpose of the Regulations (as stated in the POCA is expressly stated to be for forestalling and preventing money laundering. As a consequence, the law does not extend to the appointment of a compliance officer for combating the financing of terrorism.

788. In the case of captive and international insurance companies, the person within the jurisdiction who has substantive knowledge of the operations of this entity is the insurance manager. Under the St. Kitts and Nevis law, it is provided that *"… the Registrar may regulate the manager of a captive insurance company".* Both regulators agree that in large part, it is the insurance manager who would act as the compliance officer or reporting officer for these entities. However as stated in this Report the Examiners have some doubts as to the efficacy of this arrangement insofar as the acknowledged majority of the transactions relating to these entities

takes place abroad. There is therefore a question as to whether these officers can properly verify the accuracy of these transactions and ensure the appropriate level of compliance to the domestic laws of the country.

789. As stated above the AMLR requires that compliance officers should be senior officers. However the Regulations also indicate that it is the Reporting Officer who is to receive and consider the information submitted by staff members in order to make a determination as to whether a transaction is suspicious in nature and is the officer responsible for the making of the report ultimately to the Designated Authority. The compliance officer may however be named as the reporting officer. Information can also be received by other designated officers who may receive reports in the first instance, before forwarding same onwards (if deemed sufficiently suspicious) to the Reporting Officer. The Regulations provide explicitly that the Reporting Officer and any designated person shall have access to all relevant information that may assist them.

790. The AMLR prescribe that regulated businesses are prohibited from establishing business relations or carrying out one-off transactions unless they maintain, among other things, policies for internal controls and communication procedures as may be appropriate for the purpose of forestalling and preventing money laundering. The Regulations also require that institutions maintain appropriate procedures for monitoring and testing the effectiveness of these procedures.

791. However, the Examiners did not note any further details whether in the Guidance Notes or the Regulations with regard to the nature, frequency or scope of these internal testing procedures. The Examiners did not note any requirement for these functions to be adequately resourced or be suitably independent.

792. The Examiners noted in discussions with financial institutions, that while well established entities appeared to have robust internal audit functions (as did some smaller institutions); other entities had internal audit policies but were not having these audits performed on a timely basis.

793. Regulation 3(1) of the AMLR prohibits a relevant person from forming a business relationship or carrying out a one-off transaction with or for another person unless the relevant person takes appropriate measures from time to time for the purpose of making employees aware of the relevant identification, record-keeping, internal reporting and internal controls.

794. The Regulations also stipulate that a relevant person should at least annually make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to money laundering and the internal procedures of the relevant person.

795. Paragraph 131 of the Guidance Notes states "Regulated businesses have a duty to ensure that existing and new key staff and any person exercising responsibilities specified in these GN receive comprehensive training in:

- *The Proceeds of Crime Act, 2000 and Regulations issued there-under (Anti-Money Laundering Regulations, 2008) and any new Regulations that may be issued from time to time;*
- *The Financial Intelligence Unit Act, 2000, and any Regulations or policy directives that may be issued there-under;*
- *The Financial Services Commission Act, 2000, and any Regulations, advisories, guidelines or directives that may be issued there-under;*

- *The Anti-Terrorism Act, 2002, and any Regulations or guidelines that may be issued there-under;*
- *Vigilance policy including vigilance systems;*
- *The recognition and handling of suspicious transactions;*
- *New developments, trends and techniques of money laundering and terrorist financing; and*
- *Their personal obligations under the relevant laws."*

796. The Examiners did note reasonable attempts on the part of various financial institutions to ensure that staff was trained. These varied according to the resources of the entity, with the FIU and the Regulators playing a strong role in assisting with the provision of training to their respective constituents and their staff.

797. The GN stipulate that regulated businesses should ensure that their staff is suitable, adequately trained and properly supervised. Regulated businesses are also required to ensure that their recruitment procedures are adequate and these include vetting of applicants for employment and obtaining references in order to ensure high standards when hiring employees. The GN acknowledged that staff performing different functions will be subject to different standards.

Recommendation 22

798. The AMLR make provision for the requirements to be met by regulated businesses as they relate to the activities of branches and subsidiaries that operate in countries that do not or do not sufficiently apply the FATF Recommendations.

799. The Regulations provide that in cases where there is a difference in anti-money laundering standards between the Federation and another country where a regulated business has a branch or subsidiary, the regulated business should (with the consent of the Commission) apply the higher standards.

800. The GN require that branches should seek to apply the GN or equivalent standards to their operations and that a group wide compliance policy should be established and circulated.

801. The Examiners did not note any cases where a regulated business in the Federation had branches or subsidiaries outside of the Federation.

802. The AMLR under regulation 5 (4) states that where a regulated person has a branch or subsidiary in a foreign country which does not or does not sufficiently apply the FATF Recommendations and the requirements in that country differ from those in the Federation, then the higher standard should be adopted.

803. The provisions of the Regulations mandate that where a regulated person has a branch or subsidiary in a country, which does not or insufficiently applies the FATF Recommendations and the minimum anti-money laundering requirements of the Federation differ, the higher standard shall be applied with the consent of the Commission. The Regulations do not apply to CFT measures.

804. The Regulations also specify that the relevant person should inform the Commission when a foreign branch or subsidiary is unable to observe appropriate anti-money laundering measures due to prohibitive laws of the host country.

Additional Elements

805. The Group practice provision under Paragraph 10 of the Guidance Notes states that: *"Where a group whose headquarters are in the Federation of Saint Christopher and Nevis operates or controls subsidiaries in another jurisdiction, it should:*

- *Ensure that such branches or subsidiaries observe these Guidance Notes or adhere to local standards if those are at least equivalent;*
- *Keep all branches and subsidiaries informed as to current group policy; and ensure that each such branch and subsidiary informs itself as to its own local reporting point equivalent to the FIU in the Federation of Saint Christopher and Nevis and that it is conversant with the procedure for disclosure equivalent to Appendix H"*

3.8.2 Recommendations and Comments

806. The Examiners take the view that the AMLR cannot extend to obligations relating to terrorism financing. Thus the internal control measures prescribed by the AMLR cannot apply to the area of financing of terrorism. This would impact key areas such as internal auditing, the compliance officer and staff training, notwithstanding the fact that these areas in practice do cover terrorism financing issues. The St. Kitts and Nevis Authorities should take legislative measures that would ensure that the obligations under Recommendation 15 apply to the financing of terrorism.

807. The Authorities should consider providing further guidance on internal testing procedures and requiring that these functions be independent and appropriately resourced.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• **Requirements regarding internal audit and testing, compliance officers and staff training may only apply to ML (and not to TF issues) under the AML Regulations.** • **No requirement that internal testing should be independent and adequately resourced.**
R.22	**C**	**This Recommendation has been fully observed.**

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

808. The Banking Act at section 8 specifies that each applicant who wishes to carry on banking business must have a place of business which is stated on the licensing document. The Central

Bank must authorise in writing any other location from which the institution intends to carry out business. The Banking Act also prescribes the requirement for onsite inspections of licensees. These provisions are indicative of the fact that the Authorities will not license institutions under this Act without substantial physical presence within the jurisdiction.

809. Section 10 of the Nevis Offshore Banking Ordinance requires that an applicant company must either be a subsidiary of a bank regulated by the ECCB (and registered under the Companies Act as a company limited by shares) or a qualified foreign bank. A qualified foreign bank is an institution that is either licensed under the Banking Act, or licensed to do domestic banking in its home jurisdiction or a direct or indirect subsidiary of either of these two types of institutions. There is only one licensed offshore bank in Nevis, which is a subsidiary of a bank supervised by the ECCB. The ECCB is empowered under the Nevis Ordinance to conduct on site examinations of these offshore entities. Thus Nevis offshore banks would be affiliated with regulated banking entities and would not qualify as shell banks as defined by the FATF.

810. Regulation 4(10)(b) of the AMLR provides that a regulated person shall not –*"(b) conduct business with a shell bank."* This suggests that insofar as the Nevis Ordinance contemplates that a domestic bank may incorporate a subsidiary that is licensed to do offshore banking, that such offshore banking subsidiary cannot itself be a shell bank.

811. Regulation 4(12)(g) of the AMLR provides that *"A relevant person that is a correspondent bank shall not enter into a correspondent banking relationship, or continue an existing correspondent banking relationship, with a respondent that is a shell bank."*

812. Paragraph 143 of the GN states that *"Banks should refuse to enter into or continue a correspondent banking relationship with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (so-called "shell banks"), other high-risk banks or with correspondent banks that permit their accounts to be used by shell banks."*

813. In the AMLR 2008, physical presence means "that the substantive direction and management of the bank is conducted from within the local jurisdiction, rather than through the presence of a local agent or junior member of staff.

814. Section 4(12)(h) of the AMLR provides that "*A relevant person that is a correspondent bank shall satisfy itself that its respondents do not themselves provide correspondent banking services to shell banks*.

(i) A correspondent banking relationship involves the provision of services such as bank accounts or the facilitation of funds transfers or securities transactions.

(ii) The provision of direct access to the services of a correspondent bank is often known as "payable through accounts" or "straight through processing".

3.9.2 Recommendations and Comments

815. The Team noted that banks in the Federation did not offer correspondent banking services to other institutions.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating

R.18	**C**	**This Recommendation has been fully observed.**

Regulation, supervision, guidance, monitoring and sanctions

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

3.10.1 Description and Analysis

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

816. The Financial Services Commission Act, No. 17 of 2000, (as amended) (FSC Act) contains provisions for the establishment of a Financial Services Commission which shall act as the ultimate regulatory body for financial services for St. Kitts-Nevis. Under the FSC Act the supervisory responsibilities of the FSC are administered by the Regulators who have wide powers under section 13 of the FSC Act, including the power to receive reports from regulated businesses and to enter into any premises and inspect business transaction records and make enquiries of the regulated business. The 2008 amendments to this Act grants to the FSC powers to apply sanctions where a financial service business or a regulated business is acting in a manner prejudicial to the provisions of the POCA, the ATA or any other enactment or Guideline regulating the conduct of financial services businesses for the purpose of combating money laundering or the financing of terrorism.

817. The Examiners have noted that in the area of off shore insurance business, the framework by which that industry is established both under the laws of St. Kitts and Nevis, contains a major issue of concern for the Examiners. Under the St. Kitts legislation, although the company is required to maintain a registered office in the jurisdiction and appoint a registered agent in the jurisdiction, the Registrar may still accept service as agent for the company (where the registered agent of the company cannot be located). Under the Nevis legislation, the company may have its principal place of business either in Nevis or at some other place approved by the Minister.

818. Under the framework in both St. Kitts and Nevis, the main contact point between the Regulator and the insurance company is the insurance manager or registered agent, who has extensive obligations to report to the Registrar where there appears to be a risk of insolvency, non-compliance with the law, default in payments, or where there exists a situation that prejudices the interest of policy holders or creditors, or the registered insurer has become a defendant in criminal proceedings in any country or has ceased to carry on business in or from within Nevis. The foregoing suggests and the Regulators have admitted that a feature of the Captive and International Insurance business in the Federation is that these entities do not have substantial operations physically within the jurisdiction (e.g. policy issuance, underwriting, investment management, etc.) and that it is the Insurance Managers that have the fundamental responsibility for ensuring compliance with all of the applicable Federation's laws.

819. The Examiners are of the view that whilst it can be argued that International and Captive insurers generally only deal with a limited range of related parties (e.g. Group companies), this is not necessarily the case and the operational structure does not allow the FSC or Regulators the optimal level of supervisory access to the entities' operations. Fundamentally, the Regulators would have a major difficulty in verifying the levels of compliance of a

registered insurer with all AML/CFT obligations as reported by the Insurance Manager or Registered Agent. In fact under the Captive Insurance law, the Registrar "*may regulate*" the affairs of the insurance manager. This conflicts somewhat with the Financial Services Order, which would include Managers as persons covered under the Order. The Examiners' concerns are also heightened insofar as the FIU has indicated that it has not received any reports from the captive/international insurance sector or from insurance managers.

820. With regard to the banking system, the Examiners were also advised that responsibility for the banking sector (both domestic and off-shore) resided with the ECCB. The Evaluation Team noted that for the on shore banking sector, the express powers of the ECCB to examine the activities of its licensees are limited to such examinations that are necessary to determine whether such a financial institution is in a sound financial condition and that the requirements of the Banking Act have been met. Thus on the face of the law, the ECCB could be challenged as to whether its powers can extend to the examination of licensees to determine compliance with AML/CFT requirements. The Examiners did note that ECCB examinations did, in practice, cover AML/CFT and the inspection procedures in this regard established by the ECCB appeared to be robust.

821. On the area of sanctions, the Central Bank's powers to sanction can arise where it appears that the financial institution or any affiliate, director, officer, employee or significant shareholder is violating any law, regulation or guideline issued by the Central Bank to which the institution or person is subject, provided that the ECCB has come to that determination arising from an examination carried out pursuant to section 20 of the Banking Act.

822. The Eastern Caribbean Securities Regulatory Commission (ECSRC) is responsible for day to day supervision of the on shore securities sector. Although investment and asset management business is stated to be included in the definition of financial services under the FSC Act, the ECSRC has direct supervisory jurisdiction over broker/dealers and investment advisors, securities exchanges, publicly listed companies and custodians, among others. The Regulators acknowledge that these entities fall under the purview of the ECSRC for AML/CFT issues. The FSC's main mandate relates to investor protection through appropriate rules of conduct and disclosure.

823. The Examiners were advised that the Federation has only one "stand alone" broker dealer, whilst the others were also licensed as banks by the ECCB. As a consequence, the ECSRC relies heavily on information garnered from the ECCB in relation to these dually licensed entities. The ECSRC indicated that it has not carried out any inspection of its licensees over the last four (4) years. The Examiners also note that the under the Securities Act, powers of the Commission to inspect and investigate are limited to issues relating to compliance under the Securities Act, and not with regard to AML/CFT issues.

824. In the areas of domestic insurance and credit unions, the FSC does have, under the FSC Act powers to regulate these entities and to assess compliance with the applicable AML/CFT laws. However, proposed reforms to the regulatory system in the Federation (and throughout the EC Nation States) are intended to have the national regulatory authorities assume greater supervisory responsibilities over domestic financial institutions, in addition to their pre-existing responsibilities for the off-shore sector. In the case of insurance, the FSC has only recently assumed day to day supervision of these entities. For the credit union sector, the Federation's Regulators are in discussions with the relevant stakeholders regarding the modalities of the FSC assuming full responsibility for this sector.

825. Currently, the day to day supervision of credit unions is vested in the Registrar of Co-operatives, which falls under the auspices of the Ministry of Agriculture.

826. Under the FSC Act, a Financial Services Commission ("FSC") was established as the ultimate regulatory body for financial services within the Federation, and has the responsibility for AML regulation and supervision of regulated business activity as defined in Schedule 2 of the Proceeds of Crime Act, 2000 (as amended)." Financial institutions fall within the regulated business activities listed in Schedule 2 of the POCA and are subject to the FSC Act (as amended), the POCA (as amended), and the AMLR 2008 issued pursuant to the POCA.

827. The Examiners have noted however that the CFT obligations that are detailed in the ATA are not as extensive as those obligations in the AMLR.

828. The effectiveness of the FSC's supervision is limited by resources. In St. Kitts, approximately twelve (12) persons deal with the AML/CFT regulation of four (4) money service providers, sixteen (16) domestic insurance companies, one (1) captive insurer, twenty-six (26) authorised persons (including trust and company service providers, lawyers). The supervision of credit unions is still carried out by the Registrar of Co-operatives. The Nevis Regulator with a staffing of twelve (12) regulates fifty-eight (58) registered agents/corporate service providers, fourteen (14) insurance managers and over 150 licensed insurance companies.

829. The Examiners take the view that the relatively small size of the regulatory staffing of the FSC is a fundamental structural weakness in the Federation's efforts to combat ML and FT. In some areas, AML/CFT supervision is at an embryonic stage, for example in the case of credit unions. This notwithstanding the credit unions interviewed did show a strong grasp of AML/CFT issues and could point to reasonable measures taken to address these risks. In other areas, the Regulators are taking on wider day to day supervisory responsibilities under the proposed single regulatory unit structure, for example domestic insurers. The domestic insurers that the Team met seemed to be moving to implement stronger AML/CFT measures; however these measures were at preliminary stages at the time of the assessment.

830. The Examiners have also noted that although at law, the FSC has AML/CFT responsibility for a wide range of financial institutions operating in the Federation, the ECCB and the ECSRC have the day to day supervision of their constituent supervised entities, including the operational responsibility to ensure compliance with AML/CFT obligations. The laws relating to the ECCB and the ECSRC do not directly address this obligation and there could be a challenge as to whether these regulatory institutions could be deemed to have to appropriate jurisdiction to deal with AML/CFT issues

831. The Examiners previously also noted the concerns relating to the Supervisory Authorities limited ability to carry out verification of the compliance activities of captive insurance companies. Indeed, the Insurance Manager (a body corporate), who is responsible for compliance for over sixty (60) captive insurers in St. Kitts, has not had its operations inspected by the Authorities.

832. For the banking sector, the ECCB's staff of twenty (20) supervises a portfolio of forty (40) institutions across the Monetary Union. The ECCB carries out examinations on a risk focussed basis on an approximate twelve (12) month cycle, with ten (10) being budgeted annually. In addition the ECCB may also carry out examinations of subsidiaries and affiliates. These examinations are carried out on a more sporadic basis. For example the off shore banking subsidiary of a bank within the institution has only been examined once for AML/CFT compliance.

833. Discussions with banks revealed a strong appreciation of the issues and proactive measures being taken by licensees to upgrade their information technology systems and staff to deal with money laundering and terrorist financing threats. The fact that the ECCB is also located in the Federation did seem also to encourage a stronger relationship between the banks and their supervisor, which assisted banks in ascertaining the supervisory expectations in this area. In

addition, stringent requirements administered by overseas banks that hold correspondent accounts for domestic banks also provide strong incentives for banks to meet the national and international requirements.

834. The ECSRC has both legal and resource constrains, and would require both statutory reforms and additional resources to properly assume responsibility for AML/CFT supervision for its licensees.

835. Although the FSC is stated to be the ultimate regulatory authority for financial institutions situate in the Federation, operationally, the FSC has acknowledged that the responsibility for the supervision of the securities dealers and banks (including AML/CFT supervision) lies with the ECSRC and the ECCB respectively. However the laws governing these entities and establishing the supervisory mandate of these supervisory bodies do not refer specifically to a mandate re: AML/CFT. In contrast, the 2008 amendments to the FSC Act make it clear that a significant power of the FSC (to issue sanctions) can be exercised in cases of breaches of the AML/CFT laws.

Resources (Supervisors)

836. The FSC located in Nevis has been established under the Financial Commission Act, 2000, part 11 section 4. The Commission is headed by a Chairman who receives reports from both Regulators in the Federation. Appropriate action is taken on contents of reports.

837. A Director performs administrative duties and he is assisted by a Secretary. There are no budgetary constraints to restrict the effective performance of the FSC. The FSC enjoys full level of autonomy.

838. The Financial Services Regulatory Department, Ministry of Finance, St. Kitts is comprised of the Director General/Regulator, Assistant Director General and two (2) Financial Inspectors, one (1) Deputy Registrar of Companies, and three (3) junior staff.

839. The Financial Services Regulation and Supervision Department, Ministry of Finance and Development, Nevis Island Administration is comprised of two (2) Assistant Regulators, one (1) Assistant Regulator/Registrar of Mutual Funds, one (1) Assistant Regulator/Registrar of Insurance and one (1) Registrar of offshore companies who all report directly to the Regulator. The Deputy Registrar of Offshore Companies/Accounting Officer reports to the Regulator regarding the financial operations of the Department. There is also a Systems Administrator and three (3) junior staff.

840. Both Departments fall under the Ministry of Finance and therefore the authority for granting most approvals and licenses resides with the Minister of Finance. In practice, however, the Minister allows a significant degree of autonomy in the day to day operations and does not exercise undue influence over the functioning of the Department. Typically the Minister accepts the recommendations which are made by each Department concerning the granting of approvals and licenses.

841. As previously stated, the ECCB has a staff complement of twenty (20) persons, which overseas the supervision of forty (40) institutions. It carries out its supervision on a risk sensitive basis, paying special attention to systemically important institutions and designing the scope and frequency of its examinations based on the information gleaned from off-site surveillance. As stated previously, the Department hopes to complete ten (10) inspections this year (two (2) of which are institutions in the Federation).

842. The ECSRC has a staff complement of three (3) dedicated officers (i.e. the Deputy Director and two (2) Analysts). It receives secretariat services from the ECCB as well as legal support. In the Region, the Commission is responsible for thirteen (13) licensees and thirty-nine (39) Public Companies. It has not been able to conduct examinations and relies heavily on the ECCB's inspections and off site surveillance (given that that most licensees are banks). The Commission was frank in admitting that its current mandate did not expressly extend to AML/CFT supervision.

843. The Examiners considered that the staffing and resources available to the Supervisory Authorities was not sufficient given current and upcoming responsibilities. Staff of the FSC, ECCB and ECSRC are well qualified and do receive sufficient training. However in the case of the ECCB and the ECSRC, the resources are inadequate given the scope of responsibility of these bodies across the Region. In addition, it is also the view of the Examiners that it is difficult to monitor AML/CFT compliance via off site returns and data.

844. Examinations based on the supervisor's knowledge of the institution are critical to ensuring compliance. In the case of the FSC the lack of staffing has resulted for instance with senior officers having to carry out multiple functions, e.g. the St. Kitts Registrar of International Insurance also carries out the duties of the Registrar of Offshore Companies as well as other official duties. This situation is expected to change with the creation of the Single Regulatory Unit which will result in the assumption of even greater supervisory responsibilities by the FSC.

845. For both the Financial Services Regulatory Department, St. Kitts and the Financial Services Regulation and Supervision Department, Nevis, the key aspects related to professionalism (such as confidentially) are regularly discussed at staff meetings. Members of staff are also given opportunities to participate in training workshops and seminars related to their areas of work. These include workshops sponsored by the Government (held locally) as well as those sponsored by external organizations (held overseas). Junior members of staff are required to refer sensitive matters to supervisors.

846. All staff members of the Financial Services Regulation and Supervision Department are required to execute an Oath of Secrecy in the presence of the Commissioner of Oaths at the Courts.

847. For the ECCB and ECSRC (which is staffed by ECCB personnel), recruitment is a rigorous process involving background checks, police records, and the swearing of an oath of secrecy. In addition, staff members are subject to the staff rules and regulations which provide for employee standards relating to integrity and professionalism. Staff members are also subject to quarterly assessments with regard to performance and adherence to the staff rules.

848. Staff of both Departments who are directly involved with ML and FT matters and attend various workshops which speak to these issues. Course materials are also provided so that the information could be shared with non-attendees. The Department also conducts an annual AML/CFT Seminar for the industry at which relevant staff is required to attend.

849. The ECCB staff also attend training in the area of AML/CFT, however the ECSRC has admitted that AML/CFT issues are not an express part of the Commission's mandate.

<u>Recommendation 29& 17</u> –Authorities powers and Sanctions

850. Supervisory and compliance powers are captured under the FSC under the FSC Act (No. 17 of 2000). Although the FSC is stated in the law to have supervisory responsibility for all financial

institutions in the area of AML/CFT, it is acknowledged that the ECCB and the ECSRC retain supervisory responsibility for licensees under the Banking and Securities Act respectively.

851. Onsite inspections are conducted by the Regulators in order to ensure compliance. Generally, sample testing is done and all policies and procedures including policies relating to AML/CFT as well as accounting information and transactions are reviewed (FSC Act, No. 17 of 2000).

852. Regulation 14 of the AMLR states "*Without prejudice to regulation 11 or any enactment relating to the conduct of inspections to verify compliance, the Regulator may conduct an inspection of any relevant person to determine compliance by that person with the requirements of these Regulations and any other law or directive relating to money laundering."* The FSC would have to rely on the generalized powers under the FSC Act section 13 with regard to inspections that relate to terrorism financing.

853. The Examiners did note however a power of the FSC under section 13(1)(h) of the Act which provides that the FSC *"… may destroy any note or copy of the note made or taken or made pursuant to paragraph (g) of this section within three years of the inspection save where the note or copy of the note has been sent to a law enforcement authority…".* The Examiners were assured that all records were retained by the Authorities.

854. The Examiners also noted that the FSC is now in the process of taking over the day to day supervision of both insurance companies and the credit unions. The examination of these entities for AML/CFT measures is therefore limited (for example credit unions and insurance companies have undergone only one round of examinations thus far). The Regulators have argued that they operate on a risk based approach and therefore focus their attention on areas perceived to be of the greatest risk, for example money services businesses.

855. The ECCB is empowered under the Banking Act to conduct examinations of banks *"… to determine whether such financial institution is in a sound financial position and that the requirements of this Act have been met …"* The Examiners take the view that this does not expressly provide for AML/CFT examinations and that there is a possibility of challenge with regard to whether such an examination could properly take place.

856. The ECSRC as noted before does not currently carry out examinations and the terms of the Securities Act only permit these inspections so far as it is necessary to ascertain breaches of the Securities Act.

857. Section 13 (g) of the FSC Act states that a Regulator, (g) *may pursuant to this Act enter into any premises of any regulated business during normal working hours to inspect any business transaction record and ask any questions relevant to the record, and to make any notes or to take any copies of the whole or any part of the record.*

858. The ECCB may require production of books minutes, accounts securities and documents relating to its business as requested by the examiner for the purpose of the Banking Act. The Examiners take the view that this provision may be interpreted as constraining the purpose for which the ECCB may require the production of these records.

859. The ECSRC similarly is constrained insofar as it may request information as required for its functions. The current functions of the Commission do not cover AML/CFT.

860. Neither the FSC, the ECCB nor the ECSRC is required to secure a Court order to compel production or obtain access to relevant documents from licensees to carry out their duties.

Sanctions

861. The Financial Services Commission (Amendment) Act, 2008 provides the FSC with the power to enforce sanctions against financial institutions and related parties for failure to comply with or properly implement requirements to combat money laundering and terrorist financing.

862. The supervisory sanctions that may be exercised by the ECCB arise where the institution, its affiliate, substantial shareholder director or employee is violating any law, regulation or guideline to which the institution or person is subject. However the sanctions available namely the issue of a written warning, the conclusion of a written agreement for remedial action, the issue of cease and desist or statutory directions and the variation or revocation of licences, appear to focus on the affairs of the financial institution. Breaches of statutory prohibitions can however result in criminal sanctions that apply both to the institution and responsible substantial shareholders, directors and officers.

863. The supervisory sanctions of the ECSRC only relate to breaches of the Securities Act and related regulations and requirements.

864. The criminal sanctions applicable to ML and FT offences are fines and/or imprisonment. The POCA, ATA and the Organised Crime (Prevention and Control) Act also allow seizing, freezing, forfeiture and confiscation of money and property directly and indirectly resulting from or related to the prohibited activities in specified instances.

865. Regulation 15(1) of the AMLR penalizes any person who does not comply with the regulations or a pursuant directive. That person would be liable on summary conviction to a maximum $ 50,000 fine and in the case of a continuing offence, to an additional $ 5,000 each day the offence continues. However the Examiners noted that all offences under the regulations carried the same penalty. As discussed previously, this does not indicate proportionality and in the case of offences that are more serious, effectiveness or dissuasiveness.

866. The ATA provides for criminal penalties for failure to report under two of the three reporting obligations under that Act. In the case of suspicious transaction reports made under section 17 where the person receives information in the course of his profession that gives rise to a suspicion that another person has committed a terrorist offence and does not make a report, that person is liable to imprisonment for a term not exceeding fourteen (14) years or a fine or both (upon conviction on indictment).

867. The penalty under the ATA at section 19 for failing to report property suspected to be in the possession or control of a terrorist or terrorist group is EC$30,000.00 or to a term of imprisonment not exceeding one (1) year or both. It is not clear why the penalties under both reporting obligations are so disparate in terms of severity. As previously noted, the issue of reporting on terrorist property in one's possession appears to the Examiners to be as serious as reporting on property that appears to be related to terrorism.

868. The administrative or civil penalties provided for under the newly enacted section 8A of the FSCA institution for breaches of the AMLR and the ATA may only be applied against a financial institution, although a failure to comply with certain of these measures may result in directors, officers, or significant shareholders being exposed to criminal prosecution. Breaches of regulatory sanctions attract criminal penalties upon conviction of EC$50,000 in the case of a financial entity and EC$25,000 in the case of an individual.

869. The Banking Act provides that the ECCB may administer sanctions for breaches of any law to which a financial institution is subject, providing that the grounds for the sanction arose from an inspection of the financial institution. Breaches of regulatory prohibitions or requirements attract a fine of EC$100,000 in the case of a body corporate and EC$50,000 in the case of an

individual. It is not clear whether these sanctions can be applied in the case where a breach is discovered outside of the circumstances of an inspection.

870. Although the FSC can apply sanctions to all financial institutions by law, it is acknowledged by the Regulators that banks and securities firms do not operationally fall under the remit of the Commission. The fact that the ECRSC is not able to impose sanctions on its licensees for breaches of AML/CFT suggests that there is a gap in the sanctioning regimes relating to these institutions.

871. Section 6(f) of the FSC Act 2000 confers the responsibility of enforcing regulations on the FSC. The requisite power to impose sanctions is given to the FSC (see FSC Act, amended 2008).

872. The ECCB is also empowered to administer sanctions on licensees for breaches of laws that apply to those licensees, which would include AML/CFT laws, however as noted above such breaches must arise in the context of an examination.

873. As the FSC does not have supervisory responsibility for securities firms the lack of enforcement powers by ECRSC with regard to AML/CFT issues may require a re-examination of the regulatory regime for these entities with regard to AML/CFT issues.

874. Regulation 15 (4) of the AMLR states that *"the directors as well as the corporate body shall be guilty of the offence where an offence under the Regulations has been committed."*

875. Where the FSC takes action against a regulated business in the Federation pursuant to the FSC Act and there is a breach of those regulatory requirements, criminal sanctions attach to the body corporate as well as the responsible substantial shareholder, director officer or employee.

876. Where the ECCB takes action against a bank in the Federation pursuant to the Banking Act and the regulated institution breaches those regulatory requirements, criminal sanctions attach to the institution as well as the responsible substantial shareholder, director officer or employee.

877. The major obligations regarding AML measures are contained in the AMLR. However the Examiners note that the penalties attaching to breaches of these Regulations, directives issued thereunder and breaches of the Guidance Notes are all the same (namely $50,000.00, and $5000 a day in the case of a continuing offence). There is no provision for imprisonment. The Examiners take the view that this state of affairs is not indicative of sanctions that are proportionate to the severity of the various situations that may arise.

878. The Examiners noted as well the disparity between the penalties with regard to the reporting requirements under the ATA. The penalties attaching to the failure to report possession of terrorist property is far more lenient than a failure to report a suspicion that a person has committed a terrorist offence. It would seem that both offences should be treated relatively equally in terms of severity.

879. In the case of the FSC, the sanction powers were recently incorporated in the law in July 2008, and therefore the Examiners were not able to ascertain how these would be exercised in practice. But on the face of the new law, there are a range of measures that may be taken where fault conditions apply. In the most extreme circumstance, where a regulated business has not responded appropriately to the FSC's regulatory measures, the FSC is empowered to recommend to the Minister that the businesses licence is amended to insert new conditions or that the licence should be revoked. As noted before, in one case, the Nevis regulator did suspend the licence of a licensee resulting from breaches of the legislation.

880. The ECCB's sanction powers operate similarly to those of the FSC and it has the option where all other avenues have been exhausted to recommend the varying of a licence or the revocation of same.

Recommendation 23* –*Market entry

881. The majority of financial service providers in the Federation are subject to specific licensing requirements which contain fit and proper criteria that must be met prior to licensing. The entities to whom "fit and proper" requirements do not apply currently are credit unions, domestic insurance companies and money service providers (insofar as the Money Services Act has not yet been implemented). The Federation's Authorities have however advised that they have utilised the registration process under the Business Corporations law to conduct due diligence on applicants for these types of business.

Domestic Banking – Licensed by ECCB

The Banking Act, 2004 - Sections 26(1) - 26(3).

882. Section 26(1)–(3) establishes the key requirements for ensuring that an individual is fit and proper to hold the position of director, significant shareholder (holder of 20% or more of voting rights), or manager of a licensee under that Act. The Act also provides for the removal of these individuals in circumstances where they are no longer deemed fit and proper at section 27.

883. In the case of International Banking the Nevis Offshore Banking Ordinance, section 13(1), 13(2) & 13(7) provides for the licensing criteria for these institutions, including the requirement that shareholders owning five percent (5%) or more of the voting shares and the directors should be fit and proper persons. The law is however silent on the requirement for the senior managers to be fit and proper. Due diligence checks are also made on the associates and affiliated company to the applicant institution. There does not seem to be procedures for applying fit and proper requirements to new owners. This notwithstanding, the Financial Services Order does require applicants under that law to submit information that relates to the fitness of directors and senior managers. Thus whilst the international banking statute is silent on this issue, there is strong evidence that fit and proper issues are considered by the Authorities prior to authorisation under the Order.

884. Provisions set out in the various sections for the different types of licensees require that applicants satisfy the ECSRC as to their fitness and propriety of directors and officers. Fit and Proper requirements apply to all market participants including broker dealers, limited broker dealers, investment advisers, custodians, principals and representatives

885. Nevis International Mutual Funds Ordinance, 2004 (as amended) – sections 25(2)(a), 25(2)(b) & 25(5) 25(2) also provides for the application of fit and proper criteria to applicants who are public funds. The criteria also applies to managers and administrators of these funds. It should be noted that there are no licensees currently in operation under this Ordinance.

886. There are no provisions in the current Insurance Act for the evaluation of principal officers of insurance companies or intermediaries based on standard fit and proper criteria. It should be noted however, that the Registrar of Insurance while processing a license conducts due diligence and a fit and proper test on all Managers, Directors and majority shareholders of all applicants. The requirements of the Financial Services Order do not apply to onshore business.

887. A new Uniform Insurance Act for OECS countries has been drafted by consultants to the ECCB and it contains fit and proper provisions with regard to the licensing of insurance companies and intermediaries.

888. Nevis International Insurance Ordinance, 2004 (as amended) – section 7(1) provides for fit and proper criteria to be applied to the controllers, directors and officers of applicants for insurance business and intermediaries conducted under this Ordinance.

889. Section 10 of the Nevis International Insurance Ordinance provides for the cancellation of licenses where fit and proper criteria are no longer met. Section 12 of the Nevis International Insurance (Amendment) Ordinance 2006 provides for the licensing of international insurance intermediaries (brokers and adjusters) and the application of fit and proper requirements to these applicants.

890. Section 24 of the Nevis International Insurance Ordinance also provides for the application for fit and proper criteria to persons applying to be insurance managers under the Nevis Ordinance. The Nevis Regulator also commissions due diligence reports on Insurance Managers form private providers, which include property searches and business affiliations.

891. In St. Kitts, the Captive Insurance Companies Act, 2006 (CICA) at section 18(1) specifies that the manager of a captive insurance company shall be a person with qualifications specified in section 2 of the Financial Services (Regulations) Order, 1997, FSRO). Section 2 of the Order provides that an insurance manager must hold particular professional insurance qualifications or be a person of good standing with an applicable professional body recognized by the Minister or a person in good standing with such insurance expertise as has been approved by the Minister. The Examiners do not consider that this amounts to the application of a fit and proper assessment to insurance managers. In addition the Captive Insurance Act also provides that the Registrar may regulate the manager of a captive insurance company.

892. Although the CICA does not specifically (a) refer to the need for shareholders and directors to be qualified under section 2 of the FSRO or (b) provide for the licensing of insurance intermediaries, the Authorities have argued that both aspects are covered directly under the FSRO. Under the FSRO, the Minister may refuse to grant an authorization or revoke and authorization where the applicant or the authorized person is no longer fit and proper to be authorized. In the Examiners' view the term authorized person does not apply to directors or managers of the entity.

893. The FSRO applies to all off shore business conducted in the Federation, including trust and corporate service providers. Again the terms of the order require authorization of the applicant (which entails the application of fit and proper criteria) and the continuation of the applicability of fit and proper considerations post authorization. Although the Order does not directly impose fit and proper criteria to directors and senior managers of these institutions information on these individuals is required to be submitted with applications for authorization under this Order. The Examiners were also provided with the questionnaires that are administered to directors and senior managers of an institution seeking authorization.

894. Although the Money Services Business Act (MSBA) has been passed, the process of licensing money service operators has not commenced and therefore the fit and proper requirements of the Act have not been applied to the current operators.

895. The Co-operative Societies Act is not covered by the FSRO and the provisions of that Act do not indicate that fit and proper considerations apply to the directors or managers of these entities.

896. The Authorities have indicated that all businesses in the Federation (including all non financial businesses) must obtain a business licence from the Ministry of Finance. This licensing process has allowed the Authorities an opportunity to more closely examine the applicants for business and apply informal fit and proper criteria.

897. Although the MSBA has been passed into law, the Authorities have not commenced the process of licensing operators under that Act. Money Services businesses are required to obtain an ordinary business license under the Licences on Businesses and Occupations Act, 1972 through the MOF but this licensing process does not include formal requirements for the evaluation of the principal officers of Money Services Businesses based on standard fit and proper criteria. In practice, however the Ministries of Finance request Regulators to conduct 'fit and proper' evaluation prior to licensing.

898. Businesses engaging in activities such as finance leasing which falls within the FATF definition of financial institutions and which are registered as exempt companies under the Companies Act, as International Business Companies under the Nevis Business Corporation Ordinance or Limited Liability Companies under the Nevis Limited Liability Companies Ordinance while not being subject to special licensing are subject to the client verification procedures established under the AMLR which requires their registered agents to evaluate the integrity of directors/beneficial owners.

899. Other types of offshore business that are covered by the Financial Services Order (such as the administration of trusts) are subject to a licensing regime.

900. Credit Unions are not subject to an extensive licensing regime under the Co-operative Societies Act, although they do have to prove their future viability to the Registrar at the time of their application. The regime essentially requires registration. The FSC and industry stakeholders are in talks for the transfer of supervisory powers from the Registrar of Co-operatives to the FSC. The regime for AML/CFT supervision and monitoring is relatively recent and these entities have only undergone one round of AML/CFT examinations. The Registrar does however conduct annual inspections to test compliance with the terms of the Co-operative Societies Act.

Recommendation 23& 32 –Ongoing supervision and monitoring

901. The ECCB supervises institutions that are subject to the Basel Core Principles. The Banking Act does provide a framework that seems to meet several key aspects of the Core principles that relate to AML/CFT, including the issues of licensing, risk management and ongoing supervision of the licensees' activities. On the issue of Global consolidated supervision, the ECCB is able to obtain information not only on the licensee but also on affiliated companies (which includes holding companies, subsidiaries and companies which share a common parent) and to share supervisory information about these entities via Memorandum of Understanding.

902. However under the Nevis Offshore Banking Ordinance, the ECCB does not have powers to supervise these entities on a consolidated basis. The sole licensee under this Ordinance is a subsidiary of a licensee under the Banking Act so that in the current situation, the ECCB can share information on this licensee with counterpart supervisors, but it cannot obtain information on an ongoing basis about the affiliates of these licensees. Nor is there power in the Ordinance to allow for the ECCB to share information on *"stand alone*" licensees with fellow supervisory authorities.

903. The FSC regulates offshore insurance companies, whilst the Registrar of Insurance regulates on shore insurance companies on a day to day basis. The FSC is to assume full time regulatory responsibility for domestic insurance when the single Regulatory units are established.

904. With regard to licensees under the CICA and the International Insurance Ordinance, the relevant regulators do have statutory powers to require the production of documents and require inspections of the affairs of these licensees. However, the Examiners are again concerned that the fact that the substantive operations of these entities do not take place in the Federation, there is a possible obstacle to obtaining the necessary verification that the licensee is meeting its statutory obligations. Again, the Regulators must place great reliance in the records maintained by either the registered agent or the insurance manager. The Regulators also do not carry out insurance supervision on a group-wide basis as required by the IAIS.

905. With regard to domestic insurance companies, directors and managers are not currently subject to fit and proper requirements. The Registrar of Insurance does not supervise its insurers on a group-wide basis as required by IAIS ICP 17 and does not have express powers to share information with supervisory authorities abroad.

906. Under the IOSCO principle 8 requirements, the Examiners noted that although the ECSRC did have clear statutory powers of examination, it was hampered with regard to carrying out its duties for the comprehensive inspection, investigation and surveillance of its licensees as a result of a lack of human resources.

907. Money Services Businesses "MSBs" fall within the regulated business activities listed in Schedule 2 of the POCA and are subject to the FSC Act (as amended), the POCA(as amended), the *Anti-Money Laundering Regulations, 2001(as amended)* issued pursuant to the POCA, the FIU Act and the ATA..

908. These businesses are currently subject to due diligence audits by the Regulator under AMLR 14 and by powers under the FSC Act. AML/CFT due diligence audits are conducted by the Regulator and reported on to the FSC.

909. As noted before, the MSBA although passed by Parliament had not been fully implemented by the Authorities at the time of the visit. The law does provide for an ongoing system of supervision of a variety of businesses that are covered by the term "money services businesses". Among the measures established in the statute is the requirement for the licensing of such entities and their obligation to engage the services of an auditor who is to provide his or her opinion on the suitability of measures implemented to combat money laundering and the financing of terrorism as well as to advise of breaches of the applicable laws or guidelines uncovered in the course of his activities. Although the FSC can and does exercise supervisory powers including testing for compliance for these firms under the FSC Act and the AMLR, the Authorities should move to implement the day to day supervisory regime established by the Money Services statute as soon as possible.

910. The activities of 'other financial institutions' fall within the regulated business activities listed in Schedule 2 of the POCA and are subject to the FSC Act (as amended), the POCA(as amended), the AMLR, issued pursuant to the POCA, the FIU Act and the ATA.

911. These businesses are currently subject to due diligence audits by the Regulator under the AMLR at regulation 14. AML/CFT due diligence audits are conducted by the Regulator and reported on to the FSC.

912. However, some of these businesses such as money business services are not yet subject to a licensing regime. This is however a requirement of the Money Services statute. The Authorities have stated that all businesses are required to obtain a business licence from the MOF and that at this stage the Authorities are able to obtain due diligence information on principal and operators. However, this appears to be a generic registration regime applicable to

all businesses and not in keeping with the requirements of the Recommendations, particularly in light of the risk posed by this sector.

913. Insurance companies and credit unions are subject to registration regimes, but these regimes lack fit and proper requirements. Supervision and oversight for credit unions (focussing of AML/CFT issues) in particular appears to be at a fledgling stage, as the Authorities are still working out the details of transferring supervisory authority over these entities from the Registrar of Co-operatives (Ministry of Agriculture) to the FSC. The regime for insurance regulation also requires updating, which is expected to take place upon finalization of the new Insurance Act.

Statistics

914. The Examiners did note evidence of statistics maintained by the ECCB and the FSC with regard to their AML/CFT inspection activities.

915. **Table 11**

Eastern Caribbean Central Bank – AML/CFT Onsite Inspection of Commercial Banks

2008

5 Commercial Banks
1 Finance Company

Financial Services Regulatory Department – St Kitts	**2007**	**2006**	**2005**	**2004**	**2003**
Money services businesses	**3**			**1**	**2**
Trust company	**1**				
Investment company	**1**				**1**
Insurance companies		**2**	**3**	**7**	
Service providers		**1**			**7**

Nevis Financial Services Regulation and Supervision Department
Onsite Examination Statistics

	2004	**2005**	**2006**	**2007**	**2008**	**Total**
Corporate Service Providers	6	5	8	3	10	32
Licensed Attorneys					2	2
MSB				1		1

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

916. Guidance Notes on the Prevention of Money Laundering and Terrorist Financing have been issued by the Minister of Finance pursuant to the AMLR to assist financial institutions and DNFBPs to implement and comply with their AML/CFT requirements. Whilst the Guidance is stated to extend to all regulated businesses (which includes certain classes of DNFBPs), the Guidance does not give specific advice to those industries.

917. The Examiners have considered that although the GN are properly issued by a competent body and that breaches of these GN do carry regulatory sanctions, because they are issued under the AMLR, they are limited by the principle of ultra vires when dealing with areas outside the remit of the Regulations. Thus in the Examiners' view, the GN cannot legally extend to the area of terrorism financing.

918. The ECCB has also issued the following prudential guidelines to assist banking institutions in complying with AML/CFT requirements

- Administrative Guidelines No. 1 of 2002 governing the establishment and maintenance of relationships by a licensed financial institution with Shell Banks.
- Controlling Risk in Correspondent Accounts

3.10.2 Recommendations and Comments

Recommendation 17

919. The sanctions under the AMLR are all homogenous and therefore not proportionate, and in the case of the more serious offences not dissuasive or effective. The Authorities should re-examine the obligations and assign the appropriate penalties.

920. The Authorities should also re-examine the penalties in the ATA to ensure that the assigned penalties are commensurate with the breach involved.

921. The ECCB should consider widening their power to apply sanctions to circumstances where breaches are discovered outside of the context of an examination.

922. The Authorities should re-examine the regime for securities firms to ensure that the appropriate supervisory body can impose appropriate AML/CFT sanctions for breaches.

923. There needs to be greater use made of the new powers granted under the FSC Act by the Authorities to bolster the effectiveness of the system.

Recommendation 23

924. The Authorities need to provide additional resources for all Supervisors in the system, including the FSC, the ECCB and the ECSRC. In particular the ECSRC should commence its programme for examination of licensees to ensure compliance with the Securities laws and other governing statutes.

925. The ECSRC should be vested with the appropriate authority to supervise its licensees re: AML/CFT issues including examination and sanction powers.

926. The Authorities should consider measures that would strengthen the FSC's ability to fully monitor the activities of Captive and International Insurance companies and verify levels of compliance.

927. The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities (e.g. those relating to AML/CFT).

928. The Banking Act should clarify that the ECCB can apply sanctions for AML/CFT breaches including those that do not arise from an examination.

929. Fit and proper requirements should extend to the owners, directors and, managers and domestic Insurance Companies.

930. Fit and proper requirements should apply to Insurance Managers under the International Insurance Act. The current requirements speak to "*good standing*" relative to professional bodies.

931. Fit and proper requirements should apply to directors and managers of all institutions captured under the Financial Services Commission Order.

932. Fit and proper requirements should also extend to credit unions and their directors and senior managers.

933. The licensing process under the Money Services statute should commence.

934. The laws relating to insurance (both international/captive and domestic) should provide for group supervision as provided for in the IAIS principles.

935. The Nevis Offshore Bank Ordinance should provide for consolidated supervision.

936. The Money Services statute should be implemented as soon as possible.

937. The new Insurance statute should be finalised and passed into law.

938. The Authorities should strengthen the ability of supervisors to verify levels of compliance of captive and international insurance companies.

939. The Authorities should finalise arrangements for the transfer of regulatory responsibility regarding credit unions to the FSC.

Recommendation 25

940. The Authorities should carry out the necessary amendments to ensure that the Guidance Notes can properly cover CFT issues.

Recommendation 29

941. The ECCB/ECSRC should be vested with examination and sanction powers where AML/CFT is concerned.

942. The penalties under the AMLR and the ATA should be amended to be more effective, proportionate and dissuasive.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**NC**	• **Key offences under the AMLR carry homogenous penalties and thus are not proportionate, dissuasive or effective.** • **Penalties for reporting offences under the ATA vary widely.**

		• **Offences under the AMLR are not applicable to senior managers.** • **The FSC has not applied the range of sanctions provided by the FSC Act and the AMLR.** • **The ECSRC does not have power to sanction for AML/CFT breaches.** • **The ECCB may only apply sanctions of breaches uncovered via examination.**
R.23	**PC**	• **"Fit and proper" requirements do not apply currently to credit unions, domestic insurance companies and money service providers (insofar as the Money Services Act has not yet been implemented).** • **Fit and proper requirements under the FSRO are only indirectly imposed on directors or managers of institutions covered by that Order.** • **There are no fit and proper requirements under the CICA for owners or directors.** • **Offshore and Domestic insurance are not supervised on a group wide basis.** • **ECCB powers to inspect for AML/CFT not expressed in the Banking Act.** • **The Off shore Banking law is does not provide for senior managers to be fit and proper, nor for consolidated supervision.** • **The Supervisory Authorities face difficulties in verifying levels of compliance by international and captive insurers.** • **ECSRC lacks powers to inspect and sanction for AML/CFT measures.** • **All Supervisory Authorities require more resources.**
R.25	**PC**	• **The GN are legally constrained to ML issues.**
R.29	**PC**	• **The powers of the ECCB to inspect do not directly extend to AML/CFT.** • **The ECSRC lacks powers to inspect for AML/CFT measures.** • **Limitation on sanctions under the AMLR and the ATA.**

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3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

943. Schedule 1 of the POCA, as amended at No. 9 lists money transmission services as a Regulated Business Activity to which the Act and the AMLR apply. As a consequence, it is subject to the supervisory jurisdiction of the FSC pursuant to the provisions of both the POCA (and the regulations issued thereunder) as well as the FSCA.

944. The Money Services Business Act 2008, designates the FSC as the Authority to license and/or register persons carrying on money services business in St. Christopher and Nevis, maintain a

current list of the names and addresses of licensed and/or registered MVT service operators and be responsible for ensuring compliance with licensing and/or registration requirements.

945. The Examiners have noted that the Money Services Business Act has not yet been fully implemented with the licensing of operators, although there is monitoring and examinations of these entities pursuant to the provisions of the AMLR and the FSC Act. For example, the Authorities had not at the time of the Evaluation carried out licensing exercises, established reporting requirements or carried out examinations pursuant to the Money Services Business Act.

946. The POCA 2000 lists Money transmission services as Regulated Business Activity to which the Act applies. Therefore these entities would be any entity licensed as such, is subject to operate under the provisions of the national AML/CFT regime.

947. Section 18 subsection (3) of the MSBA 2008 states that "A licensee shall institute procedures to ensure that its accounting records and systems of business control comply with the requirements of the Anti-Money Laundering Regulations 2001, issued pursuant to the Proceeds of Crime Act, 2000." However the provisions do not seem to extend to the ATA and the obligations thereunder.

948. The obligations of money service providers would be affected by the limitations of the AMLR and the GN (which cannot extend to TF matters) as well as other system deficiencies such as the weaknesses in suspicious transaction reporting under both the AMLR and the ATA.

949. Given that no licensing has taken place under the MSBA, the FSC currently carries out examinations pursuant to the powers contained in the FSC Act. In any event the provisions of the MSBA section 22 speaks to examinations being carried out *"…to determine that such licensee is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business."* Thus examinations conducted under that statute are limited to determining compliance with the terms of that statute and overall financial condition.

950. The MSBA, 2008 under Schedule 2, Form A (Information to be contained in and to accompany an application for the grant of a licence) requires that the applicant provide *"The name and address of each person who is an agent of the applicant."*

951. The foregoing requirement operates solely at the time of application. There seems to be no ongoing requirement that Money Service Businesses should maintain a current listing of agents and have same available for the regulatory authorities upon request.

952. As stated previously, regulation 15 of the AMLR provides for penalties for breaches of those regulations in the amount of conviction to a fine not exceeding fifty thousand dollars, and, if in the case of a continuing offence, the contravention continues after such conviction, he commits a further offence and is liable to an additional fine of five thousand dollars for each day on which the contravention continues. This however applies to all breaches of the Regulations and directives and guidance issued under these Regulations. The penalties therefore lack proportionality and therefore effectiveness and dissuasiveness.

953. Section 18(3) of the MSBA provides that a licensee should institute procedures to ensure that its accounting records and systems of business control comply with the AMLR. Additionally under the MSBA, section 46 provides that a breach of any provision or requirement of this Act for which no offence is specifically created or penalty provided commits an offence. Such offences are summary in nature and the penalties which attach in these cases are a fine of $50,000 and/or imprisonment of two years. The imposition of such standard penalty for an

offence that could take many forms is in the view of the Examiners, not a proportionate, dissuasive or effective approach.

954. In addition, provision is made under the FSC Act, as amended for the Commission to issue a number of sanction measures. However, the FSC has not utilised these powers extensively as at the date of the visit.

955. The MSBA also provides for a number of enforcement actions that may be applied in a number of circumstances including where the business is being operated in a manner detrimental to the public interest or to the interest of customers. These measures include the suspension or revocation of licences. However no licences have yet been issued under this Act.

3.11.2 Recommendations and Comments

956. Full and effective implementation of the Money Services Business Act should be pursued as soon as possible.

957. Money Services Providers should be required to maintain a current listing of agents for the inspection of the Authorities.

958. The penalties under the AMLR should be more proportionate to ensure effectiveness and dissuasiveness.

959. The penalties in the Money Services Business Act (particularly as they relate to AML matters) should be more proportionate to ensure effectiveness and dissuasiveness.

960. The Money Services Business Act should also refer to the compliance obligations of the licensees under the ATA.

961. The FSC should make more use of the powers under the FSC Act and the AMLR.

962. The effectiveness of the supervisory regime for money service providers would be affected by broader system issues such as the limited scope of the AMLR /GN to ML issues and not to TF issues as well as weaknesses in the suspicious transaction reporting requirements under both the AMLR and the ATA. These issues must be addressed to ensure that these providers properly comply with the FATF Recommendations.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• **Money Services Business Act not yet fully implemented.** • **Money Service providers are not required to maintain current lists of agents.** • **Offences under both the AMLR and the Money Services Business Act are not proportionate.** • **Sanctions under the FSC Act and the AMLR appear to be under utilised.** • **Compliance obligations under the Money Services Business Act do not extend to TF issues.**

		• **Issues relating to the scope of the AMLR and the deficiencies in reporting requirements under the AMLR and the ATA.**

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

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

4.1.1 Description and Analysis

963. AML/CFT preventative measures are applicable to all "regulated business activity" as listed in the schedule to the POCA. DNFBPs falling under the remit of the POCA 2000 as amended and by extension, the AMLR, are required to adhere to all requirements provided in such legislation. DNFBPs included in the Schedule to the POCA 2000 include:

- Trust business carried on under the Trust Act, and the Nevis International Trust Ordinance (#3);
- Finance business carried on under the Financial Services regulations Order, 1997 (which includes trust businesses and corporate business in the definition of "finance business" in section 2 of that Order.) (#5);
- Real property business (#16);
- an activity in which money belonging to a client is held or managed by (#19)
  (i) a Barrister or a Solicitor;
  (ii) an accountant or a person who, in the course of business, provides accounting services;
- the business of acting as company secretary of bodies corporate (#20)

964. Gaming was added to the schedule of the POCA by an amendment to the Act in 2005, and the previous paragraph 21[7] was renumbered as paragraph 22.

965. The Proceeds of Crime (Amendment) Act 2008, gazetted on 25th April 2008, renamed the Schedule as "Schedule 1" and made the following amendments pertaining to DNFBPs:

- inserting immediately after paragraph 21 the following new paragraphs:
  - *"21A. Charities and other non profit organisations;*
  - *21B. Jewellers and dealers in precious stones and metal;"*

966. The POCA 2000 as amended at schedule 1 provides for real estate businesses and barristers and solicitors when conducting certain type of transactions or doing certain types of activities.

967. The FSC acts as the ultimate regulator for financial services in St. Kitts and Nevis, as it is empowered to do under Section 6 of the FSC Act 2000. Regulatory authority over DNFBPs that do not carry out financial services[8] is unclear, except in the case of casinos, which have a Gaming Board. However, an amendment to the FSC Act in 2008 gave the FSC the power to apply sanctions to financial services or regulated business. Additionally, section 14 of the AMLR empowers the FSC to conduct an inspection of any relevant person to verify compliance with the regulations, or any other directive or law related to money laundering.

[7] Any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted.

[8] Section 2 of the Financial Services Commission Act defines "financial services" to include the businesses of investment, asset management, trusteeship, company administration, the provision and administration of corporate and other business structures and any matters ancillary to such businesses or structures.

968. Guidelines, Advisories and Letters of instruction are sent to all DNFBPs on a regular basis. Such documents provide information as to the UN sanctions list of designated terrorists and other matters pertaining to the reporting of suspicious activity. AML/CFT training is also provided to all DNFBPs, and assistance is available to them on request.

969. At the time of the Evaluation DNFBPs in St. Kitts/Nevis consisted of twenty-one (21) real estate companies, one (1) casino (there are two casinos and slot machines in different parts of St. Kitts), twelve (12) jewelers, 35,136 IBCs, 3,725 trusts, 85 trust and company (fiduciary) services providers (29 for St. Kitts and 56 for Nevis), 70 members of the Bar Association, and thirty-six (36) accountants and auditors.

970. The AMLR at regulations 3 - 17 set out detailed requirements for AML compliance with respect to customer identification procedures, recordkeeping, recognition and reporting of suspicious transactions, staff resources and training, etc.

Recommendation 5

971. CDD requirements are imposed on "regulated business activities" as listed in schedule 1 of the POCA. DNFBPs listed in schedule 1 of the POCA are as indicated above requirements are described in section 3 of this Report. However, the effectiveness of CDD requirements are affected by the issues outlined below.

a. Regulation and supervision of Casinos for AML/CFT purposes needs to be strengthened. Casinos have not been inspected and are generally unaware of the CDD requirements of the AMLR and GN.

b. Jewellers and dealers of precious stones and metals were added to schedule 1 of the POCA on 25th April 2008.

c. The activities of legal professionals specified by the essential criteria were included in schedule 1 of the POCA on 11th July 2008. Two inspections have been conducted in each of the islands of the federation. However, there has been a challenge to the FSC's authority whereby an inspection request was refused.

d. Accountants and auditors were added to schedule 1 of the POCA on 11th July 2008. However, there is inconsistency with respect to the specified activities pertaining to accountants (which are the same for lawyers, notaries, and other independent legal professionals) in the FATF recommendation and what is listed in schedule 1 of the POCA.

972. While trust business, company business, and the business of acting as company secretary for bodies corporate are listed in schedule 1 of the POCA, trust and company service providers are covered indirectly in paragraph 5 of the POCA since they fall under the definition of Finance business carried on under the Financial Services Regulations Order 1997. The Authorities may wish to consider amending Schedule 1 of POCA to explicitly mention Trust and Company Service Providers. This issue does not have a bearing on the rating given in this section, but the suggestion is being made given the apparent comprehensiveness of the schedule.

Recommendation 6

973. The requirements for CDD measures with respect to PEPs are set out in sections 5(6) to 5(9) of the AMLR and Part III of the GN. However, casinos are unaware of their CDD obligations under the AMLR and the GN.

Recommendation 8

974. The polices and procedures to prevent 1) the misuse of technological developments and 2) to address the risks associated with non-face to face business relationships or transactions are found in sections 3(3)(d) and 3(3)(e) of the AMLR as well as paragraph 74 of the GN, which addresses the issue of Internet customers.

Recommendation 9

975. Section 7 of the AMLR speaks to identification procedures related to introduced business. However, there is no requirement to "immediately" obtain from the third party the necessary information concerning certain elements of the CDD process. Furthermore, under section 7(4)(b)(iii) of the AMLR, the introducer must provide assurance in writing that CDD information will be made available upon request but not "without delay" as stipulated by the criteria (9.2). There are no requirements for third parties to be regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10.

Recommendation 10

976. The record-keeping requirements are set out in section 10 of the AMLR. However, there is no requirement for "business correspondence to be available." Regulation 8(4) of the AMLR specifies that records should be kept in such a manner that they can be made available on a timely basis to the Commission, police officer or customs officer (not to domestic competent authorities).

Recommendation 11

977. Section 10(3) of the AMLR and paragraph 72 of the GN compel all relevant persons to pay attention to complex, unusual large transactions, to examine their background and purpose, and to keep the findings in writing and available. The GN does not specify that these should be available to competent authorities and auditors for at least five years.

4.1.2 Recommendations and Comments

978. Deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report also apply to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.

979. The Authorities should consider amending the FSC Act to give the FSC explicit powers to supervise and regulate for AML/CFT purposes. The FSC Act should be also be amended to give the FSC explicit powers over DNFBPs

980. St. Kitts and Nevis should implement a robust system of regulation and supervision for casinos. Casinos should also be sensitised about their CDD obligations under the AMLR and GN.

981. Schedule 1 of the POCA should be amended to specify the relevant activities of accountants and auditors, in line with E.C. 12.1(d).

982. The AMLR should be amended to ensure that third parties are regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10.

- Implement a robust system of regulation and supervision for casinos.

- Sensitise the Gaming industry of its CDD obligations under the AMLR
- Specify the activities of accountants and auditors to bring them in line with FATF E.C. 12(1)(d)
- Require third parties to be regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10.
- Amend section 10 of the AMLR to make "business correspondence" to be available for at least five years.
- Amend paragraph 72 of the GN to specify that documented findings regarding complex, unusual or large transactions should be made available to domestic competent authorities upon appropriate authority.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• **Deficiencies identified for all financial institutions for R.5, R.6, R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs** • **The powers of the FSC under the FSC Act extend only to financial services.** • **There is no evidence of effective supervision of casinos for AML/CFT purposes.** • **The relevant activities specified for accountants and auditors in the POCA are not in line with. E.C. 12.1(d).** • **Assessment of the effectiveness of CDD measures for legal professionals as well as jewellers and dealers of precious stones and metals is not possible due to recent additions to Schedule 1 of the POCA.** • **There are no requirements for third parties to be regulated and supervised in accordance with Recommendations 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10.**

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

Recommendation 13

983. There is a direct legal obligation on DNFBBs to report suspicious transactions to the FIU under section 10(1)(h) of the AMLR when they know or have reasonable grounds to suspect that another person is engaged in money laundering. However, FATF Recommendation 13 requires that the suspicion or reasonable grounds for suspicion must be tied to funds that may be the proceeds of criminal activity or terrorist financing.

984. Section 4(2)(a) of the FIU Act states that
2) Without limiting the generality of subsection (1) and notwithstanding any other law to the contrary, other than the Constitution, the Intelligence Unit

(a) shall receive all disclosures of information as are required to be made pursuant to the Proceeds of Crime Act, 2000 as long as such disclosure is relevant to its functions, including information from any Foreign Intelligence Unit;

This does not qualify as a direct obligation for a person to report to the FIU.

985. Section 17(6) of the ATA, by way of amendment No. 14 of 2007, was changed to compel a regulated person to file a STR to the FIU if there is reasonable suspicion that the transaction may be related to terrorist activity.

986. There are no legal requirements for attempted transactions to be reported regardless of the amount.

Recommendation 16

987. There are no recognised or approved SROs in St. Kitts and Nevis.

988. The circumstances set out under R14, 15 and 21 apply to DNFBPs by virtue of the fact that DNFBPs are included on the schedule of regulated businesses in the POCA and are therefore subject to the provisions made in the AMLR as well as those in the ATA. See sections 3.6 to 3.8 of the Report above.

Additional Elements

989. The reporting requirement is extended to the professional activities of accountants including auditing. According to the schedule to the POCA. paragraph 19(A) Accountants and Auditors – (1) *The business of providing any of the following:*

(a) external accountancy services;

(b) advice about the tax affairs of another person;

(c) audit services; or

(d) insolvency services

(2) 'External accountancy services' means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties.

(3) 'Audit services' are audit services provided by way of business pursuant to any function under any enactment.

Therefore, any persons who offer the above-mentioned services are required to adhere to the report requirements as outlined in regulation 10 of the AMLR.

990. The DNFBPs are required to report when there is a reasonable suspicion that funds the proceeds of criminal activity or money laundering.

4.2.2 Recommendations and Comments

991. The AMLR should be amended to mandate direct legal obligations on DNFBBs to report suspicious transaction to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity, irrespective of whether the transaction is complex, unusual, or large.

992. Amend the AMLR to mandate that attempted transactions be reported, regardless of the amount.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• **Deficiencies identified for financial institutions for R13, R15, and R21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBPs.**

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

993. Under The Betting and Gaming (Control) Act, 1999 (BGCA), the Gaming Board has the responsibility for the general regulation and supervision of casinos in the Federation. Section 5 of the Act outlines the functions of the Board as follows: -

- Controlling and regulating gaming;
- Granting or refusing to grant any gaming licence under the Act;
- Revoking any gaming licence issued under the Act;
- Licence any premises for gaming.

994. Under section 6(1) of the BCGA, persons engaged in the business of Internet gaming are required to be licensed by the Gaming Board.

995. Section 19 of the Act requires the licensee to have books, accounts and financial statements to be audited and for the licensee to provide the Board with a certified copy of the audited financial statements and accounts together with the auditor's report. Section 20 of the Act stipulates that licensees shall, at the end of each financial year, cause books, accounts and financial statements to be audited by an auditor, and shall provide the Board with a certified copy of the audited financial statement and accounts together with the auditor's report. No other provisions have been made in the BGCA for the monitoring of casino operations, except in cases where the Accountant General or Director of Audit may wish to conduct an examination, or where there is failure to pay taxes on the due date (Section 11 of the BGCA).

996. With respect to AML/CFT, the POCA was amended by virtue of the Proceeds of Crime (Amendment) Act, No. 25 of 2005 to include gaming businesses in the list of regulated businesses for purposes of AML/CFT compliance. Accordingly these businesses are now subject to the provisions of the AMLR issued pursuant to the POCA including the client identification and suspicious transactions reporting. Gaming businesses are also subject to the FSC Act requiring the filing of annual audited financial statements and Certificate of Compliance with the FSC and the conduct of due diligence audits by the Regulator.

997. Penalties for breaches of the AMLR are: "*On summary conviction to a fine not exceeding fifty thousand dollars, and, if in the case of a continuing offence, the contravention continues after such conviction, the person commits a further offence and is liable to an additional fine of five thousand dollars for each day on which the contravention continues." See Regulation 15(1)".*

998. Section 11(1)(c) of the FSC Act (as amended) requires that regulated businesses should "*deliver to the Commission a Certificate of Compliance issued by an independent auditor that the business is in compliance with the anti-money laundering regulations issued pursuant to the Proceeds of Crime Act 2000."* There are no other provisions in the FSC Act with respect to the monitoring of Casino operations for AML/CFT purposes.

999. Penalty for breaches of this section of the FSC Act are outlined in the Financial Services Commission (Amendment) Act, 2008.

1000. While the Gaming Board is responsible for the general regulatory and supervisory regime of Gaming in St. Kitts and Nevis, the FSC has limited responsibilities for AML/CFT supervision of casinos as described in sections 11(1)(c) and 15(1) of the FSC Act. Furthermore, there have been no on-site inspection of casinos, and sanctions for breaches of the FSC Act have only been enacted in 2008.

1001. The licensing criteria for casinos as set out in section 7(1)(a) of the BCGA provides for the evaluation of the applicants' character and business reputation.

1002. Section 7(1)(b) and (g) of the BCGA states that the Board, when considering an application for licensing, should have regard to the applicant's current financial position and financial background and whether the granting of the relevant licence to the applicant is in the public interest, respectively.

1003. Section 33(1) of the BCGA outlines circumstances under which a licence may be suspended. The following are relevant instances where the Board may suspend a licence:

- The licensee is not, or is no longer, in the opinion of the Board, a suitable person to hold the licence;
- The licensee is convicted of an offence under this Act;
- The licensee is convicted of any serious offence under any other Act;
- The licensee contravenes a condition attached to the licence;
- The licensee is affected by control action under the Companies Act, 1996;
- The licensee obtained his licence by a materially false or misleading representation or in some other improper way;
- The Minister requires that the licence be suspended to ensure that the public interest is not affected in an adverse and material way, or the integrity of the conduct of gaming is not jeopardised in any way.

1004. The Authorities indicated that, before licenses are granted, each director, shareholder with a controlling interest and beneficial owner are required to undergo background checks in order to determine whether said persons are fit and proper. However, there are no documented regulatory requirements to establish beneficial ownership for Casinos.

1005. DNFBPs fall within the regulated business activities listed in Schedule 2 of the POCA and are subject to the FSC Act (as amended), the POCA (as amended), and the AMLR issued pursuant to the POCA, the FIU Act and the ATA.

1006. Accordingly these businesses are subject to the provisions of the AMLR as well as the GN. These businesses are required to have client identification procedures and report suspicious transactions. The FSC Act requires the filing of annual audited financial statements and

Certificate of Compliance with the FSC and the conduct of due diligence audits by the Regulator. However, the power of the FSC extends only to financial services in the FSC Act.

1007. No risk analysis has been conducted on other categories of DNFBPs. It is too early to determine the effectiveness of the system of monitoring and ensuring AML/CFT compliance for jewellers and dealers of precious stones and precious metals, since this category of business was added to schedule 1 of POCA on 25th April 2008. Two lawyers have been inspected in each of the two islands of the Federation. However, at a meeting between the examination team and members of the Bar Association, lawyers questioned the FSC's legal authority to conduct onsite examination for AML/CFT purposes. The FSC contends it has the legal authority over lawyers since all attorneys are fiduciary services providers.

1008. The AMLR at regulation 16 designates the FSC as the competent authority to issue guidelines, directives and guidance notes for financial institutions in respect of AML.

1009. The AMLR at regulation 14 gives the Regulator legal authority to conduct Due Diligence Audits to verify compliance of financial institutions with the AMLR *"and any other law or directive relating to money laundering."*

1010. Due diligence audits are conducted periodically by the Regulators who report their findings to the FSC which meets on a monthly basis.

1011. Section 11(1)(c). of the FSC Act (as amended) requires that regulated businesses should "deliver to the Commission a Certificate of Compliance issued by an independent auditor that the business is in compliance with the anti-money laundering regulations issued pursuant to the Proceeds of Crime Act 2000."

1012. Penalty for breaches of this section of the FSC Act is "on summary conviction to a fine not exceeding fifty thousand dollars"

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

1013. AML Guidance Notes have been issued by the FSC to assist financial institutions and DNFBPs to implement and comply with their AML/CFT requirements. In addition, the DNFBPs are provided with additional information by way of advisories and letters as to their obligations under AML/CFT legislation. Further, all DNFBPs are invited to take part in AML/CFT training sessions hosted by the FSC by way of the supervisory departments in St Kitts and Nevis.

1014. The FIU publishes an annual report on STRs and acknowledges receipt of STRs. However, there is no evidence to suggest that the FIU has provided feedback with respect to disclosures and sanitised cases to DNFBPs. While the FIU has met with the casinos, these meetings were largely for the FIU to understand the nature of the gaming operations. There has been no direct contact between the FSC and casinos. No sector-specific AML/CFT guidance has been issued to the various DNFBPs, except for Fiduciary Services (paragraphs 171-180 of the GN).

4.3.2 Recommendations and Comments

1015. The FSC Act should clarify the powers of the FSC to regulate and supervise DNFBPs.

1016. Casinos should be subjected to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures. If the FSC were designated as the authority to supervise casinos for ALM/CFT purposes, then the FSC Act should be amended to give the

FSC those powers. Furthermore, there should be documented regulatory requirements to establish beneficial ownership for casinos.

1017. The FIU should provide feedback to DNFBPs on disclosures and sanitised cases. Additionally, there should be sector specific guidance for DNFBPs with respect to AML/CFT.

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

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• **Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.** • **The FSC Act does not explicitly give powers to the FSC for the supervision and regulation of non-financial services.** • **Lawyers have questioned the FSC's authority to conduct on-site inspections for AML/CFT purposes.**
R.25	**PC**	• **The deficiencies identified for financial services for R 25 at sections 3.7, 3.10, and 4.3 apply to DNFBPs.** • **FIU has not provided feedback with respect to disclosures and sanitised cases to DNFBPs.** • **There is no sector-specific AML/CFT guidance applicable to DNFBPs, except for trust and company service providers.**

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

4.4.1 Description and Analysis

1018. The POCA 2000, as amended provides for the regulation of pawning and any other commercial activity in which there is a likelihood of an unusual or suspicious transaction being conducted by including them in the Schedule of Regulated Business Activity.

1019. Therefore these organizations are required to adhere to the provisions of the POCA and the AMLR.

1020. All financial institutions are required to have appropriate policies which have regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned.

1021. In addition, the ECCB which ensures the soundness of the banking sector issues $100 as the highest legal tender in the Federation. Debit and Credit cards are promoted as being an effective alternate means to cash. Also, section 5(1) of the Payment Systems Act, 2008 states that "*The large value electronic funds transfer system shall be the sole system for large value payments and settlements."*

1022. ATMs are in wide use throughout the Federation. The ATMs are all connected to regulated financial institutions. There are no 'white label' ATMs in the Federation.

4.4.2 Recommendations and Comments

1023. The Federation is in full compliance with this Recommendation

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	**This Recommendation has been fully observed.**

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

5.1.1 Description and Analysis

1024. Each offshore company is required to have a domestic service provider that is licensed by the Financial Services Commission, while domestic companies are obligated to provide audited accounts and shareholder details to the Registrar. There are obligations on the service providers under the AMLR at regulation 4(2)(c)(ii) and (iii) to understand the ownership and control structure and to identify beneficial owners and controllers. Trust and corporate service providers are regulated by the FCS under the POCA for AML/CFT purposes.

St. Kitts

Companies Act

Registration

1025. The companies' registries for both St. Kitts and Nevis are housed within the Financial Services Regulatory Department of St Kitts and the Nevis Financial Regulation & Supervision Department, respectively.

St. Kitts

1026. In St. Kitts, the registration of companies is governed by the Companies Act (CA). Other laws applicable to legal persons include the Limited Partnership Act (LP Act) and the Foundations Act (FA). Categories of companies include ordinary private, ordinary public, exempt private and exempt public. A public company that has fewer than 51 members may apply to become a private company by altering its memorandum (s 16(1) of the CA). Companies doing business with persons who are not resident in the Federation are exempt from all income, capital gains and withholding taxes (s 206(1) of the CA). Companies are required to keep a register of members (shareholders) and a register of directors and secretary (control persons), and file an annual return with the Registrar. There are no provisions within the CA for the identification of beneficial ownership or control. Furthermore, there is no obligation to understand the ownership and control structure of companies or to verify the identity of beneficial owners.

1027. Pursuant to an amendment to the Companies Act (No. 14 of 2001), authorised persons must maintain in St. Kitts a record of each bearer certificate in its custody with the following information:

- the name of the company issuing the bearer certificate
- the identification number of the certificate, number of shares and the class of shares in the company contained in the bearer certificate;

- the identity of the bearer of the certificate, that is to say, the name, address, date of birth and details of identification; and
- beneficial owner, where applicable.

1028. The authorised person in St. Kitts, where the custody of the bearer share certificate is transferred to another custodian or agent, notify the Registrar of Companies within seven days of such transfer and such notice shall include the particulars of the new custodian or agent. The custodian or agent who fails or refuses to comply shall be liable to penalties of a fine ranging from EC$20,000-$30,000 (twenty to thirty thousand dollars), imprisonment to a term not exceeding twelve (12) months or revocation of the registered agent's licence.

Nevis

1029. In Nevis, the Nevis Financial Services Registry falls under the Nevis Financial Regulation and Supervision Department, which is an arm of the FSC. The registration of companies is governed by the Companies Ordinance for domestic limited liability and non-profit companies; the Nevis Business Corporation Ordinance (NBCO) and the Nevis Limited Liability Company Ordinance (NLLCO) for companies conducting business outside the Federation; and the Multiform Foundations Ordinance. At the time of the evaluation there were approximately 35,136 companies registered under the NBCO. Under section 17 of the NBCO and section 14 of the NLLCO, each corporation must have as registered agent a barrister or solicitor of the Federation with paid-up capital of at least EC$500,000. The registered agent is the liaison between the Registrar and the corporation when the corporation is served with a written notice, process or demand. Once the agent presents a receipt of mail or an affidavit stating that such mailing has taken place, the registered agent is relieved from further obligation to the corporation for service of the process, notice or demand.

1030. Under section 31 of the NBCO bearer shares are retained in the safe custody of the registered agent for the corporation or any other person authorised by the Minister. Furthermore, section 129 of the NBCO states that the registered agent should keep a register of each bearer share certificate issued for each of its companies. See. Details of information discussed above.

- the name of the company issuing the bearer share certificate
- the identification number of the bearer share certificate
- the class of shares and number of shares contained in the bearer share certificate
- the identity of the beneficial owner of the shares contained in the bearer share certificate that is to say : the name, address, date of birth , nationality and such other details of identification as may from time to time be prescribed by the Minister.

1031. There are no provisions with respect to bearer shares in the NLLCO. Neither are there provisions for the identification of beneficial owners in the NLLCO.

1032. For both St. Kitts and Nevis, the FSC has sufficient powers to compel corporations to submit beneficial owner information through the Services Financial Regulation and Supervision Departments. Additionally, the investigative powers of the police and the FIU can compel information on beneficial ownership. Adequacy, accuracy and timeliness could be enhanced if information on beneficial ownership were kept by the Registrar. Relevant authorities are able to share such information with other competent authorities domestically and internationally.

Federation

1033. The Cooperative Act applies to both islands of the Federation. Cooperatives are administered by the Registrar of Cooperatives under the Ministry of Agriculture.

1034. Pursuant to the POCA, the FIUA, the FSC Act and the AMLR information on the beneficial ownership and control of legal arrangements can be accessed from authorised persons and registered agents by FIU, law enforcement and judicial authorities, when necessary. See responses for Recommendations 17, 24, 26 and 27.

Additional Elements

1035. Each financial institution is required to have appropriate policies in place that have regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned. Such policies include vigilance policies which provide for the proper identification of all customers including beneficial ownership.

1036. Paragraph 47 of the Guidance Notes states – *Unless a company is quoted on a recognised stock exchange (see Appendix E) or is a subsidiary of such a company, steps should be taken to verify the company's underlying beneficial owner(s) – namely those who ultimately own or control the company. If a shareholder owns less than 5% of a company it may not always be necessary to verify his identity. The beneficial owners of a company should be regularly monitored and verification carried out on any new beneficial owners the identity of whom have come to light as a result of such monitoring or otherwise.*

1037. The expression "underlying beneficial owner(s)" includes any person(s) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

1038. Financial Institutions are aware that proper verification must be conducted and were informed as to methods which may be used to ensure proper identification of customers.

5.1.2 Recommendations and Comments

1039. The Authorities may wish to consider changes to the Companies Act to include measures that would provide for information on beneficial ownership and control of legal persons.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**LC**	• **No provision in the Companies Act with regard to beneficial ownership or control for domestic companies.**

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

5.2.1 Description and Analysis

St. Kitts

1040. A brief description of St. Kitts and Nevis trusts is provided in section 1.4 of this Report. Trusts Act, No.23 of 1996 – requires the registration of charitable trusts (section 10), spendthrift or protective trusts (section 11), unit trusts (section12) and ordinary trusts (section13). There is a central filing system for the attestation of a trust with the Registrar of Companies. The signed attestation of the existence of the trust contains information on the name of the trust, the type of trust, and the name and address of each trustee (individual or corporate). Documents delivered to the registrar in addition to the attestation of a trust include:

- the trust's name and the address of its office for service;
- whether the trust is an ordinary or an exempt trust;
- in the case of an exempt trust, an undertaking that the trustees of the trust will forthwith notify the Minister by notice in writing if the trust should no longer qualify as an exempt trust; and
- any other prescribed particulars.

1041. Trust business carried out under the Trust Act is a regulated business activity under the POCA. The FSC Act also defines "financial services" to include trusteeship. The trustee of a trust has record-keeping obligations at its office for service within the Federation under section 59 of the Trust Act. Section 74 of the Trust Act gives the Minister the powers to appoint inspectors to look into the affairs of the trust if he has prima facie evidence of fraud. Information on trusts can readily be accessed by the investigative and examination powers of the regulatory law enforcement authorities.

1042. There are obligations on the service providers under the AMLR at regulation 4(2)(c)(ii) and (iii) to understand the ownership and control structure and to identify beneficial owners and controllers. Each offshore trust must have a local service provider that is regulated by the FSC.

1043. These provisions however are not monitored where private domestic trusts are involved due to the very nature of such a trust. Private domestic trusts and the extent of their use in St. Kitts and Nevis will require proper reporting of such by attorneys. At present the majority of lawyers in St. Kitts and Nevis have challenged the FSC's authority to conduct onsite examination for AML/CFT purposes. Their main concern stems form the broad coverage of the legal profession under the POCA instead of limiting coverage to the conduct of relevant activities under Recommendation 12. This has not hampered the FSC from conducting two on-site inspections on licensed attorneys in 2008.

Nevis

1044. The Nevis International Exempt Trust Ordinance, 1994, as amended (NIETO) allows for the registration of international trusts in respect of which:

(a) a least one of the trustees is either:

(i) a corporation incorporated under the Nevis Business Corporation Ordinance; or

(ii) a trust company doing business in Nevis;

(b) the settlor and beneficiaries are at all times non-resident; and

(c) the trust property does not include any land situated in St. Christopher and Nevis.

The types of international trusts that can be registered are spendthrift (s.6), charitable (s.7) and trusts for non-charitable purposes (s.8).

1045. Section 3(2)(c) of the Ordinance provides that an international trust shall be invalid and unenforceable to the extent that – *(a) it purports to do anything contrary to the laws of St. Christopher and Nevis; or (b) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the laws of St. Christopher and Nevis. (c) the trusts assets, or any part thereof, are the proceeds of a crime for which the settlor is convicted.*

1046. In addition to the prescribed fee and notice of the name and registered office of the trust, an application for the registration of a trust must be accompanies by a certificate from a trustee company, a barrister or a solicitor certifying

- that the trust upon registration will be an international trust or a qualified foreign trust;
- the date on which the trust was created, settled or established;
- in the case of a qualified foreign trust, the law under which the trust was settled;
- where the governing law is changed to the law of Nevis, that the trust is registered as a qualified foreign trust and the date of its registration.

1047. There are no explicit provisions within the NIETO for a trustee, a protector or the registered office of the trust to be resident within the Federation. However, section 43 states that the registered office of a trust shall be the office of the trust company or the corporation which is the trustee.

1048. There are no provisions for trustees to identify beneficial ownership or control in NIETO. However, as stated above there are obligations on the service providers under the AMLR at regulation 4(2)(c)(ii) and (iii).

1049. Trust companies and trustees are covered by the AMLR and the GN, and are subject to supervision by the FSC. Information on trusts can readily be accessed by the investigative and examination powers of the regulatory law enforcement authorities.

5.2.2 Recommendations and Comments

1050. The St. Kitts and Nevis Authorities should put provisions in place that would facilitate obtaining relevant information with regard to private domestic trusts.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**LC**	• **Inability to assess whether information on private domestic trusts is adequate and accurate.**

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

1051. The Federations regime for NGOs is governed by the Non-Government Organisation Act (NGOA) of 2008, the St. Kitts Companies Act, and the Nevis Companies Ordinance. The

NGOA calls for the registration of NGOs by application to Registrar of Companies with the submission of the following:

- The name and address of the NGO;
- the Constitution or Memorandum and Articles of Association of the NGO, demonstrating that it is a company limited by guarantee;
- a brief statement and details of the aims, objects and purposes of the NGO;
- the organisational structure of the NGO including its membership and management, and how Directors are elected, their duties and powers and terms of office;
- the names, addresses and occupation of all of the members of the Board of Directors of the NGO; and
- the by-laws, if any, of the NGO.

1052. The NGOA was enacted on November 12, 2008. The NGOA enhances the Federation's capacity to obtain information on the activities, size and other relevant aspects of NGOs to identify the features and types on NGOs that are at risk of being misused for terrorist financing. In addition, the FSC and the FIU monitor the sector (both locally and internationally) to determine potential vulnerabilities to terrorist activities and safeguard against such by providing training and guidance to the sector. The FSC provided training to NGOs prior to the passing of the NGOA.

1053. The Guidance Notes on the Prevention of Money Laundering and the Financing of Terrorism provides ways in which charities and other not for profit organizations may be used to fund terrorist activity (see paragraphs (i) and (v) of Appendix B. Guidance against such misuse of charities and NGOs is given so as to assist such entities in detecting and deterring instances of terrorist activities. In addition, guidelines and notices are provided concerning the UN sanctions lists and the persons on such lists.

1054. The measures stated above pertain to all NGOs regardless of size. However, it should be noted that the NGO sector does not account for a significant portion of the financial resources under control of the sector.

1055. The NGOA requires that information regarding 1) the purpose and objectives of their stated activities, 2) the name and address of each board member. The names of registered NGOs will be published in the Gazette on 20th February of each calendar year. The law calls for an NGO Commission to function as an oversight body over the activities of NGOs. Financial statements are to be submitted to the Registrar by the 30th September of each calendar year, and such records will be published by the registrar in one of the local newspapers. However, there are no provisions within the NGOA for the NGO or the Registrar to make public (1) the purpose and objectives of their stated activities, and the identity of person(s) who control their activities.

Companies Act

1056. Section 5(2) of the Companies Act provides that a company shall deliver to the Registrar a memorandum of association stating, among other things, whether the liability of the members of the company is to be limited by shares or by guarantee and in the case of a company limited by guarantee, the number of members with which the company proposes to be registered and the amount of the guarantee. In respect to the identification of persons who own, control or direct the companies' activities, see responses for Recommendation 33 at section 5.1 of the Report.

Companies Ordinance

1057. *Section 328.1 of the Companies Ordinance provides that: Without the prior approval of the Minister, no articles shall be accepted for filing in respect of any non-profit company. (2) In order to qualify for approval, a non-profit company shall restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or to the promotion of some other useful object.* In respect to the identification of persons who own, control or direct the companies' activities, see responses for Recommendation 33 at section 5.1 of the Report.

NGOs

1058. Under section 18 of the NGOA, possible sanctions include deregistration or the loss of tax exemption.

Companies Act

1059. *Section 216 states that: For the purpose of any Section of this Act where under or pursuant to this Act an officer of a company or other body corporate who is in default is guilty of an offence, the expression "officer in default" means any officer of the company or body corporate who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the Section.*

Companies Ordinance

1060. *Section 530. (1) A person who makes or assists in making a report, return, notice or other document*

(a) that is required by this Ordinance or the regulations to be sent to the Registrar or to any other person, and

(b) that

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or to both.

NGOs

1061. The registration of NGOs is described above.

Companies Ordinance

1062. See reference to section 328 of the Companies Ordinance above.

Registration

1063. Section 329 of the Compannies Ordinance provides that:. The articles of a non-profit company shall be in the prescribed form, and, in addition, shall state

(a) the restrictions on the business that the company is to carry on;

(b) that the company has no authorised share capital and is to be carried on without pecuniary gain to its members, and that any profits or other accretions to the company are to be used in furthering its business;

(c) if the business of the company is of a social nature, the address in full of the clubhouse or similar building that the company is maintaining; and

(d) that each first director becomes a member of the company upon its incorporation.

1064. Charities and other non-profit organisations were added to the schedule of the POCA and are therefore subject to the record-keeping requirements under the POCA.

1065. Charitable and non-profit organisations were added to the schedule of regulated activities under the POCA as amended thus bringing them under the supervision and regulation of the FSC.

1066. Therefore the record keeping provisions stated in regulation 8 of the AMLR and paragraphs 117-130 of the GN will also apply.

1067. Memorandum of Understanding between law enforcement agencies addresses this issue. In addition, the FSC co-operates with the FIU in order to ensure that matters pertaining to money laundering and terrorist financing are communicated in a prompt manner.

1068. All such information can be obtained during an investigation as the NGOs fall within the remit of POCA and the AMLR which provide for access to relevant information by a competent authority

1069. The Central Authority for receiving such international requests is the Attorney General. However, in some cases, direct contact has been made with the FIU in order that assistance may be provided in a timely manner. MLATs may also be extended to the provision of information/assistance with terrorist related matters. See responses for Recommendation 36.

5.3.2 Recommendations and Comments

1070. While there is a system of registration of NGOs, and there are provisions under the NGOA for a Non-Governmental Organisation Commission to monitor compliance, the recent legislative changes do not allow for sufficient time to allow or test for effective implementation

1071. The purpose and objectives, and identity of persons who control the activities of non-profit organisations should be made public, and there should be documented evidence of public availability. However, the Authorities indicated that it is standard practice for all information on domestic entities to be publicly available at the general registry.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• **The purpose and objectives, and identity of persons who control the**

		activities of non-profit organisations are not publicly available and there is no documented evidence of public availability. • **The recent issue of requirements to monitor compliance does not allow for sufficient time to test for effective implementation.**

6. NATIONAL AND INTERNATIONAL CO-OPERATION

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

6.1.1 Description and Analysis

Recommendation 31

1072. The Attorney-General is the competent authority for St. Kitts and Nevis. The Financial Intelligence Unit (FIU), the Director of Public Prosecutions and the Royal St. Christopher and Nevis Police Force signed a memorandum of understanding on the 27th April 2007. The purpose of this agreement is to facilitate the free flow of information between the parties as it relates to the investigation and prosecution of money–laundering and terrorist financing offences. It also specifies the need for confidentiality. The Attorney- General is not part of this arrangement to the extent that He is excluded then there is no information available as to what mechanism is in place for the Attorney-General to co-operate and coordinate concerning the development and implementation of policies for combating money laundering and financial terrorism with the other agencies. To the extent that there is an operational framework between the other agencies it is clear that it has not been functioning as efficiently as it should.

1073. Although there is a MOU between the police, the Director of Public Prosecutions, Customs and the Police which was signed since 2007, there does not appear to be the level of cooperation and consultation between the police and the DPP concerning AML/CFT matters. There appears to be some uncertainty on the part of the police as to what charges should be preferred under the Proceeds of Crime Act and the Anti-Terrorism Act. The Examiners were left with the distinct impression that despite the excellent relationship between the Director of Public Prosecutions and the Police Force there needs to be more guidance given to the police by the DPP relative to AML/CFT matters.

1074. There is an established procedure for Policy Development that is initiated by Departments with approval from the Ministry of Finance and Cabinet that extends to ML and FT.

Additional Elements

1075. The FSC is empowered to issue guidelines and directives to all regulated business activities. In addition, the FSC and FIU provide industry specific training and guidance to such entities.

Recommendation 32

1076. While the legislative framework is in place for combating anti-money laundering and terrorist financing there is very little implementation of these measures. There is presently an ongoing law revision exercise which is seeking to review and update all Federal Laws. This exercise is

being spearheaded by the Law Revision Commissioner under the Ministry of Justice and Legal Affairs. A number of amendments to the Proceeds of Crime Act and the Anti-Money Laundering Act were made this year. In addition several new pieces of legislations were passed.

1077. The Federation's effectiveness of its systems for combating money laundering and terrorist financing are usually reviewed annually after conducting onsite inspections and receiving general feedback from the regulated businesses. The Attorney General's chambers is presently undergoing a law revision exercise to ensure that the Federation's laws are not overly archaic and adhere to the requirements of international standard setting bodies.

***Recommendation 30* –Resources (Policy makers)**

1078. The Attorney General's (AG's) Chambers forms part of a wider Ministry that is officially known as the Ministry of the Attorney General, Justice and Legal Affairs. At the head of the Attorney General's Chambers is the Attorney General himself who is also the Minister of Justice. In that capacity he sits with the Cabinet of Ministers and is critically involved in the decision making process of the executive arm of the Government. The position of Attorney General is a Federal one that therefore straddles the island of Nevis in terms of overall supervision. However the division of the Chambers on the Island of Nevis comes specifically under the purview of the Legal Advisor for Nevis. The Legal Advisor for Nevis advises and represents the Nevis Island Administration on all legal matters of a civil nature.

1079. Within the AG's Chambers responsibility is exercised over all civil matters for government ministries as well as for some statutory organisations. The Ministry of Justice is responsible for managing the budget, hiring staff, supplying technical resources, organising training and other administrative matters. Employed within the civil arm of the Ministry are five State Attorneys - known as Crown Counsel. The Office of the Director of Public Prosecutions (DPP) has two prosecutors in addition to the DPP. There are two parliamentary counsels and one senior parliamentary counsel. The full complement of Crown Counsels including prosecutors and parliamentary counsel should be twelve.

1080. Limitations in both human and financial resources have made it extremely difficult to achieve and maintain the desired target. There is definitely room for improvement in terms of adequate funding and staffing. Technical resources could be improved upon but are generally adequate. There is also a position for a Solicitor General whose responsibility it is to supervise the legal aspects of the work of Crown Counsel and to operate as the Senior Litigating Counsel in court matters. The Administrative Head of the Department is the Permanent Secretary and she is supported by several clerical members of staff.

1081. The Attorney General has indicated that he is presently advertising in an effort to fill the current vacancies. He also indicated that there are adequate funds to fill those vacancies. He has agreed that the current vacancy has affected the efficiency of his office since it places a heavier burden on the current staff. There is also need for a law library in order to make reference material easily available. While there is access to the Internet that does not always provide all the necessary assistance.

1082. Another department which falls under the administration of the Ministry of Justice and Legal Affairs is the Office of the Director of Public Prosecutions. The Office of the Director of Public Prosecutions (DPP) has two prosecutors in addition to the DPP. However the Director of Public Prosecutions is solely independent of the Attorney General since she is not accountable to him in the execution of her duties. The DPP is responsible for all criminal matters in the Federation. In addition she is responsible for applying for a number of ancillary orders under the Mutual

Legal Assistance Act, the POCA, the ATA and the Fugitive Offenders Act. The DPP has indicated that she is presently short-staffed.

1083. There is an internal organisational chart and each member of staff is sensitized on the hierarchy of offices and different areas of responsibility within the Department.

1084. Crown Counsels and Parliamentary Counsels take instructions from the Attorney-General who is himself instructed by the Cabinet of Ministers.

1085. There has not been a specific document circulated officially on the requirement of confidentiality but it is a well-established fact that there is a level of secrecy that must be preserved on a number of levels.

1086. The Human Resources Department has been involved in a critical exercise of public sector reform with a view to clarifying roles within the civil service including a re-evaluation of job descriptions, emphasizing the importance of confidentiality, transparency and promoting other aspects of good governance. It is expected that this exercise would be completed by October of this year.

1087. The Attorneys-at-Law in the Attorney-General's Chambers and the office of the DPP are all highly trained professionals and hence appropriately skilled to carry out their duties.

1088. The Attorney-General has attended a number of training courses on combating ML and TF Specialised training has been conducted for legislative drafters and Crown Counsel who is specifically assigned to deal with ML, TF and MLA matters.

1089. The DPP has received some relevant training but it is clear that her staff have not received the relevant training since they have recently joined the Chambers.

6.1.2 Recommendations and Comments

1090. The Authorities need to foster a greater level of cooperation pursuant to the MOU which was signed in 2007.

1091. The DPP should play a pro-active role in giving guidance to the police in relation to AML/CFT investigations.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	• **There is insufficient cooperation and consultation between the DPP and the Police when investigating possible money laundering and terrorist financing offences.** • **No pro-active role taken by the DPP with regard to giving guidance to the police in relation to their AML/CFT investigations.**

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

6.2.1 Description and Analysis

Recommendation 35 & SR.I

1092. St. Kitts and Nevis acceded to the Vienna Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1995. St. Kitts and Nevis have also ratified the United Nations Convention Against Transnational Organized Crime (Palermo Convention) in May, 2004 and the International Convention for the Suppression of the Financing of Terrorism (1999) (Terrorist Financing Convention) on the 16th November 2001. Most of the Articles of these three conventions have been enacted into domestic legislation as shown by the following table.

Table 12

Treaty	**Articles**	**St. Kitts & Nevis situation**
Vienna Convention (1988)	3 (Offences and Sanctions)	The Drugs Prevention of Misuse Act (DPMA), No. 11 of 1986, and the Precursor Chemicals Act (PCA) are the principal pieces of legislation governing this area. Sections 4-10 of the Drugs Prevention of Misuse Act, as well as sections 15, 16 and 19 are applicable. See also sections 2, 4, 23 – 33 of the Precursor Chemicals Act (PCA) Both Acts provide maximum penalties of four hundred thousand dollars. In the case of the DPMA it also uses a penalty of three times the street value of the drug. Punishment ranges from five years to life imprisonment in the DPMA.
	4 (Jurisdiction)	Please see sections 2 and 20 of the DPMA.
	5 (Confiscation)	Sections 22, 23 and 27 of the DPMA and sections 34 and 35 of the PCA
	6 (Extradition)	These offences fall under the Schedule of Offences pursuant to the Extradition Act Cap. 105 of

		the Laws of the Federation.
	7 (Mutual Legal Assistance)	The Mutual Assistance in Criminal Matters Act (MACMA) 1993.
	8 (Transfer of Proceedings)	The MACMA provides in section 11 for this possibility.

	9 (Other forms of co-operation and training)	Co-operation has been well established on a regional and international basis with both the Police and the FIU playing a key role in providing assistance. The Advanced Passenger Information System has been quite useful in flagging persons who are or might be involved in suspicious activity. The system was introduced in 2007 (immigration (Amendment) Act, no.2 of 2007 and sends ahead vital information to immigration and customs of persons who are on a particular aircraft or vessel, or relating to the vessel itself and its cargo (Customs (Advance Passenger and Cargo Information) Regulations, 2007 that is scheduled to land in the Federation within a specified time frame. The National Crime Commission Act was passed in 2004 as Act No. 3 of 2004. The Act sets up a Commission to conduct investigations and inquiries into criminal activity within the Federation with special emphasis on Drugs and narcotics; Fraud; Money laundering; Organised crime; Other serious offences The Act also aims to facilitate greater cooperation between law enforcement agencies to combat the prevalence of crime and recommend appropriate policies to the Government. Additional objectives are to maintain a database on crime, to liaise with and cooperate with other Crime Commissions within the region and the international community and to monitor and evaluate actions or programmes intended to prevent or reduce crime levels within the Federation. The Commission has been officially constituted and is operational.
	10 (International Co-operation and Assistance for Transit states)	Assistance has been provided and is on-going as the need arises on a regional basis through the regional security system. This is given legal effect through the Regional Security System Act No. 19 of 2001.

	11 (Controlled Delivery)	There is no specific provision in law for this, however some assistance has been provided through "ship rider facilities' participated in by members of the defence force.
	15 (Commercial carriers)	Please see the response to Article 9 above. The Maritime Areas Act is also applicable in deeming a foreign vessel as not being entitled to innocent passage where it has committed a prescribed activity. Please see Part IV of that Act.
	17 (Illicit Traffic at sea)	The Merchant Shipping Act, No. 24 of 2002 is applicable. The (Ship and Port Facility Security Regulations No. 26 of 2004 are also applicable. The Saint Christopher and Nevis Coast Guard has jurisdiction over Saint Christopher and Nevis waters in this regard and this includes powers of stopping and searching. Under the Maritime Areas Act, No. 3 of 1984 provision is made prohibiting "prescribed activity" This is defined as being any threat or use of force against the sovereignty, territorial integrity or political independence of Saint Christopher and Nevis, or acts in any other manner in violation of the principles of international law embodied in the Charter of the United Nations. Extensive powers of stopping, boarding, inspecting and searching a foreign vessel and powers of arrest for both the master and persons on board such a vessel have been given to authorised officers. An authorised officer includes the Coast Guard.
	19 (Use of mail)	Post Office Act Cap. 201. Section 18 sets out the criminalisation of certain offences using the post; this includes the offences of sending opium, cocaine, heroin or other narcotics. . Section 22 allows the

		applicability of the Customs Control and Management Act and all the powers of customs exerciable thereunder for the purposes of the post.
Palermo Convention	5 (Criminalization of participation in an organized criminal group)	Section 3 of the Organised Crime Prevention and Control Act No. 22 of 2002 criminalises the participation of a person in an organised criminal group
	6 (Criminalization of laundering of the Proceeds of Crime)	Proceeds of Crime Act, No. 16 of 2000 section 4
	7 (Measures to combat money laundering)	The AML Regulations, No. 25 of 2008 provides specifically for operating guidelines for banks and non-bank financial institutions re combating of money-laundering.
	10 (Liability of Legal persons)	The term "person" has been established in law as including "corporate persons". However the Proceeds of Crime Act in section 4(1) (b) specifically penalises a corporate body.
	11 (Prosecution Adjudication and sanction)	1. With respect to criminalisation of participation in an organised criminal activity et al. section 8 of the Organised Crime (Prevention and Control) Act, is applicable. The maximum fine is 200,000.00 as well as imprisonment for twenty-five years or both. 2. In terms of corruption, this is criminalised under section 9 of the Organised Crime Prevention and Control "Act". A description of the term 'corruption" is given in section 4 while section 2 defines "public officer" broadly to include any holder of a public office. The offence is punishable at both a summary level as well as on indictment. The fine for the offence is $50, 000.00 wherever it is prosecuted but the term of imprisonment ranges from five to fifteen years for summary jurisdiction and on indictment respectively. 3. The laundering of the proceeds

		of crime is dealt with in section 4 of the Proceeds of Crime Act. 4. Obstruction of justice is criminalised pursuant to the Organised Crime (prevention and Control) Act where the maximum fine is 150,000.00 for both summary jurisdiction and upon indictment however the terms of imprisonment vary from five years to fifteen years for the different courts.
	12 (Confiscation and Seizure)	Sections 7, 11, 22 and 43-51 of the POCA
	13 (International Co-operation for the purposes of confiscation)	Section 14 of the POCA
	14 (Disposal of confiscated proceeds of crime or property)	Section 22 of POCA
	15 (Jurisdiction)	The OCPCA in defining an organised criminal group refers to "three or more persons in or outside of Saint Christopher and Nevis". While the Act does not specifically address extraterritoriality, it can reasonably be interpreted as having that application.
	16 (Extradition)	Extradition Act.
	18 (Mutual Legal Assistance)	The Mutual Assistance in Criminal Matters Act.
	19 (Joint Investigations)	These are conducted on a case-by-case basis. There is a high level of cooperation particularly in terms of regional cooperation. The advanced passenger information system has been critical in being able to trace and identify the movements and location of criminals as well as criminal activity
	20 (Special Investigative Techniques)	
	24 (Protection of witnesses)	There is an informal witness protection system that is done on a case-by-by case basis based on a level of cooperation between the police and the St. Kitts and Nevis Defence Force where the witnesses are kept in protective custody by the Defence Force. Where circumstances demand it and resources permit, a witness may be sent to another

		jurisdiction for a period of time. The size of the jurisdiction and the population makes the application of this kind of technique impractical within the long term.
	25 (Assistance and protection of victims)	As indicated in the column just above this one. Assistance is also provided by the Social Welfare department in the care of victims particularly where those victims are women, children and the elderly.
	26 (Measures to enhance cooperation with law enforcement authorities)	The relationship between FIU and the Police, and FIU and Customs is being strongly cultivated. This includes attending joint training seminars where money laundering and other related criminal activities issues are tackled directly, and common threats that each level of these Departments are exposed to. There is a Memorandum of Understanding between these three institutions that continues to be enforced.
	27 (Law Enforcement cooperation)	The Police have regular interaction and liaising with other regional law enforcement authorities and agencies and this extends to Interpol the FBI and other international bodies.
	29 (Training and technical assistance)	
	30 (Other measures)	The National Crime Commission Act was passed in 2005. The Commission has been meeting since January of 2008 with an aim of conducting investigations and inquiries into criminal activity in the Federation with particular emphasis on drugs and narcotics, fraud, money laundering; and organised crime. The Committee has been meeting. In November of 2008 there was a National Consultation held to pool ideas and resources and to identify common threats as part of this initiative. The Chamber of Industry and Commerce has played an active role as well as the National Parliament, the churches and other key

		stakeholders in partnering with National security to strategise on ways to prevent and reduce criminal activity.
	31 (Prevention)	The Federation passed the Non-Governmental Organisations Act in 2008 to be applicable to a wide range of charitable organisations. The Act promotes the implementation of internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources. The Federation operates within a strong culture of conducting due diligence checks on persons seeking to enter into any major investments within the Federation, persons applying for sensitive positions in terms of national security, finance administration et al. The licensing procedure for commercial enterprises usually requires a background check on the bona fides of applicants. Regular reporting, annual audits are required in most cases by legislation. All financial institutions and money service businesses now require fundamental customer identification for new customers and reporting of suspicious transactions. Those measures are covered in policy procedures for each institution and are detailed in the AML Regulations.
	34 (Implementation of the Convention)	Organised crime Prevention and Control Act, The Proceeds of Crime Act, AML Regulations, The Criminal Defence Act.
Terrorist Financing Convention	2 (Offences)	These acts are covered in the Anti-terrorism Act No. of 2002, particularly sections 12- 19
	4 (Criminalization)	See sections 12-31 of the ATA.
	5 (Liability of legal persons)	The Interpretation Act defines "person" in section 2 of that Act, as including a legal person as well as a natural person.
	6 (Justification for commission of offence)	Please see the definition of 'terrorist activity' in section 2 of

		the ATA which does not allow justification.
	7 (Jurisdiction)	The definition of "terrorist activity" includes activities committed both within and without St. Christopher and Nevis. Additionally section 16 refers to this type of extraterritorial process.
	8 (Measures for identification, detection, freezing and seizure of funds)	These are dealt with primarily in sections 32- 45 of the ATA.
	9 (Investigations & the rights of the accused).	These measures are covered in sections 41, 48 and 49 of the ATA. Sections 95-99 of the ATA are also applicable
	10 (Extradition of nationals)	Please see section 104 of the Extradition Act.
	11 (Offences which are extraditable)	
	12 (Assistance to other states)	Assistance may be provided under section 103 of the Act. Additionally the FIU has jurisdiction over terrorist financing matters and may provide assistance through those means.
	13 (Refusal to assist in the case of a fiscal offence)	There is no provision providing for such a refusal
	14 (Refusal to assist in the case of a political offence)	There is no provision providing for such refusal
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	The definition of "terrorist activity" prohibits the use of those grounds listed there as a basis for refusal
	16 (Transfer of prisoners)	There is no explicit provision for this but this is feasible based on the Mutual Assistance in Criminal Matters Act.
	17 (Guarantee of fair treatment of persons in custody)	Sections 95-99 of the ATA
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	This is dealt with in a number of sections including sections 19, 20, 30A, 66, 68, 74, 75, 76 and 78.

1093. Based on the table above, St. Kitts and Nevis has implemented the majority of the Articles of the relevant conventions. However, Articles 20 and 29 of the Palermo Convention and Articles 11 and 16 of the Terrorist Financing Convention have not been implemented. Additionally, as discussed later under Rec. 39, money laundering and terrorist financing are not predicate offences for the purposes of extradition.

Resolution 1267

1094. Resolution 1267 and its successor resolutions require countries to freeze without delay funds and other assets of the Taliban, Osama Bin Laden, Al-Qaida and their associates who have been designated as terrorist by the United Nations Security Council. While section 43 (4) of the ATA makes provision for the freezing of funds in certain circumstances, none of those circumstances satisfy the requirements for the freezing of funds and assets under Resolution 1267. The procedures for authorising the access to funds for basic expenses, the payment of certain types of fees and service charges all comply with the requirements of S/RES/1452(2002) except that there is no provision for extraordinary expenses and in any event they do not apply to fund of the Taliban and Al-Quida. See. Discussions in sections 2.3 and 2.4 of this Report.

1095. While St Kitts and Nevis has legislation which authorises the search and detention of vessels, there is no provision in any legislation for denying permission for any aircraft to take off or land if it is owned, leased or operated by the Taliban.

Resolution 1373

1096. Although the Minister of National Security is authorised under the section 3 of the ATA to designate persons as terrorist, no person or organisation has been designated in St. Kits since the legislation was enacted. The Anti-Terrorism Act provides in section 12, 13, 14 and 15 for the criminalisation of the Offences of fund-raising for terrorist activities, use and possession of property for terrorist purposes, entering into funding arrangements for terrorist purposes and engaging in money laundering for terrorist purposes.

Additional Elements

1097. St. Kitts and Nevis signed the Inter-American Convention on Terrorism in 2002

6.2.2 Recommendations and Comments

Recommendation 35

1098. The St. Kitts and Nevis Authorities should ensure that all the Articles of the Conventions are fully implemented.

Special Recommendation 1

1099. The ATA should be amended to make provision for the freezing of funds of Al-Qaida, Osama Bin Laden, the Taliban and their associates and other persons designated by the U.N Security Council.

1100. The St. Kitts and Nevis Authorities should ensure that legislation should provide specifically for an aircraft to be denied permission to land if it belongs to Al-Qaida, the Taliban or their associates.

1101. The statute of limitation for commencing money laundering offences should be extended and unless the limitation is removed altogether, where a person is a fugitive from justice then the limitation period should be longer.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• **All relevant Articles of the Conventions have not been fully implemented.**
SR.I	**PC**	• **The ATA does not provide for the freezing of funds belonging to Al-Qaida, the Taliban or their associates or other persons designated by the U.N Security Council.** • **No designations have been made under UNSCR 1373.** • **The limitation period for commencing prosecution for money laundering offences is too short.** • **There is no provision for extending the statute of limitation where a person deliberately tries to escape from prosecution.** • **No legislative provision for any aircraft belonging to Al-Qaida, the Taliban or their associates to be denied permission to land.**

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

6.3.1 Description and Analysis

Recommendation 36 and SR. V

1102. The Mutual Assistance in Criminal Matters Act, Cap. 4.35 (MACMA) provides the mechanism for mutual legal assistance in criminal matters to Commonwealth countries and other countries other than Commonwealth countries. Criminal matters refer to any investigations or proceedings which have been instituted for an offence committed or suspected on reasonable grounds to have been committed against the Laws of St. Kitts and Nevis or the requesting country. The definition extends to forfeiture proceedings, restraint orders, proceedings for the imposition of pecuniary penalties calculated by reference to the value of property arising out of criminal proceedings whether the proceedings are described as criminal or civil proceedings. This Act does not infringe any existing form of co-operation between St. Kitts and any other country nor does it prevent the development of other forms of relationship between any other law enforcement agencies or prosecuting authorities in St. Kitts and Nevis and any international organisations such as Interpol. The Act provides for assistance in the following areas; obtaining evidence, locating or identifying persons who are believed to be in St. Kitts and Nevis, obtaining article or thing by search and seizure if necessary, assistance in arranging for a person to attend the requested state in order to give or provide evidence, transferring prisoner and serving documents.

1103. The Act provides broadly for the provision of assistance where an investigation has been commenced in a criminal matter in the requesting State or proceedings that have been certified to be criminal proceedings have been instituted in that State.

1104. Where a person has been charged with or convicted for a serious offence in a Commonwealth country, or is suspected of committing such an offence then the central authority for St. Kitts and Nevis may render assistance to that country in tracing property which was obtained from that offence if that property is suspected to be in St. Kitts and Nevis. Similar assistance can be granted to obtain restraining orders and to register certain orders which impose a pecuniary penalty or a restraint order on property which is suspected to be in St. Kitts and Nevis. It should

be noted that for the purposes of this Act, 'serious offence' refers to an offence for which the minimum custodial sentence is three (3) years imprisonment or the value of the property derived from the commission of the offence is not less than twenty-five thousand dollars. This threshold is lower than the four years custodial sentence required by the Palermo Convention.

1105. As noted in section 2.1 of the Report, the financing of terrorism is not a predicate offence for money laundering because as a hybrid offence it does not meet the definition of a serious offence. The penalty on summary conviction is a term not exceeding six (6) months, which is below the hybrid threshold, which is more than one (1) year. However, the Examiners are of the view that this would not impact on St. Kitts and Nevis's ability to provide mutual legal assistance in this area.

1106. St. Kitts and Nevis may request assistance in all those matters for which they are willing to grant assistance.

1107. Section 29 of the MACMA makes provision for assistance to other non Commonwealth Countries with which they have bilateral arrangement or treaties. One such example is the Mutual Assistance Treaty which St. Kitts and Nevis signed with the USA. In 2001, the Saint Christopher and Nevis and the United States of America Treaty on Mutual Assistance in Criminal Matters Act was passed to give effect to that treaty. The Attorney General's Chambers is the central authority for these matters.

1108. The POCA at section 59 provides for the DPP and the FIU to render assistance to the competent authority of another State in satisfaction of all the requirements listed in E.C. 36.1.

1109. The Financial Intelligence Unit Act, Cap. 18:04 also provides for that Unit to render assistance to a Foreign Intelligence Unit on the conditions that that Unit is willing to enter into an agreement to render similar assistance. The FIU is empowered among other things, to obtain information, order a bank account to be frozen if the request relates to the proceeds of any crime and may enter into any agreement with a foreign FIU to facilitate the proper execution of its functions.

1110. The Regulator is also authorised to render assistance to regulators in a foreign jurisdiction to furnish that body with information, documents or any assistance which is relevant to its function as a regulator. The requesting regulatory body must agree in writing to provide similar assistance.

1111. There is no provision in the FIUA for seizing instrumentalities used in or intended for use in the commission of serious offences or for St. Kitts and Nevis to request the seizure of such instrumentalities.

1112. Most requests for mutual legal assistance emanate from the U.S. There are currently no treaty arrangements with most non-commonwealth countries. However the Attorney General has assured the Examiners that assistance to the latter is generally provided by the Central Authority once it does not involve litigation. This is in addition to assistance that is provided FIU to FIU. Where a matter may not fully warrant mutual legal assistance from the Central Authority the FIU may be called upon to assist where possible.

1113. Once a request is made for MLA the matter is usually dealt with in a timely manner. There are some matters where information would have been provided pursuant to initial requests but which have not advanced any further because the requesting country has not issued any further requests.

1114. In terms of freezing, seizing and confiscation, this is conducted in an expeditious manner and there are no major difficulties.

1115. The kinds of matters that would be relevant would include forfeiture proceedings, proceedings to restrain dealings with property, proceedings for or suspected on reasonable grounds to have been committed, against the law of that country. "Property" is defined as including money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property, whether situated in Saint Christopher and Nevis or elsewhere, and includes any interest in any such property. The restrictions set out in the law are the usual provisions relating primarily to offences of a political character and the requirement of dual criminality.

1116. Mutual legal assistance is not prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions. The prerequisites for granting assistance is that the person must have been charged or convicted or suspected on reasonable grounds to have committed a serious offence, which would have been an offence in St. Kitts and Nevis (dual criminality) and the requesting state must be a Commonwealth country or a country with which St. Kitts and Nevis has a treaty arrangement. In addition section 105 of the ATA provides for a counter terrorism convention to be used as a basis for mutual legal assistance in criminal matters between St. Kitts and Nevis and the requesting State. However as stated before the Central Authority is willing to render assistance to countries that do not meet the perquisites once the assistance does not involve litigation.

1117. Restrictions apply to the prosecution or punishment of a person for a political offence, or as a result of his race, sex, religion, nationality, place of origin or political opinion. If the offence had been committed in St. Kitts and Nevis and it would not have been a criminal offence then a request for MLA shall be refused. Where the request relates to a person who committed an offence outside of the requesting country would not have constituted an offence had it occurred outside of St. Kitts and Nevis then the request may be refused. Where by reason of lapse of time a person could not be prosecuted in St. Kitts and Nevis then a request in relation to that person may be refused. It should be pointed out that under the Mutual Assistance in Criminal Matters Act, an offence is not a political offence if it is an offence under any international convention to which the requesting State and St. Kitts and Nevis are both parties to (section 18 (9)).

1118. There are no provisions in the Act for mutual legal assistance to be refused purely on the ground that the offence involves fiscal matters. See. Section 18 of the MACMA.

1119. The Act does not provide for the refusal of mutual legal assistance on the grounds of secrecy or confidentiality imposed on financial institutions except where legal or professional secrecy apply.

1120. The powers to compel the production of records or information as well as to search persons and premises to obtain those records and to seize those records if necessary and to take witness statements that law enforcement has in accordance with Rec. 28, is also provided to the central authority under the MACMA.

1121. There have been no cases of jurisdictional conflict and there is no formal mechanism in place to deal with such conflicts. However should such situations arise St. Kitts and Nevis would be prepared to resolve such conflicts in the interest of justice.

Additional Elements

1122. The powers of competent authorities which are exercised under R.28 are available for use when there is a direct request from a foreign judicial or law enforcement agency. Under R.28

competent agencies are entitled to compel production of documents, search persons or premises or seize documents during the course of investigations for ML, FT or other predicate offences.

1123. The FIU may order any person to freeze a bank account once a request is made from its foreign counterpart and the request relates to the proceeds of crime. The assistance the FIU can offer appears to be restricted to ML and FT matters.

1124. Under the Financial Services (Exchange of Information) Regulations the regulatory authority is entitled to assist a foreign regulatory authority with any inquiries, provided it is required as part of its regulatory function. The regulatory authority may request any person to furnish it with information with respect to any matter relevant to the inquiries to which the request relates or to produce any documents or to provide it with any assistance in relation to the inquiries to which the request relates as the regulatory authority may specify. If the person to whom the request is made refuses to comply then a Judge may issue an order for them to comply. Where the information sought is a matter of public interest then the regulatory authority is required to have written permission from the Attorney General before such information is given.

Recommendation 37 and SR. V

1125. In St. Kitts and Nevis, the basis for rendering mutual legal assistance is dual criminality. According to section 18(2)(d) of the MACMA, 'a request which relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in St. Kitts and Nevis, would not have constituted an offence under the criminal law of St. Kitts and Nevis shall be refused.' However in the absence of dual criminality assistance can be rendered for less intrusive and compulsory measures. In fact section 5 of the MACMA makes it clear that the Act does not exclude other forms of co-operation in respect of criminal matters between St. Kitts and Nevis and any Commonwealth country or between law enforcement agencies in the said countries or any international agencies such as Interpol. Furthermore, where there is no dual criminality the Attorney General has insisted that St. Kitts and Nevis would willingly lend mutual legal assistance to a requesting State except where the matter involves litigation. Where a matter may not fully warrant mutual legal assistance from the Central Authority the FIU may be called upon to assist where possible.

1126. In St. Kitts and Nevis once the Competent Authority is satisfied that the conduct underlying the offence has been criminalized, the fact that they do not fall into the same category or carry the same name is no impediment to rendering mutual legal assistance or extradition.

Recommendation 38 and SR. V

1127. There are appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of laundered property from proceeds from instrumentalities used in or intended for use in the commission of any ML, FT, or other predicate offences.

1128. Under the MACMA, assistance is rendered to a Commonwealth country where a person has been charged, convicted or suspected on reasonable grounds to have committed a serious offence. "Serious" offence is restricted to an offence which carries the minimum penalty of three (3) years imprisonment or the value of the property derived from the offence is not less than twenty-five thousand (E.$25,000)dollars.

1129. The nature of assistance provided for under this Act includes the identifying, locating or assessing the value of property which is derived from a specified offence, the registration and

enforcement of any confiscation order and the obtaining of a restraint order. Search and seizure can be carried out where the request is made for the search and seizure of any article or thing in connection with any criminal matter. It should be observed that the tracing, confiscation and restraining orders all relate to proceeds, hence no provision is made for instrumentalities used in or intended to be used in the commission of the offence.

1130. The POCA specifically provides for the FIU and the DPP to render assistance to another State in relation to money laundering matters. Specifically it provides at section 59 for the FIU or DPP to receive a request from the Court or other competent authority of another State to identify, trace, freeze, seize, or forfeit the property, proceeds, or instrumentalities connected to money laundering offences. Further, an order of final judgement which provides for the forfeiture of property, proceeds or instrumentalities connected to money laundering offences which are issued by the Court or competent authority of another state may be recognised as evidence that such property may be subject to forfeiture in St. Kitts and Nevis.

1131. Under the ATA section 43 provides for the freezing of funds in the possession or under the control of a person where a request has been made by the competent authority of a foreign State. The request must relate to a person who has been charged or is about to be charged with an offence under the ATA, or about whom there are reasonable grounds for believing that the person has committed an offence under the Act. In addition section 105 provides for St. Kitts and Nevis to render mutual legal assistance to any country which becomes party to any counter terrorism convention, to which St. Kitts and Nevis is also a party.

1132. In essence the convention can be used as a basis for rendering mutual legal assistance. However in the POCA there is provision for the granting of a restraint order freezing the property of a person who has been convicted of a serious offence in any jurisdiction. That person shall be notified of the order fourteen (14) days after it was issued, failure to respond to that notice within a prescribed period, allows the Court to order the frozen property, frozen proceeds, or frozen instrumentalities to be forfeited to the Government of St. Christopher and Nevis. Where a restraint order has been issued in a foreign jurisdiction and it affects real estate then the particulars of that order must be registered in St. Kitts and Nevis in order for it to be effective.

1133. As previously stated, the Federation has a Mutual Legal Assistance Treaty with the USA. In 2001, the Saint Christopher and Nevis and the United States of America Treaty on Mutual Assistance in Criminal Matters Act was passed to give effect to that treaty. The Attorney General's Chambers is the central authority for these matters.

1134. Once requests for mutual legal assistance are received they are usually dealt with in a timely manner. There are some matters where information would have been provided pursuant to initial requests but which have not advanced any further because the requesting country has not issued any further requests.

1135. In terms of freezing, seizing and confiscation, this is conducted in an expeditious manner and there are no major difficulties.

1136. Where the request for mutual legal assistance relates to property, provision is made under section 26 of the MACMA for confiscation of property of corresponding value.

1137. There are arrangements in place for co-ordinating seizure and confiscation actions with other countries. The United States of America has benefited significantly from this arrangement since assets have been frozen and confiscated on their behalf over the past four years.

1138. Section 61 of the POCA as amended by section 5 of the POCA (Amendment) Act, No.10 of 2008 establishes a forfeiture fund which consists of all monies and proceeds from the sale of

property forfeited under this Act or the Organised Crime (Prevention and Control) Act; all moneys voted for the Fund by Parliament or any monies derived from any other source. Such monies are required to be deposited in the forfeiture fund after a ten percent (10%) administrative fee has been paid into both the Consolidated Fund of Saint Christopher and the Consolidated Fund of Nevis. However where the monies and proceeds were acquired as a result of a request made from a foreign authority then a twenty per cent (20%) administrative fee shall be deposited into the Fund and the remainder repatriated to the foreign authority if requested or kept in the Fund.

1139. The Fund is required to be used for the purpose of anti-money laundering activities and to compensate victims of offences committed under the POCA or the Organised Crime (Prevention and Control) Act. It should be noted that both the police and the FIU indicated that they expected to benefit from this Fund in the near future.

1140. Confiscated assets are shared automatically where assets are seized under the POCA in that twenty percent (20%) of the proceeds or money is deposited into the Forfeiture Fund as an administrative fee and the remaining eighty percent (80%) is repatriated to the foreign authority whenever it is requested.

1141. There is no provision in the MACMA 35 of the ATA may allow for the A.G to make regulations governing the sharing of assets with a requested State. Where no such regulations have been made, there is room for bi-lateral arrangements whether formal or informal to be made for the sharing of assets which have been recovered as a result of a request for mutual legal assistance under the ATA.

1142. Under the Mutual Assistance Treaty between the Government of St. Kitts and Nevis and the United States of America provision is made under Article 16 for the transfer of all or part of the assets, or the proceeds of sale to the requesting state or as the requesting state deems appropriate.

Additional Elements

1143. Foreign non criminal confiscation orders are not recognised or enforced since the basis for rendering assistance is that the property must relate to someone who has been convicted of a criminal offence.

Special Recommendation. V

1144. Under the ATA section 43 provides for the freezing of funds in the possession or under the control of a person where a request has been made by the competent authority of a foreign State. The request must relate to a person who has been charged or is about to be charged with an offence under the ATA, or about whom there are reasonable grounds for believing that the person has committed an offence under the Act. In addition as stated above, section 105 provides for St. Kitts and Nevis to render mutual legal assistance to any country which becomes party to any counter terrorism convention, to which St. Kitts and Nevis is also a party. In essence the convention can be used as a basis for rendering mutual legal assistance.

1145. No provision is made for the POCA. Cash which is forfeited is paid into the Consolidated Fund, while any forfeited property or the proceeds of such property are usually paid or handed over to the Registrar.

1146. As previously noted Article 16 of the Mutual Assistance Treaty between the Government of St. Kitts and Nevis and the United States of America provides for dealing with assets.

Additional Element

1147. Foreign non criminal confiscation orders are not recognised or enforced since the basis for rendering assistance is that the property must relate to someone who has been convicted of a criminal offence.

<u>Recommendation 30</u> – Resources (Central Authority for receiving/sending mutual legal assistance requests

1148. The Attorney General is identified as the Central Authority for sending/receiving mutual legal assistance/extradition requests.

1149. The Attorney General's Chambers is a part of a wider Ministry that is officially known as the Ministry of the Attorney General, Justice and Legal Affairs. The Attorney General is part of the Federal government and sits in Cabinet.

1150. Within the Central Authority's unit there are two parliamentary counsels and one senior parliamentary counsel. At present there is a vacancy for a Solicitor General whose responsibility it is to supervise the legal aspects of the work of Crown Counsel and to operate as the Senior Litigating Counsel. The Administrative Head of the Department is the Permanent Secretary and she is supported by several clerical members of staff there is an obvious need for more staff since some of the work has to be outsourced. The Attorney-General has assured us that he is actively seeking to recruit more staff for his department. There is also room for improvement in terms of adequate funding. Each law officer has access to a computer and the internet. However there is an urgent need for a library to facilitate easy access to reference materials. On the whole since there is not a large volume of requests for mutual legal assistance/extradition. Accordingly, the Attorney General's office is sufficiently equipped to perform its function as a competent authority. There is sufficient operational independence and autonomy to ensure freedom from undue influence and interference.

1151. There is an internal organisational chart and each member of staff is sensitized on the hierarchy of offices and different areas of responsibility within the Department.

1152. Crown Counsels and Parliamentary Counsels take instructions from the Attorney-General who is himself instructed by the Cabinet of Ministers.

1153. Lawyers are generally governed by legal professional conduct, ethics within the legal profession. The law officers by virtue of their training are aware of the general need for confidentiality towards their client. However under section 2 of the Promissory Oaths Act, No. 9 of 1998, every law officer is required to take an oath before or immediately after assuming the duties of his or her office. That oath is an oath of confidentiality in which the officer swears that he or she will not disclose certain information received during the course of his or her duties except in certain circumstances.

1154. Although there is a penalty in the act for not taking the oath there is no penalty in the act for breaching the oath. However by virtue of this oath not only is the law officer made aware of his or her duty to maintain confidentiality but takes an oath to do the same. The law officers by virtue of The Legal Profession Act, which was passed in August of 2008 and was circulated to the local Bar Association for comments; provides guidance for the proper professional conduct and ethics of lawyers in the Federation. This Act seeks to regulate the legal profession which includes a number of measures for disciplining its members.

1155. While section 7(1) of the General Guidelines to the Act states that, "An attorney at law shall endeavour to uphold standards of integrity, capability, dedication to work, fidelity and trust," the Attorney General and law officers are exempted from disciplinary proceedings under sections 34 and 35 of the said Act. Therefore although the Attorney General opined that the

Legal Profession Act would assist in regulating the conduct of all lawyers, no sanction can be imposed on Law officers for professional misconduct which includes breach of confidentiality. The Attorney-General stated that all law officers are required to take an oath under the Promissory Oath Act on joining the Civil Service. But the DPP is unaware what sanctions can be taken against these officers for breach of confidentiality.

1156. The Confidential Relationships Act, Cap. 18:02 seeks to protect the non-disclosure of confidential information given to a professional person during the conduct of business of a professional nature. "Professional person" includes any public officer or other government official or employee. Any person who divulges such information is liable on summary conviction, in the case of an individual, to a fine of $5,000.00 or to twelve months imprisonment or to both fine and imprisonment. A body corporate is liable to a fine of $25,000.00. If a professional individual commits this offence then he is liable to a fine of $10,000.00 while the professional body corporate is liable to $50,000.00.

1157. Under section 9 of the Financial Intelligence Unit Act, Cap. 18.04, a person who obtains information as a result of that person's connection with the Financial Unit is legally bound to keep that information confidential except where the law permits otherwise. A person who is summarily convicted of breaching this section is liable to a fine not exceeding $10,000.00 or to a maximum term of one year imprisonment or to both. This section is wide since it refers to "any person" therefore a law officer would be liable for a breach of confidentiality under this Act.

1158. It is an offence under section 77 of The Anti-Terrorism Act, No. 21 of 2002, for a person who is bound by secrecy to unlawfully communicate any special operational information pertaining to a terrorist investigation to an authorised person. The penalty for such an offence is ten years imprisonment and is harsher than the penalty imposed on unauthorised disclosure of information by persons who is not so bound by secrecy.

1159. Every Law Officer in the Chambers of the Attorney-General has to be qualified as an Attorney-at-Law and therefore should be adequately skilled to perform his or her duties in the department. The AG has stated that he personally interviews prospective law Officers thus ensuring that his staff is suitably qualified.

1160. On-going training occurs within the Department. Most legal officers are provided with at least basic training in the area of ML and FT in terms of the contents and application of the relevant legislation. Specialised training has been conducted for legislative drafters, the Office of the DPP and Crown Counsel assigned responsibility for these matters. Requests and information on these matters are usually but not exclusively channelled through one assigned Crown Counsel. While centralised statistical data on Mutual Legal assistance and extradition matters is available it is not compiled in an easily accessible format.

Recommendation 32

Statistics

1161. The Central Authority maintains statistical data on mutual legal assistance and extradition matters. There has been no request for mutual legal assistance in relation to money laundering or terrorist financing. However several requests were made relative to predicate offences. Several statistics have been provided but there is no indication of the nature of the requests, the time it took to respond. We have not been supplied with any statistics to indicate whether requests were made for mutual assistance and have been refused.

1162. Presently there is one extradition matter which is engaging the attention of the Court. This matter commenced about one year ago. Counsel for the requesting country is supposed to

conduct the matter in court but the matter is currently on hold. It has been indicated that the reason for some of the delay was the need to obtain additional information from the requesting country. However it was also opined that the shortage of magistrate may have also contributed to the delay.

1163. The FIU maintains statistics on mutual legal assistance matters that are forwarded to the Unit from the Central Authority. Statistics are maintained on the number of matters received, the agency and country submitting such requests, the nature of the request, whether the request was granted or refused and the amount of funds frozen/confiscated. On average, the FIU complies with the request within thirty (30) days of receipt, except matters which may be delayed if they are required to go before the Court.

Table 13

Mutual Legal Assistance Treaties (MLATS)		
Status: Ongoing		
Requesting Country/Agency	**Number of Request**	**Year Assistance Requested**
BVI	1	2005
Chile	1	2007
Czech Republic	1	2006
International Criminal Court	1	2007
Netherlands	1	2006
Russia		2007
Russia	2	2007
Slovac Republic	1	2008
Switzerland	1	2008
UK		2005
UK		2005
UK		2005
UK	4	2005
UK	1	2007
UK	1	2008
Ukraine	1	2006
USA	1	2004
Venezuela	1	2006

Status: Closed		
Requesting Country/Agency	**Number of Request**	**Date Assistance Requested**
International Criminal Court	1	2007
Turkey	1	2007
UK	1	2006
USA	1	2000
USA	2	2001

USA		2001
USA		2002
USA	2	2002
USA		2003
USA	2	2003
USA	1	2005

1164. Of the afore-mentioned MLATs, the following funds were seized and repatriated to the requesting country.

Period of Request - 2002 – 2008

Requesting Country – United States of America

(Amounts reflected in Eastern Caribbean Currency)

1. $384,945.89
2. $21,505.94
3. $412,300.71
4. $506,898.98

1165. Please note that under POCA the amounts seized are deposited into the Forfeiture Fund and 20% is kept by the Federal Government to assist with its AML/CFT initiatives.

Additional Elements

1166. The competent authority has not provided any statistics on any formal requests for assistance made or received by law enforcement authorities relating to money-laundering or terrorist financing and whether these requests were granted or refused. In fact except where the request is forwarded to the Attorney-General, there is no mechanism in place for law enforcement agencies to forward those statistics to the A.G if those requests are made directly to those agencies.

6.3.2 Recommendations and Comments

1167. Mechanisms should be put in place to deal with matters which may cause dual jurisdictional conflict. This recommendation does not affect the rating.

Recommendation 38

1168. Arrangements should be put in place for the sharing of assets under the ATA.

1169. The Mutual Legal Assistance in Criminal Matter Act should be amended to provide for the identification, freezing seizure or confiscation of the instrumentalities used in or intended for use in the commission of an offence.

Recommendation 32

1170. The statistics provided should state the nature of assistance sought and rendered and what orders were used to obtain the funds which were repatriated to the USA.

1171. The St. Kitts and Nevis Authorities should keep statistics on the time it takes to respond to requests for extradition and mutual legal assistance.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**C**	• **This recommendation has been fully observed.**
R.37	**C**	• **This recommendation has been fully observed.**
R.38	**LC**	• **No arrangement is in place for the sharing of assets under the ATA.** • **No provision in the MACMA with regard to instrumentalities used in or intended for use in the commission of an offence.**
SR.V	**PC**	• **The deficiencies noted in relation to Rec. 38 also affects SR. V**

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and SR. V

Extradition Act, Cap 105.

Extradition and the Fugitive Offenders Act

1172. St. Kitts and Nevis follow the provisions of the 1870 U.K. legislation on Extradition as far as it relates to non-Commonwealth countries. The gist of that legislation is that it operates on the basis of an extradition treaty or some similar form of treaty in force between St. Kitts and Nevis and the requesting State. It must be established that extradition is granted on the basis that the person sought will not be tried and punished in the requesting state for previous offences other than those for which his return is requested. St. Kitts has an Extradition treaty with the United States of America which was given legislative effect by the Saint Christopher and Nevis and the United States of America Extradition Treaty Act of 2001.

1173. The Fugitive Offenders Act No. 1 of 1969 (FOA) provides for the return of persons accused of certain specified offences to Commonwealth countries.

1174. In addition to the Extradition Act, section 104 of the ATA allows a counter terrorism convention to be used as a basis for extradition. For instance, if St. Kitts and Nevis becomes party to a counter terrorism convention and there is no extradition arrangement between St. Kitts and Nevis and another State Party to the convention, the convention may be treated as establishing an extradition arrangement between St. Kitts and Nevis and the other State Party. The extraditable offence in question must, however, fall within the scope of the counter terrorism convention.

1175. Similarly, under the Act, a counter terrorism convention may be used as a basis for mutual assistance in criminal matters.

1176. The FOA provides for the extradition of persons to the United Kingdom or its dependency where a person has been accused or convicted of an offence which is punishable by one year's imprisonment or more and that offence would have constituted an offence if it was committed in St. Kitts and Nevis. This means if money laundering is an offence in the United Kingdom or any of its dependencies, once it attracts a minimum penalty of one year imprisonment then it would be an extraditable offence.

1177. On the other hand a more restrictive standard is applied to designated Commonwealth countries or the Republic of Ireland. For those countries, an extraditable offence is one which falls within the schedule of offences listed in the Fugitive Offenders Act and which carries a minimum penalty of one-year imprisonment. The designated countries are listed in the Second Schedule to the FOA. Additionally, the recent amendment to the FOA (FOA (Amendment) Act, 2008), money laundering is one of the offences listed in the first schedule as an extraditable offence.

1178. Under the FOA where a person is accused or convicted of certain scheduled offences (an extradition offence) or in certain circumstances, an offence which is punishable by a minimum penalty of one year imprisonment, then that person is liable to be extradited to the requesting State. There is no restriction on a national of St. Kitts and Nevis being extradited to another country once all the legal requirements for extradition have been satisfied. In fact the last two persons to be extradited from St. Kitts and Nevis were nationals of St. Kitts and Nevis.

1179. There is no need for special cooperation on procedural and evidentiary aspects as contemplated by E.C. 39.3 because St. Kitts and Nevis extradites its nationals once they have been charged or convicted for a crime in a country with which they have a reciprocal extradition arrangement.

1180. There are systems in place to process extradition requests expeditiously. Request relative to money laundering would be dealt with in the same manner as all other extradition requests are dealt with.

Additional Elements

1181. Extradition requests are sent directly from the Ministry of Foreign Affairs to the Central Authority and from there to the DPP's office for prosecution. Persons are extraditable on the basis of the warrant and the judgment of the Magistrate. It should be pointed out, however, that no extradition proceedings can commence without an Order to proceed from the Governor General and even after a committal order is issued by the Magistrate, the final decision still rests with the Governor General as to whether or not he will issue a warrant for that person to be returned to the requesting State. A request for extradition is normally forwarded to the Governor General with the supporting evidence. He then decides whether to issue an Order to proceed which is then forwarded to a Magistrate.

1182. If on the other hand a Magistrate issues an arrest warrant before receiving that Order from the Governor General, that Magistrate must forward to the Governor General notice of the proceedings and copies of the warrant and any information or evidence before the Court in order to satisfy him to issue the order to proceed. The Magistrate who has conduct of the matter will then examine the evidence to determine whether it is enough to issue the order for committal.

1183. The evidence normally consists of duly authenticated documents from the requesting country which contains evidence given under oath in the requesting State or evidence of the fugitive's conviction. If the Court is satisfied with the nature of the evidence then a warrant of committal is issued. If there is an appeal, after that appeal is exhausted then the Governor General may issue a warrant for the fugitive to be extradited. After the Magistrate issues a committal order, the fugitive cannot be extradited until fifteen (15) days after the order was issued.

1184. If a person consents to or waives extradition then extradition may occur without having to observe all the necessary formalities.

Special Recommendation. V

1185. The Fugitive Offenders Act provides for the extradition of persons to the United Kingdom or its dependency where a person has been accused or convicted of an offence which is punishable by one year's imprisonment or more and that offence would have constituted an offence if it was

committed in St. Kitts and Nevis. This means if terrorist financing is an offence in the United Kingdom or any of its dependencies, once it attracts a minimum penalty of one (1) year imprisonment then it would be an extraditable offence. On the other hand as stated above, a more restrictive standard is applied to designated Commonwealth countries or the Republic of Ireland. For those countries, an extraditable offence is one which falls within the Schedule of offences listed in the Fugitive Offenders Act and which carries a minimum penalty of one-year imprisonment. Since terrorist financing is not one of the offences listed in that Schedule then it appears that terrorist financing is not an extraditable offence under the FOA.

1186. However Section 104 of the ATA provides for a counter terrorism convention to be used as a basis for extradition where St. Kitts and Nevis and the requesting State are both parties to this convention. Where there is an extradition arrangement between these two States then that arrangement shall automatically apply to offences under the counter terrorism convention. Where however the two parties do not have any extradition arrangement then by order of the Minister the convention shall be treated as an extradition arrangement. Hence terrorist financing is an extraditable offence.

Additional Element

1187. The procedure used for extradition is the same for all offences

Recommendation 37 and SR. V

1188. In St. Kitts and Nevis, like most Commonwealth Countries the basis for mutual legal assistance is dual criminality. However where there is no dual criminality the Attorney General has insisted that St. Kitts and Nevis would willingly lend mutual legal assistance to a requesting State except where the matter involves litigation. The area of mutual legal assistance in criminal matters is governed mainly by the Mutual Assistance in Criminal Matters Act, 1993. This Act is intended as a mechanism to provide mutual legal assistance to Commonwealth countries and to facilitate the operation of such a scheme within Saint Christopher and Nevis. The Act speaks to the facilitation of mutual legal assistance requests from Commonwealth countries and to provide for the possibility of assistance to other non-Commonwealth countries.

1189. The Act provides broadly for the provision of assistance where an investigation has been commenced in a criminal matter in the requesting State or proceedings that have been certified to be criminal proceedings have been instituted in that State. The kinds of matters that would be relevant would include forfeiture proceedings, proceedings to restrain dealings with property, proceedings for or suspected on reasonable grounds to have been committed against the law of that country. "Property" is defined as including money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property, whether situated in Saint Christopher and Nevis or elsewhere, and includes any interest in any such property. The restrictions set out in the law are the usual provisions relating primarily to offences of a political character and the requirement of dual criminality.

1190. The Federation has a Mutual Assistance Treaty with the USA. In 2001, the Saint Christopher and Nevis and the United States of America Treaty on Mutual Assistance in Criminal Matters Act was passed to give effect to that treaty. The Attorney General's Chambers is the central authority for these matters.

1191. In addition to these Acts, the ATA provides at section 105 for the possibility of a counter terrorism convention to be used as a basis for mutual assistance in criminal matters between St. Kitts and Nevis and a requesting State.

1192. Most requests for mutual legal assistance emanate from the U.S. There are currently no treaty arrangements with most non-commonwealth countries although assistance to the latter is

generally provided by the Central Authority once it does not involve litigation. This is in addition to assistance that is provided FIU to FIU. Where a matter may not fully warrant mutual legal assistance from the Central Authority the FIU may be called upon to assist where possible.

1193. Once matters are received they are usually dealt with in a timely manner. There are some matters where information would have been provided pursuant to initial requests but which have not advanced any further because the requesting country has not issued any further requests.

1194. In terms of freezing, seizing and confiscation, this is conducted in an expeditious manner and there are no major difficulties.

1195. In St. Kitts and Nevis once the Competent Authority is satisfied that there is dual criminality, it does not matter whether the offences bear different labels. It is the criminal conduct which constitutes the offence; hence the label is not used as an impediment to render mutual legal assistance or extradition. In fact, section 5 of the FOA in defining relevant offences committed in designated Commonwealth countries and the Republic of Ireland refer to those offences 'however described in that law.'

1196. Criteria 39.1 – 39.4 apply to extradition proceedings related to terrorist acts and FT

Additional Elements

1197. Please see response at section 6.4.1 of the Report as it relates to Recommendation 39 relative to money laundering. While it appears that the FOA does not list terrorist financing as an extraditable offence, Section 104 of the ATA makes provision for a counter terrorism convention to be used as a basis for extradition with countries with which St. Kitts and Nevis does not have extradition arrangement and where they have such an arrangement then the Extradition Act shall be deemed to contain provision for extradition in respect of offences falling within the convention

1198. As noted above, St. Kitts and Nevis will extradite its own nationals for money laundering and terrorist financing offences as with any other relevant offence. See section 6.4.1 above with regard to R. 39. Procedures are in place to handle these matters without delay.

6.4.2 Recommendations and Comments

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

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	**This recommendation is fully observed.**
R.37	**C**	**This recommendation is fully observed**
SR.V	**PC**	• **See deficiencies noted at sections 6.3.3 and 6.5.3 of the Report.**

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

1199. The relevant laws are in place to facilitate information sharing with respective counterparts in foreign jurisdictions.

1200. The Mutual Legal Assistance Treaty provides for the State via the Central Authority (Attorney General) to assist foreign states in criminal proceedings – obtaining intelligence and also evidence.

1201. The Financial Services (Exchange of Information) Regulations, 15 of 2002 makes provisions for Regulators to share information with counterparts. There are however no express powers for officers such as the Registrar of Insurance (domestic) or the Registrar of Credit Unions to share information.

1202. The ECCB is empowered to share information with counterpart supervisory authorities using the mechanism of a MOU pursuant to section 32 of the Banking Act. The ECCB does have such an arrangement with regard to other regional supervisory bodies who are members of the Caribbean Group of Banking Supervisors (CGBS).

1203. The ECSRC is empowered to share information with other regulatory bodies pursuant to section 133 of the Securities Act. There is no requirement for the establishment of a Memorandum of Understanding to pursue the sharing of information.

1204. The FIU can provide assistance to counterparts. This can be done with or without a MOU. (Section 4(2)(g) FIU Act, 2000). This assistance includes checking its own database, conducting public searches; and indicating if an account exists.

1205. In addition, as an Egmont Group member, the FIU observes the principles of information exchange amongst FIUs.

1206. Section 59(2) of the POCA provides that "*The Financial Intelligence Unit or the Director of Public Prosecutions may receive a request from the Court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, and may take such appropriate actions as may be necessary."*

1207. Presently MOU arrangement exists amongst the DPP, Police, Customs and FIU to facilitate the exchange of information at the domestic level to assist with ML and FT investigations. This also enhances the exchange of information with respective counterparts subject to relevant clearance.

1208. The FIU has gotten favourable response from it Regional and International counterparts in relation to response time to requests sent from foreign FIU, whether through Egmont or via a MOU.

1209. Customs also has the ability to liaise with counterparts to participate in the information sharing process. The Customs and Excise Department can also share information with their Regional and International counterparts using the UKSAT, WCO and CICLEC.

1210. Police has the capacity to liaise with counterparts. They are active in the exchange of information with foreign law enforcement agencies and also Interpol.

1211. All requests for assistance directed to the FIU are dealt with within fifteen (15) days of receipt. There is no specific time period in which the law enforcement or customs officials provided information to their foreign counterparts however, information is generally provided within two (2) weeks of the request or at the earliest possible time.

1212. Depending on the nature of the query, the Regulators are able to respond to queries from overseas authorities swiftly. The Examiners did see evidence of strong response time by the St. Kitts Regulator with respect to queries about an entity which had been ordered to terminate its illegal operations in another jurisdiction, and which had applied to re-establish itself in St. Kitts.

1213. The Examiners were also aware of the fact that the ECCB have responded quickly to overseas requests for information from counterpart supervisory authorities both on a formal and informal basis particularly with regard to the consolidated supervision of regional institutions. These exchanges have been both constructive and effective.

1214. The Examiners did not get the impression that there were occasions in which the ECSRC had been requested by international counterparts for information or assistance.

POLICE

1215. Police participate in the exchange of information with Interpol; police to police, also through i24/7 system, and CISNE. Section 103 of the ATA gives the Police authority to share terrorist related information.

CUSTOMS

1216. There is a United States liaison officer attached to the Caribbean Customs Law Enforcement Council (CCLEC). This is an organisation that Customs officials from the Caribbean utilize to share information with its Caribbean and United States counterparts. Customs also shares information through the World Customs Organisation.

FIU

1217. The FIU does not need a MOU to share information with counterparts; however it has entered into MOUs with counterparts that legally require this mechanism. To date the FIU has signed seven (7) MOUs - Panama, Netherlands Antilles, Thailand, Taiwan, Canada, Australia and Honduras. There are draft MOUs with Costa Rica, and Suriname.

1218. The FIU actively participates in the information exchange process via the Egmont Group (Egmont Secure Website). The FIU was also a party to the multilateral agreement of the CFATF Cricket World Cup 2007 MOU on information exchange during the World Cup. The FIU was also a member and subsequently the Chair of the CFATF Cricket World Cup Working Group.

Supervisory Authorities

1219. The main supervisors, namely the FSC Regulators, the ECCB and the ECSRC have largely unrestricted powers to share information. In the case of the ECCB, the requirement for a Memorandum of Understanding is not seen as an impediment, insofar as the ECCB has information-sharing arrangements with the key supervisors who share consolidated supervision responsibilities with it. However, where a non-regional supervisory authority is requesting information, the negotiation of a MOU is necessary. Also the ECCB must be satisfied that the party with whom it is sharing its information can reciprocate.

1220. Section (4)(2) of the FIUA as amended facilitates spontaneous exchange of information in relation to ML and TF and any underlying predicate offence. Information is also shared between law enforcement and customs officers on a spontaneous basis as officers would develop relationships with officers from another jurisdiction whilst on training and share information on that basis.

Supervisory Authorities

1221. Information sharing powers for the supervisory authorities is constrained to the information that properly comes into the possession of those authorities. In the case of the FSC Regulators, that information would specifically include AML/CFT compliance information, as that is within the remit of the FSC to obtain this information. In the case of the ECCB, it has powers to obtain information relating to the compliance of banking institutions with applicable laws (including presumably those relating to AML/CFT). In the case of the Securities Commission, the information coming to the Commission would deal solely with compliance with the Securities Act and not to the AML/CFT laws). Each of these supervisors may share information spontaneously, save for the ECCB which requires that a MOU be in place.

1222. Law enforcement officials, the FIU and Customs officials can conduct inquiries on behalf of its foreign counterparts. The FIU can facilitate this process as part of its mandate outlined in the FIU Act 2000. The Royal St. Christopher and Nevis Police Force is a member of Interpol, which is an information sharing body and Customs and Excise Department is a member of CCLEC and WCO which are information sharing bodies

1223. Supervisory Authorities are able to use their powers to access information from licensees to assist overseas supervisory authorities and may also assist by providing publicly available information.

1224. The FIU can provide assistance to counterparts. This can be done with or without a MOU. (Section 4(2)(g) FIU Act, 2000). This assistance includes checking its own database, conducting public searches; making enquiries of entities; and indicating if an account exists.

1225. Currently, there is no specific legislation which addresses conducting investigations on behalf of foreign counterparts. However, information is provided to foreign jurisdictions when requests for assistance are made.

1226. Exchange of information is facilitated in a reasonable manner. The Financial Services (Exchange of Information) Regulations makes provision for the FSC to provide information to its foreign counterparts without undue delay and grants to the FSC a wide discretion in determining whether it will render assistance. As noted before, the ECCB requires both a MOU and reciprocity under the Banking Act. The ECSRC may share information with supervisory counterparts without the need for a MOU or reciprocity.

1227. There are no restrictive conditions that would prevent the FIU from sharing information with its foreign counterparts; however the country requesting the information is required to state the purpose for the information and who has access to the information. Information is also shared with non Egmont members, once the country's FIU meets the definition of an FIU.

1228. A request for information is not declined on the sole ground that the request is considered to involve fiscal matters. Fiscal matters are not one of the conditions noted for the refusal of international requests for assistance as outlined in the Mutual Assistance in Criminal Matters Act.

1229. Supervisory sharing is done with counterpart supervisory authorities for supervisory purposes and thus would not include sharing for the investigation of tax offences.

1230. Section 19(e) of the Mutual Assistance in Criminal Matters Act, denies foreign requests based on secrecy only as far as it would prejudice National Security, International Relations or any other Public Policy of St. Kitts and Nevis. However, it should be noted that all laws imposing secrecy or confidentiality are overridden by the AML/CFT laws. (Section 8, FIU Act, No. 15 of 2000)

1231. The POCA at section 62 also provides that all secrecy provisions in any other statutes are overridden by the provisions of that Statute.

1232. Information received by the FIU is only to be used for ML and FT purposes as outlined in the request for information. It is protected from unauthorised use; and only disseminated to third parties after the consent of the requested party is obtained.

1233. The statutes relating to the ECCB and the FSC impose confidentiality requirements on the requesting counterpart supervisory authority.

Additional Elements

1234. All requests to the FIU must contain the purpose of the request, how the information obtained will be used; and who would have access to the information. These requirements are also set out in the Egmont Group of Principles of information Exchange amongst FIUs.

1235. The FIU can indirectly query the law enforcement database with regard to convictions. Information of a financial nature received by the Customs or Police officials is forwarded to the FIU for investigation.

Special Recommendation V

1236. The Proceeds of Crime Act, 2000 Part V 59 (1) – (6) authorizes the FIU and DPP to cooperate with other States in matters relating to ML in accordance with that Act.

1237. As indicated previously, the ECSRC may only share information regarding compliance with the Securities Act. It does not supervise compliance relating to AML/CFT issues and thus would not be in a position to share information relating to these areas.

Additional Elements

1238. Constructive information is shared only with non-counterparts through Treaty.

Recommendation 32

Statistics

E.C. 32.1

1239. The reports that are received and disseminated are:)

- The Suspicious Transaction Reports (STRs
- Terrorism reports reflecting possession and non possession of property
- Terrorism reports from financial institutions

1240. STRs are received by the FIU and are then broken down by financial institution and analysed. DNFBPs are clearly identified separately from other persons or businesses making the STRs.

1241. STRs are received and disseminated to the police assigned to the FIU. Statistics are kept for international money transfers by the executive Office Analyst and can be produced upon demand.

1242. The FIU has maintained comprehensive statistics in relation to request for information, both spontaneous and official letters of request. Between the period 2004 to early 2008 there were a total of 264 request for assistance received by the FIU. Of these, 225 were completed, twenty six (26) of are still ongoing and thirteen (13), the Department was unable to process.

1243. Between the period 2003 to 2007 the FIU forwarded a total of 173 requests for assistance to its regional and international counterparts.

1244. The FIU also keeps statistics on spontaneous information sharing, between the period 2004 to 2007 there were a total of fifty six (56) spontaneous referrals with FIUs from Europe, North America, Central America and the Caribbean.

Additional Elements

1245. Where such requests have been made, the relevant authorities maintain statistics. Comprehensive statistics are not properly maintained by law enforcement officials on formal

request for assistance relating to ML and TF and whether such request were granted or refused, however as the Police has two officers attached to the FIU, these request are filed at the FIU and are provided in the statistics.

6.5.2 Recommendations and Comments

1246. St .Kitts and Nevis Authorities should move to put measures in place to enable law enforcement to conduct investigations on the behalf of their foreign counterparts.

1247. The Authorities should consider expanding the ECSRC's mandate to supervising compliance with both AML and CFT requirements, which would then permit the Commission to share information on these matters.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• **Law enforcement is not authorized to conduct investigations on behalf of its foreign counterparts.** • **The ECSRC would not be able to share information about AML issues as it does not supervise for AML purposes.**
SR.V	**PC**	• **Law enforcement is not authorized to conduct investigations on behalf of its foreign counterparts.** • **The ECSRC does not supervise for compliance relating to TF and would not be able to share information on this issue.**

7. OTHER ISSUES

7.1 Resources and statistics

Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	• **Inadequate staff in the Office of the DPP.** • **Lack of AML/CFT training for staff in the Office of the DPP.** • **There is no law library in the Office of the DPP available for the use of law officers.**

		• **There is a lack of both human and technical resources in the Police Force, the FIU and Customs and Excise (Enforcement Division).** • **The procedures in place in the FIU and the Customs and Excise Department are not adequate to ensure that staff maintains a high level of integrity and confidentiality.** • **Need for more training in relation to ML/TF matters for members of the Police Force and Customs and Excise.**
R.32	**PC**	• **There is no comprehensive and independent statistics maintained by the FIU in relation to international wire transfers.** • **There are no complete statistics kept by the FIU on production orders, monitoring orders and restraint orders, so as to show the effectiveness of the of the AML/CFT framework.** • **Customs and Excise does not keep any comprehensive statistics on cross border seizures.** • **No statistics maintained by Customs and Excise on matters that were referred to other Agencies such as the FIU for investigations.** • **The statistics on mutual legal assistance is limited, in that it does not explain the nature of the requests and what processes were used to obtain the funds.** • **The statistics on extradition and mutual legal assistance do not include the response time.**

7.2 Other relevant AML/CFT measures or issues

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

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

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

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

Forty Recommendations	Rating	Summary of factors underlying rating[9]
Legal systems		
1. ML offence	**PC**	**Recent amendments have affected ability to assess effectiveness of implementation.** **Terrorist financing is not a predicate offence for money laundering.** **No one has been charged or prosecuted under the POCA.** **Insufficient training for investigators and prosecutors**
2. ML offence – mental element and corporate liability	**LC**	**No one has been charged or prosecuted under the POCA.**
3. Confiscation and provisional measures	**PC**	**No provision in the POCA for the confiscation of instrumentalities intended for use in the commission of an offence.** **No provision in the ATA for the seizure of instrumentalities used in or intended for use in the commission of an offence.** **No stated procedure under the ATA for the forfeiture and confiscation of property.** **No seizures, freezing or confiscation of property relative to the offences of ML and FT therefore unable to determine how**

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

		effective the Recommendation has been implemented.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	**This Recommendation has been fully observed.**
5. Customer due diligence	**NC**	**The AMLR may not extend to terrorism financing obligations.** **No requirement for CDD on de minimis transactions if TF is suspected.** **Guidance re: money transfer business does not apply to banks.** **Requirements re: occasional transfers are not in law or regulations.** **Requirements for the use of independent documentation are not in law or regulations.** **The requirement to identify and verify the beneficial owner using data from a reliable source not in law or regulations.** **No direct requirement to verify authority of person purporting to act for a principal.** **Enhanced due diligence measures do not take into account cases and circumstances cited in the Basel CDD paper.** **No direct obligation to ascertain legal status of party to legal arrangement/ trust arrangement.** **There is no prohibition of the use of reduced due diligence where there is a suspicion of TF.** **No reference to special risk management procedures that should take place where a customer is allowed to utilise a business relationship prior to verification.** **Measures for on going due diligence does not include scrutiny that ensures that transactions are consistent with the source**

		of funds. **Effectiveness cannot be assessed due to the recent passage of Regulations and Guidance Notes and the limited knowledge of the supervised constituents about the new requirements.** **Concern relating to verification of compliance with this recommendation by Captive and International Insurers, given the fact that the bulk of their activities occur offshore.**
6. Politically exposed persons	**LC**	**The Regulation is not clear as to whether the requirement for establishing source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.**
7. Correspondent banking	**LC**	**The GN whilst considered OEM for ML purposes does not cover TF issues. Thus cannot properly cover correspondent banks carrying out assessments of TF measures in respondent jurisdictions.**
8. New technologies & non face-to-face business	**PC**	**The AMLR do not extend to TF obligations.** **Neither the Regulations nor the Guidance Notes provide for specific and effective CDD measures that financial institutions should apply to cases of non face-to face business.**
9. Third parties and introducers	**PC**	**No requirement for regulated business to immediately get necessary information from introducers re: elements of the CDD process.** **No requirements for Introducers and intermediaries to follow appropriate CDD measures (e.g. using independent evidence for verification).** **No requirement for financial institutions to be satisfied that information undertaken to be provided will be provided without delay.** **Regulated businesses should ensure that the authority of a customer purporting to act for another is valid, and ascertaining the nature of the customers business.** **Introducers and Intermediaries are not**

		required to be subject to CFT obligations. **Ambiguity regarding whether introducers are required to be supervised under FATF requirements.** **Lack of industry compliance to requirements relating to ensuring that introducers and intermediaries are subject to AML/CFT supervisory regime.**
10. Record keeping	**LC**	**Concerns re: verifying levels of compliance with the record-keeping obligations established in the law by Captive and International Insurance Companies.**
11. Unusual transactions	**PC**	**There is ambiguity between the GN and the Regulations with regard to the appropriate treatment of unusual transactions.** **The law does not state that unusual transactions should be available for competent authorities or auditors.** **There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements for treating with unusual transactions.**
12. DNFBP – R.5, 6, 8-11	**PC**	**Deficiencies identified for all financial institutions for R.5, R.6, R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs** **The powers of the FSC under the FSC Act extend only to financial services.** **There is no evidence of effective supervision of Casinos for AML/CFT purposes.** **The relevant activities specified for accountants and auditors in the POCA are not in line with E.C. 12.1(d).** **Assessment of the effectiveness of CDD measures for legal professionals as well as jewellers and dealers of precious stones and metals is not possible due to recent additions to Schedule 1 of the POCA.**

		There are no requirements for third parties to be regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with Recommendations 5 and 10.
13. Suspicious transaction reporting	**NC**	**The suspicious transaction reporting requirements under the AMLR and the ATA are not in keeping with the FATF requirements.** **Sanctions under AMLR are not proportionate and may affect effectiveness for more serious offences.** **Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA**
14. Protection & no tipping-off	**PC**	**Requirement limited to ML investigations** **No requirement with regard to the reporting of a STR or related information to the FIU which could lead to a ML or FT investigation.**
15. Internal controls, compliance & audit	**PC**	**Requirements regarding internal audit and testing, compliance officers and staff training may only apply to ML (and not to TF issues) under the AML Regulations.** **No requirement that internal testing should be independent and adequately resourced**
16. DNFBP – R.13-15 & 21	**NC**	**Deficiencies identified for financial institutions for R13, R15, and R21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBPs.**
17. Sanctions	**NC**	**Key offences under the AMLR carry homogenous penalties and thus are not proportionate, dissuasive or effective.** **Penalties for reporting offences under the ATA vary widely.** **Offences under the AMLR are not applicable to senior managers.** **The FSC has not applied the range of sanctions provided by the FSC Act and the AMLR.**

		The ECSRC does not have power to sanction for AML/CFT breaches. **The ECCB may only apply sanctions of breaches uncovered via examination.**
18. Shell banks	**C**	**This Recommendation has been fully observed.**
19. Other forms of reporting	**C**	**This Recommendation has been fully observed.**
20. Other NFBP & secure transaction techniques	**C**	**This Recommendation has been fully observed.**
21. Special attention for higher risk countries	**PC**	**There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements.** **Financial institutions only required to apply enhanced CDD regarding dealings with and transactions with countries with weak AML/CFT systems.** **Apparent inability to enforce measures as they relate to CFT issues.** **Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards.**
22. Foreign branches & subsidiaries	**C**	**This Recommendation has been fully observed.**
23. Regulation, supervision and monitoring	**PC**	**"Fit and proper" requirements do not apply currently to credit unions, domestic insurance companies and money service providers (insofar as the Money Services Act has not yet been implemented).** **Fit and Proper requirements under the FSRO are not imposed on directors or managers of institutions covered by that Order.** **There are no fit and proper requirements under CICA for owners or directors.** **Offshore and Domestic insurance are not supervised on a group wide basis.** **ECCB powers to inspect for AML/CFT not expressed in the Banking Act.**

		The Offshore Banking law is does not provide for senior managers to be fit and proper, nor for consolidated supervision. **The Supervisory Authorities face difficulties in verifying levels of compliance by international and captive insurers.** **ECSCR lacks powers to inspect and sanction for AML/CFT measures.** **Supervisory authorities require more resources.**
24. DNFBP - regulation, supervision and monitoring	**NC**	**Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.** **The FSC Act does not explicitly give powers to the FSC for the supervision and regulation of non-financial services.** **Lawyers have challenged the FSC's authority to conduct on-site inspections for AML/CFT purposes.**
25. Guidelines & Feedback	**PC**	**No feedback given with regard to AML/CFT trends and typologies.** **The GN are legally constrained to ML issues.** **The deficiencies identified for financial services for R 25 at sections 3.7, 3.10, and 4.3 apply to DNFBPs.** **FIU has not provided feedback with respect to disclosures and sanitised cases to DNFBPs.** **There is no sector-specific AML/CFT guidance applicable to DNFBPs, except for trust and company service providers.**
Institutional and other measures		
26. The FIU	**PC**	**No specified time period for the making of reports on TF.** **A number of reporting entities have not**

		received training in relation to the reporting guidelines and are unaware of their obligations under the POCA. **The FIU's independence and autonomy can be unduly influence by its Director's inability to recruit appropriate and competent staff.** **The Minister is given too much authority under the Act as he is responsible for the Policy making and the appointment of consultants to the FIU decision making functions. (Sec 6 FIU Act).** **The FIU does not prepare and disseminate trends and typologies to relevant reporting entities.** **Information held by the FIU is not sufficiently secured and protected.** **There is no standard reporting time in which reporting entities are required to file STRs to the FIU.** **No guidance on the filing of STRs in relation to TF has been issued by the FIU.** **The FIU has not been fully constituted in accordance with the FIU Act.**
27. Law enforcement authorities	**NC**	**St. Kitts and Nevis has not considered enacting legislation or putting measures in place to waive or postpone the arrest of suspected persons and /or the seizure of cash with the view to identify persons involve.** **No clear indication that money laundering and terrorist financing are properly investigated.**
28. Powers of competent authorities	**LC**	**The level of enforcement and effectiveness of implementing the tools available to law enforcement cannot be clearly ascertained.**
29. Supervisors	**PC**	**The powers of the ECCB to inspect do not directly extend to AML/CFT.** **The ECSRC lacks power to inspect for AML/CFT measures.**

		Limitation on sanctions under the AMLR and the ATA.
30. Resources, integrity and training	**PC**	**Inadequate staff in the Office of the DPP.** **Lack of AML/CFT training for staff in the Office of the DPP.** **There is no law library in the Office of the DPP available for the use of law officers.** **There is a lack of both human and technical resources in the Police Force, the FIU and Customs and Excise (Enforcement Division).** **The procedures in place in the FIU and the Customs and Excise Department are not adequate to ensure that staff maintains a high level of integrity and confidentiality.** **Need for more training in relation to ML/TF matters for members of the Police Force and Customs and Excise.**
31. National co-operation	**PC**	**There is insufficient cooperation and consultation between the DPP and the Police when investigating possible money laundering and terrorist financing offences.** **No pro-active role taken by the DPP with regard to giving guidance to the police in relation to their AML/CFT investigations.**
32. Statistics	**PC**	**There is no comprehensive and independent statistics maintained by the FIU in relation to international wire transfers.** **There are no complete statistics kept by the FIU on production orders, monitoring orders and restraint orders, so as to show the effectiveness of the of the AML/CFT framework.** **Customs and Excise does not keep any comprehensive statistics on cross border seizures.** **No statistics maintained by Customs and Excise on matters that were referred to other Agencies such as the FIU for investigations.**

		The statistics on mutual legal assistance is limited, in that it does not explain the nature of the requests and what processes were used to obtain the funds. **The statistics on extradition and the mutual legal assistance do not include the response time.**
33. Legal persons – beneficial owners	**LC**	**No provision in the Companies Act with regard to beneficial ownership or control.**
34. Legal arrangements – beneficial owners	**LC**	**Inability to access whether information on private trusts is adequate and accurate.**
International Co-operation		
35. Conventions	**PC**	**All relevant Articles of the Conventions have not been fully implemented.**
36. Mutual legal assistance (MLA)	**C**	**This Recommendation has been fully observed.**
37. Dual criminality	**C**	**This Recommendation has been fully observed.**
38. MLA on confiscation and freezing	**LC**	**No arrangement is in place for the sharing of assets under the ATA.** **No provision in the MACMA with regard to instrumentalities used in or intended for use in the commission of an offence.**
39. Extradition	**C**	**This Recommendation has been fully observed.**
40. Other forms of co-operation	**PC**	**Law enforcement is not authorized to conduct investigation on behalf of its foreign counterparts.** **The ECSRC would not be able to share information about AML issues as it does not supervise for AML purposes.**
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	**The ATA does not provide for the freezing of funds belonging to Al-Qaida, the Taliban or their associates or other persons designated by the U.N Security Council.** **No designations have been made under UNSCR 1373.** **The limitation period for commencing prosecution for money laundering offences is too short.** **There is no provision for extending the statute of limitation where a person deliberately tries to escape from**

		prosecution. **No legislative provision for any aircraft belonging to Al-Qaida, the Taliban or their associates to be denied permission to land.**
SR.II Criminalise terrorist financing	**PC**	**Terrorist financing does not meet the requirements to be considered a predicate offence.** **There are inadequate stipulated penalties for legal persons under the ATA.**
SR.III Freeze and confiscate terrorist assets	**PC**	**Section 43 of the ATA does not satisfy the requirement of S/RES/1267 for the freezing without delay of funds belonging to the Taliban and Al-Qaida.** **No regulations made with regard to the procedure for an application for de-listing as a terrorist or terrorist group.** **There is no programme in place for informing the public of the procedure for de-listing.** **There is no programme in place to inform the public about the procedure for unfreezing funds or assets.** **No procedure in place for authorizing access to funds or other assets that are frozen under UNSCR 1267 and that are to be provided for basic expenses.** **There is no legislation in place to provide for the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452(2002).** **There is no provision for extraordinary expenses.** **There has been no implementation of SR. III provisions and accordingly the effectiveness of the measures cannot be determined.**
SR.IV Suspicious transaction reporting	**NC**	**The suspicious transaction reporting**

		requirements under the ATA are not in keeping with the FATF requirements. **Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA.**
SR.V International co-operation	**PC**	**The deficiencies noted in relation to Rec. 38 also affects SR. V.** **Law enforcement is not authorized to conduct investigation on behalf of its foreign counterparts.** **The ECSRC does not supervise for compliance relating to TF and would not be able to share information on this issue.**
SR VI AML requirements for money/value transfer services	**PC**	**Money Services Business Act not yet implemented.** **Supervisors are not required to maintain listing of operators.** **Money Service providers are not required to maintain current lists of agents.** **Offences under both the AMLR and the Money Services Business Act are not proportionate.** **Sanctions under the FSC Act and the AMLR appear to be under utilised.** **Compliance obligations under the Money Services Business Act do not extend to TF issues.** **Issues relating to the scope of the AMLR and the deficiencies in reporting requirements under the AMLR and the ATA.**
SR VII Wire transfer rules	**PC**	**Money Services Act and Payment System Act not implemented.** **Detailed originator information not expressly required for all types of transfers.** **No appropriate guidance to funds transfer businesses and banks with regard to treatment of fund transfer transactions that do not have sufficient originator information.**

		Ambiguity regarding inspection and sanction powers against banks and offshore banks for AML/CFT issues. **No requirements for financial institutions to take appropriate action when they receive a transfer accompanied with inadequate originator information.** **Criminal sanctions under AMLR and FSCA not proportionate.**
SR.VIII Non-profit organisations	**PC**	**The purpose and objectives, and identity of persons who control the activities of non-profit organisations are not publicly available and there is no documented evidence of public availability.** **The recent issue of requirements to monitor compliance does not allow for sufficient time to test for effective implementation.**
SR.IX Cross Border Declaration & Disclosure	**NC**	**Cases of cross border seizures of cash and bearers instruments are not properly investigated.** **There is no coordination domestically between the relevant authorities in relation to the implementation of SR 9.** **There are no records kept on the seizure of cross border cash and bearer negotiable instruments.** **Need for greater information sharing and liaison between Customs Officials in St. Kitts and the originating country when there is a report of the seizure.** **No proper maintenance of records for the availability for AML/CFT purposes.** **Sanctions are not proportionate and difficult to assess effectiveness since there has been no implementation.**

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

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• **The recent amendments to the POCA have resulted in little time to assess the effectiveness of its implementation.** • **The penalty for financing of terrorism on summary conviction should be amended so that the offence falls within the definition of serious offence.** • **Training should be provided to all the relevant parties who are responsible for investigating and prosecuting ML and FT offences with the aim of increasing the number of investigations and prosecutions for these offences.**
2.2 Criminalisation of Terrorist Financing (SR.II)	• **The penalty for summary conviction of terrorist financing under Section 12 of the ATA should be at least one year in order for terrorist financing to be considered a predicate offence.** • **St. Kitts and Nevis needs to amend the ATA legislation in order to clearly reflect the liability of legal persons by quantifying the fines where necessary.**
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• **Amendments should be made to the POCA so that there would be clear provision for the seizure of instrumentalities intended for use in the commission of an offence under the Act and a predicate offence.** • **An amendment to the ATA should be made so that there would be provision for the seizure of instrumentalities used in or intended for use in the commission of an offence in the ATA.** • **The ATA should be amended to provide a stated procedure for the forfeiture and confiscation of property.**
2.4 Freezing of funds used for terrorist financing (SR.III)	• **Provision ought to be made for the freezing without delay of the funds or other assets of the Taliban and Al-Qaida.** • **The regulations for de-listing terrorist and terrorist groups should be published by the Minster of National Security.**

	• **There ought to be a programme in place to sensitise the public of the procedure for de-listing of terrorist and terrorist organisation.** • **Members of the public should be made aware of the procedure for applying to have funds and or assets unfrozen.** • **The St. Kitts and Nevis Authorities should establish the procedure for authorizing access for basic expenses to funds or other assets that are frozen pursuant to UNSCR 1267.** • **St Kitts and Nevis should put in place the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002)** • **While there is provision for basic living, legal and business expenses there are no provisions for extraordinary expenses. These ought to be included under the ATA.**
2.5 The Financial Intelligence Unit and its functions (R.26)	• **St. Kitts and Nevis Authorities should consider amending section 17(6)(b) of the ATA as amended to give reporting entities a specific time period to submit report of terrorist financing to the FIU.** • **St. Kitts and Nevis should consider establishing a structured training schedule, in the short term, to target those entities that have not received training in the manner of reporting and identifying suspicious transactions. Continuous dialogue and training should be maintained with reporting bodies with the view of evaluating their reporting pattern so that weaknesses can be identified and addressed accordingly.** • **The St. Kitts and Nevis Authorities may need to review the manner in which staff is recruited at the Financial Intelligence Unit to allow the Director to have some form of authority as to the quality of the staff that is recruited.** • **The St. Kitts and Nevis Authorities may need to review the powers given to the Minister, such as policy making and the recruitment of consultants to the Financial Intelligence Unit, without the consensus of the Director of the FIU or the FIU body, as this does not reflect enough**

	independence and autonomy. • **The FIU needs to prepare and circulate ML and TF trends and typologies to the reporting entities, so that they can adapt appropriate measures and strategies. These trends and typologies should also be included in the Annual Report.** • **The building that presently houses the FIU needs to be more adequately secured through the use of security features such as electronic security systems.** • **A data back up system for the storage of information should be implemented both on site at the FIU and at an offsite secure location and reconsideration given to the storage of information on memory sticks and DVDs as these items can sometimes be easily misplaced.** • **St. Kitts and Nevis Authorities should consider amending sec 15 (1) of the AMLR as it relates to the reporting of STRs to ML to give reporting entities clear directives as to the time in which they are required to file STRs to the FIU.** • **The FIU should provide guidance with regard to filing STRs with regard to TF.** • **St. Kitts and Nevis should move quickly to establish the FIU in accordance with section 3(1) of the FIU Act.**
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• **St. Kitts and Nevis Authorities should consider implementing legislation or measures that would allow law enforcement authorities, to postpone or waive the arrest of suspected person and /or the seizure of cash so as to identify other persons involved in the offence.** • **The FIU Royal St. Christopher and Nevis Police Force should put measures in place to ensure that persons responsible for the proper investigation of ML & TF have sole responsibility in this regard, as ML & TF are usually complex crimes and require dedication and comprehensive investigation with utmost circumspect.** • **The Royal St .Christopher and Nevis Police Force, the Office of the DPP and the FIU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more aggressive approach to**

	generate ML and TF investigations, prosecution and possible convictions and utilizing the investigative tools such as Production Orders provided for in the POCA. • **There is a need for speedier granting of orders by the Court, in particular production orders.**
2.7 Cross Border Declaration & Disclosure (SR IX)	• **Customs, FIU and the Police should work closely together to investigate cases of cross border transportation of cash and bearer negotiable instruments in order to determine its origin, bearing in mind that such currency or instrument may be the proceeds of criminal conduct in the said country.** • **There is a need for regular inter-agency meetings between Customs, the Police, FIU and other competent authorities as it relates to the implementation of Special Recommendation IX.** • **Proper records and statistics should be kept by the Customs and Excise Department in relation to the seizure and disclosure of cross border transportation of cash and bearer negotiable instruments.** • **There is need for training of customs officers in relation to the identification of, precious metals and precious stones, as customs officers are unable to detect such objects if they are being smuggled.** • **There is a need for customs officials in St. Kitts and Nevis to inform and liaise with their counterparts in the originating country when there has been a seizure in relation to the transportation of cross border cash and bearer negotiable instruments and not solely rely on the FIU to disseminate such information.** • **The Enforcement Section in Nevis should be given adequate resources including fireproof filing cabinets and the same procedures be implemented as in St. Kitts as it relates to the security of the Section.** • **Information obtained as a result of the seizure of cross border currency and bearer negotiable instruments should be maintained in a computerized database and be readily available for AML/CFT purposes.**
3. Preventive Measures – Financial Institutions	

3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	***Recommendation 5*** • **The Authorities should resolve the issue as to whether the AMLR can legally refer to matters relating to the financing of terrorism. As a consequence, there may be valid challenges that may be mounted against several of the measures in the Regulations or Guidance Notes which seek to address the financing of terrorism.** • **The Guidance Notes are not considered to be law or regulations and thus the requirements in the Guidance Notes relating to the treatment of occasional transfers should be placed in the law.** • **The Regulations or Guidance Notes should either prohibit numbered accounts or specify how they are to be treated.** • **The important issue of using independent documentation to verify identity should be inserted into the law.** • **The requirement to identify and verify beneficial owner using data from a reliable source should be inserted into the law.** • **The Authorities should amend the laws appropriately to deal with the requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism.** • **The Regulations or Guidance Notes should impose a requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism.** • **For clarity the requirements applicable to money services businesses that relate to originator information should extend to banks that carry out wire transfers.** • **The Regulations or Guidance Notes should refer to a direct obligation to verify the authority of the person to act on behalf of the**

	principal. • **The Regulations or Guidance Notes should address the requirements for verifying the legal status of the parties involved in trust/legal arrangements.** • **The Regulations should specifically prohibit reduced due diligence in circumstances where the relevant person suspects the financing of terrorism.** ***Recommendation 6*** • **The Regulations or the Guidance Notes should make it clear as to whether the requirement for establishing of source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.** ***Recommendation 7*** • **As the Regulations or the Guidance Notes cannot cover issues relating to terrorism financing, the measures relating to assessing a respondent's institutions measures to combat TF would have to be provided for in the appropriate law or regulation.** ***Recommendation 8*** • **The Regulations or the Guidance Notes should provide for the specific and effective CDD measures that financial institutions should apply to cases of non face-to-face business.** • **The Authorities should take greater steps in familiarising their supervised constituents about the new requirements of the law to ensure a smoother transition to the new regime.**
3.3 Third parties and introduced business (R.9)	• **Regulated businesses should be required to obtain information on introducers/intermediaries'' CDD processes. Where undertakings are given to provide information, financial institutions should be satisfied that the information will be provided without delay.** • **The Authorities should ensure that introducers and intermediaries are required to use independent documents to verify identification information, and to ensure that the authority of a customer purporting to act for another is**

	valid, and ascertaining the nature of the customers business. • **Introducers and intermediaries should be subject to CFT measures.** • **There should be greater guidance to regulated businesses with regard to ascertaining whether an introducer's/intermediary's home country has adequately applied the FATF Recommendations.** • **The Authorities should clarify the identified inconsistencies between the Regulations and the Guidance Notes with regard to whether introducers are to be subject to the FATF Recommendations.** • **The inconsistencies in the regime are evidenced by reliance on introducers that are not subject to the FATF requirements as required by the Regulations. These inconsistencies should be resolved.**
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • **The Authorities should consider measures to ensure that supervisory authorities are able to verify that captive insurance and international insurance companies are properly complying with the record keeping obligations established in the law.** ***Special Recommendation VII*** • **Both the Money Services Act and the Payment Systems Act should be brought into effective implementation.** • **The full detailed originator information required for cross border transfers should be expressly required for all types of transfers.** • **There needs to be appropriate guidance provided to funds transfer businesses and banks with regard to the appropriate treatment of funds transfers transactions where sufficient originator information is not available.** • **The Authorities may wish to consider amending the Banking Act to definitively grant to the ECCB the power to inspect and sanction banks for breaches of AML/CFT obligations.**

	• **The Nevis Offshore Banking Ordinance should provide for sanctions, including revocation, for breaches of AML/CFT obligations;** • **The Nevis Offshore Banking Ordinance should expressly allow for examinations by the ECCB to deal with AML/CFT issues.** • **The criminal sanctions under the FSCA and the AMLR should be proportionate to the actual offence committed, which can affect dissuasiveness and effectiveness.**
3.6 Monitoring of transactions and relationships (R.11 & 21)	***Recommendation 11*** • **The Authorities should consider measures that would allow the Commission to properly verify that captive and international insurance companies are fully complying with the requirements relating to complex and unusual transactions specified in the laws. .** • **The Authorities should resolve the ambiguity between the treatment of unusual and complex transactions in the law and in the Guidance Notes.** • **The Authorities should consider specifying that financial institutions should make their unusual transaction records available for competent authorities and auditors.** ***Recommendation 21*** • **The Authorities should consider measures to ensure that the FSC is able to verify the level of compliance by International and Captive Insurers with the requirements of Recommendation 21.** • **The Authorities should consider a wider range of countermeasures that should be taken against countries that fail to apply appropriate AML/CFT Standards.** • **Apparent inability to enforce measures as they relate to CFT issues.** • **Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards.**
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	***Recommendation 13*** • **The requirement for suspicious transaction**

	reporting under the AML Regulations needs to be aligned with the issue of funds being the proceeds of criminal activity in accordance with the requirements of Recommendation 13. • **The Authorities should de-link the connection between unusual transactions and suspicious transactions, as they represent two separate obligations under the FATF Recommendations.** • **The requirement for suspicious transaction reporting under the ATA needs to be aligned with the issue of funds being linked to or related to terrorism, terrorist acts or terrorist organisations or financiers in accordance with the requirements of Special Recommendation IV.** • **All offences under the AML Regulations carry the same penalty of EC$50,000. The Authorities should re-examine this as a "one-size" fits all approach to sanctions under the regulations could inhibit effectiveness especially for the more serious sanctions.** ***Recommendation 14*** • **Section 5 of the POCA (tipping-off offence) should be amended to provide for information about a STR or general information and not just ML investigations.** • **The POCA and ATA should be amended to provide for the tipping-off offence as it relates to reporting of STRs or related information to the FIU which would lead to a ML or FT investigation.** ***Recommendation 25*** • **The FIU should provide feedback in the form of AML/CFT trends and typologies to regulated sectors.** ***Special Recommendation IV*** • **Suspicious transaction reporting under the ATA should be made to the FIU.** • **Sanctions for failing to report possession of terrorist property should be more stringent.**
3.8 Internal controls, compliance, audit and foreign branches (R.15 &	• **The Examiners take the view that the AMLR cannot extend to obligations relating to terrorism financing. Thus the internal control**

22)	**measures prescribed by the AMLR cannot apply to the area of financing of terrorism. This would impact key areas such as internal auditing, the compliance officer and staff training, notwithstanding the fact that these areas in practice do cover terrorism financing issues. The St. Kitts and Nevis Authorities should take legislative measures that would ensure that the obligations under Recommendation 15 apply to the financing of terrorism.** • **The Authorities should consider providing further guidance on internal testing procedures and requiring that these functions be independent and appropriately resourced.** • **There is a fundamental issue of concern relating to properly ascertaining the level of compliance with regard to suspicious transaction reporting requirements that is achieved by the resident insurance manager operating under the Captive Insurance Act and the Nevis International Insurance. Given that the vast majority of these transactions occur offshore, there is an issue as to how the Regulators are able to properly and independently verify that all transactions are being captured.**
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	***Recommendation 17*** • **The sanctions under the AML Regulations are all homogenous and therefore not proportionate, and in the case of the more serious offences not dissuasive or effective. The Authorities should re-examine the obligations and assign the appropriate penalties.** • **The Authorities should also re-examine the penalties in the ATA to ensure that the assigned penalties are commensurate with the breach involved.** • **The ECCB should consider widening their power to apply sanctions to circumstances where breaches are discovered outside of the context of an examination.** • **The Authorities should re-examine the regime for securities firms to ensure that the appropriate supervisory body can impose appropriate AML/CFT sanctions for breaches.** • **There needs to be greater use made of the new**

	powers granted under the FSC Act by the Authorities to bolster the effectiveness of the system. ***Recommendation 23*** • **The Authorities need to provide additional resources for all Supervisors in the system, including the FSC, the ECCB and the ECSRC. In particular the ECSRC should commence its programme for examination of licensees to ensure compliance with the Securities laws and other governing statutes.** • **The ECSRC should be vested with the appropriate authority to supervise its licensees re: AML/CFT issues including examination and sanction powers.** • **The Authorities should consider measures that would strengthen the FSC's ability to fully monitor the activities of Captive and International Insurance companies and verify levels of compliance.** • **The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities (e.g. those relating to AML/CFT).** • **The Banking Act should clarify that the ECCB can apply sanctions for AML/CFT breaches including those that do not arise from an examination.** • **Fit and proper requirements should extend to the owners, directors and, managers and domestic Insurance Companies.** • **Fit and proper requirements should apply to Insurance Managers under the International Insurance Act. The current requirement speaks to 'good standing' relative to professional bodies.** • **Fit and proper requirements should apply to directors and managers of all institutions captured under the Financial Services Commission Order.** • **Fit and proper requirements should also extend to credit unions and their directors and senior managers.**

	• **The licensing process under the Money Services statute should commence.** • **The laws relating to insurance (both international/captive and domestic) should provide for group supervision as provided for in the IAIS principles.** • **The Nevis Offshore Bank Ordinance should provide for consolidated supervision.** • **The Money Services statute should be implemented as soon as possible.** • **The new Insurance statute should be finalised and passed into law.** • **The Authorities should strengthen the ability of supervisors to verify levels of compliance of captive and international insurance companies.** • **The Authorities should finalise arrangements for the transfer of regulatory responsibility regarding credit unions to the Commission.** ***Recommendation 25*** • **The Authorities should carry out the necessary amendments to ensure that the Guidance Notes can properly cover CFT issues.** ***Recommendation 29*** • **The ECCB/ECSRC should be vested with examination and sanction powers where AML/CT is concerned.** • **The penalties under the AMLR and the ATA should be more effective, proportionate and dissuasive.**
3.11 Money value transfer services (SR.VI)	• **The Money Services Business Act should be implemented as soon as possible.** • **Money Services Providers should be required to maintain a current listing of agents for the inspection of the Authorities.** • **The Supervisory Authorities should be required to maintain a current listing of operators.** • **The penalties under the AMLR should be more proportionate to ensure effectiveness and**

	dissuasiveness. • **The penalties in the Money Services Business Act (particularly as they relate to AML matters) should be more proportionate to ensure effectiveness and dissuasiveness.** • **The Money Services Business Act should also refer to the compliance obligations of the licensees under the ATA.** • **The FSC should make more use of the powers under the FSC Act and the AMLR.** • **The effectiveness of the supervisory regime for money service providers would be affected by broader system issues such as the limited scope of the AMLR /GN to ML issues and not to TF issues as well as weaknesses in the suspicious transaction reporting requirements under both the AMLR and the ATA. These issues must be addressed to ensure that these providers properly comply with the FATF Recommendations.**
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• **Deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report also apply to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.** • **The Authorities should consider amending the FSC Act to give the Commission explicit powers to supervise and regulate for AML/CFT purposes. The FSC Act should be also be amended to give the Commission explicit powers over DNFBPs** • **St. Kitts and Nevis should implement a robust system of regulation and supervision for casinos. Casinos should also be sensitised about their CDD obligations under the AMLR and GN.** • **Schedule 1 of the POCA should be amended to specify the relevant activities of accountants and auditors, in line with E.C. 12.1(d).** • **The AMLR should be amended to ensure that third parties are regulated and supervised in accordance with Recommendation 23, 24, and**

	29, and have measures in place to comply with Recommendations 5 and 10. • **Implement a robust system of regulation and supervision for casinos.** • **Sensitise the Gaming industry of its CDD obligations under the AMLR** • **Specify the activities of accountants and auditors to bring them in line with FATF E.C. 12(1)(d)** • **Require third parties to be regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10.** • **Amend section 10 of the AMLR to make "business correspondence" to be available for at least five years.** • **Amend paragraph 72 of the GN to specify that documented findings regarding complex, unusual or large transactions should be made available upon request.**
4.2 Suspicious transaction reporting (R.16)	• **The AMLR should be amended to mandate direct legal obligation on DNFBPs to report suspicious transaction to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity, irrespective of whether the transaction is complex, unusual, or large.** • **Amend the AMLR mandate that attempted transactions be reported, regardless of the amount.**
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** • **The FSC Act should clarify the powers of the FSC to regulate and supervise DNFBPs.** • **Casinos should be subjected to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures. If the FSC were designated as the authority to supervise casinos for ALM/CFT purposes, then the FSC Act should be amended to give the FSC those powers. Furthermore, there should be documented regulatory requirements to establish beneficial ownership for Casinos.**

	Recommendation 25 • **The FIU should provide feedback to DNFBPs on disclosures and sanitised cases. Additionally, there should be sector specific guidance for DNFBPs with respect to AML/CFT.**
4.4 Other non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• **The Authorities should amend the Companies Act to include measures that would provide for information on beneficial ownership and control of legal persons.**
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• **The St. Kitts and Nevis Authorities should put provisions in place that would facilitate obtaining relevant information with regard to private trusts.**
5.3 Non-profit organisations (SR.VIII)	• **While there is a system of registration of NGOs, and there are provisions under the NGOA for a Non-Governmental Organisation Commission to monitor compliance, the recent legislative changes do not allow for sufficient time to allow or test for effective implementation** • **The purpose and objectives, and identity of persons who control the activities of non-profit organisations should be made public, and there should be documented evidence of public availability. However, the Authorities indicated that it is standard practice for all information on domestic entities to be publicly available at the general registry.**
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• **The Authorities need to foster a greater level of cooperation pursuant to the MOU which was signed in 2007.** • **The DPP should play a pro-active role in giving guidance to the police in relation to AML/CFT investigations.**
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	***Special Recommendation 1*** • **The ATA should be amended to make provision for the freezing of funds of Al-Qaida, Osama Bin Laden, the Taliban and their associates and other persons designated by the U.N Security Council.**

	• **The St. Kitts and Nevis Authorities should ensure that legislation should provide specifically for an aircraft to be denied permission to land if it belongs to Al-Qaida, the Taliban or their associates.** • **The statute of limitation for commencing money laundering offences should be extended and unless the limitation is removed altogether, where a person is a fugitive from justice then the limitation period should be longer.**
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• **Mechanisms should be put in place to deal with matters which may cause dual jurisdictional conflict.** • **Arrangements should be put in place for the sharing of assets under the ATA.** • **The Mutual Legal Assistance in Criminal Matter Act should be amended to provide for the identification, freezing seizure or confiscation of the instrumentalities used in or intended for use in the commission of an offence.**
6.4 Extradition (R.39, 37 & SR.V)	• **The Schedule of the Fugitive Offenders Act should be amended to include money laundering and terrorist financing as extraditable offences.**
6.5 Other Forms of Co-operation (R.40 & SR.V)	• **St .Kitts and Nevis Authorities should move to put measures in place to enable law enforcement to conduct investigations on the behalf of their foreign counterparts.** • **The Authorities should consider expanding the ECSRC's mandate to supervising compliance with both AML and CFT requirements, which would then permit the Commission to share information on these matters.**
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• **St. Kitts and Nevis should put adequate mechanisms in place to ensure that staff recruited at the FIU maintains a high level of integrity and confidentiality.** • **The FIU should be provided additional human and technical resources for it to adequately and efficiently carry out its functions.** • **More training should be sourced and provided to the personnel of the FIU.** • **St. Kitts and Nevis should consider filling the vacant posts within the Police Force in order to**

	strengthen its human resource capabilities, so that there would be an adequate allocation of human resources for the proper investigation of crimes in general and ML and FT specifically. • **The budgetary resources of the Police Force should be increased to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its functions** • **The Police Force should consider providing more training particularly in the area of ML investigation and other relevant areas. This could also be done in-house and provision should be made to have it inducted within the regular police training programme for new recruits.** • **There is a need for more Law officers in the office of the Director of Public Prosecutions** • **There is an urgent need for AML/CFT training of all officers in the Office of the DPP. This Training should include the seizing, freezing, forfeiture and confiscation of assets.** • **A law library in the Office of the DPP should be considered as a matter of priority since this would greatly assist the office of the DPP as well as the Officers in the Ministry of Legal Affairs in accessing reference materials.** • **The St. Kitts and Nevis Authorities should consider providing the Customs and Excise Department with adequate resources to undertake it functions; such resources should include vehicles, firearms and computers.** • **The St. Kitts and Nevis Customs and Excise Department should put adequate measures in place so as to ensure staffs are properly vetted so as to maintain a high level of integrity and confidentiality, more specifically staff in key areas such as the Enforcement and the Intelligence Divisions/Units.** • **The St. Kitts and Nevis Customs and Excise Department should ensure that staffs are provided with adequate training in relation to ML and TF, especially persons in key areas and in particular officers attached to the Nevis Department.**

	• **The FIU should implement procedures for keeping statistics on international wire transfers, as these statistics are not kept by any other agency.** • **The FIU should move to establish a system whereby proper records relating to the investigation of ML &TF are properly recorded, the system could includes proper records of production orders, monitoring orders and restraint orders.** • **The Customs and Excise Department should keep adequate and comprehensive statistics in relation to cross border seizure of currency and bearer negotiable instruments and the number of these reports that were forwarded to the FIU.** • **The statistics provided should state the nature of assistance sought and rendered and what orders were used to obtain the funds which were repatriated to the USA.**
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

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

Relevant sections and paragraphs	Country Comments

ANNEXES

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

Annex 1

LIST OF ABBREVIATIONS

AG	Attorney General
AML	Anti-Money Laundering
AMLR	Anti-Money Laundering Regulations, 2008
BGCA	Betting and Gaming (Control) Act
CA	Companies Act
CALP	Caribbean Anti-Money Laundering Programme
CCLEC	Caribbean Customs Law Enforcement Council
CDD	Customer Due Diligence
CFT	Combating Financing of Terrorism
CFTAF	Caribbean Financial Action Task Force
CGBS	Caribbean Group of Banking Supervisors
CICA	Captive Insurance Companies Act
CO	Compliance Office
DNFBP'S	Designated Non Financial Businesses & Professions
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
ECSRC	Eastern Caribbean Securities Regulatory Commission
FA	Foundation Act
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FOA	Fugitive Offenders Act
FSC	Financial Services Commission
FSC Act	Financial Services Commission Act
FSRO	Financial Services (Regulations) Order
FT	Financing of Terrorism
GN	Guidance Notes
IAIS	International Association of Insurance Supervisors
IOSCO	International Organisation of Securities Commissions
KYC	Know Your Customer
LP Act	Limited Partnership Act
LPA	Legal Profession Act
MACMA	Mutual Assistance in Criminal Matters Act
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MOF	Ministry of Finance
MSBA	Money Services Business Act
NGOA	Non Government Organisation Act
NBCO	Nevis Business Corporation Ordinance
NIETO	Nevis International Exempt Trust Ordinance
NLLCO	Nevis Limited Liability Company Ordinance
POCA	Proceeds of Crime Act
REDTRAC	Regional Drug Law Enforcement Training Centre
STR	Suspicious Transaction Report
S/RES	Security Council Resolution
UK	United Kingdom
US/USA	United States of America
WCO	World Customs Organisation

Annex 2

Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

Ministries

Ministry of Finance
Minister of Finance
Financial Secretary
Permanent Secretary – Nevis

Premier's Ministry
Honourable Premier

Ministry of Justice and Legal Affairs
Attorney General
Legal Advisor - Nevis
Comptroller of Customs
Parliamentary Council
Chief Magistrate

Ministry of National Security
Commissioner of Police
Comptroller of Customs

Ministry of Foreign Affairs
Permanent Secretary

2 Operational Agencies

Financial Intelligence Unit
- Head, FIU

Drug Squad

3 Financial Sector – Government

Financial Services Commission (FSC)
- Regulator – St. Kitts
- Regulator - Nevis
- Registrar of Companies, St. Kitts
- Registrar of Companies, Nevis
- Chairman, Financial Services Commission

4. Financial Sector – Associations and Private Sector entities

- St. Kitts Nevis Anguilla National Bank
- SNIC Insurance
- Bank of Nevis

- Western Union
- Morning Star Holdings
- St. Kitts Cooperative Credit Union
- St. Kitts Marriott Casino
- Chamber of Industry and Commerce
- FIDESCO Trust

5. DNFBPs – Government and SROs

- St. Kitts & Nevis Bar Association
- Institute of Chartered Accountants of the Eastern Caribbean

Annex 4

List of all Laws, Regulations and other Material received

1. Anti-Terrorism (Amendment) Act, 2008
2. Anti-Money Laundering Regulations, 2008
3. Banking Act
4. Chemical Weapons (Prohibition and Control) Act, 2006
5. Confidential Relationships Act, 1985
6. Customs (Control and Management) Act
7. Cooperative Societies Act, 1995
8. Captive Insurance Act
9. Drugs (Prevention and the Abatement of the Misuse and Abuse of Drugs) Act and Subsidiary Legislation
10. Extradition Act
11. Financial Services Commission (Amendment) Act, 2008
12. Financial Intelligence Unit (Amendment) Act, 2008
13. Financial Intelligence Unit Organizational Chart
14. FIU AML/CFT awareness activities for the period 2003-2007
15. Financial Services Regulatory Department Register of Persons Authorized under the FSC(Regulations), Order, 1997
16. Financial Services Regulatory Department – Training Workshop Attended, 2005-2008
17. Financial Services as of BDP – St. Kitts only
18. Fugitive Offenders Act
19. Mutual Assistance in Criminal Matters Act
20. Payment Systems Act, 2008
21. Police Act
22. Proceeds of Crime (Amendment) Act, 2008
23. International Insurance Act
24. Report on Staffing and Expenditure for the period 2005-2008, Customs Department, Nevis
25. Status of STRs analysed by the FIU for the period 2004-2007
26. St. Kitts Financial Services Regulatory Department – Estimates for the period 2004-2008

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