SAINT VINCENT & THE GRENADINES

DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

JUNE 9, 2010
POST-PLENARY VERSION

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

Contents Page

Commonly used abbreviations

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AG	Attorney General
BL	Banking Law
BCP	Basel Core Principles
CC	Criminal Code
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CPC	Criminal Procedure Code
CSP	Company Service Provider
CTR	Currency Transaction Report
DNFBP	Designated Non-Financial Businesses and Professions
DTOA	Drug Trafficking Offences Act
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
ECCU	Eastern Caribbean Currency Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FSRB	FATF-style Regional Body
FT	Financing of Terrorism
IAIS	International Association of Insurance Supervisors
IBC	International Business Company
IFSA	International Financial Services Authority
ITR	International Trust
KYC	Know Your Customer/client
LEG	Legal Department of the IMF
MEF	Ministry of Economy and Finance
MFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding
ML	Money Laundering
MLA	Mutual Legal assistance
NAMLC	National Anti-Money Laundering Committee
NPO	Nonprofit Organization
PEP	Politically-Exposed Person
POCA	Proceeds of Crime and Money Laundering (Prevention) Act
RA	Registered Agent
REGs	Proceeds of Crime (Money Laundering) Regulations
ROSC	Report on Observance of Standards and Codes
RSVGPF	Royal Saint Vincent and the Grenadines Police Force
SAR	Suspicious Activity Report

SFT	Suppression of the Financing of Terrorism
SRD	Supervisory and Regulatory Division
SRO	Self-regulatory Organization
STR	Suspicious Transaction Report
SVG	Saint Vincent and the Grenadines
UN	United Nations
UNATMA	United Nations (Anti-Terrorism Measures) Act
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Saint Vincent and the Grenadines (SVG) is 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 assessment Methodology 2004, as updated in 2008. The assessment team considered all the materials supplied by the authorities, information obtained onsite during their mission from February 23 through March 10, 2009, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex II to the detailed assessment report.

The assessment was conducted by a team of assessors composed of two staff of the International Monetary Fund (IMF) and two expert acting under the supervision of the IMF: Manuel G. Vasquez (LEG staff, team leader and financial sector assessor); Moni Sengupta (LEG staff and law enforcement/FIU assessor); Ross Delston (legal expert under LEG supervision) and John Abbott (DNFBP[1] expert under LEG supervision). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions (FIs) and DNFBPs. The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in SVG at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out SVG levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report will be presented to and endorsed by the Caribbean Financial Action Task Force (CFATF) for purposes of their mutual evaluation program at its plenary meeting in May 2010[2].

The assessors would like to express their gratitude to the SVG authorities for cooperation, assistance and hospitality throughout the assessment mission.

[1] Designated Non-Financial Businesses and Professions.

[2] The report was originally scheduled for presentation at the CFATF's plenary and ministerial meeting in October 2009, but the SVG authorities were unable to properly comment on the revised report within the allowable time for circulation of the report.

EXECUTIVE SUMMARY

Key Findings

1. Saint Vincent and the Grenadines (SVG), as is the case with other countries in the Caribbean, is exposed to money laundering (ML) and financing of terrorism (FT) risk related to drug trafficking and international criminal groups. It is also exposed to international ML/FT risk associated with its relatively small international (offshore) financial sectors. SVG is aware of these risks and has expressed strong commitment to identifying and prosecuting drug trafficking offences and money laundering. It is not aware of any FT activities being conducted in SVG. There have been four convictions for ML (with two pending cases) and five prosecutions in the last five years (2004–2008). The number and level of prosecutions as well as property confiscations and forfeitures appear to be relatively low.

2. To help address these risks, SVG has enacted legislation that includes, *inter alia*, the Drug Trafficking Offences Act (DTOA), the Proceeds of Crime and Money Laundering (Prevention) Act (POCA) and its Regulations, the Financial Intelligence Unit Act (FIU Act), and the United Nations (Anti-Terrorism Measures) Act (UNATMA). However, SVG could benefit from a formal and broad-based national policy and strategy to combat ML and FT across all sectors, including international financial services. A country review of the main ML/FT threats and vulnerabilities would support the formulation of such strategy, action plan, and the effective use of resources.

3. Local legislation conforms to most but not all of the provisions of the Vienna and Palermo Conventions. In addition, the ML laws do not cover some of the categories of predicate offences called for by the international standard, and the provisions with respect to the definition of "property" and self-laundering should be strengthened. The definition of 'terrorist act' in the UNATMA does not cover acts required by two of the applicable UN Conventions. Finally, there is significant scope for enhancing implementation of the AML/CFT legislation in order to increase the number of ML prosecutions, convictions and confiscations.

4. Interagency cooperation and coordination arrangements are informal but generally effective. There is a National Anti-Money Laundering Committee (NAMLC) which provides a forum for the exchange of information and coordination. Its members are key stakeholders in national AML/CFT efforts including the financial sector regulators, the financial intelligence unit (FIU) and the various law enforcement agencies. Interagency cooperation could be better supported by more formal arrangements e.g. between the Director of Public Prosecutions (DPP) and the FIU with respect to investigations and prosecutions.

5. The preventive measures regime covers most of the financial and designated non-financial businesses and professions (DNFBP) sectors as required under the FATF Recommendations. However, the POCA and its Regulations have not kept pace with revisions in the FATF standard and should be updated. There are no other enforceable means (OEM) for ensuring compliance with these requirements and the authorities should consider making the non-mandatory Guidance Notes or parts thereof enforceable. A key challenge will be to more fully implement the legislation across all sectors, particularly in the domestic non-banking sectors (e.g. the building societies, credit unions, insurance companies and intermediaries, and money remittance), and in the international financial services sectors. This may entail strengthening the staffing and resource capacity of the International Financial Services Authority (IFSA) and the Supervisory and Regulatory Division (SRD) of the Ministry of Finance. Compliance with the AML/CFT legal

requirements has not been vigorously enforced by the financial sector supervisors and their supervisory programs could benefit from the application of more risk-based AML/CFT supervisory procedures.

6. The SVG authorities have cooperated with their international counterparts in the area of ML and are willing and able to cooperate in matters relating to both ML and FT.

Legal Systems and Related Institutional Measures

7. **ML has been criminalized and the legislation is largely in conformity with the Vienna and Palermo Conventions.** However, certain offences and the definition of 'property' in POCA are not consistent with the relevant articles of these conventions. Self-laundering by way of simple possession of proceeds is not criminalized. Racketeering, human trafficking and migrant smuggling are not predicate offences for ML. Moreover, implementation appears to be weak as suggested by the low number of criminal prosecutions and convictions for ML and related predicate crimes.

8. **The financing of terrorism has also been criminalized and is largely in conformity with the Suppression of the Financing of Terrorism (SFT) Convention.** However, the Convention on the Physical Protection of Nuclear Material (1980) and the International Convention for the Suppression of Terrorist Bombings (1997) are not included in the list of conventions under the United Nations (Anti-Terrorism Measures) Act (UNATMA) for purposes of the definition of 'terrorist act.' In addition, certain offences in the UNATMA apply only to terrorist groups and not to individual terrorists. There is no legislation to implement the relevant United Nations Security Council resolutions (UNSCRs), including but not limited to UNSCRs 1267, 1373 and 1455, that require member states to freeze, seize and confiscate the assets of designated terrorists and terrorist organizations.

9. **While it is not possible to reach a definitive conclusion, the overall numbers of prosecutions, convictions, confiscations and forfeitures of property in the last five years, appear to be low given the extent of drug trafficking believed to be taking place in or through SVG.** In addition, the available statistics do not reflect the potential for ML and FT associated with the international financial (offshore) services sectors.

10. **The FIU is well established and operational, with sufficient legal authority and a highly motivated and professional staff.** It is the primary AML/CFT institution in SVG, and is constituted as a hybrid administrative/law enforcement FIU reporting to the Minister of Finance. In addition to its core functions of receiving, analyzing and disseminating STRs, the FIU also has taken on additional tasks, in particular, engaging in financial intelligence, investigation and prosecutorial activities. (The prosecutorial activities are carried out in coordination with the Director of Public Prosecutions.) The FIU Act provides it with sufficient legal authority for most financial intelligence functions but does not specify the requisite authority to access relevant information from other governmental bodies for intelligence purposes. Police and customs officers assigned to the FIU, however, retain their individual authority to access information under their respective police and customs legislation. The FIU consistently analyzes all suspicious activity reports (SARs) received but its effectiveness in terms of generating financial intelligence for further domestic investigation and prosecution for ML offenses is could be improved. Its composition as a multi-disciplinary FIU allows for efficient case management and information flow but this may be at the expense of its core financial intelligence function due to limited human resources. Nearly all of the ML investigations conducted and related production orders issued to-date have been based on pro-active investigations by the FIU and not prompted by SARs.

11. **Designated law enforcement authorities are available to support the FIU's AML/CFT investigations and prosecutions.** As a hybrid administrative/law enforcement FIU, it has specialized staff that carry out the ML/FT investigative, law enforcement and prosecutorial functions. Its staff includes lawyers, seconded police, and customs officers, and other support staff. FIU staff are adequately trained and versed in their areas of expertise. No significant weakness was observed in this arrangement.

12. **There is good cooperation between the FIU, law enforcement authorities and the Attorney General (AG).** The FIU staff conducts joint operations and investigations with the police and customs authorities, and regularly applies to the court for production orders in coordination with the DPP. This has helped to develop prosecutions of ML cases. Cooperation arrangements could nonetheless be enhanced through a more formal framework between the FIU and domestic law enforcement authorities. The AML/CFT expertise within the police and customs force could also be enhanced, and all agencies involved in AML/CFT could benefit from more advanced training especially for complex ML and FT cases. Both the DPP and the AG's office are under-resourced to conduct complex ML prosecutions especially those with international dimensions. This may partly explain why some ML investigations are diverted to other jurisdictions.

13. **The legal and institutional framework regarding the cross-border transportation of cash and bearer instruments is largely in place**. However, the Customs Department has an administrative procedure in place for dealing with cash couriers that could limit enforcement action against such couriers. This procedure is not being used and its potential drawbacks are mitigated by informal cooperation arrangements with the FIU. There is also insufficient coordination with the DPP on such matters. In addition, administrative and criminal fines in the customs laws are not sufficiently proportionate and dissuasive.

Preventive Measures—Financial Institutions

14. **SVG has implemented an AML/CFT legal and regulatory framework for financial institutions (FIs), supplemented by non-mandatory Guidance Notes that partly meet with the FATF requirements.** The POCA (2001) was amended in 2002 and in 2005, but the POCA Regulations (Regulations) have remained practically unchanged since they were issued in 2002. They have not been updated to more fully comply with the revised FATF standard. In addition, key provisions of the Guidance Notes, which could help meet the FATF requirements, are not mandatory or enforceable. Making them enforceable or including some of their provisions in the POCA Regulations may achieve this goal.

15. **The regulatory framework does not explicitly cover CFT issues and does not extend the customer due diligence (CDD) requirements beyond customer identification and verification.** The CDD provisions in the Guidance Notes are generally broad but, as noted above, they are not enforceable. The AML/CFT requirements could be strengthened with the addition of key provisions for, inter alia, the establishment of formal AML/CFT policies, CDD for beneficial owners and controllers of legal entities and arrangements, and record keeping. In addition, the POCA (Schedule 1) and Regulations do not explicitly cover mutual fund and life insurance sector intermediaries and should, for the avoidance of doubt, list all FIs specifically covered by SVG financial legislation. More strict enforcement of compliance by supervisors is required to ensure more effective implementation of the existing CDD requirements. The regulations should include enhanced requirements for ML/FT risk management and controls especially with respect to higher risk customers e.g. bearer share companies, politically-exposed persons (PEPs), non-residents, and correspondent banking relationships.

16. **Recordkeeping in the domestic financial sector appears to be generally adequate but the regulatory requirements and practice do not facilitate effective ongoing supervision of FIs operating in the international financial services sectors.** These FIs are generally allowed to keep records outside of SVG although the International Financial Services Authority (IFSA–the primary supervisor for such entities) has the legal authority to request and access information or copies of records. In cases where FIs are allowed to rely on third parties for carrying out CDD, the Regulations do not require FIs to immediately obtain the relevant CDD information from such third parties. This limits the ability of the supervisory authorities, auditors, and compliance officers to more efficiently and effectively monitor compliance with the CDD and other AML/CFT requirements, particularly where the underlying customer records are kept outside of the jurisdiction. It may also limit the ability of the FIU and law enforcement agencies to efficiently access such information.

17. **Arrangements for the reporting of suspicious transactions are generally well developed and the FIU has been receiving reports from FIs.** There is a need to upgrade the regulatory requirements to monitor and document, complex, large and unusual transactions to provide a stronger basis for identifying and reporting suspicious transactions. Implementation of the suspicious transaction reporting regime varies significantly across sectors, with apparent under-reporting by offshore financial institutions sectors and the domestic non-banking sectors. The vast majority of SARs filed relate to cash transactions.

18. **AML/CFT compliance supervision is still evolving and more effective implementation is required particularly with respect to the non-banking sectors.** IFSA is the supervisor for international services businesses, including some DNFBPs, while the Eastern Caribbean Central Bank (ECCB) and the SRD of the Ministry of Finance are responsible for domestic banks and non-banking FIs, respectively. The scope and frequency of onsite inspections for all FIs could be strengthened including through the adoption of a more risk-based approach. Compliance supervision of domestic banks has been sporadic, and the framework and procedures for AML/CFT supervision of insurance companies and intermediaries, credit unions, and money remitters are still being developed. Implementation of AML/CFT supervision, particularly onsite inspections, has only recently commenced for the domestic non-banking sectors, and the legal and supervisory framework for a systemically important building society is still being developed. There are a couple of lending entities that appear to fall under the POCA and its Regulations but which are not subject to authorization and supervision. After the mission, they were reviewed by the authorities for significance and "fit and proper" purposes. At the time of the mission, staff resources of IFSA and the newly established SRD were very limited given the number of entities under their jurisdiction but post mission the authorities informed that steps were being taken to strengthen staff at the IFSA.

19. **Effective ongoing supervision is hindered by minimal physical presence/mind and management of some FIs operating in the international financial services sector.** While all offshore banks have local offices, the mission found that a small number have only nominal mind and management in SVG. Supervision of FIs that conduct and manage the core of their business operations from overseas is not complemented by e.g. the use of independent auditors and/or consultants acting on behalf of the supervisor. Monitoring of the fit and proper requirements for owners and controllers of offshore FIs does not appear to be a routine supervisory activity and should be strengthened including the transparency of ownership structures. Enforcement of AML/CFT compliance is relatively weak and there should be additional enforcement powers in the AML/CFT and/or financial laws to apply a range of administrative sanctions.

20. **There are no regulatory requirements for including full originator information for wire transfers in accordance with SR VII.** Nevertheless, as a matter of normal business practice some FIs appear to comply with most of the originator information requirements of SR VII because of international standardized procedures for cross-border wire transfers.

21. **Money service businesses are required to be licensed and are subject to the preventive measures obligations of the POCA and Regulations.** Supervision for compliance of stand-alone money service businesses is the responsibility of the SRD-Ministry of Finance, including for AML/CFT. Licensing procedures, including regulatory requirements for AML/CFT controls, are in place but at the time of the assessment, the Ministry was only beginning to develop AML/CFT compliance monitoring procedures. Four firms have been licensed as money transmitters and are involved primarily in servicing inward flows of worker remittances. Money transmitters process a large volume of one-off cash transactions and have implemented systems for identifying and reporting suspicious activities. They have filed the highest number of suspicious transaction reports to the FIU.

Preventive Measures—Designated Non-Financial Businesses and Professions

22. **SVG has extended the preventive measures obligations of the POCA and Regulations to designated non-financial businesses and professions (DNFBPs).** The covered sectors are: casinos, lawyers, notaries, accountants, company and trust services providers (registered agents and trustees), real estate agents, and jewelers. The obligations also apply to lottery agents and car dealers. For the DNFBPs, the main ML/FT risk exposure appears to be related to cross-border transactions conducted through the international financial services sector, or connected with real estate transactions in the tourism sector. SVG has an active trust and company services sector focused primarily on formation and management of international business corporations (IBCs), and trust administration. They are required to be licensed by the IFSA. Tourism-related real estate transactions are also significant. Cash transactions in high value goods (jewelry, cars) are relatively small scale and domestically oriented. The casino sector is small (two facilities) but poorly regulated.

23. **The preventive measures requirements for DNFBPs are broadly similar to those for financial institutions but supervision of compliance with their AML/CFT obligations is uneven and underdeveloped.** Registered agents and trustees are supervised by IFSA as part of its oversight of the international financial services sector. Supervision of registered agents has focused primarily on licensing requirements but more recently IFSA has enhanced its on-site and off-site monitoring of compliance with the AML/CFT requirements.

24. **No agency has been assigned supervisory responsibility for monitoring of and enforcing compliance by the other DNFBPs.** Nonetheless, the FIU plays an active role in promoting AML/CFT compliance by DNFBPs, as it does for other FIs. The FIU has statutory responsibility for raising awareness of AML/CFT issues across the regulated sectors and under this authority it engages in a regular program of outreach and training for DNFBPs, especially for those that are not subject to formal regulation. Despite the absence of formal supervision, these DNFBPs generally appeared to be familiar with their obligations. Formal AML/CFT oversight is needed to ensure that all DNFBPs are effectively implementing, on a risk-sensitive basis, the measures required by POCA and the Regulations, as well as the applicable FATF Recommendations. While the casino sector is very small, its vulnerability to ML has not been evaluated and its regulatory framework is not well established.

Legal Persons and Arrangements & Non-Profit Organizations

25. **With respect to international business companies (IBCs), SVG's legal framework requires registered agents to obtain information about beneficial ownership of legal persons, to make that information available to IFSA, and to immobilize bearer shares.** In addition, IFSA has begun the process of implementing these requirements through onsite inspections and is developing procedures. However, in practice, there are a number of significant concerns that diminish IFSA's ability to ensure transparency of legal persons. In particular, bearer shares are not properly immobilized and onsite inspection procedures of IFSA have not been sufficient to ensure that adequate, accurate and complete information about beneficial owners is being collected and maintained by registered agents. For local companies, the Companies Registrar does not have legal authority to ensure that adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities. There is also no restriction or control on the use of nominee shareholders and directors in the Companies Act nor is it possible for the Companies Registrar to determine if nominees are being used. For both IBCs and local companies, relevant laws do not provide competent authorities with adequate powers to ensure that requisite information on beneficial owners is being maintained and disclosed.

26. **With respect to legal arrangements, the legal and institutional framework is minimal for International Trusts (ITRs), and there is no legal or institutional framework in place for domestic trusts.** With respect to ITRs, there are no laws, regulations or other enforceable means that require registered trustees to identify the beneficial owners/beneficiaries of trusts.

27. **Charities are subject to the preventive measures obligations of the POCA and the associated regulations but are not subject to oversight for compliance.** To be eligible for tax preferences, non-profit organizations (NPOs) are required to be incorporated under the Companies Act, including satisfying basic governance and reporting requirements. The Act does not have a specific FT orientation. Drawing on companies' registration information, the FIU has undertaken responsibility for evaluating the structure and activities of NPOs to monitor the vulnerability of the sector to ML and FT risks, and to promote AML/CFT awareness and compliance. The bulk of NPOs in SVG are believed to be small, involving raising and disbursing of local funds for social, cultural, religious, or charitable purposes. However, a few NPOs receive significant funding from overseas to support various forms of education, training, and welfare assistance. These larger NPOs have been the primary focus of the FIU's attention. No specific ML or FT concerns have been identified.

National and International Co-operation

28. **SVG has significantly enhanced its framework for national cooperation since the last assessment.** The repeal of the Exchange of Information Act 2002 eliminated the previous, prohibitive provisions on financial information. The principal legal provisions for national cooperation and coordination are contained in the Exchange of Information Act 2008 (EIA) and in the FIU Act. National cooperation has been further enhanced by the signing of MOUs among the FIU, Police and Customs authorities. A similar MOU with Inland Revenue is also needed. Nonetheless, the FIU does not have specific legal authority to obtain law enforcement and other governmental information needed for purposes of its intelligence and analysis functions. In addition, the NAMLC does not have a statutory role for policy coordination. Finally, domestic regulatory authorities do not have a uniform basis for interagency cooperation including with the FIU and law enforcement authorities. While the NAMLC plays a vital

communication role among the various agencies, it does not have a specific mandate or arrangement for information sharing or cooperation in specific cases.

29. **The framework for international cooperation is generally well designed and based on clear legal authority.** The authorities consider international cooperation a priority in their AML/CFT framework, and have participated in a number of cooperation cases to-date. The legal framework for cooperation could nonetheless be enhanced by specific provisions that allow for investigations and related prosecutorial measures relating to FT on behalf of foreign law enforcement authorities. The framework for mutual legal assistance and extradition is generally in place, and has been fully implemented within the SVG AML/CFT legal system.

1. GENERAL

History, System of Government, Laws and Institutions

30. Saint Vincent and the Grenadines (SVG) is a multi-island State situated in the Eastern Caribbean. It is part of the Windward Islands in island chain called the Lesser Antilles, and is located approximately 1600 miles southeast of Miami and 100 miles from Barbados. SVG comprises mainland St. Vincent, which is the largest geographically, and 31other islands and cays, seven of which are inhabited, namely Bequia, Mustique, Union Island, Canouan, Petit St. Vincent, Palm Island and Mayreau. SVG has a combined land mass of 389 sq km.

31. The population of SVG is estimated at 118,432 (July 2008 est. Source: The CIA World Factbook) with the majority of people living and working in St. Vincent, which is the hub of most of SVG's economic and business activity. The official language is English.

32. SVG gained its full independence from the United Kingdom in 1979. It is a common law jurisdiction operating under a democratic system of Government with a unicameral legislature (House of Assembly). General elections are held every five years. SVG has a written Constitution, which provides for the separation of powers among the Governor General, the Parliament/legislature, Executive, Judiciary, and the public service. The tenure and powers of the Director of Public Prosecutions (DPP) are enshrined in the Constitution.

33. The Chief of State is Queen Elizabeth II who appoints and is represented by the Governor General. The Head of Government is the Prime Minister who is also the Minister of Finance, Minister of Legal Affairs and Minister of National Security. Cabinet is appointed by the Governor General on the advice of the Prime Minister. SVG is a member of the British Commonwealth, the United Nations, the Organization of American States, the International Labor Organization, the Caribbean Community (CARICOM) and the Organization of Eastern Caribbean States (OECS). SVG is also a member country of the Caribbean Financial Action Task Force (CFATF).

34. SVG is a member of the regional Eastern Caribbean Supreme Court which is based on Saint Lucia. It is also a member of the Eastern Caribbean Currency Union sharing a common currency (EC Dollar: US$1 = EC$2.70) and central bank (St. Kitts-based Eastern Caribbean Central Bank) with five other independent countries and two United Kingdom Overseas Territories.

Legal and Judicial System

35. As mentioned above, SVG's legal system is based on English common law with the English Privy Council being the final court of appeal. The legal system has a three-tiered structure set out in hierarchal order as follows: (i) the Eastern Caribbean Court of Appeal; (ii) the Supreme Court of Judicature or the High Court; and (iii) the Magistrates' Courts or the lower courts. The judiciary is within the Saint Lucia-based Eastern Caribbean Supreme Court of which two judges, not citizens of SVG, reside in SVG. One of the judges has jurisdiction over criminal matters and the other presides over civil matters.

36. SVG also has four Magistrates and one visiting Master of the Court. Two Magistrates' Courts are based in the capital Kingstown and the other two Magistrates' Courts are rotated in the outlying districts of

SVG, including in the Grenadines. A Serious Offences Court forms one of the two courts in Kingstown, presided over by the Chief Magistrate. This court was established to ensure that there is consistency in the adjudication and sentencing of serious crimes at the magisterial level. The Master of the Court deals with civil matters before the High Court, so as to curtail the amount of time which the High Court Judge spends dealing with applications which are incidental to the main issues before the Court.

37. Both the Court of Appeal and the Court of Criminal Assizes sit three times per year while the High Court in its civil jurisdiction and the lower courts sit throughout the year. The average session of each sitting of the Court of Criminal Assizes is three months whereby 35 cases on average are adjudicated at each sitting. According to the authorities, access to justice is unimpeded as systems exist for the laying of charges and the filing of civil suits by any member of the public.

38. Law enforcement is carried out by the DPP and the Royal St. Vincent and the Grenadines Police Force (RSVGPF) supported by the Coast Guard. The Financial Intelligence Unit (FIU) was established in May 2002 and is the national centralized agency for receiving, analyzing, investigating and disseminating suspicious activity information to relevant authorities in and out of SVG. As such it has investigative powers with respect to ML and relevant offences under POCA. The FIU is a mixed or 'hybrid' FIU that carries out administrative, investigative and prosecutorial functions. The latter functions are carried out under the authorization of the DPP.

39. The authorities claim that they strive to maintain high ethical and professional standards for police officers, prosecutors, judges and other persons involved in the justice system. Disciplinary proceedings are available for police officers and prosecutors as a result of legislation and practice ((the Police Act, CAP 280 and the Eastern Caribbean Supreme Court (St Vincent and the Grenadines) Act, CAP 18 respectively)). A Police Service Commission also exists which has responsibility for disciplinary proceedings against police officers. The Bar Association can recommend disciplinary proceedings and/or disbarment of lawyers to the High Court. The transparency and efficacy of disciplinary procedures available in SVG pertaining to lawyers is illustrated by the disbarment in 2007, of a local Queen's Counsel and former OECS judge, for unethical and dishonest practices. The said Queen's Counsel's appeal against his disbarment was recently declined by the Court of Appeal. No disciplinary and similar action has been taken by the authorities or industry groups/SROs against accountants and registered agents.

Economy

40. The production of bananas and other agricultural products remain the staple of SVG's economy. However, the country has sought to diversify its economic base away from agriculture by increasing investment in other sectors such as tourism, agro-processing, information communications technology and light manufacturing. Economic growth strengthened in recent years, with GDP growth averaging about 6.0 percent per annum during the period 2004-2007. Domestic demand has been one of the key drivers of this growth reflecting robust private consumption and investment spending. Preliminary government data indicate that economic activity increased by 7.0 percent in 2007, following a 7.6 percent growth in 2006.

41. The construction sector remained the major driver of economic activity in 2007 with the sector's share of real GDP rising to 11.0 percent from 10.3 percent in 2006, and fuelled by both public and private sector projects. Public sector projects centered on infrastructure, including a new international airport that is expected to be completed in 2011. Private sector development activity focused on residential housing, hotels and resorts. Tourist arrivals in 2007 totaled more than 200,000 tourists mostly to the Grenadines.

The increase in residential housing activity was evidenced by an expansion of 18.6 percent in commercial bank credit for home construction and renovation, well above the 3.2 percent rate of increase recorded in 2006.

42. The banking and insurance sector grew by 5.4 percent. Saint Vincent also has an offshore sector mainly comprising banking, insurance, mutual funds, trusts and company services.

1.1. General Situation of Money Laundering and Financing of Terrorism

Money Laundering

43. The principal predicate offences which have generated illegal proceeds that are laundered include drug offences, burglary, theft, and unlawful possession. A portion of the drug offences relate to activities involving other jurisdictions. There are no estimates for the proceeds of crime or of the amount laundered in or from within SVG annually. The authorities maintain that ML methods used in SVG have remained relatively consistent over the years. This includes smuggling of monies into the country through the official ports of entry, and by sea through its many islands and cays. Other methods include use of money remittance business, nominees or third parties to hold assets. Cash intensive front business such a boutiques and car rental companies are also used for reinvestment and distribution of illicit drugs. (Source: mutual evaluation questionnaire (MEQ)). No concrete information was provided with respect to the use or potential use of domestic or international (offshore) financial institutions for ML and FT purposes, namely banks mutual funds, insurance companies, trusts/trustees, international business companies, or through other professional services providers such lawyers and accountants.

44. The authorities state that the majority of the predicate offences do not constitute a serious ML problem citing drug offences that often involve possession of relatively small quantities of marijuana. They also claim that a similar situation exists with respect to burglary and theft which are often committed by petty criminals. There has been moderate decline over the last four years in the number of predicate offences committed, except for drug trafficking.

45. The following table provides summary statistics on the predicate offences:

Table 1: Crimes committed during 2004-2008

Offence	2004	2005	2006	2007	2008
Against Lawful Authority	6	10	9	3	3
Against Person	2868	2516	2135	2161	27
Against Property	5487	5075	4760	4471	2615
Against Penal Code	240	233	192	234	985
Total	8601	7834	7096	6869	3630

Table 2: Selected Crimes against property for years 2004-2008

Offence	2004	2005	2006	2007	2008
Drugs	390	314	252	447	531
Burglary	1563	1492	1301	1192	1107
Theft	2017	1933	1849	1664	1729
Unlawful Possession	26	33	37	23	24
Total	3996	3772	3439	3326	3391

46. During the last four years the FIU, in conjunction with other law enforcement authorities, investigated 41 domestic ML cases. Of the forty-one (41) money laundering cases, the predicate offences are thirty-eight (38) drug trafficking, theft two (2), fraud one (1). The amounted forfeited was ECD$124,591.60. Thus far the investigations have resulted in three successful money laundering convictions involving two individuals. In one instance, the defendant challenged his conviction and sentence in the Court of Appeal and both the conviction but these were upheld. The FIU's legal team undertook the prosecution and subsequent confiscation hearings of these ML cases in conjunction with and on behalf of the Office of the Director of Public Prosecutions. These three matters resulted in forfeiture of cash in one instance and confiscation in the others. See chart at c. 2.5, below.

47. Other ML cases dealt with over this time period are as follows:

- 1 confiscation hearing was successfully completed against a subject convicted of theft.
- 1 ongoing confiscation hearing against a person convicted of drug possession, who is an associate of a person of major interest.
- 2 pending money laundering cases before the court, both relating to drug trafficking.
- 1 prosecution of a person operating a car dealership business for failing to implement an effective compliance system. It involved 2 counts were for failing to keep proper records of transactions and failing to comply with a production order for relevant information.
- 18 successful cash forfeiture applications by the FIU on behalf of the DPP in the civil jurisdiction of the Magistrate's Court.
- 51 cases of seizures and detention of cash by the FIU in conjunction with other law enforcement agencies under the Proceeds of Crime Act (POCA).

48. According to the authorities, while both banks and money remitters may be used to launder money, it is becoming increasingly difficult for money launderers to use domestic banks due to compliance requirements and supervision of such entities. Money remitters have filed the highest number of SARs to

the FIU, but a number of these appear to be either defensive or de facto threshold cash transaction reports. A money remitter has cooperated with the FIU in the investigation of a possible ML offence.

49. The authorities state that enhanced AML efforts by the National Anti-Money Laundering Committee (NAMLC), the FIU, law enforcement and other authorities may prompt money launderers to search for more vulnerable areas in the financial system to manage their illegal proceeds. These could be the less tightly regulated domestic and offshore financial institutions, and DNFBPs. The authorities do not perceive or anticipate changes in the threat of ML.

50. Assessors acknowledge that while the scale of predicate crimes committed and originating in SVG may not pose a growing ML threat if the size of international financial sector remains the same, decreases or if there is little interaction between the international and domestic sectors. (See discussion above with respect to the filing of SARs by money remittance businesses. Also note that money remittance and some international services providers use the domestic banking sector which can create a contagion risk for the banks.) There is, nonetheless, a threat of ML in the international financial sectors arising from crimes committed abroad. Except for the number of offshore banks which has declined in recent years, the other international sectors have grown moderately in the past few years including e.g. mutual funds, trusts and company services, and the insurance sectors. There is also a potential for ML in the growing tourism sector e.g. through real estate transactions and other related businesses such as hotels, restaurants, jewelers, and other support services. By extension, the financial institutions that deal with such businesses could also be exposed to ML risk.

51. The information provided by the authorities, particularly in the Mutual Evaluation Questionnaire (MEQ), focuses mainly on predicate offences committed locally, and the potential for ML connected with such offences. At the time of the mission, there was no information available on ML/FT related to crimes committed in other countries. Increased focus on ML connected with crimes committed abroad would enhance the scope of attention to such threats and form a more comprehensive basis for developing a national AML/CFT strategy. Post mission the authorities provided examples of specific cases where they became aware or were involved in cross-border cooperation and investigations.

52. The authorities are of the view that the mere fact that SVG has an international financial services industry does not make it vulnerable to ML or FT. They maintain that the international financial services sector is small and well-regulated, and that the ML/FT the risks have been mitigated by strong legislative and administrative measures. There has been a sharp decrease in the number of offshore banks from about 41 in 2000 to six at present, influenced in partly by the need to be removed from the FATF NCCT list (de-listed in 2003). (Soon after the mission, the number of offshore banks reduced to four. One bank was closed because of suspected of involvement in fraudulent activities while another went into liquidation for prudential reasons.) During this period, legislation was updated, off-site and on-site monitoring of offshore entities was undertaken by the regulatory authority, and training was provided by the FIU. The authorities state that a thorough due diligence review of the principals of regulated entities, save unlicensed international business companies, was undertaken which helped foster a culture of compliance with the AML/CFT laws and regulations. Nonetheless, the International Financial Services Authority (IFSA is the offshore regulator) has limited supervisory staff capacity (four at the time of the mission) and about 120 licensees subject to its supervision, excluding the international business company (IBC) and trust registration and related functions.

Financing of Terrorism

53. The authorities have not identified FT through financial institutions, and do not anticipate a change in this situation. They consider banks and money remittance services to be the most likely vehicles for FT using techniques that closely resemble ML activity, requiring close scrutiny of suspicious activity reported to the authorities. The FIU states that it has undertaken training and awareness raising programs to assist the regulated sectors learn more about FT in an effort to contain this risk.

1.2. Overview of the Financial Sector

54. The domestic financial sectors comprises of: 6 banks; 1 building society; 9 credit unions; 23 insurance companies; 101 insurance intermediaries (brokers, agents and sales representatives); and 4 money transfer service providers.[3] There are some (two known) lending businesses that are technically covered by the AML/CFT legislation but which are not subject to a compliance oversight regime. The same applies to the building society which is registered with the Registrar of the High Court but not subject to ongoing supervision at the time of the mission. Post mission, the authorities indicated that a Building Society Amendment Act 1 of 2009 was passed to allow the Ministry of Finance to regulate and supervise these entities. The authorities also indicated supervision of this entity has commenced.

55. The international financial services sector comprises: 6 offshore banks (post mission reduced to 4); thirteen (13) international insurance companies; 3 insurance managers/brokers; 45 mutual funds; 30 mutual fund and managers/administrators. Post mission the authorities informed that there are no known mutual fund underwriters subject to the mutual funds law operating in or from within SVG. In addition, there are 28 licensed Registered Agents/Trustees; 123 registered trusts; and 9,584 international business companies.

56. The ECCB regulates all domestic banks while the International Financial Services Authority (IFSA) is the regulatory body for the international financial services sector. The domestic insurance sector and money remitters are supervised by the Supervisory and Regulatory Division (SRD) of the Ministry of Finance while credit unions are supervised by the Registrar of Co-operatives. Later in 2009, the SRD will assume supervision of credit unions and building societies. At the time of the mission, the SRD had only 2 supervisors/examiners on its staff.

57. The following table shows the composition of the domestic and international financial sectors in SVG:

Table 3: Financial Institutions

Domestic financial institutions	No.	Assets US$mn	Branches or Subs. Abroad	Branches/Sub. of Foreign Bank[4]	Regulator
Banks (includes securities broking by banks)[5]	6	776.2	0	3	ECCB

[3] There are indications of one money remittance business that has started operations but which has not been authorized under the Money Services Business Act.

[4] The three foreign bank branches are for banks with head offices in Canada, Barbados and Trinidad and Tobago.

Insurance companies (9 life)	23	NA[6]	0		Min. of Finance[7]
Brokers for insurance company	6	NA	0		Min. of Finance
Agents for insurance	10	NA	0		Min. of Finance
Sales representatives for insurance	85	NA	0		Min. of Finance
Pension fund plan for insurance company	14	NA	0		Min. of Finance
Money transfer services	4	NA	0		Min. of Finance
Credit unions (active)	9	NA	0		Registrar Credit Unions
Building Society	1	94.3	0		Registrar of High Court (registration only)
Total Domestic	**158**		0	3	
International (Offshore) Financial Entities	**No.**	**Assets US$mn**	**Branches or Subs. Abroad**	**Branches of Foreign Bank**	**Regulator**
Offshore banks[8]	6	100	0	0	IFSA
International insurance companies	9	NA	0		IFSA
International insurance managers/brokers	3	NA	0		IFSA
Mutual funds/1	45	NA	0		IFSA
Mutual fund managers/administrators	30	NA	0		IFSA
Sub-total offshore	**93**	NA	0		
Other non-financial offshore					
Registered agents/trustees	28	NA			IFSA
Trusts	123	NA			IFSA (registration only)

[5] The ECCB is responsible for the supervision of domestic banks in the eight countries comprising the ECCU (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Anguilla and Montserrat). There are 39 domestic banks operating in the ECCU.

[6] No recent statistics except for long-term premium which totaled about EC$82.5 million for 2007. Insurance companies only report statistics six months after calendar yearend. Pensions and annuities for 2007 was about EC$68.7 million, which is included in long-term business.

[7] The Ministry of Finance may designate the Supervisor or is the Authority responsible for supervising the various entities, as provided in the respective financial laws.

[8] Does not include off-balance sheet assets under administration or held in a fiduciary capacity. Two of these banks were intervened by the financial regulator soon after the mission reducing the number to four banks when they are finally closed.

International business companies -IBC's	9,584	NA			IFSA (registration only)
Total Offshore	**9828**				

1/ Mutual funds: 38 public, 5 private, 2 accredited. Mutual fund services providers: 4 managers/administrators, 22 managers, 4 administrators.

Table 4: Types of financial institutions authorized to carry out financial activities listed in the glossary of the FATF 40 recommendations.

Types of financial activity	Types of financial institution that is authorized to perform this activity
Acceptance of deposit and other repayable funds from the public (including private banking)	Credit Unions, Domestic Banks, International banks
Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)	Domestic Banks, Non Bank financial institutions
Financial leasing (other than financial leasing arrangements in relation to consumer products	Not Applicable
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity) , but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds	Domestic Banks, International Banks, International Insurance, Credit Unions, Money Transfer Businesses, Gaming Companies
Issuing and managing means of payments (e.g. credit and debit cards, cheques, traveler's cheques, money orders and banker's drafts, electronic money)	Domestic Banks, International Banks, Credit Unions, Gaming Companies
Financial guarantees and commitments	Domestic Banks, International Banks
Trading in: a) money market instruments (cheques, bills, CD's, derivatives etc) b) foreign exchange c) exchange, interest rate and index instruments d) transferable securities e) commodity futures trading	Domestic Banks, International Banks
Participation in securities issues and the provision of financial services related to such issues	Domestic Banks, International Banks
Individual and collective portfolio management	International Banks
Safekeeping and administration of cash or liquid securities on behalf of other persons	Domestic Banks

Otherwise investing, administering or managing funds or money on behalf of other persons	International Banks
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance (Domestic and International)
Money and currency changing	Domestic Banks

1.3. Overview of the DNFBP Sector

58. DNFBPs subject to preventive measures in SVG are casinos, lottery agents, lawyers, notaries, accountants, registered agents and trustees, real estate agents, and jewelers. Car dealers, while not DNFBPs under FATF definitions, are included subject to the same AML/CFT requirements as jewelers and are included in the discussion of DNFBPs.

Casinos

59. Two casinos operate in SVG, one being a small, local club in Saint Vincent with a limited number of regular patrons, the other being a relatively new operation in a large upscale resort on Canouan Island. The casino in St. Vincent consists of three card tables, two roulette wheels, and about eight electronic slot machines. Players would number around 30 on a busy weekend, and between 10 and 12 on a week day. Stakes are relatively low, with chip purchases of EC$3,000 being exceptional, occurring approximately once every two months. Credit may be extended to known customers during play with settlement in cash, or on approval, by check, at check-out. Some credits carry over for later settlement. Credit cards are not accepted. There are no wire facilities. A succession of operators has managed the club, with the current manager in place for about four years.

60. Little information was available in SVG about the casino at the resort on Canouan Island. Resort facilities are very high end and the island is an international port of entry, with scheduled flights to Barbados and Puerto Rico, as well as charter and private jet services. By reputation, the casino caters to international junkets.

61. While the casino sector is nominally subject to licensing and to AML/CFT requirements, little or no regulation is applied, and scant information was readily available in the authorities' files. Money laundering risk at the casino in St. Vincent appeared to be low while the situation at Canouan was undetermined.

Registered Agents and Licensed Trustees

62. SVG has a small international financial sector, offering international business companies, international trusts, international mutual funds, and allowing for establishment of international banks and international insurance. Licensing is required in order to offer company formation and management services or to act as a trustee. There are 28 firms licensed as registered agents (RAs), all of which are also licensed as trustees. Most RAs are small firms headed by a lawyer or an accountant. The principle office is required to be in SVG but a couple of firms have overseas offices, and in the case of one of the largest RAs, most of its business originates and is organized and managed by its European office.

63. Company formation is the most active line of business for registered agents, with a total of 9,466 companies registered as of the end of 2008. At the same time there were 1,059 registered trusts (statistics updated as of June 2009). No information is available on total amount assets under trust administration. Registered Agents tend to rely on established overseas business relationships for referral of new business, although a small amount of business may be attracted as a result of advertising. The active ship registry business in SVG is another channel generating demand for IBCs. Traditionally, RAs have generated most of their business from European clientele although recently business from Asia has increased and is being actively pursued. Organizing and managing mutual funds is an increasing activity of this sector, as is international insurance. The international banking sector has contracted significantly in recent years.

64. SVG registered agents offer the full range of services expected of trust and company service providers, including company formation, acting as director or secretary, providing a registered office and business address, acting as a nominee shareholder or trustee, or arranging for others to do so. It appears that, in most cases, day-to-day administration and management are left to others. Although bearer share companies are allowed, since 2002 procedures have been in place for immobilization of bearer shares. RAs are to be the custodians for immobilized bearer shares or arrange for other approved persons to be the custodians. Amendments to the Companies Act in 2007 tightened requirements for approving custodians of bearer shares.

Lawyers

65. The legal profession in SVG consists of barristers and solicitors who have been called to the bar by the Judiciary and admitted to practice. Although there is a Bar Association, there is no legal practices law in SVG and membership in the Bar is not required to be admitted to practice. At the time of the assessment mission there were approximately 94 lawyers admitted to practice in SVG. The Bar Association does not have legal standing or an enforceable code of practice, nor powers to discipline members. Solicitors represent and act for their clients in a wide range of commercial activities. All real estate transaction involves the participation of lawyers in drawing the agreement, arranging for funds transfers, and processing settlement and registration.

66. Notaries are experienced lawyers whose function involves authentication of the contents, completeness and accuracy of documents, as well as authentication of CDD documentation.

Accountants

67. The accounting profession in SVG consists of both accountants and auditors. No legislation in SVG regulates their activities but most accountants are members of chartered accountants association in another jurisdiction, primarily Canada, the UK or another Commonwealth jurisdiction. As of the time of the mission there were approximately 24 qualified accountants practicing in SVG. Two of the international Big Four accounting firms are represented in SVG and they handle most of the audit work for the SVG offices of international firms. A second tier of well-staffed firms is also active in audit and advisory work with SVG clients. A third tier, consisting mainly of one-two person practices, provides accountancy and tax services to local clients. Three registered agents are headed by accountants.

Real Estate Agents

68. The real estate agent business is not specifically regulated and there is no association of real estate agents. As of the time of the mission, the authorities estimated that there were 41 firms offering real estate agency services in SVG. This number includes individuals conducting occasional transactions as well as firms with multiple offices in SVG.

69. Identification generally is applied to the vendor but not the buyer. Buyer identification generally is treated as the responsibility of the lawyer who draws up the contract and attends to the settlement. For sales to non-residents, extensive due diligence on the buyer is carried out by the authorities under the provisions of the Alien Land Registration Act. FIU involvement in CDD compliance is too limited to test the effectiveness of implementation of R.5 requirements by Real Estate Agents.

Table 5: Designated Non Financial Businesses and Professions (DNFBPs)

Types of financial activity	Non-financial institutions that is authorized to perform this activity
Provide and collect legal fees	Lawyers, Notary Publics
Gaming activities	Casinos
Sales of Jewels, repair of Jewels	Jewelers
Vehicle sales & rentals, suppliers of automobile parts, auto body repairs	Car Dealers
Property sales, property valuations & appraisers, Property management & rentals	Real Estate Agents
Auditing, accounting services, taxation services, insolvency services, management & business advisory services	Accountants
Charitable activities, membership fees, fund raising activities	Non- profit organizations (NPO)
Financial Fiduciary, collecting prescribe fees for offshore business activities	Registered Agents-Service Providers

Table 6: Number of DNFBPs

Types of institutions	No.
Lawyers	94
Notaries	20
Casinos	2
Jewelers	8
Car Dealers	16
Real Estate	41
Accountants	24
Non- profit organizations (NPO)	120
Registered Agents-Service Providers	28
Licensed Trustees	28

Table 7: **Authority responsible for registration and supervisory of AML/CFT**

Types of domestic financial institutions	Authority responsible for registration	AML/CFT supervision
Banks	Commerce and Intellectual Property office International Financial Services Authority	Eastern Caribbean Central Bank International Financial Services Authority
Insurance	Supervisory & Regulatory Division –Ministry of Finance International Financial Services Authority	Supervisory & Regulatory Division –Ministry of Finance International Financial Services Authority
Credit Unions	Cooperative Department –Ministry of National Mobilization	Cooperative Department – Ministry of National Mobilization
Money transfer services	Supervisory & Regulatory Division –Ministry of Finance	Supervisory & Regulatory Division –Ministry of Finance
Brokers for insurance company	Supervisory & Regulatory Division –Ministry of Finance	Supervisory & Regulatory Division –Ministry of Finance
Agents for Insurance company	Supervisory & Regulatory Division –Ministry of Finance	Supervisory & Regulatory Division –Ministry of Finance
Pension fund plan-insurance company	Supervisory & Regulatory Division –Ministry of Finance	Supervisory & Regulatory Division –Ministry of Finance

Table 8: Registrant Authority/Supervisory Authority for DNFBPs & NPOs

Types of institutions	Registrant Authority/Supervisory Authority
Lawyers & Notaries	High Court Registry, Bar Association
Casinos	Gaming Commission and the FIU
Jewelers	FIU
Car Dealers	FIU
Real Estate	FIU
Accountants	FIU
Registered Agents/Service Providers	International Financial Services Authority
Non- profit organizations (NPO)	Commerce and Intellectual Property Office

1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements, and Non-Profit Organizations (NPOs)

70. A 'person' includes any company or association or body of persons incorporate or unincorporate. The main types of legal persons and arrangements used in SVG to own property, hold bank accounts, own shares or conduct financial transactions are:

- Local Companies
- International Business Companies (IBC's)
- Trusts

Local Companies

71. The Companies Act provides the legal mandate in relation to the incorporation of companies and contains provisions that deal with corporate capacity and powers, ownership, management, administration, winding up and dissolution. Different types of companies exist such as "for profit" companies and non-profit companies. A "for profit" company is incorporated by filing the following documents:

- Articles of Incorporation
- Statutory Declaration
- Notice of Directors
- Notice of Address
- Request for Name Search and Reservation

72. A non-profit company is incorporated by filing the above documents however the approval of Attorney General is also required for incorporation. In order to qualify for the approval of the Attorney General, a non-profit company must restrict its business to a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or to the promotion of some other useful object.

73. All companies are required to disclose their registered office address. Information concerning local companies is a matter of public record and is available for inspection by any member of the general public. Pursuant to Sections 123 and 124 of the Companies Act a local company is required to prepare a list of its shareholders which may be examined by any of its members.

74. According to the authorities, companies are the main vehicle in SVG used to conduct commercial activities, although partnerships governed by the Partnership Act, CAP 109, are also used.

International Business Companies (IBCs)

75. IBCs are established under the International Business Companies (Amendment and Consolidation) Act, 2007 and its Regulations, SRO No. 6 of 2008, which set out the requirements for incorporation. The Act makes specific provision for several types of companies namely: companies limited by shares, companies limited by guarantee (whether or not authorized to issue shares), and unlimited companies. Specific provision is made for limited duration companies and segregated cell companies (SCC). This latter type of company is attractive to the mutual fund and captive insurance sectors of the international financial services industry**.**

76. The Act establishes rules on corporate governance, financial reporting, fundamental changes and amendments, civil remedies, offences and penalties, winding up and dissolution provisions. The Registrar of International Business Companies (administratively under IFSA) is responsible for the administration of this Act and maintains a register of IBCs which is open to public inspection.

77. IBCs may only be incorporated through the services of a SVG-licensed RA. Disclosure of information concerning ownership and control (shareholders and directors) is not mandatory and the company can elect to register its directors.

78. IBCs cannot conduct or engage in business locally and must have an international element. Corporate documents are kept at the office of the RA and records of minutes of meetings and resolutions of members are maintained by the company. They are used in the international financial services sector and are useful for carrying out specific investment activities and attract tax advantages under the Act. IBCs are the most popular form of carrying out commercial activities in SVG's international financial services sector.

Trusts

79. Trusts can be either local or international. A local trust is governed by the Public Trustees Act, CAP 382 and the Trustees Act, CAP 383 of the Laws of St. Vincent Revised Edition 1990, respectively. International trusts must be registered by the Registrar of International Trusts who is currently also the Executive Director of IFSA. The Registrar has the power to obtain information and reports, and to require the production of documents by notice in writing served on the registered trustee. International trusts are governed by the International Trust Act 1996 and its Regulations, SRO No. 34 of 1996. IBCs can engage in international trust business and are also governed by the International Business Companies (Amendment and Consolidation) Act.

80. The Trustees Act governs the duties, powers, liabilities of the trustee and powers of the Court relating to the administration of trusts in terms of the trust instrument. There must be an instrument creating the trust. International trusts are created by written instrument which satisfies the formal requirements for a deed or settlement under the proper law of the trust, and which is signed by the settlor and Trustee who must be a licensed RA in SVG. Property is vested in the Trustee upon trust for named beneficiary beneficiaries. The law makes provision for the appointment of a protector and retention of control by the settlor. The trustee can either be a person or a legal entity.

81. Property of any sort can be held in trust and the uses of trusts are varied. Trusts can be created during a person's life (usually by a trust instrument referred to above) or after death in a will. Types of trusts which are available include spendthrift or protective trusts, charitable trusts, and purpose trusts which are irrevocable with a limited duration of 120 years. The International Trusts Act states the conditions which may constitute the termination, failure or cancellation of a trust, liability for breaches, the proper law and effect of foreign law and powers of the court.

82. The International Trust Register is not open to public inspection except by the protector, trustee or a person authorized in writing by the protector. An international trust must have a registered office, which is the office of the Registered Trustee/Registered Agent.

Non-Profit Organizations

83. Non-profit organizations are required to register under the Companies Act. The primary purpose of registration is to verify that the organization is eligible for exemption from taxation because it is a not-for-profit organization operating with a charitable or public purpose. Although the registration formalities are streamlined, each NPO must be approved by the Attorney General before being accepted for registration.

Once registered, oversight is generally limited to following up if annual financial statements are not filed or in response to complaints. There has been no systematic review of the FT vulnerability of the NPO sector in SVG.

Table 9: Numbers of Non Profit Organizations

Years	No. of registrations
1993-2003	57
2004	8
2005	16
2006	10
2007	13
2008	16
Total	**120**

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

AML/CFT Strategies and Priorities

84. According to the authorities, the Government of SVG has been and is committed to establishing the necessary infrastructure, both legislative and administrative in order to ensure it has a strong AML/CFT regime. In the last seven years, the Government passed legislation to combat money laundering and the financing of terrorism, including:

- Proceeds of Crime and Money Laundering (Prevention) Act 2001 and amendments thereto;
- Proceeds of Crime (Money Laundering) Regulations 2002 and amendment thereto;
- Financial Intelligence Unit Act 2001 and amendments thereto;
- Exchange of Information Act 2002 (repealed the Confidentiality (Preservation of Relationships) Act, recently replaced by the Exchange of Information Act 2008;
- International Banks Act 2004;
- International Business Companies (Consolidation and Amendment) Act 2007;
- United Nations Anti Terrorism Measures Act 2002 and amendment thereto.

85. Money Laundering Prevention Guidance Notes to the regulated sector were first issued in 2003 and amended thereafter in 2004 and 2006.

86. The authorities have not as yet issued a formal AML/CFT policy and strategy to help prioritize its AML/CFT efforts and resources. In practice, the National Anti-Money Laundering Committee (NAMLC) provides a forum for coordinating AML/CFT activities among its representative agencies, and is the de facto policy making body. According to the authorities, it regularly meets with the key AML/CFT stakeholders of SVG and has focused on implementing the applicable legislation. The main agencies are described below in the context of the institutional arrangements for AML/CFT.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

87. The NAMLC provides the main AML/CFT forum for national cooperation and coordination in SVG. It is a national body created pursuant to the provisions of POCA, consisting of the following members:

- the Attorney General;
- the Director of Public Prosecutions;
- the Director General, Ministry of Finance and Planning;
- Director of the FIU;
- Comptroller of Customs;
- Representative of the ECCB;
- Commissioner of Police ;
- Chairman and Executive Director, IFSA.

88. The SRD of the Ministry of Finance is not a statutory member but has been invited to attend meetings by the Director General of the Ministry of Finance who is the Chairman of the NAMLC.

89. As mentioned above, the NAMLC is the umbrella body which coordinates governmental action in relation to AML/CFT. It makes recommendations to the Minister of Finance and Attorney General for the strengthening of the AML/CFT regime including recommendations pertaining to legislative and administrative changes. Meetings of the NAMLC are held every quarter and convened more regularly if required.

90. SVG's Minister of Finance has certain responsibilities under various pieces of AML/CFT legislation. He is, for example, the Minister:

- to whom the NAMLC reports under POCA;
- to whom the FIU reports; and
- that gives final approval for the licensing of a banks and mutual funds.

91. The Minister of Finance's role is the AML/CFT regime is also important from the point of view of resource allocation based on his responsibility for the country's budget. The Minister of Finance in SVG is also the Minister of Legal Affairs, the Minister of National Security and the Prime Minister.

92. The Attorney General plays an important role in SVG's AML/CFT regime in two respects:

(i) responsibility for proposing legislation to Parliament; and
(ii) as the central authority for international cooperation. The AG has played a leading role in enacting AML/CFT legislation since 2001. Together with the Office of the Director of Public Prosecutions (DPP), who is the competent authority under the Mutual Legal Assistance in Criminal Matter Act 1993, the AG receives requests under this Act and other international requests by letters rogatory or through diplomatic channels. Requests made through diplomatic channels are received by the Ministry of Foreign Affairs and forwarded to the AG. The main role of the Ministry of Foreign Affairs is therefore receiving international requests for cooperation and forwarding them for processing by the relevant authorities in SVG. The Attorney General has authorized the FIU to process all

international requests which the office receives either directly, or through the Ministry of Foreign Affairs. The execution of these requests by the FIU has proven to be the most efficient way of processing international requests for assistance. The AG is also the competent authority under the US Treaty for Mutual Legal Assistance in Criminal Matters between SVG and the USA.

93. The FIU also plays a key role in the AML/CFT regime. In addition to its core FIU functions, it has also engaged in awareness raising and training activities for the regulated sectors with respect to their obligations under POCA. It has also established relationships locally and internationally in order to carry out its duties more effectively and to be able to foster greater information sharing. The FIU has entered into nine MOUs with counterparts in other jurisdictions and has provided assistance regularly to such counterparts.

94. The DPP is responsible for the prosecution of all criminal matters in SVG. It works closely with FIU whereby certain applications under POCA, as well as prosecutions, are undertaken by the FIU under the authority of the DPP. The FIU prosecutes ML cases and its functions include obtaining production orders, search warrants, restraint orders, confiscation applications, and cash detention orders. Although under the Constitution the power to prosecute lies solely with the DPP, prosecutions may be delegated to others, including the FIU or independent counsel. The DPP's staff is not involved in day-to-day ML prosecutions, and the institutional knowledge is largely within the FIU legal staff. To the extent that more prosecutions are being developed, the balance of work between the FIU and DPP should be revisited, and appropriate staffing enhancements should be considered. While the FIU and DPP have informed the mission that the case-by-case delegation by the DPP has been effective, a formal, open-ended delegation would facilitate the FIU's work in this regard.

95. In SVG, the law enforcement agencies are composed of different departments or branches within the Royal Saint Vincent and the Grenadines Police Force (RSVGPF). The latter specializes in certain crime fighting areas and has formed specialized units such as the White Collar Crimes Unit, a Criminal Investigation Department, a Rapid Response Unit, a Narcotics Unit, and a Major Crimes Unit.

96. The main financial sector bodies in SVG with responsibility for authorizing and supervising financial institutions are the Eastern Caribbean Central Bank (ECCB), IFSA, the Ministry of Finance and its SRD, the Registrar of Cooperatives Department and the Commerce and Intellectual Property Office (CIPO). As the regulator of domestic banks, the ECCB has been involved in the examination of domestic banks but onsite examinations have not been conducted regularly for some banks and do not seem to adhere to its stated risk-based approach with respect to AML/CFT. Prior AML/CFT reviews appear to be more compliance-based focusing on the existence and adequacy of internal policies, procedures and controls.

97. IFSA is a single regulator for the international (offshore) financial services sector responsible for the supervision all of the international financial services providers authorized in SVG including:

- International Banks;
- International Mutual Funds;
- International Insurance;
- Registered Agents and Trustees;

- Registration of International Business Companies;
- Registration of International Trusts.

98. Supervision by IFSA consists of offsite monitoring and onsite examinations. It has limited supervisory capacity (4 examiners including the Executive Director). Onsite examinations for AML/CFT have only recently been conducted for most sectors, and are still evolving in dept and scope. Special attention has been give to the international banks by virtue of their inherent risks. To complement its staff resources, IFSA has in the past utilized the services of an outside consultant for onsite inspections, financed through the Caribbean Regional Technical Assistance Center (CARTAC).

99. Domestic insurance and money remitters are subject to the supervision of the Ministry of Finance–SRD, while credit unions are supervised by the Registrar of Co-operatives. At the time of the mission, an amendment to the Building Societies Act was being made to grant regulatory responsibility for building societies, which have not been supervised, to the Ministry of Finance. There were also plans to transfer responsibility for credit unions from the Registrar to the Ministry of Finance. The establishment of the SRD in SVG is part of an Eastern Caribbean Currency Union (ECCU) wide initiative to set up a Single Regulatory Unit in each member State to supervise those financial institutions not subject to the supervision of the ECCB and IFSA. A Memorandum of Understanding (MOU) for the Single Regulatory Units in the region is being developed to facilitate regional cooperation among the various units.

100. The Commerce and Intellectual Property Office (CIPO) has responsibility for the incorporation of companies and maintaining a register of companies. Non-profit organizations are also registered by CIPO.

101. Casinos are licensed by the Gaming Commission and subject to the joint supervision of the Commission and the FIU. There are only two licensed casinos.

102. The Bar Association does not have self-regulatory authority (SRO). As a result, there is no legal framework for supervising lawyers for AML/CFT compliance.

103. Except for the trust and company service providers that are supervised by IFSA, all other DNFBPs fall under the legal jurisdiction of the FIU for AML/CFT legal compliance supervision.

Approach Concerning Risk

104. There is no formal policy or procedures for applying a risk-based approach to compliance and supervision, and no assessment has been conducted of ML and FT threats and vulnerabilities in the system to inform policy making and implementation of countermeasures. The authorities nonetheless maintain that risk is assessed at the national level by the NAMLC, with important input from the FIU, and that priority is placed on commercial and international banks, money remitters and cash businesses. Priority is given to these entities due to the high volume of transactions, the trend of suspicious activity reporting, intelligence results, and the fact that worldwide these institutions are recognized as being more susceptible to ML and FT. However, this “assessment” has not translated into the formulation of a national policy, strategy, and the application of supervisory resources, especially with respect to the international sectors.

105. The list of regulated entities covered under the Proceeds of Crime and Money Laundering (Prevention) Act No. 39 of 2001 is relatively broad containing most activities required under the FATF Recommendations. It does not appear to be risk-based and includes some activities that are not currently in

operation in SVG. Some existing activities, however, should be explicitly listed such as insurance agents and brokers, mutual fund administrators/managers and underwriters, etc.

106. It is also noted that the POCA Regulations and Guidance Notes provide certain exemptions for the verification of client identity e.g. with respect to introduced business and other non-face to face activities. Both types of business are more common in the international (offshore) sectors and are inherently more vulnerable to ML/FT risks arising from cross-border activities. This would not be consistent with a risk-based approach.

107. While the authorities maintain that a risk-based approach has been implemented to supervision for compliance with the AML/CFT requirements, the practice suggests that this has not been fully developed. For instance, supervision of money remitters (a high risk sector as e.g. reflected by SAR reporting), investment-linked insurance activities, and the international financial and trust and company services sectors, have not attracted the level of supervision and resources that would be commensurate with their inherent risks. The casinos and other DNFBPs have also not been subject to an effective AML/CFT oversight regime.

108. The authorities maintain that both the domestic and international financial sectors of SVG are relatively modest and that it would be somewhat impracticable to develop an elaborate risk-rating system. They note that while there are differences in the quality of banks, there is no pressing need to develop or adopt an elaborate risk-based methodology that would allow for variations in approach.

Progress since the Last Mutual Evaluation

109. The last evaluation of SVG's AML/CFT regime was undertaken by the Caribbean Financial Action Task Force (CFATF) in October 2003. SVG responded to the large majority of the recommendations made by embarking upon both legislative and administrative changes. The two prominent criticisms of SVG's AML/CFT regime in the CFATF mutual evaluation report were weaknesses of its Customs and Excise Department and the restrictive effect of Sec. 5 of the Exchange of Information Act 2002, with respect to international regulatory co-operation and exchange of information. Both deficiencies have been addressed by changes in the Customs and Excise Department and by repeal and replacement of the Exchange of Information Act. Some concerns remain with restrictive information exchange language in sectoral laws.

110. While progress has been made since the 2003 CFATF mutual evaluation, the regime has some key legal and institutional weaknesses left to address. Specifically, there are limitations in the legal framework for FT investigations and prosecutions. The recommendations of the CFATF and the status of these recommendations, whether implemented or not, are outlined in the following table.

Action Since Last Assessment

Criminal Justice Measures and International Cooperation	Recommended Action	Actions Taken by St. Vincent and the Grenadines
I—Criminalization of ML and FT	1) Ratify and implement the Palermo Convention expeditiously.	1) The Palermo Convention was signed by SVG on November 20, 2002. Legislation enacted in the jurisdiction addresses several articles of the Convention. For e.g., the Criminal Code, Chapter 124, Chapter 5,

		creates offences against the administration of lawful authority including official corruption, in keeping with the provisions of Article 8 of the Palermo Convention. Additional steps will be taken with regard to the ratification of the Palermo Convention.
	2) Implement the Inter-American Convention Against Corruption in a timely manner.	2) Steps are currently being taken with regard to the implementation of the Inter-American Convention Against Corruption by St. Vincent and the Grenadines. CARICOM is currently drafting a harmonized bill to give effect to the Convention however this has not as yet been distributed to member territories for passage through Parliament.
	3) For the avoidance of doubt as to whether FT offences are ML predicate offences, the POCMLPA could be amended to list the FT offences created by the UNATMA in the Second Schedule to the POCMLPA as relevant offences.	3) POCA was amended in 2005 by Act No. 8 of 2005 and now lists the Financing of Terrorism (FT) offences in the Second Schedule thereby establishing them as relevant offences and by extension ML predicate offences.
	4) Amend Schedule 2 POCMLPA to set out a list of offences rather than a list of Acts.	4) Schedule 2 of POCA has been repealed and replaced by Act No. 8 of 2005 and now refers to a list of offences created under various Acts rather than a list of Acts.
	5) Consideration should be given to amending the POCMLPA to explicitly provide for inferring the intentional element of ML offences from objective factual circumstances. Possible wording such as: "Knowledge, intent, purpose, belief or suspicion may be inferred from objective, factual circumstances" might be considered.	5) Sections 41- 43 of POCA have been amended by Act No. 8 of 2005 and now adequately provide for the inferring of the mental element of ML offences from objective factual circumstances.
	6) The Customs Department needs to be adequately funded, resourced, trained and its practices reviewed so that it can become an effective element in the implementation of the ML and FT laws.	6) A new Comptroller of Customs has since been appointed to head the Department. He is well-versed in AML/CFT laws and practices and the Department has improved its implementation of same since his appointment.

		Further, onsite training was conducted with the Customs Department by the Caribbean Anti-Money Laundering Programme (CALP), in 2004. The Customs Department has established and intelligence unit and conducts internal AML/CFT training with new recruits as well as intermediate and senior staff.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

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

2.1.1. Description and Analysis

111. Legal Framework: The Proceeds of Crime and Money Laundering (Prevention) Act, No. 39 of 2001, as amended by Act No. 25 of 2002 and Act No. 8 of 2005 (collectively, POCA) is the main piece of AML legislation in SVG.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):

112. ML is criminalized in Sections 41 – 43 of POCA which criminalize a broad range of offences generally consistent with the Vienna and Palermo Conventions, including concealing or disguising proceeds of criminal conduct (Sec. 41(a)), converting or transferring such property (Sec. 41(b)), retention or control of such property by or on behalf of another person (Sec. 42(1)), and acquiring, using or possessing such property (Sec. 43(1)). However, the offences set forth in Sec. 41 are not consistent with Article 3(1)(b)(i) and (ii) of the Vienna Convention, nor with Article 6(1)(a) of the Palermo Convention, which state that the criminal conduct must be "for the purpose of concealing or disguising the illicit origin of the property **or** of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions." (emphasis added). The POCA offences in Sec. 41 simply contain one leg of the required purposes, as follows: "for the purpose of avoiding prosecution for a drug trafficking or relevant offence or the making or enforcement in his case of a confiscation order."

The Laundered Property (c. 1.2):

113. Under the definition of 'property' in Sec. 2(1) of POCA, all types of property are covered in a manner consistent with the Vienna and Palermo Conventions, including "real or personal property, whether inside or outside St. Vincent and the Grenadines and includes money and all other property, moveable or immovable . . . ." However, the definition does not include "legal documents or instruments evidencing title to, or interest in, such assets" as required by Article 1(q) of the Vienna Convention and Article 2(d) of the Palermo Convention.

Proving Property is the Proceeds of Crime (c. 1.2.1):

114. Under POCA, when proving that property is the proceeds of crime, there is no requirement that the accused be convicted of a predicate offense. According to the authorities, courts in SVG have required a linkage of the proceeds to a criminal offense, but not proof of or conviction for the predicate offense. See LGQM [2004] EWCA Crim 1579. The Scope of the Predicate Offences (c. 1.3): SVG uses an "all crimes" approach to predicate crimes. Under Sections 41–43 of POCA, the money laundering offenses are based on proceeds of criminal conduct. The definition of criminal conduct under Sec. 2(1) means any "drug trafficking or any relevant offense." The term "any relevant offense" is defined as: any indictable or summary offence; any offence triable both summarily or on indictment in SVG from which a person has benefited, other than a drug trafficking offence; an offence under the Acts listed in Schedule 2; and any act or omission which, had it occurred in St. Vincent and the Grenadines, would have constituted any of the aforementioned offences. The offences listed in Schedule 2 include non-criminal or administrative violations of regulatory or other laws. However, with respect to designated categories of offences, the offences of racketeering, human trafficking and migrant smuggling are not covered as predicate offences since they are not found in domestic legislation.

Threshold Approach for Predicate Offences (c. 1.4):

115. N/A

Extraterritorially Committed Predicate Offences (c. 1.5):

116. Predicate offenses extend to offenses committed extraterritorially, based on the definition of 'relevant offence' as set out in Sec. 2(1) of the POCA which includes "any act or omission which, had it occurred in St. Vincent and the Grenadines, would have constituted an offence [in SVG] . . . ."

Laundering One's Own Illicit Funds (c. 1.6):

117. Pursuant to Sec. 41(1) of POCA, a person commits an offence if he conceals or disguises any property which represents his proceeds of criminal conduct or converts or transfers that property, brings it into or removes it from SVG. Possession of the criminal's own proceeds is not currently covered; according to the authorities, a proposed amendment to POCA will be considered.

Ancillary Offences (c. 1.7):

118. Sec. 42 of POCA provides that the arrangement with another to retain the proceeds of criminal conduct is an offence. While there are no statutory provisions in POCA, the Criminal Code provides for conspiracy, attempt, aiding and abetting, facilitating and counseling the commission of any crime, including money laundering. Criminal Code, CAP 124 (1990), Sec. 20(b) aiding, (c) aids or abets, (d) counsels; Sec. 315, attempt; and Sec. 310, conspiracy.

Additional Element—If an overseas act which does not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML (c. 1.8):

119. Yes, based on the definition of 'relevant offence' in Sec. 2(1) of the POCA which includes "any act or omission which, had it occurred in St. Vincent and the Grenadines, would have constituted an offence [in SVG] . . . ."

Liability of Natural Persons (c. 2.1):

120. The ML offence extends to natural persons who knowingly engage in money laundering activity as set forth in Sections 41–43 of POCA.

The Mental Element of the ML Offence (c. 2.2):

121. Under Sections 42–44 of POCA (as amended by the 2005 Amendments), a person must "know, suspect or have reasonable grounds to suspect . . . " and therefore the intentional element of the offense may be inferred from objective factual circumstances. The authorities have also cited relevant English case law such as Regina v. Montila, [2004] 1 WLR 3141, at 10, para. 43, which states that ". . . the evidence which goes to prove knowledge or reasonable grounds to suspect . . . will often be sufficient to justify the inference that the origin of the property was coincident with that state of mind."

Liability of Legal Persons (c. 2.3):

122. Criminal liability extends to legal persons under Sec. 57 of POCA, which states; "Where a body corporate commits an offence under this Act and the offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly." In addition, under Sec. 3(1) of the Interpretation and General Provisions Act, CAP. 10, the definition of 'person' includes any company, association, or body, corporate or unincorporated.

Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings (c. 2.4):

123. According to the authorities, parallel proceedings are implicitly provided for in POCA and therefore two or more civil, criminal or administrative procedures may be brought against a corporation at the same time although this has never occurred in SVG. According to the authorities, parallel proceedings may be brought against a corporation or natural person, where simultaneously a criminal, administrative and civil proceeding may proceed from the same facts or incident. To date, this has not occurred in SVG.

Sanctions for ML (c. 2.5):

124. Sec. 47 of POCA sets out the penalties for the money laundering offences set out in Sections 41–43 of the Act. A person committing an offence under any of these Sections faces imprisonment for 5 years or a fine of up to $500,000 on summary conviction, and imprisonment for 20 years or an unlimited fine or both.

ML Prosecutions and Convictions, 2005 – 2008

Year	Prosecutions	Convictions	Sentence	Predicate offense
2005	0	0	N/A	N/A
2006	3	3	Three convictions:3½ years, 9 months imprisonment	Drug Trafficking

			and $10,000 (fine)	
2007	1	1	4½ years imprisonment	Drug Trafficking
2008	2	Pending	Pending	Drug Trafficking

Effectiveness of Implementation

125. While the SVG legal framework is generally compliant with relevant Conventions and FATF Recommendations 1 and 2, the low number of prosecutions and convictions in the last four years, six and four, respectively, raise questions about the effective implementation of the criminalization provisions. While it is not possible to reach any definitive conclusions about the pattern of prosecutions and convictions in the last four years, the overall numbers appear to be low given the extent of drug trafficking believed to be taking place in or through SVG (e.g. the authorities acknowledged that the identities of the largest traffickers were known to them) and the inherent ML and FT risks in the cross-border international (offshore) business sectors.

2.1.2. Recommendations and Comments

126. Relevant laws should be strengthened to provide that:

- The references to the purpose of the offences set forth in Sec. 41 are consistent with the Vienna and Palermo Conventions;
- The definition of property in POCA includes a reference to legal documents or instruments evidencing title in a manner consistent with the Vienna and Palermo Conventions.
- Self-laundering by way of simple possession of proceeds is criminalized;[9] and
- Racketeering, human trafficking and migrant smuggling are enacted into law as criminal offences and covered by POCA as predicate offences.
- In addition, efforts should be made by competent authorities to increase the number of convictions for ML and related predicate crimes.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• Certain offences in Sec. 41 of POCA as well as the definition of 'property' in POCA are not consistent with the relevant articles of the Vienna and Palermo

[9] The mission has been informed that the authorities have taken steps to draft legislation to remedy this deficiency.

		Conventions; • Self-laundering by way of simple possession of proceeds is not criminalized; • Racketeering, human trafficking and migrant smuggling are not predicate offences; and • Effective implementation is weak in light of low number of criminal prosecutions and convictions for ML and related predicate crimes.
R.2	**C**	

2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework:

127. The United Nations (Anti-Terrorism Measures) Act, No. 34 of 2002, as amended in 2006 by Act No. 13 of 2006 (UNATMA) was enacted to implement the International Convention for the Suppression of the Financing of Terrorism, 1999 and to provide measures to combat terrorism. The criminalization of FT under UNATMA is generally compliant with the SFT Convention except as noted below.

Criminalization of Financing of Terrorism (c. II.1):

128. FT is criminalized by Sections 3–6 of UNATMA, which covers terrorist acts, terrorist groups, and, in most instances, individual terrorists and is generally consistent with the relevant offences set forth in the SFT Convention. However, Schedule II to UNATMA, which lists the relevant terrorism conventions, omits two conventions that are listed in the annex to the SFT Convention, as follows: The Convention on the Physical Protection of Nuclear Material (1980) and the International Convention for the Suppression of Terrorist Bombings (1997). One of the conventions listed in UNATMA, on the safety of maritime navigation, has not been signed and ratified. In addition, one convention not listed in UNATMA, the convention on terrorist bombings, has been acceded to but not ratified, and one not listed, on nuclear materials, has not been signed or ratified. Conduct covered by the listed conventions is criminalised by UNATMA. Finally, under UNATMA, terrorist financing offenses extend to any funds as defined in the SFT Convention.

Predicate Offence for Money Laundering (c. II.2):

129. Offences under UNATMA are captured by the definition of 'relevant offence' in Sec. (2)(1) of POCA in two ways: First, under Sec. 7 of UNATMA, offences are both summary and indictable, therefore covered under the first part of the definition, and second, under an amendment to UNATMA, Act No. 8 of 2005, Schedule 2, amending Schedule 2 of POCA, offences under UNATMA are listed, thereby establishing such offences as predicate offences for money laundering.

Jurisdiction for Terrorist Financing Offence (c. II.3):

130. Under Sec. 9 of UNATMA, terrorist acts committed outside SVG by citizens of SVG and "stateless persons" resident in SVG (e.g. resident aliens) constitute offences under UNATMA.

The Mental Element of the TF Offence (applying c. 2.2 in R.2 for c. II.4):

131. See discussion at c. 2.2.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2 for c. II.4):

132. Under Sec. 3(1) of the Interpretation and General Provisions Act, CAP. 10, the definition of 'person' includes any company, association, or body, corporate or unincorporated. The possibility of parallel criminal or civil liability is not prohibited.

Sanctions for FT (applying c. 2.5 in R.2 for c. II.4):

133. Sanctions, as set forth under Sec. 7 of UNATMA, provide that: "A person guilty of an offence under sections 3, 4, 5 or 6 of [UNATMA] shall be liable- (a) on conviction on indictment, to imprisonment for a term not exceeding twenty years, to an unlimited fine or both; or (b) on summary conviction, to imprisonment for a term not exceeding five years, to a fine not exceeding $500,000 or both."

Effectiveness of Implementation

134. There are no known instances of FT in SVG, no SARs for FT have been filed nor have there been any investigations, prosecutions or convictions under UNATMA since its implementation. Hence effectiveness is difficult to gauge. However, the authorities maintain that SVG is a jurisdiction which is low risk for FT and has had no instances of FT being identified in or passing through the jurisdiction and that this is borne out by the fact that there are no domestic or international matters which involve FT which have been brought to light by foreign or international authorities.

2.2.2. Comments

The laws of SVG should be strengthened as follows:

- Schedule II to UNATMA, which lists the relevant terrorism conventions, omits two conventions that are listed in the annex to the SFT Convention, as follows: The Convention on the Physical Protection of Nuclear Material (1980) and the International Convention for the Suppression of Terrorist Bombings (1997);

- Sec. 3(4) of UNATMA should be amended to apply to individual terrorists, and not just terrorist acts and terrorist groups; and

- The POCA Regulations should be amended to cover FT offences.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• The Convention on the Physical Protection of Nuclear Material (1980) and

		the International Convention for the Suppression of Terrorist Bombings (1997) are not included in the list of Conventions that define one aspect of the definition of terrorist act in UNATMA; • Under Sec. 3(4) of UNATMA, the offences under Secs. 3(1) and 3(3) of UNATMA do not apply to individual terrorists; and • POCA Regulations do not cover FT offences.

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

2.3.1. Description and Analysis

Legal Framework

135. Part II, Sections 6–22 of POCA relate to confiscation orders which may be made during the sentencing of the defendant if the Court is satisfied that a defendant has benefited from either drug trafficking or relevant offences and is based on the Court's assessment of the value of the defendant's proceeds of criminal conduct under Sec. 13 of POCA. Sec. 26 of POCA provides for the making of restraint orders which prohibit any person from dealing with any realizable property. Further, Sections 49 and 50 of POCA provide for the seizing, detaining and forfeiture of cash which is reasonably suspected of directly or indirectly representing any person's proceeds of criminal conduct or of being intended by any person for use in criminal conduct.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):

136. Sections 6-8 of POCA provide for the confiscation of the proceeds from the commission of any crime, including drug trafficking, money laundering, terrorist financing and other predicate offences, as well as property of corresponding value if the proceeds themselves are not available. The confiscation order can be applied for at the time of conviction but before sentencing once the Court is satisfied that the defendant has benefited from the offence and has or may have 'realisable property' as defined by POCA. The value of such proceeds is determined by the Court and is not limited to the actual amount of proceeds seized from or relating to the defendant.

137. Under Sec. 51A of POCA, instrumentalities used or intended to be used to commit any offence may also be forfeited, including property under the defendant's possession or control which has been used for the purpose of committing or facilitating the criminal conduct, or was intended to be used to commit the criminal conduct. In addition, the Drugs (Prevention of Misuse) Act, CAP 219, Sec. 28, includes all conveyances for drugs and drug trafficking, subjecting those to forfeiture as well.

138. Questions of fact to be decided by a Court in proceedings under POCA including seizures or forfeitures are subject to a civil standard of proof, i.e. "the balance of probabilities," under Sec. 63 of POCA.

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

139. (a) Indirect proceeds of crime: Although there is no explicit provision that applies to indirect proceeds of crime, including income, profits or other benefits, the authorities are of the view that the confiscation provisions of POCA would apply to such indirect proceeds, since, under Sec. 7(3)(a) "a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of any property so obtained; and (b) if he derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated as if he obtained instead a sum of money equal to the value of his pecuniary advantage." Further, they cite the English Court of Appeal case of Regina v. Causey (18 October 1999, at 6, which stated that "if one penny or one penny's worth of the property dealt with is the proceeds of criminal conduct" then the property is obtained partly in connection with the commission of an offence. This interpretation appears to be a reasonable one in light of the statutory reference to the defendant having derived a "pecuniary advantage."

c.3.1.1 (b) Property held by third parties:

140. With respect to confiscation of property held by a third party, subject to Sec. 14 of POCA, which provides for protection of the property rights of third parties (see c. 3.5 below), the definition in Sec. 2 of 'realisable property' applies to "any property held by the defendant" and "any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by this Act." Under Sec. 3(4)(a), which covers gifts caught under POCA, "the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person, directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant." Such property is subject to confiscation only if the consideration for the gift is "significantly less" than the value of the property. Finally, POCA applies to all property, whether in the hands of the defendant or of a third party, and including proceeds of criminal conduct as well as instrumentalities. See also c. 3.1(b) above.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

Two provisions of POCA relate to provisional measures:

141. Sec. 26 authorizes the court to make restraint orders to prohibit persons from dealing with, transferring or disposing of any realizable property that is or may become subject to confiscation. According to the authorities, this typically occurs during the investigation of a ML case as well as prior to or during the prosecution but prior to the completion of the case. The evidentiary standard is the same civil standard as applies generally under POCA**.** In addition, Sec. 49 permits the seizure of cash and monetary instruments anywhere in the country "if the [police or customs] officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct."

***Ex Parte* Application for Provisional Measures (c. 3.3):**

142. Under Sec. 26(4)(b) of POCA, a restraint order may be made on an *ex parte* application to a Judge in chambers. Prior notice is therefore not necessary According to the authorities, once an *ex parte* application has been granted by the court, notice is subsequently provided to the affected parties within a reason**able time.** This is usually from immediately up to seven days. Notice is given to all affected parties; affected parties are usually listed in the Order and may include financial institutions, corporate bodies or individuals.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

143. The laws of SVG provide for a number of legal powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime, including the following:

- Under Sec. 4(2)(b) of the *FIU Act,* the Director of the FIU ". . . may require the production of such information (excluding information subject to legal professional privilege) from financial institutions or a person engaged in a relevant business activity that the FIU considers necessary for the purpose of investigating the relevant offence" where it appears to the Director that there are reasonable grounds to suspect that a relevant offence has been committed.
- Under Sec. 35(1) of POCA, the DPP as well as a police officer may apply to the Court for a production order for the purpose of an investigation in or outside SVG into (i) any offence, (ii) ascertaining whether any person has benefited from criminal conduct or (iii) ascertaining the whereabouts of any proceeds of criminal conduct, if there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has benefited from criminal conduct (Sec. 35(4)). According to the authorities, the term "specified person" is wide enough to include any person who has possession or control of such proceeds.
- Under Sec. 37 of POCA, a police officer may apply for a search warrant for the purpose of an investigation into any offence if the Court is satisfied, *inter alia*, that a production order has not been complied with and that there are reasonable grounds for suspecting that material pertaining to a specified person who is suspected to have benefited from criminal conduct is located on the premises.
- Sec. 38 of POCA also provides for the making of an order to compel disclosure of information held by Government Departments.
- Sec. 39 of POCA provides for the making of monitoring orders directing a financial institution to give to a police officer information obtained by the institution about transactions conducted by a particular person with that institution.

Protection of *Bona Fide* Third Parties (c. 3.5):

144. Sec. 14 of POCA provides for the protection of *bona fide* third party rights in a manner consistent with the Palermo Convention. This section provides that a person asserting interest in property subject to confiscation the opportunity to apply to the court and prove that he was not in any way involved in the defendant's criminal conduct, that he acquired the interest in the property for sufficient consideration, without knowing of the criminal conduct and in circumstances that he would not have formed a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in or was the proceeds of criminal conduct.

Power to Void Actions (c. 3.6):

145. There is no explicit power in the laws of SVG to void contracts, and no legal basis for doing so otherwise. The authorities have cited three cases that contracts against public policy will not be enforced, as follows:

> "Contractual freedom must be fostered but any contract that tends to prejudice the social or economic interest of the community must be forbidden. The contract is not unlawful in the sense that it is criminal or would give any cause of action to a third person injured by its operation, but it is

unlawful in the sense that the law will not enforce it. North-Western Salt Co v. Electrolytic Alkali Co (1912) 107 LT 439. A contract is illegal and void if its object , direct or indirect, is the commission of a crime or tort, is an agreement made with the object of defrauding or deceiving a third party, or one which amounts to a criminal conspiracy. No person is allowed to benefit from his own crime, Cleaver v. Mutual Reserve Fund Life Association [1892] 1 QB 147. The rule that the court will not assist a person to recover the fruits of his crime applies equally to his representatives, Beresford v. Royal Insurance Co Ltd [1937] 2 KB 197."

Additional Elements (Rec. 3)—Provision for:

(a) Confiscation of assets from organizations principally criminal in nature:

146. While there is no explicit provision for confiscation of assets from criminal organizations, under Sec. 57 of POCA, corporate bodies are subject to prosecution and hence their assets are subject to confiscation.

(b) Civil forfeiture:

147. Cash and negotiable instruments only may be seized, detained and confiscated without criminal conviction under Sections 49 and 50 of POCA.

(c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

148. While there is no provision of law providing for civil forfeiture of property prior to conviction other than cash and negotiable instruments, Sec. 11 of POCA provides that the Court may require the defendant to indicate the extent to which he accepts any allegation provided by the DPP to the Court in relation to his benefit and assessing the value of his proceeds of drug trafficking or benefit from any relevant offences. As a result, the defendant is provided with the opportunity to demonstrate the lawful origin of his property by negating any such allegations put forward by the DPP. Secs. 8 and 10 of POCA do not apply to seizures or forfeitures of cash under Secs. 49 and 50 of POCA but do allow for post-conviction confiscations or forfeitures of non-cash property. According to the authorities, orders made under Secs. 8 and 10 for non-cash property may take into consideration all benefits derived from the underlying criminal activity for the period over which such activity was undertaken, normally limited to six years from the date of the charge for the relevant offence.

Effectiveness of Implementation

149. While it is not possible to reach any definitive conclusions about the pattern of confiscations and forfeitures in the last four years, the overall numbers appear to be low given the extent of drug trafficking believed to be taking place in or through SVG (e.g. the authorities acknowledged that the identities of the largest traffickers were known to them) and the inherent ML and FT risks in the cross-border international (offshore) business sectors.

Cash Forfeitures under POCA, 2004 – 2008[10]

Year	Amount Seized	Equivalent (EC$)	Equivalent (US$)
2004	EC$8,104.64	8,104.64	2,990.64
	EC$12,953.32	12,953.32	4,779.82
Total		**21,057.96**	**7,770.46**
2006	EC$18,700.00 & US$3,000	26,710.00	9,856.08
	BD$ 8,100.00 & US$300	11,574.00	4,270.84
	EC$1,520.00 & US$20	1,573.40	580.59
	£3,020.00	10,570.00	3,900.37
	EC$1,452.15 & US$1.00	1,454.82	536.83
	BD$6,600.00 & US$667.00	10,690.89	3,944.98
	EC$3,200.00	3,200.00	1,180.81
	€3,280.00	11,480.00	4,236.16
Total		**77,253.11**	**28,506.66**
2007	BD$49,845.00	67,290.75	24,830.54
	EC$31,895.00	31,895.00	11,769.37
	EC$6,750.00, US$210 & BD$14,300	26,615.70	9,821.29
	BD$ 9,900.00	13,365.00	4,931.73
	BD$72,600.00	98,010.00	36,166.05
	EC$ 9,170.00	9,170.00	3,383.76
	BD$10,542.00	14,231.70	5,251.54
	€6,890 & US$249	22,457.13	8,286.76
	BD$7,392 & US$50	10,062.43	3,713.07
Total		**293,097.71**	**108,154.11**
2008	EC$11,590.00 & US$200	12,124.00	4,473.80
	US$7,371, BD$5,022 & £7,380	47,897.49	17,674.35
Total		**60,021.49**	**22,184.15**
Total	**Forfeited 2004 -2008**	**EC$451,430.27**	**US$166,615.38**

Note: No cash forfeitures occurred in 2005.

EC$: Eastern Caribbean Dollar; BD$: Barbadian Dollar; £: Pound Sterling; €: Euro

Confiscation of Property, 2004 – 2008

Year	Cash (EC$)	Equivalent (US$)	Property (EC$)	Equivalent (US$)
2005	Nil	Nil	*One Catamaran yacht, asset- sharing with US (207,110.17)	76,424.41

[10] According to the authorities, virtually all of the seizures noted on this chart resulted in forfeitures of the assets in question.

2006			Land valued at EC$55,000, one Go Fast boat valued at EC$40,000	Land valued at $21,000 and a boat valued at $15.000
2007	147,895	54,573.80		
2008	Nil			

NB: There is currently one confiscation hearing involving twelve motor vehicles pending in the High Court of SVG.
*/ The catamaran confiscated in 2005 was done in conjunction with the US and the proceeds were shared.

2.3.2. Recommendations and Comments

150. The relevant laws should be strengthened to provide for an explicit provision to allow competent authorities to take steps to prevent or void actions, whether contractual or otherwise, where, as a result of the actions of third parties, the authorities would be prejudiced in their ability to recover property subject to confiscation.

151. In addition, given that drug trafficking is a serious concern in SVG, and continues to flourish despite the efforts of law enforcement, the competent authorities should assess the extent of possible predicate offences and related ML conducted in or through SVG, to determine whether there is a reasonable correlation with the amount of cash forfeitures and confiscations of property.

152. Finally, consideration should be given to amending POCA to provide for: (i) civil forfeiture of all property, not just currency; the authorities have indicated that a bill to accomplish this is currently being considered by parliament but has not yet been enacted; (ii) in Sec. 3(4) of POCA for gifts that represent a value that is less than the value of the property, rather than "significantly less" as provided under current law, to be subject to confiscation; and (iii) an explicit provision subjecting to confiscation of indirect proceeds of crime, including income, profits or other benefits.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• There is no explicit provision of law empowering competent authorities to take steps to void contractual or other actions that would prejudice their ability to recover assets; and • Effective implementation of laws is weak in light of low number of cases and amounts with respect to forfeitures of cash and confiscations of property relating to ML and related predicate crimes.

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

2.4.1. Description and Analysis

Legal Framework:

153. Although UNATMA implements the SFT Convention, there is no explicit statutory authority in SVG to implement UNSCRs relating to FT. Hence, the designation by relevant UNSCRs or committees established pursuant to such UNSCRs of terrorists or terrorist organizations would not have the effect of permitting the authorities to take certain actions to freeze the assets of such terrorists and terrorist organizations.

Freezing Assets under S/Res/1267 (c. III.1):

154. While there is no explicit authority under the laws of SVG to implement the UNSCRs, Sec. 17 of UNATMA provides in relevant part as follows:

> 17. (1) The High Court may make a restraint order to prohibit persons from dealing with funds and other financial assets or economic resources of:
>
> (a) persons who commit, or attempt to commit, a terrorist act or participate in or facilitate the commission of a terrorist act;
>
> (b) entities owned or controlled directly or indirectly by persons referred to at (a) above;
>
> (c) persons and entities acting on behalf of, or at the direction of persons referred to at (a) above or entities referred to at (b) above.
>
> (2) The High Court may also make a restraint order to prohibit persons from dealing with funds derived or generated from property owned or controlled directly or indirectly by persons referred to in subSec. (1) (a) above or their associated persons and entities.
>
> (3) A restraint order-
>
> (a) may be made only on an application by the Attorney General or the Director of Public Prosecutions;
>
> (b) may be made on an *ex parte* application to a Judge in chambers; and
>
> (c) shall provide for notice to be given to persons affected by the order.

155. In addition, with respect to cash only, Section 13(2) of UNATMA provides that any police, customs or immigration officer "may seize and detain any cash to which this section applies if he has reasonable grounds for suspecting that- it is intended to be used for the purposes of a terrorist act, or (b) it is terrorist property . . ."

Freezing Assets under S/Res/1373 (c. III.2):

156. See c. III.1 above.

Freezing Actions Taken by Other Countries (c. III.3):

157. See c. III.1 above.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

158. See c. III.1 above.

Communication to the Financial Sector (c. III.5):

159. No such communications systems are in place.

Guidance to Financial Institutions (c. III.6):

160. No such guidance has been issued.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

161. There are no publicly-known procedures for considering delisting requests.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

162. There are no procedures for unfreezing funds.

Access to frozen funds for expenses and other purposes (c. III.9):

163. There are no procedures for authorizing access to funds frozen pursuant to relevant UNSCRs.

Review of Freezing Decisions (c. III.10):

164. There are no procedures to allow those with funds frozen pursuant to relevant UNSCRs to challenge those measures.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):

165. Sections 7 and 8 of POCA apply to all relevant offenses, including FT. See responses to c. 3.1 and c. 3.1.1 above.

Protection of Rights of Third Parties (c. III.12):

While there are no provisions explicitly relating to the UNSCRs, Sec. 8(2) of UNATMA provides for the protection of the rights of bona fide third parties as follows:

166. "Where a person other than a convicted person claims to be the owner of or otherwise interested in any money or property which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order." See also the response to c. 3.5 above, since POCA covers all predicate crimes, including FT.

Enforcing the Obligations under SR III (c. III.13):

167. No such measures or sanctions relating to the implementation of the relevant UNSCRs are in place.

Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):

168. No such measures have been implemented.

Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):

169. No such procedures have been implemented.

2.4.2. Recommendations and Comments

170. The authorities in SVG should take immediate action to implement the relevant UNSCRs, including, but not limited to UNSCRs 1267, 1373 and 1455, and any such provision of law should be sufficiently flexible so as to apply as well to similar designations by other states as well as any future UNSCRs that require UN member states to freeze, seize and confiscate the assets of designated terrorists and terrorist organizations, as well as such designations by other member states in the future.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	Statutory provisions implementing relevant UNSCRs are almost completely absent.

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

2.5.1. Description and Analysis

Legal Framework:

171. The Financial Intelligence Unit Act 2001, Act No. 38 of 2002, was signed into law on December 18, 2001. In addition to the organizational provisions and authority in the FIU Act, the FIU exercises specified functions pursuant to POCA and UNATMA, both as are conferred directly upon the FIU as an institution. It also engages in law enforcement functions though the legal authority of police and customs officers assigned to it. The FIU Act establishes the FIU, and mandates the composition of its personnel that include the director, an attorney, and a public accountant, all appointed by the Minister, as well as assigned police officers and customs officers, who are appointed by the Minister on the recommendation, respectively, of the Police and Customs Commissioners. The FIU Act authorizes the FIU to receive all STRs required to be reported under POCA. The FIU is legally an administrative FIU, insofar as it is not under the direct authority of either the police, prosecutor or bank supervisory body. The FIU reports directly to the Minister of Finance. Nevertheless, in its operations the FIU is a hybrid-administrative FIU because of the regular use of the investigative powers of police and customs officers. It also prosecutes specified cases in collaboration with the DPP. . Information gathering activities under authority conferred on the DPP, under Sec.35 of POCA, is carried out by FIU personnel, on the basis of specific delegations by the DPP rather than through any institutional authority conferred on the FIU itself. Similarly, authority conferred by POCA to police officers to obtain search warrants is carried out by police officers assigned to the FIU. Hence, FIU personnel directly conducts police investigatory functions under POCA Secs. 25-27, 35, 37, and 49.

Establishment of FIU as National Centre (c. 26.1):

172. The FIU was established in May 2002 in accordance with the FIU Act 2001. The FIU is the agency responsible for receiving, analyzing, obtaining and disseminating information which relates to or may relate to the proceeds of offenses created by POCA and UNATMA. The FIU reports to the Minister of Finance. The FIU's dissemination authority includes competent authorities, the Royal St. Vincent and the Grenadines Police Force and the Director of Public Prosecutions (DPP). The FIU in addition to serving as

the national centralized agency responsible for receiving SARs, also carries out proactive ML and predicate offense investigations and intelligence gathering to develop ML cases. The explicit source of authority to conduct such proactive investigations is not clear within the FIU Act. Rather, the powers of the police personnel transferred to the FIU are the basis for the FIU's conducting such proactive investigations. This arrangement is not uncommon in the Caribbean region.

FIU structure and functions.

173. Pursuant to the FIU Act, Sec.3, the FIU is comprised of:

- a Director appointed by the Minister of Finance;
- an attorney appointed by the Minister of Finance;
- public accountant appointed in writing by the Minister of Finance;
- such number of police officers assigned from the RSVG Police Force (recommended by the Commissioner of Police and appointed by the Minister of Finance);
- such number of customs officers assigned from the Customs Service (recommended by the Comptroller of Customs and appointed by the Minister of Finance);
- such other personnel as the Minister of Finance considers necessary.

174. There are currently 16 employees in the FIU, including a Director, 2 Lawyers, the Chief Investigator and 3 Financial Investigators who are police officers and 2 Customs Officers. Currently, there is one customs vacancy and at least one police vacancy. In addition, the FIU has requested the NAMLC and Commissioner of Police 4-5 additional police officers. The request is expected to be granted.

175. The FIU's hybrid function provides some distinct advantages but also poses some challenges. On the one hand, the direct capacity of the FIU to undertake investigations and conduct prosecutions under the authority of the DPP allows for great consistency and potential efficiencies in these functions. The FIU's core staff includes experienced police officers and qualified lawyers to manage the AML/CFT. The output in terms of the number of production orders issued, cash detentions and seizures indicate a reasonable level of effectiveness in its operations. On the other hand, the FIU's core function to analyze financial intelligence, in particular information obtained through SARs, has apparently not been given operational priority. In practice, the FIU does not draw a distinction between its analysis and investigatory functions, which may not facilitate prioritization of cases for investigation. This negatively impacts on operational effectiveness and reduces the value added of the FIU's statutory role to analyze information originating from SARs.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

176. Pursuant to POCA, the NAMLC has issued guidance (the GNs) in 2002, which were last updated in December 2004, for financial institutions that includes *inter alia*, specific guidance for the detection and reporting of suspicious transactions in SARs. [The FIU Director is a member of the NAMLC.] The GNs also contain the SAR form that is expected to be filed along with brief instructions. The FIU does not have

separate, legal authority to issue guidance to reporting entities on SAR filings. Nevertheless, the FIU has taken a leading role in informing reporting entities of their obligations in other forms in order to elaborate on the guidelines issued by the NAMLC. Under the FIU Act, Sec.4(2)(g), the FIU shall inform financial and business institutions of their obligations under measures that have been or might have been taken to detect, prevent and deter the commission of offenses under POCA. The FIU has used this broad authority to issue letters and newsletters to reporting entities concerning their obligations. In addition, the FIU has also relied on this section of the FIU Act to conduct extensive training of financial institutions and other businesses engaged in relevant financial activities that would be required to report, as well as to provide AML/CFT specific training to judges, magistrates, and law enforcement officials within SVG.

177. There is a need for updating of guidance on the content for SAR filing; the last update was in 2004 and new typologies and risks should be addressed in the specific, written guidance issued directly to reporting entities. In addition, the SAR form itself should be updated and tailored. In addition, consideration should be given to updating the MLR to authorize the FIU to issue specific, enforceable guidance on SAR filings, including with respect to new typologies. This should be supplemented by detailed instructions to reporting entities on how to complete SARs to help improve their quality, accuracy and consistency, which is issued to the reporting entities and available on the FIU website when it becomes live. (Post mission in February 2010, the authorities provided updated SAR forms with respect to banks, insurance companies and money services businesses.)

Access to Information on Timely Basis by FIU (c. 26.3):

178. Under the FIU Act, Sec.4(1) the FIU is the agency responsible for "obtaining" information that relates to or may relate to the proceeds of the offenses created by POCA and UNATMA. The FIU, AG and DPP assert that this general language of itself suffices to obtain, directly and indirectly and on a timely basis, the financial, administrative, and law enforcement information that it requires to properly undertake its functions. For this purpose, the FIU mainly relies on information that is available from police and customs databases, which are accessible by the police and customs officers who are assigned to the FIU. Additional specific legal authority of the FIU as an organ is required to obtain necessary is warranted to ensure that the FIU's general access to information for both intelligence (FIU) purposes and investigations is not compromised. Specifically, it should also have explicit legal access, directly or indirectly, to other sources of information such as administrative databases e.g. corporate, property and trust registries, tax, supervisory information databases, etc.

179. The FIU has concluded bilateral MOUs with the Police and Customs authorities. These memoranda are needed to ensure that the FIU has timely access to information through these bodies. The law does not vest the FIU with its own specific right to obtain information, and does not define the types of information or its scope for fulfilling its core functions. A specific MOU with Inland Revenue to obtain non-public tax information would be helpful to clarify the scope of tax information required for the FIU to properly analyze and investigate matters.

Additional Information from Reporting Parties (c. 26.4):

180. Pursuant to the FIU Act Sec.(4)(2)(b), where there are reasonable grounds to suspect that a relevant offense (as defined in the FIU Act to include POCA and UNATMA offenses) has been committed, the FIU may require the production of such information (excluding information subjected to legal professional privilege) from financial institutions or persons engaged in a relevant business activity that the

FIU considers necessary for the purpose of investigating the relevant offense. While this authority is sufficiently broad to allow the FIU to obtain information from other reporting entities from the one that filed the SAR, the legislation contains a two-part requirement to exercise this authority. First, the FIU needs reasonable grounds to suspect that a relevant offense has been committed, and second, the information that is sought must be necessary for the purpose of investigating the relevant offense. It is the mission's view that, at most, only one threshold should apply as a basis for the FIU to obtain information from other reporting parties. Of the two, only the first requirement should apply as the latter requires the FIU to move entirely to investigating an offense rather than conducting intelligence analysis of the information obtained. However, even this lesser threshold may be too high to obtain information relevant to carrying out the statutory function to support the analysis of financial intelligence information obtained from SARs. In addition, the FIU should have specific legal authority to go back to the reporting party filing the SAR for any reason connected to that filing without qualification. It should be noted that in practice, the FIU finds that approximately 25% of SARs filed require additional information to complete the filing in accordance with the SAR filing requirements and reports that in all requests information has been provided to the FIU.

Dissemination of Information (c. 26.5):

181. The FIU is required to provide information subject to any conditions specified by the Minister of Finance, to the Commissioner of Police where the information may relate to the commission of an offense. In practice, there is less need to disseminate information outside the FIU to other police officers and the DPP is because the FIU houses police and customs officers who conduct investigatory functions. The expected finalization of MOUs with the Commissioner of Police, Customs, and Immigration will clarify the basis for dissemination from the FIU to these agencies. (Post mission, the authorities informed that MOUs have been signed by the FIU with the Police and Immigration Departments but that the MOU with the Customs Department was still pending.) In addition, the specific authorizations granted by the DPP to conduct functions under POCA and UNATMA reduce the use of and need for formal dissemination processes.

Operational Independence (c. 26.6):

182. The FIU reports to the Minister of Finance, who is also the Prime Minister, the Minister of Legal Affairs, and Minister of National Security. This raises an issue of whether the FIU can operate independently without undue influence. The Director General of the Ministry of Finance, who is the second in command of the ministry, is the Chair of the NAMLC, and also reports to the Minister of Finance. The NAMLC itself also reports to the Minister of Finance.. In practice, FIU officials indicate that their work at the operational level is conducted in accordance with the strategic plan developed by the FIU's director in consultation with specific members of the NAMLC (including the DPP and Commissioner of Police). In addition, the Director of the FIU appears to exercise independent authority to hire and fire FIU staff, with what is described by the FIU personnel as perfunctory approval of the Minister upon the recommendation of the Director of the FIU. The mission was not aware of instances of undue influence or interference from other persons or parties.

Protection of Information Held by FIU (c. 26.7):

183. The FIU has a secure computer database system and informs that SARs themselves are not disseminated beyond the FIU premises. The premises of the FIU are protected by electronic entry locking

systems and surveillance cameras, and remote monitoring by a security firm 24 hours per day. The reception desk at the FIU entrance is staffed by two administrative officers, who may be assisted by an office attendant, with the objective that during operational hours that one person is constantly monitoring visitor entry. Persons entering the FIU premises, they are required to identify themselves via intercom to administrative staff before access is granted.

184. Despite these measures, additional security measures to protect the physical access to the FIU could be implemented. At the initial entry, the wall separating the FIU from the rest of the building premises is wooden, which could be vulnerable. In addition, the premises are frequently accessed by messengers and reporting entities' employees or agents that deliver SARs to the FIU which should call for stricter confidentiality/security safeguards in the receipt of SARs and other confidential information. SARs are delivered in hard copies rather than electronically, and the number of persons entering the FIU premises can be quite high. So long as SARs are delivered manually in hard copy, and FIU's acknowledgements of receipt are delivered in a similar manner, there will be a risk of potential in transit loss or interception of confidential information. In this respect, an electronic SAR filing and acknowledgment system should be considered as a more secure alternative.

Publication of Annual Reports (c. 26.8):

185. Sec.8(1)(b) FIU Act requires filing of an annual report with the Minister of Finance for purposes of reviewing the work of the FIU. This report is not published but the FIU Act Sec.8(2) requires that the annual report be submitted to the House of Assembly for its review, but this report itself is not published or disseminated in the public domain. While there are quarterly and other periodic disclosures through newsletters and to the media, the issuance of annual reports on the FIU's activities would be useful to raising the FIU's profile and engaging public awareness. Nevertheless, the FIU has sent out to reporting entities and other stakeholders (including law enforcement) some sanitized information on typologies and trends, through its periodic newsletters.

Membership of Egmont Group (c. 26.9):

186. The FIU became a member of the Egmont Group in July 2003.

Egmont Principles of Exchange of Information Among FIUs (c. 26.10):

187. The FIU has adopted Egmont's Principles of Exchange of Information Among FIUs. Moreover, the FIU Act Sec.4(2)(f) allows it to enter into any agreement or arrangement in writing with a foreign FIU, which the Minister considers necessary for the discharge of its functions. To date, 9MOUs have been executed. Furthermore, through the Egmont secure website, the FIU regularly responds to requests from other FIUs. The FIU has adopted a specific and clearly-defined standard operating procedure for the provision of assistance to foreign FIUs and foreign law enforcement agencies. Further consideration should be given to providing a specific legal basis for direct FIU to foreign law enforcement assistance. The authorities inform that nearly all law enforcement requests, in practice, are channeled through their FIUs.

Effectiveness of Implementation

188. The FIU is at the forefront of AML/CFT efforts in SVG, and is the single most developed AML/CFT institution in the country. It leads operational implementation of the authority under POCA and

UNATMA and is the primary contact for reporting entities and the public on AML/CFT issues. In this regard, the quality and professionalism of its staff is considered to be high, as has shown concrete operational results through its competency in a number of legal actions, such as the number of cash detention and forfeiture orders, production orders and search warrants, in the context of ML and predicate offense investigations and prosecutions. Their participation in investigations has resulted in successful prosecutions, convictions and forfeitures. As noted by the authorities, the FIU is one of few in the region to have fully developed successful ML prosecutions. The FIU's level of cooperation and assistance with foreign counterparts also supports the effectiveness of its operations. In this connection, however, it should seek to enter into MOUs with other countries where SVG registered financial institutions and entities operate or are managed, e.g. with Liechtenstein.

189. However, weakness in effectiveness was noted in a few key areas. First, the FIU seems to emphasize its law enforcement and prosecutorial activities more than its analytical function. This has the effect of limiting its analysis and financial intelligence outputs for the law enforcement purposes. The composition of the FIU staff, which is predominantly law enforcement and prosecutorial in nature, (at the time of the mission its core professional staff consisted of only two analysts as compared to five police and customs investigators, and three lawyers out of 14 professionals) may partly explain this tendency. There has also been a decline in the analysis of SARs in the last four years: in 2005 and 2006, 100% of the 108 and 118 SARs received were analyzed, respectively; in 2007, 150 out of 190; and in 2008, 101 out of 489 (see box, Analysis, para. 424). Second, in over six years of operation, the FIU has not developed a single prosecution domestically of an ML or predicate offense arising directly from the intelligence analysis of SARs originated information. The centerpiece of the FIU's key outputs – i.e., the number of investigations and prosecutions of ML and predicate offenses – are not a product of its primary statutory function but arise more from the ancillary authority of police and investigators who are assigned to and housed in the FIU. Thus, its statutory role as the national central authority to receive, analyze and disseminate financial intelligence submitted in SARs is not yet operationally its centerpiece function, and is not fully effective. This statutory analytical role needs to be strengthened and prioritized both to provide value added to the efforts of reporting entities and to complement preventive measures, and to provide a more useful input to the investigation function of the FIU. The FIU's effectiveness in receiving useful SAR information analyzing its contents is at risk of becoming entirely subsumed within the investigative function, as it currently so operates. In this regard, the FIU should revise its operational procedures to ensure that it provides adequate weight and attention to the analysis of the financial intelligence obtained from SARs, even if law enforcement personnel are primarily responsible for this analysis. Moreover, the authority of the FIU to obtain information from other governmental bodies needs to be strengthened through more formal means, including finalizing MOUs. Greater consideration should be given to including other staff, e.g. legal and accounting/forensic accounting, at the analytical level. Second, the structure, composition of its personnel and its reporting lines could compromise the independence of the FIU operationally. Clarifying the FIU's independence would also serve to strengthen the control mechanisms for dissemination of confidential SAR information; while the FIU states that the SARs remain within the FIU premises, as required under penalty of law, the existing reporting structure does not legally ensure that dissemination of actionable intelligence is controlled.

2.5.2. Recommendations and Comments

- The FIU should strengthen its analytical function including through enhanced staff capacity.

- The FIU Act should provide broad based authority to obtain information from other governmental authorities to conduct analysis for financial intelligence purposes.

- The FIU should issue additional and comprehensive guidance to reporting parties on SAR filings to increase the quality and consistency of reports.

- The FIU should publish an annual report on it operations. In this regard, sanitized information on trends and typologies should be regularly included in a public document. The FIU should consider creating a website with information on its operations, SAR forms and instructions for reporting entities, and information for requesting authorities on the FIUs exchange of information procedures.

- The FIU should consider entering into MOUs with counterparts in other countries, especially where SVG registered institutions and entities operate.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Implementation of its analytical function is under pressure. • The FIU has not directly developed a single case for prosecution of an ML or predicate offense originating from a SAR filed. • Insufficient legal authority in the FIU Act for general access to law enforcement information. to obtain information from other governmental bodies to support its intelligence analysis. • The FIU does not issue additional and comprehensive guidance to reporting parties on SAR completions and filings. • The ability of the FIU to obtain additional information from reporting parties is subject to a threshold requirement that allows for reporting entities to reject additional requests on the basis that the information sought is not sufficiently correlated to a particular stated offense. • The FIU does not publish an annual report on trends and typologies.

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

2.6.1. Description and Analysis

Legal Framework:

190. Both POCA and UNATMA specify authority of law enforcement, prosecution and other competent authorities for investigation, prosecution and for confiscation and freezing. Under POCA Sec.35, either the police or DPP may apply to the Court for a production order related to a relevant offense. In addition to the powers specified for ML and FT offenses, similar designations of powers are provided in the Drug Trafficking Offenses Act No. 45 of 1993. The Criminal Code Cap. 124 authorizes the police officers to search persons and premises for information.

Designation of Authorities ML/FT Investigations (c. 27.1):

191. (See Rec. 26 above.) The FIU is the principal body undertaking ML investigations and prosecutions, as well as seizure and forfeiture of cash and property related to ML (none with respect to FT so far). Both POCA and UNATMA vest specific investigation and prosecution powers for ML and FT with the Police and DPP respectively, with a clear division of responsibility between the two functions. However, operationally, the FIU conducts most of the front-line law enforcement activities de facto through the assignment of police and customs officers to the FIU and specific designations by the DPP of FIU lawyers to undertake prosecutorial mandates. The presence of these law enforcement officials makes the FIU, for all practical purposes, a self-contained AML/CFT competent authority. The investigative powers of the FIU, however, derives solely from the authority vested in the law enforcement officers assigned to it. This is not uncommon in some commonwealth countries in the Caribbean and it has worked reasonably well in practice. Nevertheless, there should be additional definition and separation of the respective responsibilities of the FIU per se and the Police/Customs authorities in ML and FT investigations; to this end, MOUs between the FIU and the Police and Customs authorities should be finalized to define the scope of information sharing and separation of functions. (Post mission, the authorities informed that MOUs have been signed by the FIU with the Police and Immigration Departments but that the MOU with the Customs Department was still pending.)

192. The DPP is constitutionally responsible for all criminal prosecutions in SVG but, due to inadequate staff, on a case by case basis, the FIU prosecutes cases on its behalf. To allow the FIU to conduct these activities directly, the DPP is required to sign off on each of the FIU's court filings, essentially deputizing FIU lawyers as assistant DPPs. The Customs Service has a limited but related law enforcement authority regarding cash seizures. However, there have been some coordination issues as described in Sec. 6.1 below.

193. In addition to the authority in POCA and UNATMA, there are specialized units within the Police that complement the functions of the FIU. The major crimes and drug squad units of the RSVG Police Force conduct ML and predicate offense investigations in coordination with the FIU. In particular, the increase in drug transshipment operations in SVG have required enhanced coordination between the FIU and the Police. To facilitate this arrangement, a MOU has been agreed in principle between the Police and FIU to memorialize and clarify their respective roles. The Customs Service has some related authority to pursue customs law violations, however, some unevenness in coordination with the FIU has raised concerns. These concerns may be mitigated by the adoption of a Customs-FIU MOU, which has been agreed in principle between the FIU and the Customs. (Post mission, the authorities informed that MOUs have been signed by the FIU with the Police and Immigration Departments but that the MOU with the Customs Department was still pending.)

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c. 27.2):

194. Neither POCA, UNATMA, nor the Criminal Code provide specifically for the waiver or postponement of arrest for the purpose of identifying suspected persons or seizing of money. Sec. 49(2) of POCA authorizes court-approved continuation of the detention of cash, "while its origin or derivation is further investigated; this allows for the postponement of the arrest of the suspected person and the seizure of the cash so as to identify other persons involved or for evidence gathering persons". Furthermore, the authorities inform that both waiving and postponement of the seizure of property, either by the customs or police, have been used in specific ML investigations targeting drug traffickers, which ultimately resulted in arrests for ML and predicate offense prosecution. The Drug Trafficking Offenses Act, provides specific authority for postponing of seizures, in Sections 6, 13 and 18.

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):

195. In practice, specific investigative techniques such as controlled delivery are used on a case by case basis. The DPP has suggested that implementing wire tapping authority may be of benefit to ML and FT investigations in SVG. However, implementing such wire tapping and related authority within the Eastern Caribbean region has been considered from time to time but without much political success.

Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

196. The authorities cite two major joint controlled delivery operations with the Bermuda FIU leading to the seizure of $103,000 and $1.7 million (both USD) in 2007-2008, respectively. The latter case has led to charges against two persons for ML that are awaiting prosecution. No other special investigative techniques are regularly used; wire-tapping is not legally authorized for ML/FT.

Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):

197. As stated above, because of the structure and composition of the FIU, it in effect operates as a specialized unit responsible for nearly all aspects of investigating and prosecuting ML and FT offenses. However, the FIU is not designated by statute as the specialized investigation entity but so operates de facto due to the composition of its personnel. Authorities cite the three successful confiscation orders and numerous restraint and detention orders as evidence of the benefit of the FIU's consolidated operations. In addition, there are discussions between the domestic law enforcement authorities and foreign counterparts for cooperative investigations. The recent detention of US $1.7 million and property and the ML charges are cited as successful outputs.

Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):

198. The FIU is the primary authority monitoring for trends used by suspected criminals and money launderers. The FIU documents these trends, including typologies, in quarterly and annual reports that are submitted to the Minister of Finance and the NAMLC. The annual report is also presented to the House of Assembly.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

199. Chapter V of POCA provide specific authority for production orders, search warrants of persons and property, and monitoring orders for financial institutions in connection with ML and predicate offenses. While UNATMA does not contain similar specific language in relation to FT offenses, the authorities cite the Secs. 11 and 12 of the Police Act, Cap. 280 that allows them to compel production and conduct searches of property and persons. In addition, because FT offenses are predicate offenses for ML that may generate proceeds of crime, the authorities are of the view that the specific authority under the POCA is sufficient to cover FT. However, the POCA provisions have not been used in relation to FT-related investigations mainly because there have been no such FT investigations. Moreover, the extension of POCA authority to compel production or and searches for documents and information directly to FT offense may be subject to challenge, so the general provisions in the Police Act would be the sole basis upon which to compel production of and searches for documents and information related to FT.

Power to Take Witnesses' Statement (c. 28.2):

200. Sec.12 of the Police Act Cap. 280 authorizes police officers to take witness statements, which are admissible in court or any other trial. The authorities inform that such witness statements are regularly procured in ML and predicate offense investigations. In addition, to the authority of the police, the courts may compel witnesses to provide testimony.

Effectiveness of Implementation

201. The legal framework is sufficient for the designation of law enforcement authorities for ensuring that ML and FT offenses are properly investigated. The execution of ML and FT offenses falls almost entirely to the personnel at the FIU, by virtue of its composition of police and customs officers, and lawyers that receive specific delegations from the DPP. The FIU has therefore been transformed into the agency that takes the lead role for a broad range of law enforcement actions related to ML and FT. Competent authorities may compel production of, search persons and premises for and seize and obtain records, information or other evidence and may compel witness testimony for ML offenses; the authority in for FT is less clearly defined in the law.

202. The FIU, in consultation with the DPP, (and with specific delegation from the DPP) has obtained production orders as follows:

Year	Number of Production Orders
2004	21
2005	34
2006	13
2007	13
2008	28
Total	109

203. **[See Rec.10 on effectiveness of record keeping.]** Notwithstanding the above, the authorities should review the efficiency and effectiveness of their ability to compel production of records etc., to conduct searches, and to seize and obtain records etc., in cases where the records and persons that would be the subject of such action are located in other countries. In this regard, the mission noted that a number of the international (offshore) financial institutions and persons that hold manage entities and records are physically domiciled outside of SVG.

2.6.2. Recommendations and Comments

- Specific FT-related investigative authority should be incorporated either in UNATMA or by amending POCA to directly include any FT offense.

- The respective roles of law enforcement authorities should be formalized to provide clarity in their respective roles, particularly given the preeminence of the FIU in the development of investigations and prosecutions.

- The DPP's staff should be expanded to allow it to play a greater role in ML/FT prosecutions. In the meantime, consideration should be given to formally deputizing FIU lawyers as assistant DPPs.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• Authority for applying POCA investigative and prosecutorial techniques and m investigations of FT is not explicitly included in law. • Inadequate resources in the DPP's office.
R.28	**C**	

2.7. Cross Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Legal Framework:

204. Customs (Control and Management) Act No. 14 of 1999, as amended by the Customs (Control and Management)(Amendment) Act No. 43 of 2002, the Customs (Control and Management)(Amendment) Act No. 4 of 2007, and the Customs (Control and Management)(Amendment) Act No. 33 of 2007 (collectively the CCMA) and Statutory Rule and Order No. 33 of 2001, the Prescribed Amount (Foreign Currency) Order 2001 (SR&O No. 33).

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

205. Pursuant to Sec. 81(1) of the CCMA, SVG uses a dual declaration and disclosure system requiring all persons making a physical cross-border transportation of currency or bearer negotiable instruments in an amount exceeding EC$10,000 (pursuant to Part I, item 20 of the Third Schedule to the CCMA). It requires persons to submit a truthful written or oral declaration at the request of a customs officer. According to the authorities, the written declaration requirement applies only to passengers arriving by air. A targeted disclosure system is used for those passengers departing by air as well as passengers arriving or departing by sea, based on intelligence developed by the Customs Department. The written declaration is required to be made on the official customs declaration form in accordance with SR&O No. 33. Under Sec. 26(1)(b), false declarations to customs officers relating to incoming packages may result in forfeiture. In addition, according to the authorities, containerized cargo is also covered by Sec. 81(1) of the CCMA.

Request Information on Origin and Use of Currency (c. IX.2):

206. Pursuant to Sec. 81(2) of the CCMA, all persons entering or leaving SVG are required to answer questions of customs and police officers.

Restraint of Currency (c. IX.3):

207. (a) Where there is a suspicion that currency is related to money laundering or terrorist financing, customs or police officers may seize and detain the cash for up to 48 hours in accordance with Sec. 49(1) of POCA with respect to ML and Sec. 13(2) of UNATMA with respect to FT. Any additional detention must be authorized by a magistrate under Sec. 49(2) of POCA or Sec. 14 of UNATMA for ML and FT, respectively. (b) In respect to a false written or oral declaration, currency may forfeited under Sec. 81(3) of CCMA if not declared, and, under Sec. 81(4) any person failing to declare may be fined for so doing.

Under Sec. 108 of the CCMA, any person who knowingly or recklessly makes or signs a declaration that is materially false commits an offense and currency may be forfeited. In addition, Sec. 125 of the CCMA gives the authority to a customs or police officer to seize or detain anything (including currency) that is liable for detention and forfeiture under any customs enactment. Sec. 29(1)(f) allows detention where currency is concealed in a manner intended to deceive.

208. Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4): Information relating to currency or bearer negotiable instruments that are declared or otherwise detected, including the amount and the identification of the bearer(s), are retained by Customs forming part of the statistics and available for use by the Customs Intelligence Unit and where appropriate, can be shared with other key law enforcement agencies including the FIU and various units of the Police Department. Please see chart at c. 30.2 below.

Access of Information to FIU (c. IX.5):

209. The Customs Department uses an internal procedure which requires reporting of suspicious transportation incidents to the Customs Intelligence Unit by customs officials at the ports. According to the authorities, the Customs Intelligence Unit is responsible for providing the information directly to the FIU in a timely manner. This process is facilitated by the assignment of two members of the Customs Intelligence Unit to the FIU and through an informal procedure that is being used by Customs and the Police which will be formalized through a MOU between the two agencies. A simplified form is used by customs officials at cash collecting centers (designated points at seaports and airport) to report certain types of suspicious payments; such information may, if necessary, be transferred to a SAR-type form to be submitted by Customs to the FIU. The form also includes a list of red flags relating to payments of customs duties, such as a single transaction paid for with more than one checking account, payment of a single transaction by significant amount of cash and the payment of a significant amount of duties by both cash and check. Hence, the information about suspicious payments and movements of cash appears to be provided to the FIU on a timely basis.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

210. While no formal cooperation arrangements (e.g. MOUs) have been established with other departments, according to the authorities, the Customs Department, the immigration authorities, the Special Service Unit of the police and the FIU have established a good working relationship. There is an Intelligence Office established at the E.T Joshua Airport, the main Airport where international passengers are processed, that is occupied jointly by the Customs Intelligence Unit and the Police Special Service Unit. Information relative to passengers entering or leaving SVG is collected from the offices of the Immigration and Customs on a daily basis by officials assigned to this office. Where there is intelligence relating to any special monitoring of passengers, that information is shared with the Intelligence Office where dissemination will take place by customs and police officers to their respective departments.

211. International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7): The Customs Department is a member of the Caribbean Customs Law Enforcement Council (CCLEC). According to the authorities, cooperation, information sharing and mutual assistance is facilitated in respect of key issues including ML and FT through a Memorandum of Understanding in 1989 established between and among the membership, currently 36 signatories. The Membership comprises customs departments from the Caribbean and Latin America as well as Canada,

France, the Netherlands, Spain, the United Kingdom and the US. According to the authorities, CCLEC has also entered into MOUs with key enforcement agencies such as Interpol and World Customs Organization thereby widening the information network.

Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8):

c. 17.1. Effective, proportionate and dissuasive sanctions for false declarations:

212. Under Sections 81(4) and 29(1)(e) of the CCMA, conviction of an offence may result in a fine of up to the greater of $5,000 or three times the value of the currency, and under Sec. 108, a fine of up to $5,000. There is also an administrative process under Sec. 119 that, subject to the constitutional powers of the DPP over criminal prosecutions, applies to those persons who admit their guilt in writing and agree to pay an administrative fine. In such cases, under Sec. 119((1)(c), the liability of the offender will be discharged and the currency seized may be returned, although in practice, according to the authorities, this does not occur. Once that occurs, no further criminal liability will attach to such person, and, if they are foreign nationals, they would be free to leave SVG.

c. 17.2. Designated authority to apply sanctions:

213. The DPP is the sole authority in SVG to prosecute criminal cases, which, in practice, is accomplished with assistance from the FIU and police prosecutors, and with respect to the imposition of administrative fines, the Comptroller of Customs is the sole authority.

214. c.17.3. Sanctions applicable to legal persons and their directors and senior management: Under Sec. 118((2), legal persons and their directors who have consented or connived may be held liable for an offense under the CCMA.

c. 17.4. Range of sanctions should be broad and proportionate:

215. There are only two sanctions, a criminal penalty or administrative fine. Criminal penalties under the CCMA range from a fine of EC$5,000 to imprisonment of up to five years or both. Administrative penalties that may be imposed by the Customs Department range from the greater of amounts ranging from EC$5,000 to EC$10,000, or to an amount equal to three times the value of the currency seized. See chart, after c. IX.9, below, for administrative and criminal penalties under the CCMA.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

c. 17.1: The offences in Sections 41–43 of POCA would apply in relation to ML, and Sections 3–6 of UNATMA relating to FT, and the criminal penalties for those offences are found in Sec. 47 of POCA and Sec. 7 of UNATMA, and in each case are the same: On summary conviction, a fine of up to EC$500,000 or imprisonment for five years or both, and on conviction on indictment, an unlimited fine or imprisonment of up to twenty years or both. In addition, under Sec. 29(1)(f) of the CCMA, conviction of an offence is subject to a fine not exceeding $5,000 or three times the value of the currency, whichever is greater.

c. 17.2: The DPP is the sole authority in SVG to prosecute criminal cases, which, in practice, is accomplished with the assistance of the FIU lawyers and police prosecutors. The Customs Department has the power to impose administrative fines.

c. 17.3: See the responses to c. 2.3 and c. II.4 above.

c. 17.4: See response to c. 17.4 under c. IX.8, above.

Sanctions for customs offences (all references are to CCMA)

Customs Offences	**Legislative Reference**	**Penalty**
Disclosure of confidential information or records (tipping-off offence covering customs and police officers).	Sec. 6	A fine not exceeding EC$5000 or imprisonment not exceeding twelve months or both.
Importing goods, including currency, concealed or packed in manner appearing to be intended to deceive.	Sec. 29	A fine not exceeding EC$5000 or three times the value of goods involved and goods forfeited.
Failure to declare anything contained in baggage.	Sec. 81	A fine not exceeding EC$5000 or three times the value of goods involved.
False declaration a. Makes, signs, caused to be signed, delivers any declaration, notice, certificate or other document b. Makes a statement in answer to any question put to him by an officer which is materially false.	Sec. 108(a) & (b)	A fine not exceeding EC$5000, currency liable for forfeiture .
a. Fraudulent Evasion: Fraudulent intent in relation to any goods, in any way concerned in an evasion of any prohibition or restriction.	Sec. 111(2)(b)	A fine not exceeding EC$10,000 or five years imprisonment or both.

Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10):

216. See the responses to c. 3.1–c. 3.6. In particular, Sec. 50 of POCA provides for the forfeiture of cash seized under Sec. 49 of that Act, and Sec. 16 of UNATMA provides for forfeiture of cash seized under Sec. 13 of that Act. In addition, currency is subject to forfeiture under the CCMA, Sections 29(1)(f), which deals with concealment of cash with intent to deceive a customs officer; 81(3), concealed or undisclosed currency; 83(4), currency concealed on board a vessel at the port or an aircraft at the airport; and 89(1) currency concealed in any building or place.

Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):

217. See the responses to c. III.1 – III.10.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

218. According to the authorities, since SVG is a member of the CCLEC, notification of such transaction would be made in a manner consistent with principles relating to cooperation and information-sharing provided in the MOU. As a copy of the MOU was not made available, the mission was not able to verify whether the MOU covers unusual movements or precious metal and stones.

Safeguards for Proper Use of Information (c. IX.13):

219. According to the authorities, information that is passed to the FIU is accomplished only through the Customs Intelligence Unit, a small specialized group. There are three data systems that are relevant, the first relating to the movement of vessels, the RCS (Regional Clearance System), which is controlled by CCLEC, the second is the RSS, (Regional Security System), and the third is the APIS (Advanced Passenger Information System); in each case information is entered into these systems by units of the Customs Department, and, with respect to the RSS and APIS, the Police Department. RSS and APIS are linked to INTERPOL Access to these systems is controlled by a password requiring authorization; only certain units of Customs and the Police have such access. According to the authorities, all three data systems cover information on cross-border transactions. As a result, there appear to be sufficiently strict safeguards in place to ensure proper use of information in the three databases.

Additional Element—Implementation of SR.IX Best Practices (c. IX.15):

220. According to the authorities, the Customs Department has adopted most of the best practices stated in the paper, including targeting of couriers, risk management and intelligence techniques, behavior analysis, domestic coordination with units of customs, police, coast guard, immigration and the FIU, and the use of RSS and APIS to alert other customs units regionally about high risk targets. One major area not covered is that the Customs Department does not routinely use scanners, x-ray equipment, and canine units in its work nor is such equipment and capabilities available to it.

Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.15):

221. RCS, RSS and APIS are all computer-based systems. In addition, according to the authorities, a range of information is available on the internal database maintained by Customs, including profiling, prior actions of suspects, and personal data on suspects such as photographs. According to the authorities, all three data systems cover information on cross-border transactions.

Effectiveness of Implementation

222. Given the potential for ML or FT-related offences that should be prosecuted in a court of law, it is not clear why the Customs Department continued until 2008 to use its administrative powers over those detected with undisclosed, suspicious or concealed currency to impose fines, accept an admission of guilt and discharge of liability, and then release the offender, who, if a foreign national or resident, would then be free to leave SVG. While the authorities have indicated that this administrative procedure is not routinely used and that there has been an unwritten policy in place since 2004 for the Customs Department to refer all such matters to the FIU, the ability of the DPP, the FIU and the Police Department to develop ML or FT cases could be inhibited given that such administrative procedures were being used as recently as 2008 as discussed immediately below. Finally, the range of administrative and criminal sanctions in the CCMA is not sufficient dissuasive given the amounts of money being forfeited.

223. Statistics provided by the Customs Department indicate that there were three administrative cases in 2005 (US$10,000 in forfeitures, US$2,100 in fines); 20 in 2006 (US$133,00 in forfeitures, US$6,300 in fines); seven in 2007 (US$115,00 in forfeitures, US$1600 in fines); three in 2008 (US$14,000 in forfeitures, US$2,700 in fines); and none in 2009 to date. In addition, the following statistics reflect cases referred to the FIU for forfeiture under Sec. 50 of POCA: four cases in 2005 (totaling US$40,000); three cases in 2006 (totaling US$15,000); no cases in 2007; one case in 2008 (US$15,000), and three cases in

2009 to date (totaling US$178,000). Hence, since 2006, more money has been forfeited by the Customs Department through the administrative process (US$262,000, exclusive of fines) than by the FIU through forfeiture cases (US$208,000). These numbers suggest at the very least that the administrative procedures are, if anything, more effective than the criminal forfeiture process.

2.7.2. Recommendations and Comments

- Amend Sec. 119 of the CCMA that empowers the Customs Department to conduct administrative processes over those caught with undisclosed, suspicious or concealed currency to require that the prior consent of the DPP be obtained before any such administrative process may be initiated; such consent should also cover the amount of the administrative fine and whether the currency will be returned to the suspect. In the meantime, the Customs Department should condition any future exercise of its administrative powers on the receipt of a written determination of the DPP, along the lines that (a) no further investigation by law enforcement authorities, including the FIU, Police and Customs, is required and/or (b) no criminal proceedings will be brought by the DPP against the offender.

- In order to increase the dissuasive effect of such sanctions, administrative and criminal fines in the CCMA should be substantially increased, from the current range of EC$5,000 – 10,000 to at least EC$100,000.

- The Customs Department should sign the pending MOU with the FIU regarding cooperation, taking into account the following:

    - In para. 4, it is not clear why it is necessary to wait as much as 14 days to provide feedback and dissemination of intelligence;

    - In para. 5, the imposition by the Customs Department of the administrative fines, admission, discharge of liability and release of the offender referred to above should be addressed; and

    - Also in para. 5, any issues relating to the detention of the offender should be addressed, since the FIU works with the DPP on major financial crimes cases.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**LC**	• The administrative procedure by which the Customs Department seizes and forfeits cash, imposes a fine, accepts an admission of wrongdoing, and discharges the liability of the suspect does not allow the DPP, with the assistance of the FIU, to investigate, develop and prosecute criminal cases against suspects caught with undisclosed, suspicious or concealed currency; • Administrative and criminal fines of EC$5,000 – 10,000 in CCMA are not effective, dissuasive or proportionate; and

		• A long-standing proposed MOU between the Customs Department and the FIU has not been signed.

3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1. Risk of money laundering or terrorist financing

FIs not covered or not explicitly covered in the AML/CFT legislation and other requirements:

224. Mutual Fund Underwriters are subject to the Mutual Funds Act and, according to the Act, can engage with customers in mutual fund subscriptions and redemptions in the same manner as e.g. fund administrators. The Act, however, does not contain adequate provisions for their regulation and supervision, and hence for AML/CFT purposes. Notwithstanding, the authorities have indicated that they are not aware of underwriters operating in or from SVG and that the law will be amended to remove this category of service providers as they are irrelevant in the SVG context. In addition, it is being recommended that mutual fund administrators and managers be specifically covered under the POCA Schedule to remove any doubt as to their AML/CFT obligations.

225. There is no specific coverage of insurance brokers and agents in the POCA Schedule except under a broad category of "financial intermediaries" the POCA Schedule. In practice, insurance intermediaries (agents, brokers and sales representatives), are regulated under the insurance laws but are not considered to be conducting insurance business. They should be explicitly covered as for mutual funds administrators and underwriters above.

226. There are at least two well-known lending operations in SVG that are unregulated and unsupervised, but may likely fall under relevant business in the POCA Schedule of covered entities. At the time of the mission, no assessment or investigation had been conducted by the authorities to establish the extent of their operations, ownership and control, and inherent risks, and to ascertain whether or not they should be subject to the AML/CFT requirements. No explanation was given, even though the issue was raised on several occasions by the Mission. Post mission the authorities indicated that they had conducted an investigation into these entities to establish, inter alia, fit and proper criteria and type of business being conducted. No adverse information was identified on the owners. A determination is still to be made as to whether they should be subject to regulation at which time they may be brought under the POCA and its Regulations. In the meantime, they were advised to observe the AML/CFT requirements as a matter of good practice.

227. There is one systemically important building society that is covered by AML/CFT legislation but which has not been subjected to an oversight regime for compliance with the AML/CFT requirements. This entity has been in operations decades before the AML/CFT laws were introduced and has effectively been unsupervised. There are plans to bring it under the supervision of the Ministry of Finance later in 2009, which is a positive development. According to the authorities, the FIU has provided guidance to this entity on the implementation of its AML/CFT obligations, and that a compliance Officer was appointed several years ago upon the recommendation of the FIU. The mission confirmed that training had been provided by the FIU and that the compliance officer is also the accountant. This creates a potential conflict of interest.

In addition, the accountant/compliance officer dedicates less than 10 percent of his/her time to AML/CFT issues. Post mission, the authorities indicated that the SRD of the Ministry of Finance had conducted a full examination of this entity in August 2009 but it was not specified if it included an AML/CFT component.

228. Reg. 4 of the POCA Regulations exempts from customer identification requirements customers that are introduced by other institutions. This is inconsistent with the provisions of Rec. 9 of the FATF which does not provide for exemptions and which requires certain criteria and conditions for relying on certain elements of the CDD process. In addition, the non-mandatory Guidance Notes provides for other identification exemptions e.g. certain non-face to face business and business conducted over the phone or mail. This is inconsistent with the FATF and should, on the contrary, be subject to additional risk controls.

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

3.2.1. Description and Analysis

Legal Framework:

229. The Proceeds of Crime and Money Laundering (Prevention) Act 2001 ("POCA"), as amended in 2002 and 2005, provides the basic AML/CFT requirements for FIs. These requirements are further elaborated in the Proceeds of Crime (Money Laundering) Regulations 2002 ("Regs.") issued under the POCA. Prevention of Money Laundering Guidance Notes (GNs) have also been issued by the National Anti-Money Laundering Committee (NAMLC). New Anti-Money Laundering Guidance Notes for the insurance sector have been prepared by the Ministry of Finance but as of mission date had not yet been issued to the industry and implemented, and are not used for purposes of this assessment. The mission advised that the procedure for issuing these guidelines should be consistent with the requirements of the POCA and the Regs which does not provide for the issuance of guidelines by the Ministry. In addition, the provision in the Regs that guidance are to be appended to the Regs should also be reviewed for consistency with the POCA provisions.

230. The NAMLC GNs represent non-mandatory good practice recommendations for covered institutions and are not Other Enforceable Means for purposes of this assessment. (See e.g. GN 60 stating that they are not mandatory). They are described and used in this report only for purposes of assessing the effectiveness of implementation to the extent that they are adhered to and can influence the nature of compliance with the Recommendations. However, the mission considered whether they meet the conditions as "drivers" for assessing effectiveness based on the following two FATF criteria:

- The first condition is only partially met. The GNs have been issued by the NAMLC which is an official body established by law under the POCA. These GNs are intended to have directional effect, that is, represent recommended good practice. They address some but not all of the issues in the essential criteria. In some cases, the GNs go beyond the law and Regs both by expanding or clarifying on the provisions contained in the Regs (positive) while in others they go against the Regs by purporting to limit its application (negative) such as the inclusion of exemption from identification requirements not contemplated in the Regs. For instance, GNs 49-51 provide exemptions from identification requirements for certain postal, telephonic, electronic, mail shots, off-the-page, and coupon business. These are not exempted in the Regs.

- The second condition is also only partially met. Some of the supervisory authorities have used the GNs as a guide for monitoring adherence to the POCA and Regs but some supervisors have only recently commenced onsite inspections for AML/CFT in some sectors, or only partially assessed for compliance, e.g. the insurance, credit unions. Some have not been assessed at all e.g. money remitters, the building and loan society, international insurance and mutual fund sectors. For these sectors in particular, there is no evidence that enforcement powers have been used in a general or specific case for non-compliance with the GNs.

231. Based on the above, use of the GNs as drivers for assessing implementation is limited and in most cases maybe insufficient to justify an upgrade in rating based on effectiveness of implementation. They will be analyzed, however, to reflect the general guidance such GNs provide for industry practice and considered in assessing implementation where relevant.

232. Schedule 1 of the POCA lists the financial institutions, DNFBPs and other businesses to which the applicable provisions of the Act apply. These cover all of the financial activities, most of the DNFBPs (not clear if Jewelers covers dealers in precious metals and stones but the authorities believe that it does and that barristers and solicitors cover attorneys. See Rec. 12 and 16 below) and other businesses (See Rec. 20 below), as listed in the Schedule (bolded words are those of the assessors):

Financial Institutions

1. A bank licensed under the Banking Act
2. A bank licensed under the International Banks Act 1996
3. A building society registered under the Building Societies Act
4. An insurance company registered under the Insurance Act
5. International Insurance business licensed under the International Insurance Act 1996
6. Registered agents and trustees licensed under the Registered Agent and Trustee Licensing Act 1996 (**DNFBPs**)
7. A Trust licensed under the International Trusts Act 1996
8. A person licensed to operate an exchange bureau
9. A person licensed as a dealer or investment adviser
10. A person who carries or cash remitting services
11. A person who carries on postal courier services (**other business**)
12. Mutual Funds licensed under the Mutual Funds Act 997
13. Credit Unions

Other relevant business activities

14. Lending (including personal credits, factoring with or without recourse, financial or commercial transactions including forfeiting check cashing services)
15. Finance leasing
16. Venture risk capital
17. Money transmission services
18. Issuing and administering means of payment (e.g. credit cards, travelers' checks and bankers' drafts)
19. Guarantees and commitments
20. Trading for own account customers in:
    a. money market instruments (checks, bills, certificates of deposit etc.)
    b. foreign exchange
    c. financial futures and options
    d. exchange and interest rate instruments; and
    e. transferable instruments
21. Underwriting share issues and the participation in such issues
22. Money broking
23. Investment business
24. Deposit taking
25. Bullion dealing
26. Financial intermediaries
27. Custody services
28. Securities broking and underwriting
29. Investment and merchant banking
30. Asset management services
31. Trusts and other fiduciary services (includes Trust settlement per POCA Regulations)
32. Company formation and management services
33. Collective investment schemes and mutual funds

34. Car dealerships

35. Jewelers

36. Real estate agents

37. Casinos

38. Internet gambling

39. Pool betting

40. Lottery agents

41. Barristers-at-law and solicitors

42. Accountants

43. Charities

233. Insurance companies are explicitly covered under the POCA and Regs per Schedule 1 of the POCA. However brokers and agents are not so explicitly covered, except under the general category of as 'financial intermediaries' under Relevant Business Activities. The interpretation of this with respect to the coverage of brokers and agents (and sales representatives) varies across the industry and the authorities and should be clarified in the law.

234. In addition, mutual fund underwriters are not regulated entities in the mutual funds law but the authorities maintain that they are not aware of any in operation and that these entities will be deleted from the Mutual Funds Act. In addition, there are two known lending operations that are not subject to regulation and supervision. Until an investigation is conducted to ascertain the extent and nature of their operations, they would effectively fall outside the scope of the POCA, Regs and Guidance Notes. As noted above, post mission the authorities indicated that they have conducted an investigation of these entities and that a determination is to be made on whether they should be regulated.

235. In addition to the above entities and activities, the POCA Reg. 3 provides that any person or entity not falling within the definition of a "regulated institutions" (these are those listed in Schedule 1 of the POCA above) may apply to the Minister of Finance (Minister) to become a "voluntary regulated institution". Reg. 3(4) requires the Minister to issue a list of such institutions and to-date no such list has been issued by the Minister since no application has been made to/approved by the Minister.

236. For purposes of this report, the following FIs are in operation in SVG and assessment of compliance will be based on these entities. Where there are FIs that are not covered by a supervisory regime that should or are covered under the AML/CFT legislation, these are discussed above under Sec. 3.1 above, and in the other applicable sections of the report.

Domestic financial institutions	No.	Regulator
Banks (includes securities broking by banks)[11]	6	ECCB
Insurance companies (9 life)	23	Min. of Finance[12]
Brokers for insurance company	6	Min. of Finance
Agents for insurance	10	Min. of Finance
Sales representatives for insurance	85	Min. of Finance
Pension fund plans	14	Min. of Finance
Money transfer services	4	Min. of Finance
Credit unions (active)	9	Registrar Credit Unions
Building society	1	None
Sub-total Domestic	**158**	
International (Offshore) Financial Entities	**No.**	**Regulator**
Offshore banks	6	IFSA
International insurance companies	9	IFSA
International insurance managers/brokers	3	IFSA
Mutual funds	45	IFSA
Mutual fund managers/administrators	30	IFSA
Sub-total Offshore	**93**	
Total	**251**	

237. There is a systemically important building and loan society with about 25,000-30,000 clients and assets of approximately EC$252 million in assets. This entity is not subject to a supervisory or regulatory regime for prudential or AML/CFT purposes but is covered by the AML/CFT legislation. The intention is for the Ministry of Finance-SRD to assume supervisory responsibility along with credit unions later in 2009. Post mission, the authorities indicated that an onsite inspection of this building society has been conducted in August 2009. No indication was given as to whether it included an AML/CFT component.

238. Sec. 46 of the POCA requires FIs that carry on business listed in Schedule 1 of POCA to keep and retain records relating to their financial activities in accordance with the POCA Regulations issued under Sec. 67 of the Act. These will be further discussed below and in Rec. 10. Sections 42-45 also make provisions for reporting of suspicious activities, tipping-off, etc. for FIs. These are elaborated under Rec. 12, 13, 14 and SRIV in this report. Furthermore, Sec. 46 requires/provides under subsections (2) FIs to pay special attention to complex and other transactions (See Rec. 11); (3) and (4) reporting of suspicious activities to the FIU (Recs. 13 and 14); (5) exemption of liability for reporting suspicion (Recs. 14 and 16); (6) and (7) duty to develop and implement a written training and compliance program to ensure and

[11] The ECCB is responsible for the supervision of domestic banks in the eight countries comprising the ECCU (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Anguilla and Montserrat). There are 39 domestic banks operating in the ECCU.

[12] The Ministry of Finance may designate the Supervisor or is the Authority responsible for supervising the various entities, as provided in the respective financial laws.

monitor compliance with the Regs issued under the Act. (Rec. 15). The POCA also established the FIU and the NAMLC.

239. The Drugs Trafficking Offences Act also contains provisions under Secs. 30-33 with respect to FIs listed in that Act. Sec. 30 requires FIs to retain for a minimum prescribed period, the original or other retrievable form of copies of documents, inter alia, with respect to transactions, accounts, deposit box facilities, wire transfers and transmission of funds, and loans (Rec. 10). Transactions of EC$5,000 or less are excluded. For this purpose FIs are domestic banks, any other licensed financial institution under any Act, trust companies, finance companies or any other deposit-taking company.

240. The United Nations (Anti-Terrorism Measures) Act, 2002, as amended, also contains provisions for FIs. In particular, Sec. 10 imposes a duty on persons or citizens to provide information with respect to terrorist property; Sec. 10A(1) for reporting of suspicious transactions relating to terrorist acts; and Sec. 10(B) and (C) penalty for failure to report suspicions. (See Rec. 13, 14, 17 and SRIV.)

241. The POCA Regs establish mandatory customer identification and other AML/CFT requirements for FIs. In particular, it makes provision for:

- Identification verification;
- Recordkeeping;
- Monitoring and verification;
- Internal reporting procedures and compliance officer (ML reporting officer or MLRO);
- Training;
- Offences and penalties;
- Accounts in anonymous and fictitious names at time the Regs were issued;
- Schedule: Procedures for verification of identity of customers.

242. In summary, many of the legal requirements in the Regs are to establish/institute and maintain procedures that require FIs and persons involved in relevant business activity as defined, to take certain action. The following analysis will primarily focus on technical compliance with the FATF Recs. based on the requirements established under the POCA and the Regs. Therefore, reference in the analysis below to the lack of requirements, refers to the lack of legal, regulatory or other mandatory and enforceable requirements, and not to the GNs.

Note:

243. In this report, international banks licensed in SVG under the International Banks Act will be referred to as either international (offshore) banks or simply offshore banks simply to distinguish from other non-“offshore” foreign banks operating in or outside of SVG, and is not intended to cast any adverse connotation on any particular bank or sector.

Prohibition of Anonymous Accounts (c. 5.1*):

244. There are no provisions in the POCA or the Regs that explicitly prohibit the keeping of anonymous or fictitious name accounts. However, the customer identity verification requirements in the Regs (esp. Regs 4, 5, 6 and its Schedule) if strictly applied, would effectively avoid opening accounts under anonymous or fictitious names. In addition, Sec. 19(8) of the International Banks Act (for offshore banks) states that any account established by a licensee on behalf of a customer shall state the name and address of the customer and/or the beneficiary of the account.

245. Notwithstanding the above, Reg. 10 contains a lacuna with respect to anonymous and fictitious name accounts. The transitional provisions require FIs to establish the beneficial ownership of all "anonymous" accounts and accounts in obviously "fictitious" names within one year of the Regs coming into force. Where the beneficial owner cannot be established within one year, FIs are required to report these to the FIU. There is no explicit requirement to close such accounts which leaves the possibility of maintaining anonymous and fictitious name accounts that existed prior to the Regs. Guidance should be given in this regard, e.g. for closing them, or maintaining accounts on instructions from the competent authorities.

246. There are no regulatory provisions with respect to the treatment of numbered accounts which are permitted and treated differently from anonymous and fictitious name accounts in c. 5.1.

247. **Non-mandatory Guidance Notes:** There are no provisions with respect to this issue in the GNs.

When is CDD required (c. 5.2*):

For all FIs

248. Reg. 4 (2) requires identification, but not the full range of customer due diligence (CDD) to be conducted when (a) forming a business relationship and (b) conducting a one-off transaction when payment is to be made by or to the applicant for business in an amount of EC$10,000 or more (equiv. to about US$3,704 at exchange rate US$1.00=EC$2.7). For purposes of one-off transactions, identification is also required when two or more such transactions that appear to be linked equal or exceed EC$10,000. The requirement for one-off transactions where "payment is to be made by or to the applicant for business" could be interpreted by institutions as excluding transactions where payments could be made by and to the applicant, or where it is not clear if payments were made such as e.g. currency exchange transactions and the provision of financial guarantees if e.g. no fee payments are involved.

249. The one-off threshold of EC$10,000 (US$3,700) is in significantly in excess of the FATF requirement (US/EU$1,000) for wire transfers under SR VII.

250. Reg. 4 (2) (d) also requires customer identification when there is knowledge or suspicion of ML (does not cover FT) only in respect to one-off transactions. It is not clear whether the one-off transactions are limited to those of EC$10,000 or more, or whether they include lower amounts. In addition, it does not extend to business relationship in accordance with c. 5.2 (d) and the interpretive notes to Rec. 5.

251. There is no legal requirement to conduct CDD when there are doubts as to the veracity or adequacy of previously obtained customer identification data.

Non-mandatory Guidance Notes:

252. The GNs elaborate on the above requirements, including with respect to the need for identification of joint applicants for business. In particular, it expands on the computation of one-off transactions recommending that for purposes of linking transactions, only those that take place within a period of less than three months should be linked. In addition, GN 80 states that FIs should conduct CDD when doubts arise as to the identity of clients, and GN 82 states that a report should be made the MLRO (compliance officer) if failure to complete verification raises suspicion.

Identification measures and verification sources (c. 5.3*):

253. Reg. 4 (1) (a) requires FIs to implement procedures that require their customers to produce satisfactory evidence of identity as soon as practical after first making contact with the FI, in accordance with the particulars set out in the Schedule to the Regs.. If satisfactory evidence is not obtained, the business shall not proceed any further. One exception to this requirement is when there is suspicion of ML in which case the business can proceed but only in accordance with directions issued by the FIU, and only when they involve one-off transactions. This seems to be a reasonable exception requirement but should extend to business relationships as well. With regards to the identification verification procedures, the Schedule sets out the following key requirements:

Individuals (no distinction between residents and non-residents):

254. Name, address, date and place of birth, nationality, contact details, occupation, copy of passport or identity card and signature. In addition, information on the purpose and potential activity of the account (not of the business whole relationship) is required as well as information on the source of income and wealth, written authority to obtain independent verification of the information provided, and written confirmation that all credits to the account are and will be beneficially owned by the "regulated institution holder". The terms "regulated institution holder" should be defined to remove any doubt as to which regulated institution it refers. There is also a general requirement to obtain any other document or evidence to establish the identity of the client. This requirement also applies to verification of identity of the beneficial owners of the regulated institutions themselves.

Corporate Entities (no distinction between local and foreign):

255. copy of certificate of incorporation, memorandum and articles, location of the registered office or registered agent of the corporate entity; resolution of the Board of Directors authorizing the opening of the account and conferring authority on the person who will operate the account, confirmation that the corporate entity has not been struck off the register or is not in the process of being wound up, names and address of all officers and directors of the corporate entity, names and addresses of the beneficial owners of the corporate entity except a publicly traded company, description and nature of the business including date of commencement of business products or services provided and location of principal business, purpose of the account and the potential "parameters" of the account (including size in the case of investment and custody accounts, balance ranges in the case of deposit accounts, and expected transaction volume of the account), written authority to obtain independent verification of any information provided, written confirmation that all credits to the account are and will be

beneficially owned by the "regulated institution holder", and any other official document and other information reasonably capable of establishing the structure of the corporate entity.

Partnerships or Unincorporated Businesses:

256. FIs are required to verify all partners or beneficial owners in accordance with the procedure for the verification of individuals and in particular: copy of partnership agreement (if any) or other agreement establishing the unincorporated business, description and nature of the business (including date of commencement of business, products or services provided, location of principal place of business), purpose of the account and the potential "parameters" of the account (including size in the case of investment and client accounts, balance ranges, in the case of deposit and client accounts and the expected transaction volume of the account), mandate from the partnership or beneficial owner authorizing the opening of the account and conferring authority on those who will operate the account, written confirmation that all credits to the account are and will be beneficially owned by the "regulated institution holder", and any documentary or other evidence reasonably capable of establishing the identity of the partners or beneficial owners.

257. Reg. 6 states that once a FI has verified the identity of an "applicant for business", no further verification is necessary so long as the "applicant for business" maintains a business relationship on a regular basis. In addition, where there has not been contact with the customer or there has not been a transaction in five years, the FI shall confirm the identity of the account holder.

258. There are no laws, regulations or other enforceable means that allow the application of identification requirements on a risk sensitive basis.

Non-mandatory Guidance Notes:

259. (See Rec. 9 for a more comprehensive discussion of introduced business and exemptions from customer identification.) Reg. 4 (9) sates that for purposes of establishing satisfactory evidence of identity or reasonable measure of identity, regard "may" be had to the guidance notes appended to the Regs. However, to date no such guidance notes have been appended but the NAMLC has issued industry wide non-mandatory Guidance Notes that elaborate on the above verification requirements.

260. While the GNs do not constitute laws, regulations or other enforceable means that allow the application of CDD requirements on a risk sensitive basis, the GNs 45-51 state that FIs are **exempted** from verification of identity requirements in certain cases. This is distinct from and broader than the simplified or reduced CDD that may be allowed under c. 5.9 below. Those clients exempted from verification fall into three broad categories as follows:

Licensed financial institutions:

261. Seven categories of "eligible institutions" licensed in SVG, or their equivalents in other jurisdictions, including: (i) domestic banks; (ii) international banks; (iii) building societies; (iv) domestic insurance companies; (v) international insurance companies; (vi) registered agents and trustees; and (vii) mutual funds. [Note that GN 46 refers to seven "eligible" institutions listed in the Schedule to the POCA. However, the POCA has a much larger number of categories of institutions.]

262. For purposes of establishing whether exemption from identification of a customer is a foreign regulated institution, or is introduced by a foreign financial institution subject to AML laws equivalent to SVG, regard should be had to GN 53 and GN 162 which set out a list of 83 countries that may be used for such purpose. It is noted that for purposes of a customer that is a regulated financial institution (not the full range of relevant business activities contained in Schedule 1 of the POCA which includes non-financial entities), c. 5.9 allows for simplified or reduced CDD, not a complete exemption. And even in the case of Rec. 9 for introduced business (See Rec. 9 below), there is a need for an FI to immediately obtain information on the customer from the introducer, and be able to obtain the underlying documentation (which would allow for verification of identity) promptly on request. Therefore, these exemptions seem to go beyond the FATF requirements.

Small one-off transactions:

263. These are consistent with the requirement to verify identity (but not conduct full CDD) of customers above the established threshold of EC$10,000. In addition, please note the comment under c. 5.2 with respect to the threshold exceeding the wire transfer requirements of US/Euro $1,000.

Introduced business:

264. GNs 53 and 162 relate to introduced/intermediary business covered under Rec. 9 which may also allow FIs the discretion not to verify identity in some cases. (See Rec. 9 below.)

265. GNs provide further details on verification methods that may be used by FIs, including for legal arrangements such as trusts which are not covered in the Regs (e.g. GNs 60-79). GN 65 also recommends obtaining bank and professional references directly from the issuers, which should be verified.

266. Part IV of the GNs also contain further sector-specific guidelines that would generally apply the exemptions from the verification to Banking, Investment Business, Fiduciary Services and Insurance business. But as discussed above, these would go beyond what is required under the FATF Recs.

Identification of Legal Persons or Other Arrangements (c. 5.4):

267. **Corporate Entities** (See c. 5.3 above.) **c. 5.4 (a)***. The Schedule to the Regs requires that a FI obtains the resolution of the Board of Directors authorizing the opening of the account and conferring authority on the person who will operate the account. It does not explicitly require verification of the identity of the person so authorized.

268. The Schedule of the Regs require FIs to obtain certified copies of incorporation documents, address, directors and officers and beneficial owners of the entity, except for publicly traded companies. As indicate in the previous paragraph, the resolution authorizing the opening and operating of the account is required but not identity of the person so authorized, and this may be a narrow power to bind the legal entity.

Partnerships or Unincorporated Businesses (See c. 5.3 above):

269. Verification of all partners and beneficial owners of incorporated businesses is required under the Schedule to the Regs. This includes a copy of the partnership or other agreement establishing the unincorporated business, location of principal place of business, mandate from the partnership or beneficial

owner authorizing the opening of the account and authority to operate it. The FIs can also require any other document or evidence to assist in establishing the identity of partners or beneficial owners.

270. There are no other requirements in the POCA or Regs for FIs to identify other legal arrangements such as trusts/trustees. There is a requirement to identify corporate entities, which would cover corporate trustees, but no specific identification requirements for FIs to identify the various parties to a trust relationship, that is in addition to the trustees, the settlors and beneficiaries, as provided for in the GNs for the trustees. The provisions for identifying unincorporated businesses is also not appropriate for trust relationships as the "agreement" establishing the business may not consistent with the concept and structure of a trust which may constitute a different type of instrument (e.g. deed, declaration, etc.) and which may be an oral trust relationship.

Non-mandatory Guidance Notes:

271. GN 39 states that for purposes of identifying corporate entities, FIs should include corporate trustees. While this would help meet the requirements of c. 5.4 if it were in the Regs, it would still be insufficient as non-corporate trustees are not covered. GN 38 also states that FIs should verify the identity of partners/directors of a firm who have authority to operate an account or "otherwise to give relevant instructions" as if they were directors or shareholders of a non-quoted corporate entity. In addition, it states that for a limited partnership, only the general partner needs to be identified unless limited partners are "significant investors" but these terms are not defined in the GNs.

272. The GNs (44) also state that for other legal arrangements such as associations, institutes, foundations, charities, etc. that are not firms or companies, all signatories "who customarily operate the account" should be identified. It is noted that GN 78 refers to the identification of parties to a trust by the trustees (as DNFBPs), and not to the identification of the trustee (corporate or non-corporate) by FIs.

Identification of Beneficial Owners (c. 5.5*; 5.5.1* & 5.5.2):

273. There is no explicit requirement in the Regs to identify beneficial owners except in the Schedule with respect to corporate and incorporated businesses. Reg. 4(5) requires FIs to establish and maintain procedures to identify persons on whose behalf an applicant for business appears to be acting for, that is, where the applicant is not acting as principal. This is not necessarily the same as identification of beneficial owners or beneficiaries. The Schedule to the Regs for individuals does not address this issue except for a rather unclear provision that requires FIs to obtain "written confirmation that all credits to the account are and will be beneficially owned by the regulated institution holder". It is unclear what a "regulated institution holder" is but would also not be a sufficient requirement to identify beneficial owners or beneficiaries such as those of a trust. Para. 2 of this part of the schedule for individual customers also require identification of the beneficial owners of all "regulated institutions" which is confusing. Similar provisions are included for corporate entities, partnerships and incorporated businesses in the Schedule.

274. The Schedule to the Regs requires that for corporate entities, FIs are required to obtain information that includes the "names and addresses of beneficial owners of the corporate entity, except for a publicly traded company".

275. For partnerships and incorporated businesses, the Schedule requires FIs to obtain verification of identify for all partners or beneficial owners, using procedures applicable to individuals under the Schedule.

276. For corporate entities, the Schedule to the Regs requires FIs to obtain information or official documentation that is "reasonably capable of establishing the structural information" of the entity. This may be interpreted as to include ownership and control structure information but is not explicit enough. There is a requirement in the Schedule to obtain the names and addresses of the beneficial owners of non-publicly traded companies as described above.

277. For partnerships and unincorporated businesses, there is no specific requirement to obtain information as to the ownership and control structure, only verification of identity of partners and beneficial owners.

278. Reg. 4(6) provides that, where an applicant for business (customer): (i) is being introduced to the FI by another regulated institution (both FIs and non-FIs as listed in Schedule 1 of the POCA); (ii) is acting for another (principal); and (iii) the applicant is another regulated institution (domestic or foreign), then it shall be reasonable for the FI to accept a written assurance from the applicant for business (the regulated institution) to the effect that evidence of the identity of the principal has been obtained and recorded under procedures maintained by the applicant. This requirement is very confusing and seems to go beyond the requirements for introduced business under Rec. 9 below. It seems to describe a situation where a SVG FI can rely on the identification of an underlying client conducted by a second tier regulated institution, that is, one that is itself introduced by another regulated institution. This issue is further discussed under Rec. 9.

279. While there are sufficient requirements to establish beneficial ownership of legal entities and arrangements covered by the Regs and the Schedule, a requirement as to the identity and information on natural persons that ultimately "control" a legal person or arrangement is not explicitly required, particularly with respect to trusts/trustees as clients of FIs. There is a need for provisions in the Regs, similar to those for trustees under para. 78 of the GNs, for FIs to identify settlors, beneficiaries, protectors in addition to the identification of trustees. (See c. 5.4 above.)

Non-mandatory Guidance Notes:

280. The GNs provide additional identification guidance for clubs, societies and clubs, and for those procedures that Trustees should take with respect to identification and information on their clients and businesses. GN 33 states that "principals" should be understood in the widest sense to include beneficial owners, settlors, controlling shareholders, directors, major beneficiaries, etc. GN 32 further states that where there are a large number of verification subjects, it may be sufficient to carry verification on a limited group only such as the principal shareholders and main directors of a company which is reasonable. GN 39 also states that for non-publicly traded companies, the underlying beneficial owners who ultimately own or control the company should be identified. For public companies quoted in recognized stock exchanges, subsidiaries thereof, and 'private company with substantial premises and payroll of its own", no identification verification is required. This latter exemption, if put into practice, is not consistent with the requirements under Rec. 5, and would also be *ultra vires* the POCA and Regs.

281. The GNs further define "underlying beneficial owner/s" as 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". This provision is insufficient and would not, e.g. cover beneficiaries under a trust arrangement where beneficiaries would not be expected to provide such instructions to e.g. to the trustee.

Information on Purpose and Nature of Business Relationship (c. 5.6):

282. The Schedule of the Regs. requires FIs to obtain information on the purpose and potential activity of the account for individuals and legal entities. For individuals, it requires the purpose of the account and potential activity. For corporate entities, partnerships and unincorporated businesses, the purpose of the account and the potential parameters of the account (including size in case of investment and custody accounts, balance ranges in case of deposit accounts and expected transaction volume of the account). These requirements limit the information to account activity and do not extend to information on potentially broader "business relationships".

Non-mandatory Guidance Notes:

283. Unlike the requirements under the Schedule of the Regs, there are no requirements to obtain information on the purpose and nature of the account, nor business relationship, except for corporate entities that require a statement of purpose of the account, including expected turnover and volume of activity (GN75).

Ongoing Due Diligence on Business Relationship (c. 5.7*; 5.7.1 & 5.7.2):

284. The general rule under Reg. 6 is that once an FI has verified the identity of a client, no further verification is required so long as the customer maintains a business relationship on a regular basis. There is a limited requirement to verify customer identity when, in the course of business, there are concerns regarding the identity of the client or beneficial owner. Where there has been no contact with a client or no transaction within a period of five years, the FI shall confirm the identity of the account holder. In addition, Reg. 6(2) requires FIs to monitor the relationship for consistency with the stated account purpose, business and the expected account activity. These requirements are consistent with c. 5.7 but it falls short of c. 5.7.2 which should extend the obligation to update documents, data or information through periodic reviews of existing client records, particularly with respect to higher risk business relationships.

Non-mandatory Guidance Notes:

285. The GNs reflect the requirements in the Regs and do not address the issue of updating CDD documentation especially with respect to high risk business, and focuses mainly on re-verification of identity.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

286. There are no requirements in POCA or the Regs to perform enhanced CDD for higher risk customers and transactions.

Non-mandatory Guidance Notes:

287. The GNs do not provide for enhanced CDD for higher risk customers and transactions.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

288. There are no legal or regulatory requirement that allow FIs to apply reduced or simplified CDD where it has been proven that ML/FT risks are lower, where information on identity can be obtain publicly or where other controls exist in the national regime. On the contrary, the Regs and GNs exempt certain categories of customers from verification of identity as discussed under c. 5.3 above. (See Rec. 9 below.)

Non-mandatory Guidance Notes:

289. The GNs reflect the requirements under the Regs and further exempts FIs from verification requirements for certain categories of customers, including other FIs (both domestic and foreign), particularly GN 46, 49, 50 and 50. As indicated above, these exemptions go beyond the simplified/reduced CDD procedures allowed in c. 5.9.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

290. There are no requirements that when simplified or reduced CDD. There is a requirement for introduced business under Reg. 4(6) that exempts FIs from identification verification, where an applicant for business is another domestic regulated institution (those listed in the Schedule to the POCA) or a foreign regulated institution (those subject to AML Regs similar to the SVG Regs.). In such cases, the FIs only need to obtain a written assurance from the applicant that it has obtained and recorded evidence of identity of the principal/beneficiary of such institution. This provision, however, is more relevant to Rec. 9, but in principle goes beyond the simplified CDD regime allowed under c. 5.9.

Non-mandatory Guidance Notes:

291. See discussions above on exemptions from identification requirements in the Regs and GNs.

Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):

292. There are no requirements in POCA or the Regs that would prohibit simplified/reduced CDD when there is suspicion of ML/FT, or where higher risk scenarios apply. There are no exceptions to the exempted cases for customer identification described above, when there is suspicion of ML or FT. Only the GNs have these provisions as described in the following paragraphs.

Non-mandatory Guidance Notes:

293. GN 45 states that where "a transaction" is suspicious, the exempted cases discussed above with respect to verification of identity would not apply.

Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

294. As mentioned above, the POCA and Regs do not allow for simplified/reduced CDD, and the exempted cases covered in the GNs (Guidance Notes) go beyond what is allowed under the legislation in some cases, e.g. for example, business conducted by post, telephone, electronic means, coupons, etc. (See GNs 49-51).

Timing of Verification of Identity—General Rule (c. 5.13):

295. As a general rule, Reg. 4(2) states that if satisfactory evidence of identity is not obtained, the business in question must not proceed any further except under directions of the FIU when there is suspicion of ML. It does not cover suspicion of FT. This is a reasonable requirement, but should consider the benefits of extending this provision beyond one-off transactions, e.g. under circumstances described under GN 137.

Non-mandatory Guidance Notes:

296. The GNs contain provisions similar to those of the Regs.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c. 5.14 & 5.14.1):

297. There are no provisions in the POCA or Regs that allow for delaying of verification of identity of customers and beneficial owners.

Non-mandatory Guidance Notes:

298. The GNs do not contain provisions for delaying verification of identification except for Investment Business under GN 137 that allow delays when an investor has cancellation or cooling off rights. In such cases, the repayment of investment funds during this cooling off period is not to be considered as proceeding further with business under Reg. 4(2). When this occurs, repayment of investment funds should not be made to a third party to avoid the risk of ML.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

299. Reg. 4(2) states that where satisfactory evidence of identity (as opposed to full CDD) is not obtained, the business relationship or one-off transaction shall not proceed any further, except under directions from the FIU when there is suspicion of ML. It is implicit, therefore, that the FIU will be informed of the suspicion. However, the circumstances under which an FI can proceed under directions from the FIU are limited to one-off transactions, and do not extent to business relations. Nonetheless, this seems to be a reasonable provision in that it would provide the opportunity for the FIU and/or other authorities to inquire/investigate the person should there be an interest and avoid tipping off the subject of a suspicious activity report.

Non-mandatory Guidance Notes:

300. The GNs contain broadly similar provisions for dealing with an applicant for business when verification is unsatisfactory. In particular, the second GN 82 (note that there are two GN 82s) states that where failure to complete verification and there are no reasonable grounds for suspicion of ML, any business with or one-off transaction for, the applicant for business should be suspended and any funds held to the applicant's order should be returned in the form it was received, until verification is subsequently completed, if at all. Funds should never be returned to a third party and an internal report to the MLRO (compliance officer) should be made on how to proceed. This provision should be reconsidered to require that where there is suspicion, a SAR should be filed with the FIU.

301. The GNs are vague in that they do not prohibit the establishment of a business relationship or carrying out of a one-off transaction when CDD cannot be completed. It mainly requires the suspension of

such business or transaction. In addition, it does not deal with situations involving existing customers as discussed under c. 5.16 below.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

302. There are no requirements to terminate an existing business relationship in the circumstances covered by c. 5.16. There is only a requirement under Reg. 10 to report to the FIU anonymous or fictitious name accounts when the beneficial owner of such accounts cannot be established within one year of the Regs coming into effect (22 January 2002). Part IV of the GNs contains broadly similar provisions for the sectoral guidelines esp. for Investment Business. See c. 5.17 below.

303. **Non-mandatory Guidance Notes**: See c. 5.15 above.

Existing Customers—CDD Requirements (c. 5.17):

304. There is no requirement to apply CDD requirements to existing customers at the date the Regs came into effect, except for those anonymous or fictitious name accounts discussed under c. 5.16. The provisions of Reg. 6 apply to customers after the Regs came into effect and do not address the issue of materiality and risk. Under Reg. 10, when customer identification cannot be established on anonymous or fictitious name accounts existing at the time the Regs came into effect, they shall be reported to the FIU but there is no requirement to close the accounts.

Non-mandatory Guidance Notes:

305. There are no provision in the GNs with respect to this requirement.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

306. See c. 5.16 above. There is only a requirement under Reg. 10 to establish the beneficial ownership of anonymous or fictitious name accounts within one year of the Regs coming into effect (22 January 2002), and to report to the FIU when the beneficial owner cannot be established within one year. This is insufficient.

307. **Non-mandatory Guidance Notes**: The GNs do not address issues under c. 5.18.

Foreign PEPs—Requirement to Identify (c. 6.1):

308. There are no requirements to conduct additional CDD measures on PEP including risk management systems to determine whether a potential customer, customer or beneficial owner is a PEP.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

309. No requirement for senior management approval for establishing business relationships with PEPs.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

310. While there is no explicit requirement in the Regs to obtain source of funds and wealth of PEPs, the Schedule to the Regs for individuals and beneficial owners requires FIs to obtain source of income and wealth for purposes of identity verification which would satisfy this obligation.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

311. There is no requirement to conduct enhanced CDD on PEP relationships.

Domestic PEPs—Requirements (Additional Element c. 6.5):

312. No requirements on domestic PEPs.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

313. SVG has signed but not ratified the UN (Merida) Convention against Corruption.

Non-mandatory Guidance Notes:

314. The GN 168 asks FIs to apply enhanced CDD on PEPs and to identify sources of information for establishing their position as PEPs. It describes the categories of persons that should be considered as PEPs, implicitly from other countries. Part of the CDD should include identifying related persons and companies, and identifying their source of funds, but not source of wealth. It also includes applying ongoing due diligence on the account. The decision to establish a PEP account/relationship should be taken at senior management level, but there is no similar requirement to obtain senior management approval for the continuation of an existing PEP or beneficial owner who is a PEP, or who subsequently become PEPs.

315. The GNs do not provide for domestic PEPs.

Cross Border Correspondent Accounts and Similar Relationships – introduction

316. It does not seem to be a general practice for domestic and international banks to provide cross-border correspondent account facilities to other banks. However, for purposes of this Rec., the provision of correspondent account facilities to some of the six international (offshore) banks in SVG would be analogous and are assessed under this Rec. In SVG, the domestic bank sector does provide correspondent/ nested correspondent accounts to offshore banks licensed in SVG. The provision of such correspondent accounts in SVG appears to be generally related to difficulties or the inability to open correspondent accounts directly with other institutions abroad. In some cases, it did not appear to the mission that the offshore banks had significant mind and management presence in SVG. Most of the top officials the mission met that had operational duties and knowledge of the banks business were residing overseas. To the extent that the domestic banking sector provides correspondent facilities to these offshore banks, they would be assuming the risks inherent in such business. It is noted that soon after the mission, two of the offshore banks were intervened by the government and may be wound up. (See Rec. 18 for a further discussion of this issue.)

317. **International/Offshore Banks:**

Requirement to Obtain Information on Respondent Institution (c. 7.1):

318. There are no specific requirements in the Regs with respect to the provisions of correspondent accounts to banks or other FIs. And whereas the identification of respondent institutions would have been required with respect to corporate entities under the Regs, the GNs indicate that when such entities are other FIs (both domestic and foreign) listed e.g. in GN 46, FIs are exempt from identification requirements subject to the jurisdiction of domicile for respondent entities.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

319. There are no specific requirements in the Regs to assess the AML/CFT controls of respondent institutions.

Approval of Establishing Correspondent Relationships (c. 7.3):

320. There are no specific requirements in the Regs to obtain senior management approval before establishing correspondent account relationships.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

321. There are no specific requirements in the Regs to document the respective AML/CFT responsibilities of FIs.

Payable-Through Accounts (c. 7.5):

322. There are no specific requirements in the Regs with respect to the provisions of correspondent payable-through accounts to other banks or other FIs institutions. The correspondent accounts provided to offshore banks, while not strictly payable through in nature, seem to be pass-through nested correspondent accounts.

Non-mandatory Guidance Notes:

323. GN 124A indicates that banks should pay particular attention to the provision of services to other banks in jurisdictions where the respondent institutions do not have a physical presence. When providing correspondent services, banks should obtain sufficient information to understand the nature of the respondent's business, including inter alia, the reputation of the AML (but not CFT) regime of the jurisdiction where it operates, the status of regulation and supervision of such banks, and the adequacy of its know your policy (KYC) policies.

324. The GNs further indicate that correspondent banks should refuse to enter or continue a relationship with respondents when they are "incorporated" in jurisdictions (but does not include jurisdictions where they operate from) in which they do not have a physical presence and are unaffiliated with a regulated financial group. They should also pay attention to correspondent relationships in existence where the respondents are located in jurisdictions with poor KYC standards or are known as being non-cooperative in AML (but not CFT) issues. Care should also be taken to the use of correspondent accounts as payable-through facilities.

325. From discussion with the industry, it appears that the provisions of the GNs with respect to correspondent facilities to offshore banks are not being strictly adhered to. In addition, the ECCB on instructions from its Monetary Council (comprised of Ministers of Finance from the ECCU member

countries) issued prudential **Guidelines for Correspondent Accounts** in March 2001. These were directed at domestic banks for purposes of making them aware of and managing ML risks inherent in correspondent banking facilities. The introduction to these guidelines also made reference to the risks of providing "nested" correspondent facilities. Consequently the ECCB, "in cognizance of the importance of correspondent banking relationships to economic activity in the currency union, and of the risks posed to these arrangements by the operation of accounts for offshore entities that are subject to a different regulatory and supervisory framework," recommended that:

> "A financial institution shall not provide, or in any way facilitate, access to correspondent banking facilities to third-party financial institutions not licensed under the provisions of the Banking Act and/or supervised by the Eastern Caribbean Central Bank. Banks are also required to employ strict know-your-customer standards and exercise adequate due diligence, particularly in maintaining accounts for offshore entities, in order to minimize counterparty risks."

326. In practice, international (offshore) banks licensed in SVG under the International Banks Act and subject to supervision by IFSA maintain correspondent/nested correspondent accounts with the domestic banking sector, apparently in breach of to the ECCB's prudential guidelines.

Misuse of New Technology for ML/FT (c. 8.1):

327. There are no requirements to have policies or measures in place specifically to prevent misuse of technological developments for ML or FT.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

328. There are no specific requirements to have policies and procedures in place to address risks associated with non-face to face business relationships or transactions. There are provisions in Reg. 4 (and GNs) that allow FIs to completely rely on customer identification conducted by another regulated institution. In such cases, the Reg. completely exempts the FIs from verification of identity of the customer subject to certain conditions. This would be contrary to the requirements of c. 8.2.1 that include measures, by way of example, reliance on third party introduction as one among other possible measures that can be taken. The general principle should be to obtain "additional documentation to complement those which are required for face-to-face customers." See box under c. 8.2.1.

Non-mandatory Guidance Notes:

329. GN 44A deals with customers who may not be available for an interview at the time an account or relationship is to be established, such as non-resident clients. (Note, under c. 5.8 non-resident clients are an example of a high risk category of customer.) The GN states that in such cases, FIs should apply the same identification and monitoring procedures as applied to customers that are personally interviewed, and should have specific and adequate measures to mitigate the higher risk of non-face to face business. This would be contrary to the provisions of Reg. 4 which provides for possible exemption from identification verification provisions in cases where a customer is introduced by another regulated entity, and which can involve non-face to face and non-resident clients. Nonetheless, GN 44A states that risk mitigation measures should be applied in line with the examples given under c. 8.2.1 which should include, inter alia, certification of documents and independent verification of documents by contacting a "third party".

330. In addition to the preceding paragraphs, GNs 49-51 go beyond the Regs, and are contrary to Rec. 8 in that they exempt from identification verification requirements certain transactions such as postal, telephone and electronic business, "mail shots, off-the page and coupon business. The mission did not ascertain the extent to which such business was actually being conducted in or from within SVG.

Effectiveness of Implementation

331. The authorities have not conducted a formal ML/FT risk assessment of the financial sector to better inform and support the development of more effective CDD, monitoring and reporting policies and procedures by FIs. In this regard, the authorities should consider e.g. the relative ML/FT risks inherent in the mutual funds industry as there is a perception of lower risk in private/accredited funds. These are investment vehicles for high value/net worth investments, broadly akin to private banking, which inherently is of higher risk. A reevaluation of the supervisory thinking on this issue is advisable.

332. In particular, no AML/CFT supervision of building and loan societies has been conducted, and limited or no CDD supervision has been undertaken with respect to the offshore financial sector, credit unions, insurance companies and intermediaries, and money remitters.

333. In addition, there are two known money lending operations that are subject to the AML/CFT laws and which openly advertise their activities. However, the authorities have not conducted a review of their operations with a view to determining the need for an authorization and oversight regime. Their beneficial ownership and control, and sources of their funding are unknown.

334. From discussions with the FIs and regulators, it appeared that most FIs were conducting reasonable CDD measures to comply with the SVG AML/CFT requirements, and in the case of foreign banks, with their head office policies and procedures. There were however, some areas that indicated lack of effective implementation as discussed in the following that relate to Recs. 5-8:

- FIs are mainly focused on ML risk, especially cash transactions and possible linkages with drug trafficking. Little attention seems to be made on FT risks and some FIs were unaware of the official UN terrorist lists.

- During the conduct of CDD for new clients, it seems that FIs do not report to the FIU all cases where they are suspicious of ML/FT. The FIU on average only gives directions to FIs on how to proceed with suspicious transactions about 3 times a year.

- With respect to on wire transfers, banks appear to be conducting CDD for amounts lower than the regulatory EC$10,000 equivalent for one-off transactions which is positive but there is a need for enhanced scrutiny of wire transfer activity. In addition, a mitigating factor is that some banks are required by the SWIFT system to include full originator information in all wire transfers. (See SRVII).

- Senior management approval generally required for opening correspondent accounts, but enhanced CDD including for offshore bank respondents is weak, including for establishment of nested correspondent accounts.

- CDD on beneficial owners/beneficiaries is weak in some FIs, including the identification of all main parties to a trust, and lack of controls in some banks with respect to opening accounts for bearer share companies. Weaknesses in account opening documentation were evident in some FIs.

- Ongoing CDD monitoring seems to be less effective for some FIs, particularly offshore entities that deal with customers in many jurisdictions where they do not have a physical presence or representation and may involve non-face to face business relationships. Such review would be particularly important for certain types of business transactions, e.g. back-to-back loans by banks, and loans backed by insurance policies. These loans appear to be common practice by some institutions and inherently carry a higher level of ML risk, and should be subject to more enhanced CDD. In addition, insurance companies, which generally conduct business through intermediaries, also do not require their agents/brokers to have or to provide them with copies of their AML/CFT policies and procedures. Consideration should be given to including this in their agency and broker agreements.

- Supervisory findings indicate that FIs may not be adequately updating customer documentation which would limit ongoing CDD and risk profile updating.

- CDD in the credit union and building society sectors appears to be generally weak, and supervision of compliance has just commenced for credit unions and is non-existent for the building and loan society. This is a significant weakness considering the risks inherent in both sectors activities with respect to money remittance business and back-to-back loans.

- Some banks, but not other FIs, require senior management and/or head office approval for establishing correspondent and PEP accounts. Supervisors state that a number of banks subscribe to database services for PEPs and other official ML/FT lists, and that the FIU circulates terrorist lists. However, not all FIs interviewed were aware of the latter.

- Inadequate CDD and risk assessment for correspondent account relationships in the domestic banking sector, including such facilities to offshore banks.

- There appears to be insufficient oversight and training on AML/CFT by insurance companies over the activities of their agents and sales representatives, and where applicable brokers, especially in the domestic sector. The agency contracts between the insurers and intermediaries generally do not contain AML/CFT elements to assist the insurers comply with their own CDD and other requirements. Most insurance intermediaries accept cash from clients which raises the potential for placement stage ML risk.

3.2.2. Recommendations and Comments

R.5

General Recommendations:

- Consider explicitly covering in the Schedule to the POCA (i) mutual fund administrators, and managers; and (ii) insurance intermediaries i.e. agents and brokers.
- Implement an oversight and AML/CFT compliance regime for non-regulated lending operations.

- Extend the Regulations to explicitly cover FT consistent with the requirements of Sec. 46 of POCA.

Other Recommendations:

- Explicitly prohibit anonymous or fictitious name accounts particularly those that were in existence before the Regs were issued.
- Extend the full range of CDD (only identification verification) for business relationships and one-off transactions.
- Reduce the threshold for one-off wire transfers to comply with SRVII.
- Extend the identification requirement when there is suspicion beyond one-off transactions and cover FT.
- Introduce a CDD requirement for cases when there are doubts as to the veracity or adequacy of previously obtained customer identification data.
- Remove/amend the provisions in the POCA Regs that allow exemptions from for customer identification, and review similar exemptions contained in the GNs.
- Introduce (i) an explicit requirement to verify the identity of the person authorized to act on behalf of a corporate entity, partnership or other legal arrangement, and (ii) expand the verification requirement of provisions regarding the power to bind entity, beyond the power to open and operate accounts.
- Enhance requirements for identification of legal arrangements such as trusts/trustees, including measures to identify settlors, beneficiaries and other parties to a trust.
- Extend the scope of the requirement to obtain information on the purpose and intended nature beyond accounts to include business relationships.
- Extend the ongoing CDD requirements to include update of CDD records particularly with respect to higher risk business relationships.
- Introduce enhanced CDD requirements for higher risk clients and review/delete exemptions from identification verification as they go beyond the criteria for simplified CDD.
- Require termination of existing business relationships in the circumstances covered by c. 5.16, subject to any directions from the FIU/competent authorities in case of suspicion or other reason.
- Remove the identification exemptions in the Regs especially for cases when there is suspicion ML or FT.
- Introduce a requirement to apply CDD requirements to customers existing at the date the Regs came into effect, on the basis of materiality and risk. This may also be relevant for any future changes to the Regs and other applicable laws.
- Extend the requirement to perform CDD on existing customers beyond the beneficial owners of anonymous of fictitious name accounts, and require termination of such accounts immediately to the extent that they may exist.
- Review the provisions of the GNs that only require the suspension, and not prohibition, of a new or existing business relationship or transaction when verification of identity cannot be completed.
- Enhance supervision and enforcement of compliance to address weaknesses across most sectors in implementation of CDD, including with regards to beneficial owners and bearer/nominee share companies.

R.6

- Require FIs to conduct additional and enhanced CDD measures, or to obtain senior management approval, for on new and/or existing PEPs relationships.

R.7

- Require FIs to for perform, inter alia, additional and enhanced CDD on correspondent banking relationships, assess the AML/CFT controls of respondent institutions, and obtain senior management approval before establishing correspondent account relationships.
- Introduce requirements with respect to the provisions of correspondent payable-through accounts.
- Enhance supervision of risk management practices and compliance with R.7 by domestic banks that provide correspondent/nested correspondent banking facilities to international (offshore) banks in breach of R.7 and the ECCB's prudential guidelines on correspondent banking (March 2001).

R.8

- Require FIs to have policies or measures in place to prevent misuse of technological developments for ML or FT, including non-face to face business relationships and transactions, and review the exemptions provided in the GNs for this type of business.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• • No implementation of CDD and other AML/CFT requirements for non-regulated lending operations. • The POCA and the Regulations issued thereunder do not cover FT. • No prohibition against keeping anonymous or fictitious name accounts particularly those that were in existence before the Regs were issued. • Full range of CDD (only identification verification) is not required for business relationships and one-off transactions. • Threshold for one-off wire transfers significantly in excess of SRVII. • Identification requirement when there is suspicion limited to ML and to one-off transactions. • No CDD requirement when there are doubts as to the veracity or adequacy of previously obtained customer identification data. • Exemptions from CDD in the GNs, to the extent implemented, go beyond the risk sensitive measures allowed under c. 5.3 and c. 5.9, and in some cases beyond the POCA Regs. • No explicit requirement to verify the identity of the ultimate natural persons who control an entity, and of persons authorized to act on behalf of a corporate entity, partnership or other legal arrangement, and provisions of power to bind entity limited to the power to open and operate accounts. • Insufficient requirements for identification of legal arrangements such as trusts/trustees, including measures to determine settlors, beneficiaries and other parties to a trust. • Narrow requirement to obtain information on the purpose and intended nature; limited to accounts and does not extent to the broader business relationship. • Ongoing CDD requirements do not include update of CDD records

		particularly with respect to higher risk business relationships. • No requirements for enhanced CDD for higher risk clients and exemptions from identification verification go beyond the criteria for simplified CDD. • No requirement to terminate an existing business relationship in the circumstances covered by c. 5.16. • The identification exemptions in the Regs should not apply when there is suspicion ML or FT. • No requirement to apply CDD requirements to customers existing at the date the Regs came into effect, on the basis of materiality and risk. • Requirement to perform CDD on existing customers is limited to the beneficial owners of anonymous of fictitious name accounts, and no requirement to close such accounts existing at the time the Regs came into effect. • The GNs only require the suspension, and not prohibition, of a new or existing business relationship or transaction when verification of identity cannot be completed. • General weaknesses in implementation of CDD, especially for beneficial owners and bearer share companies.
R.6	**NC**	• No requirement to conduct additional and enhanced CDD measures, or to obtain senior management approval, for new and/or existing PEPs relationships.
R.7	**NC**	• No specific requirements for perform, inter alia, additional and enhanced CDD on correspondent banking relationships. • No requirements to assess the AML/CFT controls of respondent institutions. • No requirements to obtain senior management approval before establishing correspondent account relationships. • No requirements with respect to the provisions of correspondent payable-through accounts. • Domestic banking sector provides correspondent/nested correspondent banking facilities to offshore banks in breach of the ECCB's prudential guidelines.
R.8	**NC**	• No regulatory requirements to have policies or measures in place specifically to prevent misuse of technological developments for ML or FT, including non-face to face business relationships and transactions.

3.3. Third Parties And Introduced Business (R.9)

3.3.1. Description and Analysis

Legal Framework:

335. The Regs allow FIs to rely on introducers to perform CDD. In particular, Reg. 4(3) covers CDD for customers ("applicant for business") introduced to the FI by another regulated institution (these are those entities covered under Schedule 1 of the POCA that includes both financial institutions, DNFBPs and other specified businesses). Such reliance can also be placed when an applicant for business is introduced

by foreign regulated institution (Schedule 1 entities that are subject to regulation at least equivalent to the SVG AML Regs.). In such cases, the requirements to obtain satisfactory evidence of identity is met by receiving a written assurance from the introducer to the effect that evidence of identity has been obtained and recorded by the introducer. The SVG FIs are not explicitly required to obtain information (and verification) of customers under these circumstances.

336. The above requirement to obtain a written assurance also applies in cases where the applicant for business is another regulated institution, including a foreign regulated institution. In such cases it is also acceptable to obtain a written assurance that identification information has been obtained and recorded with respect to the underlying principal.

337. It is noted that "principal" is not a defined term under the Regs and is not clear whether it extends to beneficial owners/beneficiaries.

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

338. There is no mandatory requirement to immediately obtain CDD information from introducers.

Availability of Identification Data from Third Parties (c. 9.2):

339. Apart from the written assurance from the introducer that CDD information has been obtained and recorded, there is no requirement for FIs to take steps to satisfy themselves that the underlying documentation can and will be available from the introducers promptly on request. There is a requirement under Reg. 4(4) that the FI obtains from a regulated institution (that is, a SVG regulated entity as the Regs separately define and apply the terms "regulated institutions" and "foreign regulated institutions") a written assurance that information on "identity" will be "exchanged" in the event that the International Finance Services Authority (IFSA) or the FIU requests such information in connection with a criminal investigation.

340. It is also not clear whether the assurance under Reg. 4(4) is to be given by the introducer regulated institution or the underlying applicant for business but it is assumed from the broader context that the information will be exchanged between the FI and the introducer. Reg. 4(4) as drafted imposes limitations. It would be useful to include in this Reg. a direct general obligation on the FI to take steps to ensure that information will be made available promptly on request by the FI, not only when required by IFSA and/or the FIU in connection with criminal investigations. There may be other legitimate reasons for the FI to require such information without delay, such as to conduct internal investigations and ongoing CDD, to respond to any other supervisory request or purpose (e.g. court order), and to facilitate internal and external audits and compliance checks. Such adequate steps required by c9.2 may include, for example, ensuring that there are no legal secrecy, confidentiality, contractual or other restrictions to provide information to the requesting FI whether domestically or on a cross-border basis. In addition, as drafted and in light of the distinction made in the definitions and Reg. 4 between a regulated institution and a foreign regulated institution, this requirement would also seem to apply only to cases where the introducer is a SVG regulated institution and not a foreign regulated institution, which would also be a limitation. (See para. 326 above.)

Regulation and Supervision of Third Party (c. 9.3) (applying R.23, 24 & 29, c. 9.3):

341. The Regs require that an introducer that is a foreign regulated institution be subject to AML regulation that is at least equivalent to that of the SVG Regs Regulated institutions, and their foreign equivalent, cover all of the entities listed in Schedule 1 of the POCA which includes e.g. car dealers, pool betting, lottery agents, and charities, which fall outside the scope of FIs and DNFBPs covered under Recs. 23, 24 and 29. These non-financial entities should not be considered regulated financial institutions for purposes of c. 9.3. SVG states that, implicit in the process of developing its Guidance Notes (534 and 162), it has taken measures to satisfy itself that the regulated institutions are subject to, regulated and supervised in accordance with FATF Recs. (esp. Recs. 5, 10, 23, 24 and 29) . The Guidance Notes also provide guidance on the discretion that may be applied in deciding who is acceptable as an eligible introducer.

Adequacy of Application of FATF Recommendations (c. 9.4):

342. See c. 9.3 above. There is a requirement that foreign regulated institutions (foreign introducers) be subject to AML requirements similar to the SVGs Regs, but not with respect to the adequacy of implementation of the FATF Recommendations. The GNs provide further direction as to the countries that are acceptable for this purpose.

Ultimate Responsibility for CDD (c. 9.5):

343. There is no explicit statement that ultimate customer identification and verification responsibility lies with the SVG FI in the case of introduced business. In addition, the lack of a requirement to immediately obtain information on the underlying client under c. 9.1 above limits the interpretation that an implicit responsibility exists.

Non-mandatory Guidance Notes:

344. See also Rec. 5 above on exemptions from customer identification verification. The GNs expand on the exemptions from verification with respect to introduced business. GN 52 states that where an FI exercises its discretion not to verify identity, it may do so under a reliable introduction from an "eligible regulated institution", that is, one of the seven categories of SVG licensed FIs under GN 46 (banks, building societies, insurance companies, mutual funds, registered agents, and trustees) and their foreign equivalents. The latter are those from countries with AML requirements at least equivalent to SVG's listed in GN 162. In addition, the eligible introducers list reflects those in Schedule 1 of the POCA which go beyond FIs and DNFBPs as discussed above.

345. GNs 52 and 165 suggest using a written introduction letter in the form attached in Appendix B of the GNs to be used for local introductions only. No sample letter is provided for foreign introductions. The underlying key recommendations in the GNs is for: the eligible introducing institutions to be from SVG or from one of the countries listed in GN 162, the AML requirements of these countries to be at least equivalent to those of SVG, the introducer to be in good standing, the introduction letter to provide an "assurance that evidence of identity would have been taken and recorded in accordance with the set procedures of that institution and in accordance with FATF recommendations, and for the introducer to have customer identification and verification procedures that are as rigorous as those of the SVG FI. The introduction letter requires that the name and country of the regulatory body of the introducer.

346. GN 53 states that the FIs should require a written assurance from the introducer that identification data "should" be made available from the "third party" (presumably the introducing institution)

immediately upon request. However, it is noted that the recommended introduction letter in Appendix B is not written in an explicit form that requires the introducer to give firm assurance or undertaking, but simply provides statements such as: that the applicant for business is an existing customer of the introducing party or that the latter has verified the customers identity and her name and address, that the applicant for business is acting on his own behalf or acting as a nominee, trustee of other fiduciary capacity for others and only in the case of the latter that documentation has been obtained, held and "can" be produced on demand. Nowhere in the introduction letter is there a requirement to indicate whether or not the identification procedures are in accord with the SVG institution's own procedures and the FATF recommendations. The introduction letter is provided without any guarantee, responsibility or liability on the part of the issuing entity or its officials.

347. GNs 54 and 55 provide further elaboration with respect to exemptions from verification in cases of introduced business including from a FI's overseas branch or member of the same group to which the FI belongs. In such cases written confirmation from the parent or holding company should be required as evidence of "the relationship". This may not be sufficient for purposes of obtaining the requisite identification information for purposes of Rec. 9, and it is unclear as to whether the introducer needs to be one of the eligible categories of entities, and inappropriate in cases where there is no parent or holding company.

Effectiveness of Implementation

For international business, over-reliance on introduced business that limit CDD by the service provider institution, particularly with respect to underlying beneficiaries. See Rec. 5 above.

3.3.2. Recommendations and Comments

FIs should be required to:

- Immediately obtain CDD information from introducers;
- Ensure that documentation can and will be available promptly on request;
- Limit the eligibility of introducing institutions to those FIs and DNFBPs covered by the FATF standard, consistent with the provisions given in the GNs;
- Explicitly state that ultimate responsibility for customer identification and verification lies with the SVG FI and not the introducer. The exemptions allowed for by the Regs and GNs are not consistent with this requirement.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	• No mandatory requirement to immediately obtain CDD information from introducers. • No requirement to ensure that documentation can and will be available promptly on request, without limitation. • The list of eligible introducers listed in the Regulations and the POCA

		Schedule 1 goes beyond the FATF list of FIs and DNFBPs, and should be limited as is intended in the Guidance Notes. • Insufficient provisions that ultimate responsibility for customer identification and verification lies with the SVG FI.

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Legal Framework:

348. SVG no longer has a general law on secrecy or confidentiality; the Confidential Relationships Preservation (International Finance) Act, 1996 was repealed by the Exchange of Information Act (2002). On December 15, 2008, a new Exchange of Information Act (Act. No 24 of 2008) (the"EIA") was adopted which liberalized the previously criticized limitations on access to information from regulators and other competent authorities under the 2002 EIA. While the EIA has liberalized the confidentiality regime to allow for gateways of information, the acts to which the EIA amendments apply still contain specific wording with respect to the limitations of access to information that are contradictory to the import of the EIA.

349. It should be noted that for purposes of the EIA, the FIU is not a regulatory authority to whom information may be shared pursuant to the EIA gateways. The Exchange of Information Act 2002, Act No. 29 of 2002, 5/30/02) (the "2002 EIA") repealed the Confidential Relationships Preservation (International Finance) Act, 1996. This "Confidentiality Act 1996" had broad reaching application to information no matter where located.

350. The ECCB, Eastern Caribbean Securities Regulatory Commission, IFSA and other regional regulatory authorities are in the process of signing a multilateral MOU to facilitate open information sharing among all regulatory bodies in the OECS (Organization of Eastern Caribbean States).

351. The FIU regularly obtains information from regulators and reporting entities to facilitate its functions. However, except with respect to reporting entities specifically listed in POCA, the source or authority for the FIU to obtain other confidential information is not clear in the law.

Inhibition of Implementation of FATF Recommendations (c. 4.1):

352. The EIA provides Sec. 4(1) that if domestic regulatory authority is satisfied that assistance should be provided to another domestic regulatory authority or foreign regulatory authority it may request any person to furnish it with *inter alia* information relevant to the inquiries to which the request relates. When information is supplied from a foreign regulatory authority or obtained under the provisions of the EIA, the information shall not be disclosed by a domestic regulatory authority or by any person who obtains the information directly or indirectly from it, without the consent of the authority from whom the domestic regulatory authority obtained the information. Prior to the EIA, the express consent was required from the person about whom the information pertained or from whom the regulatory body obtained the information, i.e., a regulated entity as set forth in the 2002 EIA.

353. As noted above, although the Confidentiality Act 1996 was repealed, that repeal did not also amend the financial sector specific acts that contained confidentiality provisions or limitations to the information accessible to the supervisor. These include the Mutual Funds Act, the Registered Agents and Trustee Licensing Act and the International Banks Act. Because these provisions have not been repealed or amended in the sector specific Acts, there could be some ambiguity whether the repeal of the confidentiality Act wholly preempts these confidentiality provisions. For instance, Sec.15(4) of the Registered Agents and Trustee licensing act does not permit the regulatory authority (IFSA) to gain access to confidential or any other information regarding the trust and company clients of the registered agent and trustee in the course of conducting its regulatory functions. Under this section, the effect of the repeal of the Confidentiality Act 1996 is to only remove the gateway for sharing obtaining the information – which itself was very limited one – thus keeping in force the inhibitory language on access to information. Read on its face, this provision would not authorize IFSA to compel access to such confidential or other information except by the written consent of the company or of the beneficiaries or of each other trustee of a trust as the case may be or an order of the Court made on the grounds that there are no reasonable means of obtaining such document, information or thing. This limitation constitutes a significant impediment on the regulator to access confidential customer information to ascertain if the regulated entities are complying with e.g. the CDD obligations under the POCA and POCA Regulations. This provision on limiting access should be removed and made consistent with the provisions allowing full access to regulated entity information by the competent supervisor as exists in other regulatory laws.

354. In addition, Sec. 19 (8) of the International Banks Act (and by reference Sec. 19(5) which states access to information and examination of licensees shall be subject to any confidentiality provision of the Act), limits access to the name or title of an account of a customer or to any other confidential information about the customer that is in possession of a bank, only to the Executive Director of IFSA. This varies from the other examination and information access provisions under Sec. 19 of the Act which grants such authority to either IFSA ("Authority"), the Executive Director, or any person or entity acting under or with either of them. Therefore, for practical purposes, it would be difficult for the Executive Director to effectively conduct examinations or access to information on an ongoing basis, without a delegating power for its functions under Sec. 19(8) or under provisions similar to those where such activities can be conducted by persons or entities acting under the Executive Director. The authorities counter that the Executive Director would have introduced the Authority's staff to the banks and outlined how the examination would proceed, what information was required and this would have clearly included accounts, etc. Further, they assert that where Executive Director was in fact involved in the on-site examinations, that the Examiners and the Consultant(s) which the Executive Director left behind at the bank to continue with the examination, would have been acting upon and under the authority of the Executive Director. The authorities' assertion is understandable but not without risk in future examinations where the Executive Director is not a participant. Therefore, the mission strongly recommends that access under Sec. 19(8) should be extended to the Authority or to any of its authorized officers/examiners, agents, contractors or entities. It is noted that during the recent examinations of international (offshore) banks, IFSA staff other than the Executive Director, conducted examinations and are reported to have access to confidential customer account information. It is for consideration whether IFSA acted outside the scope of the authority of the International Banks Act.

355. It is arguable whether the actual consequence of the repeal of the Confidentiality Act 1996 was to restore the common law definition (i.e., *Tournier*, case) of confidentiality for purposes of applying Sec.15(4) of the Registered Agents and Trustee Licensing Act, as the authorities assert. To the extent that

similar confidentiality definitions are contained in the other financial sector licensing laws, the same concerns would arise. Furthermore, it is not clear that the repeal of the Confidentiality Act 1996 itself would cause the gateways established in the subsequent Acts, i.e., the EIA 2002 and the EIA, to replace the former gateways.

356. In addition to the EIA, there are some sector specific gateways for information to facilitate sharing of information. The Cooperatives Societies Act, Sec.183(2) states "[i]n addition to the powers set out in the order appointing him, an inspector may furnish to, or exchange information or otherwise cooperate with, any public official in [SVG] or elsewhere who is authorized to exercise investigatory powers concerning the society . . .and is investigating, with respect to the society, an allegation of improper conduct . . . . " This is a useful provision because the Registrar of Cooperatives, unlike the other domestic financial sector regulators is not a domestic regulatory authority for purposes of the EIA.

Effectiveness:

357. The continued application of confidentiality provisions in the Registered Agents and Trustees Act, the International Banks Act, and the limitations in other Acts to the scope of information available to supervisors undermines effective implementation of the FATF recommendations. These limitations could have knock on consequences for the effective transmittal and sharing of information among competent authorities.

358. Further, the EIA – having liberalized the conditions upon which information may be shared among regulators – has only been in effect for three months, so the capacity to test the efficacy of the assigned gateways of information is limited.

3.4.2. Recommendations and Comments

359. Each provision of confidentiality and limitation of access to information in sector specific acts, in particular Sec. 15(4) of the Registered Agents and Trustees Act, should be removed from law.

360. The Attorney General should provide a legal opinion on the meaning of "confidential" information in light of the repeal of the Confidentiality Act 1996, in particular the extent to which such repeal restored the common law definitions of bank secrecy and confidentiality.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• Sectoral acts continue to have confidentiality and other limitations on access to information for regulators. • Ambiguity within the legal system as to the status of common law definitions of bank secrecy and confidentiality.

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

3.5.1. Description and Analysis

Legal Framework:

361. There are a number of recordkeeping requirements for AML and CFT in the SVG legislation, and some of these provisions are elaborated in the GNs. In addition, the various financial and regulatory laws complement the recordkeeping requirements placed on FIs, including access by the regulatory authorities. The recordkeeping requirements of the AML/CFT legislation are discussed below.

POCA:

362. Sec. 46 of the POCA requires FIs and other regulated businesses (listed in Schedule 1) to keep and retain records relating to financial activities in accordance with the Regulations issued under Sec. 67 of the POCA by the Minister of Finance. Sec. 48(4(g) also states that the regulations may provide, inter alia, for the keeping of records.

POCA Regulations:

363. Reg. 5 provides the main recordkeeping requirements for FIs. It states that "if" a FI obtains evidence of identity in accordance with the Regs, it shall keep (i) a copy of such evidence "or" a record indicating the nature of such evidence, and (ii) records or copies of records of details of its business, as may be necessary to assist in an investigation of ML. The requirement to keep records of "its business" is very broad, however, the "if" condition is presumably to account for introduced business where the FI would not obtain and possess such information except on request as provided for under Reg. 4. Such records or copies shall be kept in a legible form that is retrievable within a reasonable period of time. Th1e minimum retention period is seven years.

364. **The United Nations (Antiterrorism Measures) Act** does not contain applicable similar recordkeeping provisions.

Drug Trafficking Offences Act:

365. Sec. 30 of this Act also requires FIs to retain for a minimum of seven years, in original form, financial transaction documents including but not limited to those that relate to account opening and closing, account operations, opening and use of safety deposit boxes, telegraphic or electronic funds transfers, transmission of cross-border funds, and loans. FIs shall also keep records of documents "that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person." It is not clear what this refers to but seems that it may include instructions from clients. Sec. 30 also defines the start of the minimum retention period, e.g. following the closure of an account. The record keeping requirements do not apply to a single deposit, credit, withdrawal, debit or transfer of money under EC$5,000, or such larger threshold as may be prescribed.

366. Records may be kept under the requirements of the drug trafficking law in microfilm or other retrievable form. Where a FI is required by law to release the original of the required records, it shall retain a copy thereof until the minimum period expires or the original is returned. A register of such released

documents shall also be maintained. For purposes of the drug trafficking law, a FI is a domestic bank, any financial institution of whatever kind licensed, registered or otherwise regulated in SVG, and a trust company.

Note:

367. All of the main criteria of Rec. 10 are required to be in law or regulations as indicated by (*) below.

Record-Keeping & Reconstruction of Transaction Records (c. 10.1* & 10.1.1):

368. Reg. 5 (1) requires that (1) "If" a FI obtains evidence of a person's identity in accordance with the Regs, it shall keep such records for the minimum prescribed period of seven years. Such records shall include evidence of identity, the nature of the evidence and information that would enable a copy to be obtained. Reg. 5(2) requires retention of records or copies thereof for the seven-year period containing details relating to its business as may be necessary to assist an investigation into suspected ML.

369. Reg. 5(5) also states that what constitutes records to assist in such investigation shall be determined in accordance with guidance notes appended to the regulations. No such guidance notes have been appended. Consequently, there is no specific provision that would require FIs to ensure that records are sufficient to reconstruct individual transactions that may provide evidence for prosecutions of criminal activity.

370. Reg. 5 (4)(c) requires FIs to keep records of transactions for a minimum of seven years after the day on which the transaction "recorded" takes place. This requirement is broad (see para. 354 above) and does not distinguish between domestic and international transactions, and whether or not it applies to transactions related to an existing or terminated account or relationship. Rec. 5(4) also requires that where the FIU has notified the regulated institution in writing that particular records are or may be relevant to an investigation that is being carried out, records shall be retained pending the outcome of the investigation. The requirement to keep records on request by the FIU only in connection with ongoing investigations is a good one and generally applies when there is a requirement to hold records longer than the basic minimum period. To emphasize this point, the Reg. could be clarified to also indicate that under these circumstances, the records should be kept for a period of not less than 7 years even where such investigations conclude before the minimum period expires.

371. In addition to the above, the financial laws contain various recordkeeping requirements that complement the above. In particular, the Money Services Business (MSB) Act (Sec. 9(4) state that without prejudice to the recordkeeping requirements under Sec. 46 of the POCA (and by extension to the POCA Regs.), MSBs shall maintain (a) a record of each transaction and outstanding transaction for at least seven years after the date the transaction is complete; (b) bank statements for at least seven years after the date the transaction is complete; and (c) bank reconciliation records for at least seven years after the date of creation.

Record-Keeping for Identification Data, Files and Correspondence (c. 10.2*):

372. Reg. 5(1) requires FIs to keep records for seven years a copy of evidence of customer identity or a record indicating the nature of that evidence including information as would allow a copy to be obtained.

Reg. 5(4) also states that for purposes of the minimum retention period, such period will be seven years after an account has been closed or a transaction takes place. Unlike the explicit requirement to keep records of accounts, transactions and identification, there is no specific requirement to retain records of business correspondence. This may be captured by the general requirement to retain copies or records of "details relating to its business" under Reg. 5(2).

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3*):

373. Reg. 5(3) requires FIs to keep records or copies in a form to allow retrieval in legible form within a reasonable period of time. This would provide the basis for making such records available to competent authorities in a timely manner, especially when read in connection with the requirement under Reg. 5(2) with respect to assisting with an investigation into money laundering.

Mutual Funds:

374. Sec. 13 of the Mutual Funds Act allows public (retail) funds to keep such accounting records and financial statements available for examination by the Registrar or any person authorized by IFSA at (i) its place of business or registered office in the SVG; or (ii) such other place as its officers may see fit, provided that copies of such records and statements or such other documents or information as the registrar may consider adequate are kept at its place of business or registered office in SVG. The Act is silent about the maintenance and location of records with respect to books, investor accounts, subscriptions, redemptions, etc. with respect to public funds, private and accredited funds. In practice, customer related records are generally kept by fund administrators and managers in other countries from which they operate, and at least in one important case in a country with which IFSA has no formal supervisory cooperation arrangements. The provisions of the Exchange of Information Act may be invoked to obtain information from foreign regulatory and other authorities but it may not be practical for the IFSA to access such records for purposes of ongoing supervision of mutual funds, managers and administrators. IFSA maintains that it can and has obtained such records on request.

375. The **International Insurance Act** also contains broadly similar provisions that would allow insurance companies, brokers and managers to maintain records abroad.

Non-mandatory Guidance Notes:

376. GNs 102 to 110 make provisions for recordkeeping by FIs which should "facilitate the investigation of any audit trail" concerning transactions with customers. To achieve this, the GNs recommend keeping, inter alia, records of account opening, identification verification, customer instructions, for the seven year minimum period. FIs should also keep copies of account ledger records including records that support entries in such ledgers such a credit and debit slips.

377. Where the FIU has initiated an investigation into ML, it may request FIs to keep records open until further notice, notwithstanding the prescribed seven-year period. GN 103 states that even if the FIU does not make a request and where an FI knows of an ongoing investigation, it should not destroy records without the prior approval of the FIU even though the prescribed period has elapsed. It is unclear how this would apply in practice as the likelihood of an FI becoming aware of an investigation into ML would be rare.

378. GNs 104-108. Records to be retained should include, inter alia, details of identification verification, transaction details including of securities and investments, and electronic transfers (does not specify full originator information e.g. account number and address but SVG believes that "transaction details" would cover this.) FIs should keep records in readily retrievable form and be able to access them without undue delay in original, "microform" or electronic data. The authorities state that electronic data would be admissible as evidence for prosecutions for purposes of c. 10.1.1 subject to the requirements of the Evidence Act.

379. The GNs further state that records held by third parties are not regarded as being in a readily retrievable form unless the FI is reasonably satisfied that the third party is itself an institution which is able and "willing" to keep such records and disclose them to it when required. This would be insufficient for purposes of c. 9.2 where a more explicit requirement to satisfy itself that the relevant records have been obtained and retained. FIs should also maintain a register of enquiries made by the FIU for the minimum seven years.

Effectiveness of Implementation

380. Recordkeeping requirements seem to be generally met in the domestic financial sectors largely as part of commercial business practices, which also cover AML/CFT requirements.

381. With respect to the international/offshore sector, however, the absence of records in SVG (e.g. for the mutual fund and insurance sectors records are generally kept in other countries but legal access to the IFSA is available and has been done in a few cases) can limit the ability of supervise to effectively monitor for compliance on an regular basis.

Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c. VII.1):

382. No specific regulations with respect to wire transfers have been issued. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. Under Sec. 4(2)(b) of the POCA Regulations the threshold for identification of a one-off transaction is EC$10,000, equivalent to US$3,750. c. VII.1 sets the threshold at US$1,000. The standard CDD requirements have no provisions dealing with originators' account number or unique reference number.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

383. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. Under Sec. 4(2)(b) of the POCA Regulations the threshold for identification of a one-off transaction is EC$10,000, equivalent to US$3,750. The standard CDD requirements have no provisions dealing with the contents of international wire transfer messages or payment orders.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

384. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements

under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. Under Sec. 4(2)(b) of the POCA Regulations the threshold for identification of a one-off transaction is EC$10,000, equivalent to US$3,750. The standard CDD requirements have no provisions dealing with the contents of domestic wire transfer messages or payment orders.

Maintenance of Originator Information (c.VII.4):

385. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. Under Sec. 4(2)(b) of the POCA Regulations the threshold for identification of a one-off transaction is EC$10,000, equivalent to US$3,750. The standard CDD requirements have no provisions dealing with the information that should be accompany transfers throughout the payment chain, nor with respect to record keeping requirements for receiving intermediaries of such information..

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

386. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. Under Sec. 4(2)(b) of the POCA Regulations the threshold for identification of a one-off transaction is EC$10,000, equivalent to US$3,750. The standard CDD requirements have no provisions dealing with risk-based procedures for handling wire transfers that are not accompanied by complete originator information.

Monitoring of Implementation (c. VII.6):

387. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. The standard CDD and record keeping requirements do not have the detailed provisions for wire transfers that are called for in SR VII. Nor do the compliance monitoring systems of the various FI regulators cover the detailed provisions for wire transfers contemplated in SR VII.

Application of Sanctions (c. VII.7: applying c. 17.1 – 17.4):

388. No specific regulations with respect to wire transfers have been issued by any of the regulators responsible for financial institutions in St. Vincent. The standard CDD and record keeping requirements under POCA, POCA Regulations, and the Guidance Notes that are analyzed above apply equally to wire transfers as well as to the other business activities of financial institutions. The sanctioning powers of the financial regulators with respect to CDD and record keeping for wire transfers are limited to the requirements imposed under POCA and the POCA Regulations and other St. Vincent regulations and do not extend to the specific elements set out in SR VII.

Additional elements: elimination of thresholds (c. VII.8 and c. VII.9) (c. VII.8 and c. VII.9):

389. St. Vincent does not require that all incoming and outgoing cross-border wire transfers below a US$1,000 thresholds should contain full and accurate originator information.

Effectiveness of implementation

390. Notwithstanding the absence of specific wire transfer requirements, operating practices of most St. Vincent financial institutions with respect to wire transfers appear to follow some of the FATF standards for international transfers. Banks handling wire transfers state that the Swift systems they use require the inputting of complete originator information or the transactions will not go through; and that these systems retain the originator information across the payment chain. The accuracy of such information is reliant on the financial institutions effectively implementing their POCA CDD obligations, and identification below a threshold of $3,750 is not assured. General record retention requirements are for 7 years, although the detail expected under the FATF wire transfer standards will not be achieved. Risks based procedures are not emphasized in St. Vincent financial regulation and no risk based procedures specifically for dealing with wire transfers are likely to be in place except in cases where the local bank is a subsidiary of a large international bank.

391. Similarly, operating practices of money transmitters with respect to wire transfers address several elements of the FATF standard, even if not specifically required under St. Vincent laws and regulations. Money transmitters are all agents or sub-agents for regional or international money service companies and they use these companies' proprietary electronic systems for transmitting payment instructions. As under the Swift system, complete originator information is required in order for the system to accept payment instructions, although it was unclear whether this information routinely included addresses. A money transfer control or reference number is included, which identifies the specific transaction. Identification is required for all transactions. One money transmitter stated that its internal procedures set a threshold of US1,000, at which level additional verification details were required and at which level more complete records were required to be maintained. Another service provider stated that its threshold was EC4,000, slightly more than US$1,000. In the absence of sufficient originator information, transactions are not accepted. Licensed money service providers have not as yet been examined by their supervisor for their compliance with their CDD, record keeping, and internal control requirements established under POCA, the POCA Regulations and the Money Service Business Act.

3.5.2. Recommendations and Comments

R.10

- Clarify in the regulations the provisions to keep records longer than the minimum period when required by the FIU, consistent with the GNs.
- Explicitly require FIs to retain business correspondence.
- Review for and remove potentially conflicting recordkeeping requirements between the POCA/Regs and the Drug Trafficking Offences Act and with some of the provisions in Guidance Notes 102-110.
- Review recordkeeping arrangements by some FIs that operate and keep records outside of SVG to ensure adequate compliance supervision and efficient access by competent authorities.

SR. VII

- Binding regulations should be adopted requiring all wire transfer service providers, including banks, money transmitters, and other financial institutions, to adhere to the wire transfer recommendations of FATF SR VII.

- All financial institutions subject to wire transfer requirements should be monitored for compliance by a supervisor with the authority and capacity to enforce compliance.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• Need for explicit provisions in the Regs. to retain business correspondence. • • Recordkeeping by some FIs outside of SVG (non-banks) may limit capacity for compliance supervision on an ongoing basis.
SR.VII	**NC**	• No wire transfer requirements. • Partial implementation of SR VII standards by banks and money transmitters.

3.6. Monitoring of Transactions and Relationships (R.11 & 21)

3.6.1. Description and Analysis

Legal Framework:

392. Financial institutions and persons engaged in relevant financial activities, as set forth in Schedules 1 and 2 of POCA, respectively (hereinafter "reporting entities") are required under POCA Sec. 46.2, for which supplemental requirements to verify continually accounts and to report internally are elaborated in the Regs Sec. 6(2) and Sec. 7(a), respectively. The GN elaborate on circumstances where monitoring of transactions is required and where reliance and third party introductions is allowed.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

393. POCA Sec. 46(2) requires reporting entities to pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to which insignificant or periodic patterns of transactions, which have no apparent economic or lawful purpose. However, the GNs, which are not enforceable, exempt specific transactions from CDD requirements, in particular in GN Secs.46-50 (related to exempt financial institutions) and Secs.52-53 (related to reliable instruction from regulated institutions or professional intermediaries). Accordingly, a subset of exempt transactions would not subject to monitoring on an ongoing basis. Thus, there is an insufficient scope of monitoring for consistency with the customer's business or personal profile because the requisite such background information would not be obtained or scrutinized.

Examination of Complex & Unusual Transactions (c. 11.2):

394. There is no specific legal requirement for reporting entities to examine as far as possible the background and purpose of such transaction or to set forth their findings in writing. To some extent,

Sec.6(2) of the Regs, which requires regulated institutions to at all time monitor a business relationship for consistency with the stated account purposes and business and the identified potential account activity, would address this criterion; in any case this is limited to regulated institutions and not applicable to all reporting entities. As such there is insufficient information for authorities or auditors of to assess the scope of the reporting entities examination of complex or unusual transactions. In addition, assessors could not establish with any certainty whether supervisors or external auditors have in fact reviewed the level of compliance of reporting entities in their examinations into the background and purpose of complex and unusual transactions or whether such examinations are documented.

Record-Keeping of Findings of Examination (c. 11.3):

395. Neither POCA, the Regs nor the GN require a reporting entity to keep records of their analysis (background and purpose) with respect to complex and unusual transactions, such information would not be available for competent authorities and their auditors. Only records of those complex and unusual transactions that result in the filing of a SAR are required to be maintained for a period of 7 years and hence available to competent authorities but in practice are not made available to external auditors.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

396. FIs are not required to pay special attention to transactions and relationships with persons, including legal persons and other financial institutions, from or in countries that do not or insufficiently apply the FATF Recommendations. In addition, there is no formal mechanism or measures to ensure that FIs are advised of concerns about the weaknesses in the AML/CFT systems of other countries. To date no advisories have been issued to FIs in SVG.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

397. There is a general requirement under Sec. 46 of the POCA that requires FIs to pay special attention to all complex, unusual or large transactions, whether completed or not, to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions, which have no apparent economic or lawful purpose. This requirement would include transactions with persons in countries that do not or insufficiently apply the FATF Recommendations. However, Sec. 46 should be broadened to include all transactions with such countries that do not have an apparent lawful or economic purpose, not only those transactions that are complex, large, unusual etc. (See also Recs. 11 and 13.)

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

398. There are no provisions that enable SVG to apply counter-measures against countries that do not or insufficiently apply the FATF Recommendations and in practice no such measures have been applied.

Non-mandatory Guidance Notes:

399. GN 17 contains provisions similar to Sec. 46 of the POCA except that they recommend that FIs desist from entering into business relationships or significant transactions unless FIs have fully implemented their AML regimes. In addition, GN 162 provides a long list of countries that are considered

to have an AML regime at least equivalent to that of SVG. There is a possibility that not all countries on this list apply or sufficiently apply the FATF Recommendations.

Effectiveness of Implementation

Monitoring of Transactions (R.11):

400. Reporting entities display wide discrepancies and unevenness in their monitoring of transactions. This is due to a variety of factors:

401. First, there is a discrepancy among financial institutions that appears to apply the legal requirement for monitoring transactions, which, while embodied in the law, is not supplemented with a specific requirement to examine the background and purpose of complex or unusual large or unusual patterns of transactions. Many of the reporting entities are conducting one-off transactions, in particular the money remitters. As such, the depth of the background and purpose information these entities obtain is shallow. As stated above, the only legal requirement to examine the purpose of an unusual transaction applies to regulated institutions that enter into ongoing relationships with a customer, under the Regs. The result is that nearly all large transactions or transactions that are just below the EC $10,000 threshold, i.e., for $9,900 for enhanced verification are reported by money remitters to the FIU in a SAR, without substantial analysis.

402. (See also, Rec. 16 DNFBP STR reporting). Second, while not relevant to the rating of Rec. 13,the inconsistency in SAR filing evidences some weakness in the guidance provided on SAR filing; in particular there is limited reporting by offshore banks and an essential failure to comply by a number of reporting entities, in particular DNFBPs that are not otherwise subject to supervisory body oversight such as lawyers. As inferred from the SAR filing outputs of DNFBPs (discussed in 3.7 and 4.2), certain DNFBPs are not instituting procedures for monitoring transactions nor applying the legal requirements to their clients. These DNFBPs essentially balance the cost and potential loss of business arising from the monitoring requirements (among other requirements) against the likelihood of sanctions under POCA being enforced. Because all POCA sanctions are criminal sanctions requiring the involvement at least nominally of the DPP, charging in court and the high criminal threshold for prosecution, in particular lawyers, calculate the odds of prosecution as low. Because there are no direct POCA and UNATMA administrative sanctions and no regulatory sanctions apply, monitoring of transactions is virtually nil. Compounding this problem in the case of lawyers is the wide interpretation of the exemption in POCA relating to activities relating to legally privileged communications.

R.21:

403. FIs do not take account of business that originates from countries with weak AML/CFT regimes. The assessors believe that reliance on the list of countries in the GNs that are considered to have legal requirements at least equivalent to SVG's is too liberal.

3.6.2. Recommendations and Comments

R.11

- The Regs should be amended to require explicitly that reporting entities be required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing.
- The Regs should be amended to require that the written findings of reporting entities on their examination be subject to the POCA record keeping requirements.
- POCA should be amended to provide for direct administrative sanctions for reporting parties that fail to adhere to the requirements for monitoring transactions, including failure to implement procedures to monitor, prepare written findings and maintaining records on such monitoring.

R.21

- Require FIs to pay special attention to transactions and relationships with persons from countries that do not or insufficiently apply the FATF Recommendations.
- Implement a formal mechanism to advise FIs of AML/CFT concerns with other countries and where necessary advise FIs of such concerns.
- Introduce provisions and procedures that would require SVG to apply counter-measures against countries that do not or insufficiently apply the FATF Recommendations.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• No requirement to examine as far as possible the background and purpose of complex, unusual or unusual patterns of transactions as far as possible and to establish such findings in writing. • No requirement to keep records of findings of the examination of the background and purpose of complex, unusual, or unusual patterns of transactions, to be available to help competent authorities and auditors. • In implementing unusual transaction detection and analysis, the reporting entities are focuses almost exclusively on cash transactions.
R.21	**NC**	• No requirement to pay special attention to transactions and relationships with persons from countries that do not or insufficiently apply the FATF Recommendations. • No formal mechanism to advise FIs of AML/CFT concerns with other countries and no such advisories have been issued to date. • No provisions to apply counter-measures against countries that do not or insufficiently apply the FATF Recommendations and no such measures have been applied.

3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

3.7.1. Description and Analysis[13]

Legal Framework:

404. The legal requirements to make suspicious activity reports are contained in: (1) POCA Sec. 46(3) and (2) and in UNATMA Sec. 10A. Both obligations are direct, mandatory obligations. These statutory obligations are complemented by the Regs, which define suspicious activity reports (SARs), and the non-mandatory GNs which elaborate on detection of suspicious transactions and include the SAR form and instructions. In addition, the FIU Act establishes the FIU to which all SARs are filed (as described in detail above, in Sec. 2.5.1).

Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

405. Under POCA Sec. 46(2) and UNATMA Sec. 10A, financial institutions and persons engaged in a relevant business activity are required to file SARs. The combined requirement under both statutes mandates that a person or financial institution to file a SAR upon suspicion that a transaction or financial activity could constitute or be related to money laundering, the financing of a terrorist act or the proceeds of criminal conduct. SARs are required to be filed as soon a reasonably practicable but in no case, more than 14 days from the date the financial activity was deemed to be suspicious as relating to ML, the proceeds of crime or the financing of a terrorist act. The authorities confirmed that Sec. 46(2) of POCA, which authorizes filing the SAR upon the reporting party's drawing a conclusion of suspicion that the transaction is related to money laundering or the proceeds of criminal conduct, does not unduly delay filings of SARs. Because SVG takes an "all-crimes" approach to predicate offenses for ML, activities related to the proceeds of all such predicate offenses would be captured. The standard for SAR filings in SVG is a subjective standard of a "suspicion" rather than an objective test of reasonable basis to suspect. The authorities inform that in practice reporting entities frequently file based on their conclusions that there are reasonable grounds to suspect ML or proceeds of crime exists.

406. However, under Sec. 46(3) of POCA, there is a two-part requirement for SAR filings. First, a determination must be made under Sec. 46(2) that the transaction that fall under one of the following three categories: "Complex, unusual or large transactions, whether completed or not;" "unusual patterns of transactions;" or "insignificant but periodic patterns of transactions," that, in each case, "have no apparent economic or lawful purpose." This is partly a R. 11 requirement and not an R. 13 reporting obligation.. Second, once the determination is made under Sec. 46(2) that a transaction falls under one of these three categories, a second determination is required under Section. 46(3) that the transactions as described under Sec. 46(2) "could constitute or be related to ML or the proceeds of criminal conduct." Consequently, the requirement to report for purposes of R. 13 is limited to those described under Sec. 46(2), that is, those that are complex, unusual or large, etc. This formulation is not sufficient for purposes of R. 13.

STRs Related to Terrorism and its Financing (c. 13.2):

[13] The description of the system for reporting suspicious transactions in Sec. 3.7 is integrally linked with the description of the FIU in Sec. 2.5 and the two texts need not be duplicative. Ideally, the topic should be comprehensively described and analyzed in one of the two sections, and referenced or summarized in the other.

407. UNATMA Sec. 10A requires financial institutions and persons engaged in relevant financial activities to file SARs directly to the FIU for suspicions constituting or that may be related to the financing of terrorist acts. The wording of the direct filing requirement in UNATMA is narrow. However, there is no legal requirement to file a SAR for suspicions of financial activity constituting or being related to financing of terrorist organizations or financing of an individual terrorist in the absence of an identified terrorist act.

No Reporting Threshold for STRs (c. 13.3):

408. Neither POCA nor UNATMA requirements for filing of SARs impose a reporting threshold for SAR filing. POCA Sec. 46 requires filing of SARs when reporting entities detect complex, unusual or large transactions, **whether completed or not**, upon suspicion that such transaction could be related to ML or the proceeds of crime, thus capturing attempted transactions. However, c.13.3 requires that all transactions be reported, not just those that fall under the three-part determination set forth in Sec. 46(3) of POCA, as described in more detail in the discussion of c.13.1 above.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

409. Neither the POCA nor UNATMA contain any limitation on reporting in connection with tax matters.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

410. POCA's SAR filing requirements cover the proceeds of all criminal acts that constitute predicate offenses for ML. Because SVG has taken an all crimes approach to criminalizing ML, all crimes are predicate offenses for ML and therefore, would be subject to SAR filing if the reporting entity has a suspicion that such an offense would constitute or be related to the proceeds of crime.

Protection for Making STRs (c. 14.1):

411. POCA Sec. 46(5) provides the legal protection for persons filing SARs related to transactions that could constitute or be related to ML or the proceeds of criminal conduct. When a SAR is filed in good faith, the financial institutions or persons engaged in relevant business activities, and their employees, staff, directors, owners or other representatives as authorized by law, are exempted from criminal, civil, or administrative liability as the case may be for complying with the SAR filing requirement in Sec. 46(3) POCA. This protection applies regardless of the result of the communication; as applied within SVG, this language has the effect of protecting a SAR filer for disclosures in SARs to the FIU for attempted transactions. UNATMA Sec. 10A provides a separate legal protection for persons filing SARs for transactions or financial activity that could constitute or be related to the commission of a terrorist act. Specifically, a person or financial institution who in good faith files a SAR on an activity suspected to be related to the financing of a terrorist act, and their employees, staff, directors, owners and other representatives, are exempted from criminal, civil or administrative liability arising out of contract or by any legislative, regulatory or administrative provision.

412. In addition to the direct protection for filing a SAR in Sec. 46(2)(5) and in UNATMA Sec. 10A, POCA Sec. 44 provides the legal protection for persons reporting suspicions of ML. This protects a person who discloses in good faith to a police officer his suspicion or belief that another person is engaged in ML, or any information or other matter on which that suspicion or belief is based. Such disclosure shall not be

treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any criminal, civil or administrative liability. One advantage of this particular provision – while not completely coextensive with the tipping-off provision in Sec. 45, is that it protects a person who is not required to file a SAR, i.e., a voluntary filer for reporting to a police officer. There is a one important defect in this additional provision because it includes a defense to the criminal offense contained in this Sec. if the person had "a reasonable excuse for not disclosing the information or other matter in question." This defense is too broad for effective implementation of the legal protection.

Tipping Off Offenses:

413. POCA Sec. 45 contains the criminal offense for tipping off for ML and criminal conduct that generate proceeds.

Prohibition Against Tipping-Off (c. 14.2):

414. Under POCA Sec. 45, a person commits an offense if discloses to any other person that he knows, suspects or has reasonable grounds to suspect that a police officer is acting, or is proposing to act, in connection with an investigation into money laundering or the proceeds of criminal conduct, and the disclosure is of information or any other matter which is likely to prejudice the investigation or proposed investigation. In addition, the same section provides that it is a criminal offense for a person to disclose to any other person, if he knows, suspects or has reasonable grounds to suspect, that a disclosure has been made to a police officer or to an appropriate person related to an offense under POCA.

415. There are three significant limitations in the tipping off offenses.

- First, the fact of filing a SAR itself is not explicitly covered by the offense of tipping off in Sec. 45 of the Act. That is, the fact of filing the SAR would not be an offense unless it is established that the disclosure relates to a police officer acting or proposing to act in connection with an investigation and the disclosed information is likely to prejudice the investigation or proposed investigation.

- Second, the defense provided in Sec. 45(4) to a person charged with a tipping-off offense under this section renders the offense ineffective. It provides that it is a defense for the person charged "to prove that he did not know that the disclosure was likely to be prejudicial in the way there mentioned."

- Third, there is no direct offense for tipping off with respect to the financing of terrorism. Although POCA has been amended to make the FT offenses in UNATMA (Secs. 3-6) predicate offenses for ML offenses under POCA, for FT offenses that do not generate proceeds of criminal conduct, such offenses would not be captured for the purposes of POCA. As such, the prohibition on tipping off is not sufficiently broad to meet the requirements of the criterion.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

416. The approach is to rely on the provisions of Sec.7(1) of the FIU Act, which provides that a person who obtains in any form as a result of his connection with the FIU shall not disclose that information to any person except insofar as it is required or permitted in the FIU Act or other law.

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

417. The FIU has proposed to the NAMLC the establishment of a currency transaction threshold. The expectation is that the reporting volume would not be significant and the FIU would receive these reports. The threshold currently under contemplation is EC $10,000. This threshold may be too high for the level of cash transactions conducted within SVG, which while numerous are normally well-below the threshold.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

418. Not applicable.

Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

419. Not applicable.

420. Feedback and Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.2) [Note: guidelines with respect other aspects of compliance are analyzed in Sec. 3.10]:

421. Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):

Effectiveness of Implementation:

SAR Reporting:

422. The following table shows the level of SAR reporting by entities covered by the POCA, the POCA Regulations and the UNATMA.

Table: SARS filed with the FIU during 2005 through 2008

Year	Domestic Banks	Offshore Banks	Money Remitters	Insurance companies	Credit Unions	IFSA[14]	Trust Services	Customs	Annual Total
2004	38	5	41	–	3	–			**89** (87 + 2 other)
2005	80	7	6	–	3	12	–	–	**108**
2006	39	4	67	–	–	4	–	–	**114**
2007	54	12	119	–	4	1	–	–	**190**
2008	121	26	383	1	14	–	4	7	**570** (556+14 other)
Total	**332**	**54**	**616**	**1**	**24**	**17**	**4**	**7**	**1,071** (1,055+16)

[14] IFSA reporting SARs as regulator of offshore banks.

423. The table above shows a rather uneven but generally increasing pattern of reporting with a large concentration of SARs filed by banks and money remittance businesses, particularly in the last two years. No SARs have been filed by the systemically large building and loan society. Particularly worrying also is the absence of SARs from the international (offshore) mutual funds and insurance sectors both of which have significant numbers. Banks, credit unions and money remitters are on one end of the spectrum, filing the vast majority of SARs since 2004. (On the other end, certain DNFBPs – in particular those that are not subject to regulatory oversight – are not reporting altogether.)

424. This level of under-reporting by some sectors is worrisome and appears to be due to combination of deficiencies in training of FIs, lack of effective compliance oversight, enforcement and sanctions. It does not appear to be a matter of outreach by the FIU and regulators as the sole obligation to report and to provide training is on the FIs themselves and their management. Addressing these deficiencies should be a priority. In addition, administrative sanctions and assigning a competent authority like the FIU as the default supervisor for otherwise not supervised entities would be an effective step in increasing such compliance.

ANALYSIS

Year	Received	Analyzed	Under analysis	Disseminated	Result in Invest	Result in Prosecution	Result in Conviction	Closed
2005	108	108	00	09	10	00	00	98
2006	118	118	00	07	11	00	00	107
2007	190	150	40	15	08	00	00	142
2008	489	101	388	11	06	00	00	95
Total	**905**	**477**	**428**	**42**	**35**	**00**	**00**	**442**

Quality of SAR Reporting:

425. Even with respect to the financial institutions that are regularly filing, there are quality issues that need to be addressed. The authorities distinguish two types of SARs, those filed by financial institutions such as banks and credit unions and those that are filed by money remitters. The former are generally of a higher quality, shows greater analysis of underlying factors, including background and purposes of the activity. The SARs from money remitters are by very nature of the activity is less likely to elicit substantial analysis by themselves. The FIU reports that about 50% of SARs filed require the FIU to return for additional information. Nevertheless, the FIU reports that when combined with other available information, the information contained in the SARs is very useful and actionable. The FIU finds both types of SARs are useful. Nevertheless, the guidance for SAR filing provided in the GNs and SAR form could be significantly improved including e.g., a field in the form for the amount of suspected transaction. The authorities state that one of the long-term objectives is to implement a more secure electronic SAR filing

system that will provide an updated SAR tailored to each main sector. In doing so, the authorities should be cautious about creating unnecessary confusion among reporting entities.

426. Another concern is that not all offshore FIs with substantive physical presence/mind and management in SVG. This has led in some instances of the FIs and/or their managers and administrators not being fully aware of the reporting procedures to the FIU, and at least in one case they did not even have copies of the SARs. This tends to support the statistics above that indicates 0 SARs from the non-bank offshore financial sectors.

Tipping Off Protection:

427. As detailed above, the limitations on the protection for breach of disclosure and tipping off effectively undermine the legal strength of these provisions. While the authorities assert, persuasively, that the reporting populace views the breach of disclosure and tipping off provisions as broadly applicable, including in relation to the SAR itself, the law is not so generous.

3.7.2. Recommendations and Comments

- POCA (Sec. 46(3)) should be amended to require FIs to report all suspicion with respect to funds that are the proceeds of criminal conduct and not only those described under Sec. 46(2).
- Either POCA or UNATMA should be amended to require the filing of SARs for transactions or financial activities that are suspected to constitute or be related to the financing of individual terrorists or terrorist organizations.
- POCA Sec. 45 should be amended to prohibit tipping off of the fact of the filing of the SAR itself.
- The defense in POCA Sec. 45(4) should be removed.
- UNATMA and/or POCA should be amended to prohibit the tipping of the filing of SARs and any related disclosure of information to a police officer of suspected terrorist financing activities or transactions.

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

	Rating	Summary of factors underlying rating
R.13	**PC**	• The two-part threshold for filing of SARs does not meet the requirement of R. 13. • Offshore insurance and banks are reporting at a very low level. • SAR filing guidance is outdated, the last update was in 2004, contributing to low quality SARs.
R.14	**NC**	• UNATMA and/or POCA do not prohibit tipping off of the filing of SARs related to terrorist financing. • POCA Sec. 45 does not explicitly prohibit tipping off of the fact of filing of the SAR itself.

R.19	**C**	
R.25	**C**	
SR.IV	**NC**	• There is no requirement in UNATMA or POCA to file SARs for transactions or financial activities that could constitute or be related to financing of individual terrorists or terrorist organizations.

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

3.8.1. Description and Analysis

Legal Framework:

428. Sec. 46 of the POCA requires every FI to develop and implement a written compliance program that is reasonably designed to ensure and monitor compliance with the Regs made under the POCA. Such program shall include a system of internal controls to ensure ongoing compliance, internal or external independent testing of compliance, staff training in the identification of suspicious transactions, and the appointment of senior staff or a senior staff member at management level for ongoing compliance with the POCA and Regs. Sec. 48(4) of the POCA also empowers the Minister of Finance to issue regulations under the POCA to, inter alia, require FIs to establish and maintain procedures for customer identification, recordkeeping, making of "reports" (taken to denote suspicious activity reports), and training. See discussion of Reg. 8 below.

429. The Regs issued under the POCA make provisions that require FIs to: (a) Reg. 4 establish and maintain customer identification procedures; (b) Reg. 5 maintain records of identification, accounts and transactions, etc.; (c) Reg. 6 conduct ongoing verification of accounts; (5) Reg. 7 institute and maintain internal reporting procedures for reporting of suspicious activities including identification of a money laundering "reporting officer" ("MLRO or compliance officer") to whom the internal reports are to be made and for making reports to the FIU; (6) Reg. 8 train staff on the POCA, Regs and any other statutory provisions relating to ML and of its compliance procedures.

430. For domestic banks, the ECCB also has the power under Sec. 19 of the Banking Act to appoint annually an auditor whose duties shall be, inter alia, to certify whether suitable AML/CFT measures have been adopted by a bank and are being effectively implemented in accordance with the applicable laws. Auditors are required to report to the ECCB any evidence of criminal activity involving fraud (but not ML or FT), or if they detect serious irregularities. No similar provisions are contained in the other financial laws.

431. Some of the financial laws provide for FIs to maintain systems of internal controls, as part of their prudential management functions. These provisions are complementary to those requirements established under the POCA and Regs discussed below.

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):

432. There are requirements to establish AML/CFT procedures and controls, but no explicit requirement for AML/CFT policies. Nonetheless, the SVG authorities have indicated that they interpret the procedures and controls requirement more broadly to encompass policies. In particular, the Regs require measures with respect to identification, recordkeeping, detection and reporting of suspicious transactions. The limitations in the legal requirements discussed in the preceding Recs. would also apply here, especially with respect to the need to have policy and procedure requirements that cover the full scope of CDD, and for the detection of unusual transactions, and FT. Therefore, an explicit and comprehensive policy requirement would be recommended to more directly commit the board of directors and top management to implement ML/FT risk management controls and compliance with the applicable legislation. As mentioned below under effectiveness of implementation, most banks met had an AML/CFT policy in place but deficiencies were noted in the non-banking sectors.

433. There are requirements in the POCA and Regs for FIs to establish a compliance program that includes the appointment of a money laundering reporting (MLRO or "compliance officer") for purposes of implementing the internal and external suspicious activity reporting regime. Sec. 46 (7) of the POCA requires the appointment of the MLRO at a senior level who shall be responsible for ongoing compliance with the POCA and the Regs. It also includes a provision for FIs to have a system of internal controls to ensure ongoing compliance.

434. The internal reporting procedures requirement under Reg. 7 would allow the MLRO to have access to any other information that may be of assistance to him in considering an internal report of suspicion. The provisions of Reg. 7 could be expanded to make them consistent with the much broader compliance requirements established under Sec. 46 of the POCA.

435. The International Banks Act, Sec. 13, requires the directors (presumably the board of directors) of offshore banks to manage and supervise the business and affairs of banks and to establish, inter alia, anti-money laundering policies. There is also a general requirement to establish controls and procedures.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):

436. Sec. 46 of the POCA requires FIs to have a compliance program that includes internal or external testing for compliance. There are no similarly broad provisions in the implementing Regs that would require FIs to maintain an adequately resourced and independent audit function for testing compliance with the applicable policies, procedures and controls. Consistency between the obligations under POCA and the Regs is desirable.

437. Under Sec. 19 of the Act, the ECCB can appoint annually an auditor whose duties shall be, inter alia, to certify whether suitable AML/CFT measures have been adopted by a bank and are being effectively implemented in accordance with the applicable laws. Auditors are required to report to the ECCB any evidence of criminal activity involving fraud, but not ML or FT, or if they detect serious irregularities. Similarly, Sec. 13 of the International (offshore) Banks Act requires an international bank to appoint an external auditor to audit its accounts and to report to the bank and IFSA any evidence of a criminal offence that may come to their attention during their audits involving fraud, money laundering or dishonesty. It does not include the duty to report on suspected FT crimes. While the authorities interpret the requirement by domestic banks to report serious irregularities as encompassing ML and FT issues, such requirements should be consistent for all FIs, and for the avoidance of doubt should specify ML and FT, in the same manner as ML and fraud are covered.

438. Sec. 21 of the Money Services Business Act also imposes the duty to maintain a system of internal controls and recordkeeping, a system of inspections and reporting. It also requires that the direction and management of the business be conducted with prudence and integrity by a sufficient number of fit and proper persons.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

439. Both the POCA and the Regs contain provisions for FIs to provide training to their staff. Sec. 46 of the POCA requires that, as part of a written compliance program to ensure and monitor compliance with the Regs, such training includes the identification of suspicious transactions. In addition, Reg. 8 requires FIs to take measures from time to time to make "relevant employees" aware of the POCA, the Regs, any other ML statutory provisions, and of the procedures maintained by the FIs in compliance with the duties imposed under the Regs. These duties would include customer identification, recordkeeping, reporting, etc. Reg. 8 also requires FIs to train staff with respect to the handling and reporting of suspicious ML transactions. There are no specific requirements to train staff on current ML and FT trends, typologies, techniques, etc. Training under Reg. 8 shall be given to all new relevant employees as soon as practical after their appointment.

440. For purposes of Reg. 8, a "relevant employee" are those that at any time in the course of his/her duties has or may have access to any information that may be relevant in determining whether a person is engaged in ML. The authorities are of the view that relevant employee covers most employees but it would be useful to clarify the scope of this requirement is unclear and to ensure that it does not restrict its application.

Employee Screening Procedures (c. 15.4):

441. There are no legal requirements to screen employees to ensure high standards.

Additional Element—Independence of Compliance Officer (c. 15.5):

442. Neither Sec. 46 of the POCA nor the Regs requires that the compliance officer/MLRO is operationally independent and reports to senior management above their positions, or to the board of directors, or a committee thereof.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

443. Neither the POCA nor the Regs requires that FIs apply AML/CFT measures to any foreign branches and subsidiaries under any of the circumstances covered under these criteria.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

444. There are no requirements in the POCA or the Regs that require FIs to inform their supervisors of cases where their foreign branches and subsidiaries cannot observe appropriate AML/CFT measures when prohibited by local law or other measures.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

445. There are no requirements for Core Principles institutions to apply CDD measures at group level.

Non-mandatory Guidance Notes (Rec. 15 Internal Policies, etc.):

446. While the GNs do not explicitly require FIs to have comprehensive policies, procedures and controls to prevent ML and FT, and to communicate those to employees, they contain some of these elements in several of its provisions. GN 15 would require FIs to exercise a duty of diligence to prevent assisting ML operations through customer verification, recordkeeping, recognition and reporting of suspicion, and training. This would require them to have systems that would enable them to achieve these objectives and to cooperate with the NAMLC on vigilance issues concerning ML policy and systems. It should also involve internal audit and compliance departments to regularly monitor implementation of such systems.

447. GN 18 states that the nature and scope of vigilance systems should be appropriate to the size, structure and nature of the business of FIs but that nonetheless they should be consistent with the GNs. GNs 19 and 20 also cover training as part of the vigilance systems to help staff comply with their responsibilities, including providing them with copies of FIs manuals with regard to customer acceptance (entry), verification and records. GN 21 also deals with the appointment of a MLRO at senior level that should act as the contact point for the FIU, and who should have authority to ensure compliance with the GNs. GN 21 also allows for the possibility to delegate such authority to other Prevention Officers with respect to their regular compliance duties. For large FIs, the compliance and audit functions could be by way of departments out of which the MLRO would be appointed.

448. GNs 23-25 make provisions for having “know your employees” policies which include hiring policies and due diligence checks on new employees, and for monitoring their lifestyles.

449. (Rec. 22 Application to Branches and Subsidiaries): GN 9 states that where a group whose headquarters are in SVG operates foreign branches and subsidiaries, it should ensure that such operations observe the recommended measures contained in the GNs or to adhere to local standards if those are at least equivalent to the GNs. In addition, it states that branches and subsidiaries are to be informed of the group policy and of the local reporting procedures for suspicious activity reports and of the reporting procedures to the SVG FIU. However, GN 9 states that the local reporting point should be the equivalent of the NAMLC, and not the FIU, which would be inconsistent with the reporting requirements and practice for suspicious activity in SVG.

Effectiveness of Implementation

- There is a need to fully implement the requirement to file AML/CFT policies and procedures, particularly in respect of the non-banking sectors.

- The offsite surveillance process should also focus on the ML/FT risk assessment policies and controls being developed by FIs, and not only on regulatory compliance issues. Most AML/CFT policies and procedures provided to IFSA are compliance based. It seems that the other supervisors do not implement this practice.

- While most FIs interviewed have appointed an MLRO/compliance officer as required by the POCA and Regs, in many instances such persons share multiple operational tasks and devote anywhere

between 10% to 50% of their time to AML/CFT issues. In some cases there could be conflicting functions such as the compliance officer also being the accountant or internal auditor, which may not be senior enough and also adversely affect their reporting lines within the FIs organizational hierarchy.

- Insufficient use of the external audit function to review adequacy of internal controls and procedures for AML/CFT, including in some cases, reporting of deficiencies through management letters.

- There seems to be insufficient internal audit oversight with respect to compliance with AML/CFT policies and procedures from the parent companies of foreign FIs operating in SVG.

- Training programs seems to be more adequate in the domestic banking sector, except for the smaller banks, and less developed in the rest of the financial sector including offshore banks.

- With respect to Rec. 22, most FIs do not have foreign branches and subsidiaries, so this requirement would largely be in applicable. However, in the international (offshore) financial sector where the large majority of cases involve a significant part of the business activities conducted outside of SVG, an analogous situation exists where the local registered office/principal office in SVG should be charged with ensuring that AML/CFT policies, procedures and legal requirements are observed by their overseas operations, including representative offices. In addition, there are other mitigating controls in the system such as the regulatory controls that would require the written approval of the regulator to open branches or subsidiaries overseas, which could in principle be used to apply AML/CFT controls similar to those required under R 22. For instance, Sec. 12 of the International Banks Act states that "A licensee shall not, without the prior written approval of the Authority….. (b) acquire, open or operate outside the State any subsidiary, agency, representative office or branch." In addition, Sec. 8 (4) of the Banking Act (domestic institutions) states that "No local financial institution shall open a place of business elsewhere that in Saint Vincent and the Grenadines without the prior approval of the Minister after consultation with the Central Bank". Sec. 6 also provides for the closing of foreign branches when the Central Bank determines that supervision in the host country is inadequate relative to its risks. Other regulatory laws do not contain explicit provisions as is the case for banking but do have general licensing requirements that could also extend to approvals or at least notification of significant changes in business arrangements.

3.8.2. Recommendations and Comments

- Enhance the requirements for FIs to have comprehensive policies, and consider revising the compliance and independent audit requirements under Regs 8 (narrower) to make them consistent with those under Sec. 46 of the POCA (broader).

- Require FIs to train staff on current ML and FT trends, typologies, techniques, etc.

- Clarify the scope of the training requirement to ensure that the term "relevant" employees, i.e., to those that have/may have access to information that can be relevant to determine the existence of ML, does not restrict the training requirement

- Require FIs to properly screen employees for fit and proper criteria to ensure high standards.

- Supervise and require FIs to ensure that compliance officers devote sufficient time and seniority to AML/CFT, and avoid inherent conflicts when multi-tasking such officers.

- FIs, especially banks, should emphasize AML/CFT training for high risk areas e.g. money remittance business, correspondent accounts, wire transfers, back-to-back loans, and credit card operations.

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Insufficient provisions for comprehensive policies. • No requirements to train staff on current ML and FT trends, typologies, techniques, etc. • No requirements to screen FI employees to ensure high standards. • Insufficient time and seniority of compliance officers devoted to AML/CFT functions by some FIs, including inherent conflicts in multi-task responsibilities. • Lack of specific training in on AML/CFT for high risk areas e.g. money remittance business, correspondent accounts, wire transfers, back-to-back loans, and credit card operations.
R.22	**LC**[15]	• No requirements for FIs to apply AML/CFT measures to their foreign branches and subsidiaries. • No requirements for FIs to inform their supervisors when their foreign branches and subsidiaries cannot observe appropriate AML/CFT laws or measures.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Definition of Shell Bank in the FATF Methodology "A *Shell bank* means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision. *Physical presence* means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence."

Legal Framework:

Domestic Banks:

[15] It is not a common practice that SVGs FIs have overseas branches and subsidiaries. Therefore, from the perspective of implementation, Rec. 22 is largely not applicable at the time of the mission.

450. While not explicitly prohibiting the establishment of shell bank in SVGs, the provisions of the Banking Act, 2006 would effectively preclude the establishment of such banks. All banks have substantial physical presence and mind and management in SVG. The definition of "principal place of business" and of "place of business" in Sec. 2 of the Act would require a principal office in SVG. Sec. 8 authorizes licensed banks to carry on business in SVG at the place of business designated in their licenses, and no new place of business (whether in SVG or elsewhere) or change in location of business shall be made without prior approval of the Minister after consultation with the Eastern Caribbean Central Bank (ECCB).

International (offshore) banks:

451. Sec. 8 of the International Banks Act, 2004 requires a licensee to have a physical presence in SVG. Neither physical presence or place of business is defined per se except that under Sec. 8 physical presence shall include the following:

- a physical place of business in SVG where all the books and records are kept;
- a minimum of two employees, one of whom shall be of senior management level;
- a designated registered agent, that IFSA has received notification of and who is not an officer of the licensee.

452. International banks are also required to designate a resident director, and in practice, such director can act as director for more than one bank. Licensees not having a physical presence as outlined above were required to do so within six months of the Act coming into force or as otherwise authorized by IFSA. Changes in the location of banks' offices in SVG and of the registered agents shall be notified to IFSA (as opposed to requiring approval as for domestic banks). These are license conditions. In practice, a number of offshore banks do not have meaningful mind and management in SVG.

Prohibition of Establishment Shell Banks (c. 18.1):

Domestic banks:

453. Banks are required to have their principal business office in SVG and any change requires approval. In practice, all domestic banks licensed to operate in SVG have a significant presence in terms of office and fairly large number of staff. With respect to the branches or subsidiaries of foreign branches operating in SVG, certain business decisions, such as large credit exposures and opening of correspondent accounts, may require the approval from their head or regional office, but this would not affect the fact that they maintain substantial mind and management residing in SVG, as supported by discussions with domestic banks.

International (offshore) banks:

454. At the time of the mission, there were six licensed offshore banks but soon thereafter two were closed for different reasons. (See para. 52 above.) The legal requirements for a physical presence in SVG under Sec. 8 of the International Banks Act provide for basic physical presence requirements including the designation of a registered agent for the bank, and the minimum requirement that two employees of which only one shall be of senior management level. While this may be sufficient for a small (or limited scope) institution, (most SVG offshore banks are small), it may not be appropriate for larger banks

(existing entities could grow or new larger banks may be established in the future.) to meet the meaningful mind and management requirement as defined under the Methodology. ("The existence simply of a local agent or low level staff does not constitute physical presence.") In practice, most international banks the mission met generally have low levels of staff in SVG and for some, the senior management requirement may be met by having a manager responsible for general administrative work. There were two offshore banks where mind and management were outside of SVG. All of the offshore banks are privately held and are not members of a regulated financial group.

455. Sec. 14 of the International Banks Act also requires that a bank to have at least two directors who shall be individuals of whom one shall be a resident of SVG as defined under the Act. In practice and as indicated above, persons can participate as resident directors for more than one bank.

456. **Prohibition of Correspondent Banking with Shell Banks (c. 18.2):**

457. There are no prohibitions on banks from entering into, or continuing correspondent banking relationships with shell banks. In practice, the domestic banking sector provides correspondent banking facilities to offshore banks licensed in SVG, some of which, as mentioned above, do not maintain meaningful mind and management in the country.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

458. There are no requirements that FIs satisfy themselves that respondent FIs in another country do not permit their accounts to be used by shell banks.

Non-mandatory Guidance Notes:

459. GN 124A contains potentially conflicting statements and may be inconsistent with the requirements of Rec. 18 in light of the FATF definition of shell banks. (See beginning of Rec. 18) Para. 2 of GN 124A does not require a prohibition from entering or continuing correspondent relationships with shell banks (banks that have no physical presence) but rather states that banks should pay particular attention to correspondent account services in jurisdictions where banks have no physical presence. On the other hand, in para. 3 it 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. This apparent contradiction should be clarified and resolved.

ECCB guidelines on correspondent banking (2001):

460. In March 2001, the ECCB issued prudential guidelines to domestic banks for purposes of making them aware of and for managing risks inherent in correspondent banking. The ECCB, "in cognizance of the importance of correspondent banking relationships to economic activity in the currency union, and of the risks posed to these arrangements by the operation of accounts for offshore entities that are subject to a different regulatory and supervisory framework," recommended that:

> "A financial institution shall not provide, or in any way facilitate, access to correspondent banking facilities to third-party financial institutions not licensed under the provisions of the Banking Act and/or supervised by the Eastern Caribbean Central Bank. Banks are also required to employ strict

know-your-customer standards and exercise adequate due diligence, particularly in maintaining accounts for offshore entities, in order to minimize counterparty risks."

461. In practice, international (offshore) banks licensed in SVG under the International Banks Act and subject to supervision by IFSA maintain correspondent/nested correspondent accounts with the domestic banking sector. As mentioned above, the mission identified a number of offshore banks that have very low staff levels and do not meet the test of meaningful mind and management in SVG. None of the international banks are members of a financial group subject to consolidated supervision.

Effectiveness of Implementation

- There is non-compliance within the domestic banking sector with respect to opening correspondent facilities for international banks that do not have a substantive physical presence/mind and management in SVG, contrary to Rec. 18 and the ECCB's prudential guidelines. In some cases it appears that such relationships did not benefit from a risk assessment before business take on.

3.9.2. Recommendations and Comments

- Review the physical presence of all offshore banks against the meaningful mind and management criteria of FATF Rec. 18 above and prohibit the continuation of any shell banks.
- Introduce explicit prohibitions against entering into, or continuing correspondent banking relationships with shell banks, consistent with the ECCB's prudential guidelines.
- Require FIs to satisfy themselves that respondents in other countries are not used by shell banks.
- Require domestic banks to comply with Rec. 18, the ECCB's prudential guidelines and the GNs with respect to correspondent banking facilities.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**NC**	• Two offshore banks were identified as not having meaningful mind and management/significant physical presence in SVG. • No prohibitions against entering into, or continuing correspondent banking relationships with shell banks. • No requirements for FIs to satisfy themselves that respondents in other countries are not used by shell banks. • Offshore shell banks maintain correspondent accounts locally, contrary to Rec. 18, the GNs, and ECCB's prudential regulations.

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

Legal Framework: (See Recs. 17 and 29 below for powers to enforce compliance and sanction, and for supervision.)

Regulation and Supervision of Financial Institutions (c. 23.1):

462. Not all FIs that are subject to the AML/CFT requirements and are operating in SVG are subject to effective AML/CFT regulation and supervision. Those that are subject to an AML/CFT supervisory regime are listed below:

Domestic financial institutions	No.	Regulator
Banks (includes securities broking by banks)[16]	6	ECCB
Insurance companies (9 life)	23	Min. of Finance[17]
Brokers for insurance company	6	Min. of Finance
Agents for insurance	10	Min. of Finance
Sales representatives for insurance	85	Min. of Finance
Pension fund plan for insurance company	14	Min. of Finance
Money transfer services	4	Min. of Finance
Credit unions (active)	9	Registrar Credit Unions
Building Society	1	None
Sub-total Domestic	**158**	
International (Offshore) Financial Entities	**No.**	**Regulator**
Offshore banks (reduced to 4 shortly after the mission)	6	IFSA
International insurance companies	9	IFSA
International insurance managers/brokers	3	IFSA
Mutual funds	45	IFSA
Mutual fund managers/administrators	30	IFSA
Sub-total Offshore	**93**	
Total	**251**	

The principal entities subject to IFSA's supervision total 120 (subtotal of 92 plus registered agents and trustees 28).

[16] The ECCB is responsible for the supervision of domestic banks in the eight countries comprising the ECCU (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Anguilla and Montserrat). There are 39 domestic banks operating in the ECCU.

[17] The Ministry of Finance may designate the Supervisor or is the Authority responsible for supervising the various entities, as provided in the respective financial laws.

463. There is one systemically large building and loan society registered under the Building Societies Act that is not being supervised. The authorities state that there are plans to bring building societies (and credit unions) under the supervision of the Ministry of Finance and it is expected that the legislation, which was passed earlier in 2009, will be put into effect soon. A budget has been prepared to increase the number of examiners for the Ministry of Finance–SRD in 2009. See Rec. 30 with respect to the adequacy of resources. Building societies and lending activities are covered as FIs under the POCA (Schedule 1) and hence legally required to comply with the POCA, the Regs and the United Nations (Anti-Terrorism Measures) Act. As they engage inter alia, in deposit taking, lending and money remittance services, they are exposed to ML/FT risks and should be brought under effective supervision soon, as planned.

464. In addition, there are at least two well-known money lending operations that are apparently not covered under any legislation for regulatory or supervisory purposes that openly advertise their services. It is not officially known who owns or controls these lending operations, or what is/are the source(s) of their funds. The Authorities did not indicate any plans with respect to these lending operations, that is, plans to regulate and supervise them, to review of the size and nature of their operations, and their ownership.

Domestic Financial Institutions:

Domestic banks:

465. No detailed statistics that were requested were provided by the ECCB with respect their AML/CFT supervisory procedures and the number of onsite examinations that included AML/CFT, over the past three years. From discussions with the sector, it seems that the frequency of onsite inspection and AML/CFT reviews varies with some banks inspected on average about once every 2 to 3 years, while some have not been inspected for 4 to 6 years. One large bank stated that it had not been inspected since 2002. In addition, the coverage of AML/CFT would average about 1 day per visit. For banks that are branches or subsidiaries of foreign institutions, the home supervisors have not conducted onsite inspections for AML/CFT under consolidated supervision arrangements.

466. From discussions with the ECCB, they indicated that most banks had been examined for AML/CFT compliance during 2002-2005, and that subsequent follow up examinations had been conducted as part of general inspections. Examinations on average last about 5-10 days with AML/CFT components taking between 1-2 days on average. Between 1 and 2 examiners conduct the AML/CFT the review depending on the size of the banks. Examination teams average about 5 examiners. The ECCB claims that its AML/CFT examinations are risk-based, but it seems that the review process tends to focus more on technical compliance with the AML regulations. The offsite planning process and inspections does not seem to place priority to sectors that are generally perceived as high ML risk in SVG, e.g. those involving cash and money transmission business conducted directly by either banks or by other money remitters that use the local banking system.

467. In its last annual report, the ECCB stated that it will establish risk profiles for all financial institutions licensed under the Banking Act based on a stress-testing model and a consolidated supervisory framework. It is not clear if it will take into account ML/FT risk in such developing institutional risk profiles. A risk-based review should also take into account the significant business activities by e.g. clients, products, services, processes, etc. and their inherent ML/FT risks. Risk profiling could also benefit from a review of suspicious activity reporting trends by institution and sector in SVG and the broader ECCU region. More focus on risk-profiling for ML/FT as part of both the offsite and onsite risk-based supervisor

process would assist in focusing supervisory attention on the higher risk areas, including to prevent banks from undertaking unauthorized[18] money transmission business. Such activities could partly be done on an offsite basis, and could focus on other areas such as identification of correspondent banking activities, and the absence of AML/CFT policies. The ECCB should also focus on other potentially high ML risk areas such as identification of banks that provide cash secured loans (back-to-back loans) which appears to be a common practice across the deposit-taking financial sector, including offshore banks.

468. A risk-based supervisory focus should also take account of banks that provide correspondent banking facilities, and in particular focus supervisory attention to those banks that provide correspondent/ nested correspondent banking facilities offshore banks licensed in SVG or elsewhere. It is known that the domestic banking sector provides such facilities (see Rec. 18 above) contrary to the ECCB's own 2001 prudential guidelines for correspondent banking. These guidelines considers this business high risk and aims to prohibit banks from providing correspondent facilities to banks that are not licensed under the domestic Banking Act and supervised by the ECCB.[19] The ECCB should take steps to ensure compliance with its prudential guidelines.

469. In summary, the offsite and onsite supervisory practices can be improved with respect to AML/CFT, by paying more attention to those areas that are inherently of higher risk, and adopting the frequency and scope of examinations accordingly. While the ECCB claims to follow a general risk based approach, it would be useful to review the existing AML/CFT supervisory policies and procedures should to ensure that they are consistent with the risk-based and institutional risk profiling being developed, as discussed above.

470. No information was provided with respect to the ECCB's total available examination staff but it is acknowledged that they have a comparatively larger pool of examiners given their scope of their supervisory activities which include all of the 8 ECCU member countries. No statistics were provided for the ECCB's supervisory resources available for offsite and onsite supervision of the 39 domestic banks operating in the ECCU region which could serve as a rough proxy of the adequacy of resources available for the supervision of SVG-based domestic banks. The ECCB supervision department has 7 staff positions at management level, and the last annual report of the ECCB showed operating income of EC $111 million and operating expenditure of $59.7 million. The annual report also shows that staff are generally well trained and of sufficient professional caliber.

Insurance companies and intermediaries and pension funds:

471. The Ministry of Finance (Supervisor of Insurance) is responsible for the regulation and supervision of the insurance sector. The Ministry has recently established a Supervisory and Regulatory Division

[18] The mission was aware of at least one apparently unlicensed money transmission service that has recently started operations in SVG though a licensed institution.

[19] The ECCB prudential guidelines state that: "A financial institution shall not provide, or in any way facilitate, access to correspondent banking facilities to third-party financial institutions not licensed under the provisions of the Banking Act and/or supervised by the Eastern Caribbean Central Bank. Banks are also required to employ strict know-your-customer standards and exercise adequate due diligence, particularly in maintaining accounts for offshore entities, in order to minimize counterparty risks."

(SRD) that will be responsible for supervision, including for AML/CFT, of all 57 entities currently under its jurisdiction (excluding 85 sales representatives). The SRD currently has two examiners on its staff that engages in general supervision and have only recently commenced limited AML/CFT supervision. At the time of the mission the SRD had commenced to draft supervisory procedures. They have recently started to conduct onsite inspections of insurance companies for the first time and have relied on AML/CFT questionnaires used by IFSA. These first two inspections took place in October-November 2008, and lasted about two days each and were largely focused on AML issues. Given the size of these two companies and the fact that this was the first examination, the duration and scope of supervision seems to be very short and narrow. There have been no AML/CFT examinations of insurance brokers, agents, sales representatives, and private pension funds.

472. The SRD believes that the level of ML/FT risk is low in the insurance (life) sector. However, while inherently there may be a lower degree of risk in life and other types of insurance, many insurers provide savings/deposit type accounts which would be broadly similar to the deposit taking activities of other entities. They also provide high value investment policies/products for high net worth customers, and on the basis alone their risk level would be inherently high and broadly similar to that of other FIs. Most insurance business is conducted through intermediaries who routinely accept cash, and who have not been subject to AML/CFT supervision by either the insurance regulator or the insurance companies on whose behalf the conduct business. This is a significant lacuna in that insurance intermediaries are generally regarded as one of the weakest links in the insurance sector for ML.

473. There are plans to increase the supervisory capacity of the SRD. Budget estimates provided to the mission after the visit show the following:

		Number of Positions		Salaries	
		2008	**2009**	**2008**	**2009**
STAFF POSITION	**Grade**				
Management and administrative		2	3	47,796	106,992
Insurance and Pension Plan Unit					
Examiners		3	4	88,942	196,728
Credit Union Unit/Building Societies					
Examiners		-	3	-	141,300
Total (of which 7 are examiner positions)		**5**	**10**	**136,738**	**445,020**
Provision for salary adjustment				-	13,351
		5	**10**	**136,738**	**458,371**
Less provision late filling of posts				-	75,000
Total Permanent Staff		**5**	**10**	**136,738**	**383,371**

474. The authorities have indicated that the supervision of money remitters will be done by the examiners specifically assigned to the sectors above. Given the relatively large number of entities subject to the SRD's supervision, it is clear that the need for additional well-trained examiners will continue.

475. As mentioned under Rec. 5, it is not clear whether insurance intermediaries (brokers and agents) were intended to be covered under per Schedule 1 of the POCA for purposes of compliance with the POCA and Regs Insurance companies are explicitly covered in the Schedule but brokers and agents are not, except perhaps and only in a general manner as "financial intermediaries" under Relevant Business Activities. The interpretation of this with respect to their coverage of brokers and agents (and sales representatives) varies across the sector.

Money remitters:

476. The Ministry of Finance is the designated Authority for supervising money remitters under the Money Services Business Act of 2005. The SRD within the Ministry has been charged with supervision but as of mission date, no inspections had been conducted of the four remitters for AML/CFT or for any other purpose. The SRD believes that the risk of ML/FT is low in this sector, but this view is inconsistent with the broader perception of the financial sector and law enforcement which considers this sector as high risk particularly with regards to drug trafficking. This perception is supported by the relatively large proportion of SARs connected with money remittance business. In addition, the authorities should conduct a thorough review the money remittance sector to ascertain if it is consistent with e.g. the level of cross-border business in the relevant sectors, the size of SVG nationals living abroad, etc. and assess the patterns of inward and outward flows. Such analysis would provide a clear basis for ascertaining areas of higher risk and for focusing oversight resources and priorities.

Credit Unions:

477. The Registrar of Co-operative Societies is the designated supervisor of credit unions. They are however subject to the POCA and the Regs. There are plans to transfer supervision of credit unions later this year to the SRD.

478. There are some 9 active credit unions with about 47,500 members of which one is relatively very large accounting for about 30,000 members, or about 25% of the population of SVG. Onsite inspections take place every year, but AML reviews only commenced around December 2008. Most general onsite visits are on average of 1 hour duration depending on the size of the credit union, with 2-3 staff participating. The Registrar has a total of six employees available for supervision. An examination of the largest credit union, with some 47,500 members, lasted only 1 hour. In addition, under Secs. 19 and 18 of the Co-operative Societies Act, it seems that the Registrar does not have the legal authority to conduct thorough examinations of e.g. CDD because of limitations on access to customer related documentation which would limit their effectiveness for AML/CFT purposes. In summary, AML/CFT supervision has only recently started and is inadequate given the size of the sector. There is one very large credit union that undertakes banking type activities including, inter alia, deposit-taking, (if authorized under law can also open checking accounts), money remittance business and back-to-back loans. The authorities believe that some of these societies may be used for small scale drug-related ML. All of these activities are inherently risky with respect to ML, which should call for enhanced supervision.

Building Societies:

479. Building societies are registered with the Registrar of the High Court, but there is no mechanism for their ongoing regulation and supervision. They are subject to the AML/CFT laws and later this year the Ministry of Finance-SRD will assume responsibility for their supervision. There is only one building and

loan society in SVG that, by virtue of its size is systematically important with about 25,000-30,000 members or about 25% of the population of SVG. It also engages in a broad range of activities, including money remittance business.

480. Given the size of the SRD and the fact that it has only recently been staffed, there is a need for additional examination staff and AML/CFT training especially in light of the additional sectors being transferred for its supervision. In addition, the SRD should develop sector specific AML/CFT supervisory and inspection procedures to be used as part of its offsite and onsite activities.

International (Offshore) Financial Institutions:

International Banks:

481. IFSA is the designated authority responsible for the supervision of offshore banks. Earlier inspections appeared to have focused more on fit and proper issues to ascertain the need for continuation or license revocation. This resulted in sharp reduction of banks from 40 plus in the early 2000s to six in 2009. Post mission the number was reduced to four operating offshore banks. However, this process should continue as ongoing activities of IFSA as discussed under c. 23.3 below.

482. In 2006, only 1 bank was inspected while in 2007 there were no inspections. All six banks were inspected during in the past year, 5 during Oct.–Dec. 2008, and 1 in Jan. 2009. The duration of these inspections ranged around 2–6 days. On average, the examination teams consisted of 3 IFSA examiners and 1 outside consultant, with the Executive Director forming part of the examination teams. While IFSA indicates that about half of the inspection time was devoted to AML/CFT, the results of inspections suggest a much narrower scope of AML/CFT issues as reflected by the type of analysis and recommendations made. There also seemed to be insufficient focus on certain high risk business areas, including back-to-back loans (a main activity of some entities), wire transfers and off balance sheet activities. This may be influenced by a number of factors including but not limited to: (1) lack of staff resources, training and experience; (2) limited duration of inspections; and (3) insufficient mind and management in SVG for most of the offshore banks.

483. With respect to the scope of examinations, IFSA should establish the overall ML/FT risks inherent in the conduct of the banks correspondent accounts (as respondent institutions) to see if their correspondent banks are conducting the necessary due diligence with respect to their own AML/CFT systems and controls. This would be an indirect and complementary approach to risk assessment and supervision, and should clearly establish the reasons for the offshore banks conducting most/all of their correspondent banking through the domestic banking sector. Their stated inability to open correspondent accounts directly with banks outside of SVG should be reviewed for purposes of risk supervision. In this regard, close supervisory cooperation with the ECCB, the supervisor of domestic banks, should be enhanced at least in this area.

484. Offsite supervisory processes and activities for AML/CFT (and even for prudential purposes) should be strengthened and include enhanced analysis of the business and financial risk profiles as indicators of potential ML/FT risks. Onsite examinations should also focus on a continuing review of the fit and proper criteria of owners, controllers, and top management. And it should include a review of compliance with the physical presence requirements of the International Banks Act to ensure that the structure does not inhibit effective ongoing supervision (AML/CFT) of such banks, and avoid the presence

of shell banks contrary to Rec. 18 of the FATF. Both of these issues are relevant to effective AML/CFT supervision. Enhanced training of examiners may be required in all of the above areas.

Mutual Funds, Managers and Administrators:

485. Little or no AML/CFT supervision has been conducted of this sector, in particular onsite inspections. The lack of meaningful mind and management, and documentation in SVG by of most of these operations would also limit the capacity of IFSA for ongoing effective AML/CFT supervision. A significant number of these funds are managed in Liechtenstein and there are no formal supervisory and FIU cooperation agreements or arrangements with Liechtenstein to facilitate cross-border supervision of these entities and service providers. A similar situation appears to exist with respect to the trust and company service sector. Where similar situations exist involving other countries, cross-border supervisory arrangements should be established, including with countries where the owners or parent companies of FIs exist, beyond the mutual funds sector.

International Insurance Companies, Managers and Brokers:

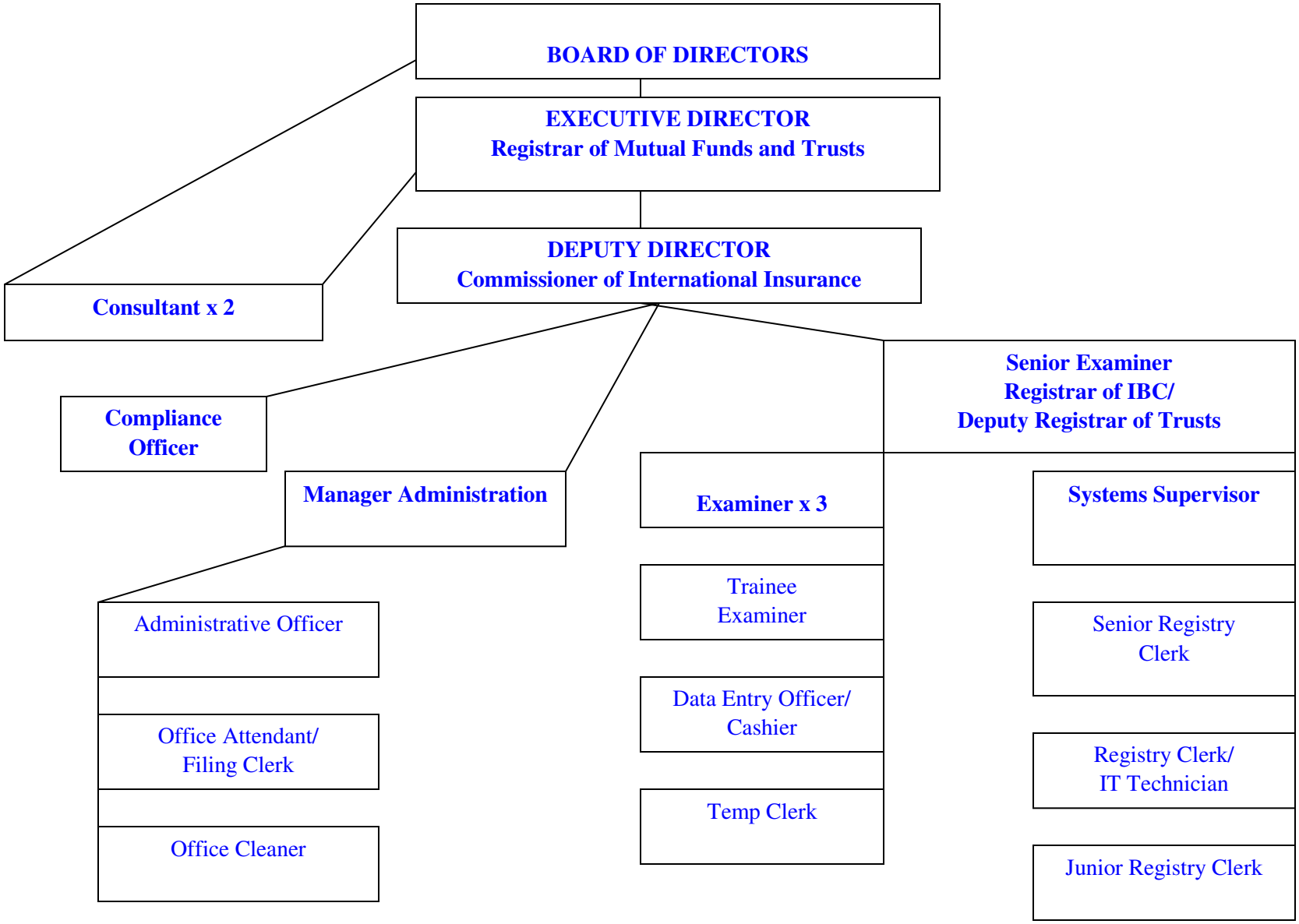
486. Little or no AML/CFT supervision has been conducted of this sector, particularly onsite inspections. As for the mutual fund sector, the absence of substantial physical presence in SVG by a number of entities would limit the capacity for ongoing effective AML/CFT supervision, as for international (offshore) banks and mutual funds above.

487. [See also Rec. 24 with respect to supervision of Registered Agents/Trustees by IFSA. No inspections were conducted of these licensees before 2008. In 2008, 2 inspections were conducted and 1 inspection before the mission in 2009.]

IFSA:

488. IFSA is a professionally run supervisory body and its staff are generally of a high professional caliber, but its supervisory resources are limited. At the time of the mission, IFSA had on staff the following: 2 examiners, 1 senior examiner, 1 compliance officer and the Executive Director. There was also a full time consultant for IFSA. Post mission IFSA informed that they had hired three additional supervisory staff. There are a total of some 120 licensees, excluding trusts and international business companies, and on current staff levels and business trends (particularly in the mutual funds, insurance and registered agent/trustee sectors), IFSA is significantly understaffed. There is a vacancy for a Deputy Executive Director, and a consultant has been contracted to assist/advise IFSA. IFSA also contracts services of outside consultants when needed to assist with training and inspection. IFSA's total operating budget for 2008 was approximately EC$1.8 million, and for 2009 it is projected at EC$1.9 million. Funding for IFSA comes from the government normal budget resources. (Sec. 4 of the IFSA Act.)

489. The organization chart below was provided by IFSA after the mission in August 2009 to show the updated staffing arrangements.


BOARD OF DIRECTORS
EXECUTIVE DIRECTOR
Registrar of Mutual Funds and Trusts
DEPUTY DIRECTOR
Commissioner of International Insurance
Consultant x 2
Compliance Officer
Manager Administration
Administrative Officer
Office Attendant/ Filing Clerk
Office Cleaner
Senior Examiner
Registrar of IBC/
Deputy Registrar of Trusts
Examiner x 3
Trainee Examiner
Data Entry Officer/ Cashier
Temp Clerk
Systems Supervisor
Senior Registry Clerk
Registry Clerk/ IT Technician
Junior Registry Clerk

490. A key issue is the relatively high turnover in the Executive Director/Offshore Inspectors position of IFSA and its predecessor organization. In the past 8 years, there have been 4 different chief executives in IFSA which can inhibit continuity and development of an experienced cadre of supervisors at the top management level. This can limit the effectiveness of ongoing AML/CFT supervision of entities under its jurisdiction, including for dealing with crisis resolution issues, such as the closure of FIs.

491. There is also a need for IFSA to review and strengthen its supervisory procedures particularly with respect to AML/CFT inspections, and consider developing risk-based methodologies to supervise for ML/FT risks in its offsite and onsite supervisory functions. These procedures should be further adapted to the specific characteristics of each sector it is responsible for supervising, including the supervisory issues raised with respect to the offshore sectors above.

492. IFSA has also issued internal guidelines and regulations to foster professionalism and ethics by its staff members, including the duty to observe confidentiality requirements and related criteria for assessing staff performance.

Designation of Competent Authority (c. 23.2):

493. See the tables under c. 23.1 above with respect to the designated regulators/supervisors for the various financial institutions. In addition, see Rec. 29 with respect to their AML/CFT supervisory powers. IFSA is the authority explicitly designated under the International Banks Act to monitor compliance with Sec. 46 of the POCA with respect to offshore banks. Similarly, the Ministry of Finance is the designated authority under the Money Services Business Act with respect to money remitters. While these designations are limited to Sec. 46 of the POCA (the main AML provisions), there are no similar provisions with respect to other FIs. As discussed under Rec. 29, there is a need to extend such powers in all the financial and regulatory laws to supervise and enforce compliance that also include the AML Regulations and the United Nations (Anti-Terrorism Measures) Act. Where appropriate such powers could also extend to supervision for compliance with applicable guidelines or guidance notes.

494. The Banking Act does contain some broad supervisory powers for the ECCB that in a general sense could extend to AML/CFT issues. However, they need to be more explicit and similar to those provisions contained in the International Banks Act and the Money Services Business Act.

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

ECCB: domestic banks:

495. There are only six licensed banks in SVG with three being branches or subsidiaries of larger regional and international banks. One of the domestic banks is owned by the government of SVG. The ECCB has in place detailed licensing procedures to ensure fit and proper tests are made, but in practice these are rarely used given the small number of institutions and the relative infrequency of applications. In particular, Sec. 5 of the Banking Act and the Schedule attached thereto require relatively strict fit and proper criteria for applicants, owners, directors and management of banks. While these procedures seem to be put in practice, there may be a need for regular review and updates on the ownership of banks, particularly those that were established before the Act came into effect, and those that are standalone privately held institutions.

Domestic non-bank financial institutions, except for money transmission business:

496. Considering the relative infrequency of new license applications, the existing legal requirements and procedures for licensing of insurance entities and credit unions seems to be adequate. The mission did not identify any significant gaps that would facilitate ownership and control of these entities by criminals or their associates. Nonetheless, the existing procedures should be aligned with those of banks particularly as some insurance and credit unions, (and building societies) conduct bank-like activities such as deposit-taking and/or money remittance business. In particular, the sole building and loan society should be brought under a regime of ongoing supervision by an appropriate authority given its systemic significance. Plans are underway for the SRD in the Ministry of Finance to undertake this role.

Money lending businesses:

497. It is imperative that the authorities review the operations of the known money lending businesses that openly advertise their services in SVG, with a view to implementing a suitable authorization and oversight regime, including for AML/CFT purposes. There are at least two such businesses known to be operating in SVG without any AML/CFT oversight even though they are subject to the POCA and Regs.

International (offshore) financial institutions:

498. IFSA has developed relatively comprehensive licensing criteria for all international entities subject to its supervision, and also relies on outsourcing services to support its licensing due diligence functions. It has not licensed any new offshore banks in the past few years and has revoked most of the offshore banking licenses that were in effect in the early 2000s. Nonetheless, IFSA should continue to review, on regular basis, the ownership and control of offshore financial institutions. Enhanced "know your bank" procedures should also be implemented including through a more thorough analysis of financial information available to IFSA. It should also discourage ownership and control structures of banks and other institutions that could reduce transparency, and could limit capacity to conduct regular reviews of fit and proper criteria. In particular, entities owned or controlled through holding companies, trusts and/or similar arrangements, especially in other countries, should be strongly discouraged as they tend to obscure ownership and control, and make it more difficult to establish compliance with fit and proper criteria. It also makes it more difficult to conduct supervision on a consolidated ongoing basis requiring suitable cross-border cooperation mechanisms. The latter seem to be largely absent with respect to countries where SVG FIs ownership is legally held and/or where they are managed or operate.

499. The growth area in the international sector appears to be in the mutual funds, insurance and company and trust services area. Consequently, the licensing of such operations should continue to adhere to strict fit and proper criteria, including due diligence of license applicants and their promoters to complement the outsourcing of this process.

Application of Prudential Regulations to AML/CFT (c. 23.4):

500. There are several domestic banks and insurance companies that are branches or subsidiaries of foreign institutions. In several cases, there is a lack of consolidated supervision by their home supervisor and inadequate contact/cooperation with the host supervisors for purposes of ongoing supervision and onsite AML/CFT inspections in particular. Supervisors should review and apply the relevant principles contained in the Basel core principles (banks), IOSCO principles (for securities and mutual fund entities)

and IAIS principles (for insurance) especially in the areas of consolidated supervision, supervisory cooperation, audit and licensing criteria.

501. There a no offshore banks that are affiliates of other banks abroad but there some are owned under trust arrangements. In such cases, there is a need to strengthen supervisory cooperation with the authorities of countries where the trustees/trusts are domiciled, and where offshore entities operate. In this regard, IFSA should enter, as planned, into supervisory cooperation arrangements with Brazil and Liechtenstein, and should consider others countries such as e.g. Switzerland and Malta, and CARICOM where these are lacking.

502. To enhance the independence of the regulators, especially with respect to the international financial sector, the regulatory laws should be reviewed to ensure that key regulatory powers and operational decisions such as authorization and administrative enforcement, lie within the legal jurisdiction of the main supervisory body, as appropriate.

503. In addition to the above, the marketing/promotion function of IFSA under the IFSA Act should be removed as that function has been transferred to NIPI (National Investment and Promotion Inc.)

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5): Money transmission businesses:

Money remitters:

504. All money services business are required to be licensed mainly under Secs. 4 to 6 of the Money Services Business Act, 2005. The Act covers business that involves (i) the transmission of money or monetary value in any form; (ii) check cashing; (iii) currency exchange; (iv) issue, sale or redemption of money orders or travelers checks; and (v) any other service that the Minister of Finance may specify by notice published in the Gazette; or (vi) the business of operating as an agent or franchise holder of any of the forgoing five business activities. A licensed domestic or international/offshore bank does not require a license if it conducts money services business in conjunction with its other activities. However, they require a license if the bank conducts such business as an agent or franchise holder of a money service business.

505. The mission is aware of one possible case of unauthorized money services business in SVG.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

506. All of the money services businesses described under c. 23.5 above are subject to the AML/CFT requirements under the POCA and Regs and are listed in Schedule 1 of the POCA. However, other than money transmission business conducted by domestic banks that have been supervised by the ECCB , standalone MSBs have not as yet been supervised by the Ministry of Finance for compliance with the AML/CFT requirements. There is a requirement under Sec. 10 of the Money Services Business Act that requires MBSs to file a quarterly return to the Ministry of Finance in the requested format. Post mission, the authorities stated that since June/July 2008, monthly and quarterly returns are being filed with IFSA for transactions exceeding EC$$10,000 as required under the POCA Regs. However, the mission could not review these returns or their use, and the POCA Regs do not specify any transaction reporting requirements.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

507. In SVG, there are two known money lending operations that openly advertise their activities and that, apart from the corporate registration requirements, are not subject to a licensing and supervision for AML/CFT. While the authorities claim that they would fall under the supervision of the FIU, this had not been done at the time of the mission. They are subject to the POCA and Regs and are listed as a relevant business activity in Schedule 1 of the POCA. The size of their operations has not been established, nor has their beneficial ownership, control and source of funding been ascertained by the authorities. The uncertainty as to the size of their operations, sources of funding, and their beneficial ownership and control, raise the potential of significant ML/FT risk to the jurisdiction, and any other FI that provides services to these operations.

Guidelines for Financial Institutions (c. 25.1):

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

508. **(For the sake of order and simplicity, c. 29.2, c. 29.3 and c. 29.4 are described under this heading by regulator, regulated entity and applicable law. Summary analysis and conclusions are provided under the respective criteria that follow.)** (See also Rec. 17. Also, for purposes of this part, "international" and "offshore" may be used interchangeably or together.)

509. Except for international (offshore) banks and money services businesses (MSBs), there are no specific provisions in the POCA, Regs, or the United Nations (Anti-Terrorism Measures) Act or any other law that explicitly designates the authorities responsible for monitoring and enforcing compliance with the AML/CFT requirements. The emergency powers of the ECCB and those for domestic banks can be generally used for AML/CFT purposes but are inconsistent with and not as explicitly stated under Sec. 23 of the International Banks Act and the Money Services Business Act. The authorities, mainly IFSA and the ECCB, also have general powers to supervise FIs and to enforce compliance with the applicable financial and regulatory laws which could usefully be extended to AML/CFT requirements as for entities under their jurisdiction. The following describes these powers.

ECCB

Domestic Banks:

510. The ECCB is the regulator and supervisor of domestic banks in SVG (and in the other six Eastern Caribbean Currency Union members). Certain functions are carried out in coordination with the Minister of Finance for certain issues, e.g. licensing and enforcement. Its functions and powers are provided under the ECCB Agreement Act that established the ECCB, and is complemented by more specific supervisory duties under the Banking Act, 2006. The following provisions apply with respect to domestic banks:

ECCB Agreement Act:

511. Sec. 3 of the Act empowers to the ECCB to, inter alia, regulate banking business on behalf of and in collaboration with Easter Caribbean Currency Union (ECCU) governments (Ministers of Finance) which includes the exercise of all powers specifically granted by the provisions of the Act to do all such things as shall be necessary to carry out such powers.

512. Under Part IIA of the Act, the ECCB has been granted broad emergency powers to intervene, assume control of and take other necessary action against a bank when the ECCB is of the opinion that, inter alia, a bank is not acting in the interest of depositors and creditors or is not maintaining high standards of financial probity or sound business practices. Such powers include inter alia, investigation the bank and its affiliates, assume control of its affairs, and ensure that the financial institution maintains high standards of financial probity and sound business practices. For that purpose it can examine and supervise the operations of the financial institution, issue cease and desist orders and stipulate prudential criteria to be followed by the financial institutions. In the exercise of such powers, the ECCB shall have access to books and records of a bank.

513. However, these powers are limited under Sec. 5B to those circumstances where the ECCB is of the opinion that the financial system of any of the territories of ECCU governments is in danger of disruption, substantial damage, injury or impairment. In principle this could involve criminal activities.

514. Under Sec. 41 of the Act, the ECCB shall act as agent for the ECCU governments in the administration of any law or regulation relating to the licensing of any offshore banking or offshore trust operation. In this connection, the ECCB shall monitor the operations of offshore financial institutions in accordance with the laws or regulations under which such financial institutions have been licensed to operate and shall take account of such guidelines as the ECCB's Monetary Council may issue for this purpose. In practice, the ECCB no longer participates in the supervision of offshore banks as a matter of routine.

Banking Act:

515. Sec. 20 of the Act also provides the ECCB with the power to examine banks from time to time or whenever it believes that such examination is necessary or expedient in order to determine that such financial institution is in a sound financial condition and that the requirements of this Act have been complied with. These powers, as those under the ECCB Act, can apply only in a very broad basis (e.g. safety and soundness issues) but not specifically for AML/CFT purposes. Sec. 21 further provides that banks shall produce for the inspection of any examiner appointed by the ECCB at such time as the examiner specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of this Act. It is an offence not to produce such records for inspection, or where such records are false, and banks can be subject to monetary fines on summary conviction.

516. Sec. 23 (1) of the Act requires banks to furnish the ECCB from time to time and in such form such manner information and data for the proper discharge of its functions and responsibilities. Under Sec. 23(6), the ECCB may further require banks to submit any other information which it may require for the purposes of this Act from any financial institution about its operations and those of its affiliates in SVG and abroad. Fines can be applied for non-compliance on summary conviction.

517. Under Sec. 19 of the Act, the ECCB can appoint annually an auditor whose duties shall be, inter alia, to certify whether suitable AML/CFT measures have been adopted by a bank and are being effectively implemented in accordance with the applicable laws. Auditors are required to report to the ECCB any evidence of criminal activity involving fraud (but not ML or FT), or if they detect serious irregularities.

518. The sanctioning powers available to the ECCB can only broadly and indirectly apply for non-compliance with the AML/CFT requirements. Under Sec. 22 of the Act, where the results of an examination of a bank shows that the entity or its directors, officers, employees, significant shareholders, etc. are engaging in unsafe or unsound practices in conducting the business of the institution, is violating any law, regulation or guideline issued by the Central Bank to which the institution or person is subject, or the ECCB has reasonable cause to believe that the practices or violations are likely to occur, the ECCB may take one or more sanctioning or corrective measures including the issue of warnings, directions, conclude written agreements (in practice memoranda of understanding are mainly used), cease and desist orders, and make recommendations to the Minister for restricting or revoking a license. Directors, officers, employees, significant shareholders, etc. are subject to financial penalties for non-compliance on summary conviction. Under Sec. 29 monetary fines can also be applied, on summary conviction, against, a director, manager, secretary, employee or agent of a bank who with intent to deceive: (i) makes any false or misleading statement or entry; (ii) omits any statement or entry that should be made in any book, account, report or statement of the financial institution; or (iii) obstructs or endeavors to obstruct the proper performance by an auditor under the Act or of an examination by an authorized examiner.

519. Sec. 11 of the Act provides the ECCB with a broad power to recommend to the Minister of Finance the revocation of a bank license where a bank is conducting its affairs in a manner that is detrimental to the national interest and those of its depositors. This could again broadly cover AML/CFT issues.

520. The ECCB Act and the Banking Act do not contain explicit provisions for the ECCB to supervise banks for compliance with the POCA and the AML Regs, except for the general indirect powers described above. It would be useful to include explicit powers to supervise and enforce compliance with the POCA and the Regs as well as the relevant provisions of the United Nations (Anti-Terrorism Measures) Act. Such explicit provision would be consistent with and complementary to those obligations imposed on external auditors to review and certify the existence and implementation of AML and CFT measures by banks. The range of enforcement powers, particularly the application of administrative measures, contained in the Banking Act should also be available for enforcement of the AML/CFT obligations. The ECCB should also be empowered to initiate/refer enforcement proceedings with/to the competent SVG authorities for enforcement of violations of under the POCA, Regs and anti-terrorism legislation. The AML/CFT legislation could also identify the ECCB as the competent authority with respect to the supervision of entities under its supervision, and for the application of administrative sanctions for non-compliance with the AML/CFT requirements using powers under the financial regulatory laws.

IFSA

Saint Vincent and the Grenadines International Finance Authority Act:

521. Sec. 3 of the Act establishes IFSA as the authority responsible for administering and supervising international (offshore) legislation. The international legislation currently in place, while not mentioned under Sec. 3, include those sectors relating to international (offshore) banks, international insurance, mutual funds, international trusts and trustees, registered agents, international business companies, and any other future offshore legislation. To the extent that these laws include or are linked to AML/CFT supervisory requirements (see sector-specific discussions that follow), the Act provides IFSA with supervisory jurisdiction.

522. In addition, Sec. 8 of this Act also expands on the duties under Sec. 3 stating that IFSA shall have the "duty, ultimate authority and exclusive right" to, inter alia, administer the licensing and supervision provisions in the laws relating to trusts and trustees, registered agents, international banks, and to oversee the activities of the Registrar of IBCs (international business companies) and the Registrar of trusts in accordance with the applicable legislation. Sec. 8 does not explicitly cover the full range of international entities that could be covered under Sec. 3 above. This should be reviewed for consistency to remove the uncertainty with respect to the scope of IFSA's supervisory jurisdiction under this Act. Sec. 8 also designates the International Finance Inspector as the person responsible for discharging the duties of IFSA where these have been delegated under this Act or other international legislation.

523. With respect to enforcement, IFSA may call on the government of SVG to assist in carrying out and enforcing decisions, rulings and resolutions it makes, and for purposes of carrying out its duties and responsibilities under the Act and under other applicable laws of SVG. These provisions should be explicitly extended to the AML/CFT laws, and similar powers would also be useful for the ECCB for the supervision and enforcement or initiation of enforcement and sanctions proceedings under the AML/CFT legislation, including for enforcement through the courts.

International (offshore) banks:

The International Banks Act:

524. Sec. 23 of the Act states that IFSA "shall be responsible for monitoring compliance by a licensee with the requirements of Sec. 46 of the Proceeds of Crime and Money Laundering (Prevention) Act. However, for the avoidance of doubt, the mission recommends that this power extends to the Regs issued under the POCA. The POCA Regs have specific compliance requirements as well as corresponding sanctions for violations. In addition, the POCA does not provide for sanctions (administrative or otherwise) for breaches of Sec. 46 of the POCA, except for Sec. 46(4) which is limited to failure to report a suspicious transaction. (See discussion under Money Services Business below with respect to the similarities to Sec. 46). Neither are there sanctions in the POCA for non-compliance under Sec. 46 that deal with the duty to implement compliance programs to ensure and monitor compliance with the Regs. The POCA Regs provide explicit sanctions for non-compliance.

525. There is a need, therefore, to extend the provisions of Sec. 23 of the International Banks Act (as well as in Sec. 9 of the MSB Act and all the other financial and regulatory laws) to the POCA Regs. In addition, it would be important to specify (in this Act, or the POCA and Regs.) that IFSA also has the power to enforce compliance and to apply the administrative sanctions under the International Banks Act, and to initiate (through the competent SVG authority e.g. FIU, police or DPP) enforcement action for breaches of the AML/CFT legislation.

526. Sec. 19 (1) of the Act states that IFSA's functions under the Act shall be conducted under the supervision of the Minister of Finance. Sec. 19(2) establishes the broad functions of IFSA that include, inter alia (i) to examine the affairs or business of licensees including the conduct of onsite inspections to determine if they are conducting their business in a satisfactory manner; (ii) to inspect the books and records, and request information from the appropriate authorities in any country with respect to the holding company, parent company or shareholder company of a licensee; and (iii) to assist with investigations of violations of SVG laws or of any other country where that country has sought assistance in connection with offences by a licensee or any of its officers or directors. In the exercise of its powers, IFSA can under Sec.

19 (3) call upon an auditor, director, officer or employee of a bank to produce books, records, documents, etc. relating to its business generally and any other information about its affairs and business. These provisions can facilitate AML/CFT supervision.

527. For purposes of performing its functions, Sec. 19 (5) of the Act empower IFSA to, subject to any applicable confidentiality provisions (see Rec. 24 with respect to Sec. 15(4) of the Registered Agents and Trustees Act for restrictions on access to information held by certain DNFBPs), have access to books, records, documents, cash, securities, etc. and may request any information, matter or thing from any person IFSA believes is carrying on business without a license. Under this subsection, it can also examine or cause to be examined the foreign affiliates of a licensee to the same extent that a licensee can be examined. However, Sec. 19(9) states that for purposes of Sec. 19(5) it is the "Executive Director" and not IFSA who shall have access to the name or title of an account of a customer and any other confidential information about the customer that is in possession of a licensee. There are no explicit powers for the Executive Director to delegate or appoint someone to conduct this specific function/activity which may create practical limitations for routine ongoing supervision. Any account established by a licensee on behalf of a customer shall state the name and address of the customer and or the beneficiary of the account.

528. Sec. 19(10) authorizes IFSA to examine or cause to be examined the affairs of licensees (or previous licensees) from time to time or to determine, inter alia, if they are complying with the Act. This covers AML elements such as under Sec. 14 (3) where e.g. the directors of the bank are required to manage and supervise the conduct of business and to establish AML policies, internal controls and procedures. Sec. 19(11) further provides for IFSA to examine or cause to be examined any affiliate of a bank to ascertain compliance with the Act and whether they are engaging in unsafe and unsound practices. This would also broadly cover AML/CFT issues.

529. Sec. 13 of this Act has provisions that are broadly similar to those in the Banking Act that requires an international bank to appoint an external auditor to audit its accounts and to report to the bank and IFSA any evidence of a criminal offence that may come to their attention during their audits involving fraud, money laundering or dishonesty. It does not include the duty to report terrorism finance crimes.

530. Under Sec. 19(9), IFSA may petition the court for an order authorizing it to take any action it considers necessary in the interest of depositors or other creditors and to preserve the assets of a bank that is subject to such an order. It can make this petition when it suspects that there is a contravention of the Act or where a contravention is likely.

531. Sec. 20 enables IFSA to take one or more remedial measures when a bank is engaging in unsafe and unsound practices or is in violation of laws, regulations (can include the AML/CFT laws) or guidelines. Such measures can include: (i) a written warning; (ii) enter into a written agreement with the bank providing for a program of remedial action; (iii) issue a cease and desist order that requires the bank, director or officer with respect to practices or violations of law specified in the order; or (iv) issue any directions to the bank it deems necessary.

532. Sec. 21 provides additional powers to IFSA to take certain actions, with the advice of the Minister of Finance, when, inter alia, a bank is carrying on business in a manner detrimental to the interest of the public, depositors or other creditors, has breached the Act, where a director, officer or manager is not a fit and proper person, or where it has not managed its business in a fit and proper manner. These issues broadly cover AML/CFT issues. The measures that IFSA can take in these circumstances are to: (i) revoke

the license; (ii) impose new or additional conditions on the license; (iii) substitute a director or officer; (iv) appoint a person to advise the bank on the conduct of business; (v) appoint a person to assume control of the bank; (vi) require the bank to take any other action IFSA considers necessary. IFSA may take other consequential or ancillary actions in relation to the forgoing, in some cases under the advice of the Minister.

533. Sec. 27 (1) provides for sanctions against licensees, directors, shareholders or officers, or applicants for licenses, for supplying false or misleading information to IFSA which can be, on summary conviction, a fine of EC$100,000 and/or to imprisonment of two years. Under Sec. 27(4), a person can be subject to similar penalties if, inter alia, he fails to comply with a request made by IFSA or contravenes any provisions of the Act or its regulations where no punishment is specifically provided.

Mutual Funds

Mutual Funds Act:

534. There are no provisions under this Act, as under the International Banks Act, for IFSA to monitor, supervise or enforce compliance with the POCA and the AML Regs. In addition, IFSA does not have statutory powers to supervise fund underwriters who, under the Act, can offer fund shares to the public, or as agent for a mutual fund, offers for sale or sells to the public shares issued by the mutual fund. (Sec. 2 of the Act).

535. Sec. 3 of the Act provides for the appointment of a Registrar by the IFSA (an employee of IFSA), with the approval of the Cabinet. In particular, the Registrar is responsible for supervising mutual funds, mutual fund managers and fund administrators, (but not underwriters) and for issuing directives and policy guidelines for the purpose of this Act or regulations issued thereunder. IFSA may also appoint other staff to administer the Act. Such powers do not legally extend to the AML/CFT requirements applicable to the mutual fund industry.

536. Under Sec. 35 of the Act, the Minister of Finance may, on the recommendation of IFSA, direct that all or any of the provisions of this Act or the regulations shall (a) not apply, or (b) apply subject to such modifications as he may specify to any person or any class of persons. Such broad discretionary powers for the Minister if used could result in effectively exempting certain funds, managers or administrators from provisions that could affect supervision and enforcement generally. The assessors were informed that the authorities have not used such powers.

537. The Act allows mutual funds to keep its accounting records and financial statements, “and such other documents or information” outside SVG [see e.g. Sec. 13 (1)(b)(ii)] as the funds’ officers see fit, provided that the Registrar may require that copies of such records, statements, other documents and information be kept in SVG. Apart from books and records under Reg. 23 and Sec. 13 of the Act, other documents and information would seem to refer mainly to prospectuses and offering documents per Reg. 22 and 14 of the Act. These requirements would make it impractical and expensive, for any purpose, for IFSA to access such records and information for purposes of examination and ongoing supervision of funds, administrators and managers, and would not be suitable for AML/CFT purposes. In addition, Regulation 3(2) refers to access to financial statements by investors under Sec. 12(2)(c) to the effect that where a fund has issued bearer shares, an investor must produce the “original” of the shares to the officer of the fund in order to inspect such statements. To the extent that mutual funds have issued bearer shares to

investors that are physically under the possession or control of investors, it could have implications on the fund administrators' ability to conduct effective CDD and for IFSA to examine for compliance with the same. This regulatory provision should also be reviewed with respect to the immobilization requirements for bearer shares of SVG international business companies (IBCs). See also Rec. 33 below.

538. Under Sec. 36 of the Act the Registrar or any other person authorized by IFSA may direct in writing any person to whom this Act applies to (a) furnish information, or (b) provide access to any records, books, or other documents relating to the mutual business of that person that are necessary to enable him to ascertain compliance with the provisions of this Act or the regulations. As indicated above, the Act does not address compliance with the POCA, Regs and the UN (Anti-Terrorism Measures) Act but these provisions on access to information could facilitate an examination of compliance with the AML/CFT requirements. However, it would be useful to have explicit powers to monitor for AML/CFT compliance as exist under the International Banks Act.

539. Notwithstanding the above, the Mutual Fund Regulations (Regulation 23) require that books and records of a mutual fund be kept "at the principal office in the state" of each fund. Furthermore, each fund shall maintain permanently at "its principal office in the State" such books of accounts and records of this business and financial affairs as will, inter alia, enable the Registrar to conduct at any time a proper examination of the mutual fund's affairs. (The latter "State" means SVG but unclear whether the former "state" also means SVG or any other country where it may have a principal office. Principal office is not defined.) These records shall include, inter alia, general and subsidiary "ledges" (presumably ledgers) and general journals, and any other registers or records as may be directed or authorized by the Registrar. It is not specified that any of these include investor records including of investment subscriptions and redemptions but these may implicitly be covered. It should also be clarified whether such records may or may not be kept outside of SVG, but in practice the records of a large majority of SVG registered funds are kept in other countries, which would make ongoing supervision less practical and cost effective, particularly onsite inspections. Where such funds may also be subject to regulation in another country, "legal" access to such records may also require formal procedures with the authorities of those other countries making the ongoing supervision.

540. Under Regulation 24, the Registrar may also appoint an accountant to examine the affairs of a mutual fund where it believes that the books and records are not kept in accordance with the Regulations. The purpose of such an examination appears to be to establish the financial accounts/position and accuracy of filings of the fund per Exhibit 18 of the Regulations. It would be useful to specify that such examination will cover AML/CFT compliance. The authorities assert that such purpose is broad enough to include AML/CFT compliance.

541. Under Sec. 29, IFSA may take enforcement action against mutual funds, licensed managers or administrators (but not underwriters) that include cancellation of a certificate or a license, or imposition of conditions, restrictions or limitations on such certificates or licenses where a licensee has, inter alia, been convicted of an offence under this Act or of a criminal offence in any country or jurisdiction; has supplied false, misleading or inaccurate information or failed to disclose material information required for the purposes of any provision of this Act or the regulations; or is carrying on business in a manner detrimental to the interests of mutual funds investors or to the public interest. There should be provisions to use such enforcement powers for AML/CFT supervision and compliance purposes.

542. Under Sec. 29 of the Act, IFSA may cancel a certificate or license if, inter alia, the holder thereof has been convicted of a criminal offence or is carrying on business in a manner detrimental to the interest of mutual funds investors or the public interest. In its broadest these provisions can cover AML/CFT issues. In addition, under Sec. 37 (2), IFSA "may bring actions and institute proceedings in its name or office for the enforcement of any provision of this Act or the regulations, or for the recovery of fees and other sums of money payable under this Act or the regulations". These provisions should explicitly extend to non-compliance with the AML/CFT legal requirements. Sanctions can also be applied to any person who: (a) makes a misrepresentation in any document required under this Act or the regulations (b) makes false statements or information required under this Act or the regulations (c) fails to disclose any fact or information required to be disclosed for the purpose of this Act or the regulations, or (d) refuses or neglects to comply with a request for information and documentation under Sec. 36 (see above). The sanctions are, on summary conviction, a fine of not less than EC$5,000 and not more than EC$50,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment. In addition, a person who contravenes a provision of this Act or the regulations for which no penalty is provided may be liable on summary conviction, (a) in the case of a body corporate or unincorporated, to a fine of not more than EC$50,000 and (b) in the case of an individual, to a fine not more than EC$5,000 or to imprisonment for a period not exceeding one month or to both such fine and imprisonment.

543. Sec. 5 of the Act also requires the Registrar to submit an annual report to IFSA, which shall send a report to the Minister of Finance that includes enforcement proceedings or disciplinary measures taken under the Act.

Domestic Insurance Companies

Insurance Act:

544. There are no provisions under this Act or any other legislation that explicitly empowers the Supervisor of Insurance to monitor, inspect and enforce compliance with the AML/CFT requirements.

545. Under Sec. 4 of the Act, the Minister of Finance shall designate a Supervisor of Insurance ("Supervisor") who shall comply with any special directions given to him in writing by the Minister. Sec. 5 states that the Supervisor may engage other persons to, inter alia, conduct investigations, inquiries or functions under this Act, and may delegate all or some of his powers under the Act to other employees of the Ministry. Under Sec. 46, the Supervisor may require an insurer to furnish information with regards to its business including securities, books, accounts, papers, documents, etc. at a time, manner and place the Supervisor determines. Such documentation shall be furnished even when they are in possession of another person. In pursuance to such powers, the Supervisor can take copies or extracts of documents and to obtain explanations concerning the same. Where such information has not been produced, the Supervisor can seek for an explanation as to why they were not produced. In principle, these powers can be used to access and inspect records for AML/CFT purposes.

546. Sec. 47 requires the Supervisor to obtain a warrant from a Magistrate to enter and search the premises of an insurance company when it believes that information and documentation requested by the Supervisor under "Sec. 45" of the Act has not been produced. (This is an erroneous reference with the correct section being Sec. 46 as described in the preceding paragraph.) The warrant requires the participation of the police. Under such judicial order, the Supervisor can seize and remove records, etc.

547. Under Sec. 48 and Sec. 49 the Supervisor can intervene in the affairs of an insurance company, and impose requirements, for a number of prudential and safety and soundness issues but not for AML/CFT purposes either directly or indirectly. Such powers should extend for AML/CFT purposes.

548. Under Part IV of the Act, the Supervisor has broadly similar powers with respect to associations of insurance underwriters, under Part V for insurance intermediaries (brokers, agents and sales representatives), and Part VIII for pension plans. The Act also provides for penalties for breaches of the law but not for AML/CFT.

International (offshore) Insurance:

International Insurance Act:

549. There are no provisions under this Act or any other legislation that explicitly empower the Supervisor of Insurance to monitor, inspect and enforce compliance with the AML/CFT requirements.

550. Under Sec. 5 of this Act, IFSA shall appoint a Commissioner of International Insurance ("Commissioner") and a Deputy and any other persons for the administration of the Act. The Commissioner has the duty for general supervision of insurance business (includes reinsurance and all other activities regulated under the Act that would include intermediaries) and shall include examination of matters connected with international insurance business.

551. Sec. 7 states that, subject to the "confidentiality Act" (not defined but may refer to the Confidential Relations Preservation Act which has been repealed), the Commissioner shall have access to, and make copies of, books, records and documents, etc. of any insurer, insurance manager or other intermediaries (agents, brokers, adjusters). The Commissioner can also make inquiries of these parties with respect to the conduct of their business affairs. Any officer or person in charge of or in possession of such information who refuses to provide such access or to answer to inquiries, commits an offence.

552. The International Insurance Regulations, under Reg. 11, also require insurers to maintain at their principal office in SVG such books of accounts and records of its affairs that, inter alia, will enable the Commissioner to conduct an examination of the insurers' affairs for purposes of ascertaining its financial condition and compliance with the insurance legislation. While under Reg. 12(g) the Commissioner may require a licensee to keep any other register or records as may be specified by the Commissioner, this is insufficient. It is recommended that the purpose of the Commissioner's examination and the types of records should explicitly cover AML/CFT compliance issues. It does not extend to AML/CFT compliance. It is important to note that for purposes of keeping books and records, the insurance Regulations (Reg. 11) only require that the Commissioner has access to such books and records through electronic means. This requirement presumably is aimed at allowing insurers and their managers to hold original documentation outside of SVG, as appears to be the general practice. Only a certification from a director or principal officer of the insurer as to their accuracy may be requested by the Commissioner. Regulation 12 also provides for the Commissioner to appoint auditors or accountants to conduct examinations of insurers but only for financial condition purposes.

553. The Act also provides for sanctions and intervention by IFSA for breaches of the Act, but which may apply for AML/CFT purposes in a very general sense. In particular, under Sec. 34 where IFSA is of the opinion that a licensee, inter alia, is carrying on business in a manner detrimental to the public interest

or policy holders. Sanctions may involve suspension or revocation of certifications of authority (evidencing licenses).

554. In addition, Sec. 36 requires insurance managers to report to and provide information and documentation to the Commissioner, when they have knowledge of or information that an insurer is, inter alia, is experiencing a serious state of affairs that is or may be prejudicial to the interests of policyholders and creditors, or is involved as a defendant in any criminal proceedings. Under these circumstances, IFSA can revoke a license if it considers the circumstances reported may be detrimental to the public interest or those of policyholders. Furthermore, Sec. 43 states that where IFSA is of the opinion that a licensee is or may be carrying on business in a manner that can be detrimental to the public interest or those of policyholders, etc., it may require information from such entities and require that they take remedial measures. These requirements maybe complementary to IFSA's/Commissioner's duty to supervise and may broadly involve AML/CFT issues, but is insufficient for purposes of Rec. 29.

555. Sec. 46 provides for offenses and financial and imprisonment penalties for non-compliance with the Act on summary convictions.

Credit Unions

556. Co-operative Societies Act: There are no provisions in this or any other law for the supervision and enforcement of compliance by cooperatives with the AML/CFT requirements. Under the Act, the Registrar of Co-operative Societies shall have staff necessary to assist him to, inter alia, register and supervise cooperatives. Such powers can be delegated to his staff. Sec. 19 contains provision for the Registrar to examine the records of cooperatives but these are limited to those listed under Sec. 18(2) which does not include books, records and other documents with respect to its business affairs including with respect to its depositors and members. The latter would be necessary for AML/CFT purposes.

557. Under Sec. 180, the Registrar may appoint an examiner to conduct an examination of the books and affairs of a cooperative. In such cases the officers, members, agents or employees shall provide the examiner with books, accounts, securities, or other documents the examiner requires to perform the examination. However, access may be limited by the provisions of Secs. 18 and 19 of the Act. Under Sec. 181, the Registrar may also apply to the Court for an order to conduct an investigation of the cooperative and any of its member societies or corporations. The powers of the inspector authorized to conduct the investigation are broad in terms of access to documents and premises, etc. (Sec. 182). None of the underlying reasons for such an investigation are sufficient or related to e.g. criminal activity involving ML/FT or legal violations that could apply to the AML/CFT legislation.

Money Services Business (MSB): Money Remitters

Money Services Business Act (2005):

558. Sec. 9 of the MSB Act designates the Ministry of Finance as the "Authority", or its designee, as responsible for monitoring compliance with the requirements of Sec. 46 of the POCA, but not with the POCA Regulations. (This provision is similar to that under Sec. 23 of the International Banks Act.) In practice, the SRD of the Ministry of Finance will carry out this function. In addition, Sec. 9(2) of the Act states that MSBs shall comply with the requirements of Sec. 46 of the POCA but not with the Regs. The POCA Regs have specific compliance requirements as well as corresponding sanctions for violations. On

the other hand, there are no sanctions for breaches of Sec. 46 of the POCA, except for Sec. 46(4) which is limited to failure to report a suspicious transaction. There are no sanctions in the POCA for non-compliance with the other obligations under Secs. 46 and 47 that deal with the duty to implement compliance programs to ensure and monitor compliance with the Regs. Therefore, the compliance, monitoring and administrative sanctioning provisions in all the financial and regulatory laws should extend to the full range obligations imposed on FIs by the AML/CFT legislation.

559. In addition to Sec. 19, the Authority shall exercise general supervision over all matters relating to MSB practice in SVG. Under such powers, it may examine the affairs or business of any MSB in SVG for purposes of, inter alia, satisfying itself that business is being conducted in a satisfactory manner, and MSBs are complying with the MSB Act, which under Sec. 9 would include compliance and supervision with Sec. 46 of the POCA. As discussed above, it would not extend to the POCA Regs which is necessary for purposes of enforcement. Sec. 19 also allows the Authority to assist in the investigation of an offence against the laws of SVG by the MSB or any of its directors or officers. The powers to examine an MSB can extend to the supervision of parent, subsidiaries and affiliated companies.

560. In the exercise of its functions under the Act, the Authority may, under Sec. 19 (3), have access to the premises, books, records, vouchers, documents, cash and securities of licensees; remove and make copies of the same; request information, matter or thing from any person who may be carrying on unauthorized business; and call upon any manager or similar person or officer for any information or explanation. Any person who fails to comply with any requirements under Sec. 19(3) above commits an offence and liable on summer conviction to a fine of EC$5,000 and/or to six months in prison.

561. Sec. 20 also provides broad powers of inspection to the Authority when, inter alia, it believes that a licensee is carrying on business in a manner detrimental to the public interest or that of its customers, has contravened the Act, imprudent management, failure to cooperate under Sec. 19(3) above, or is carrying on business in an unlawful manner. All of these circumstances could generally apply to AML/CFT issues. The powers of the Authority to act in these cases include, inter alia, revocation of a license, attachment or varying of conditions, substitution of directors or officers, appointment of persons to advise the licensee, assume control of the licensee, or require a licensee to take or cease or desist from certain actions.

562. Sec. 24 of the Act also allows, for the Authority to apply for a search warrant to enter premises, vehicles, etc. to obtain evidence of offences against the Act, or where books, records, documents, etc. requested under Sec. 19(3) have not been produced. Any person who obstructs the Authority or authorized person under this section commits an offence and can be penalized upon summary conviction to a fine or imprisonment. The provision of false or misleading information is also sanctionable under Secs. 25-27 of the Act.

563. Under Sec. 19(4), where the Authority suspects that an offence under the Act has or is being committed, the Authority with the approval of the Court, take any action it considers necessary in the interest of customers, etc. and to preserve the assets held by that person.

Building Societies (There is only one systemically important Society by virtue of its asset size and number of clients.)

Building Societies Act:

564. Societies are registered with the Register of the High Court of SVG. However, other than registration and the filing of periodic returns, there are no provisions or mechanisms in the Act, POCA or Regs for there is no regulatory or supervisory regime that is in place for purposes of AML/CFT supervision and enforcement.

Money Lenders

565. There are two well-known money lenders operations that are subject to the AML/CFT laws and regulations, but which are not covered by any legislation with respect to authorization, regulation, and supervision. Hence, there is no regime for AML/CFT oversight and enforcement.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

566. See c. 29.1 above.

567. There are supervisory powers to examine or inspect the operations of the books and records of FIs, but those are primarily for purposes of compliance with the applicable financial laws and not explicitly for AML/CFT purposes. The International Banks Act does provide for IFSA to monitor for compliance (c. 29.1) but these should be more explicitly linked to the authority to conduct onsite inspections and to compel records, and to enforce compliance with the AML/CFT requirements under c. 29.3 and c. 29.4 below. In addition, Sec. 19 of this Act limits access to the Executive Director of IFSA to customer account names and titles (see c. 29.1 above) and to any other confidential information about an offshore bank's customer. This would be impractical for reviewing and testing compliance with e.g. the customer identification and recordkeeping requirements under the AML/CFT legislation, in the absence of an explicit power to delegate this function to others. In practice but infrequently, IFSA has conducted examinations of banks and reviewed customer files through a team of examiners and consultants. In the past 3 years, most offshore bank examinations were conducted within a period of 3–5 months the preceding the mission.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

568. See c. 29.1 and c. 29.2 above. In addition, the ability of certain international financial entities e.g. mutual funds and insurance, to keep records outside of SVG can limit the authorities' ability for the conduct of ongoing AML/CFT supervision and enforcement, particularly the conduct of onsite inspections.

Powers of Enforcement & Sanction (c. 29.4):

See c. 29.1 and c. 29.2 above and c. 17.1 – 17.4 below):

569. The provisions in the financial and AML/CFT legislation should be strengthened to enhance the powers of all the relevant regulators to enforce or initiate enforcement, and apply administrative sanctions for compliance with the AML/CFT legislation per se, including the application of administrative sanctions available under the financial laws. There should also be explicit authority to enforce the AML/CFT requirements through the sanctioning powers in the financial and regulatory laws, particularly the application of administrative measures.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

570. (See also c. 29.4 above.) As shown by the charts below, except with respect to criminal fines in the International Banking Act, the Banking Act, POCA, UNATMA, and those elements of POCA that are covered by the POCA Regulations, sanctions are not effective, proportionate and dissuasive. With respect to POCA and UNATMA, the offences in Sections 41–43 of POCA would apply in relation to ML, and Sections 3–6 of UNATMA relating to FT, and the criminal penalties for those offences are found in Sec. 47 of POCA and Sec. 7 of UNATMA, and in each case are the same: On summary conviction, a fine of up to EC$500,000 or imprisonment for five years or both, and on conviction on indictment, an unlimited fine or imprisonment of up to twenty years or both. However, criminal and administrative sanctions in other Acts, as set forth in the charts below raise concerns: For example, criminal penalties under the MSB Act are very low, as are those of the Mutual Funds Act. Other than the Banking and MSB Acts, sanctions are typically linked to broad concepts, such as carrying on business in a manner detrimental to the public interest (Sec. 21(1)(e) of the International Banks Act, Sec. 34(1)(a) of the International Insurance Act and Sec. 8(1)(a) of the RA Act) or "has not conducted the direction and management of the business in a fit and proper manner" (Sec. 21(1)(j) of International Banks Act). Finally, the Registrar of Cooperatives, an independent agency that regulates credit cooperatives and credit unions, is the only financial regulator that does not have any AML/CFT-related sanctions available to it, either criminal or administrative.

Designation of Authority to Impose Sanctions (c. 17.2):

571. The regulatory laws specified in the tables below provide for the authorities indicated to impose the sanctions noted, including IFSA for international banks, mutual funds, insurance companies and registered agents; the Minister of Finance for banks, MSBs and insurance companies.

Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):

572. In general, the regulatory laws have provisions, such as Sec. 27(1) of the MSB Act, Sec. 27(3) of the International Banking Act and Sec. 24(3) of the Mutual Funds Act, to impose sanctions on both the legal person and its directors and senior officers.

Range of Sanctions—Scope and Proportionality (c. 17.4):

573. In general, as shown by the charts below, regulators do not have a wide range of sanctions available to them.

Sanctions Available to IFSA for Regulated Sectors

Type of Sanction	International Banks (all citations to International Banks Act)	Mutual Funds (all citations to Mutual Funds Act)	International Insurance (all citations to International Insurance Act)	Registered Agents and Trustees (all citations to Registered Agents Act)
Issuance of letters requesting remedial action	N/A	N/A	N/A	N/A
Orders to comply with instructions	Impose new or additional conditions on the bank, Sec. 21(2)(b); require the bank to take any action that IFSA deems necessary to rectify certain issues, Sec. 21(2)(f).	Impose new or additional conditions on certificate or license, Sec. 29; Issue directives for purposes of Act or regulations, Sec. 3(3)(d).	Require that the holder of the certificate of authority to take steps as IFSA deems necessary to rectify the matter, Sec. 34(1).	Require the registered agent to take steps deemed necessary by IFSA, Sec. 8(1)(a).
Civil money fines	N/A	N/A	N/A	N/A
Removal of control parties	N/A	N/A	N/A	N/A
Removal of directors and senior executives	Require the substitution of any director or officer of the bank, Sec. 21(2)(c)	N/A	N/A	N/A
Imposition of Conservatorship	Appoint a person to assume control of the bank's affairs with the powers of a receiver or manager under Companies Act and any other power conferred by IFSA, Sec. 21(2)(e)	N/A	N/A	N/A

Criminal penalties	Knowingly or willfully supplies false or misleading information to IFSA, liable on summary conviction to a fine of $100,000 or to imprisonment for two years or both, Sec. 27(1); failure to comply with a request made by IFSA or contravenes any provision of the Act or regulations where no punishment provided, liable on summary conviction to a fine of $100,000 or to imprisonment for two years, or both, Sec. 27(4)(a) and (d).	a) willfully makes a misrepresentation in any document; b) willfully makes a false or misleading statement c) knowingly fails to disclose any fact or information; or d) any person who being in charge of books and records, fails to comply with a lawful direction, is liable on summary conviction to a fine of not less than $5,000 and not more than $50,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment, Sec. 40 (1): contravenes a provision of the Act or its Regulations for which no penalty is provided, liable on summary conviction for a fine of up to $50,000 if a corporation, and for a fine up to $5,000 and imprisonment for up to one month for a natural person, Sec. 40(2).	Knowingly makes any false representation in connection with a right, duty, or obligation under the Act, liable on summary conviction to a fine not exceeding $10,000 and to imprisonment for a term not exceeding two years and in the case of a corporate body to a fine not exceeding $10,000, Sec. 46(1); contravenes any requirement of the Act for which no specific penalty is provided, liable on summary conviction “to a fine not exceeding one year (sic)” and in the case of a corporate body to a fine not exceeding $5,000, Sec. 46(2).	Knowingly making a false representation, liable on summary conviction to a fine not exceeding $ 25,000 or to imprisonment for term not exceeding one year or both, Sec. 24(1)(b); Contravenes any provision of the Act for which no penalty is specifically provided, liable on summary conviction to a fine not exceeding $10, 000 or to imprisonment for a term not exceeding one year or both, Sec. 24(2)(c).

Additional powers	Appoint an advisor to the bank who reports to IFSA, Sec. 21(2)(d)

Sanctions available to the Ministry of Finance for domestic banks

Type of sanction	Related Section of Banking Act
Issuance of letters requesting remedial action	Memoranda of understanding and commitment letters (both non-binding) pursuant to Sec. 22(1)(i)
Orders to comply with instructions	Cease and desist orders, Sec. 22(1)(iii) and (4), and directions to management, Sec. 22(1)(iv)
Civil money fines	N/A
Removal of control parties	N/A
Removal of directors and senior executives	Sec. 27(2)
Revocation of license	Sec. 22(2)(b); restrict a license, Sec. 22(2)(a)
Imposition of conservatorship	N/A
Criminal penalties	Failure to comply by licensed financial institution with any requirement or contravenes any prohibition of Sec. 22 (see above) is liable on summary conviction to a fine of $100,000, and, in the case of a continuing offence, to a fine of $10,000 per day, Sec. 22(5)(a); failure to comply as above by any individual, including a director, officer, employee or significant shareholder of a financial institution, to a fine of $50,000 and to daily fine of $5,000; any director, manager, secretary, employee or agent of a financial institution who makes any false or misleading statement or omits any statement or entry or obstructs the proper performance by an auditor of his duties under the Act is liable on summary conviction to a fine of up to $15,000 or to imprisonment of up to two years or both, Sec. 29; offences may be compounded by the acceptance by the Minister in consultation with the ECCB of a fine of not more than $5,000 under Sec. 35.

Sanctions available to Ministry of Finance for insurance companies and MSBs

Type of Sanction	Insurance Business (all references to Insurance Act)	Money Services Business (all citations related sections of MSB Act)
Issuance of Letters Requesting Remedial Action	/A	N/A
Orders to comply with instructions/	N/A	Require a MSB to take, refrain from, or discontinue any action, Sec. 20(2)(f)

directions		
Civil Money Fines	N/A	N/A
Removal of Control Parties	N/A	N/A
Removal of Directors and Senior Executives	N/A	Require the substitution of a director or officer, Sec. 20(2)(c)
Imposition of conservatorship	N/A	Appoint a person to assume control of the MSB's affairs with the powers of a receiver or manager under Companies Act, Sec. 20(2)(d)
Revocation of License	N/A	Sec. 20(2)(a); attach conditions to a license, Sec. 20(2)(b)
Criminal Penalties	N/A	Obstruction of powers to search under a warrant, liable on summary conviction to a fine of $5,000 or imprisonment for six months or both, Sec. 24(5); knowingly supplying false or misleading information, liable on summary conviction to a fine of $2,000 or imprisonment for up to three months, or both, Sec. 26
Additional powers	N/A	Appoint an advisor to the MSB to report to the Ministry, Sec. 20(2)(d)

Effectiveness of Implementation

574. With the exception of the Banking and MSB Acts, all regulatory laws have either a weak linkage or no linkage whatsoever between administrative sanctions powers and violations of POCA, UNATMA and the POCA Regulations. This legal and regulatory weakness, coupled with an almost complete absence of the use of sanctions powers by competent authorities in relation to AML/CFT compliance, results in a lack of effectiveness with respect to sanctions, with one limited exception: The use by IFSA of directives to international banks in the context of inspection reports which require that banks take certain actions with respect to AML/CFT compliance. It should be noted that IFSA has used administrative sanctions in the past, such as license revocation and imposition of controllership, for non-AML/CFT related violations.

3.10.2. Recommendations and Comments

Recommendations with respect to sanctions powers are as follows:

R.23

- Enhance supervision of ownership and control structures of some offshore institutions to increase transparency of fit and proper criteria.

- Implement enhanced AML/CFT supervision of the systemically large building society and credit union.
- Strengthen onsite inspections FIs across all sectors, particularly in the non-domestic banking sectors.
- Enhance oversight of inherently high risk business areas across all the relevant sectors esp. correspondent banking, money remittance services, wire transfers and back-to-back loans.
- Increase supervisory resources and understaffing to conduct effective ongoing supervision across all sectors including through the use of external auditors/consultants, particularly in the non-domestic banking sector.
- Prioritize development and implementation of a comprehensive AML/CFT inspections/supervision program for the international mutual fund and insurance sectors, including through development of cross-border supervisory cooperation mechanisms.
- Develop detailed sector-specific AML/CFT inspection procedures for the non-domestic bank sectors.
- Implement AML/CFT supervision of money services business and review and enforce licensing laws with respect to possible existence of one unauthorized activity.
- Review and if necessary implement an authorization and AML/CFT supervisory regime for the existing money lending businesses covered by the AML/CFT laws.

R.29 (See also R.17 below)

- Make explicit provision for regulators to supervise and enforce compliance with the AML/CFT legislation including the application of administrative sanctioning powers in the financial laws.
- Develop the legal and regulatory regime for regulators to supervise, inspect and enforce AML/CFT compliance for building societies and presently unauthorized money lending operations.
- Introduce explicit legal provisions for other regulators (functionally the ECCB, IFSA, Ministry of Finance), to supervise, inspect and enforce compliance by FIs broadly similar to those for international banks and money services business, in the POCA, Regs and UNATMA. These should include the power to initiate enforcement proceedings under these laws.
- Extend the AML/CFT compliance obligations under the International Banks Act and Money Services Business Act to the POCA Regs in order to provide broader regulatory scope for monitoring and enforcing compliance.
- Develop and implement a regulatory and supervisory regime for mutual fund underwriters that would include AML/CFT, similar to that for fund administrators.
- Remove the technical restrictions under Sec. 19(9) of the International Banks Act that limit access to the names, titles and confidential information about customers' accounts to the Executive Director.
- Review and as appropriate revise the legal and operational framework for mutual funds, administrators and managers, and insurance companies and their managers, to ensure that IFSA has efficient and timely access to books, records and information of such institutions to enable effective AML/CFT supervision.
- Review and if necessary amend the Mutual Funds Act and Regulations to deal with the ability of IBC funds to issue bearer shares (not immobilized) as this may limit CDD and compliance supervision.
- Review/amend Sec. 35 of the Mutual Funds Act that can exempt FIs from supervision and enforcement under the Act with implications for AML/CFT.
- Amend the credit unions law to ensure full access to records by Registrar.

R.17

- Amend regulatory laws to ensure that the full range of administrative sanctions powers for violations of POCA and the POCA Regulations are available to regulatory bodies; such sanctions powers should be harmonized across regulatory laws to ensure consistency. Administrative sanctions should include, at a minimum: written warnings; orders or directives to comply with specific instructions; removal of controlling shareholders, directors and senior management officials; ordering regular reports; administrative fines for non-compliance (possibly on a daily basis); barring individuals from employment within any regulated sector; replacing or restricting powers of managers, directors, or controlling owners; imposing conservatorship; and suspension, revocation or withdrawal of the license;
- Amend POCA and the POCA Regulations to explicitly authorize all regulatory bodies and agencies, including IFSA with respect to international banks, mutual funds, insurance companies and registered agents; the Ministry of Finance with respect to local banks, MSBs and insurance companies, and the Comptroller of Cooperatives with respect to credit cooperatives, to impose administrative sanctions referred to above for violations of POCA and the POCA Regulations;
- Amend regulatory laws to authorize regulators to recommend to the DPP that a criminal proceeding be initiated for serious violations of POCA and the POCA Regulations; and
- Amend regulatory laws to ensure that civil fines and criminal penalties are substantially increased along the lines of those found in the Banking Act (see chart above) or in Sec. 47 of POCA.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	**NC**	• Regulatory laws lack the full range of administrative sanctions for non-compliance with POCA and the POCA Regulations; • Regulatory laws lack explicit linkages between sanctions and non-compliance with POCA and the POCA Regulations; • POCA and the POCA Regulations do not provide legal authority for regulators to impose sanctions for non-compliance; • Regulatory laws do not have effective, proportionate and dissuasive administrative fines and criminal penalties; • Regulatory laws lack explicit authority for regulators to recommend to competent authorities that a potential criminal matter be initiated with respect to serious violations of POCA and the POCA Regulations; and • With the exception of IFSA in limited cases, competent authorities, including the ECCB and the Ministry of Finance, have not imposed any administrative sanctions against financial institutions for non-compliance with AML/CFT measures even when authorized by law to do so.

	Rating	Summary of factors underlying rating
R.23	**NC**	• Ownership structures of some offshore institutions reduce transparency and may limit ability of regular review fit and proper criteria. • Systemically large building society not subject to effective AML/CFT supervision. • Generally inadequate supervision for AML/CFT across all sectors. • Infrequent focus on inherently high risk business areas such as e.g. correspondent banking, money remittance services and back-to-back loans. • Insufficient supervisory resources and understaffing to conduct effective ongoing supervision across all sectors, particularly in the non-domestic banking sector. • No AML/CFT inspections/supervision of the international mutual fund and insurance sectors. • Lack of detailed AML/CFT inspection procedures for the non-domestic bank sectors. • No AML/CFT supervision of money services business and possible existence of one unauthorized activity. • Lack of authorization and AML/CFT supervisory regime for money lending businesses covered by the AML/CFT laws.
R.25	**C**	
R.29	**PC**	• No explicit link between the application of supervisory and administrative sanctioning powers in the financial laws and the AML/CFT legislation. • There are no powers or mechanisms to supervise, inspect and enforce AML/CFT compliance with respect building societies and money lending operations. • Except for international banks and money services business, no explicit provisions for other regulators (functionally the ECCB, IFSA, Ministry of Finance), to supervise, inspect and enforce compliance by FIs of the POCA, Regs and UNATMA, particularly the power to initiate enforcement proceedings under these laws. • AML/CFT compliance obligations under the International Banks Act and Money Services Business Act do not extend to the POCA Regs, limiting the scope of monitoring and enforcement. • No regulation and supervision of mutual fund underwriters. • Sec. 19(9) of the International Banks Act restricts access to the names, titles and confidential information about customers' accounts to the Executive Director of IFSA who does not have the power of delegation with respect to this function. • IFSA is constrained in its capacity to effectively supervise mutual funds, administrators and managers, and insurance companies and their managers, in cases where the books, records and information are held outside the SVG. • No supervisory powers in either the AML/CFT legislation or the financial and regulatory laws, to enforce, sanction, or initiate proceedings for,

		violations of the AML/CFT legislation per se. • Ability of IBC mutual funds to issue bearer shares (not immobilized) may limit CDD and compliance supervision. • Sec. 35 of the Mutual Funds Act can exempt FIs from supervision and enforcement under the Act with implications for AML/CFT. • Limited access to records by Registrar of credit unions.

Money or Value Transfer Services (SR.VI)

3.10.4. Description and Analysis (summary)

Legal Framework:

575. Under the Money Services Business Act 2005 (Sec. 4) any person carrying on money services business in Saint Vincent and the Grenadines is required to be licensed by the Finance Ministry. Under the Act money service business means: (a) the business of providing any or all of the following services; (i) transmission of money or monetary value in any form; (ii) cheque cashing; (iii) currency exchange; (iv) the issuance, sale or redemption of money orders or traveler's cheques; and (v) any other services the Minister may specify by notice published in the Gazette; or (b) the business of operating as an agent or franchise holder of a business mentioned in para. (a).

576. Persons licensed to carry on money services business under the Banking Act or the International Banks Act 2004 are regulated under those acts and are not subject to the MSBA.

577. License requirements include detailed information on the ownership, control, business plans, accounting records, establishment and maintenance of systems of internal control and record keeping, seven year record retention requirements, annual audited accounts, and fit and proper tests for directors and senior officers. No person convicted of an offence involving dishonesty shall continue as a director or senior officer.

578. Per Sec. 9 (4) record keeping requirements under the MSBA are: (a) a record of each transaction executed and record of each outstanding transaction for at least seven years after the date the transaction is complete; (b) bank statements for a least seven years after the date the transaction is complete; and (c) bank reconciliation records for at least seven years after the date of creation. The record keeping requirements under POCA also apply. Under Sec. 11, annual audited statements are required and must be filed with the Authority. Article 19 (1) (b) and Sec. 21 impose prudent management requirements on money services businesses that require them to operate in a safe and sound manner.

Designation of Registration or Licensing Authority (c. VI.1):

579. Under the MSBA the Ministry of Finance is the licensing and supervising "Authority" for money service businesses. In addition to satisfying the direct requirements of the MSBA, Sec. 9 (2) provides that licensed money service businesses must comply with Sec. 46 of POCA. Also, Sec. 9 (3) provides that the Authority or the Authority's designee shall be responsible for monitoring compliance by a licensee with the requirements of Sec. 46 of POCA. The Act gives the Authority a range of powers to carry out its supervisory authority, including: examination of books, records and activities for compliance with

regulation and for safety and soundness; access to premises and documents; removal and copying of documents and records; and requiring information to be provided. Sanctioning authority under 20 (2) includes: (a) revocation of license, (b) attach or revoke or amend conditions attached to a license; (c) require substitution of a director or officer; (d) require appointment of adviser to remedy deficiencies and to report to Authority; (e) appoint a controller; and; (f) require a licensee to take, refrain from or discontinue any action.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

580. Money services businesses are subject to POCA and the POCA Regulations. The POCA requirements are imposed under Schedule 1 of POCA, which lists money transmission services relevant business activity subject to the act. In addition, among the financial institutions subject to the act are (a) a person licensed to operate an exchange bureau; and (b) a person who carries on cash remitting services; and (c), a person who carries on postal courier services. Also, as noted above, the MSBA itself provides that money services businesses are subject to Sec. 46 of POCA. In addition, the non-mandatory Prevention of Money Laundering Guidance Notes are applicable to money services businesses. Consequently the full scope of CDD, record keeping, monitoring, reporting, internal controls, employee training and screening, audit supervision that apply to financial institutions apply equally to money service businesses. See Sec. 3 above for the strengths and weaknesses of the legal framework for these arrangements.

Monitoring of Value Transfer Service Operators (c. VI.3):

581. A Supervisory and Regulatory Unit (SRD) has been established within the Ministry of Finance to carry out the Ministry's responsibilities for supervision of financial institutions, including supervision of money transmitters. As noted, the MSBA provides the Ministry broad powers to supervise money transmitters, including for compliance with their POCA obligations. The SRD has established and applied internal policies and procedures for licensing money transmitters. It also receives and reviews quarterly and annual financial reports from licensed money transmitters. The Unit is developing policies and procedures for overseeing MSB's compliance with their AML/CFT preventive measures requirements. On-site examination is contemplated but, to date, no on-site examinations have taken place.

List of Agents (c. VI.4):

582. Under the licensing provisions of the MSBA, Schedule 1, Sec. 5 (1)(c) provides that license applicants must provide the name and address of each person who is an agent of the applicant. The SRD maintains a list of the money transmitters it has licensed. Licensees are required to notify the SRD of the details of any sub-agents employed (name, location, key personnel, business plan, controls, etc.) but subagents are the responsibility of the licensee and are not separately licensed.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

583. See Sec. 3 above for the St. Vincent regime for sanctioning financial institutions for non-compliance with AML/CFT preventive measures requirements, which applies equally for money service providers.

Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):

584. St. Vincent has elected to adopt a licensing regime for money transmitters that conforms with the Best Practices recommendations for SR IV. The authorities are aware of only one informal money remitter operating in St. Vincent, a small-scale activity associated with a shipping company. On review, the authorities have concluded that this service, with a limited, established clientele operating on a single link with New York, is too small scale and low risk to justify licensing it as a money service provider or suppressing its activities. There also appears to be an FI that has recently started operations as an agent for an alleged foreign UK based remittance firm which has not been authorized pursuant to Sec. 3 of the MSBA.

585. **Effectiveness of Implementation**

586. Four firms have been licensed as money transmitters. In addition to their main offices, these four firms operate a total of 9 branches. One licensee is a bank, one is savings and loan, one is a regional travel service and the fourth is a regional money service business. At least two sub-agents operate in association with banks. There are two large international money remittance firms operation in SVG one being the largest provider of money transmission services (two licensees, 5 service points) and the other being the second largest (one licensee, 6 service points). A regional network with head office based in Jamaica also operates in SVG. A fourth international network is understood to be considering entering the St. Vincent market but has not yet applied for a license.

587. Financial flows are dominated by inbound remittances from a large population of overseas workers. The U.S. (Brooklyn, Atlanta, Miami), followed by Canada (Toronto) are the origins for most remittances, followed by the UK. Significant flows also are received from construction workers in Trinidad and Tobago and Turks and Caicos. Outbound transfers, which are only 10-20 percent as large as inbound, are concentrated more in the Caribbean region and appear to be related to payments for travel, education, medicine and medical treatment and other low value purchases.

588. Interviews with two of the four licensees established that the firms had developed AML compliance programs. Identification based on valid IDs is required and transactions cannot be processed without input of verified ID data of sender or receiver or appropriate information on person who money is being sent to. Clients are all individuals. Corporate clients are not permitted and individuals who appear to be acting for a corporate would be very closely screened. Additional verification may be required if doubts arise about the client or a proposed transaction. The firms state that they have systems for controlling and monitoring transactions, both for financial and for AML purposes, with one system being automated up to corporate headquarters level and the other involving manual recordkeeping at the local level. Compliance officers screen transactions for unusual activity based on such factors as names of clients, frequency and size of transactions, country or even neighborhood of origin or destination, and behavior of customers. MSBs are the most voluminous reporters of SARs in the jurisdiction. Reporting is based mainly on patterns of unusual activity. In the nature of their business, MSBs have limited CDD information (one off transactions mainly) to make a full analysis of suspicion for STR purposes which may contribute to the large number of reports to the FIU.

589. The SRD of the Ministry of Finance currently has 2 examiner staff but there are plans to increase as show in R.23 and R.30 of this report. In addition to oversight of MSBs, the SRU has responsibility for supervision of the insurance sector, and is anticipated that it will soon take over credit unions and building societies base on a law that was recently passed. Current staff is inadequate to effectively carry out current assigned responsibilities. Licensing of MSBs is, including fit and proper testing for key personnel,

seems to be well administered. The SRD is just beginning to develop policies and procedures for on-site supervision of MSBs for AML/CFT and has not yet carried out any on-site examinations.

3.10.5. Recommendations and Comments

590. The licensing arrangements for MSBs appear to be sound and well-established. On the basis of short visits MSB staff appears to be well versed in their AML/CFT obligations and to be implementing appropriate policies and procedures. Given the cash intensity of the money transmission business, the high level of suspicious activity reports filed by MSBs, and the inherent vulnerability to ML through cash movements:

- The Ministry of Finance should quickly develop policies, procedures and capacity for on-site compliance examinations and begin such examinations.
- Investigate the existence of unlicensed money remittance operations and take appropriate action.

3.10.6. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• Lack of AML/CFT compliance monitoring and supervision of business conducted outside of banking sector.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

Legal Framework:

591. DNFBPs subject to preventive measures in St. Vincent are casinos, lottery agents, lawyers, notaries, accountants, registered agents and trustees, real estate agents, and jewelers. Car dealers, while not DNFBPs under FATF definitions, are included in Schedule 1 of POCA and are included here in the discussion of DNFBPs. Internet gambling and pool betting are also covered by Schedule 1 of POCA but neither of these activities is currently authorized. CDD obligations for DNFBPs are laid out in the POCA and the POCA Regulations. The Prevention of Money Laundering Guidance Notes are also applicable to all DNFBPs. The CDD requirements of these laws, regulations and guidance are the same as those for financial institutions and their application to DNFBPs are subject to the same strengths and weakness identified in 3.1 and 3.3 above.

592. It is worth noting that, by applying the general CDD framework applicable to financial institutions, the identification obligations for high value dealers (jewelers and car dealers) apply to all transactions and not just cash transactions above a threshold. For one-off transactions, the identification threshold is EC$10,000, equivalent to about US$3,745 (slightly above the US$10,000 FATF threshold for casinos but within the €3,000 limit).

593. While DNFBPs are subject to common CDD obligations, the authority and structure for AML/CFT compliance supervision varies from sector to sector and is very uneven. Registered agents and trustees have been regulated and supervised for business purposes since 1996. IFSA is the functional supervisor for registered agents and trustees, and monitors compliance with AML/CFT obligations but the authority for this function is implicit, not explicit. Casinos and lottery agents are generally governed by the Gaming, Lotteries and Betting Act administered by the Gaming Authority. Within this legal framework, however, there is also explicit authority for the Cabinet to license and prescribe requirements for gambling and betting activities. For such licensees the regulatory authority is unclear, although the FIU exercises some AML/CFT outreach. The other DNFBP sectors (lawyers, notaries, accountants, real estate agents, jewelers and car dealerships) are not subject to specific business or professional regulation in St Vincent. For these DNFBPs, oversight for AML/CFT compliance, including compliance with CDD requirements, has been assigned to the FIU, again with only weak statutory authority.

Casinos and Lottery Agents

594. As noted above, the Gambling, Lotteries and Betting Act is the relevant law governing law for the activities of casinos and lottery agents. The law is administered by a Gaming Authority, headed by a five-person board of directors. The Authority has the power to grant or renew permits to receive or negotiate bets, or conduct pool betting operations. The law and national policy are restrictive and very little gambling, lottery or betting activity is authorized. Permits appear to relate to small scale activities in conjunction with one-time events. The Authority has no on-going regulatory role or enforcement powers, or staff. Under separate legislation a national lottery is operated under the Ministry of Finance, with all proceeds going to support athletic and cultural activities. The national lottery is conducted in a transparent manner with twice weekly public drawings. The authorities believe there is little scope or risk for money laundering through the national lottery. Given the perceived low risk, although lottery agents are subject to AML/CFT requirements under Schedule 1, they are not supervised for compliance.

595. Sec. 47 (1) of the Gambling, Lotteries and Betting Act provides a significant exception to the restrictive provisions of the Act, and from the authority of the Gaming Authority to regulate gaming activities. Sec. 47 (1) states that: “Notwithstanding anything contained in this Act or in any other law relating to gambling, Cabinet may issue a license to any person, having regard to the circumstances of the case, for the carrying on of any activity in any premises which may constitute gambling, betting or other prohibited activity, and impose such conditions, limitations and restrictions (including the payment of periodical or other fees for the purpose) as it may deem fit.” Administration and supervision of such Cabinet-issued licenses are unclear.

Effectiveness of Implementation: Casinos

596. Two casinos are licensed in the jurisdiction. Neither the Gaming Authority, nor the Ministry of Finance, nor the FIU were able to provide information on the licensing arrangements for these casinos. While it was generally understood that the casinos had been licensed, it was unclear whether this might have been done by the Gaming Authority or directly by the Cabinet. Nor was any information available on the provisions of such licenses or the approval steps that had been taken in issuing a license. One small casino of long standing operates in St. Vincent. It appears that the owner of the property is the casino licensee although the facts could not be established. The current operator has been authorized for approximately four years. Ministry of Finance understood that the operator had been approved but that no formal background check had been undertaken.

597. Games offered at the St. Vincent casino include roulette, black jack and Caribbean poker, as well as electronic slot machines. Nightly visitors range from 10-12 to 30 on a busy night. Customers sign in at the door and transactions are logged by name at the cage. Clients are almost all regulars. The few outside visitors are readily identified and monitored. CDD information is not retained. Given the clientele, credit may be extended to known customers during play with settlement in cash, or on approval, by check, at check-out. Some credits carry over for later settlement. Credit cards are not accepted. Purchases of chips in excess of EC$ 3,000 are exceptional, occurring approximately once every two months. Record keeping is somewhat informal but sufficient to recognize transactions by individual.

598. There appear to be no specific casino taxes nor conduct of business regulations. The casino is not regulated other than for AML/CFT purposes.

599. A second casino is known to operate at a very up-scale resort on Canouan Island. The details and circumstances of its license and its operations could not be established. By reputation, it is stated that the casino caters to international clients, particularly clientele on junkets.

Registered Agents and Trustees

600. Under the Registered Agent and Trustee Licensing Act any person offering "overseas representation services" must be licensed under the Act. The St. Vincent definition of offshore services encompasses the activities of Trust and Company Service Providers as specified in R.12. Offshore representation covers: (i) acting as agent or representative in the establishment, renewal or continuation of international business companies, or the continuation or registration of international trusts, or the registration of international mutual funds; (ii) providing registered office or registered agent services for international business companies; (iii) providing or appointing nominee directors, nominee shareholders or nominee officers for international business companies or international banks, or (iv) acting as a local trustee or fiduciary for trusts exempt from taxation, whether registered or not.

601. Under schedule 1 of POCA provision of trusts and other fiduciary services and provision of company formations and management services are relevant businesses subject to the AML/CFT provisions of POCA. The applicable CDD obligations for registered agents (as well as for all DNFBPs) are laid out in the POCA and the POCA Regulations. The Prevention of Money Laundering Guidance Notes are also applicable to registered agents (as well as for all DNFBPs.) The CDD requirements of these laws, regulations and guidance are the same as those for financial institutions and their application to DNFBPs are subject to the same strengths and weakness identified in 3.1 and 3.3 above.

602. Under Sec. 4 (2)(a) of the POCA Regulations the obligation to identify applies to "the forming of a business relationship." Under 4 (8) a "'business relationship' means an arrangement between any person and a regulated institution, the purpose of which is to facilitate the carrying out of financial and other related transactions on a regular basis." The Guidance Notes provide illustrations of how this can be done in the case of companies (paras. 74-75) and by trustees (para. 78). The Guidance Notes provide illustrations of information needed on (a) settler, (b) beneficiaries, (c) protector, (d) the purpose and nature of the trust, (e) source of funds, and (f) payment authorization.

603. The Registered Agents and Trustee Licensing Act gives IFSA (as the successor to the Saint Vincent Offshore Finance Authority) broad authority to monitor and enforce compliance with the Act. This includes monitoring, examining books and records, requiring information to be supplied or

explained, etc. Sec. 3 in combination with Sec. 4 (5)(3) of the Saint Vincent Offshore Finance Act give authority to oversee compliance with other relevant laws. On this authority IFSA has responsibility to monitor, and supervise, and enforce registered agents and trustees for compliance with their CDD obligations under POCA and the POCA regulations.

Lawyers

604. The AML/CFT preventive measures requirements of POCA and the POCA Regulations, including the CDD requirements, apply to all the activities of lawyers except those activities subject to legal privilege. (See POCA, Part 5, Para. 45 (3)). There are no arrangements to monitor and supervise the compliance of lawyers with their CDD obligations. The St. Vincent Bar Association is an informal organization without legal standing and with no authority to enforce compliance with any code of practice or to supervise the AML/CFT compliance of members. Membership in the St. Vincent Bar is not required to be called to the bar. As discussed below, the FIU has an outreach function that is actively used to promote compliance with AML/CFT obligations, particularly by sectors that are not otherwise regulated. However, in deference to legal privilege, the FIU has not been involving itself in training lawyers in compliance with their CDD obligations.

Accountants, Real Estate Agents, Jewelers, and Car Dealers:

605. These four businesses and professions are all subject to the AML/CFT requirements of POCA and the POCA Regulations, including CDD requirements. However, none is subject to separate business or professional regulation. In the absence of a functional regulator, the FIU has taken steps to promote AML/CFT compliance. Under the FIU Act the FIU has responsibility for raising awareness and, under this authority, it engages in outreach and training of DNFBPs to explain to them their AML/CFT obligations. Individual two hour training sessions have been conducted for most accountants, real estate agents, jewelers and car dealers. The FIU also uses its police investigative powers and its prosecutorial powers, to monitor and promote AML/CFT compliance. Where DNFBPs are unable to provide information they would be expected to have based on proper CDD, the FIU may, and has, investigated to determine whether proper records are being maintained.

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R.5 to DNFBP) (c. 12.1):

606. As noted above, all DNFBPs are subject to the same R.5 CDD obligations as those applicable to financial institutions. The strengths and weaknesses of these requirements are analyzed in Sec. 3 above.

Effectiveness of Implementation

Casinos:

607. CDD procedures at the casino in St. Vincent are relatively casual, even though financial transactions only occasionally reach US$3,000, the threshold level at which identification by casinos is required under R.12. No information was available on the CDD practices of the casino on Canouan Island. There is no oversight of casinos' CDD compliance.

Registered agents and licensed trustees:

608. CDD seems to be a core activity of registered agents and licensed trustees. Agents and trustees interviewed had detailed familiarity with their CDD obligations under POCA, the POCA Regulations and the guidance notes. CDD policies and procedures reviewed by assessors appeared to cover key elements the St. Vincent requirements, including handling of introduced business and non-face-to-face business. IFSA exercises on-site and off-site monitoring of CDD compliance by registered agents and licensed trustees but oversight is not sufficiently thorough or frequent to evaluate how effectively the CDD requirements of registered agents and licensed trustees are implemented. In addition, the absence of client documentation in SVG may pose a challenge to efficient ongoing supervision.

Lawyers:

609. Lawyers appear to be generally aware of their CDD obligations although not fully attentive to all of the details and procedures expected under the law, regulation and guidance. There is no AML/CFT compliance monitoring and supervision so the effectiveness of implementation of R.5 requirements by lawyers has not been tested.

Accountants:

610. Accountants appear to be well aware of their CDD obligations. However, FIU involvement in CDD compliance is too limited to test the effectiveness of implementation of R.5 requirements.

Real Estate Agents:

611. Real estate agents appear to be aware of their CDD obligations. Identification generally is applied to the vendor but not the buyer. Buyer identification generally is treated as the responsibility of the lawyer who draws up the contract and attends to the settlement. For sales to non-residents, extensive due diligence on the buyer is carried out by the authorities under the provisions of the Alien Land Registration Act. FIU involvement in CDD compliance is too limited to test the effectiveness of implementation of R.5 requirements by Real Estate Agents.

Jewelers and Car Dealers:

612. For jewelers and car dealers the obligation to identify customers arises primarily under the provisions of Art 4 (2)(b) of the POCA Regulations which requires identification in case of one-off transactions involving payment by or to the applicant of ten thousand (EC) dollars or more." Jewelry transactions only occasionally reach this threshold and many used car transactions fall below this threshold. Jewelers and car dealers appear to be familiar with their R.5 identification obligations. FIU involvement in CDD compliance is too limited to test the effectiveness of implementation of R.5 requirements by jewelers and car dealers.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R.6 & 8-11 to DNFBP) (c.12.2):

R.6

613. The non-mandatory Guidance Notes address PEPs, calling for financial institutions and DNFBPs to apply enhanced due diligence for both domestic and foreign PEPs. The strengths and weaknesses of this regime as it is applied to financial institutions are analyzed in Sec. 3 above and the comments there

apply equally to DNFBPs. In St. Vincent CDD for PEPs is primarily an issue for casinos, lawyers, and registered agents.

Effectiveness of Implementation of R.6

614. In interviews, some lawyers and registered agents indicated they were unfamiliar with their enhanced due diligence obligation with respect to PEPS notwithstanding that they had established policies and procedures to implement their AML obligations. Supervisory oversight is limited and the effectiveness of implementation of PEP requirements has not been systematically evaluated.

R.8

615. The requirements for DNFBPs with respect to non face-to-face transactions are the same as those for all financial institutions. The strengths and weakness of this regime were analyzed in Sec. 3 above and the comments there apply equally to DNFBPs. The non-mandatory Guidance Notes call for non-face- to-face identification procedures to be equally as effective as face to face procedures, and for risk mitigation steps to be taken. Certification of documents is encouraged, as well as additional documentations where appropriate.

Effectiveness of Implementation of R.8

616. Lawyers and registered agents appeared to require certification of many documents provided by their offshore clients. Again supervisory oversight is too limited to evaluate the effectiveness of implementation of identification in the case of non face-to-face-transactions.

R.9

617. The requirements for DNFBPs with respect to intermediaries and introduced business are the same as those for all financial institutions. The strengths and weaknesses of this regime were analyzed in Sec. 3 above and the comments there apply equally to DNFBPs.

Effectiveness of implementation of R.9 (see issues raised above under Rec. 9 for FIs)

618. Reliance on third parties appears to be an issue primarily for lawyers and registered agents and trustees. c. 9.1 Lawyers and registered agents appear to be aware of the requirement to obtain from third parties necessary CDD information. During interviews some copies of supporting policies and procedures were made available, along with examples of CDD information being obtained from third parties. Although some professionals indicated they would not rely on third party CDD, most indicated that they do rely on them for much of their offshore business. There is no systematic oversight of the AML/CFT compliance of lawyers so the effectiveness of lawyers' implementation has not been systematically evaluated. IFSA oversight of AML/CFT compliance by registered agents includes review of their CDD practices, including offsite review of required internal AML policy and procedures. However, IFSA oversight has not been sufficiently thorough or frequent to judge the general effectiveness of implementation by registered agents of the procedures for relying on third party CDD.

619. c. 9.2 In interviews, lawyers and registered agents provided copies of internal procedures for ensuring that they are able to obtain identification of CDD data and supporting documentation without

delay. Examples of written agreements were reviewed. Supervisory oversight of the effectiveness of these policies and arrangements is limited.

620. c. 9.3 St. Vincent AML/CFT guidance notes allow financial institutions and DNFBPs to rely on CDD carried out by parties regulated for AML/CFT compliance in jurisdictions which have regulation equivalent to that of St. Vincent. Lawyers and registered agents appear to follow this guidance and do not appear, as a matter of regular practice, to take additional steps to satisfy themselves that the third party is adequately regulated and supervised.

621. c. 9.4 The Guidance Notes include a list of approved countries which St. Vincent deems to have AML/CFT regulation and supervision equivalent to that of St. Vincent. The list includes major OECD countries and a number of offshore jurisdictions. The criteria used for inclusion on the list are not clear but the list does not appear to be based on information about adequate compliance with the FATF recommendations. Lawyers and registered agents give some attention to the list when deciding how much reliance to place on CDD work supplied by third parties. The practice with respect to reliance on third parties who are regulated parties in countries not on the list, varied. Some lawyers and registered agents did not appear to probe deeply into the AML/CFT environment of a country if they were generally satisfied with the third party introducer. Other lawyers and registered agents avoided any reliance on third parties unless they were fully satisfied as to their compliance with the FATF standard.

622. c. 9.5 Fixing the ultimate responsibility for customer identification and verification with the financial institution relying on the third party is discussed in Sec. 3 above and the same provisions apply equally to DNFBPs. Lawyers and registered agents interviewed were well aware of this provision.

R.10 Record Keeping

623. c. 10.1 Record keeping requirements applicable to all AML/CFT regulated persons are set out in POCA (Art 46 (1)), and the POCA Regulations (Sec. 5), as well as being addressed in the Guidance Notes (paras. 102-109). Under the Regulations a seven year record keeping requirement is established. Sec. 3 above provides an analysis of the St. Vincent record keeping regime and the analysis there applies equally to DNFBPs.

624. c. 10.1.1 Sec. 5 (2) of the Regulations specifies that: “A regulated institution shall also keep for the minimum retention period the records or copies of records containing the details relating to its business as may be necessary to assist in investigation into suspected money laundering.”

625. c. 10.2 Sec. 5 (3)(a) of the Regulations specifies a seven year retention period after the day on which the account is closed. Sec. 5 (4)(c) provides for the holding period to be extended pending the outcome of an investigation, upon written request by the FIU.

626. c. 10.3 Sec. 5 (3) requires retrieval of records in legible form within a reasonable period of time.

Effectiveness of Implementation of R.10

627. All DNFBPs interviewed appeared to be generally familiar with their record keeping requirements. Registered agents are subject to on-site examination by IFSA, which includes review of record keeping; compliance appears to be generally acceptable, if uneven. Lawyers are not subject to AML/CFT oversight and no information is available on the effectiveness of their implementation of

record keeping requirements. With respect to accountants, real estate agents, jewelers, and car dealers, the FIU has conducted outreach and training including with respect to record keeping requirements so awareness of record keeping responsibilities is satisfactory. On an occasional basis the FIU has made spot checks of the quality of record keeping by these DNFBPs, usually in the context of following up on some difficulty in getting information in relation to an investigation. Within the last four years the FIU, drawing on the police powers of its staff and it DPP powers, charged and got conviction of one car dealer for violations that included non-compliance with POCA record keeping obligations.

628. R.11 St. Vincent requirements to pay attention to complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose are the same for all Schedule 1 parties, whether financial institutions or DNFBPs. The strengths and weaknesses of that regime are analyzed in Sec. 3 above and the comments there are equally applicable to DNFBPs.

Effectiveness of implementation of R.11.

629. Of the DNFBPs, the registered agents seem to be the most aware of techniques of money launderers and the potential abuse of corporate and trust structures. In interviews, some registered agents presented exceptional cases where corporate or trust structures had been requested which had no reasonable business purpose, and where the business was rejected, and an SAR filed. However, it is noted that during the past 5 years, trustees filed only 4 SARs with the FIU, all during 2008.

630. Oversight procedures adopted by IFSA include review of internal monitoring procedures but to date such oversight is limited. For the other DNFBPs, the FIU has provided systematic AML/CFT training, including training on ML and FT typologies. In addition, the FIU sends out periodic newsletters highlighting the duty of vigilance with respect to ML and FT risks. Most of these other DNFBPs are sole proprietors or very small operations. Parties interviewed tended to see only their one-off transactions and they viewed these as posing very low ML or FT risk. For these other DNFBPs there is no systematic oversight to their internal procedures for monitoring complex, and unusual large transactions.

Overall effectiveness of implementation of R.12.

631. Implementation of CDD requirements by casinos is poor. One casino is entirely unsupervised and no information on its practices was available. The other casino, which is also not supervised, has informal CDD procedures which provide some identification information but fall short of national or FATF standards. The authorities believe that the AML/CFT risks of these casinos are slight given the low levels of business at each.

632. Implementation by other DNFBPs is uneven but compliance generally suffers from a lack of, or insufficient, compliance monitoring and supervision. Registered agents are more advanced with respect to awareness and procedures for insuring CDD compliance, both in general and in set circumstances. However, their business also involves the most complex CDD issues and, in the absence of compliance monitoring it is not possible to draw any firm conclusions about the general pattern of compliance. With respect to reliance on third parties some RAs and lawyers do not take adequate steps to satisfy themselves that the counterparty is effectively regulated for AML/CFT compliance at the standard set by FATF, whether it is on the Guidance Notes approved list or not. Record keeping standards are adequate but supervisory oversight of DNFBPs is too limited to gauge the level of compliance with those standards. It is noted that only 4 SARs were filed by trustees during the past 5 years, all in 2008.

4.1.2. Recommendations and Comments

- Casinos should be regulated and supervised.
- All DNFBPs should be examined more systematically for CDD compliance.
- IFSA on-site examinations should be more frequent and thorough, especially for registered agents and trustees.
- Some arrangement should be introduced for inspection of lawyers for compliance. Other DNFBPs should be subject to spot checks of files.
- Additional training should be undertaken, particularly for lawyers but also for registered agents in their procedures for relying on third-parties for CDD compliance.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• No regulation or supervision of casinos. • Infrequent and insufficiently detailed monitoring of CDD compliance of RAs. • No arrangements for systematically spot checking CDD compliance by lawyers, real estate agents, accountants, jewelers, and car dealers. • Insufficient training, particularly of lawyers and of more complex international business relations.

4.2. Suspicious Transaction Reporting (R.16)

4.2.1. Description and Analysis

Legal Framework:

633. The R.13 obligation of St. Vincent DNFBPs to: file suspicious activities reports; R.14 protections for SAR reports and prohibitions on tipping of; and R.15 requirements for internal controls, screening, training and audit, all derive from the POCA and the POCA Regulations, with guidance provided in the Prevention of Money Laundering Guidance Notes. The same provisions that apply to financial institutions apply equally to DNFBPs. See Sec. 3 above for an analysis of the strengths and weaknesses of this legal regime. Of the DNFBPs, only registered agents and trustees are subject to a systematic oversight for compliance with suspicious activity reporting and with requirements for an internal AML compliance program. In the case of the other DNFBPs (casinos, lawyers, accountants, real estate agents, jewelers and car dealers) the FIU has engaged in a pro-active outreach and training program to raise awareness among DNFBPs of their AML/CFT obligations, including with respect to SAR reporting and internal AML compliance programs. The FIU does not, however, systematically monitor and enforce compliance by

DNFBPs with these preventive measures obligations. The FIU may, however, undertake compliance examinations if, in the course of its own investigations, it finds that a DNFBP is unable to provide the sort of information expected to be available it the party has an adequate internal AML program.

Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 & IV.1 to DNFBPs):

634. c. 13.1 & IV.1. The SAR reporting obligations of DNFBPs are the same as those for FIs. See Sec. 3 above for an analysis of these requirements in St. Vincent.

STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):

635. c. 13.2. The reporting obligations for DNFBPs with respect to FT funds are the same as those for FIs. See Sec. 3 above for an analysis of these requirements in St. Vincent.

No Reporting Threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs):

636. c. 13.3. All suspicious transactions, including attempted transactions and funds linked to FT, are to be reported by DNFBPs regardless of the amount of the transactions. See discussion in Sec. 3 above.

Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):

637. c. 13.4. The requirement to file a SAR, including SARs for funds related to FT, applies regardless of whether they are thought to involve tax matters. See discussion in Sec. 3 above.

Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):

638. See discussion of c 13.5 in Sec. 3 above.

Protection for Making STRs (applying c. 14.1 to DNFBPs):

639. The protections for DNFBPs who make SARs are the same as those for financial institutions. See discussion in Sec. 3 above.

Prohibition Against Tipping-Off (applying c. 14.2 to DNFBPs):

640. Prohibitions on tipping off, applicable to all reporting parties including DNFBPs, are discussed in Sec. 3.7 above

Additional Element—Confidentiality of Reporting Staff (applying c. 14.3 to DNFBPs):

641. Provisions requiring the FIU to maintain confidential the names of individuals filing SARs are the same for all reporting institutions. See the discussion of these provisions in Sec. 3.7 above.

Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPs):

642. c. 15.1 POCA and the POCA Regulations require Schedule 1 parties to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their

employees. The guidance notes amplify a little on how these requirements might be satisfied. The requirements for DNFBPs are the same as those for all financial institutions. See Sec. 3 for a discussion of these requirements. Sec. 46 (6) of POCA provides that: "Every financial institution or person engaged in a relevant business activity shall develop and implement a written compliance program reasonably designed to ensure and monitor compliance with Regulations made under this Act." Sec. 46 (7) of the Act spells out the key elements of such a compliance program. "(a) a system of internal controls to ensure ongoing compliance; (b) internal or external independent testing for compliance; (c) training of personnel in the identification of suspicious transactions; and (d) appointment of a staff member responsible for continual compliance with this Act and the Regulations."

643. The single Schedule to the POCA Regulations provides specific procedures for: (a) verification of individuals; (b) verification of corporate entities; (c) verification of identity of partnerships or unincorporated businesses; and (d) verification of facilities established by telephone or Internet.

644. With respect to CDD and the detection of unusual and suspicious transactions, the Guidance Notes discuss a Duty of Vigilance to properly identify parties and to be alert to suspicious transactions, and it provides specific guidance as to how this duty can be satisfied. The Record Keeping Sec. of the Guidance Notes provides detailed guidance with respect to required time limits for records and the contents of records, as well as a register of enquires. (paras. 102-110).

645. c. 15.1.1 Compliance management is mandated under Sec. 47 (7)(d). The requirement to appoint an internal AML reporting officer and his functions are spelled out in Sec. 5 (7) of the Regulations. The Guidance Notes call for the Reporting Officer to be a senior member of key staff. Sec. 5(7)(b) and (c) specify that the reporting officer should have access to any information necessary to evaluate an internal report of suspicion.

Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):

646. c. 15. 2. Internal or external independent testing of compliance is required by Sec. 47 © of POCA. Neither adequate resourcing of the audit activity nor sample testing are addressed in POCA, the Regulations or the Guidance Notes.

Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):

647. c. 15.3 Training is required under Sec. 47 (7)(c) of the POCA. Sec. 8 of the Regulations sets out requirements that relevant staff be trained from time to time on: (a) St. Vincent AML/CFT laws and regulations; (b) internal compliance procedures; (c) recognition and handling of apparent ML transactions; and (d) the new staff be trained as soon as practicable.

Employee Screening Procedures (applying c. 15.4 to DNFBPs):

648. Employee screening is not explicitly addressed in POCA or the POCA Regulations. The Guidance Notes discuss The Duty of Vigilance of Employees, with para. 25 explicitly calling for employers to have a "know your employees" policy.

Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):

649. c. 15.5 The independence of the AML/CFT reporting officer and his reporting lines are not addressed in POCA or the Regulations. The Guidance Notes (para. 21) state that "the Reporting Officer should be a senior member of key staff with the necessary authority to ensure compliance with these notes."

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

650. c. 21.1 Neither POCA, the POCA Regulations, nor the Guidance Notes specifically require relevant persons to pay special attention to transactions and relationships with persons from countries which do not or insufficiently apply the FATF Recommendations. The Guidance Notes (para. 86) set out a more general standard of enhanced due diligences in cases where "the authorities or management may determine that because a high incidence of money laundering is associated with persons from certain countries or regions." The Guidance Notes also address vigilance with respect to high risk countries in the context of PEPs, in which case financial institutions are instructed to assess which countries are most vulnerable to corruption. The Transparency Corruption Perceptions Index is cited as a reference.

c. 21.1.1 Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

651. c. 21.2 The vigilance procedures for relevant persons in St. Vincent do not differentiate between transactions with countries that do not sufficiently apply the FATF Recommendations and other countries. Under para. 17 of the Guidance Notes: "Financial institutions should pay particular attention to all complex, unusual or large business transactions, or unusual patterns of transactions, whether completed or not, and to insignificant but periodic transactions which have no apparent economic or lawful purpose or any other transaction or financial activity that may constitute or be related to money laundering."

652. The Guidance Notes (paras. 88-95) call for staff to report any suspicions to their Reporting Officer. The Reporting Officer, in turn, is charged with investigating to determine whether the suspicions warrant filing a SAR. If a SAR is filed, it will contain a written summary of the Reporting Officer's findings. Para. 94 states "If in good faith he/she decides that the information does not substantiate a suspicion, he/she would be well advised to record fully the reasons for his/her decision not to report to the Financial Intelligence Unit in the event that his judgment is later found to be wrong."

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

653. c.21.3 See discussion in Sec. 3 above.

Overall effectiveness of R.16

654. With the exception of some registered agents, the DNFBPs in St. Vincent tend to be small organizations, ranging from sole proprietorships to businesses with 12-15 employees. Compliance functions and training arrangements reflect the size of the businesses. All DNFBPs interviewed seemed aware of the requirement to report suspicious transactions as well as requirements to have written AML/CFT policies and procedures and to appoint a reporting officer. All stated that they had such

documents, including appointment of a reporting officer, with some providing documentation. Details varied greatly, with registered agents providing the most formal and complete documented policies and procedures.

655. The FIU, in executing its awareness raising function, has conducted systematic training for DNFBPs. Most of this training is conducted firm by firm, with typical programs involving two hour structured sessions covering key elements of an effective AML/CFT program. Follow-up training has been conducted where requested or where the FIU has detected weaknesses. FIU training is supplemented by follow up instructions and periodic newsletters. Registered agents stated that they typically undertake in-house staff training.

656. Not surprisingly, given the small scale of most DNFBPs, no parties interviewed indicated that their internal compliance programs were subject to an independent internal or external audit. Supervisory oversight of DNFBPs internal polices and controls, and screening, training and audit is limited. Registered agents are required to provide IFSA with copies of their internal AML/CFT policies and procedures but inspection of the adequacy and effectiveness of these arrangements is quite limited. Some documentation provided to assessors appeared to be out of date. From time to time the FIU has occasion to investigate other DNFBPs internal control arrangement but the FIU does not systematically oversee compliance. Screening of employees did not appear to be systematically applied.

657. All DNFBPs interviewed were familiar with the requirement to file SARs and had a general familiarity with money laundering vulnerabilities. Awareness was higher among registered agents, lawyers and accountants. Supervisory oversight of the internal compliance programs of DNFBPs is limited. IFSA has recently become more active in supervising AML/CFT compliance but its procedures are still underdevelopment. The FIU, in exercising its police investigative powers, occasionally examines the adequacy of some DNFBP internal systems and controls. Across all DNFBPs, in the five year period 2004-2008, a total of 4 SARs were filed, all by a single firm and all in 2008. This result seems low in relation to the number of registered agents/trustees (28) and brings into question the effectiveness of, inter alia, their CDD, monitoring, control and reporting systems.

4.2.2. Recommendations and Comments

- While the overall volume of business conducted by DNFBPs is low, many transactions, particularly cross-border transactions, are vulnerable to ML and FT risk. In this context, SAR reporting by DNFBPs is very low, suggesting a need for additional training and/or stricter oversight of compliance in this area.
- Need to strengthen internal compliance programs and supervision of the same, especially with respect to the larger DNFBPs. With the limited exception of some registered agents, the adequacy of internal compliance programs has not been examined by supervisors.
- Need to assign responsibility for oversight of the reporting and internal AML/CFT compliance programs of lawyers, accountants, real estate agents, jewelers and car dealers. Compliance with Recommendation 16.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating

R.16	**NC**	• Minimal SAR reporting. • No compliance supervision of most DNFBPs.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Legal Framework:

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

Casinos:

658. c. 24.1 As noted above, the Gambling, Lotteries and Betting Act is the relevant law governing law for the activities of casinos and lottery agents. The law is administered by a Gaming Authority, headed by a five person board of directors. The Authority has the power to grant or renew permits to receive or negotiate bets, or conduct pool betting operations. The law and national policy are restrictive and very little gambling; lottery or betting activity is authorized. Permits appear to relate to small scale activities in conjunction with one-time events. The Authority has no on-going regulatory role or enforcement powers, or staff. Under separate legislation a national lottery is operated under the Ministry of Finance, with all proceeds going to support athletic and cultural activities. The national lottery is conducted in a highly transparent manner with twice weekly public drawings. The authorities believe there is very little scope or risk for money laundering through the national lottery. Given the low risk, although lottery agents are subject to AML/CFT requirements under Schedule 1, they are not supervised for compliance.

659. Sec. 47 (1) of the Gambling, Lotteries and Betting Act provides a significant exception to the restrictive provisions of the Act, and from the authority of the Gaming Authority to regulate gaming activities. Sec. 47 (1) states that: “Notwithstanding anything contained in this Act or in any other law relating to gambling, Cabinet may issue a license to any person, having regard to the circumstances of the case, for the carrying on of any activity in any premises which may constitute gambling, betting or other prohibited activity, and impose such conditions, limitations and restrictions (including the payment of periodical or other fees for the purpose) as it may deem fit.” Administration and supervision of such Cabinet-issued licenses are unclear.

660. Casinos are relevant businesses under Schedule 1 of POCA and hence subject to the AML/CFT provisions of POCA and the POCA Regulations as well as to the guidance in the Guidance Notes. Other than the licensing requirements under the Gambling, Lotteries and Betting Act, and AML/CFT regulation under POCA, there are no other regulatory requirements specifically for casinos.

661. C. 24.1.2 Two casinos are licensed in St. Vincent. At the time of the assessment the authorities were unable to provide documentation on the details of the licensing arrangements for each of the two casinos, or clarify which authority available under the Gambling, Lotteries and Betting Act had been used for to issue the licenses.

662. One small casino of long standing is licensed in St. Vincent and has operated under a succession of managers. The current operator has been authorized for approximately four years. The authorities were uncertain whether the current operator had been subject to fit and proper examination prior to authorization. Games offered include roulette, black jack and Caribbean poker, as well as electronic slot machines. Nightly visitors range from 10-12 to 30 on a busy night. Customers sign in at the door and transactions are logged by name at the cage. Clients are almost all regulars. The few outside visitors are readily identified and monitored. CDD information is not retained. Given the clientele, credit may be extended to known customers during play with settlement in cash, or on approval, by check, at check-out. Some credits carry over for later settlement. Credit cards are not accepted. Purchases of chips in excess of EC$ 3,000 are exceptional, occurring approximately once every two months. Record keeping is somewhat informal but sufficient to recognize transactions by individual.

663. The casino is not regulated other than for AML/CFT purposes. There are no specific casino taxes assessed on the St. Vincent casino nor is it subject to casino-specific conduct of business or financial regulations.

664. A second casino is known to operate at a very up-scale resort on Canouan Island. The details and circumstances of its license and its operations could not be established. The authorities believed that authorization for the casino may have been included in special legislation covering resort hotel developments of 100 rooms or more, which, in the St. Vincent context, would be very large development projects. By reputation, the casino caters to international clients, including clientele on junkets. The Canouan airport is an international port of entry with scheduled flights to Barbados and Puerto Rico, in addition to charter and private air facilities.

665. c. 24.1.1 The Gaming Authority has no specific authority or capacity to supervise and regulate the on-going operations of casinos. While the FIU does not have authority to supervise casinos for compliance with their AML/CFT obligations, the FIU, as part of its outreach function (see below), has sent a letter of obligation to the St. Vincent casino explaining the casinos obligations under the POCA. The FIU has also visited with the manager of the St. Vincent casino to discuss compliance. No obligation letter has been sent to the casino at Canouan Island. Neither the FIU nor other government authorities were familiar with the operations of that casino.

666. c. 24.1.3. Details of licensing requirements were not available and the authorities were not able to provide information on what steps, if any, had been take to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino.

Effectiveness of implementation of R.24 with respect to casinos

667. FATF requirements for the licensing, regulation and supervision of casinos are not being implemented.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

Registered Agents and Licensed Trustees:

668. As outlined above, persons carrying on the business of "offshore representation" are required to be licensed under the provisions of the Registered Agent and Trustee Licensing Act, 1996. The definition of the business of offshore representation essentially encompasses the activities of Trust and Company Service Providers as defined in the Methodology Glossary. Licensing of registered agents is only required for international business, not domestic business. Registered agents are relevant businesses under Schedule 1 of POCA and hence subject to the AML/CFT provisions of POCA and the POCA Regulations as well as to the guidance in the Guidance Notes.

669. Under the Offshore Financing Authority Act, 1996, as amended in 2003, the International Financial Services Authority has "primary responsibility for the efficient and responsible administration and supervision of Offshore Legislation." Under Sec. 2 of the Offshore Financing Authority Act, Offshore Legislation includes "any future laws or regulations of the State relating to the provision of offshore financial services or to the regulation of entities formed in the State to render such services." Since registered agents are, under Schedule 1, subject to POCA, this definition of Offshore Legislation is construed by the authorities as providing the legal authority for IFSA to supervise and regulate registered agents for compliance with their AML/CFT obligations under POCA and the POCA Regulations.

670. In addition to its responsibility for registered agents, IFSA has responsibility for the licensing, regulation and supervision of International Banks, International Insurance Companies, Mutual Funds and the registration of IBCs and International Trusts. The legal authority, resources, capacity and policies and procedures of IFSA as the regulator of the international financial sector, including for AML/CFT compliance, are analyzed in detail in Sec. 3 above under R.23.

671. The powers of IFSA to sanction for non-compliance with AML/CFT obligations are reviewed in Sec. 3.11.1 above in the discussion of R.17.

Effectiveness of Implementation of R.24 with respect to registered agents.

672. Until recently IFSA's oversight of registered agents' compliance with their AML/CFT obligations has focused almost exclusively on the licensing stage and offsite monitoring for compliance with the RA legislation. Onsite inspections only began in the second half of 2008 following the appointment in June 2008 of a new Executive Director of IFSA and an internal review that led to a refocusing of IFSA priorities and work practices. Inspection policies and procedures are still under development. Most of the AML/CFT reviews took place within the previous 3-5 months of the mission.

673. The Registered Agent and Trustee Licensing Act, 1996 is the main legislation dealing with registered agents and, not surprisingly, licensing is the primary focus of the Act. Sec. 4(1) states that: "No person shall carry on any element of the business of Offshore Representation, directly or indirectly, in, for, from or within the State unless that person has obtained and holds a valid and subsisting license to do so under this Act." Both the authorities and various practitioners maintained that anyone doing the business that registered agents do must be, and is, licensed. This understanding notwithstanding, the definition of Offshore Representation appears to provide a carve out for lawyers and accountants. At the end of the definition of Offshore Representation, Sec. 2 (a)(i) and (ii) state that the activities of (i) barristers or solicitors and (ii) accountants and auditors "in connection with the formation or professional representation of any entity referenced in the forgoing definition." "shall not constitute "Offshore Representation." The authorities were unable to reconcile the text of the Act with the common understanding that all parties, including lawyers and accountants, were required to be licensed if they act

as company service providers. In practice, almost all of the 28 registered agents firms are headed by lawyers or accountants. The authorities were not aware of any individual lawyers or accountants who were doing the business of Offshore Representation without a license. The authorities indicated that the situation with respect to lawyers and accountants will be clarified in future revisions of the act.

674. License applications include information on character, competence, and financial resources of applicants and IFSA carries out extensive due diligence on applicants prior to licensing. Licensees are required to submit annual accounts and to submit a certificate of Compliance by an Independent auditor that the information set out in the license is current and correct and gives an accurate summary of the businesses of the licensee. As an AML/CFT requirement, registered agents are required to provide current copies of their written internal AML/CFT policies and IFSA stated that these documents are reviewed as part of the annual license renewal process.

675. Sec. 15(2) and (3) of the Registered Agent Act, gives the Executive Director of IFSA substantial powers to supervise the activities of registered agents. These include monitoring, examination, reporting to the Authority the results of examinations, requiring production of books, records and documents, requiring the supply of information or explanations. No explicit provisions allow the Executive Director to delegate his/her duties. To date, however, this does not appear to have acted as an impediment in practice.

676. Sec. 15(4) dealing with confidentiality of information is problematic. This section requires written consent of a company or trustee, or a court order for IFSA to access client (company and trust) information. The authorities state that this section by virtue of the repeal of the Confidential Documents Preservation Act of 1996 (see, discussion below, Rec. 4) has been effectively repealed but it was not possible to satisfactorily demonstrate that this is the case. This constitutes a significant supervisory lacuna as discussed below.

677. Notwithstanding Sections (2) and (3), subSec. (4) states that the Executive Director "shall not have access to any document or other confidential information of a company managed by a licensee or of a trust for which the licensee shall serve as trustee or to any information, matter or thing relating to or concerning the affairs of any such company or trust under the circumstances described in the Confidential Relationship Preservation (International Finance) Act, 1996 or without having obtained: (a) the written consent of that company or of the beneficiaries or of each other trustee of a trust, as the case may be; or (b) an order of the court made on the grounds that there are no other reasonable means of obtaining such document matter or thing." The Confidentiality Act has been repealed but repeal seems to leave in place the information access restrictions, that is, the need for consent or a court order. The apparent prohibition on the Executive Director's access "to any document or other confidential information…or to any information, matter or thing relating to or concerning the affairs of any such company or trust…" would appear to frustrate the supervisor's ability to verify, for example, proper CDD in cases of even moderately complex corporate structures or arrangements. It also introduces an impediment to sharing of information. See the discussion under R.4 for a more complete analysis of the confidentiality issues raised by Sec. 15(4).

678. Due diligence and record keeping are core functions of registered agents. IFSA records show that in the period 2006-2009, there have been three on-site inspections of registered agents, one in the second half of 2008 and two in 2009. AML/CFT was a significant but not exclusive focus of the inspections. Based on a review of examination reports the first inspections appear to have been relatively brief,

involving meetings with management while the more recent inspections have done more file sampling as staff have gained experience with the process. The scope of examinations did not appear to allow a confident assessment of the degree to which registered agents examined were fulfilling their CDD and record keeping and SAR reporting obligations. IFSA stated that it is in the process of developing inspection policies and procedures and training staff to carry out more thorough on-site examinations.

679. Discussion with IFSA and with registered agents revealed significant gaps in the administration and supervision of the requirements to immobilize bearer shares which were introduced in 2002. As amended in 2002, the International Business Companies Act (Sec. 30(1)) required that: "Any share certificate issued in respect of bearer shares shall not be distributed but shall be retained in the safe custody of the registered agent for the international business company which issued such certificates or in the safe custody of any other approved custodian." Other provisions of the law require registered agents and approved custodians to maintain registers of the bearer share certificates they hold, with the register to provide information on the shares and their current documented beneficial owners. IBCs that had issued bearer shares are also required by law to provide registered agent information as to the beneficial owners of the shares in such certificates and to give a full and detailed account of ownership changes since the shares were issued. Registered agents, in turn, are required, within 12 months, to notify the Registrar or IFSA if any IBCs could not or would not comply with this requirement. Failure by an IBC to reply could result in shares being stricken from the Register; refusal or failure of a registered agent to comply would be an offence. The requirement for registered agents to retrospectively establish the beneficial owners of outstanding bearer shares is re-emphasized in para. 167 of the Guidance Notes. (For additional analysis of the bearer share situation see the discussion under R.33 below.)

680. In April 2002, IFSA sent a memorandum to all registered agents calling attention to the new immobilization requirements but it is unclear what additional steps, if any, were taken subsequently to ensure that registered agents complied. Some registered agents stated that, as a matter of policy, the companies they administer do not issue bearer shares so the issues of establishing chains of beneficial owners did not arise for them. Other registered agents indicated that the companies they administer do issue bearer shares and that, after the 2002 amendment to the Companies Act, they had contacted their IBCs and had either obtained the required beneficial ownership information or, in other cases, found that the company ceased activity, in which case it was stricken.

681. Subsequent amendments to the IBC Act reiterated and tightened the requirement for retrospectively establishing the identity of holders of bearer share certificates. Amendments adopted in 2007 in the International Business Companies (Amendment and Consolidation) Act, 2007, require that IBCs that had not already done so were to provide registered agents information on beneficial owners of shares within six months of the date of this Act. Based on discussions with IFSA it was unclear what supervisory steps, if any, had been taken to verify compliance with this new timetable.

682. The immobilization procedures adopted in 2002 required that bearer share certificates be held in the safe custody of the registered agent *or in the safe custody of any other approved custodian.* The 2002 Act did not contain a definition of "approved custodian." According to one registered agent, its operating practice had been for it, the registered agent, to recognize various financial institutions or other reputable parties as approved custodians. The approval process between the registered agent and the custodian included written assurances that the "approved custodian" would maintain a register and promptly provide information on beneficial ownership upon request. The formalities were akin to those used with reliable introducers. IFSA appears to have only belatedly become aware that registered agents had been

self-approving "approved custodians." The amendments to the IBC Act adopted in 2007 introduced, for the first time, a definition of "approved custodian." Under the new definition in the IBC Act, "approved custodian" means "a properly regulated custodian or financial institution approved in writing by the Authority where the custodian or financial institution is required to hold bearer shares subject to a mortgage, charge or other form of security interest." IFSA staff were aware of only one request for it to approve a custodian, and that request was in 2008. They stated that policies and procedures for granting approval of "approved custodians" were still being developed. It was unclear what steps, if any, were to be taken with respect custodian arrangements registered agents had established in the interval between 2002 and the 2007 adoption of a strict definition of "approved custodian" requiring IFSA to approve the custodian. IFSA acknowledged that the policies and procedures and administration and supervision of the approved custodian provisions would need to be revisited.

683. Sec. 17 of the Registered Agent Act sets out a relatively undemanding requirement that a registered agent maintain its principle place of business within the SVG. At or through such principal place of business, the registered agent is required to maintain (a) books or records that accurately reflect the business of offshore Representation of the Licensee; and (b) if expressly required by governing law to maintain them in the State, separate accounts in the books or records in respect of each company the licensee manages or represents and of each trust or registered trust of which the licensee act as trustees; and, if the licensee is engaged as a financial fiduciary, one or more separate bank accounts for each company or trust. The governing laws for IBCs, international trusts, and mutual funds do not appear to require that such books and records and bank accounts be maintained in SVG.

684. At least one registered agent maintains multiple offices, one in SVG and another large office in Europe, as well as additional smaller offices in other countries. The mind and management of the registered agent are in the European office, the preponderance of the business of the RA is conducted in that office, and all the detailed books and records are maintained in that office. This structure makes it difficult for IFSA to effectively supervise the registered agent for AML/CFT compliance since, given its resources, IFSA does not currently have the capacity to undertake the sort of on-site detailed examination of files necessary for effective oversight of compliance. No arrangements for home/host sharing of supervisory responsibilities are currently in place. Agreed arrangements for comprehensive supervision of this and other similar structured registered agents should be put in place and formalized.

685. With the exception of the bearer share issue, registered agents interviewed appeared to be highly alert to their responsibilities for AML/CFT compliance, particularly CDD. Each provided copies of internal policies and procedures with addressed key requirements although in some cases the material was dated. Information available in IFSA files was not sufficient to evaluate the general effectiveness of registered agents' compliance with AML/CFT preventive measures requirements.

Other DNFBP's

686. With the exception of registered agents, there are no structured arrangements for monitoring and enforcing the compliance of other DNFBPs with their AML/CFT preventive measures obligations. While the FIU does not have any specific powers or responsibility for compliance supervision, it has taken a variety of steps to promote compliance.

687. Sec. 4 (2)(g) of the FIU Act assigns an outreach function to the FIU. It provides that the FIU "shall inform financial and business institutions of their obligations under measures that have been or

might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime and Money Laundering Prevention Act 2001."

Effectiveness of Implementation of R.24 with respect to other DNFBPs

688. Under its outreach the FIU sends "obligation letters" to Schedule 1 financial institutions and relevant businesses. The obligation letters call attention to obligations for CDD, record keeping, monitoring, internal controls and reporting of suspicious activities. As a follow-on, the FIU provides training for covered parties, explaining their obligations and giving instruction in relevant money laundering typologies and techniques for monitoring, detecting and reporting suspicious activities. Training is provided for groups of firms in specific sectors and on a firm by firm basis. Typical programs are about two hours long and include organized presentation and discussion of AML topics. Outreach and training are continuing functions of the FIU. Training sessions are organized intermittently and the FIU prepares and distributes a periodic news letter reviewing recent money laundering trends and vigilance procedures. Four FIU staff, including the director, are engaged in outreach and training.

689. Where, in its investigative work, the FIU detects weaknesses in firms AML/CFT procedures it may pro-actively arrange additional training. More assertively, if the FIU detects that a relevant business is not able to comply with the FIUs requests for information, it may, under its police investigative powers, initiate an inspection of the record keeping and internal controls of the business. In one case in 2005/06 a car dealer repeatedly ignored requests for information as well as a formal production order. The car dealer was charged and convicted with failure to comply with a production order and failure to maintain adequate records as required by POCA. A fine of ECD 10,000.00 was assessed.

690. The FIU compliance outreach program among DNFBPs has been most active among accountants, real estate agents, jewelers, car dealers and the casino in St. Vincent. The FIU is less active among registered agents because those parties are regulated for compliance by IFSA. The FIU has been tentative in its approach to lawyers, in part because of legal-privilege considerations. No letter of obligation has been sent to the casino in Canouan, nor has there been any training for that casino.

Guidelines for DNFBPs (applying c. 25.1):

691. c. 25. 1 The Prevention of Money Laundering Guidance Notes have been issued by the National Money Laundering Committee. The Guidelines are applicable to all parties covered by Schedule 1 obligations, including DNFBPs. The Guidelines cover: the duty of vigilance; identification and verification; recognition of suspicious customers/transactions; reporting of suspicions internally and to the FIU; keeping of records; and training. The Guidelines include topics applicable to both financial and non-financial institutions, including guidance specifically directed to DNFBPs. The Guidance Notes were last updated in December 2006. See Sec. 3 above for an analysis of the content, coverage, applicability, and legal standing of the Guidance Notes.

692. c. 25.2 The outreach and training program of the FIU provides both general and specific feedback on ML and FT developments in the country and abroad, on procedures for satisfying preventive measures obligations, including any issues related to the proper filing of SARs See discussion in the section above on compliance supervision.

Effectiveness of implementation of R.24

693. The FIU outreach program provides a useful forum for both individual and group interaction with DNFBPs and serves as an effective channel for the FIU to provide feedback. The guidance notes contains some, but only limited, information on issues of specific relevance to DNFBPs and some of the information should be updated or expanded.

4.3.2. Recommendations and Comments

- Procedures for licensing casinos should be regularized and regulation of casinos should be introduced.

- A regulator with the adequate skills and capacity should be assigned to oversee and enforce compliance by casinos with their AML/CFT obligations.

- The apparent exemption in the Registered Agents Act barristers and solicitors and accountants from being licensed for Overseas Representation services should be eliminated.

- Sec. 4 of the Registered Agents Act should be repealed.

- IFSA policies and procedures for on-site examination and supervision of registered agents' compliance with AML/CFT obligations should be enhanced, including additional staff and additional training.

- Given its responsibilities for regulation of the entire international sector, the number of IFSA examiners –four--is too few.

- Authority of the IFSA Executive Director to delegate examination responsibility should be included in the Overseas Finance Authority Act.

- IFSA should adopt written internal policies and procedures for approving approved custodians.

- Policies and procedures should be put in place by IFSA for retrospectively approving bearer share custodians who were authorized by registered agents between 2002 and 2007, or for revoking such custodianship and establishing new, approved arrangements.

- Policies and procedures, including if necessary, changes in laws or regulation, should be adopted to ensure that the extensive overseas business activities of some registered agents do not create structures not subject to effective supervision. A variety of approaches are possible.

- A supervisory authority (or authorities), with adequate powers and capacity, should be appointed to monitor and enforce compliance by other DNFBPs with their AML/CFT obligations.

R.25

- Updated guidance should be issued, with additional material applicable to the operations of DNFBPs.

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**	• No regulation or supervision of casinos. • Gaps/inconsistencies in the Registered Agents and Licensed Trustees Act. • Confidentiality provisions of Registered Agents Act are a potential impediment to effective supervision. • Gaps in the oversight of registered agents. • Inadequate supervision of the immobilization of bearer shares. • Weak arrangements for supervising large overseas activities of Registered Agents. • No effective arrangements for overseeing and enforcing AML/CFT obligations of other DNFBPs.
R.25	**PC**	• Need for updated guidance with more attention to sector specific issues, especially for DNFBPs.

4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Legal Framework:

694. The following non-financial businesses and professions, which are not DNFBPs under the FATF definitions, are included in Schedule 1 of POCA as relevant businesses subject to AML/CFT preventive measures obligations: car dealers, internet gambling, pool betting and lottery agents. For assessment purposes, car dealers have been treated as if they were DNFBPs. To the extent relevant, internet gambling, pool betting and lottery agents are reviewed in the sections above dealing with casinos. The authorities state that there is no internet gambling organized or operated in the jurisdiction. Although not specifically directed at internet gambling, para. 161 of the Guidance Notes specify action which should be taken by any financial service provider offering services over the internet. Pool betting has not been authorized. Lottery agents are considered a very low risk activity and no compliance oversight arrangements have been applied to them.

Other Vulnerable DNFBPs (applying R.5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

695. For discussion of car dealers, see DNFBP sections above.

Modernization of Conduct of Financial Transactions (c. 20.2):

696. c. 20.2 The largest denomination issued by the Eastern Caribbean Central Bank is $EC100.00, which is equivalent to US$37.00. The majority of banks in the jurisdiction also offer various automated systems including the use of ATM and credit cards. St. Vincent has a well established and actively used network of international money transmission services. Nonetheless, the authorities and FIs are of the view that SVG has a significant cash-based economy in relation to the rest of the ECCU.

4.4.2. Recommendations and Comments

697. No issues with respect to other DNFBPs. The authorities should keep under review evolving opportunities for reducing the use of cash in the economy.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

Legal Framework:

International business companies (IBCs):

698. The IBC Act, and the Registered Agent and Trustee Act No. 15 of 1996 as amended by the Registered Agent and Trustee Licensing Amendment Act 2004 (collectively, RA Act).

Local companies:

699. The Companies Act No. 8 of 1994, as amended by Act No. 2 of 1999, Act No. 7 of 2001, Act No. 28 of 2002, Act No. 10 of 2005, and the Companies (Amendment) Act 2006 (collectively, the Companies Act). Partnerships are covered by the Partnership Act, CAP 109.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

IBCs:

700. Under Sec. 5(3) of the IBC Act, IFSA is empowered to maintain a system of central registration of IBCs (IBC Register). In addition, under Sec. 4(1) of the RA Act, only registered agents may incorporate an IBC and under Sec. 194(2) of the RA Act, only registered agents are authorized to pay any required fees for incorporation of IBCs to IFSA, and IFSA shall not accept a fee from any other person (see c. 33.2 and 33.3 below for more information). Under Sec. 185(1)(a), any person showing a "proper purpose" may inspect the IBC Register after a first making a written request.

Local companies:

701. Under the Companies Act, the Registrar is empowered to maintain a system of central registration of local companies (Companies Registry). While not available in electronic form, the Companies Registry is indexed by company name and is accessible to the public. The Companies Registry contains information provided by companies about their directors, shareholders and articles of incorporation (see c. 33.2 and 33.3 below for more information).

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

IBCs:

702. Under Sec. 183(1)(a), IFSA is required to maintain a register of IBCs, including under Sec. 14 of the IBC Act, information on the IBC's articles of incorporation, which in turn refers to the name and address of the company, the registered agent involved in its formation, names of directors, although not required, and the types of shares issued. However, under Sec. 184 of the IBC Act, there is no requirement to provide names of directors or shareholders to the IBC Register. There is no restriction in the Act on the use of nominee shareholders or directors, or any method of determining whether such nominees are being used. There is also no restriction on the use of corporate directors. According to the authorities, IFSA may reach beyond the IBC Register for information held by the registered agent, such as customer due diligence on principals and directors as well as names of shareholders through the use of its authority under Sec. 15 of the RA Act to conduct onsite inspections, obtain information, and access the books and records of the registered agent. Hence, IFSA through its supervisory powers over registered agents, should have access to CDD information held in their files about beneficial ownership of the IBCs registered by such agents. However, given the questions about IFSA's legal authority to have access to confidential information based on Sec. 15(4) of the Registered Agents Act, the small number of on-site inspections of registered agents actually conducted by IFSA, the fact that the mind and management of some of the largest registered agents are not resident in SVG nor are all records maintained locally, and the fact that bearer shares have been immobilized by custodians neither resident in SVG nor approved by IFSA, IFSA's practical ability to access beneficial ownership information on IBCs may be limited (see discussion of effectiveness of implementation of R.24, above).

Local companies:

703. Under the Companies Act, there are a number of provisions that require information about beneficial owners to be provided to the Companies Registrar. These include sections 7 (initial submission of articles of incorporation), 69 (notice of names of directors), 176(1) & (2) (notice of address & change of address), 178(4)(b) & (c)(b) (notice of appointment of secretary & notice of change of secretary), and 194 (annual return setting forth any changes in any in the foregoing and including a list of names and addresses of current and former shareholders). There is no restriction on companies being shareholders, but, according to the authorities, in such cases typically local companies have been used. There is also no prohibition on the use of nominee shareholders or directors or any requirement that the use of such nominees be disclosed to the Companies Registrar or indicated as such in the Company Registry. However, under Sec. 184(1) of the Act, companies must keep a register of 'substantial shareholders' as defined in Sec. 181 of the Act, and, under Sec. 182, substantial shareholders are required to give notice to the company, naming the nominee, if any. Under Sec. 184(2), the Companies Registrar may require the company to furnish a copy of the register of substantial shareholders to the Registrar and therefore to the names of nominee shareholders who are substantial shareholders.

704. The Companies Registrar does not verify any of the information submitted to it, although if an omission or obvious misstatement is discovered on any form, the Registrar has the power under Sec. 526 to "make inquiries that relate to compliance with the [Companies] Act by any persons." In addition, Sec. 530 of the Act contains a criminal penalty on summary conviction of a fine of EC$2,000 and imprisonment of six months, or both, for any document filed with the Companies registrar that "(i) contains an untrue statement of a material fact, or (ii) omits to state a material fact required in the

[document], or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made."

Prevention of Misuse of Bearer Shares (c. 33.3):

IBCs:

705. Sec. 29 of the IBC Act prohibits an IBC from issuing bearer shares unless expressly authorized by its articles of incorporation. Once issued, under Sec. 30 of the IBC Act, bearer shares must be held in "safe custody" either by a registered agent or an approved custodian and each must keep a register of bearer shares. "Approved custodian" is defined in Sec. 2 as follows:

- in relation to the immobilization of bearer shares under Sec. 30 means, a properly regulated custodian or financial institution approved in writing by the Authority where the custodian or financial institution is required to hold bearer shares subject to a mortgage, charge or other form of security interest.

706. In addition, under Sec. 49 of the IBC Act, to the extent that bearer shares are used as security for a mortgage, the shares may also be immobilized by a mortgagee or chargee who is not a registered agent or approved custodian. This appears either to be an exception to or in conflict with Sec. 30, which limits the parties who may hold bearer shares to registered agents or approved custodians. According to industry representatives, most bearer shares in SVG IBCs are held by asset-based lenders who wish to obtain a security interest in the shares of IBCs holding assets financed by such lenders (see discussion of effectiveness of implementation of R.24, above).

707. Further, international banks are not permitted to issue bearer shares, since in Sec. 2 of the International Banks Act, the definition of "eligible company," para. (a)(iii), only permits companies that have not issued such shares to be eligible for a banking license. Similarly, registered agents, since they must be local companies under the definition of 'person' in Sec. 2 of the RA Act, would not be able to issue bearer shares. There are no similar statutory restrictions on mutual funds or international insurance companies., With respect to mutual funds, regulation 3(2) of the Mutual Fund Regulations which provides as follows, contemplates the issuance of bearer shares: "If a fund has issued bearer shares, the holder of such a share must produce the original of the same to the secretary of the fund in order to inspect the financial statements as provided in Sec. 13 (2) © (sic) of the Act." However, according to the authorities, IFSA would not grant a mutual funds or insurance license to any company with bearer shares outstanding.

Local companies:

708. Sec. 29(2) of the Companies Act explicitly prohibits the issuance of bearer shares.

709. Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):

IBCs:

710. Under Sec. 185(a)(1) of the IBC Act, any person, including a financial institution, showing a "proper purpose" may have access to the IBC Register, subject to the restrictions on the nature of the

information available under the Register referred to in c. 33.2 above. According to the authorities, however, no such instance is known to them.

Local companies:

711. Since the Local Company Register is open to the public, it may be used by financial institutions to obtain information on beneficial owners, subject to the restrictions on the nature of the information available under the Register referred to in c. 33.1 above.

Effectiveness of Implementation

712. With respect to IBCs, SVG's legal framework has a number of provisions to require registered agents to obtain information about beneficial ownership of legal persons, to make that information available to IFSA, and to immobilize bearer shares. In addition, IFSA has begun the process of implementing these laws through onsite inspections and developing procedures. However, in practice, there are a number of significant concerns that diminish IFSA's ability to ensure transparency of legal persons and therefore preclude a finding that the SVG legal and institutional framework is effective in this regard, including:

(i) questions arising under the Registered Agents Act relating to IFSA's legal authority to access confidential information held by registered agents, including information relating to CDD;

(ii) IFSA's ability to have timely access to adequate, accurate and current beneficial ownership information may be limited by the fact that two of the largest registered agents have mind, management and records elsewhere;

(iii) the limited number of onsite inspections of registered agents; and

(iii) with respect to bearer shares

(a) not all such shares are held in "safe custody" by registered agents or approved custodians as required by the IBC Act; the mission was informed by industry representatives that a number of custodians, including mortgagees, who were not approved by IFSA are holding bearer shares, and

(b) IFSA's on-site inspection procedures with respect to (x) immobilized shares held by registered agents and approved custodians are not effective to ensure that actual certificates are held in "safe custody," and (y) nominee directors and shareholders are not effective to ensure that beneficial ownership information is being made available to registered agents.

713. With respect to domestic companies, the situation is similar except that there are no effective mechanisms to: (i) ensure that the beneficial ownership information is adequate, accurate and complete; (ii) determine whether nominee shareholders or directors are being used to shield the identity of beneficial owners; or (iii) go behind such nominees to determine the identity of beneficial owners.

5.1.2. Recommendations and Comments

- With respect to IBCs;
- relevant laws should be amended to provide:
    - that only Registered Agents and approved custodians may immobilize bearer shares; and
    - IFSA with the legal authority to strike off an IBC under Sec. 172 of the IBC Act for reasons of public policy along the lines of its authority under Sec. 34(1)(a) of the Insurance Act;
    - measures should be taken by IFSA to verify, at a minimum, that:
    - information about beneficial ownership of legal persons in the IBC Register is adequate, accurate and current, and consistent with such information about legal persons held by registered agents,
    - AML/CFT procedures of both registered agents and approved custodians are effective and comply with the laws of their home country as well as those of SVG, and
    - bearer shares are held in "safe custody" under the IBC Act and therefore have been properly immobilized by registered agents and approved custodians, and that only approved custodians as defined by the IBC Act are authorized to immobilize bearer shares;
- Consideration should be given to amending relevant laws administered by IFSA to require a wide range of effective, dissuasive and proportionate administrative and criminal sanctions against controlling shareholders, directors, officers and companies for failure to disclose material information to IFSA or to RAs or for misuse of any company in respect to ML, FT or any other predicate crime;
- IFSA's onsite inspection procedures should ensure that it has access to and is verifying that adequate, accurate and complete information with respect to beneficial ownership of IBCs is being collected and maintained by registered agents whether such agents maintain mind, management and records in SFG or elsewhere;
- With respect to local companies, the Companies Act should be amended to:
    - provide the Companies Registrar with the requisite legal authority to ascertain the beneficial ownership of all companies registered in SVG, and to ensure that information about beneficial ownership of legal persons in the Local Companies Registry is adequate, accurate and current; and
    - consideration should be given to including a wide range of effective, dissuasive and proportionate administrative and criminal sanctions against controlling shareholders, directors, officers and companies for failure to disclose material information to the Companies Registrar and for misuse of any company in respect to ML, FT or any other predicate crime;

- The use of nominee and non-SVG corporate directors and shareholders should be prohibited in both the IBC and Companies Acts unless measures are taken to ensure that adequate, accurate and complete beneficial information is made available to IFSA and the Companies Registrar respectively and that the IBC and Companies Registers so reflect; and

- The Mutual Funds and International Insurance Acts should be amended to prohibit the use of bearer shares by licensees, and the Mutual Funds Regulations revised to reflect this change.

5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Bearer shares in IBCs are not properly immobilized since some are in hands of custodians that have not been approved by IFSA. • With respect to IBCs, onsite inspection procedures of IFSA not sufficient to ensure that adequate, accurate and complete information about beneficial owners is being collected and maintained by registered agents. • For local companies, the Companies Registrar does not have legal authority to ensure that adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities. • For local companies, there is no restriction on the use of nominee shareholders and directors in Companies Act nor is it possible for Companies Registrar to determine if nominees are being used.

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1. Description and Analysis

Legal Framework:

714. **International Trusts (ITRs):**ITR Act and the International Trusts (Amendment) Act No. 27 of 2002 (collectively the ITR Act); International Trust (Amendment) Regulations, 2002, and the RA Act.

Local Trusts:

Trustees Act (1897), CAP 383:

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

ITRs:

715. Sec. 63(1) of the ITR Act requires the names of the settlor, trustee, beneficiaries and protector to be registered with IFSA and the trust deed to provide names of settlor, trustee, beneficiaries and protector, if any. The ITR Register is not public, but is accessible to IFSA and to the FIU. Finally, under Sec. 62(1) of the ITR Act, trusts receive an exemption from taxation by SVG if the trust complies with the Act and

registration of the trust creates "a rebuttable presumption and *prima facie* evidence of such exemption" under Sec. 62(6). Hence, there is an incentive for ITRs to be registered with IFSA but such registration is not mandatory.

Local Trusts:

716. No measures in place to prevent unlawful use of local trusts.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

ITRs:

717. Under Sec. 55A of the IT Act, IFSA has the authority to require a registered trustee to provide IFSA with any information which it may reasonably require to ensure that the ITR complies with the provisions of the IT Act or any code of practice. Under Sec. 55B of the Act, IFSA has the authority to require a Registered Trustee to produce books, records and other information which IFSA may reasonably require to ensure that the ITR complies with the provisions of the IT Act or any code of practice. Under Sec. 63(1)(b) of the ITR Act, a registered trustee is required to keep and maintain a register for each ITR with the names of the settler, beneficiary, trustee and protector. In addition, for purpose or charitable trusts, a summary of the purpose of the ITR and if a purpose or charitable trust, a summary of the purposes of the trust and "such documents as are necessary to show the true financial position of the trust . . . ." Under Sec. 56(3) of the ITR Act, at least one trustee must be a registered trustee under the RA Act. Finally, there is no prohibition in the IT Act on companies acting as a settlor or beneficiary. Under Secs. 9 and 16(3) of the ITR Act, the settlor may also be the beneficiary or the protector. However, there is no requirement in laws, regulations or other enforceable means for registered trustees to identify beneficial owners of trusts.

Local trusts:

718. No information on local trusts available to the authorities.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):

ITRs:

719. Under Sec. 56(4) of the ITR Act, the ITR Registry is not open to the public except to confirm that an ITR is registered.

Local Trusts:

720. Information on beneficial owners of local trusts is not available to financial institutions since there is no comparable registry.

Effectiveness of Implementation

ITRs:

721. There are no laws, regulations or other enforceable means that require registered trustees to identify the beneficial owners of trusts, including settlors, trustees (other than the registered trustee itself), beneficiaries and protectors. Although para. 78 of the Guidance Notes covers this issue, the Guidance Notes do not constitute other enforceable means. Further, since, under Secs. 55A and 55B of the ITR Act, IFSA is only entitled to obtain information, reports and documents which it "may reasonably require for ensuring that the Trust is complying with the provisions of [the] Act and any code of practice," it does not appear that IFSA has the requisite legal authority to request information about beneficial ownership of ITRs in order to ensure that registered trustees are properly identifying beneficial owners of ITRs.

Local trusts:

722. There is no information available on effectiveness.

5.2.2. Recommendations and Comments

- With respect to ITRs, relevant laws, regulations or other enforceable means should be amended to require registered trustees to identify beneficial owners of trusts (e.g. the settlor, trustee, beneficiaries and protector) and the IT Act should be amended to make clear that IFSA has the authority to request books, records and other information about beneficial owners of trusts.
- With respect to ITRs, IFSA should conduct sufficient inspections of registered trustees so as to ensure that beneficial owners of trusts are identified.
- With respect to local trusts, laws, regulations and other enforceable means should be adopted to: (i) ensure that competent authorities have access to adequate, accurate and complete information about beneficial owners of trusts; (ii) prevent misuse of local trusts for purposes of ML and FT; and (iii) prevent use of companies as settlors, trustees or beneficiaries of trusts unless they can be adequately identified.
- With respect to both ITRs and local trusts, relevant laws should be amended to prohibit use of companies as settlors, trustees or beneficiaries.
- With respect to both ITRs and local trusts, consideration should be given to amending relevant laws should be amended to provide competent authorities with effective, dissuasive and proportionate sanctions to ensure that requisite information on beneficial owners is being disclosed and that corporate vehicles are not being used for ML or FT.

5.2.3. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating

R.34	**NC**	• With respect to ITRs, no laws, regulations or other enforceable means requiring registered trustees to identify beneficial ownership of trusts (e.g. the settlor, trustee, beneficiaries and protector of the trust) and allowing IFSA access to such information. • With respect to ITRs, IFSA does not conduct sufficient inspections of registered trustees so as to ensure that beneficial owners of trusts have been identified. • With respect to local trusts, no laws, regulations or other enforceable means are in place to: (i) ensure that beneficial owners are identified; (ii) provide a mechanism so that competent authorities have access to adequate, accurate and complete information about beneficial owners of local trusts; and (iii) prevent misuse of local trusts for purposes of ML and FT. • With respect to both ITRs and local trusts, no restrictions on use of companies as settlors, trustees or beneficiaries.

5.3. Non-Profit Organizations (SR.VIII)

5.3.1. Description and Analysis

Legal Framework:

723. Schedule 1 of POCA was amended in May 2005 to include charities as relevant business activities subject to the AML/CFT preventive measures of the Act.

724. The Companies Act, 1994 provides for the incorporation of NPOs, including those with a charitable purpose. To be eligible for exemption from taxation a non-profit organization must be incorporated under the relevant provisions of the Companies Act. The relevant provisions are in *Part III, Other Registered Companies, Division A, Companies without Share Capital (Articles 326-337).* To be approved, an NPO must "restrict its business to 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." Prior to applying for registration as a non-profit company, organizers must first obtain the approval of their articles by the Attorney General. The articles must state that the company is to be carried on without pecuniary gain to its members, and than any profits or other accretions to the company are to be used in further its business.

725. Requirements for incorporation as an NPO are somewhat more stringent than those for an ordinary company. An NPO must have three directors and it must state its non-profit purpose. If the NPO changes its objectives, it must reapply for registration. Other requirements include submission of bylaws and submission of annual financial statements signed by a person acting as an auditor. Registration notices are submitted by CIPO to the Inland Revenue and to Customs. At the end of 2008 there were 120 registered NPOs.

726. Unless they are clearly inconsistent, the general provisions of the Companies Act that apply to ordinary companies are also generally applicable to Companies without Share Capital. Thus the analysis of the transparency of domestic companies and arrangements in the immediately preceding section is equally applicable to NPOs.

727. Compliance monitoring of NPOs by CIPO is relaxed, with reviews taking place if filings are not made or a change in structure is submitted or when complaints are received. Complaints are rare. The Registrar of Companies has powers to investigate for violations of the Companies Act, including violations of bylaws, but, in practice this has not arisen. The Companies Act provides for various sanctions for non-compliance, including fines, striking from the Register, and sentences of up to six months in jail.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

728. The authorities have undertaken most of the reviews called for in VIII.1 (i, ii, and iii). The FIU has conducted a review of the NPO sector to understand its activities and vulnerability to ML and TF. The review established that the majority of NPOs are relatively small and received donation mainly from local fundraising activities and through donations made by local business persons. These donations most of the times include perishable goods and clothing. The NPOs that received donations from overseas are mainly donations from subsidiaries in other jurisdictions mainly the United States of America. Furthermore, most of the monies received by these NPOs are utilized locally. No systematic review appears to have been undertaken of laws and regulations of SVG as they affect the NPO sector.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

729. The FIU has undertaken an outreach program with the NPO sector to raise awareness of the risks of terrorist financing and to identify and address any vulnerabilities. Outreach has included publication of information in all local newspapers as well as articles in FIU information notices. Special attention has been given to the major NPOs that receive donations from overseas, including targeted training for these organizations.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

730. While charities are subject to POCA and the POCA regulations and hence are subject to the AML/CFT guidance notes, they are not subject to specific monitoring for compliance with AML/CFT preventive measures. Nevertheless, the FIU has used its general oversight authority to raise awareness and undertake training for the NPO sector, particularly training of the larger NPOs. The FIU also continues to monitor developments in the NPO sector for any indications of ML or FT activity.

731. Sec. 154 of Division G of Part 1 of the Companies Act requires additional financial reporting requirements for companies with annual revenues of more than EC4,000,000 or assets of more than EC 2,000,000. No distinction is made between domestic and international activities.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

(i) The purpose and objectives of an NPO are required to be stated in the Articles submitted to the CIPO for registration. Any changes must also be submitted to the Registrar.

(ii) Under sections 177 (3) and 178 of the Companies Act, the Registrar is to maintain a registry of directors and secretaries of companies, including NPOs. Registry information includes personal details such as name and address. CIPO does not verify the information but submission of false or misleading information is an offence under the Act. The registry information is available to the public. Provisions of the Companies Act implicitly require the NPO to maintain information on senior officers. Officers are required to be approved by the Directors; minutes of directors' decisions are to be maintained; and records of minutes are required to be maintained. Information on officers is available to members of an NPO and to the authorities but not necessarily to the public. Since NPOs are companies without share capital, the question of trustees as share owners does not arise.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

732. The sanctions available for NPOs are the same as those for ordinary domestic companies. See the discussion of legal entities in the section immediately above. Under Article 184 the Registrar may require an NPO to provide certain information. Failure to comply or failure to comply with other periodic filing requirements may result in the NPO being struck off from the Register. Division B of Part V of the Companies Act includes specific provision for court-directed investigations of companies, including NPOs, with broad powers to compel production of books and records and to require information and explanations. It also provides sanctions for providing false or misleading information.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

733. As discussed above, NPOs are registered under the Companies Act and registration information is available from the Commerce and Intellectual Property Office for a small fee.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

734. NPOs are required to keep their records for a period of 7 years in accordance with the POCA, including to be able to make the records available to investigative authorities. Division G of Part 1 of the Companies Act sets out the general requirements for financial disclosure for companies. These requirements include annual financial statements that provide detailed breakdowns of incomes and expenditures. No distinction is required between domestic and international income and expenditure. The Registrar should verify that the funds have been applied in a manner consistent with the purposes and objectives set out in its registration documents.

735. Countries should implement measures to ensure that they can effectively investigate and gather information on NPOs. (VIII.4).

736. c. VIII.4.1. The arrangements for domestic co-operation, co-ordination and information sharing with respect to NPOs are the same as those for all domestic companies. See the discussion of legal entities immediately above and also the discussion in 7.1 below.

737. c. VIII. 4.2. Division B of Part V of the Companies Act provides broad authority for court-directed investigations of any company, including NPOs, with provisions compelling production of books and records, and provision of information and explanations of any matters investigators consider relevant, with sanctions for non-compliance.

738. c.VIII. 4. 3. The powers and capacity of competent authorities to share information about NPOs, to investigate NPOs and to take preventive measures to prevent NPOs from being exploited for terrorist purposes or for terrorist financing are the same as those available for all prevention of terrorism purposes. No special provision applies with respect to NPOs.

739. Points of contact and procedures for responding to international requests regarding any particular NPOs.

740. Dealing with international requests for information regarding NPOs would follow the same procedures as those used for other information related to terrorist financing. See discussion below in 7.1-7.5.

Effectiveness of Implementation of SR VIII

741. The majority of NPOs in SVG appear to be small, involving raising and disbursing of local funds for local social, cultural, religious, or charitable purposes. However, a few NPOs receive significant overseas funding to support various forms of education, training, and welfare assistance. Although no evidence or suspicion of FT has arisen, some structural vulnerability exists. The few NPOs interviewed displayed a general appreciation of concerns about possible ML and FT abuse of NPOs. However, they were not familiar with specific techniques that might be used. Tax compliance by NPOs is the main focus of attention for the authorities. Little attention has been directed at monitoring the activities of NPOs for possible terrorist financing or at raising general awareness of such vulnerabilities.

5.3.2. Recommendations and Comments

- The authorities should undertake a review of its laws and regulations as they relate to AML/CFT and the NPO sector.
- The Registrar of companies should establish policies and procedures to monitor financial filings of NPOs to verify that funds are being raised and disbursed in a manner consistent with the NPOs stated purpose.
- Financial reporting requirements should be broadened to including information on domestic and international sources of funds and applications of funds.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**LC**	• No review of NPO sector laws and regulations. • Limited monitoring of NPO financial activities.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31 & R.32)

6.1.1. Description and Analysis

Legal Framework:

742. The principle legal provisions for national cooperation and coordination are in the Exchange of Information Act 2008 (the "EIA") and in the FIU Act. The legal framework is not explicit in setting forth the legal basis for coordination among the FIU, regulatory authorities, police and customs on operational matters. To the extent that the FIU obtains information from domestic regulatory authorities, this authority is contained in the sector specific laws. The International Banks Act, Sec. 19 authorizes IFSA to share with *inter alia* the FIU and the RSVGPF, which are specifically listed as receiving authorities, if it is suspected that the licensee or its directors or officers has committed an offense. The Banking Act authorizes the ECCB to share information with other financial institutions regulatory bodies within the jurisdiction as well as foreign authorities; however this authority is circumscribed to the information required to maintaining the integrity of the financial system.

743. A specific concern is that access to information by the FIU that is held by the Inland Revenue Service is not authorized under law. The FIU, AG and DPP assert that the FIU's general authority to "obtain" information under Sec. 4(1) of the FIU Act enables the broadest possible cooperation and information access. Draft MOUs between the FIU and the Police, Customs, and Immigration respectively are expected to be finalized that establish the framework and scope of mutual cooperation and coordination. The DPP has not yet agreed to a request from the FIU to conclude an MOU to formally delegate functions to the FIU. Finally, pursuant to POCA Sec. 48, the establishment of the NAMCL is intended to facilitate both policy development/strategic planning and operational cooperation among domestic competent authorities charged with AML/CFT responsibility.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

744. The Exchange of Information Act of 2008 is the primary basis for sharing of information among domestic regulatory authorities. The domestic regulators along with the ECCB are also in the process of signing a regional MOU on information sharing and coordinating exchange of information requests. Only two sector specific acts provide express authority for cooperation – the Cooperative Societies Act, Sec. 183(2) – to any public official in SVG or elsewhere who is authorized to exercise investigatory powers concerning the society. Other sector specific acts limit cooperation to limited, non-investigatory purposes – i.e., to maintain the integrity of the financial system which are not co-extensive with the breadth of AML/CFT cooperation that may be required.

745. Presently, the basis upon which the FIU exercises authority with other competent authorities is not specifically defined in law or regulation. In practice the mechanisms implemented are direct requests and ongoing dialogue, in particular this is most evident in the working relationship among the FIU, the Police and the DPP. The separation of the lines of responsibility are seamless, in fact perhaps overly conflated, in that the FIU by virtue of police officers assigned to it cooperates and coordinates investigations. The lack of specific legal authority of the FIU to directly access databases of law enforcement and other governmental authorities is yet another factor that pushes the FIU's work to more police-empowered investigation over financial intelligence gathering and analysis. The FIU is in the process of formalizing MOUs with Customs, Police and Immigration authorities that will help to alleviate the ambiguity as to the FIU's reach. Nevertheless, the generic wording "obtain" relied upon by the FIU under the FIU Act Sec. 4(1) does not suffice to provide the required clarity of the domestic information sharing with the FIU.

746. In addition, while the policy coordination function of the NAMLC has been used for information sharing for policy formulation and strategic planning among the member authorities, the legal basis for

policy coordination is not explicit; firmer legal language would facilitate operational cooperation and coordination.

Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):

747. Consultation with the financial sector and DNFBPs on AML/CFT laws, regulations and guidelines falls almost entirely to the FIU. The FIU Act Sec. 4(2)(g) requires the FIU to inform financial and business institutions of their obligations under POCA and UNATMA (the latter through the 2006 amendments to POCA). The NAMLC could take on a more formal role with respect to financial sector awareness, in support of the FIUs current efforts in this area.

Statistics:

748. The FIU maintains statistics on cooperation with foreign FIUs but not domestically, except as follows:

Search Warrants Conducted by the FIU in collaboration with other Law Enforcement Units

Year	Total
2004	N/A
2005	N/A
2006	1
2007	N/A
2008	14

749. Other institutions do not keep regular statistics on cooperation efforts. The FIU reviews its procedures on its tools for AML and CFT systems on an ongoing basis and reports to the NAMCL on a quarterly basis. However, there is no periodicity for regular reviews of the effectiveness of AML/CFT domestic cooperation.

Effectiveness:

750. The FIU Act Sec. 4(1) reference to “obtain” does not suffice to give full legal and unfettered access to appropriate law enforcement and other governmental information needed to develop financial intelligence and analysis. Relying on the authority of the police officers assigned to the FIU does not close the gap as the police powers relate to investigating offenses under the Criminal Code and specified other offenses. An MOU between the DPP and FIU would help to formalize the FIU’s function in carrying out POCA and UNATMA prosecutorial functions.

6.1.2. Recommendations and Comments

751. FIU Act should be amended to specify the FIU authority to obtain appropriate law enforcement and other governmental information needed to develop intelligence and analysis.

NAMCL:

752. The NAMCL to have the legal policy and coordination mandate and to take a more proactive role in policy and operational coordination, e.g. risk assessment and prioritization and strategy. They seemed to have neglected the offshore sector which is inherently higher risk.

Regulators:

753. Need for closer coordination and cooperation implementation arrangements between the various regulators especially among the ECCB, IFSA and the Min. of Finance-SRD (to include in the future credit unions and building societies being transferred to the Min. of Finance). The EIA provides a reasonable basis for regulatory information sharing, but formal cooperative arrangements beyond pure exchange of information are warranted.

6.1.3. Compliance with Recommendation 31 & 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• The FIU does not have specific FIU authority to obtain appropriate law enforcement and other governmental information needed to develop intelligence and analysis. • The NAMCL does not have a statutory role for policy coordination. • Domestic regulatory authorities do not have uniform bases upon which to cooperate among each other and with law enforcement.
R. 32	**LC**	

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

6.2.1. Description and Analysis

Legal Framework:

754. St. Vincent and the Grenadines has signed, ratified and largely implemented the Vienna Convention. Both the Palermo Conventions and the United Nations International Convention for the Suppression of the Financing of Terrorism (the SFT Convention) have been signed. Neither has been ratified, and portions of the Palermo Convention have not been implemented in the legal framework. The principal laws implementing these conventions are the Drugs (Prevention of Misuse) Act, Cap 219, Drug Trafficking Offenses Act 1993, POCA and UNATMA.

Ratification of AML Related UN Conventions (c. 35.1):

755. The Vienna Convention has been ratified. The Palermo Convention has not been ratified pending full legal implementation of its provisions.

Ratification of CFT Related UN Conventions (c. I.1):

756. The SFT Convention has not been ratified.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):

757. The Vienna Convention is implemented primarily through the Drugs (Prevention of Misuse) Act, Cap 219. With the exception of the following specific provisions of the Vienna Convention, all other articles are incorporated into the SVG legal framework:

- Article 3(1)(a)(iv) criminalizing the manufacture, transport or distribution of equipment, materials or substances as listed in the convention knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

- Article 3(1)(v) criminalizing the organization, management or financing related to the production, manufacturing, cultivation or possession of purchases of narcotic drugs or psychotropic substances;

- Article 3(1)(c)(ii) criminalizing possession or equipment or materials or substances listed in the convention knowing that they are being or are to be used in the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances.

Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1):

758. The SFT Convention has been given effect in domestic law by UNATMA. A few gaps exist, specifically, Article 2 of the SFT Convention, which is incorporated in Secs. 3–6 of UNATMA criminalize the offenses for FT but the domestic FT offenses do not cover terrorist acts defined by conventions in the annex to the SFT Convention. UNATMA excludes the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980 and the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997. (Please see, above, discussion of SR II in Sec. 2.2, see also, discussion that the each FT offense does not extend to terrorist acts, terrorist organizations and individual terrorists.)

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):

759. With the exception of Article 5 of the Palermo Convention, Articles 6, 7, 10-16, 18, 19, 20 24-27, 29-31 are implemented. The Palermo Convention will be ratified upon an assessment by the AG that that all relevant measures required by the convention, including legislative and administrative, are finalized or near finalization. With respect to Article 5, no offenses have been enacted within SVG to criminalize the participation in an organized criminal group.

Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2):

760. SVG has not implemented legal provisions to allow for the freezing or seizing of terrorist assets in accordance with UNSCRs 1267 or 1373.

Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):

761. SVG signed the 2002 Inter-American Convention against Money Laundering on June 3, 2002.

6.2.2. Recommendations and Comments

- UNATMA should be amended to include all conventions that define offenses to which the SFT Convention applies.

- Legal provisions and other measures should be adopted in order to implement the requirements in UNSCRs 1267 and 1373. In particular, a mechanism for freezing funds, assets, and other financial or economic resources of terrorists and terrorist organizations.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• The SFT and Palermo Conventions have not been ratified. • Sec. 5 of the Palermo Convention has not been implemented and the SFT Convention has not been fully implemented with regard to the application of offenses in UNATMA to terrorist acts, terrorist organizations and individual terrorists. • UNATMA does not include two of the conventions which define terrorist offenses under the annex to the SFT Convention.
SR.I	**NC**	• No legal framework implemented to comply with UNSCRs 1267 and 1373. • The SFT Convention has not been fully implemented and the relevant law, UNATMA, does not include two of the conventions listed in the annex to the SFT Convention.

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

6.3.1. Description and Analysis

Legal Framework:

762. Mutual legal assistance provisions are specified in POCA, UNATMA, the Mutual Legal Assistance in Criminal Matters No. 46 of 1993 (the "MACMA"), specialized treaties on mutual legal assistance including with the U.S., and through FIU to FIU information sharing under Secs. 4(2)(e) and (f). The FIU has adopted a standard operating procedure on foreign requests for assistance that provides the framework by which most requests are processed.

763. The MACMA allows for wide ranging mutual legal assistance within the Commonwealth. The MACMA also provides the outlines of a framework for mutual legal assistance ("MLA") in criminal matters between SVG and non-Commonwealth countries. The MACMA applies to "serious offenses" which are defined as indictable offenses subject to a sentence of imprisonment for a term of no less than 3 years, or where the value of the property derived or obtained from the commission of the offense in not less than $20,000 (ECD). The concept of a serious offense is somewhat at tension with the SVG "all

crimes" approach to predicate offenses for ML. However, the authorities assert that because (i) all ML and FT crimes are "hybrid" offenses with elements of both statutory and indictable offense, and (ii) the maximum sentences for each are above the serious offense threshold (which should be noted is a minimum threshold for imprisonment), all ML and FT offenses are captured by the MACMA.

764. While SVG has entered into at least one treaty for MLA with the United States, this treaty is not yet part of the domestic legal framework, i.e, does not have the full force of law because it is only applicable at the executive branch level. The authorities recognize that there is a gap in terms of putting MLA treaties into legal effect insofar as regulations called for under the MACMA have not been adopted to give effect to a treaty for bilateral mutual legal assistance (Sec. 30(1) of the MACMA). Such regulations would give equal standing to requests for MLA through bilateral treaties with requests to and from Commonwealth countries. To this end, the authorities have begun to consider whether to enact a separate Act to put into effect bilateral treaties in general or to issue MLA related regulations as envisaged by the MACMA. Despite this legislative gap, the authorities believe that the current level of provision of MLA is high and that requests are handled expeditiously.

765. The Attorney General's office is the main conduit through which mutual legal assistance requests from letters rogatory and MLA requests. In most cases, the requests pertaining to ML and predicate offenses are executed by the FIU on behalf of the government. The Police and Customs are able to provide mutual legal assistance to counterpart agencies through INTERPOL and the Caribbean Customs Law Enforcement Council (CCLEC), the latter comprising customs administration from the Caribbean and Latin America, Canada, France, the Netherlands, Spain, the United Kingdom and the United States.

Widest Possible Range of Mutual Assistance (c. 36.1):

766. Assistance provided under the MACMA includes assisting in obtaining production orders and restraining orders, seizing property, executing search warrants, taking of witness statements, tracing property, securing transfer of prisoners, locating or identifying persons, and assisting in serving documents. MLA may be provided for the purpose of pursuing criminal proceedings which have been or could be instituted in the requesting state in respect to an offense committed or suspected on reasonable grounds to have been committed against the laws of SVG.

767. More specifically, POCA provides for the enforcement of external confiscation orders in Sec. 52. UNATMA Sec.19 provides for expressly for the provision of the fullest measure of assistance authorized under MLAMC in connection with criminal investigations or criminal or extradition proceedings for FT.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

768. The time for responses to requests for MLA is on average 3 weeks, but depends on the nature and complexity of the terms of the request. Requests normally come through the AG's office and are executed primarily by the FIU. The FIU has applied to the court and magistrates for production orders, and seizures of property in executing MLA requests.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

769. The basis for refusing MLA requests are set out in Sec.19 of the MACMA. These include that the offense is:

- of a political character;
- would cause prejudice to a person on account of the person's race, sex, religion, nationality, place of origin, or political opinions;
- would be a military rather than ordinary criminal offense;
- would prejudice national security or international relations of SVG; or
- the steps to implement the request to provide MLA would be contrary to SVG law or public policy.

770. The authorities submit that the basis for rejecting a request are reasonable and have not resulted in undue restrictions in the actual provision of MLA.

Efficiency of Processes (c. 36.3):

771. Most requests for MLA are received by the Attorney General's office, although some may be channeled through the Ministry of Foreign Affairs, which passes on the request to the AG. The AG is responsible for assessing whether the request conforms to minimum requirements for MLA requests, including whether the purpose of the request is properly justified. In most cases, ML and predicate offense requests for MLA are executed by the FIU.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

772. There is no limitation on the basis of possible involvement of fiscal matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

773. No domestic legislation prohibits the provision of assistance arising from the existence of secrecy or confidentiality laws. However, as described above in Sec. 3.4 there continue to be some limitations and confidentiality of information in the regulatory authority's access. Further, there are indications that information that should be available to domestic competent authorities are not kept within the jurisdiction which would make it inefficient and difficult to access in order to provide MLA in timely manner. It is also not always clear whether information maintained abroad with respect to entities licensed or registered in SVG are also subject to the laws and restrictions of the countries where they are held, e.g. Liechtenstein. To the extent that there could be such restrictions, there is a need to assess the operational structure and arrangements of the applicable sectors (e.g. mutual funds, international insurance, IBCs, trusts, and their service providers, managers, administrators, etc.) to ensure that there are adequate avenues and safeguards for obtaining such information promptly on request.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

774. All powers available to competent authorities are available for use in response to requests for MLA on ML, FT and predicate offenses.

Avoiding Conflicts of Jurisdiction (c. 36.7):

775. The authorities inform that SVG has never had to consider devising and applying mechanisms for determining the best possible venue for prosecution as this has never arisen in practice. Operationally, the SVG authorities frequently develop and turn over evidence for the prosecution of offenses outside of SVG.

Additional Element—Availability of Powers of Competent Authorities Required under R.28 (c. 36.8):

776. Competent authorities in SVG are authorized to exercise the powers available under R.28 in response to requests received directly from foreign judicial and law enforcement authorities to domestic counterparts. **As described above, the FIU Act, Sec. 4(2)(e) allows the FIU provide information directly to FIU** counterparts. The FIU has developed a standard operating procedure for the execution of such requests.

International Cooperation under SR V (applying c. 36.1-36.6 in R.36, c. V.1):

777. As described above, the full measure of assistance contemplated under the MACMA is made available for FT offenses under Sec. 9 of UNATMA. To date, no requests have been received for FT related offenses.

Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):

778. See 36.1-36.6 application to SR V, above.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

779. The MLAMC authorizes the AG to provide MLA in the absence of dual criminality. Specifically, the MLAMC Sec. 19(3) provides that the AG has the discretion to refuse mutual legal assistance in the absence of dual criminality; however, this discretion is rarely exercised. The AG had no specific recollection of having availed of this discretionary authority.

International Cooperation under SR V (applying c. 37.1-37.2 in R.37, c. V.2):

780. See International Cooperation under SR V above.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):

781. The FIU, as the main ML and FT competent authority, responds to requests to apply provisional measures including confiscation in response to requests from foreign competent authorities; the FIU executes confiscation requests under POCA for ML and predicate offense-related seizures/confiscations as it does for domestic cases. The FIU has issued a standard operating procedure for the timely response to MLA requests, which includes any request for the application of provisional measures. The main provisional measures available under POCA and UNATMA with respect to obtaining production orders, detaining cash, obtaining search warrants and forfeiting of assets and property are available in response to MLA requests. . See charts on cash forfeitures and confiscation of property at para. 149. More specifically, Secs. 52-53 of POCA provide for the enforcement and registration of external confiscation orders in St. Vincent and the Grenadines and Sec.54 provides for the submission of evidence of corresponding law of the other country to execute such confiscation orders.

Property of Corresponding Value (c. 38.2):

782. The authorities advise that the requirements of 38.1 are also applicable for the confiscation of property of corresponding value. No statistics were provided to support that property of corresponding value has been attached.

Coordination of Seizure and Confiscation Actions (c. 38.3):

783. As described above, coordination of confiscation is contemplated in POCA Secs. 52-53. Joint searches and seizures have been coordinated and undertaken with foreign authorities, including the United States.

International Cooperation under SR V (applying c. 38.1-38.3 in R.38, c. V.3):

784. The requirements of Recs. 38.1 -38.3 apply equally to cooperation under SR V because of the specific language in Sec.19 of UNATMA.

Asset Forfeiture Fund (c. 38.4):

785. Under POCA Sec. 55, a Confiscated Assets Fund has been established. The amounts collected of EC$ 897,135.45 are allocated by the Act to law enforcement including *inter alia* the FIU and in particular the investigation of suspected cases of drug trafficking and money laundering.

Sharing of Confiscated Assets (c. 38.5):

786. SVG has considered, and has participated in, the sharing of assets with other countries when confiscation has resulted from coordinated law enforcement actions. One action cited by the authorities was with the United States under the MLA treaty between the two countries.

Additional Element (R 38) – Recognition of Foreign Orders for: a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

787. Not recognized.

Additional Element under SR V (applying c. 38.4-38.6 in R.38, c V.7):

788. The answers for 38.4-38.6 do not apply to SR V.

Effectiveness of Implementation

789. As noted in criterion 36.1.1 and 38.2, the timeliness and content of the provision of information show a generally effective system. The burden of handling the substance of most requests appears to fall to the FIU with little participation from other competent authorities. If MLA requests were to increase substantially, this would place a strain on the FIU's resources.

790. From 2004 through 2008, 31 MLA requests from 17 countries were received and processed by the FIU. None were refused.

6.3.2. Recommendations and Comments

791. Pursuant to MACMA, SVG should adopt regulations that will allow for bilateral mutual legal assistance treaties to have the effect of law.

792. The AG should issue a legal opinion that the discretion to reject requests for MLA in the absence of dual criminality would not be exercised in respect to ML, predicate offense and FT requests.

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	**LC**	• Bilateral treaties on mutual legal assistance do not have the force of law.
R.37	**C**	
R.38	**C**	
SR.V	**LC**	• The legal basis for conducting investigations and related prosecutorial measures for FT on behalf of foreign law enforcement is not specified in law.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

793. Extradition is governed by the Fugitive Offenders Act, Cap. 126. Offenses under POCA and UNATMA are extraditable offenses. Specifically, Sec. 65 of POCA makes its offenses extraditable and Sec. 18 of UNATMA does the same. The Fugitive Offenders Act permits persons from St. Vincent and the Grenadines for ML and FT offenses to all Commonwealth countries, the Republic of Ireland, and the other 58 countries listed in the schedule to the act. Other countries have been subsequently added to the list. Under the Fugitive Offenders Act, the Governor-General is the authority to whom extradition requests are made, and who signs the order granting such request.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

794. Under the Fugitive Offenders Act, dual criminality is based on conduct rather than on names or categories of offenses. Pursuant to the MAMC, as described above in 6.3., the competent authority, i.e., the Attorney General has the discretion to reject a request for extradition or other mutual assistance in the absence of dual criminality. However, as this is discretionary, the Attorney General has informed that the provision has been rarely invoked.

Money Laundering as Extraditable Offence (c. 39.1):

795. Pursuant to Sec. 65 of POCA, ML is an extraditable offense. The provisions of the Fugitive Offenders Act apply. Extradition applies to persons who are accused of or have been convicted of offenses in other countries.

Extradition of Nationals (c. 39.2):

796. Pursuant to Sec. 20 of the Fugitive Offenders Act, St. Vincent and the Grenadines may extradite its own nationals. Specifically, this section provides that "the Governor-General shall not refuse the return of a person who is a citizen of, or a permanent resident in, Saint Vincent and the Grenadines solely on the ground that the person is not also a citizen of the country making the request."

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

797. **N**ot applicable.

Efficiency of Extradition Process (c. 39.4):

798. The authorities cite cases of extradition to the United States as evidence of the practice to handle matters relating to extradition expeditiously. The Attorney General informs that requests for extradition are passed through the office within one day to the appropriate law enforcement body, in the case of ML, to the FIU for prompt processing.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

799. Sec. 4(4) of the Fugitive Offenders Act authorizes the Governor-General to *inter alia* modify, make exception or limit the requirements of the act. This would allow for modifying orders to expedite extradition.

Additional Element under SR V (applying c. 39.5 in R.39, c V.8):

800. The procedures stated in c.39.5 apply to extradition.

6.4.2. Recommendations and Comments

801. Specific procedures should be established for expediting extradition requests.

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**	
R.37	**C**	
SR.V	**LC**	• The legal basis for conducting investigations and related prosecutorial measures for FT on behalf of foreign law enforcement is not specified in law.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework:

802. Specific provisions for international cooperation outside of mutual legal assistance for ML and FT are provided for in POCA, UNATMA and the FIU Act. More generally, there is legal authority for the Police and Customs authorities may provide cooperation with their counterparts. The domestic regulatory authorities may provide information and assistance to foreign regulatory counterparts under the EIA, as described above in Secs. 3.4. and 6.1.).

Widest Range of International Cooperation (c. 40.1):

FIU:

803. As described above in 2.5., above, the FIU is the main AML/CFT body, and because of its structure as hybrid-administrative FIU, serves as the core body for international cooperation. The FIU is authorized Sec.4(2)(e) and (f) to cooperate with foreign counterpart FIUs. The FIU need not establish formal MOUs with counterparts in order to provide information but may enter into broad MOUs necessary for the discharge of its functions. The FIU has adopted a standard operating procedure for responding to requests from foreign FIU and foreign law enforcement. The FIU has exchanged information with counterparts through the secure Egmont website.

ECCB:

804. The provides information on a reciprocal basis with other regulators pursuant to Sec. 23 of the Banking Act for regulatory purposes] In addition, the advent of the OECS regional MOU among all domestic regulators would permit exchanges with non-counterparts. This MOU has been agreed in principle among relevant authorities and is being circulated for signature.

IFSA:

805. IFSA's primary basis for information exchange is the EIA. In operation, the Executive Director reviews all requests and substantiates the response.

Police:

806. The Police regularly exchange information through Interpol.

Customs:

807. Customs provides information upon request through CICLEC.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):

808. The FIU standard operating procedure calls for responding to requests within 2 weeks. Based on the complexity of the request, the average response time is 3 weeks. The AG, DPP and Police did not provide specific information on the timeliness of the provision of assistance that are handled directly by their offices.

FIU Memoranda of Understanding with Counterparts

	Year & Countries					Total MOUs
	2004	**2005**	**2006**	**2007**	**2008**	
	Italy	Netherlands Antilles	Canada	Chile	Aruba	
	Panama	Guatemala				
	Albania	Thailand				
No. of Countries	3	3	1	1	1	9

Clear and Effective Gateways for Exchange of Information (c. 40.2):

809. The primary gateway for ML and FT information is the FIU's gateways with other FIUs through MOUs, and the Egmont's secure website, the gateways created by the EIA (See Secs. 3.4. and 6.1. above) for regulators, Interpol for the Police and the CICLEC for the Customs Commission. There are complementary provisions in some of the financial regulatory laws that provide for supervisor to supervisor cooperation.

Spontaneous Exchange of Information (c. 40.3):

810. The FIU shares information both spontaneously and upon request in relation to both ML and the underlying predicate offenses. Information provided by the FIU is for intelligence purposes only and is restricted to the use of the receiving FIU only unless the SVG FIU specifically permits otherwise. Of some concern is that the FIU in its own work does not draw a clear distinction between intelligence gathering/analysis and the development of evidence for investigative purposes. In this regard, to the extent that the FIU only authorizes the disclosure of information for intelligence purposes when making spontaneous exchanges, there is no distinction made to the receiving authority of the character of the information. Other competent authorities do not have operating practices or policies for spontaneous exchanges of information but some of the sector specific acts, e.g., the International Banks Act and the Banking Act do provide for the regulators to share information on a reciprocal basis but only with respect to issues of preserving the integrity of the financial system.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):

811. The EIA, Sec. 4(c) expressly authorizes the receiving regulatory authority to make inquiries on behalf of foreign counterparts. In practice, such AML-related inquiries have been channeled to the FIU to assemble the substantive response; not CFT requests have been received to date.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

812. The FIU Act Sec. 4(2)(f) and the FIU's standard operating procedures are the basis upon which the FIU makes inquiries on behalf of foreign counterparts. The FIU searches its own databases and databases of other governmental authorities, including law enforcement. As was discussed above in Sec.

2.5., the authority of the FIU to directly access such other databases and obtain information from other governmental authorities in making inquiries is not clear in the law. While the authorities assert that the general provision in the FIU Act Sec. 4(1) designating the FIU as the national central authority to "obtain" information suffices, this provision does not appear to be adequate. Rather, the FIU relies on the access of police officers that are assigned to the FIU offices as a basis for access to law enforcement intelligence, and subsequent to the finalization of MOUs with the RSVGPF and Customs authority, the indirect access of the FIU under their terms. In this regard, while inquiries are made on behalf of foreign counterparts, in the absence of a legally sound basis for the FIU accessing such information directly, such inquiries could be subject to judicial challenge.

Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):

813. For the Police and Customs, the authority is as set out in Rec. 40.1 above. The FIU exercises administrative, investigative and prosecutorial powers under POCA and UNATMA. In this respect to further investigations on behalf of foreign law enforcement, the FIU may obtain restraint orders (POCA Sec. 26), search warrants (POCA Sec. 37), and production orders (POCA Sec. 35).

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

814. The FIU provides information to counterparts on the basis that the information will be used only for intelligence purposes unless the specific authorization of the FIU is sought or if it is to be shared with another agency.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

815. The EIA has repealed the previous secrecy and financial privacy provisions that applied arising out of commercial arrangements. In addition, the EIA also liberalized the gateways that allow for exchange of information but some sector specific laws have some residual confidentiality provisions the legal effects of which are not fully known. (See. Recs. 4 and 24 on secrecy provisions.)

Safeguards in Use of Exchanged Information (c. 40.9):

IFSA:

816. Any information provided by IFSA is governed by Sec. 5 of the Exchange of Information Act 2008, which restricts the use of the information for regulatory purposes only unless the information is obtained through an order of the High Court of St. Vincent and the Grenadines. A typical wording in a transmittal letter is that the information is provided to be used for the exercise of regulatory functions only. The authorities inform that in some cases it appears that these restrictions were not mentioned, perhaps inadvertently.

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):

817. The FIU's standard operating procedure contemplates the provision of information to non-counterparts, however, there is no specific legal basis to so provide. In operation, the FIU informs that the request will be channeled through the foreign FIU indicating the law enforcement purpose, which the SVG FIU must consent to prior to exchanging information. The regional MOU that is circulating for signature in the OECS would permit exchanging of information with non-counterparts.

Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11):

818. See c. 40.10 above, which provisions apply.

International Cooperation under SR V (applying c. 40.1-40.9 in R.40, c. V.5):

819. The principles outlined in c. 40.1 to 40.9 apply equally under SR V. However, the legal basis to apply the POCA investigative and prosecutorial powers (production orders, restraint orders, and search warrants) to FT offenses is not directly specified.

Additional Element under SR V (applying c. 40.10-40.11 in R.40, c. V.9):

820. The answers with respect to the additional elements in c. 40.10 and 40.11 apply to SR V.

6.5.2. Recommendations and Comments

821. The legal basis for conducting investigations and related prosecutorial measures for FT directly on behalf of foreign law enforcement should be specified in law.

822. The scope and definition of financial intelligence information that is subject to sharing by the FIU to foreign counterparts and to foreign law enforcement needs to be clearly defined.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	**C**	
SR.V	**LC**	• The legal basis for conducting investigations and related prosecutorial measures for FT on behalf of foreign law enforcement is not specified in law.

7. OTHER ISSUES

7.1. Resources and Statistics

R.30 Adequacy of Law Enforcement and other AML/CFT Investigative or Prosecutorial Agencies (R.30.1):

FIU:

823. The current staffing composition of the FIU is described above in Sec. 2.5 above. The FIU has seen a two-fold increase in the filings of SARs from 2007 to 2008. Numbers of investigations and requests for production orders, cash detentions, and requests from other FIUs has substantially increased as well during the period of 2004 to 2008. Looking forward, if the government moves forward with an additional threshold cash reporting system, the demands on the FIU will increase again. The existing complement of FIU staff is inadequate to handle this volume of work and there are unfilled positions within the existing complement. In response, for 2009 the FIU requested and has been granted 4-5

additional police staff and one additional customs officer; however, such additional staffing has not yet been made available to the FIU. Beyond law enforcement skills, the FIU is in critical need of specialized analytical staff such as forensic accounting, as well as training of existing staff on financial analytical work. The FIU budget is provided allocation under the Consolidated Fund through the Minister of Finance. The FIU's structure and budget would need to be revisited if the FIU is assigned as an AML/CFT supervisor for certain DNFBPs; resource management would be required to ensure that the core functions of the FIU are not further marginalized by multiplying its role.

FIU Annual Budgets/1

Year	**Amount $**	**Budgetary Allotment from Police $**	**Police Officers Positions**
2009	941,170.43	114,660.00	1 SSgt, 1 Cons. 1 Cpl.
2008	885,998.67	69,420.00	1 SSgt, 2 Cons.
2007	910,526.57	87,732.00	1 SSgt, 1 Cpl., 1 Cons
2006	605,891.57	90,312.00	1 ASP, 1 Sgt, 1 Cpl.
2005	616,680.93	86,424.00	1 ASP, 1 Sgt, 1 Cpl.

1/ The FIU budget is supplemented by the assigned police and customs officers assigned that are on their respective budgets.

824. The FIU's office space and computer facilities are adequate but could be enhanced, particularly with respect to physical security. In particular, as the FIU moves to receiving SARs through electronic filings, additional computer capacity is warranted. Further, to the extent that real-time connectivity to other governmental databases becomes available, the FIU should be allocated sufficient technological resources to make full use of these databases. Moreover, the FIU should look to obtain direct access to one or more commercial financial databases to enhance its analytical capacities. The FIU has submitted proposals to enhance its IT capacity by increasing the number of computers available, development of new and modern data bases and enhanced disaster recovery policies.

DPP and Attorney General's Offices:

825. The office of the DPP is significantly understaffed. Out of a total of six positions, 2-3 professional positions are unfilled or personnel are assigned outside of the DPP office. To augment its resources, the DPP frequently hires private counsel on a contractual basis. However, the frequent turnover and long periods of vacancy in posts increases pressures on the limited staff and undermines collective institutional knowledge and capacity. The authorities are of the view that the lack of qualified applicants for DPP and AG posts are due primarily to the salary levels. However, the resource constraints are minimized somewhat because nearly all ML and predicate offense related prosecutorial functions are carried out by the specialized lawyers in the FIU.

826. The office of the AG is also understaffed, including a long-standing vacancy for the number two position of solicitor. The understaffing of the AG's office has two main effects with respect to AML/CFT issues: (i) it limits the ability of the DPP to borrow staff as needed for criminal cases; and (ii) it limits the ability of the AG to use its own resources for legislative drafting.

Police:

827. The police have a pressing need to fight increasing criminality in SVG and to participate in joint operations within the region. To this end, the budget of the RSVGPF was increased by 10% from 2007 to 2008. The size of the police force has increased over the last 4 years as well. Many of the drug offenses, whether from marijuana grown within SVG or transshipment of cocaine and heroin require related ML investigations. To this end, the Police major crimes division will conduct related and specialized investigations in order to supplement the work of the FIU-assigned police officers. The RSVGPF requires more resources in communication and technological equipment specifically to enhance its role in ML and FT investigations. However, it is should be noted that the FIU, which has investigative functions, augments the role of the police in investigations.

Customs:

828. According to the authorities, the staffing is adequate. They claim that the Customs Department has 184 staff deployed at eight seaports and five airports. In addition to the human resources, the Department has at its disposal the following resources to strengthen its enforcement capacity: 2 patrol vessels used to monitor marine activities and to assist in the interdiction of illegal drugs and firearms; and a mobile trace detector capable of detecting illegal drugs and explosives. This unit is used at several locations at the main ET Joshua Airport and at the main seaport at Kingstown to aid in the interception program.

Integrity of Competent Authorities (R.30.2).

FIU:

829. The hiring process for the FIU, including the selection of police and customs officers to be transferred to the FIU is rigorous. All employees are hired after extensive interview processes and character and background checks. The final hiring must be approved by the Minister of Finance.

Police:

830. The RSVGPF requires all recruits to undergo character investigation and a six-month training course at the police academy. Weekly training administered to the members includes ongoing ethics training. The Commissioner of Police is in the process of reinstituting specialized examinations for promotion.

DPP:

831. The DPP hires pursuant to job specifications, with appointments approved by the Judiciary and Legal Services Commission.

Customs:

832. According to the authorities, the hiring mechanism in relation to Customs personnel comes directly under the general civil service and is performed by the Service Commissions Department. In the case of the hiring of Customs guards, a background check is performed by the Customs Preventive

Branch and the required interview is performed by a panel of senior customs officials. Candidates are required to submit documents relating to their conduct, including police records, to the panel.

Training for Competent Authorities (R. 30.3):

833. Training of FIU staff is quite adequate; since 2004, FIU staff have attended over 40 specialized training workshops and seminars. FIU staff has attended rigorous training both at home and abroad as offered by CFATF, Canadian and U.S. agencies and Redtrac in Jamaica. New police training includes AML/CFT training conducted by the FIU director. The Police are in need of specialized outside training for non-trainees on both ML and FT. The DPP and AG have undertaken AML/CFT training but other staff lawyers have not.

Customs:

834. According to the authorities, training of customs officials in the area of AML/CFT has become a standard feature in the department's training yearly schedule, as part of three modules: An Induction Course module – a training course which is given every year to new entrants to the organization for approximately a half-day; Junior Promotional Course module – a course is delivered to Junior Customs Officers who are seeking promotion to Senior Customs Officer level and is conducted for one day every two years; and AML/CFT Seminars – a series of yearly half-day awareness seminars, targeting customs managers and all other customs officials at all levels. In addition, according to the authorities, enforcement officers from the Customs Intelligence Unit and the Preventive Branch have been exposed to training in related areas such as financial investigation at the regional institution in Jamaica, REDTRAC. There are at present two qualified financial investigators on the staff and the department is seeking to have trained for the year 2009 five (5) officers who will undergo training in relevant areas at REDTRAC.

Additional Element – Special Training for Judges (R.30.4):

835. Although an AML/CFT training seminar was recently offered by the FIU, turnout among judges was extremely low.

Supervisors

R.30

ECCB:

836. No statistics were provided for the ECCB's supervisory resources for oversight of the 39 domestic banks operating in the ECCU region as a proxy of the adequacy of resources for the supervision of SVG-based domestic banks. The ECCB supervision department has 7 staff at management level. The last annual report of the ECCB showed operating income of EC $111 million and operating expenditure of $59.7 million. From the review of the ECCB's annual report, it seems that its staff are generally well trained and of sufficient professional caliber, and supervisory staff has received AML/CFT training.

837. **IFSA** currently has three supervisory staff plus the Executive Director that engage in AML/CFT and other supervisor activities. There is a vacancy for a Deputy Executive Director, and a consultant has been contracted to assist/advise with this and other activities of IFSA. In the past IFSA has also contracted services of an outside consultant to assist with onsite inspections, mainly through technical

assistance from CARTAC (the IMF's Barbados-based regional technical assistance center for the Caribbean). See the organization chart below for the main positions available in IFSA. Given the number of entities subject to its supervision, the mission is of the view that IFSA is understaffed and requires additional training for AML/CFT and general supervisory purposes.

838. IFSA is a professionally run supervisory body and its staff are generally of a high professional caliber. At the time of the mission, IFSA had on staff the following: 2 examiners, 1 senior examiner, 1 compliance officer and the Executive Director. There was also a full time consultant for IFSA. There are a total of some 120 licensees, excluding trusts and international business companies, and on current staff levels and business trends (particularly in the mutual funds, insurance and registered agent/trustee sectors), IFSA is significantly understaffed. There is a vacancy for a Deputy Executive Director (filled after the mission), and a consultant has been contracted to assist/advise with this and other activities of IFSA. In the past IFSA has also used its internal compliance officer for onsite inspections, and contracted services of an outside consultant to assist with training and inspections, mainly through technical assistance from CARTAC —the IMF's Barbados-based regional technical assistance center for the Caribbean. IFSA's total operating budget for 2008 was approximately EC$1.8 million, and for 2009 it is projected at EC$1.9 million. Funding is provided by the government of SVG based on income from licenses and other fees received from the international business sector, with any shortfall to be covered from the government's other resources. (Sec. 4 of the IFSA Act.)

839. A key issue is the relatively high turnover in the Executive Director/Offshore Inspectors position of IFSA and its predecessor organization. In the past 8 years, there have been 5 different chief executives in IFSA which can inhibit continuity and development of an experienced cadre of supervisors at the top management level.

SRD-Ministry of Finance:

840. There are only two examiners on the staff of the SRD in the Ministry of Finance. Staffing has only recently commenced and there is a need for focused training on AML/CFT with respect to the sectors it is/will be charged with supervising. With the planned transfer of supervision of credit unions and building societies later in 2009 to the Ministry of Finance-SRD, on top of the current responsibility for insurance companies and intermediaries and money remitters, the need for staff, training and other supervisory resources will increase. Post mission the SRD provided a Work Plan and budgetary estimates for 2009 which call for additional staff including: a Director, 2 examiners for insurance and pensions, and 3 examiners for the other institutions. The following budget estimates have been provided for the SRD for 2009, which vary somewhat from the Work Plan statistics described above, and which call for a doubling of total staff from 5 to 10: (note that not all of the 2008 examiner positions were filled as there were only 2 examiners at the time of the mission.) In spite of the proposed increase, there may still be a need for additional staff, especially for the insurance sector where there are 39 insurance companies and broker/agents and 124 if sales representatives are included. There is no basis for commenting on the integrity and background of the proposed new staff but it is anticipated that the SRD will fill the vacancies for examiners with the adequate background, training and skills, e.g. in accounting, finance and related fields.

		Number of Positions		Salaries	
		2008	**2009**	**2008**	**2009**

STAFF POSITION	Grade				
Management and administrative		2	3	47,796	106,992
Insurance and Pension Plan Unit					
Examiners		3	4	88,942	196,728
Credit Union Unit/Building Societies					
Examiners		-	3	-	141,300
Total (of which 7 are examiner positions)		**5**	**10**	**136,738**	**445,020**
Provision for salary adjustment				-	13,351
		5	**10**	**136,738**	**458,371**
Less provision late filling of posts				-	75,000
Total Permanent Staff		**5**	**10**	**136,738**	**383,371**

Post Registrar of Credit Unions:

841. Very limited staff are available for supervision (less than 5). However, this function will be transferred to the Ministry of Finance-SRD, expected to take place later in 2009.

Building Societies:

842. There is no supervisory staff or other resources currently available for supervision of the sole systemically large building and loan society.

DNFBPs:

843. Registered agents are supervised by IFSA within its available staff and resources. For the other DNFBPs, however, no agency has been assigned responsibility for supervising and enforcing AML/CFT compliance and no staff or resources are dedicated to this activity. Although it does not have formal supervisory authority, the FIU performs a useful role in raising AML/CFT awareness and compliance by DNFBPs within its available staff and resources.

Judiciary:

844. According to the authorities, many, if not most magistrates are on short-term contracts of one to two years. This results in both a lack of independence, since magistrates are always waiting for their next appointment, and a higher than necessary turnover, diminishing the effectiveness of the judiciary.

R.32

FIU:

845. The FIU maintains most AML/CFT related statistics for the competent authorities in SVG. These include ongoing statistics on SAR filings, investigations, cash detention/production orders/seizures, and MLA responses. Where the FIU should enhance its statistical base is the information on the vulnerabilities, trends and typologies of ML risks both generally and within particular sectors.

Law Enforcement:

846. Neither the DPP, Police nor AG's office maintain separate statistics on AML/CFT investigations. The Police maintain statistics on general crimes and trends, including a number of predicate offenses. These statistics on predicate offense trends and vulnerabilities do not appear to be regularly analyzed in comparison to or synthesized with ML or FT trends.

Supervisors:

847. The statistics gathering and generation is underdeveloped and/or untimely received in the non-bank financial sectors, especially the insurance sectors with respect to statistics on life and investment linked policies both in the domestic and international sectors. Supervisors should consider obtaining or developing, as part of their AML/CFT supervisory procedures, statistics with respect to the number of clients refused and accounts closed due to ML/FT concerns. These could be analyzed in conjunction with statistics on the number of SARs filed with the FIU and would help with planning and conducting onsite inspections.

7.1.1. Recommendations

R.30

Supervisors:

848. There is a need to strengthen the supervisory staff of IFSA's and the Ministry of Finance-SRD supervisory staff, including enhanced training on supervision and AML/CFT in particular.

849. The planned transfer of supervision for credit unions and building societies to the SRD will require enhanced resources and training for supervisors in these new sectors.

850. Supervisory authorities with adequate staff and resources should be assigned responsibility for monitoring and enforcing AML/CFT compliance by those DNFBPs that are not now subject to supervision by IFSA.

FIU:

851. FIU needs additional training and resources to conduct core analytical functions, including accounting and forensic skills.

Police

852. Police officers should receive regular and comprehensive training on ML and FT offenses and their linkages to predicate offenses.

RSVGPF should have additional resources for technological and communication to improve the predicate crimes, ML and FT investigations.

Customs:

853. Additional AML/CFT training focusing on red flags and typologies should be provided to all Customs Department employees amounting to a total of at least two full days of training per year. The Department should consider coordinating with the FIU in researching, designing, and providing such additional training.

854. Consideration should be given to adding airport scanners and permanent trace detector, as well as mobile canine squads for ET Joshua Airport and the main seaport.

Law Judiciary:

855. Consider longer term contracts for magistrates of at least five and up to ten years be used.

R.32

Supervisors:

856. Inadequate and untimely statistics obtained by insurance supervisors with respect to e.g. life and investment linked insurance policies.

857. Insufficient financial statistics received and generated by financial sector supervisor to assist them in risk-profiling FIs for ML/FT risks, including with respect to their money remittance business, back-to-back loans, etc.

FIU/Police:

858. The FIU and Police should maintain statistics on trends, vulnerabilities and typologies of ML and FT offenses, and predicate offenses that analyze and synthesize the information obtained separately by each agency.

7.1.2. Compliance with Recommendation 30 & 32

	Rating	Summary of factors underlying rating
R.30	**PC**	**Supervisors: NC** • Understaffed and need for additional AML/CFT training for IFSA's and the Ministry of Finance-SRD supervisory staff. • Registrar of credit unions generally understaffed and under-resourced. • No supervisory regime and resources for the systemically important building and loan society. **DNFBPs: NC** • No supervisory regime or resources for DNFBPs other than for Registered Agents and Trustees.

		FIU: LC • FIU does not have a full complement of analytical and investigative staff to assess the SARs and other financial intelligence collected. **DPP: NC** DPP does not have sufficient staff to handle prosecutions of ML cases. **Police: LC** • Police do not require regular, specialized training in AML/CFT; training on AML/CFT is only provided regularly to new recruits during their police academy sessions. **Customs: LC** • Insufficient AML/CFT training for customs officers. **Judiciary: PC** • Consider use of longer-term contracts for magistrates compromises independence and results in turnover that diminishes effectiveness of judiciary. • Insufficient AML/CFT training for judges and magistrates.
R.32	**LC**	**Supervisors: LC** • Inadequate and untimely statistics obtained by insurance supervisors with respect to e.g. life and investment linked insurance policies. • Insufficient financial statistics received and generated by financial sector supervisor to assist them in risk-profiling FIs for ML/FT risks, including with respect to their money remittance business, back-to-back loans, etc. **FIU: LC** • Statistics on ML and FT vulnerabilities and trends are lacking. **Law Enforcement: PC** • Most AML/CFT statistics are maintained by the FIU and the crime trend statistics on predicate offenses are not analyzed alongside or synthesized with AML/CFT-specific trends.

7.2. Other relevant AML/CFT Measures or Issues

859. SVG should review the operations of money lenders currently subject to the POCA and POCA. Regulations but which are not subject to any form of authorization, registration or oversight for compliance with their AML/CFT obligations.

7.3. General Framework for AML/CFT System (see also Sec. 1.1)

860. In addition, IFSA and other competent authorities should review the structure of the business and management of the international (offshore) business sectors, particularly mutual funds, insurance and trust and company services, to ensure that there are no legal or practical impediments to their supervision and/or to timely access to information by the authorities on a routine or special basis. For instance, in the mutual funds and insurance sectors, even the administration and management of these companies may be subcontracted to other entities outside of SVG which would make it more difficult to supervise and access information, without the requisite controls. In this regard, consideration should be given to developing reasonable arrangements to achieve these two broad objectives where they are deemed to be lacking.

861. The mission also recommends that the authorities review the business operations of the money remittance sector with respect to ML/FT risks, particularly given the relatively large number of STRs. In particular, they may wish to take into account in conducting this sectoral risk review, inter alia, the following issues and indicators: the size of the sector and any correlation with the number of SVG nationals living abroad and foreigners living in SVG, volume of cross-border business with countries that are origins and destinations of remittances, sectors or regions where clients of remitters reside in SVG, etc. The results of such analysis may provide indicators of potential risks and help formulate policies, strategies and priorities for the AML/CFT regime.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[20]
Legal systems		
1. ML offense	**PC**	• Certain offences in Sec. 41 of and the definition of 'property' in POCA are not consistent with the relevant articles of the Vienna and Palermo Conventions; • Self-laundering by way of simple possession of proceeds is not criminalized; • Racketeering, human trafficking and migrant smuggling are not predicate offences; and • Effective implementation is weak in light of low number of criminal prosecutions and convictions for ML and related predicate crimes.
2. ML offense—mental element and corporate liability	**C**	
3. Confiscation and provisional measures	**LC**	• There is no explicit provision of law empowering competent authorities to take steps to void contractual or other actions that would prejudice their ability to recover assets; • Effectiveness is weak in light of low number of cases and amounts with respect to forfeitures of cash and confiscations of property relating to ML and related predicate crimes.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	• Sectoral acts continue to have confidentiality and other limitations on access to information for regulators; • It is unclear that the repeal of the 1996 Confidentiality Law also repealed common law definitions of bank secrecy and confidentiality or whether these were restored by virtue of the repeal. If the latter, the common law secrecy laws would need to be assessed in light of the gateways provided.
5. Customer due diligence	**NC**	• No implementation of CDD and other AML/CFT requirements for non-regulated

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

		lending operations; • The POCA and the Regulations issued thereunder do not cover FT; • No prohibition against keeping anonymous or fictitious name accounts particularly those that were in existence before the Regs were issued; • Full range of CDD (only identification verification) is not required for business relationships and one-off transactions; • Threshold for one-off wire transfers significantly in excess of SRVII; • Identification requirement when there is suspicion limited to ML and to one-off transactions; • No CDD requirement when there are doubts as to the veracity or adequacy of previously obtained customer identification data; • Exemptions from CDD in the GNs, to the extent implemented, go beyond the risk sensitive measures allowed under c. 5.3 and c. 5.9, and in some cases beyond the POCA Regs; • No explicit requirement to verify the identity of the ultimate natural persons who control an entity, and of persons authorized to act on behalf of a corporate entity, partnership or other legal arrangement, and provisions of power to bind entity limited to the power to open and operate accounts; • Insufficient requirements for identification of legal arrangements such as trusts/trustees, including measures to determine settlors, beneficiaries and other parties to a trust; • Narrow requirement to obtain information on the purpose and intended nature; limited to accounts and does not extent to the broader business relationship; • Ongoing CDD requirements do not include update of CDD records particularly with respect to higher risk business relationships; • No requirements for enhanced CDD for higher risk clients and exemptions from identification verification go beyond the criteria for simplified CDD; • No requirement to terminate an existing business relationship in the circumstances

		covered by c. 5.16; • The identification exemptions in the Regs should not apply when there is suspicion ML or FT; • No requirement to apply CDD requirements to customers existing at the date the Regs came into effect, on the basis of materiality and risk; • Requirement to perform CDD on existing customers is limited to the beneficial owners of anonymous of fictitious name accounts, and no requirement to close such accounts existing at the time the Regs came into effect; • The GNs only require the suspension, and not prohibition, of a new or existing business relationship or transaction when verification of identity cannot be completed; • General weaknesses in implementation of CDD, especially for beneficial owners and bearer share companies.
6. Politically exposed persons	**NC**	• No requirement to conduct additional and enhanced CDD measures, or to obtain senior management approval, for new and/or existing PEPs relationships.
7. Correspondent banking	**NC**	• No specific requirements for perform, inter alia, additional and enhanced CDD on correspondent banking relationships; • No requirements to assess the AML/CFT controls of respondent institutions; • No requirements to obtain senior management approval before establishing correspondent account relationships; • No requirements with respect to the provisions of correspondent payable-through accounts; • Domestic banking sector provides correspondent/nested correspondent banking facilities to offshore banks in breach of the ECCB's prudential guidelines.
8. New technologies & non face-to-face business	**PC**	• No regulatory requirements to have policies or measures in place specifically to prevent misuse of technological developments for ML or FT, including non-face to face business relationships and transactions.
9. Third parties and introducers	**NC**	• No mandatory requirement to immediately obtain CDD information from introducers; • No requirement to ensure that documentation

		can and will be available promptly on request, without limitation; • The list of eligible introducers listed in the Regulations and the POCA Schedule 1 goes beyond the FATF list of FIs and DNFBPs, and should be limited as is intended in the Guidance Notes; • Insufficient provisions that ultimate responsibility for customer identification and verification lies with the SVG FI.
10. Record-keeping	**LC**	• Need for explicit provisions in the Regs to retain business correspondence; • Recordkeeping by some FIs (non-banks) outside of SVG may limit capacity for compliance supervision on an ongoing basis.
11. Unusual transactions	**PC**	• No requirement to examine as far as possible the background and purpose of complex, unusual or unusual patterns of transactions and to establish such findings in writing; • No requirement to keep records of findings of the examination of the background and purpose of complex, unusual, or unusual patterns of transactions, to be available to help competent authorities and auditors; • In implementing unusual transaction detection and analysis, the reporting entities focus almost exclusively on cash transactions.
12. DNFBP–R.5, 6, 8–11	**NC**	• No regulation or supervision of casinos; • Infrequent and insufficiently detailed monitoring of CDD compliance of RAs; • No arrangements for systematically spot checking CDD compliance by lawyers, real estate agents, accountants, jewelers, and car dealers; • Insufficient training, particularly of lawyers and of more complex international business relations.
13. Suspicious transaction reporting	**PC**	• The two-part threshold for filing of SARs does not meet the requirement of R. 13; • • Offshore insurance and banks are reporting at a very low level; • SAR filing guidance is outdated, the last update was in 2004, contributing to low quality SARs.
14. Protection & no tipping-off	**NC**	• UNATMA and/or POCA do not prohibit tipping off of the filing of SARs related to terrorist financing;

		• POCA Sec. 45 does not explicitly prohibit tipping off of the fact of filing of the SAR itself.
15. Internal controls, compliance & audit	**PC**	• Insufficient provisions for comprehensive policies; • No requirements to train staff on current ML and FT trends, typologies, techniques, etc; • No requirements to screen FI employees to ensure high standards; • Insufficient time and seniority of compliance officers devoted to AML/CFT functions by some FIs, including inherent conflicts in multi-task responsibilities; • Lack of specific training in on AML/CFT for high risk areas e.g. money remittance business, correspondent accounts, wire transfers, back-to-back loans, and credit card operations.
16. DNFBP–R.13–15 & 21	**NC**	• Minimal SAR reporting; • No compliance supervision of most DNFBPs.
17. Sanctions	**NC**	• Regulatory laws lack the full range of administrative sanctions for non-compliance with POCA and the POCA Regulations; • Regulatory laws lack explicit linkages between sanctions and non-compliance with POCA and the POCA Regulations; • POCA and the POCA Regulations lack legal authority to regulators to impose sanctions for non-compliance; • Regulatory laws do not have effective, proportionate and dissuasive administrative fines and criminal penalties; • Regulatory laws lack authority for regulator to initiate a referral to the DPP for serious violations of POCA, UNATMA and the POCA Regulations; and • Regulators, including IFSA and the Ministry of Finance, have imposed few, if any, administrative sanctions for non-compliance with AML/CFT measures even when authorized by law to do so.
18. Shell banks	**NC**	• Two offshore banks were identified as not having meaningful mind and management/significant physical presence in SVG. • No prohibitions against entering into, or

		continuing correspondent banking relationships with shell banks. • No requirements for FIs to satisfy themselves that respondents in other countries are not used by shell banks. • Offshore shell banks maintain correspondent accounts locally, contrary to Rec. 18, the GNs, and ECCB's prudential regulations.
19. Other forms of reporting	**C**	
20. Other NFBP & secure transaction techniques	**C**	
21. Special attention for higher risk countries	**NC**	• No requirement to pay special attention to transactions and relationships with persons from countries that do not or insufficiently apply the FATF Recommendations; • No formal mechanism to advise FIs of AML/CFT concerns with other countries and no such advisories have been issued to date; • No provisions to apply counter-measures against countries that do not or insufficiently apply the FATF Recommendations and no such measures have been applied.
22. Foreign branches & subsidiaries	**LC**	• No requirements for FIs to apply AML/CFT measures to their foreign branches and subsidiaries; • No requirements for FIs to inform their supervisors when their foreign branches and subsidiaries cannot observe appropriate AML/CFT laws or measures.
23. Regulation, supervision and monitoring	**NC**	• Ownership structures of some offshore institutions reduce transparency and may limit ability of regular review fit and proper criteria; • Systemically large building society not subject to effective AML/CFT supervision; • Generally inadequate supervision for AML/CFT across all sectors; • Infrequent focus on inherently high risk business areas such as e.g. correspondent banking, money remittance services and back-to-back loans; • Insufficient supervisory resources and understaffing to conduct effective ongoing supervision across all sectors, particularly in the non-domestic banking sector; • No AML/CFT inspections/supervision of the international mutual fund and insurance sectors;

		• Lack of detailed AML/CFT inspection procedures for the non-domestic bank sectors; • No AML/CFT supervision of money services business and possible existence of one unauthorized activity; • Lack of authorization and AML/CFT supervisory regime for money lending businesses covered by the AML/CFT laws.
24. DNFBP—regulation, supervision and monitoring	**NC**	• No regulation or supervision of casinos; • Gaps/inconsistencies in the Registered Agents and Licensed Trustees Act; • Confidentiality provisions of Registered Agents Act are a potential impediment to effective supervision; • Gaps in the oversight of registered agents; • Inadequate supervision of the immobilization of bearer shares; • Weak arrangements for supervising large overseas activities of Registered Agents; • No effective arrangements for overseeing and enforcing AML/CFT obligations of other DNFBPs.
25. Guidelines & Feedback	**LC**	• Need for updated guidance with more attention to sector specific issues, especially for DNFBPs.
Institutional and other measures		
26. The FIU	**LC**	• Implementation of its analytical function is under pressure. • The FIU has not directly developed a single case for prosecution of an ML or predicate offense originating from a SAR filed. • Insufficient legal authority in the FIU Act for general access to law enforcement information. to obtain information from other governmental bodies to support its intelligence analysis. • The FIU does not issue additional and comprehensive guidance to reporting parties on SAR completions and filings. • The ability of the FIU to obtain additional information from reporting parties is subject to a threshold requirement that allows for reporting entities to reject additional requests on the basis that the information sought is not sufficiently correlated to a particular stated offense. • The FIU does not publish an annual report on trends and typologies.

27. Law enforcement authorities	**PC**	• Authority for applying POCA investigative and prosecutorial measures for FT is not explicitly included in law; • Law enforcement authorities' integration into the AML/CFT framework needs to be detailed and formalized. • Inadequate resources for the DPP's office affects implementation.
28. Powers of competent authorities	**C**	
29. Supervisors	**PC**	• No explicit link between the application of supervisory and administrative sanctioning powers in the financial laws and the AML/CFT legislation; • There are no powers or mechanisms to supervise, inspect and enforce AML/CFT compliance with respect building societies and money lending operations; • Except for international banks and money services business, no explicit provisions for other regulators (functionally the ECCB, IFSA, Ministry of Finance), to supervise, inspect and enforce compliance by FIs of the POCA, Regs and anti-terrorism legislation, particularly the power to initiate enforcement proceedings under these laws; • AML/CFT compliance obligations under the International Banks Act and Money Services Business Act do not extend to the POCA Regs, limiting the scope of monitoring and enforcement; • No regulation and supervision of mutual fund underwriters; • Limitations under Sec. 8 of the IFSA Act could limit the scope of IFSA's supervisory and enforcement powers; • Sec. 19(9) of the International Banks Act restricts access to the names, titles and confidential information about customers' accounts to the Executive Director of IFSA who does not have the power of delegation with respect to this function; • IFSA is constrained in its capacity to effectively supervise mutual funds, administrators and managers, and insurance companies and their managers, in cases where the books, records and information are held outside the SVG;

		• No supervisory powers in either the AML/CFT legislation or the financial and regulatory laws, to enforce, sanction, or initiate proceedings for, violations of the AML/CFT legislation per se; • Ability of IBC mutual funds to issue bearer shares (not immobilized) may limit CDD and exercise of powers of supervision; • Sec. 35 of the Mutual Funds Act can exempt FIs from supervision and enforcement under the Act with implications for AML/CFT; • Limited access to records by Registrar of credit unions.
30. Resources, integrity, and training	**PC**	**Supervisors: NC** • Understaffed and need for additional AML/CFT training for IFSA's and the Ministry of Finance-SRD supervisory staff; • Registrar of credit unions generally understaffed and under-resourced; • No supervisory regime and resources as yet for the systemically important building and loan society. **DNFBPs: NC** • No supervisory regime or resources for oversight of DNFBPs other than registered agents. **FIU: LC** • The FIU does not have a full complement of analytical and investigative staff to assess the SARs and other financial intelligence collected. **DPP: NC** DPP does not have sufficient staff to handle prosecutions of ML cases. **Police: LC** • Police do not require regular, specialized training in AML/CFT; training on AML/CFT is only provided regularly to new recruits during their Police academy sessions. **Customs: LC** • Need for additional AML/CFT training.

		Judiciary: PC • Use of short-term contracts compromises independence and results in turnover that diminishes effectiveness of judiciary; • Need for additional AML/CFT training for judges and magistrates.
31. National co-operation	**LC**	• The FIU does not have specific FIU authority to obtain appropriate law enforcement and other governmental information needed to develop intelligence and analysis; • The NAMCL does not have a statutory role for policy coordination; • Domestic regulatory authorities do not have uniform bases upon which to cooperate among each other and with law enforcement.
32. Statistics	**LC**	**Supervisors: LC** • Inadequate and untimely statistics obtained by insurance supervisors with respect to e.g. life and investment linked insurance policies; • Insufficient financial statistics received and generated by financial sector supervisor to assist them in risk-profiling FIs for ML/FT risks, including with respect to their money remittance business, back-to-back loans, etc. • **FIU: LC** Statistics on ML and FT vulnerabilities and trends are lacking. **Law Enforcement: PC** • Most AML/CFT statistics are maintained by the FIU and the crime trend statistics on predicate offenses are not analyzed alongside or synthesized with AML/CFT-specific trends.
33. Legal persons–beneficial owners	**PC**	• Bearer shares in IBCs are not properly immobilized since some are in hands of custodians that have not been approved by IFSA; • With respect to IBCs, onsite inspection procedures of IFSA not sufficient to ensure that adequate, accurate and complete information about beneficial owners is being collected and maintained by registered agents; • For local companies, the Companies Registrar does not have legal authority to ensure that

		adequate, accurate and complete information about beneficial owners is available to them or to law enforcement authorities; • For local companies, there is no restriction on the use of nominee shareholders and directors in Companies Act nor is it possible for Companies Registrar to determine if nominees are being used.
34. Legal arrangements – beneficial owners	**NC**	• With respect to ITRs, no laws, regulations or other enforceable means requiring registered trustees to identify beneficial ownership of trusts (e.g. the settlor, trustee, beneficiaries and protector of the trust) and allowing IFSA access to such information; • With respect to ITRs, IFSA does not conduct sufficient inspections of registered trustees so as to ensure that beneficial owners of trusts have been identified; • With respect to local trusts, no laws, regulations or other enforceable means are in place to: (i) ensure that beneficial owners are identified; (ii) provide a mechanism so that competent authorities have access to adequate, accurate and complete information about beneficial owners of local trusts; and (iii) prevent misuse of local trusts for purposes of ML and FT; • With respect to both ITRs and local trusts, no restrictions on use of companies as settlors, trustees or beneficiaries.
International Cooperation		
35. Conventions	**LC**	• The SFT and Palermo Conventions have not been ratified. • Sec. 5 of the Palermo Convention has not been implemented and the SFT Convention has not been fully implemented with regard to the application of offenses in UNATMA to terrorist acts, terrorist organizations and individual terrorists. • UNATMA does not include two of the conventions which define terrorist offenses that

		are listed in the annex to the SFT convention.
36. Mutual legal assistance (MLA)	**LC**	• Bilateral treaties on mutual legal assistance do not have the force of law.
37. Dual criminality	**C**	•
38. MLA on confiscation and freezing	**C**	•
39. Extradition	**C**	•
40. Other forms of co-operation	**C**	•
Nine Special Recommendations		
SR.I Implement UN instruments	**NC**	• No legal framework implemented to comply with UNSCRs 1267, 1373 and 1455. • The SFT Convention has not been fully implemented and the relevant law, UNATMA, does not include two of the conventions listed in the annex to the SFT Convention.
SR.II Criminalize terrorist financing	**LC**	• The Convention on the Physical Protection of Nuclear Material (1980) and the International Convention for the Suppression of Terrorist Bombings (1997) are not included in the list of Conventions that define one aspect of the definition of terrorist act in UNATMA; • Under Sec. 3(4) of UNATMA, the offences under Secs. 3(1) and 3(3) do not apply to individual terrorists; • POCA Regulations do not sufficiently cover identification of FT offences.
SR.III Freeze and confiscate terrorist assets	**NC**	• Statutory provisions implementing relevant UNSCRs are largely absent.
SR.IV Suspicious transaction reporting	**NC**	• There is no requirement in UNATMA or POCA to file SARs for transactions or financial activities that could constitute or be related to financing of individual terrorists or terrorist organizations.
SR.V International cooperation	**LC**	• The legal basis for conducting investigations and related prosecutorial measures for FT on behalf of foreign law enforcement is not specified in law.
SR.VI AML/CFT requirements for money/value transfer services	**PC**	• Lack of AML/CFT compliance monitoring and supervision of business conducted outside of banking sector.
SR.VII Wire transfer rules	**NC**	• No wire transfer requirements; • Partial implementation of SR VII standards by banks and money transmitters.
SR.VIII Nonprofit organizations	**LC**	• No review of NPO sector laws and regulations; • Limited monitoring of NPO financial activities.
SR.IX Cross-Border Declaration & Disclosure	**LC**	• The administrative process by which the

		Customs Department imposes a fine, accepts an admission of wrongdoing, and discharges the liability of the suspect does not allow the DPP, with the assistance of the FIU, to investigate, develop and prosecute criminal cases against suspects caught with undisclosed, suspicious or concealed currency; • Administrative fines are not effective, dissuasive or proportionate; and • A long-pending proposed MOU between the Customs Department and the FIU has not been signed.

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

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	

2.1 Criminalization of Money Laundering (R.1 & 2)	• Relevant laws should be strengthened to provide that:
	  • The offences set forth in Sec. 41 are consistent with the Vienna and Palermo Conventions;
	  • Self-laundering by way of simple possession of proceeds should be criminalized; and
	  • Racketeering, human trafficking and migrant smuggling should be enacted into law as criminal offences and covered by POCA as predicate offences.
	• Efforts should be made by competent authorities to increase the number of prosecutions and convictions for ML and related predicate crimes.

2.2 Criminalization of Terrorist Financing (SR.II)	• The laws of SVG should be strengthened as follows:
	  • Schedule II to UNATMA should be amended to add two conventions that are listed in the annex to the SFT Convention, as follows: The Convention on the Physical Protection of Nuclear Material (1980); and the International Convention for the Suppression of Terrorist Bombings (1997);
	  • Sec. 3(4) of UNATMA should be amended to apply to individual terrorists, and not just terrorist acts and terrorist groups; and
	  • The POCA Regulations should be amended to cover FT offences.

2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	• The relevant laws should be strengthened:
	  • To provide for an explicit provision subjecting to confiscation indirect proceeds of crime, including income, profits or other benefits;
	  • To provide for an explicit provision to allow competent authorities to take steps to prevent or void actions, whether contractual or otherwise, where, as a result of the actions of third parties, the authorities would be prejudiced in their ability to recover property subject to confiscation; and
	  • To provide in Sec. 3(4) of POCA for gifts that represent a value that is less than the value of the property, rather than "significantly less" under current law, to be subject to confiscation;
	• In addition, efforts should be made by competent authorities to

	increase the number and value of both cash forfeitures and confiscations of property; • The authorities should consider timely enactment of the bill currently under review by parliament that would provide for civil forfeiture of all property, not just currency, as well as the subsequent implementation of such forfeiture provisions.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The authorities in SVG should take immediate action to implement the relevant UNSCRs, including, but not limited to UNSCRs 1267, 1373 and 1455, and any such provision of law should be flexible enough to apply as well to similar designations by other states as well as any future UNSCRs that require UN member states to freeze, seize and confiscate the assets of designated terrorists and terrorist organizations, as well as such designations by other member states in the future.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The FIU should strengthen its analytical function including through enhanced staff capacity. • The FIU Act should provide broad based authority to obtain information from other governmental authorities to conduct analysis for financial intelligence purposes. • The FIU should issue additional and comprehensive guidance to reporting parties on SAR filings to increase the quality and consistency of reports. • The FIU should publish an annual report on it operations. In this regard, sanitized information on trends and typologies should be regularly included in a public document. The FIU should consider creating a website with information on its operations, SAR forms and instructions for reporting entities, and information for requesting authorities on the FIUs exchange of information procedures. • The FIU should consider entering into MOUs with counterparts in other countries, especially where SVG registered institutions and entities operate.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Specific FT-related authority should be incorporated either in UNATMA or by amending POCA to directly include any FT offense; • Law enforcement authorities' designation and integration into the AML/CFT framework, including relative to the FIU, should be detailed and formalized. • Resources for the DPP's office should be enhanced and consideration should be given to formally deputizing FIU lawyers as assistant DPPs.

2.7 Cross-Border Declaration & Disclosure (SR. IX)	• The administrative process should be changed to allow the DPP, with the assistance of the FIU, to investigate, develop and prosecute criminal cases against suspects caught with undisclosed, suspicious or concealed currency. • CCMA should be amended to increase administrative fines so that they are effective, dissuasive and proportionate. • MOU between the Customs Department and the FIU should be signed.
3. Preventive Measures–Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• Review the Schedule to the POCA to explicitly cover (i) mutual fund administrators, managers and underwriters; and (ii) insurance intermediaries i.e. agents and brokers; • Implement an oversight and AML/CFT compliance regime for non-regulated lending operations; • Extend the Regulations to explicitly cover FT consistent with the requirements of Sec. 46 of POCA.
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	**R.5** • Consider explicitly covering of mutual fund administrators and managers, and of insurance agents and brokers in the POCA; • Extend the POCA and the Regulations to explicitly cover FT; • Explicitly prohibit anonymous or fictitious name accounts particularly those that were in existence before the Regs were issued; • Extend the full range of CDD (only identification verification) for business relationships and one-off transactions; • Reduce the threshold for one-off wire transfers to comply with SRVII; • Extend the identification requirement when there is suspicion beyond one-off transactions and cover FT; • Introduce a CDD requirement for cases when there are doubts as to the veracity or adequacy of previously obtained customer identification data; • Remove/amend the provisions in the POCA Regs that allow exemptions from for customer identification, and review similar exemptions contained in the GNs; • Introduce: (i) an explicit requirement to verify the identity of the person authorized to act on behalf of a corporate entity, partnership or other legal arrangement; and (ii) expand the verification requirement of provisions regarding the power to bind entity, beyond the power to open and operate accounts; • Enhance requirements for identification of legal arrangements such as trusts/trustees, including measures to identify settlors, beneficiaries and other parties to a trust; • Extend the scope of the requirement to obtain information on

	the purpose and intended nature beyond accounts to include business relationships; • Extend the ongoing CDD requirements to include update of CDD records particularly with respect to higher risk business relationships; • Introduce enhanced CDD requirements for higher risk clients and review/delete exemptions from identification verification as they go beyond the criteria for simplified CDD; • Require termination of existing business relationships in the circumstances covered by c. 5.16, subject to any directions from the FIU/competent authorities in case of suspicion or other reason; • Remove the identification exemptions in the Regs especially for cases when there is suspicion ML or FT; • Introduce a requirement to apply CDD requirements to customers existing at the date the Regs came into effect, on the basis of materiality and risk. This may be also be relevant for any future changes to the Regs and other applicable laws; • Extend the requirement to perform CDD on existing customers beyond the beneficial owners of anonymous of fictitious name accounts, and require termination of such accounts immediately to the extent that they may exist; • Review the provisions of the GNs that only require the suspension, and not prohibition, of a new or existing business relationship or transaction when verification of identity cannot be completed; • Enhance supervision and enforcement of compliance to address weaknesses across most sectors in implementation of CDD, including with regards to beneficial owners and bearer/nominee share companies. **R.6** • Require FIs to conduct additional and enhanced CDD measures, or to obtain senior management approval, for on new and/or existing PEPs relationships. **R.7** • require FIs to for perform, inter alia, additional and enhanced CDD on correspondent banking relationships, assess the AML/CFT controls of respondent institutions, and obtain senior management approval before establishing correspondent account relationships; • Introduce requirements with respect to the provisions of correspondent payable-through accounts; • Enhance supervision of risk management practices and compliance with R.7 by domestic banks that provide correspondent/nested correspondent banking facilities to

	international (offshore) banks in breach of R.7 and the ECCB's prudential guidelines on correspondent banking (March 2001). **R.8** • Require FIs to have policies or measures in place to prevent misuse of technological developments for ML or FT, including non-face to face business relationships and transactions, and review the exemptions provided in the GNs for this type of business.
3.3 Third parties and introduced business (R.9)	FIs should be required to: • immediately obtain CDD information from introducers; • ensure that documentation can and will be available promptly on request; • limit the eligibility of introducing institutions to those FIs and DNFBPs covered by the FATF standard, consistent with the provisions given in the GNs; • Explicitly state that ultimate responsibility for customer identification and verification lies with the SVG FI and not the introducer. The exemptions allowed for by the Regs and GNs are not consistent with this requirement.
3.4 Financial institution secrecy or confidentiality (R.4)	• Each provision of confidentiality and limitation of access to information in sector specific acts, in particular Sec. 15(4) of the Registered Agents and Trustees Act, should be removed from law; • The Attorney General should provide a legal opinion on the meaning of "confidential" information in light of the repeal of the Confidentiality Act 1996, in particular the extent to which such repeal restored the common law definitions of bank secrecy and confidentiality.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	**R.10** • Clarify in the regulations the provisions to keep records longer than the minimum period when required by the FIU, consistent with the GNs; • Explicitly require FIs to retain business correspondence; • Review for and remove potentially conflicting recordkeeping requirements between the POCA/Regs and the Drug Trafficking Offences Act and with some of the provisions in GNs 102-110; • Review recordkeeping arrangements by some FIs that operate and keep records outside of SVG to ensure adequate compliance supervision and efficient access by competent authorities. **SR VII** • Binding regulations should be adopted requiring all wire transfer service providers, including banks, money transmitters, and other financial institutions, to adhere to the

	wire transfer recommendations of FATF SR VII; • All financial institutions subject to wire transfer requirements should be monitored for compliance by a supervisor with the authority and capacity to enforce compliance.
3.6 Monitoring of transactions and relationships (R.11 & 21)	**R.11** • The Regs should be amended to require explicitly that reporting entities be required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing; • The Regs should be amended to require that the written findings of reporting entities on their examination be subject to the POCA record keeping requirements; • POCA should be amended to provide for direct administrative sanctions for reporting parties that fail to adhere to the requirements for monitoring transactions, including failure to implement procedures to monitor, prepare written findings and maintaining records on such monitoring. **R.21** • Require FIs to pay special attention to transactions and relationships with persons from countries that do not or insufficiently apply the FATF Recommendations; • Implement a formal mechanism to advise FIs of AML/CFT concerns with other countries and where necessary advise FIs of such concerns; • Introduce provisions and procedures that would require SVG to apply counter-measures against countries that do not or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	• Amend POCA (Sec. 46(3)) to require FIs to report all suspicion with respect to funds that are the proceeds of criminal conduct, not only those described under Sec. 46(2). • Either POCA or UNATMA should be amended to require the filing of SARs for transactions or financial activities that are suspected to constitute or be related to the financing of individual terrorists or terrorist organizations; • POCA Sec. 45 should be amended to prohibit tipping off of the fact of the filing of the SAR itself; • The defense in POCA Sec. 45(4) should be removed; • UNATMA and/or POCA should be amended to prohibit the tipping of the filing of SARs and any related disclosure of information to a police officer of suspected terrorist financing activities or transactions.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Enhance the requirements for FIs to have comprehensive policies, and consider revising the compliance and independent audit requirements under Regs 8 (narrower) to make them consistent with those under Sec. 46 of the POCA

	(broader); • Require FIs to train staff on current ML and FT trends, typologies, techniques, etc.; • Clarify the scope of the training requirement to ensure that the term "relevant" employees, i.e., to those that have/may have access to information that can be relevant to determine the existence of ML, does not restrict the training requirement; • Require FIs to properly screen employees for fit and proper criteria to ensure high standards; • Supervise and require FIs to ensure that compliance officers devote sufficient time and seniority to AML/CFT, and avoid inherent conflicts when multi-tasking such officers; • FIs, especially banks, should emphasize AML/CFT training for high risk areas e.g. money remittance business, correspondent accounts, wire transfers, back-to-back loans, and credit card operations.
3.9 Shell banks (R.18)	• Review the physical presence of all offshore banks against the meaningful mind and management criteria of FATF Rec. 18 above and prohibit the continuation of any shell banks; • Introduce explicit prohibitions against entering into, or continuing correspondent banking relationships with shell banks, consistent with the ECCB's prudential guidelines; • Require FIs to satisfy themselves that respondents in other countries are not used by shell banks; • Require domestic banks to comply with Rec. 18, the ECCB's prudential guidelines and the GNs with respect to correspondent banking facilities;
3.10 The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	**R.23** • Enhance supervision of ownership and control structures of some offshore institutions to increase transparency of fit and proper criteria; • Implement enhanced AML/CFT supervision of the systemically large building society and credit union; • Strengthen onsite inspections FIs across all sectors, particularly in the non-domestic banking sectors; • Enhance oversight of inherently high risk business areas across all the relevant sectors esp. correspondent banking, money remittance services, wire transfers and back-to-back loans; • Increase supervisory resources and understaffing to conduct effective ongoing supervision across all sectors including through the use of external auditors/consultants, particularly in the non-domestic banking sector; • Prioritize development and implementation of a comprehensive AML/CFT inspections/supervision program for the international mutual fund and insurance sectors, including

	through development of cross-border supervisory cooperation mechanisms; • Develop detailed sector-specific AML/CFT inspection procedures for the non-domestic bank sectors; • Implement AML/CFT supervision of money services business and review and enforce licensing laws with respect to possible existence of one unauthorized activity; • Review and if necessary implement an authorization and AML/CFT supervisory regime for the existing money lending businesses covered by the AML/CFT laws. **R.29 (See also R.17 below)** • Make explicit provision for regulators to supervise and enforce compliance with the AML/CFT legislation including the application of administrative sanctioning powers in the financial laws; • Develop the legal and regulatory regime for regulators to supervise, inspect and enforce AML/CFT compliance for building societies and presently unauthorized money lending operations; • Introduce explicit legal provisions for other regulators (functionally the ECCB, IFSA, Ministry of Finance), to supervise, inspect and enforce compliance by FIs broadly similar to those for international banks and money services business, in the POCA, Regs and UNATMA. These should include the power to initiate enforcement proceedings under these laws; • Extend the AML/CFT compliance obligations under the International Banks Act and Money Services Business Act to the POCA Regs in order to provide broader regulatory scope for monitoring and enforcing compliance; • Develop and implement a regulatory and supervisory regime for mutual fund underwriters that would include AML/CFT, similar to that for fund administrators; • Review the possible limitation under Sec. 8 of the IFSA Act with respect to scope of IFSA's supervisory and enforcement powers; • Remove the technical restrictions under Sec. 19(9) of the International Banks Act that limit access to the names, titles and confidential information about customers' accounts to the Executive Director; • Review and as appropriate revise the legal and operational framework for mutual funds, administrators and managers, and insurance companies and their managers, to ensure that IFSA has efficient and timely access to books, records and

	information of such institutions to enable effective AML/CFT supervision; • Review and if necessary amend the Mutual Funds Act and Regulations to deal with the ability of IBC funds to issue bearer shares (not immobilized) as this may limit CDD and compliance supervision; • Review/amend Sec. 35 of the Mutual Funds Act that can exempt FIs from supervision and enforcement under the Act with implications for AML/CFT; • Amend the credit unions law to ensure full access to records by Registrar. **R.17** • Amend regulatory laws to ensure that the full range of administrative sanctions powers for violations of POCA and the POCA Regulations are available to regulatory bodies; such sanctions powers should be harmonized across regulatory laws to ensure consistency. Administrative sanctions should include, at a minimum: written warnings; orders or directives to comply with specific instructions; removal of controlling shareholders, directors and senior management officials; ordering regular reports; administrative fines for non-compliance (possibly on a daily basis); barring individuals from employment within any regulated sector; replacing or restricting powers of managers, directors, or controlling owners; imposing conservatorship; and suspension, revocation or withdrawal of the license; • Amend POCA and the POCA Regulations to explicitly authorize all regulatory bodies and agencies, including IFSA with respect to international banks, mutual funds, insurance companies and registered agents; the Ministry of Finance with respect to local banks, MSBs and insurance companies, and the Comptroller of Cooperatives with respect to credit cooperatives, to impose administrative sanctions referred to above for violations of POCA and the POCA Regulations; • Amend regulatory laws to authorize regulators to recommend to the DPP that a criminal proceeding be initiated for serious violations of POCA and the POCA Regulations; and • Amend regulatory laws to ensure that civil fines and criminal penalties are substantially increased along the lines of those found in the Banking Act (see chart above) or in Sec. 47 of POCA.
3.11 Money value transfer services (SR.VI)	• The Ministry of Finance should quickly develop policies, procedures and capacity for on-site compliance examinations and begin such examinations;

	• Investigate the existence of unlicensed money remittance operations and take appropriate action.
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Casinos should be regulated and supervised; • All DNFBPs should be examined more systematically for CDD compliance; • IFSA on-site examinations should be more frequent and thorough, especially for registered agents and trustees; • Some arrangement should be introduced for inspection of lawyers for compliance. Other DNFBPs should be subject to spot checks of files; • Additional training should be undertaken, particularly for lawyers but also for registered agents in their procedures for relying on third-parties for CDD compliance
4.2 Suspicious transaction reporting (R.16)	• While the overall volume of business conducted by DNFBPs is low, many transactions, particularly cross-border transactions, are vulnerable to ML and FT risk. In this context, SAR reporting by DNFBPs is very low, suggesting a need for additional training and/or stricter oversight of compliance in this area; • Need to strengthen internal compliance programs and supervision of the same, especially with respect to the larger DNFBPs. With the limited exception of some registered agents, the adequacy of internal compliance programs has not been examined by supervisors; • Need to assign responsibility for oversight of the reporting and internal AML/CFT compliance programs of lawyers, accountants, real estate agents, jewelers and car dealers.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	• Procedures for licensing casinos should be regularized and regulation of casinos should be introduced; • A regulator with the adequate skills and capacity should be assigned to oversee and enforce compliance by casinos with their AML/CFT obligations; • The apparent exemption in the Registered Agents Act barristers and solicitors and accountants from being licensed for Overseas Representation services should be eliminated; • Sec. 4 of the Registered Agents Act should be repealed; • IFSA policies and procedures for on-site examination and supervision of registered agents' compliance with AML/CFT obligations should be enhanced, including additional staff and additional training; • Given its responsibilities for regulation of the entire

	international sector, the number of IFSA examiners –four–is too few; • Authority of the IFSA Executive Director to delegate examination responsibility should be included in the Overseas Finance Authority Act; • IFSA should adopt written internal policies and procedures for approving approved custodians; • Policies and procedures should be put in place by IFSA for retrospectively approving bearer share custodians who were authorized by registered agents between 2002 and 2007, or for revoking such custodianship and establishing new, approved arrangements; • Policies and procedures, including if necessary, changes in laws or regulation, should be adopted to ensure that the extensive overseas business activities of some registered agents do not create structures not subject to effective supervision. A variety of approaches are possible; • A supervisory authority (or authorities), with adequate powers and capacity, should be appointed to monitor and enforce compliance by other DNFBPs with their AML/CFT obligations; • Updated guidance should be issued, with additional material applicable to the operations of DNFBPs.
4.4 Other designated non-financial businesses and professions (R.20)	• The authorities should keep under review evolving opportunities for reducing the use of cash in the economy.
5. Legal Persons and Arrangements & Nonprofit Organizations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	• With respect to IBCs: (i) relevant laws should be amended to provide (a) that only registered agents and approved custodians may immobilize bearer shares, (b) IFSA with the authority to strike off an IBC under Sec. 172 of the IBC Act for reasons of public policy along the lines of its authority under Sec. 34(1)(a) of the Insurance Act; (ii) measures should be taken by IFSA to verify, at a minimum, that (a) information about beneficial ownership of legal persons in the IBC Register is adequate, accurate and current, and consistent with such information about legal persons held by registered agents, (b) AML/CFT procedures of both registered agents and approved custodians are effective and comply with the laws of their home country as well as those of SVG, and (c) bearer shares are held in "safe custody" under the IBC Act and therefore have been properly immobilized by registered agents and approved custodians, and that only approved custodians as defined by the IBC Act are

	authorized to immobilize bearer shares; • Consideration should be given to amending relevant laws administered by IFSA to require a wide range of effective, dissuasive and proportionate administrative and criminal sanctions against controlling shareholders, directors, officers and companies for failure to disclose material information to IFSA or to RAs or for misuse of any company in respect to ML, FT or any other predicate crime; • IFSA's onsite inspection procedures should be revised to ensure that it has access to and is verifying that adequate, accurate and complete information with respect to beneficial ownership of IBCs is being collected and maintained by registered agents; • IFSA should develop policies and procedures for approving custodians to hold immobilized bearer shares; • With respect to local companies, the Companies Act should be amended to (i) provide the Companies Registrar with the requisite legal authority to ascertain the beneficial ownership of all companies registered in SVG, and to ensure that information about beneficial ownership of legal persons in the Local Companies Registry is adequate, accurate and current, and (ii) consideration should be given to including a wide range of effective, dissuasive and proportionate administrative and criminal sanctions against controlling shareholders, directors, officers and companies for failure to disclose material information to the Companies Registrar and for misuse of any company in respect to ML, FT or any other predicate crime; • The use of nominee and non-SVG corporate directors and shareholders should be prohibited in the IBC and Companies Acts unless measures are taken to ensure that adequate, accurate and complete beneficial information is made available to IFSA and the Companies Registrar respectively and that the IBC and Companies Registers so reflect; and • The Mutual Funds and International Insurance Acts should be amended to prohibit the use of bearer shares by licensees, and the Mutual Funds Regulations revised to reflect this change.
5.2 Legal Arrangements– Access to beneficial ownership and control information (R.34)	• With respect to ITRs, relevant laws, regulations or other enforceable means should be amended to require registered trustees to identify beneficial owners of trusts (e.g. the settlor, trustee, beneficiaries and protector) and the IT Act should be amended to make clear that IFSA has the authority to request books, records and other information about beneficial owners of trusts; • With respect to ITRs, IFSA should conduct sufficient inspections of registered trustees so as to ensure that beneficial owners of trusts are identified;

	• With respect to local trusts, measures, including laws, regulations and other enforceable means, should be adopted to: (i) ensure that competent authorities have access to adequate, accurate and complete information about beneficial owners of trusts; (ii) prevent misuse of local trusts for purposes of ML and FT; and (iii) prevent use of companies as settlors, trustees or beneficiaries of trusts unless they can be adequately identified; • With respect to both ITRs and local trusts, relevant laws should be amended to prohibit use of companies as settlors, trustees or beneficiaries; and • With respect to both ITRs and local trusts, consideration should be given to amending relevant laws to provide competent authorities with effective, dissuasive and proportionate sanctions to ensure that requisite information on beneficial owners is being disclosed and that corporate vehicles are not being used for ML or FT.
5.3 Nonprofit organizations (SR.VIII)	• The authorities should undertake a review of its laws and regulations as they relate to AML/CFT and the NPO sector; • The Registrar of companies should establish policies and procedures to monitor financial filings of NPOs to verify that funds are being raised and disbursed in a manner consistent with the NPOs stated purpose; • Financial reporting requirements should be broadened to including information on domestic and international sources of funds and applications of funds.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	• FIU Act should be amended to specify the FIU authority to obtain appropriate law enforcement and other governmental information needed to develop intelligence and analysis.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• SFT and Palermo Conventions should be ratified and fully implemented. • UNATMA should be amended to include all conventions that define offenses to which the SFT Convention applies; • Legal provisions and other measures should be adopted in order to implement the requirements in UNSCRs 1267 and 1373. In particular, a mechanism for freezing funds, assets, and other financial or economic resources of terrorists and terrorist organizations.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	• Pursuant to MACMA, SVG should adopt regulations that will allow for bilateral mutual legal assistance treaties to have the effect of law; the AG should issue a legal opinion that the discretion to reject requests for MLA in the absence of dual criminality would not be exercised in respect to ML, predicate offense and FT requests.
6.4 Extradition (R. 39, 37 &	• Specific procedures should be established for expediting

SR.V)	extradition requests.
6.5 Other Forms of Cooperation (R. 40 & SR.V)	• The legal basis for conducting investigations and related prosecutorial measures for FT directly on behalf of foreign law enforcement should be specified in law; • The scope and definition of financial intelligence information that is subject to sharing by the FIU to foreign counterparts and to foreign law enforcement needs to be clearly defined.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**R.30** **Supervisors:** • There is a need to strengthen the supervisory staff of IFSA's and the Ministry of Finance-SRD supervisory staff, including enhanced training on supervision and AML/CFT in particular; • The planned transfer of supervision for credit unions and building societies to the SRD will require enhanced resources and training for supervisors in these new sectors; • Supervisory authorities with adequate staff and resources should be assigned responsibility for monitoring and enforcing AML/CFT compliance by those DNFBPs that are not now subject to supervision by IFSA. **FIU:** • FIU needs additional training and resources to conduct core analytical functions, including accounting and forensic skills. **DPP:** • Additional resources and training needed. **Police:** • Police officers should receive regular and comprehensive training on ML and FT offenses and their linkages to predicate offenses; • RSVGPF should have additional resources for technological and communication to improve the predicate crimes, ML and FT investigations. **Customs:** • Additional AML/CFT training focusing on red flags and typologies should be provided to all Customs Department employees amounting to a total of at least two full days of training per year. The Department should consider coordinating with the FIU in researching, designing, and providing such additional training; • Consideration should be given to adding airport scanners and

	permanent trace detector, as well as mobile canine squads for ET Joshua Airport and the main seaport. **Law Judiciary:** • Consider longer term contracts for magistrates of at least five and up to ten years be used. **R.32** **Supervisors:** • Inadequate and untimely statistics obtained by insurance supervisors with respect to e.g. life and investment linked insurance policies; • Insufficient financial statistics received and generated by financial sector supervisor to assist them in risk-profiling FIs for ML/FT risks, including with respect to their money remittance business, back-to-back loans, etc. **FIU/Police**: • The FIU and Police should maintain statistics on trends, vulnerabilities and typologies of ML and FT offenses, and predicate offenses that analyze and synthesize the information obtained separately by each agency.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Authorities' Response to the Assessment

The Government and people of St. Vincent and the Grenadines (SVG) extend its sincerest gratitude to the team of evaluators of the IMF for their untiring efforts in the Mutual Evaluation process of SVG. The process was a rigorous undertaking for both the team and the country but one which we recognize as a necessity.

We, the Government and people of this country remain committed and ready to do all within our powers and resources to build and sustain a strong anti money laundering (AML)/ counter financing of terrorism (CFT), and financial regulatory regime. To this end, we remain ever cognizant that this Mutual Evaluation process is designed as an objective measure of our efficacy in implementing an AML/CFT regime, and as an indicator to the international community of the status of enforcement initiatives to money laundering and terrorist financing.

Given the significance and potential international and domestic implications, it is imperative that the report of our IMF Assessors, as far as possible, is an accurate and objective representation of the state of affairs of our country in respect to our AML/CFT regime. In this regard, we were given assurances that the country situation would be given adequate consideration. However, at times it remained unclear whether such assurances were sufficiently reflected in the Assessors' work.

We intend to consider the recommendations provided in the report to enhance our efforts while at the same time collaborating with the IMF and other stakeholders to progress the execution of such plans. Plans are already in motion to implement some of the recommendations while others require further consultations with the various stakeholders. We wish to emphasize a few of the important areas to which we intend to give utmost priority in 2010 and the near future:

- Amend the two primary pieces of legislation: POCA and UNATMA to achieve full compliance with the FATF 40 plus Nine Special Recommendations. Other pieces of legislation speaking to the operations of the FIU, IFSA and other regulatory bodies are being reviewed and shall be amended where appropriate.

- Issue a legally enforceable and comprehensive set of guidance notes to cover both AML and CFT as an aid in providing clear direction to all Financial Institutions and Regulated entities.

- Continue to build greater human resources capacity at key governmental organizations, particularly at regulatory agencies, as this has already commenced since the evaluation.

- Implement the most effective regulatory oversight systems in keeping with the recommendations of the Detailed Assessment Report (DAR).

One of our overarching goals is to enhance and accelerate current measures in St. Vincent and the Grenadines targeted towards strengthening the existing financial regulatory regime. We intend to achieve this goal through a strategy of prioritization within the context of our available resources. The key manifestation of this would be the discernible improvements in

legislation, guidance and regulatory oversight for all sectors governed under the AML/CFT regime.

Not surprisingly, contained within the IMF's DAR are a number of points of differences between the Assessors and the examined country. Above all, St. Vincent and the Grenadines considers that it has managed to achieve, maintain and implement an effective AML/CFT regime, commenced since December 2001, whereby significant human, financial and technical efforts have been expended to obtain this result. Considerable progress has been made in establishing an AML/CFT regime that actually works and produces desired results. This is especially relevant in our historical and country context of such legislative and administrative practices being wholly unfamiliar prior to 2001/2002. Bearing in mind the overarching objectives of the FATF 40 plus Nine Special Recommendations, there can be little doubt that SVG has indeed curtailed the activities of the money launderers, as evidenced by the fact that the years following the setting up and operation of its FIU, the biggest drug dealers and money launderers have been and are being brought to justice – due to the implementation of an effective, working AML/CFT regime.

St. Vincent and the Grenadines is however fully cognizant of the need to make further and greater progress and to enhance both our laws and systems so that they accord fully with the requirements of the FATF 40 plus Nine Special Recommendations. Though it is understood that the objective of the Report is to highlight deficiencies and weaknesses, it is respectfully submitted that in the country's view, the Assessors have not effectively reflected in the Report the very positive achievements of the country over the past several . In addition, in our view there remain in the DAR a number of subjective judgments, which we believe do not accord with the known facts, particularly in respect of what is believed to be actions that demonstrate effective implementation.

Notwithstanding, St. Vincent and the Grenadines will henceforth focus on improving its AML/CFT regimes in a manner guided by the recommendations of this Report.
We reiterate our commitment to the mutual evaluation process and to ensuring that our AML/CFTAML regime is in compliance with the FATF 40 plus Nine Special Recommendations.

Details of Key Bodies and Persons Met During the On-Site Visit

GOVERNMENT AND PUBLIC SECTOR AUTHORITIES

Hon. Prime Minister, Minister of Finance, Legal Affairs and National Security

Attorney General

Ministry of Legal Affairs

Ministry of Foreign Affairs

Director of Public Prosecutions

Commissioner and Deputy Commissioner of Police

Supreme Court Judges

Chief Magistrates

Financial Intelligence Unit

Permanent Secretary of National Security

Director General, Ministry of Finance & Planning

Budget Director, Ministry of Finance & Planning

Comptroller, Customs & Excise Dept.

Comptroller, Inland Revenue Dept.

International Financial Services Authority (IFSA)

Registrar, International Business Companies (IBCs)

Supervisory and Regulatory Unit (Ministry of Finance)

Co-operatives Department/Registrar of Cooperatives

Eastern Caribbean Central Bank: Banking Supervision Dept.

Gaming Commission

Commerce and Intellectual Property Office

PRIVATE SECTOR ORGANIZATIONS AND ENTITIES

Financial Institutions

9 Banks: Domestic 4; Offshore 5

5 Insurance Companies & Intermediaries

3 Investment Companies, Intermediaries and Mutual Fund Administrators

1 Credit Union

1 Building Society

4 Money Remitter (some were part of other financial institutions)

1 Bureau de Change

Designated Non-Financial Businesses and Professions

Bar Association

1 Law Firm

Accountants Association

1 Accounting Firm

2 NGOs

1 Jeweler

1 Real Estate Broker

1 Casino

3 Trust and Company Services Providers

1 Car Dealer

Annex 3. List of All Laws, Regulations, and Other Material Received

The International Business Companies (Amendment and Consolidation) Act, 2007

Offshore Finance Authority (Reenacting Act)/International Finance Authority Act

Uniform Banking Act

Eastern Caribbean Central Bank Act

Insurance Act

Money Services Business Act

Co-operative Societies Act

Co-operative Societies Regulations

Building Societies Act

The International Banks Act 2004

International Banks (Amendment Act)

Mutual Funds Act, 1997

Mutual Funds (Amendment) Act

Mutual Funds Regulation

The International Insurance (Amendment and Consolidation) Act, 1998

The International Trust Act

The International Trust (Amendment) Act, 2002

The International Trust (Amendment) Regulations, 2002

The International Trust Regulations, 1996

The Exchange of Information Act, 2008

Registered Agent & Trustee Licensing (Amendment) Act

Chapter 382 – Public Trustee Act

Proceeds of Crime and Money Laundering (Prevention) Act 2001

To amend the Proceeds of Crime and Money Laundering (Prevention) Act 202

Prevention of Money Laundering, Guidance Notes

UN Anti-Terrorism Measures Act, 2002

UN Anti-Terrorism Measures Amendment Act of 2006

Statutory Rules and Orders, Proceeds of Crime Regulations

Financial Intelligence Unit Act 2001

Acts to amend the Financial Intelligence Unit Act 2001

Gaming, Lotteries and Betting Act Cap 276

Companies Act No. 8 of 1994

Registration of Business Names Act Cap 111

Partnership Act Cap 109

Environmental Services Act No.14 of 1991

Convention on Oil Pollution Damage No. 6 of 2002

Management of Ship- Generated Solid Waste Act No: 15 of 2002

Dumping at Sea Act No: 53 of 2002

Mutual Legal Assistance in Criminal Matters No: 46 of 1993.

Exchange of Information Bill 2008

Customs (Control and Management) Act No: 14 of 1999

Customs and (Control and Management) Amendment order, 2001

Police Act Cap 280

Drugs (Prevention of Misuse) Act Cap 219

Immigration (Restriction Act) Cap 78

Firearms Act No. 12 of 1995

Drug Trafficking Offences Act No: 45 of 1993

Criminal Code Cap 124

Copies of Key Laws, Regulations, and Other Measures

[Included in a separate file.]