

CARIBBEAN FINANCIAL ACTION TASK FORCE



ANNUAL REPORT

October 2003 – October 2004

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EXECUTIVE SUMMARY

On assuming the reins to guide the organisation during the eleventh operational year, Antigua and Barbuda, through its Chief Foreign Affairs Representative with Ministerial Rank, Sir Ronald Sanders, heralding a new vista for the future, set out an impressive Work Programme which sought to secure, inter alia, a genuinely consultative and participatory mechanism wherein the Financial Action Task Force (FATF) and all FATF style regional bodies, like the Caribbean Financial Action Task Force, (CFATF) could meet as equal partners in the fight against money laundering and the fight against terrorism.

General elections in early 2004 ushered in a shift in representation both at home and abroad in the political administration of Antigua and Barbuda and saw the resignation of Sir Ronald. His successor as Chairman, Senator The Honourable Justin L. Simon, Attorney General and Minister of Legal Affairs, adhered to the spirit and vision of the existing Work Programme and pursued a course of action that facilitated constructive and fruitful engagement on the thrust of the principles outlined therein, with our international partners.

Chairman Simon at the Opening Ceremony of the April 2004 Trinidad and Tobago Plenary Meeting warmly thanked Sir Ronald for the dedication, focus and commitment that he brought to the organisation's ongoing work.

The CFATF family shared the grief and sadness of colleagues in the Netherlands and Spain on the death of a well-loved and important national figure and the loss of innocent lives.

On the administrative front, several significant milestones were achieved. The process to review and modernise the Memorandum of Understanding, the constitutive document of the organisation was brought to a close and a revised updated document endorsed by Ministers. The meeting of the Heads of Financial Intelligence Units on the margins of Plenary meetings has now been institutionalised as an important forum for enhancing the typologies work of the organisation as well as fostering intra regional cooperation on law enforcement issues.

The Mutual Evaluation Programme, the mechanism for monitor regional compliance with international anti money laundering and combating the financing of terrorism benchmarks is now fully entrenched as the Second Round comes to an end. Preparations are well in hand for moving to the Third Round of Evaluations, which should commence in early 2005.

Drawing on the experiences of the organisation in the use of the October 2002 version of the AML/CFT Methodology, the CFATF endorsed the use of the 2004 Methodology for use in the Third Round of Mutual Evaluations during which the effective implementation of the AML/CFT systems will be assessed.

The revision of the FATF 40 Recommendations has taken into account for the most part, the obligations set out in the 19 CFATF Recommendations. Accordingly, Ministers have agreed that the



19 CFATF Recommendations will not be used as benchmarks in the Third Round of Mutual Evaluations.

With regard to Technical Assistance and Training, the 2003-2004 Work Programme articulated that the machinery for training now needs to be owned by and must serve the priority needs of the Caribbean Basin Region and carried forward in a way that contributes to the specific and individual requirements of each of the thirty CFATF members. This new thinking as reflected in the new provisions of the Memorandum Of Understanding was the guiding factor in terms of drawing up a Technical Assistance and Training Needs Matrix for the membership and engaging with the donor community with a view to securing necessary funding.

As a first step in this expanded remit, a conference on compliance issues catering for both the public and private sectors was arranged in Port of Spain, Trinidad during September 7-8 2004 and our thanks are extended to the sponsors and the speakers who gave so readily and generously of their time and resources in this endeavour. Coming out of this exercise was the foundation for the eventual creation of a Compliance Officers Association for the Caribbean Basin Region.

On the external relations front, the CFATF goal of securing a genuine framework for enhanced cooperation and constructive engagement with the FATF received significant support through discussions between former FATF President Claes Norgren of Sweden and CFATF Members at our April 2004 Plenary Meeting. The dialogue was viewed as a commendable step in the right direction and a call was made for similar discussions between the CFATF and the current FATF President, Mr. Jean-Louis Fort of France. Cordial Relations with our Group of Cooperating and Supporting Nations as well as our longstanding and new Observer Organisations were further strengthened during this reporting period.

CFATF OVERVIEW

The Caribbean Financial Action Task Force (CFATF) is an organisation of thirty states of the Caribbean Basin, which have agreed to implement common countermeasures to address the problem of criminal money laundering and the financing of terrorism. It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992.

In Aruba representatives of Western Hemisphere countries, in particular from the Caribbean and from Central America, convened to develop a common approach to the phenomenon of the laundering of the proceeds of crime. Nineteen recommendations constituting this common approach were formulated. These recommendations, which have specific relevance to the region, are complementary to the additional forty recommendations of the Financial Action Task Force established by the Group of Seven at the 1989 Paris Summit.

The Jamaica Ministerial Meeting was held in Kingston, in November 1992. Ministers issued the Kingston Declaration in which they endorsed and affirmed their governments' commitment to implement the FATF and Aruba Recommendations, the OAS Model Regulations, and the 1988



U.N. Convention. They also mandated the establishment of the Secretariat to co-ordinate the implementation of these by CFATF member countries.

The main objective of the Caribbean Financial Action Task Force is to achieve effective implementation of and compliance with its recommendations to prevent and control money laundering and to combat the financing of terrorism. The Secretariat has been established as a mechanism to monitor and encourage progress to ensure full implementation of the Kingston Ministerial Declaration.

The Costa Rica Ministerial Meeting held in San José, Costa Rica, during October 1996, adopted and signed the Memorandum of Understanding, the constitutive document of the CFATF.

Twenty-one member delegations were present along with the initial five member countries of the Group of Cooperating and Supporting Nations.

Currently, CFATF members are Antigua & Barbuda, Anguilla, Aruba, The Bahamas, Barbados, Belize, Bermuda, The British Virgin Islands, The Cayman Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Republic of Haiti, Honduras, Jamaica, Montserrat, The Netherlands Antilles, Nicaragua, Panama, St. Kitts & Nevis, St. Lucia, St. Vincent & The Grenadines, Suriname, The Turks & Caicos Islands, Trinidad & Tobago, and Venezuela.

Representatives of the Governments of Canada, the Kingdom of the Netherlands, France, The United Kingdom, and the United States of America (the "Cooperating and Supporting Nations"), meeting together in San Jose, Costa Rica, 9-10 October, 1996, considered the work of the Caribbean Financial Action Task Force (the "CFATF") since 1990, the benefits of effective implementation of mechanisms to prevent and control money laundering; and the need for expertise and training, and cooperation among Nations to assure such implementation in the Caribbean region.

The Cooperating and Supporting Nations are members of the Financial Action Task Force on Money Laundering (the "FATF") and as such are committed to the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to the implementation of the 40 FATF Recommendations concerning anti-money laundering measures.

The Cooperating and Supporting Nations recognize the relationship between the work and objectives of the FATF and the work and objectives of the CFATF. Accordingly, these Nations are committed to making such contributions to the work and/or resources of the CFATF as are permitted by their respective national laws and policies.

At Council of Ministers Meetings in October 1999 and October 2000, both Spain and Mexico respectively joined the CFATF Group of Cooperating and Supporting Nations.

The CFATF Secretariat monitors members' implementation of the Kingston Ministerial Declaration through the following activities:



- i. Self-assessment of the implementation of the recommendations.
- ii. An ongoing programme of Mutual evaluation of members.
- iii. Co-ordination of, and participation in, training and technical assistance programmes.
- iv. Biannual plenary meetings for technical representatives.
- v. Annual Ministerial meetings.

Money laundering is growing rapidly and subject to ever changing techniques. Since February 1996, the CFATF has been conducting a number of Typology Exercises on money laundering with the aim of increasing awareness of the attendant risks to the region. These exercises allow for the sharing of information collated by various bodies involved in combating money laundering.

These exercises have explored money laundering activity in Domestic Financial Institutions; the Casino and the Gaming Industry, through International Financial Transactions conducted in both Domestic and Offshore Institutions and the Emerging Cyberspace Technologies.

The CFATF in October 2000 conducted Part 1 of a Typology Exercise into the money laundering possibilities in the Free Trade Zones. Part 11 was undertaken during March 2001. The Exercise led to the formulation of Money Laundering Prevention Guidelines for CFATF Member Governments, Free Trade Zone Authorities and Merchants and a Model Free Zone Compliance Programme and a Code of Conduct.

In April 2002, the CFATF and GAFISUD, the Financial Action Task Force of South America organized in Tobago, Trinidad & Tobago, a Joint Hemispheric Typology Exercise on Terrorism and Terrorist Financing.

In furtherance of its mandate to identify and act as a clearing house for facilitating training and technical assistance needs of members, the Secretariat works closely with regional Mini-Dublin Groups, the diplomatic representatives of countries with interest in the region, in particular Canada, France, Japan, the Netherlands, the United Kingdom, and the United States, and, finally, international organisations. Included among these international organisations are OAS/CICAD, CARICOM, the Caribbean Customs Law Enforcement Council (CCLEC), the Caribbean Development Bank (CDB), APG Secretariat, The Commonwealth Secretariat, E.C./E.U., E.C.D.C.O., ECCB, FATF Secretariat, GAFISUD, GPML, IADB, INTERPOL, OGBS, Jersey, the United National International Drug Control Programme (UNDCP) and World Customs Organization (WCO).

With the support of and in collaboration with UNDCP, the CFATF Secretariat developed a regional strategy for technical assistance and training to aid in the effective investigation and prosecution of money laundering and related asset forfeiture cases. The development of this regional strategy by



UNDCP/CFATF parallels and is being closely co-ordinated with similar initiatives by the European Commission and efforts arising from the Summit of the Americas Ministerial in Buenos Aires.

The CFATF Secretariat is hosted by the Government of Trinidad & Tobago. The CFATF Chairman is Senator The Honourable Justin L. Simon, Attorney General and Minister of Legal Affairs, Antigua and Barbuda.

Calvin E. J. Wilson, the CFATF Executive Director, is a national of Trinidad and Tobago, and a member of the Bar of England and Wales and Trinidad and Tobago. He was a former Senior Crown Prosecutor in the United Kingdom for eight years and is a member of Lincoln's Inn.

INTRODUCTION

On assuming the reins to guide the organisation during the eleventh operational year, Antigua and Barbuda, through its Chief Foreign Affairs Representative with Ministerial Rank, Sir Ronald Sanders, heralding a new vista for the future, set out an impressive Work Programme which sought to secure, inter alia, a genuinely consultative and participatory mechanism wherein the Financial Action Task Force (FATF) and all FATF style regional bodies, like the Caribbean Financial Action Task Force, (CFATF) could meet as equal partners in the fight against money laundering and the fight against terrorism.

THE CHAIRMAN'S WORK PROGRAMME

The Antigua and Barbuda period as Chair offered such a vista to the CFATF that Work Programme as presented by Sir Ronald is included here in full.

THE ANTIGUA AND BARBUDA CHAIRMAN'S WORK PROGRAMME

The Government of Antigua and Barbuda looks forward to serving as Chair of the Caribbean Financial Action Task Force for the period 2003-2004 as we seek to advance significantly the regional agenda on anti-money laundering and combating the financing of terrorism.

The proposed Work Programme will focus on the following areas:

- The AML/CFT Methodology.
- Relationships with FATF and the other FATF style regional bodies.
- Governance issues for CFATF.
- Budget issues
- Technical Assistance and Training
- Mutual Evaluations, Country Reports and Typology Exercises.



THE AML/CFT METHODOLOGY

Since the Special Meeting in Barbados in January 2003 to consider the IMF/WB methodology there have been two crucial developments. FATF has issued the Revised 40 Recommendations and the World Bank/IMF Group has completed its twelve month Pilot Programme that has involved a number of CFATF members.

A small drafting group of FATF members is in the process of creating a draft text of the revised Methodology which will be discussed in a Working Group meeting from 2 - 4 December, 2003 in Washington, D.C.

CFATF Member States have been invited to participate in the Working Group meeting to refine the Methodology that will be presented to the FATF Plenary in February 2004. It would be in the interests of all CFATF Members to participate fully in this Working Group meeting, and, to this end, I would recommend a preparatory meeting of CFATF Members during November to coordinate a common position that we could jointly advance in Washington.

It should not be thought that the development of a revised methodology is a matter to be taken lightly. It is the detailed instrument through which the international financial institutions and the G7 countries will presume to assess compliance with the 40 Recommendations. It is vital to the interests of CFATF member states that the revised methodology reflects their circumstances and their experience with the pilot project. The methodology should not impose a one-size fits all solution to be imposed on CFATF members by the IMF/World Bank Group.

RELATIONSHIPS WITH FATF AND FATF STYLE REGIONAL BODIES

We need a genuinely consultative and participatory mechanism for FATF and all the FATF style regional bodies to meet as equal partners in the fight against money laundering and terrorism financing. All parties should have an equal voice. None should be subject to coercion by another. Blacklists should be a thing of the past.

Only by working together can FATF, CFATF and the other regional bodies like the Financial Action Task Force on Anti-money laundering in South America (GAFISUD), the Asia Pacific Group and the Eastern and Southern Africa Money Laundering Group establish mutual confidence and respect. It should not fall to FATF alone to devise and impose Recommendations. These are matters for us all.



CFATF should use its best efforts to initiate regular joint meetings of the leadership groups of these bodies to work together to devise Recommendations and practices that enjoy the consensus of all.

I note the desire expressed by the current FATF President to improve working relations between FATF and regional bodies such as CFATF. Similarly, I note the proposal by Austria for better cooperation between FATF and FATF-style regional bodies. These are developments that CFATF should encourage.

GOVERNANCE ISSUES

There have been attempts in the recent past to address issues of governance through the establishment of a Working Group for the revision of the Memorandum of Understanding of the CFATF. Unfortunately the process has been slow to yield any fruit. At this meeting however we will be able to review proposed amendments to the MOU and utilise these contributions over the coming year and to carry the work forward.

CFATF has been in existence for a decade. It is a maturing organization, and the most successful of the FATF-style regional bodies. It is time that its members take greater possession of it and celebrate both their ownership of the organization and its considerable achievements.

To this end, I propose that its principal decision-making organ, the Council, should meet at least twice a year to give political direction to the organization on a regular and sustained basis.

Issues of the financial viability of CFATF go to the heart of its independence and relevance to its regional membership.

At issue here is how to make CFATF more relevant to the needs of its members, and better able to speak for them at international meetings and, through training and technical assistance, better able to equip members in the fight against money laundering and terrorism financing.

BUDGET ISSUES

Matters of governance of CFATF and the manner in which the Organisation represents the concerns and interests of its members are linked to the willingness of governments to participate in, and fund the work of, the Organisation.



It is my intention to engage government representatives at an appropriate senior level to encourage their greater support to the Budget of a reinvigorated CFATF that strongly represents their interests in relevant bodies and contributes to enhancing their capacity for fighting money laundering and terrorism financing. These activities spawn more criminality which further debilitate all our societies. The work of CFATF must be seen by governments as a vital enhancement of their national efforts to curb all criminal activity.

TECHNICAL ASSISTANCE AND TRAINING

CFATF needs access to international grant funds to maintain an effective technical assistance and training programme. The work of CALP so far is greatly appreciated. But, the machinery for training now needs to be owned by the Region and must serve the priority needs of the Region. Such new machinery needs to be expanded and carried forward in a way that contributes to the specific and individual requirements of each of the thirty members of CFATF on a sustainable basis.

CFATF has a good story to tell in the international donor community. Approaches to the World Bank, European Union, the Commonwealth Secretariat and bilateral donor agencies will be a priority during 2003 and 2004 to enhance the training and technical assistance opportunities that are available. Regional financial agencies and the private sector will also be approached, not least because much of the training has relevance to private sector financial institutions.

MUTUAL EVALUATIONS, COUNTRY REPORTS AND TYPOLOGY EXERCISES

The work of the mutual evaluations and related country reports is now well established. It is the principal mechanism through which CFATF determines the effectiveness of the compliance of its Members with the Recommendations.

Currently the Second Round of Mutual Evaluations are proceeding but with some inevitable difficulties. And we need to recognise the element of “mission fatigue” that is evident in jurisdictions that are subjected to a continuous and unsustainable programme of evaluations, to say nothing of the difficulties of finding experienced evaluators.

The Typology exercise links closely with the training and technical assistance work discussed above. The challenge which CAFTF faces is two-fold: (a) to maintain a consistently high standard of presentation in the typology work, and (b) to ensure that the priority of the typology exercise remains relevant to the urgent needs of members.

I commend this Work Programme for your support.



General elections in early 2004 ushered in a shift in representation both at home and abroad in the political administration of Antigua and Barbuda and saw the resignation of Sir Ronald. His successor as Chairman, Senator The Honourable Justin L. Simon, Attorney General and Minister of Legal Affairs, adhered to the spirit and vision of the existing Work Programme and pursued a course of action that facilitated constructive and fruitful engagement on the thrust of the principles outlined therein, with our international partners.

Chairman Simon at the Opening Ceremony of the April 2004 Trinidad and Tobago Plenary Meeting warmly thanked Sir Ronald for the dedication, focus and commitment that he brought to the organisation's ongoing work.

Both Sir Ronald and Justin L. Simon undertook their responsibilities with a dignity and commitment that reflected the best traditions of the CFATF Chairmanship and did Antigua and Barbuda proud.

OPENING CEREMONY

The Opening Ceremony to the Plenary Meeting XIX which was attended by Members of the Diplomatic Corps and the business community of Trinidad and Tobago, allowed for the introduction of current Chairman Senator the Honourable Justin L. Simon, Attorney General and Minister of Legal Affairs, Antigua and Barbuda, who assumed office following the resignation of former Chairman Sir Ronald Sanders. These changes came as a consequence of general elections in Antigua and Barbuda, which brought into office the administration of Prime Minister Baldwin Spencer.

The Feature Address was delivered by Senator the Honourable Martin Joseph, Minister of National Security, Government of Trinidad and Tobago and Prime Contact to the CFATF, who outlined inter alia his government's firm partnership with the international community in the struggle against money laundering and the financing of terrorism and its continuous support for all aspects of the CFATF's operations. Ms. Claire Blake, Chief Parliamentary Counsel, Attorney General's Chambers, Trinidad and Tobago outlined the steps that are being taken by the country to enact and implement international standards to combat the financing of terrorism.

As a mark of respect and in support for our COSUN colleagues from the Netherlands and Spain, the Plenary stood for a minute's silence to mark the passing of Queen Juliana of the Netherlands and again for the loss of lives in Spain on March 11th, 2004.



THE REVIEW OF THE MEMORANDUM OF UNDERSTANDING

On April 10th, 2002, Plenary XV held in Tobago authorized the formation of a Working Group for the revision of the Memorandum of Understanding (MOU), the organisation's constitutive document which was initially drawn up and signed on October 10th 1996 in San Jose Costa Rica.

Whilst all did not go to plan in terms of strict adherence to the timetable initially imposed for this body of work, Members, COSUNs and Observers Organisations eventually actively participated in and adopted a serious approach to this review process which sought to modernise the MOU and to bring it in line with the new thinking of making the organisation more meaningful to its members. Salient changes reflect the decision by Ministers to extend the mandate of the organisation to include a commitment to adhere to the international benchmarks to combat the financing of terrorism and implement where applicable, the March 2002 Washington Statement of the Black Market Peso Exchange System Multilateral Working Group and the October 2002 CFATF Money Laundering Prevention Guidelines for CFATF Member Governments, Free Trade Zone Authorities and Merchants.

The requirements to obtain Observer Status were clarified and authority was provided for the Chair and the Secretariat to invite non-governmental entities to observe special meetings for the discussion and analysis of money laundering, financing of terrorism and trans national criminal methods and trends.

The mandate was also extended for the CFATF to act as implementing agency for meeting the technical assistance and training needs of all thirty members

OBSERVER STATUS

Banco Centro Americano de Integración Económica (BCIE) is a multilateral financial organisation of Central American countries, whose goal over the past forty-three years has been to promote economic integration and development as well as social equilibrium for countries of the region. Having considered the work of the CFATF and recognising its important to BCIE's founding Member countries, an application dated July 22nd 2004 was forwarded seeking the grant of Observer Status.

Ministers considered the work of BCIE and its readiness to collaborate in a constructive fashion with the CFATF to the benefit of our Central American members endorsed warmly and unanimously the grant of Observer Status.

COMPOSITION OF THE STEERING GROUP

Plenary IV resolved to form a Steering Group, which as agreed, shall:



- 1.) comprise the Chairman, the Chairman-elect, the CFATF Executive and Deputy Directors, one COSUN and three CFATF Members;
- 2.) the COSUNs would participate in the Steering Group on a rotating basis;
- 3.) the Government of the Netherlands was designated as the first COSUN Representative;
- 4.) the initial CFATF Members to participate on the Steering Group shall be the Cayman Islands, the Netherlands Antilles, and Trinidad and Tobago.

Plenary IV resolved further that the Steering Group shall:

- 1.) advise the Secretariat regarding issues of policy, which arise and require action prior to meetings of the CFATF Council of Ministers;
- 2.) on all significant matters relating to internal CFATF policy, consult in co-ordination with the Secretariat with all CFATF Member Governments at the Ministerial Level; and,
- 3.) at annual meetings of the CFATF Council of Ministers, provide a full briefing on its activities and, when appropriate, formulate recommendations for the Council.

Plenary XVIII was required to consider and make a recommendation to the Council of Ministers as to the composition of the Steering Group for the 2003-2004 period. Fixed positions on the Steering Group are the Chairman, the Deputy Chair, the Executive Director, the Deputy Director and the outgoing Chair.

As recommended by Plenary XVIII the Antigua and Barbuda Ministerial Meeting, Ministers endorsed the composition of the Steering Group as follows: The Chair – Antigua and Barbuda, Deputy Chair – Panama, the Outgoing Chair – The Bahamas, Belize, Costa Rica and Guatemala and COSUN representative Netherlands, along with the Executive Director and the Deputy Executive Director. As previously endorsed, Ministers have the authority to call upon all past Chairmen to share their expertise and experiences in the conduct of all aspects of the organization's affairs.

STAFFING

The Honourable Minister of Justice of the Netherlands Antilles by way of letters dated January 22nd, 2004 and February 2nd, 2004 generously indicated his government's nomination of Mr. Russell Ursula for the post of Deputy Executive Director of the Secretariat for the three-year period October 2004 to September 2007. This gesture demonstrated the firm commitment of the Netherlands



Antilles to the fight against money laundering and the financing of terrorism and at the same time underscored the country's continuing interest and ongoing support for the affairs of the CFATF.

Mr. Ursula is well familiar with the operations of the Secretariat, having been previously seconded for a three-year term commencing August 2001, to perform the duties of Law Enforcement Advisor, responsibilities which were undertaken with distinction.

The Port of Spain Plenary supported the nomination of Mr. Russell Ursula for the post of Deputy Executive Director of the Secretariat for the period October 2004 to September 2007 and accepted that the organization should be responsible for the additional costs of approximately U.S.\$52,000 per annum beyond his salary arrangement, which will be met by the Netherlands Antilles.

The Secretariat was authorized to meet those costs associated with housing, education and insurance, which had to be met during July-September 2004 prior to the formal commencement of the term of secondment.

Mr. Ursula was a Commissioned Police Officer and Deputy Director of the Netherlands Antilles national Intelligence Service during 1982 to 1994. He was also Director of the Ministry of Justice of the Netherlands Antilles from 1994 to 1999 and is considered one of the country's most senior civil servants.

Mr. Ursula has a Masters Degree in Dutch Civil Law and also a Masters Degree in Public Administration majoring in international affairs and development cooperation. He speaks Dutch, English and Spanish.

The CFATF is very much indebted to the Government and people of the Netherlands Antilles for extending, in a continuing fashion, such a generous hand of friendship through the commitment of this very valuable and experienced public servant.

ANNUAL AUDITED FINANCIAL STATEMENTS

The Auditor's Statement and Financial Report regarding the operations of the Secretariat for the year ending December 31st, 2003 as prepared by PricewaterhouseCoopers, were considered by Plenary who recommended its approval to the Council of Ministers X which was granted. The Report confirms that the affairs of the organisation continue to be managed in a safe, transparent and prudent fashion.

THE MUTUAL EVALUATION PROGRAMME

The main objective of the CFATF is to achieve compliance with and effective implementation of international and regional standards to prevent and control money laundering and the financing of



terrorism. An important mechanism for monitoring adherence by the membership to these obligations is the Mutual Evaluation Programme.

The CFATF Second Round of Mutual Evaluations which commenced in July 2001 is due to be completed by December 2004 within a three and one half year time frame and covering thirty countries. This compares very favourably with the First Round of Mutual Evaluations which involved twenty-four countries but took five and one half years.

THE AML/CFT METHODOLOGY

During September 2003, Mutual Evaluation Missions were undertaken to Dominica, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, members of the Organisation of Eastern Caribbean States (OECS). These Missions were undertaken at the same time as the International Monetary Fund and the World Bank were conducting Financial Sector Assessment Programme Missions to those jurisdictions. In these particular circumstances and with the acquiescence of the jurisdictions concerned, the assessment tool for these Missions was the October 2002 version of the AML/CFT Methodology.

The objective, which was achieved, entailed avoiding concerns about mission fatigue, duplication of efforts, where two Missions assessing the same AML/CFT issues in a short space of time of each other and the attendant inefficient use of limited human and financial resources which occur.

At the Antigua and Barbuda Ministerial, Ministers endorsed the following position which reflected recognition of the reality of the use of the Methodology during the September Missions to some of the OECS jurisdictions:

1. Endorsed the principle of the use of a common and mutually agreed Methodology in the assessment of AML/CFT regimes globally.
2. Agreed to continue to use the current Methodology-October 2002 version- for the completion of the second round of Mutual Evaluations where countries to be evaluated so agree.
3. Agreed to participate in the post pilot review of the use of the Methodology incorporating inter alia the experiences of CFATF jurisdictions and examiners using the methodology.
4. Affirmed that its peer review process will continue to be the underlying principle for the CFATF mutual evaluation programme.
5. Agreed that as a general rule CFATF will use its best efforts to do a Mutual Evaluation of a member jurisdiction simultaneously with an IMF/WB FSAP/OFC, and noted the commitment of the IMF/WB to accept the CFATF AML/CFT assessment in their normal review process.



6. Agreed that in those cases where AML/CFT assessments have already been conducted by the IMF/WB, and the jurisdiction concerned agrees, CFATF will use the IMF/WB AML/CFT assessment in its normal review process as if it were a CFATF Mutual Evaluation.

At the suggestion of the Chairman, Sir Ronald Sanders, representatives from Barbados, Bahamas, Panama and Guatemala, under the chairmanship of Sir Neville Nicholls, former President of the Caribbean Development Bank acting as the personal representative of the Chairman, attended the meeting of the Drafting Group of the FATF AML/CFT Working Group in Washington DC, 2-4 December 2003. Despite the fact that the Membership did not receive drafts of the revised methodology until mid-November a number of countries, including Antigua and Barbuda, Barbados, Bahamas, Jamaica, Guatemala and Panama, were able to submit comments to Sir Neville immediately prior to the Washington DC meeting. These comments were all addressed with the Drafting Group in Washington DC but with mixed results.

The report on this meeting subsequently issued by Sir Neville highlighted a number of difficulties surrounding both the process of drafting and the resultant draft Methodology document. Sir Neville's report was considered by a special meeting of the Steering Group which the Chairman, Sir Ronald Sanders, called in Miami in January 2004 and it was agreed that despite the problems a representative of CFATF should attend the meeting in Tokyo later that month and the FATF meeting in Paris in February 2004. Mr Bernard Turner, Director of Public Prosecutions, Government of Bahamas, attended these meeting.

The Methodology was finalized at the FATF Paris Plenary during February 2004, and was circulated to the Membership immediately upon receipt at the Secretariat Since the circulation of the finalized Methodology on March 3rd, 2004, comments were received by the Secretariat from British Virgin Islands.

At the April 2004 Plenary Mr. Bernard Turner, Director of Public Prosecutions, The Bahamas, presented a report on his attendance and participation at the FATF Meetings in Tokyo and Paris, which took into account some of the positions advanced by the CFATF on the structure and contents of the revised Methodology.

Mr. John Carlson, FATF Secretariat provided a detailed report on the structure of the revised Methodology, as it related to the revised 2003 FATF 40 recommendations and the Eight Special Recommendations on Combating the Financing of Terrorism.

Plenary noted comments from Barbados as to its concern as to whether the revised methodology faithfully followed the FATF 40 + 8 Recommendations and whether CFATF representation in the FATF Drafting Group would have enhanced regional representation.

The FATF Drafting Group was tasked to develop proposals for the ongoing revision of the



Methodology and present the final product to the FATF AML/CFT Methodology Working Group at the December 2003 Washington Meeting of the Working Group.

In the Secretariat's Report to Members on developments during the FATF Stockholm October 2003 Plenary it was noted that the Executive Director had advocated the need for participation by the members of the FATF Style regional bodies (FSRBs) in the FATF Drafting Group but that this view did not find support from the other FSRBs who considered participation in the wider FATF Working Group Meeting, a sufficient level of involvement.

The April 2004 Plenary considered fully the course of events with regard to overall CFATF participation in the process to revise the AML/CFT Methodology and recommended that the 2004 Methodology should be endorsed for use in the Third Round of Mutual Evaluations.

Plenary also recommended that the Secretariat as well as any other interested Members who participated in the Washington 2003 Meeting of the FATF Working Group should attend and participate in the meeting of the FATF Working Group for the revision of the supporting documents to the Methodology, which was scheduled for April 26-27, 2004 in Washington.

The aim of this meeting was to ensure that as far as possible the processes and procedures that were to be used by the FATF and the FATF style regional bodies in conducting Mutual Evaluation Mission using the Methodology were reasonably consistent, and that a common format or template for a number of the underlying documents to the Methodology, such as the Criterion-by-Criterion Questionnaire, the Detailed Assessment Report and the Summary would also be utilised.

It was felt that CFATF participation in this revision process would have benefited from regional experiences in the use of the Methodology and supporting documents by countries that were examined, as well as Examiners and the Secretariat staff who were involved in the process.

Accordingly, Member Countries who had been assessed under IMF/World Bank Assessment Programmes, as well as those OECS jurisdictions that were assessed by the CFATF during the September 2003 Missions, were urged to share their experiences with the use of the Methodology. CFATF Examiners who participated in the September Missions were also urged to share their experiences of the process, as was the Eastern Caribbean Central Bank, which was very much involved in the preparations for the September Missions.

The CFATF was represented at this meeting by Ms. Rochelle Deleveaux, The Bahamas, Ms. Isabel Fernandez, Panama, Ms. Dawne Spicer and Mr. Roger Hernandez from the Secretariat.

The Washington meeting did produce a revised Criterion-by-Criterion Questionnaire; an outline template of the mutual evaluation report/detailed assessment report, an outline summary of the report, guidelines for bodies doing evaluations/assessments for the countries being examined and a detailed checklist for assessors covering both substantive and procedural issues. And these documents were circulated to CFATF members for comments prior to the June/July 2004 FATF Plenary Meeting as were the revised versions coming out of this FATF Plenary.



The FATF indicated that following adoption of the AML/CFT Methodology 2004, all organizations and bodies involved in conducting AML/CFT evaluations or assessments will need to prepare new documentation and consider changes that need to be made to their evaluation/assessment procedures. Training workshops in the use of new documents and procedures were arranged for September 2004 in Washington and the Secretariat was represented by Mr. Russell Ursula, Ms. Dawne Spicer and Roger Hernandez.

The CFATF and the International Monetary Fund/World Bank continue to explore avenues for close, constructive collaboration in the use of the Methodology and the conduct of joint training exercises in the new regimes. Plans are afoot to ensure that there is coordination of the schedules for CFATF Mutual Evaluation Missions during the Third Round of Evaluations and FSAP/OFC Assessments conducted by the FUND/BANK beginning 2005.

COUNTRY REPORTS

Ministers authorized the compilation and publication on an annual basis, Country Reports, which reflect the current anti money laundering and combating the financing of terrorism infrastructure of all CFATF Members. The Draft Country Reports have been of considerable assistance to the Secretariat and the Mutual Evaluation Examiners in preparing for and conducting Mutual Evaluation Missions

At the Antigua and Barbuda Ministerial, Sir Ronald on behalf of Ministers urged all Members to be pro-active and co-operate with the Secretariat in finalizing their respective Country Reports so that these in turn could be published on the website. Thus far, reports on Antigua and Barbuda, Anguilla and Bermuda have been finalised.

THE 19 CFATF RECOMMENDATIONS

In 1990, the Financial Action Task Force (FATF) developed the original FATF Recommendations in order to prevent the proceeds of illegal drug related activity from being channelled through financial systems globally.

These original recommendations were revised in 1996 in order to reflect the changing methods and techniques for laundering the proceeds of crime and were endorsed by more than 130 countries as the international anti-money laundering standard.

In response to the tragic events of September 11th the FATF expanded its mandate to deal with the financing of terrorism and developed the Eight Special Recommendations on Terrorist Financing. These recommendations outlined measures for combating the funding of terrorist acts and terrorist organizations.



An analysis of money laundering methods and techniques has revealed an increasing and sophisticated process of using legal entities to conceal the true ownership and control of illegal proceeds along with the involvement of professionals giving aid and advice in the laundering process.

This changing international scenario led the FATF to review and revise the Forty Recommendations, which are now designed to combat both money laundering and terrorist financing.

By virtue of the principles enshrined in the Kingston Declaration, CFATF Member States agreed to endorse and implement both the 40 FATF Recommendations of 1990 and the 19 CFATF Aruba Recommendations, measures that were used as the benchmark for the First Round of Mutual Evaluations.

In October 1996 the CFATF Council of Ministers took note of the 1996 Revised 40 Recommendations, resolved to initiate a Typology Exercise and formed a Working Group to consider the new Recommendations and to propose any necessary revisions and or interpretative notes to the Recommendations adopted by the CFATF.

Rather than pursue a one stage Typology Exercise, circumstances dictated a broader approach. Accordingly, four Typology Exercises examined money-laundering possibilities in diverse areas ranging from Domestic Financial Institutions to the emerging Cyberspace Technologies.

The reports compiled from these Exercises formed the factual basis on which the Working Group and the wider membership considered the CFATF response to the 1996 FATF Revised Recommendations.

Council of Ministers Meeting IV during November 1998 considered the reports and recommendations on the four Typology Exercises and resolved to endorse the Revised 40 FATF Recommendations. Ministers further agreed that the process of implementation should commence immediately.

The impact of the 1996 Revised FATF Recommendations on the 19 CFATF Recommendations was also considered by the Working Group and their findings as outlined in the Revised 19 CFATF Recommendations were also endorsed by the Ministers.

Council IV further resolved that in the context of the Mutual Evaluation programme, both the 1996 FATF and CFATF Revised Recommendations would be applicable on commencement of the Second Round of Mutual Evaluations, starting January 1st 2001. At the Bahamas Ministerial in 2002 Ministers endorsed the 8 Special Recommendations on Terrorist Financing.

The 2003 Revised Forty Recommendations were finalized at the FATF Special Plenary in May 2003, which was attended by the Executive Director and Ms. Rochelle Deleveaux, Central Bank of The Bahamas who represented then Chairman Sears.



The Revised Recommendations were adopted by the June 2003 FATF Plenary as a new comprehensive framework for combating money laundering and terrorist financing and were effective immediately.

At the Council of Ministers Meeting in Antigua and Barbuda, Ministers endorsed the Revised 2003 FATF Recommendations. This then led to consideration of the impact of the 2003 FATF Recommendations on the CFATF Recommendations.

Accordingly, during Plenary XVIII in Antigua and Barbuda, a Working Group established to review the issue, found and reported that:

1. The FATF's revised 40 Recommendations have essentially raised the global anti-money laundering standards to incorporate most of the CFATF's 19 Recommendations, thereby facilitating the creation of a level playing field between the CFATF Members and their international counterparts.
2. That there were four recommendations that were not covered by the Revised FATF 40 Recommendations as follows:
 - CFATF Rec. No. 5 which requires that States consider enacting statutes that would 'criminalize the knowing payment, receipt or transfer or attempted payment, receipt or transfer of property known to represent the proceeds of drug trafficking, serious crimes or money laundering where the recipient of the property is a public official, political candidate or political party.' With regard to this Recommendation, it was noted that FATF Rec. No. 6 only dealt with PEPs as part of a due diligence function for financial institutions.
 - CFATF Rec. No. 15, which generally deals with the sharing of information on international currency flows. With regard to this Recommendation, it was noted FATF Rec. No. 19 pertains to cross-border movements of cash and not international currency flows per se.
 - CFATF Recs. 18 and 19, which fall under the heading 'Training and Assistance' and recommend ways in which regional States could assist each other in dealing with money laundering.

Based on this review, the Working Group suggested that the CFATF 19 Recommendations be rescinded but that the four exceptions noted above be re-worded where necessary and incorporated within the CFATF MOU. Members however expressed the view that CFATF Rec. 5 placed a higher standard on Members than was required and it should therefore not be retained. Others expressed the view that it was unnecessary to retain CFATF Recommendations 15, 18 and 19 in any form, least of all the MOU.

At the Council of Ministers Meeting the Working Group's findings and other views were considered. It was determined that given the importance of the CFATF 19 Recommendations to the identity of the organisation further discussions on the issue should be undertaken at the April 2004 Plenary. After considering the matter anew Plenary recommended the following six-point position for Ministerial consideration:



1. Recognising the ground breaking nature of the original 19 CFATF Recommendations in that they took into account Special Caribbean Basin circumstances which required particular consideration in the fight against money laundering thereby augmenting the 1990 40 FATF Recommendations and in tandem strengthening regional anti money laundering defences.
2. Recognising the important role that the 19 CFATF Recommendations played in encouraging Member countries to comply with international money laundering standards.
3. Recognising recent developments in global antimoney laundering strategy through the revision of the FATF 40 Recommendations which now encompass for the most part the provisions of the 19 CFATF Recommendations.
4. Recognising the agreement by the FATF to work closely with and to ensure the fullest participation of FATF style regional bodies like the CFATF in the development of the AML/CFT standards.
5. Recognising the inherent right and responsibility of the CFATF to develop anti money laundering and combating the financing of terrorism standards in keeping with the realities of the Caribbean Basin Region.
6. It is recommended that the CFATF 19 Recommendations should no longer be used as benchmarks for compliance in the Third Round of the CFATF Mutual Evaluation Programme.

Ministers considered the recommendations of the Plenary and endorsed the position that the 19 CFATF Recommendations should no longer be used as benchmarks for compliance in the Third Round of the CFATF Mutual Evaluation Programme.

COMBATTING THE FINANCING OF TERRORISM

The April 2002 Tobago Plenary was the first opportunity where CFATF Members could have collectively considered the FATF Eight Special Recommendations on terrorist financing. The Bahamas Ministerial in October 2002 extended the mandate of the organisation to include terrorism and terrorist financing, endorsed the Eight Special Recommendations on Terrorist Financing, and mandated the Secretariat to facilitate the provision of technical assistance in this area.

Members at that time were also encouraged to and continue to participate fully in the initiative by the United Nations Counter Terrorism Committee in relation to signing and ratifying the United Nations Convention for the Suppression of the Financing of Terrorism and various Security Council Resolutions.



Ministers, at the Antigua and Barbuda Ministerial meeting during October 2004, considered and endorsed the following FATF documents, which provide useful guidance on the Implementation of the Eight Special Recommendations.

Interpretative Note to Special Recommendation III Freezing and Confiscating Terrorist Assets.

Best Practices regarding the Freezing of Terrorist Assets.

Interpretative Note to Special Recommendation VI Alternative Remittance.

International Best Practices – Combating the Abuse of Alternative Remittance Systems

Interpretative Note to Special Recommendation VII – Wire Transfers.

Combating the Abuse of Non Profit Organizations – Best Practices Paper – Special Recommendations VIII -

At the Panama Ministerial, the Interpretative Note to Special Recommendation II concerning the criminalization of terrorist financing, was endorsed by Ministers.

The FATF continues its review of the risks, vulnerabilities and possible measures to address the use of the non-profit sector by terrorist financiers. CFATF Members are encouraged to undertake similar reviews of their domestic infrastructure as required in Special Recommendation VIII and provide input into this exercise.

With regard to Special Recommendation VII, wire transfers, and the feedback within the FATF concerning the difficulties arising with its implementation, Members will be kept abreast of efforts to develop a comprehensive proposal on possible revisions to this Special Recommendation as well as the ongoing work in relation to the area of alternative remittance covered in Special Recommendation VI.

The FATF has commenced work on the utility of establishing cross-border currency reporting requirements as a potentially effective means of identifying and interdicting illicit cash couriers. It is anticipated that guidance will be issued concerning the role cash couriers play in terrorist financing and countries will be called upon to implement measures that ultimately will look to confiscate such funds. The CFATF will continue to follow this work and provide input where pertinent information is available.

Throughout the 2003-2004 period Members continued to provide reports on efforts being undertaken to rectify deficiencies in their combating the financing of terrorism framework.



MEETING OF THE HEADS OF FINANCIAL INTELLIGENCE UNITS IN THE CFATF REGION

An exploratory meeting of the Heads of Financial Intelligence Units of CFATF Member States was held on the margins of the Antigua and Barbuda Plenary on October 20th, 2003.

Some of the guiding factors for the meeting were as follows:

1. To facilitate regional outreach for signing Memoranda of Understanding;
2. To exchange information on regional AML/CFT trends and methods and to launch a publication of regional typologies;
3. To explore basic and advanced FIU training needs for the region, and;
4. To develop common positions on regional issues that could be put forward to EGMONT and other such bodies.

The Meeting concluded that a further meeting of FIU Heads would be held at the April 2004 Plenary, with a view to discussing issues and concerns which were put forward, but also importantly, to decide whether regular meetings will continue.

Based upon representations made to the Secretariat, it was clear that there is strong support for the holding of meetings of FIU Heads on the margins of Plenary Meetings, as well as the need for regular electronic communication. The second meeting took place on the margins of the April 2004 Plenary, was well attended and resulted in a recommendation that such meetings be institutionalized. Ministers endorsed this position as emphasizing the view that such a concept encourages the enhancement of information exchange within the Caribbean Basin and is fully in keeping with global efforts to facilitate greater cooperation.

REGIONAL TRAINING ON THE NEW COMPLIANCE BENCHMARKS AND ASSESSMENT TOOL

The Antigua and Barbuda Ministerial endorsed the Revised 2003 FATF Recommendations, as well as several Interpretative Notes on the 8 Special Recommendations for Combating the Financing of Terrorism, which were previously endorsed in October 2002.

The Antigua and Barbuda Ministerial also provided support for the use of the October 2002 version of the new Methodology for completion, where countries so agree, during the Second Round of Mutual Evaluations.

Ministers also formally endorsed the use of the results of IMF/World Bank FSAP/OFC Assessments for the purposes of CFATF Mutual Evaluations.



Both the Revised FATF Recommendations and the new assessment tool extend the network of gatekeepers that have been brought within AML/CFT framework, and expand significantly the requirements of the Mutual Evaluation Programme, as well as the IMF/WB – FSAP and OFC Assessments.

With specific reference to Financial Intelligence Units, the Revised Recommendations and the new Methodology open up a new panorama of responsibilities and assessment criteria. Accordingly, it is important that within the Mutual Evaluation Programme, FIU personnel who act as Mutual Evaluation Examiners are adequately trained in order to effectively undertake assessments of FIU obligations.

Within the context of FSAP and OFC Assessments conducted by the IMF and the World Bank, the CFATF has been involved in providing Independent Law Enforcement Assessor Experts (IAE) where assessments are being conducted in CFATF jurisdictions. Additionally, where the FATF has not provided the IAE, the CFATF has provided reviewers to critique the work of those IAEs.

Prospective IAEs and Reviewers will also require training to undertake these duties in a competent fashion and thus far, training on the Methodology has been undertaken in conjunction with the World Bank and IMF. With a view to increasing and sustaining regional capacity, the technical assistance and training mandate of the CFATF will require the development of a cadre of trainers. Suitable candidates will have to be identified across the membership to undergo training for this specific responsibility within the FIU context. The forum for the Heads of CFATF FIUs will therefore play an important role in this regard during the 2004-2005 period.

TOUR DE TABLE OF FIU OPERATIONS

In recognition of the fact that the establishment of FIUs within the Caribbean Basin has been of recent vintage, the Tour de Table allowed Heads to indicate in a candid way, an objective assessment of their operations.

Information was shared on whether the Units were operating at full capacity, with adequate staffing levels and suitable equipment to meet any increases in functions such as handling a large volume of suspicious transaction reports and ensuring a higher level of analysis. Problems arising through the loss of previously trained staff and the requirements of new legislation attendant on the new benchmarks were also explored.

The Tour de Table presentations have and will continue to provide valuable data, which would assist the Technical Assistance and Training Working Group in completing the Technical Assistance and Training Needs Matrix and devising new training programmes for all Members.



TYOLOGIES PUBLICATION PROJECT

The important and informative materials generated by the Annual Typology Exercises are vital to efforts to protect regional financial systems. The extension of the network of gatekeepers to include the professions necessitates an outreach programme to educate the public and raise awareness about AML/CFT issues across the region. A first step in this regard, would be the publication of a Report on regional trends and methods which have been and are being used by criminal organizations to launder illegal proceeds and finance terrorism or terrorist organizations.

Supporting data for this exercise would be available from the series of Typology Exercises that the CFATF has been conducting since 1996, as well as current information, which could be provided by Financial Intelligence Units from all Members.

The Inter American Development Bank has agreed in principle to support this project financially and discussions during the Heads meeting will continue to assist the process of collating the information in order to prepare the initial publication as well as the process for updating the publication on an annual basis.

INTRA-REGIONAL CO-OPERATION

One of the guiding factors, in putting forward the proposal to assess whether there was support to establish a regular Forum of FIUs for CFATF Members was to facilitate regional outreach, mutual support and the expeditious signing of MOUs. The general consensus coming out of the initial meeting was support for the idea of the Forum with the aim of improving regional co-operation and sharing concerns about common issues and problems.

This move to provide avenues for mutual support by FIUs operating in a particular region are ongoing in South America by GAFISUD and in Europe by the European Union. The presentations on both these initiatives at the April 2004 meeting provided useful guidance on how the CFATF FIUs could embark upon and sustain this forum to the benefit of regional AML/CFT efforts.

Following Ministerial endorsement of the Forum, reports on its activities will now be made to the Plenary and Ministerial Meetings.

TECHNICAL ASSISTANCE AND TRAINING

The Chairman's Work Programme for the 2003-2004 period which was unanimously supported by the membership called for expanding the technical assistance and training machinery so that it contributes to the specific and individual requirements of all thirty members of the CFATF and is owned by the Region.



Ministers at the Antigua and Barbuda Ministerial Meeting endorsed this position and instructed the creation of a Technical Assistance and Training Working Group which in conjunction with the Secretariat, and under the supervision of the Chairman and Steering Group would:

1. Finalize the technical assistance and training needs matrix
2. Design a training project document
3. Engage with members, our traditional allies and the donor community for securing the necessary funding.

This extension of the CFATF mandate had to be reflected in the organization's constitutive document and dovetailed with the ongoing work to modernize the Memorandum of Understanding (MOU).

The expanded mandate is in keeping with the growing body of opinion, which supports the view that the FATF style regional bodies should be strengthened, particularly at this stage with the advent of the revised FATF 40 Recommendations, the new Methodology as the common global assessment tool and the emphasis that is being placed internationally on effective implementation.

The rationale for this position is the belief that the FATF style regional bodies possess specialist knowledge on the AML/CFT needs of their members and have in place readily available, long standing frameworks to monitor and encourage effective implementation of international AML/CFT benchmarks.

On assuming the Chair of the CFATF, Sir Ronald, on behalf of Antigua and Barbuda, indicated that his central task would be to integrate the membership more closely. He emphasized that there must be no division between English-speaking and Spanish-speaking Members, no separation between English-speaking and Dutch-speaking and no gap between English-speaking and French-speaking.

The extension of the organization's mandate so that it could meet the training needs of all its members, under one training programme utilizing its specialist knowledge, of the particular needs of its members will go far to achieving the general membership's desire for close and constructive integration of all thirty members.

Equally importantly is the fact that Panama has played a leading role in terms of assisting fellow CFATF members such as Costa Rica, Guatemala, Honduras, Nicaragua and non-Member Russia in strengthening their anti money laundering programmes. Roll out of this expanded remit during 2005 occurs at a time when Panama assumes the Chair and will cement its reputation of working in the best interests of the region and by extension, the international community, and will be of considerable satisfaction to our Central and South American Members who have been constantly advocating for an integrated training programme for all Members.



EXTERNAL RELATIONS

The growing accomplishments of member countries in strengthening their domestic anti money laundering and combating the financing of terrorism protective mechanisms is testimony to the seriousness with which the CFATF as a whole pursues its mandate to monitor and encourage compliance with international standards.

In recognition of the important role that this organisation plays in the global battle against money laundering and combating the financing of terrorism, there is an increasing level of interest in CFATF affairs. Ministers were encouraged by the continued interest of Germany who is considering the requirements of Observer and COSUN status.

The strong bonds of friendship and support of our traditional friends and allies, the Group of Cooperating and Supporting Nations and the Observer Organisations, have been and will continue to be pivotal to the Caribbean Basin Region's successes in pursuit of the wider goal of protecting the international financial system from trans national criminal organisations.

THE CARIBBEAN REGIONAL COMPLIANCE ASSOCIATION

A regional compliance association has been formed consisting of representatives from Trinidad and Tobago, The Bahamas Association of Compliance Officers (BACO), The Cayman Islands Compliance Association, (CICA), The British Virgin Islands Association of Compliance Officers and Practitioners, (ACO), and The Barbados Association of Compliance Professionals, (BACP). The inaugural regional compliance association event was held in Nassau, in the form of a two-day conference on Thursday October 9th, 2003. The conference was held under the auspices of Minister Alfred Sears, Attorney General of The Bahamas and Chair of the Caribbean Financial Action Task Force (CFATF).

The rationale for the formation of a Regional Compliance Association came from the belief that it is necessary to reflect, *and perhaps even broadcast*, our region's commitment to good compliance practice, especially in light of the current challenges. It is felt that a centralized regional body, comprised of national associations, could best accomplish this.

Caribbean nations which have not as yet formed themselves into a body dedicated to the advancement of best compliance practice, would benefit from the existence of an umbrella regional compliance association which would promote sound compliance standards, commensurate with risk and good governance, through its encouragement of the formation of national compliance associations.

The Regional Compliance Association will provide our respective memberships with important regional wide networking opportunities as well as a forum for regional conferences and workshops. It will also provide a consolidated representative body for regional statements, an additional voice



in debates and would make itself available to act as an advisory source for organizations concerned with the well being of our region such as CFATF.

CARIBBEAN ANTI MONEY LAUNDERING PROGRAMME

The Caribbean Anti Money Laundering Programme, a five-year training initiative funded by the European Union, the United States of America and the United Kingdom through CARIFORUM draws to a close on December 31st 2004.

Throughout the 2003 – 2004 period, the Programme continued its work in assisting beneficiary countries namely English-speaking CFATF Members along with Aruba, the Republic of Haiti, Netherlands Antilles and Suriname, to strengthen their anti money laundering and combating the financing of terrorism framework.

CARICOM

Efforts to ensure even closer ties between the CFATF and CARICOM continued apace throughout the past year. The Caricom Secretariat was invited to participate in the Barbados Working Group that was mandated to formulate the CFATF position on the new AML/CFT Methodology.

Additionally, Mrs. Gloria Richards-Johnson of the Caricom Secretariat and the Executive Director, on the occasion of the United Nations Security Council Counter Terrorism Committee March 6th 2003 New York meeting, used the opportunity to advance the call by the CFATF for a Global Forum on money laundering within the United Nations framework.

FINANCIAL ACTION TASK FORCE

The constructive and harmonious ties between the FATF and the CFATF continued over the past year and saw FATF President Claes Norgren of Sweden address and dialogue with delegates at the April 2004 Plenary Meeting.

President Norgren thanked the CFATF for the invitation and congratulated the organization for its ambitious work schedule with regard to the Mutual Evaluation Programme, the co-ordination of technical assistance and training and active participation in FATF activities.

His presentation covered the revised 40 Recommendations, financing of terrorism issues, the revised methodology and enhanced co-operation between the FATF and the FATF style regional bodies (FSRBs).

President Norgren noted the importance that the Swedish Presidency of the FATF placed inter alia on:



1. Achieving a better understanding of terrorist financing techniques through the FATF Typology Exercises, the work on Non Profit Organizations relating to wire transfers and their use by terrorist organizations and encouraging a global dialogue on combating the financing of terrorism issues.
2. Enhancing co-operation between the FATF and the FATF style regional bodies.

Note was made of a small seven member FATF Group, which included Mr. Roy Wever of Aruba, which was tasked to review the FATF interaction with the FSRBs.

The presentation covered some of the issues outlined in the FATF Paper – FATF Suggestions for Improving the Dialogue with FATF style Regional Bodies, which had been circulated to CFATF Members for their review and comments prior to the Plenary Meeting.

In response, Member Countries viewed as commendable and a step in the right direction, the important suggestions outlined in the President's speech, which would improve dialogue and consultation. A call was made for a similar presentation by the President to the Council of Ministers, as a confidence building measure.

Clarification was sought on a variety of issues, which included:

- Would participation by the FSRBs be at full Plenary meetings or on the margins;
- Would FSRBs have a vote on the issues at stake so that the relationship would not simply be one of dialogue but would encompass the regional bodies being a part of the FATF;
- The need for an ongoing presence at the Plenary which looked beyond the two year cycle that attendance by FSRBs on a rotational basis would allow;
- The need for all countries who must comply with the AML/CFT standards to be part of the FATF;
- The need for willingness by the FATF to co-operate with the FSRBS to be an ongoing policy initiative for all FATF Presidents;
- The need for clear criteria for FATF membership, the recognition of an FSRB to allow for the grant of Observer Status to the FATF, as well who will be responsible for giving the stamp of approval for an FSRB;
- The need for a formal, secure, long term relationship where the FSRBs are well and sufficiently placed in the FATF setting through one recognized seat in the FATF and not just Observer Status;



- Whether the CFATF could be accorded the same status as the GCC and whether the strength and size of the offshore financial sector of a country could be used in determining status within the FATF.

It is anticipated that these discussions will continue with the current FATF President Jean-Louis Fort of France.

FATF NON COOPERATIVE COUNTRIES OR TERRITORIES (NCCT) INITIATIVE

The FATF Review Group of the Americas paid an on-site visit to Guatemala during May 2004 and the report on that visit was discussed at the June 2004 FATF Plenary when Guatemala was delisted.

During the 2003-2004 period, the FATF no longer required Grenada and St. Vincent and the Grenadines to provide Progress Reports to the FATF Plenary. The Bahamas however, is still subject to such monitoring.

GAFISUD

The productive partnership between this hemisphere's two FATF style regional bodies continue to be solidified. GAFISUD Executive Secretary attended the Panama Plenary during March 2003 and outlined the various avenues through which GAFISUD and the CFATF benefit from the cordial dialogue in the execution of their respective work programmes. Additionally, he strongly endorsed the view that in the global battle against money laundering and combating the financing of terrorism, the FATF-style regional bodies are key.

INTER AMERICAN DEVELOPMENT BANK

The commencement of delivery of a training programme for the employees of banking institutions and the Superintendents of Banks in the Dominican Republic, Costa Rica, Panama and Venezuela did not occur in the first quarter of 2003 as was anticipated. However the consultants who had been engaged, undertook preparatory work through visits to the jurisdictions in order to examine the legislation with the assistance of relevant officials and to adapt the course materials as required.

The CFATF Secretariat continues to work closely with both the IADB's Washington office and the representative office in Trinidad and Tobago so as to ensure that the training courses, which were made possible with the generous financial assistance from the Bank, are conducted successfully.



OAS/CICAD

INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION (CICAD)

In accordance with the approved work plan for 2003-2004 (33rd Regular Session of CICAD in December 2002), the Group of Experts on Money Laundering Control met once in November 2003, chaired by the USA, and twice in 2004, chaired by Bolivia, to discuss the improvement of the money laundering framework in the Americas (effective national and international asset forfeiture system, criminalizing terrorist financing, freezing assets related to terrorism and control of alternative remittance systems, as well as the mandate of the Ad Hoc Group on Organized Crime.

As far as **training** is concerned, CICAD promoted:

Money Laundering Control through the Judicial System (IDB/CICAD project) which started in 2002. This program was successfully replicated in Chile and Uruguay in June and August 2002, respectively. Seventy judges and public prosecutors attended this one-week course, which focuses on new trends in money laundering trials and sentencing. In particular, emphasis was given to the autonomy of the offence, the treatment of evidence, and judicial cooperation. In 2004, the training program was implemented in Colombia.

Training for police officers in financial investigation (CICAD-CICTE-France-USA project):

With the support of the French Inter-Ministerial Anti-Drug Training Centre (CIFAD) in Martinique, CICAD initiated a Train-the-Trainers program for law enforcement instructors on money laundering and terrorist financing for all Spanish and Portuguese-speaking countries of the Western hemisphere. With this initiative, CICAD is creating a network of certified instructors in charge of replicating and/or adapting the course content in their own countries. The training is a two-level course of five days for each level. At the first level, participants receive a general overview of money laundering and terrorist financing, and at the second level – offered to those instructors who passed the first course --, the subject concentrates on the techniques of financial investigation. The program started in April 2004 and will end in May 2006.

Mock trials

CICAD, in cooperation with the UNODC, carried out mock trials on ML in Ecuador, Colombia, Venezuela, Nicaragua and El Salvador.

As far as **technical assistance** is concerned, in August 2002, the General Secretariat of the OAS and the Inter-American Development Bank (IDB) signed a Technical Cooperation Agreement which makes CICAD the executing agency for a US\$1.9 million program to set up and develop Financial Intelligence Units (FIUs) in Argentina, Bolivia, Brazil, Chile, Ecuador, Peru, Uruguay, and Venezuela. Program execution began in September 2002. Depending on the needs of each country and the state of their FIUs, CICAD brought its assistance to four areas: (1) development of the legal framework; (2) institutional development; (3) training, and (4) information and communications technology.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON ANGUILLA

Anguilla has a relatively comprehensive legal and institutional AML/CFT framework, particularly with respect to measures to combat terrorism and terrorist financing; criminalization of offences; confiscation of the proceeds of criminal conduct; international cooperation; and law enforcement and prosecution powers. Its legislation contains many of the principal elements required for compliance with the FATF Recommendations and efforts are underway to introduce improvements in the AML/CFT regime and for addressing a number of recommendations made in the KPMG Report.

As an Overseas Territory of the United Kingdom (UK), Anguilla is not able to ratify conventions but depends upon extensions to it by the UK. It has, however, implemented the provisions of the Vienna Convention and of the Convention for the Suppression of the Financing of Terrorism in local legislation. Since the UK has not yet ratified the Palermo Convention, it has not been extended to Anguilla.

Anguillan legislation is broadly consistent with international standards. It criminalizes money laundering and extends to the proceeds of all serious offences including those that occur extraterritorially. The offences of money laundering apply to both individuals and legal entities.

Legislation for combating the financing of terrorism is strong. These laws apply to terrorists and terrorist organizations irrespective of whether terrorist acts occur in Anguilla or in other countries. For both ML and FT offences, there are appropriate dissuasive sanctions including confiscation of property, fines and, with respect to regulated entities, the legislation provides for the suspension and revocation of licenses.

While the basic elements are in place, the legal framework could be strengthened in a number of areas. Anguillan legislation does not allow for the extradition of individuals for financing of terrorism and money laundering offences. The authorities are also considering the adoption of a number of provisions contained in the new UK Proceeds of Crime Act which should significantly strengthen the AML/CFT regime. With regards to combating the financing of terrorism, the authorities are still to develop appropriate administrative arrangements for the filing and analysis of suspicious activity reports. Specific guidance to the industry on this issue is also required.

Confiscation and seizure provisions are generally available in the Anguillan ML and FT legislation. Under these provisions law enforcement authorities can freeze property but only after criminal proceedings have been initiated for ML offences. For FT offences, ex parte restraint orders may be obtained once an investigation has commenced. The counter-terrorism laws contain comprehensive seizure and confiscation provisions, including for the seizure of cash under civil proceedings. The rights of innocent and bona fide third parties are protected under law for restraint and confiscation orders. Law enforcement authorities also have adequate powers to identify and trace property, particularly with respect to the production of material. Adoption of the provisions similar to those contained in the new UK Proceeds of Crime Act would also improve the seizure



and confiscation regime for ML, particularly those relating to account monitoring orders, restraining orders and the voiding of contracts.

—There have been no seizure or confiscation of property arising out of ML and FT cases. A few suspicious transaction reports have been filed but these have not resulted in seizures or confiscations. Notwithstanding, a system has been developed to keep statistics on such issues. Training has been provided to police officers through the Trinidad and Tobago-based Caribbean Anti-Money Laundering Program on basic money laundering investigations but more advanced training is now required. Training has also been provided to prosecution staff on money laundering issues. No timeframe has been established for the provision of advanced training for law enforcement officers.

The Money Laundering Reporting Authority (RA) has been designated under the Money Laundering Reporting Authority Act as Anguilla's FIU with general functions to receive and disseminate information on suspicious transactions relating to suspected ML offences. The law does not specify a responsibility for the RA to analyse reports of suspicious transactions and in practice it has not fully developed an analytical role for processing such reports. Reports of suspected terrorism financing activities are not filed with the RA but are provided directly either to the police or to the Governor. The RA is required to provide information on suspicious activity to the police and customs authorities for investigation. In practice most reports are forwarded by the police to an investigative agency of the UK (WCCIT) established overseas for assistance in their investigations.

The RA has access to financial, administrative and law enforcement databases and is authorized to disclose information to law enforcement authorities in Anguilla and abroad. When disclosing information to a foreign agency, due regard is given to the interests of third parties and on the use of such information by the recipients. However, there is no specific provision in the law that mandates reporting institutions to provide additional information to the RA upon request although in practice this is reported to occur.

—The RA is comprised of the Commissioner of Police, a senior police officer, the Comptroller of Customs and the Director of Financial Services. The RA does not have an independent budget and given the current resource constraints, processing of suspicious transaction reports is not conducted in a systematic manner. There have been a few cases of suspicious activity reported to the RA (5) and no requests for assistance have been made or received from foreign FIUs. There is no centralized system for filing of suspicious activity reports which can be sent to any one of the agencies that comprise the RA. There is a need to develop a centralized reporting mechanism and for keeping statistics of such reports as well as for requests for assistance when these occur.

Law enforcement authorities have adequate powers to compel the production of records from financial institutions to assist in ML and FT investigations by applying to the High Court. More robust powers are required for money laundering cases particularly those relating to account monitoring and tracking orders, similar to those contained in the new UK Proceeds of Crime Act and in the FT laws.



Although law enforcement staff has undergone basic training on money laundering, their skills are under utilized locally as most reports of suspicious transactions (STRs) are sent overseas for assistance from WCCIT. As the number of STRs increases, there will be a need to develop local intelligence and investigative capacity that could include the creation of a law enforcement/intelligence task force comprising police, customs and immigration officials. The pooling of resources would help alleviate the current resource constraints.

The use of undercover operations, including controlled deliveries, is not unlawful in Anguilla. In the past, local law enforcement agencies have collaborated with overseas counterparts in an undercover operation.

Anguillan law provides for a wide range of assistance to be granted to foreign authorities in criminal investigations and proceedings, including on a discretionary basis. In addition, compulsory measures are possible under the legislation and a mutual legal assistance treaty (MLAT) with the USA. The authorities may also enforce foreign restraining and confiscation orders for various types of cases, including for terrorism finance. The RA can also share information freely with foreign law enforcement authorities through various mechanisms, including Interpol and a regional information-sharing network (OTCRIS). A main drawback to international cooperation is the inability under Anguillan law to extradite individuals for money laundering and terrorist financing cases. Notwithstanding, the Governor is authorized to deport individuals who are deemed to be “undesirables”.

—In light of the small number of requests for mutual legal assistance received each year (2-3) from abroad, there is no immediate need to maintain statistics and assign staff solely for this purpose. None of these requests has involved ML or FT cases.

The ML Regulations and Guidance Notes comprise the primary legal and institutional instruments for anti-money laundering controls in Anguilla. The Guidance Notes, which are not mandatory, were issued under the ML legislation to provide practical assistance to financial institutions for complying with the AML requirements. They also form the basis by which they are supervised for compliance. Both the Regulations and the Guidance Notes apply to a wide range of financial service providers including but not limited to banking (both domestic and offshore), insurance companies, company managers, trust companies and money transmission services.

The Director of the Financial Services Department (FSD) in the Ministry of Finance is currently at the forefront of efforts to implement the AML/CFT laws of Anguilla. The planned establishment of the FSC as an omnibus supervisory body to replace the FSD will provide the authorities with enhanced supervisory powers, including for enforcing and applying disciplinary action for non-compliance with AML requirements. Much will depend, however, on maintaining a well-resourced cadre of supervisory staff for the new FSC. The recent signing of an MOU with the ECCB, which supervises domestic banks, should enable consolidated supervision of offshore and domestic banks for AML/CFT purposes. The authorities should formally assign responsibility to an agency, such as the FSC, for supervising compliance with CFT requirements.



To improve implementation of AML/CFT requirements in the financial sector, the authorities should consider revising the Guidance Notes to provide more industry-specific guidance and to require a more risk-focused approach for customer due diligence and monitoring activities. In addition, they should specifically address issues relating to CFT. Enhanced training and awareness in the financial sector is also required.

All covered financial institutions are required to have procedures in place that require evidence of the identity of customers, either occasional or habitual. What constitutes satisfactory evidence under the ML Regulations is to be determined by reference to the Guidance Notes. There is no legal requirement to periodically review customer identification and due diligence documentation but the Guidance Notes provide situations where further evidence of identification should be obtained. Records of customer identification and transactions are required to be retained for at least six years.

Important improvements can be made to the legal and institutional arrangements for customer identification and due diligence. These include the introduction of core customer identification requirements in the ML Regulations that: (i) establish general requirements for what constitutes satisfactory evidence of identity including for legal entities; (ii) require re-verification of customer identity under certain circumstances; (iii) require identification and due diligence information for introduced business to be made available to financial institutions promptly on request; (iv) establish an obligation on company and trust services providers to ascertain the adequacy of AML/CFT systems and controls of eligible introducers; and (v) require financial institutions to monitor for unusual complex transactions, and unusual patterns of transactions. In addition, FIs should be required to comply with the Directive on information for funds transfers to comply with the FATF 8 Special Recommendations on terrorist financing. Legislative initiatives are also planned with respect to money remittance firms which are expected to come under the supervision of the ECCB or the FSC.

One of the areas requiring attention is the need for an explicit suspicious transaction reporting requirement supported by a more effective sanctioning system. Failure to promptly file a suspicious activity report should be made an offence. There is also a need for a more explicit requirement regarding the internal review and recording of unusual complex transactions and patterns of transactions. With regards to FT, additional guidance is required to assist financial institutions in identifying and reporting suspicious activity, including through amendments to the Guidance Notes and training for staff. The authorities should also investigate the reasons for the small number of suspicious activity reports filed to date.

Company and trust services providers comprise the fastest growth area in financial services in Anguilla. Many licensed CSPs do not have a physical presence on the Island which will pose a challenge for the authorities in the conduct of onsite inspections for AML/CFT. With the establishment of the FSC, a program of periodic onsite examinations of CSPs should be fully implemented and focused on compliance with AML/CFT requirements. These examinations should extend to CSPs that do not have a physical presence in Anguilla and should review the implementation of arrangements for reliance on customer due diligence carried out by overseas



introducers/sub-agents. CSPs should also be required to ascertain that the AML/CFT systems of overseas agents are at least as rigorous as those required under the Anguillan legislation and Guidance Notes.

One of the principal challenges for the authorities will be the establishment of a well resourced and functioning FSC that can continue to act as the lead agency in supervising the implementation of the AML/CFT requirements in the financial sector. Attracting and retaining qualified staff for the FSC should be a primary objective, as well as the implementation of the MOU with the ECCB for the supervision of offshore banks. Another challenge will be reviewing and enforcing compliance with AML/CFT requirements by CSPs that do not have a physical presence in Anguilla and who rely on eligible introducers for customer due diligence.

Summary assessment against the FATF Recommendations

Overall, Anguilla complies well with the FATF 40+8 Recommendations. Its legal framework is relatively strong but improvements in provisions relating to extradition and in the regulations would significantly improve the AML/CFT regime. Adoption of some of the provisions of the new UK Proceeds of Crime Act would also strengthen the legal framework. With regards to implementation, more comprehensive monitoring for compliance, heightened awareness and guidance for the financial sector, including for the combating of the financing of terrorism, would enhance compliance with the Recommendations.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON BERMUDA

Bermuda has a generally adequate legal framework for addressing money laundering and the financing of terrorism (ML and FT). ML is criminalized on the basis of the Vienna Convention and the scope for predicate offences extends to all indictable offences. FT is criminalized as an offence by way of an Order in Council extended by the UK to its Overseas Territories, which gives effect to the provisions of the UN Security Council Resolution 1373. Whilst the Order is directly applicable in Bermuda, it was extended by the UK with a view to broader application to the Overseas Territories in relation to criminalizing FT and is less substantial than a domestic CFT legislation that seeks to give effect more fully to the requirements of international conventions and treaties for Bermuda. The Terrorism Order does not include provisions that deal with seizure and confiscation of property that is the proceeds of, or are to be used for terrorism, terrorist acts or acts by terrorist organisations. Terrorism, per se, however, is currently not a criminal offence. However, there is work underway with a view to introducing legislation in this regard.

The legal framework provides for a range of enforcement measures, such as confiscation and restraint orders as well as production and monitoring orders; although, there is less emphasis on non-criminal measures, such as civil forfeiture and penalties.

The FIU is established as a part of the Police and is a member of the Egmont Group. The requirement under the PCMLR is for reporting officers (“MLROs”) of Regulated Institutions to file SARs to a police officer and not necessarily a police officer of the FIU. The Guidance Notes indicate that SARs should be filed with the FIU and that communication with respect to the SARs should also be undertaken with the unit.

The FIU is a small unit and has a complement of four officers plus a constable on secondment from the UK. It has been given the responsibility not only to investigate money-laundering offences and deal with proceeds of crime matters but also the responsibility to receive, collate, analyze, and investigate reports of suspicious activity made by regulated institutions in accordance with the Act. To this end, it also has the ability to obtain production and monitoring orders inter alia and is called upon to assist with the investigation of requests from international FIUs.

The FIU maintains the statistics to show inter alia the number of SARs received, investigations carried out and cases realized. Since the creation of the unit, it has received in excess of ten thousand SARs according to the statistics and has developed nine money-laundering matters. Most of the SARs relate to small-scale money transmission cases. It can account for, trace, and show the status of all reports received.

The high level of SARs filed has resulted in a situation in which the focus within the unit has been skewed towards ensuring that the information is collated and entered into the database. Presently, the situation at the FIU is not very effective as much of the time at the unit is spent in data entry activities and responding to the reporting institutions. Notwithstanding, there have been nine investigations for money-laundering offences and four confiscation orders.



As presently constituted, the resources are inadequate if the unit is to perform the roles of an intelligence and investigative unit. The head of the unit has recognized the dilemma and has tendered for consideration a model for an increase in staff. The model has been accepted and additional staff is forthcoming.

While all the members of the unit have been exposed to some training in financial investigation, further training is desirable. Consideration should be given to conducting awareness raising programs for prosecutors and the judiciary. There is the need for refresher training at the office of the DPP.

The legal framework supports information sharing, extradition and limited mutual legal assistance. In the case of mutual legal assistance, the extent of assistance is more limited to the scope of serving of processes, calling of witnesses and obtaining evidence, and does not extend to facilitating the enforcement of measures such as search and seizure. The authorities work with foreign authorities in cooperative investigations and information sharing.

There is no general secrecy law in Bermuda and the common law on customer confidentiality does not limit disclosure of information where relevant, such as pursuant to public interest. Regulations and guidance notes are in place, the scope of which could be extended further than the range of financial institutions that are currently regulated, such as in the case of those insurers that are presently excluded under the regulations and professionals such as accountants and lawyers.

- A more substantial CFT legislation would be necessary for giving effect more fully to the requirements of international conventions and treaties.
- The position and function of the FIU would be strengthened if it is incorporated as the competent authority in the legal framework, and its powers are more explicitly stated.

Bermuda has a relatively well-developed infrastructure for the implementation of its AML/CFT framework. The National Anti-Money Laundering Committee (NAMLC) serves in an advisory capacity to the MOF on matters related to money laundering and issues relevant guidance from time to time. Its principal initiative has been the issuance of the Guidance Notes on the Prevention of Money Laundering (Notes) in January 1998. The Notes are applicable to most prudentially regulated institutions. Other guidance that has been issued includes notices urging that caution be exercised in conducting business with NCCT jurisdictions.

The Bermuda Monetary Authority has regulatory responsibility for licensed entities in the sectors of banking, insurance, investment, and trust activity. The BMA also plays a critical role in the registration of companies. It undertakes due diligence in respect of beneficial owners of all entities seeking to be registered and, in the case of licensed institutions, extends its investigations to include directors and senior executives. These extensive processes represent an important first line of defense against the possible abuse of Bermuda financial institutions for the purposes of money laundering or terrorists financing.



Apart from its registration role the BMA undertakes oversight in relation to AML/CFT through on-site surveillance mechanisms. A number of its staff has received specific training to assist them in undertaking these functions. The BMA is also represented on NAMLC. Over the last two years, the BMA's on-site visits to banks and investment firms have covered AML/CFT risks.

The BMA does not conduct on-site visits to insurance entities. Such visits are undertaken by auditors on behalf of the BMA. The authority does not give guidance to the auditors in respect of aspects of AML/CFT risk to be assessed during visits, and to date, no assessments of insurance entities have addressed this risk. This absence of any oversight of insurance entities in respect of AML/CFT risks is considered to be a serious weakness in the BMA's surveillance activities. While the initial due diligence undertaken by the BMA is comprehensive, it needs to be supplemented by on-going regulatory initiatives to create an effective AML/CFT regime.

Bermuda has in place a regime which allows licensed institutions to accept business from "reliable introducers." Such introducers are required to meet the definition of regulated institution/foreign regulated institution as defined in the Proceeds of Crime (Money Laundering) Regulations 1998, and must be from a country listed in Appendix A to the Notes. With the exception of Guernsey, the Isle of Man, and Jersey, all of the countries on the list are members of the FATF. The Notes indicate that institutions are not required to verify the identity of customers where the relationship originates through a reliable introducer. The introducer is, however, required to complete an introduction letter, which among other things requires confirmation that the customer's identity has been verified. The fact that verification documents may not at all times be immediately available to a Bermuda institution, represents a degree of vulnerability in customer-due-diligence arrangements. A further concern is that an eligible introducer certificate appearing in an appendix to the notes offers an option in which the introducer does not have to assert that identity verification documents are held and will be available on demand. The introduced business regime is among a number of issues currently under review by the authorities.

Both the IBA and the BDCA include a definition of fit and proper which includes "a conviction or finding of guilt in respect of any criminal offence other than a minor traffic offence." Using this approach, the law sets out clearly the types of persons that are considered ineligible to participate in the ownership and management of licensed institutions. The concept of fit and proper is, however, not included in the IA, and this issue is therefore not addressed as clearly and unambiguously in this legislation.

Bermuda's only money service business was run under an agency arrangement by a commercial bank. Since the activity was undertaken by a commercial bank, it came under the purview of the BMA. The agency arrangement was recently terminated, and there is currently no significant activity in this area. The agency was the principal source of the very large number of SAR's reported to the FIU.

There are currently no regulatory arrangements in place for company service providers. Trust companies and other persons undertaking trust business under the Trust Company Act 1991 are captured by the definition of regulated institution under the PCMLR. Company service providers are not captured by the PCMLR.



The PCMLR does not cover persons captured by the Investment Business (Exemption) Order. While this is acceptable in respect of persons who do not act as intermediaries or deal directly with client assets it is not clear that that all exempt persons fall into this category. The PCMLR should be reviewed to ensure that all persons who act as intermediaries or deal in client assets are captured by the legislation and the BMA's supervision in respect of AML/CFT.

Principal Areas of Concern:

- the lack of on-site surveillance of the insurance sector in respect of AML/CFT risk is unsatisfactory;
- the regime for introduced business creates some potential vulnerability in the KYC arrangements.

The planned update of the notes should provide further guidance on the requirements set out in the law and regulations on a number of issues including the following:

- details of transaction records (other than those necessary to identify the customer) that should be maintained by banks and deposit taking institutions for the purpose of assisting money laundering investigations;

guidance in relation to shell companies, charities, and not-for profit organizations



SUMMARY OF THE MUTUAL EVALUATION REPORT ON THE BRITISH VIRGIN ISLANDS

1. Pursuant to the Mutual Evaluation Schedule adopted by Plenary XII and sanctioned by Council Meeting VI, the second round Mutual Evaluation of the British Virgin Islands (BVI) was conducted during November 17-21, 2003. The team of Examiners comprised Philippa Duncan – Financial Expert, Belize; Robert Jeffers – Law Enforcement Expert, St. Kitts and Nevis; and Dawne Spicer – Legal Expert, CFATF Secretariat. Calvin E.J. Wilson, CFATF Executive Director led the team of Examiners.
2. With regard to the drug situation in the BVI, the BVI located just off the U.S. Virgin Islands and Puerto Rico continues to be used as a transshipment corridor for marijuana and cocaine. Some marijuana is grown locally but most of it comes from St. Vincent and is transhipped to the U.S. Virgin Islands then to consumer countries in North America.
3. Given the size of the financial sector and the amount of financial activity generated, it is believed that in the BVI money laundering incidents could occur at the layering and integration stages.
4. The political will to deal with money laundering, terrorism and the financing of terrorism issues is high, with the Government expressing its commitment to do what is necessary to enact and implement the laws in these areas. There have also been anti-money laundering public awareness campaigns by various groups including the Bar Association and the Bankers Association. This has been done through the hosting of forums and seminars on money laundering.
5. The British Virgin Islands has a plethora of legislation that deals with drug trafficking money laundering, all serious crimes money laundering, terrorism, the financing of terrorism and international cooperation. As a British Overseas Territory, the BVI is not a separate Party to any multilateral or bilateral convention, however the BVI has criminalized money laundering and implemented other measures in accordance with the 1988 U.N. Vienna Convention and the U.N. Convention against Transnational Organized Crime (the Palermo Convention). In so doing, the BVI can be considered to be compliant with **FATF Rec. 1 and CFATF Rec. 3.**
6. The Attorney General's Chambers (AG's Chambers) has a constitutional responsibility for instituting and bringing prosecutions against individuals. (Virgin Islands Constitution Section 24). With regard to anti-money laundering issues, the AG's Chambers has been at the forefront of drafting and enacting laws. In early 2002, the Commercial Crime Division (CCD/the Division) was established to deal with money laundering, drug trafficking and fraud. The Division comprises a Principal Crown Counsel, two assistant Senior Crown Counsels and one Crown Counsel. The CCD works closely with the Royal Virgin Islands Police Force (the Police).



7. The BVI's legislative framework for money laundering goes back to 1988 with the enactment of the Drugs (Prevention of Misuse) Act, 1988 as amended 1992 and 1995. Section 16 of this Act established drug trafficking as an offence and Section 17 as a drug trafficking money laundering offence by providing that a person commits an offence who enters an arrangement whereby the retention or control by or on behalf of another is facilitated or the proceeds of drug trafficking are used to secure the funds are placed at the drug traffickers disposal or are used for his benefit to acquire property through investment. **FATF Rec. 4**
8. In an effort to deal more comprehensively with money laundering, the BVI enacted the Drug Trafficking Offences Act, 1992 as amended 2000 (DTOA 1992). This Act more specifically applies with money laundering associated with the proceeds of drug trafficking and penalizes persons who assist another to retain the benefits of drug trafficking. Specific provisions are made for the recovery of those proceeds. The Act also complies with the main provisions of the U.N. Vienna Convention. The reference to persons includes legal entities. **FATF Rec. 6.**
9. In 1999 the Customs Department detained U.S.\$30,000, which was subsequently seized. The money is currently in an interest bearing account. While Section 34 generally complies with **FATF Rec. 22**, it should be noted that the provision monitors the movement of cash only, since the definition of cash at Section 38 of the Act does not include bearer negotiable instruments. An amendment to Section 38 is being considered, however the view was expressed that most people tend to carry cash as opposed to any other types of monetary instruments.
10. Due to the limitations of the DTOA 1992, the BVI Government enacted the Proceeds of Criminal Conduct Act, 1997 (PCCA 1997), which created additional money laundering offences and expanded the predicate offences beyond drug trafficking. Under this Act, money laundering pertains to criminal conduct, which is defined as '...conduct, which constitutes an offence to which this Act applies or would constitute such an offence if it had occurred in the Territory'. **CFATF Rec. 2.**
11. The BVI has received no requests for the enforcement of external restraint and external confiscation orders under the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999.
12. The Reporting Authority is a member of the Egmont Group and was in fact the first Unit in the region to receive admission to this Group. The RA is responsible for the receipt of suspicious transactions under both the DTOA 1992 and the PCCA 1997. As such, the RA can be considered the official FIU in the BVI. **FATF NCCT Criterion 25.** The RA can also be regarded as the competent authority to deal with anti-money laundering matters in the BVI. **CFATF Rec. 1.** It should be noted that the BVI does not have a system of mandatory suspicious transaction reporting. The system is defensive in that reporting protects the person/entity from liability. Serious consideration is being given to a mandatory system, which would be in keeping with FATF Rec. 15 and FATF NCCT Criterion 10. There were no major objections by any of the interviewees to a mandatory reporting system.



13. The RA is expected to be replaced in the very near future by the Financial Investigation Agency (FIA), which will be formatted under the FIU Egmont Group definition. The FIA legislation has already received its first reading and should be enacted by the end of 2003. The RA was established primarily to receive and disseminate suspicious transaction reports.
14. The BVI has a very robust record of international co-operation given their size. Requests for assistance are by law supposed to be directed to the Governor's office, save for requests made under the Mutual Legal Assistance (USA) Act, 1990, which are directed to the AG and requests made under the Financial Services (International Co-operation) Act, which are directed to the FSC.
15. In the BVI extradition measures are provided for in the Fugitive Offenders (Virgin Islands) Order of 1967, the Extradition Treaty (United States of America, United Kingdom) for 1977 as amended by the Supplemental Treaty of 1985, the Extradition Act, 1989 and the Extradition (Overseas Territories) Order of 2002. There are no restrictions with regard to the extradition of nationals. There is however a restriction as it relates to the death penalty in that the BVI will only extradite a person if the death penalty will not be enforced in the case. Money laundering is an extraditable offence. **FATF Rec. 40.**
16. The BVI has an asset sharing agreement with the USA. Under this Agreement, shared assets are used in anti-drug trafficking and anti-money laundering efforts in the BVI. The BVI have also indicated to the U.K. government its agreement for concluding an asset sharing agreement with the Government of Canada, and is still awaiting formal communication that the Agreement is finalized. At present, the BVI is processing a request from India for a Mutual Legal Assistance Treaty (MLAT) and an asset sharing agreement. **FATF Rec. 38.**
17. Terrorism and the financing of terrorism has been criminalized through the Terrorism (United Nations Measures)(Overseas Territories) Order, 2001 (2001 Order) and the Anti-Terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002 (2002 Order). As stated earlier, the BVI also adheres to the Palermo Convention. These measures comply with **FATF SRs I and II.**
18. The 2001 Order criminalizes the collection of funds for the purposes of terrorism (Section 3) and making funds available directly or indirectly for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of acts of Terrorism (Section 4). This is in compliance with **FATF SR II.**
19. In the 2002 Order, the following acts are criminalized: (i) fund raising for terrorism (Section 6), (ii) the use and possession of money or other property knowing or having reasonable grounds to suspect that it will be used for terrorism (Section 7), (iii) entering into funding arrangements knowing or having reasonable grounds to suspect that the funds will be used for terrorism (Section 8), (iv) facilitating the retention or control of terrorist property by concealment, removal from the jurisdiction, transfer to nominees etc. **FATF SR II** and (v) failure to disclose to a constable a belief or suspicion of a terrorist financing offence. **FATF SR IV.** Section 16 of



the Order provides for the forfeiture of terrorist cash and complies with **FATF SR III**. This includes cash that is intended to be used for the purpose of terrorism or represents property obtained through terrorism.

20. The National Drug Advisory Council (NDAC) was established pursuant to Section 3 of the Drug (Prevention of Misuse) Act, 1988 and is still functional. The NDAC developed drug policies for the Government and is still active via the media through public awareness messages on drugs and alcohol abuse. The Joint Anti-Money Laundering Coordinating Committee (JAMLACC) was established in 1998 and the National Joint Intelligence and Coordinating Committee (NJICC) was established to deal with intelligence information and situations that require a coordinated intelligence approach.
21. There is an overlap between the traditional legal services and the financial services through the trust companies. Most major law firms also have fiduciary companies. There are no guidance notes on anti-money laundering or combating the financing of terrorism for attorneys. The Bar Association however thought that such notes could be useful and are prepared to look at developing them in the future. While attorneys have filed STRs, they acknowledged that there sometimes was a conflict between ‘tipping-off’ and ‘constructive trust’. Attorneys generally will not accept funds from persons they do not know and rely on the due diligence checks done by the banks or other law firms.
22. The financial system is comprised of 11 banks, 178 insurance companies, 2,200 mutual funds, 544,000 registered international business companies, of which less than 200,000 are active, and 79 registered agents. The Financial Services Commission (FSC) is the licensing and supervisory authority of onshore and offshore, financial service institutions in the BVI and ensures regulatory compliance by the financial services institutions. **FATF NCCT Criterion 1.**
23. There are 2,023 mutual funds operating from within the BVI. Mutual funds are divided into Public, Private or Professional funds. There are currently 448 licensed mutual funds managers/administrators.
24. The insurance sector includes local and captive insurance services being offered by 312 companies. The domestic market is significantly smaller and has 28 companies one of which is a subsidiary of a foreign company and the others that operate through licensed agents. In addition, licenses have been granted to 13 insurance agents and 13 insurance brokers to operate within the local insurance sector. The 284 captive insurers constitute the bulk of insurance business carried on from within in the territory.
25. BVI’s international business companies’ (IBC) market represents a huge portion of its financial sector. BVI has thus far registered 544,000 IBCs, all of which must have registered agents, who are licensed under the Companies Management Act or the Banks and Trust Companies Act (BTCA), and who are also required to maintain physical presence in the BVI. Of the total registered IBCs, it is estimated that less than 200,000 are currently active as many IBCs were formed for the purpose of conducting one off transactions, such as the purchasing of property.



26. The Financial Services Commission (FSC) was established under the FSC Act, 2001. The functions of the FSC includes, inter alia, licensing, supervising and regulating of financial services business under the various financial services legislation. The FSC may also enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the territory and also, may develop mechanisms within the financial system with a view to maintain integrity in financial services. The former facilitates the exchange of information and assists in compliance with **FATF Rec. 34** and not meeting **FATF NCCT Criteria 15 and 16**.
27. The BVI has registered about 544,000 IBCs, making it highly impractical to provide proper oversight to each company. Hence, in order to safeguard against potential abuse of IBCs by money launderers, the BVI licenses and regulates 79 resident registered agents, which are responsible for implementing anti-money laundering measures and control IBCs from being used for criminal purposes. **FATF Rec. 25 and FATF NCCT Criterion 3**.
28. The Attorney General's Chambers is responsible for prosecuting all major crimes in the Courts of Law of the BVI Summary offences are normally prosecuted in the Magistrate's Court by suitably trained Police Officers. Where legal advice is needed Case Files are submitted to the Attorney General's office.
29. There is no Director of Public Prosecutions (DPP) in the BVI. However, plans are afoot to have the office of DPP established in the Territory. This will greatly ease the workload now undertaken by the Attorney General's Chambers.
30. The Royal Virgin Islands Police Force is the authority that presently conducts inquiries into suspected money laundering cases and terrorist financing. There is within the Force a specialized unit known as the Financial Investigation Unit that conducts these inquiries. **FATF NCCT Criterion 25**. This is a three-member unit, which is comprised of one (1) Chief Inspector, one (1) Inspector and one (1) Sergeant. All are fully Caribbean Anti-Money Laundering Programme (CALP) accredited.
31. The main role of the Customs Department is to prevent smuggling and other related crime in the B. V. I. Along with the Immigration and Police Department they assist in effecting Border Control. They are the first line of defence against Terrorist who may try to smuggle articles to be used in carrying out Terrorist Acts in the BVI. They also collect revenue on behalf of the Government.
32. The legislative framework of the British Virgin Islands as it pertains to money laundering and combating the financing of terrorism is very strong.
33. It appears however, that thus far the legislation has been used primarily to assist with investigations in other jurisdictions. This fact is of credit to the BVI's international co-operation record. The two current matters notwithstanding, it is necessary for the legislation (restraining, confiscation and forfeiture of assets) to be applied more frequently in the BVI.



34. The British Virgin Islands Government through its legislative and regulatory framework has not only expressed, but also demonstrated its commitment to the fight against Money Laundering and Terrorist Financing. There seems to be a high level of awareness in the financial sector. The Government seems intent on keeping this sector clean even if it means losing business to another jurisdiction. The Anti Money Laundering Financing of Terrorism framework in the BVI has addressed the main issues pertaining to the provisions for counteracting Money Laundering and Terrorist Financing. The Government has embarked on an extensive marketing drive and is endeavouring to ensure that the BVI remains one of the premier Financial Centres in the world.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON DOMINICA

Dominica is a party to the Vienna Convention which is implemented through the Drugs (Prevention of Misuse) Act, 1988 (DPMA), the Proceeds of Crime Act, 1993 (POCA), and the Money Laundering (Prevention) Act, 2000 (MLPA). The Suppression of the Financing of Terrorism Act, 2003 (SFTA) was enacted in direct response to the UN International Convention for the Suppression of the Financing of Terrorism 1999 Convention and UN Security Council Resolution 1373. ML is criminalized on the basis of the Vienna and Palermo Conventions. The predicate offences for ML extend to all indictable offences or their hybrids. Money laundering offence extends to money or other property derived from unlawful activity. Knowledge, intent, purpose, belief or suspicion may be inferred from objective, factual circumstances.

FT is criminalized on the basis of the Convention for the Suppression of the Financing of Terrorism. FT offence is applicable even though it takes place in another jurisdiction once certain conditions are met. There is no legislative provision allowing for knowledge, intent, purpose, belief or suspicion to be inferred from objective factual circumstances for FT offences.

ML and FT sanctions are generally proportionate and dissuasive. However, where drug trafficking is a ML predicate offence; the defendant has the option to be tried summarily and thereby be liable to penalties which are not prohibitive. ML and FT offences apply to corporate bodies

The legislative initiatives appear to be quite comprehensive in that all of the major standards have been met and they appear to be effective and proportionate to quite a large extent. The relevant legal and law enforcement agencies responsible for the implementation of the ML and FT laws include the Police Force, the Office of the Director of Public Prosecutions (DPP), the Attorney General, the Customs Division, the Money Laundering Supervisory Authority (MLSA), and the Financial Intelligence Unit (FIU). There is a shortage of personnel especially attorneys who work with Government Legal Departments. This is so because of the inability of the Government to pay more civil servants. Consequently, at the time of the visit, there was one person acting in several positions, all of them key and influential.

The MLPA provides for the freezing of assets pertaining to money laundering and the forfeiture of property, proceeds or instrumentalities derived or connected or related to the offence of money laundering. Application for a freezing order may only be made by the DPP, however there is no stipulation whether such application can be made on an ex parte basis. The DPP can apply for a restraint order where the defendant has been convicted of a scheduled offence or where a person is about to be charged with such an offence. The application for the order may be made ex parte. Forfeiture of property and confiscation orders are applicable to organizations. Confiscation of property of corresponding value is permitted by law.

With regard to FT, the SFTA provides for the forfeiture of funds, property or assets from a convicted person. The Attorney General may apply to a Judge for a forfeiture order with regard to property. Additionally, a Judge can make an ex parte restraint order against property that is deemed



to be terrorist property. At present the laws do not provide for confiscation without conviction (civil forfeiture). While legislation provides for the establishment of a Forfeiture Fund there are no legislative mechanisms that allow for the sharing of confiscated assets with other jurisdictions.

Police are provided with a wide range of investigative and information gathering powers which include production and inspection orders, monitoring orders, search warrants etc. The FIU may apply to a Judge for property tracking and monitoring orders. Orders can be made for any document relevant to identifying, locating or quantifying any property or document.

The rights of third parties with legitimate legal interest in frozen or forfeited property related to ML and FT are protected while under common law principle, contracts made for illegal purposes against public policy are generally void and unenforceable by either parties.

The FIU is in charge of compiling statistics and records on matters relating to ML and FT including information on frozen property. Similar statistics on frozen property are also kept by all agencies involved in the freezing, seizure and confiscation of property.

With respect to training for administrative authorities, the Caribbean Anti-Money Laundering Project (CALP) continues to provide training for the MLSA. The FIU has received training from the United States Narcotics Affairs Section and other agencies such as CALP. Two FIU officers and two customs officers are CALP accredited. Three (3) magistrates in 2000, two (2) judges in 2001 and one (1) prosecutor in 2002 have received specialized training in administering money-laundering cases.

The establishment and functioning of the FIU is compliant with all of the requirements stipulated in the criteria. The powers and functions provided for in legislation are appropriate and the operational structure, staffing and technical resources appear sufficient to fulfil the FIU responsibilities.

The FIU became functional in 2001 and became a member of the Egmont Group in 2003. The FIU is primarily responsible for receiving and analyzing suspicious transaction reports (STRs) sent to it by the MLSA and gathering intelligence about pending money laundering cases and detecting money laundering. Under the terrorism legislation the FIU can investigate any foreign exchange currency or securities transaction or any transaction involving a foreign country's interests.

Financial institutions or persons involved in a scheduled business are required to promptly report suspicious transactions to the MLSA. Copies of the STRs received by the MLSA are sent to the FIU for analysis. With respect to FT, all persons are required to disclose to the FIU any information about property or transactions involving property controlled or owned by terrorists. Financial institutions are required to report their suspicious transactions with regard to FT to the Commissioner of Police.

Under law the FIU can access all information obtained by a financial institution or person carrying on a scheduled business. The FIU also has access to law enforcement information and has an



informal sharing of information agreement with other law enforcement agencies in Dominica. Conversely, the FIU can pass on relevant ML information to the DPP for appropriate action and can liaise with money laundering intelligence agencies outside Dominica.

The FIU can apply for mandatory injunctions against officers or employees of financial institutions or persons carrying on a scheduled business to enforce compliance with reporting and recording obligations.

The FIU keeps statistics on the number of suspicious activity reports (SARs) analyzed, disseminated and resulting in investigations and prosecutions, and international assistance requests. The FIU had received 112 SARs of which at least 36 had been investigated up to December 2002. From January 2003 to September 2003 15 STRs had been received. A database is in operation to assist with requests for assistance by the FIU or other competent authorities, from domestic and foreign authorities.

The FIU is adequately structured and provided with sufficient technical resources to perform its authorized functions. It is an independent statutory body with a staff of five persons operating out of the Ministry of Finance and receives a budget allocation in the government's annual budget. Other resources available to the FIU include modern computerized equipment and RAID database, a network of information from narcotics affairs units in the United States. While the FIU and the MLSA receive SARs simultaneously from financial institutions, the FIU is independent in its review, analysis and dissemination of SARs information. The FIU submits annual reports on the performance of its functions to the Minister.

Law enforcement and prosecution authorities have powers appropriate to their legislated functions. Law enforcement authorities are charged with the responsibility of properly investigating ML and FT offences, have requisite powers to access information and implement a wide range of investigative techniques.

The FIU is responsible for intelligence gathering, analysis and investigating of SARs submitted to it by the MLSA and cross border currency transactions submitted directly to it. It forwards appropriate information to the DPP and liaise with other jurisdictions on financial crime cases. It can freeze assets for 7 days and apply for an order to track or monitor any property. Under law, the FIU can request to inspect records or apply for a warrant to enter and inspect any business transaction record kept by a financial institution or person carrying on a scheduled business. The FIU is also in charge of compiling statistics and records on matters related to ML and FT.

The DPP is in charge of prosecution of all criminal matters including Court of Appeal and High Court matters. The DPP office is constitutionally established under the Ministry of Legal Affairs. The Office of the DPP has a compliment of 2 legal counsels. One attorney is designated for all fraud and fraud related crimes including ML. No ML case has been prosecuted and at the time of the assessment no case was being prepared. The post of the DPP is currently vacant with the recent resignation of the former DPP. There is one computer available to the staff. One of the legal counsels underwent a US Embassy-sponsored ML training exercise in Barbados in 2002.



As of September 2003 the Police Force comprised 412 officers with 32 vacancies and 11 administrative staff. It has adequate human, technical and financial resources to address the investigation and prosecution of ML and FT matters in the current environment. Traditional investigative techniques have been used pursuant to police powers granted under the Police Act in investigating predicate, ML and FT offences. These include controlled delivery, especially in relation to drug offences.

There is extensive cooperation between the FIU, Police (especially the Drugs Squad unit and the CID), Customs Department and the other law enforcement agencies including the DPP. A National Joint Headquarters (NJHQ) has been created. Seventeen (17) law enforcement officers have been trained regionally by the PMO (Project Management Organization, which was created to provide region-wide training in the establishing of NJHQ's) and these officers collaborate on a daily basis. Training has been provided for FIU staff, Police and Customs in ML and FT investigation and training plays a major role in the continuation plan. On the job training exercises have been conducted with the assistance of the US Embassy. Investigators are CALP accredited and have attended several training programmes. CALP continues to provide training for the MLSA and three (3) magistrates in 2000, two (2) judges in 2001, and one (1) prosecutor in 2002 have received specialized training in administering money-laundering cases.

The law provides for mutual assistance in criminal matters between Dominica and Commonwealth and non-Commonwealth countries. The scope of assistance includes the obtaining of evidence, the locating or identifying of persons, the arranging of attendance of persons, the tracing of property, the service of documents etc. Additionally, the law allows for international cooperation and as such permits the court or the FIU to cooperate with foreign counterparts in matters concerning ML offences.

The POCA provides for the enforcement of external confiscation and forfeiture orders. International cooperation in the area of FT is contained in the SFTA, which also facilitates the extradition of persons charged with terrorist offences. The FIU can provide assistance in matters relating to ML such as the identifying, tracing, seizing or forfeiting proceeds of crime. Dominica has not established any asset sharing agreements with any other country.

Under the SFTA, the Attorney General can disclose information related to FT to the appropriate foreign authority. Legislation provides for assistance in investigations and proceedings where persons have either committed both the ML and the predicate offence or only the ML.

Under law both ML and FT are extraditable offences. Nationals of Dominica can be extradited under the provisions of the Extradition Act. Differing standards concerning the intentional elements of the offence do not affect Dominica's ability to provide mutual legal assistance. The FIU is responsible for compiling statistics and records on matters relating to ML.

Dominica has signed a bilateral Mutual Legal Assistance Treaty, a Maritime Enforcement Agreement and an Extradition Treaty with the United States. The Extradition Treaty is not yet in



force. Through the enactment of various pieces of legislation, the Government of Dominica has sought to ensure that the country is not viewed or used as a safe harbour for persons engaged in ML or FT.

Generally speaking the framework for international cooperation is quite comprehensive and has been very effective. The most utilized provision governs cooperation between the FIU and judicial authorities of Dominica and those of other countries. However, this cooperation is limited to money laundering offences. There is no express provision that allows for asset sharing with other countries.

The Eastern Caribbean Central Bank (ECCB) is responsible for the supervision and examination of domestic banks and offshore banks in conjunction with the local regulator. The Bank Supervision Department of the ECCB has an adequate level of qualified staff who have all received anti-money laundering training. The Minister of Finance is the ultimate licensing, enforcement and revocation authority in both domestic and offshore banking sectors. The ECCB has full access to customer account and transaction information but has no legal authority to share information with its foreign counterparts. The ECCB does not yet have a graduated system of sanctions and penalties and outside of moral suasion, must rely on the national government to enforce any of its recommendations.

On-site examinations were carried out by the ECCB at the domestic and offshore banks (5 domestic and 3 offshore) in Dominica in 2002 to assess compliance with anti-money laundering requirements. The domestic banks were assessed as compliant, licences of two of the offshore banks were revoked and the third is party to an MOU.

The International Business Unit (IBU) is required to supervise and regulate all offshore entities and domestic insurance companies. At the moment there is no insurance supervisor in Dominica. Onsite inspection visits are not provided for in the Insurance Act and never happened. Offshore banks are supervised in conjunction with the ECCB. The IBU is also responsible for supervising, regulating and inspecting registered agents, and international business companies (IBCs) for compliance with legal requirements. The IBU has not been carrying out its responsibilities in recent times, due to inadequate staffing.

The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the regulatory body for the Eastern Caribbean Securities Market (ECSM), which includes the securities sector in Dominica. The authority of the ECSRC to regulate the ECSM is established under the Eastern Caribbean Securities Regulatory Commission Agreement, of the eight member territories of the Eastern Caribbean Currency Union (ECCU) including Dominica.

The ECSRC is an autonomous body accountable to the Monetary Council¹ of the ECCB (the Council). The mission of the ECSRC is to ensure integrity, probity, efficiency and transparency in the operations of the Eastern Caribbean Securities Market and its participants, while facilitating

¹ Comprised of the Ministers of Finance of the territories of the ECCU.



market development. The ECSRC has not conducted any on-site inspections of the securities industry of Dominica as there is only one licensed institution (a bank) offering this service at the moment. This institution has been examined as a bank for compliance with AML legislation.

The MLPA makes provision for the MLSA or the FIU under the functions of these institutions to conduct onsite compliance examinations. No compliance examinations have been undertaken by the FIU. In 2002, the MLSA inspected 1 jewellery store, 1 car dealership, 1 lawyer, 8 credit unions and 3 insurance companies. The MLSA does not have a schedule for inspections of the other 16 insurance companies in Dominica.

Dominica's AML/CFT framework includes most of the requirements stipulated in the FATF 40+8 Recommendations. The general legal obligations for the identification of customers and the recording of their identity, the ongoing monitoring of accounts and transactions, record keeping, and suspicious transaction reporting meet international standards. In the area of internal controls, compliance and audit there are sufficient legal requirements for AML/CFT programs; however, the need for audit tests to be carried out is not addressed. There is no requirement for financial institutions to report to their home jurisdiction regulator when a foreign branch or subsidiary is unable to observe AML/CFT measures of the home jurisdiction. However, it should be noted that there presently are no foreign branches and subsidiaries of financial institutions in other jurisdictions.

While legislation prohibits criminals from holding managerial or board positions, there is no direct fit and proper requirement. A proposed amendment to the Banking Act is to incorporate this requirement.

The legal provisions concerning supervisor/regulator capability to perform its authorized AML/CFT functions are adequate. The co-operation of the supervisor/regulator with other domestic competent authorities with respect to AML/CFT analysis, investigations, and prosecutions is also adequate. The Exchange of Information Act provides provisions for international co-operation between supervisors/regulators and gateways for exchange of information relating to ML and FT. However a dual criminality provision in the Act needs to be clarified as to its possible prohibitive effect on the exchange of information. The ECCB has no legal authority to share information with its foreign counterparts. This is being addressed in the proposed amendments to the Banking Act and ECCB Agreement Act.

The banking sector is well regulated and compliant with most of the banking sector specific requirements. Some customer identification requirements not stipulated in legislation are reported to be part of banks' procedures. Requirements not detailed in legislation include enhanced due diligence, policies and procedures for opening of correspondent accounts and dealing with politically exposed persons, identification of non-face-to-face customers and beneficial owners of client accounts opened by professional intermediaries, and refusal of funds derived from corruption.



There is no legal requirement that banks should aggregate and monitor significant balances and activity in customer accounts on a fully consolidated worldwide basis. Given the nature of the operations of banks in Dominica, such elaborate systems may not be required.

Record keeping, internal controls requirements and most aspects of the criteria for integrity standards for the banking sector are dealt with in existing legislation but specific evaluations as to the integrity and expertise of individual directors and managers are not being done during on-site inspections of the domestic institutions. This will be addressed under the Amending Banking Act via a “Code of Conduct Guidelines”.

At present there is no legislative provision empowering the authorities in Dominica to require a domestic bank to close down an establishment in a foreign jurisdiction. However, the onshore banks in Dominica consist only of branches of foreign institutions and one local institution, which have no branches or subsidiaries outside of Dominica.

In the area of cooperation, there are no legal provisions permitting host supervisors to allow foreign supervisors to carry out on-site inspections of or access customer information of local branches or subsidiaries of foreign institutions or share specific financial information. However, the proposed amended Banking Act will allow the ECCB to share information on the local operations of foreign financial institutions.

There are no insurance specific anti-money laundering regulations or guidelines in Dominica. The Money Laundering (Prevention) Regulations (MLPR) and the Anti-Money Laundering Guidelines Notes (AMLGN) provide for legal requirements, standards, policies and procedures to be adopted by all financial services providers which include services provided by insurance and reinsurance entities, including captive insurance business, and business conducted by an insurance agent, manager, sub-agent or broker. There are no legal provisions concerning the insurance sector specific requirements.

Most of the securities sector specific requirements are incorporated in legislation. There is need to include requirements for management’s duty of compliance with the laws, a written contract of engagement with each customer and appropriate segregation of duties. The ECSRC should set accounting and reporting requirements.

Dominica’s has a strong AML/CFT regime and has achieved a high level of compliance with most of the FATF 40+8 Recommendations. The main deficiencies highlighted by the assessment concern enhancing the power of the ECCB to allow for a graduated system of intervention measures, issuing of specific fit and proper criteria and integrity standards, implementation of adequate supervisory regime for the insurance sector, and development of guidelines dealing with specific sector requirements.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON GRENADA

Grenada is a party to the Vienna Convention and has acceded to the International Convention for the Suppression of the Financing of Terrorism. While Grenada has yet to sign and ratify the Palermo Convention, it has implemented several articles of the convention through legislation. ML is criminalized on the basis of the Vienna and Palermo Conventions. Predicate offences for money laundering extend to all criminal conduct and include any indictable offence or offence triable summarily or on indictment in Grenada from which a person has benefited. Additionally, predicate offences for money laundering extends to conduct that occurred outside the jurisdiction.

The financing of terrorism is criminalized in the Terrorism Act (TA) on the basis of the International Convention for the Suppression of the Financing of Terrorism and extends to offences committed outside Grenada; however some offences are not liable to legal penalty. ML and FT offences extend to corporate bodies and the intentional element can be inferred from objective factual circumstances. ML and FT penalties are dissuasive and proportionate.

Grenada has implemented and strengthened the administrative, regulatory, law enforcement framework and other measures to combat ML and FT. The relevant law enforcement and regulatory authorities include the Royal Grenada Police Force, the Customs, the Financial Intelligence unit, the Office of the Director of Public Prosecutions, the Supervisory Authority, the Grenada International Financial Services Authority, the National Council on Drug Control, the Supervisor of Insurance, the Registrar of Co-operatives and the Eastern Caribbean Central Bank (ECCB). The authorities have indicated that they will review the Palermo Convention with a view to Grenada signing it.

The legislative framework for the confiscation of criminal and terrorist offences proceeds is quite comprehensive and complies with international standards. Legal provisions allow for confiscation orders covering the proceeds of relevant offences including money, property, things in action and other intangible or incorporeal property. With regard to FT, forfeiture orders include money and funding arrangements. ML confiscation or forfeiture orders include instrumentalities connected or related to the offences. These orders can be applied for after conviction and are assessed on the basis of the value of the benefit derived from the offence.

Restraint orders can be made where proceedings have been instituted and there are reasonable grounds to believe that the defendant has benefited from the offence. Restraint orders cover property and cash and may be applied for only by the DPP and the application can be made ex parte to a Judge in chambers. In the case of FT, restraint orders based on proceedings instituted outside of Grenada for an offence under Grenada law can be made. Corporate bodies are subject to confiscation provisions of the legislation. At present there are no provisions for civil forfeiture. ML and FT production orders can be made and monitoring orders granting access to transaction information are also provided for.

Bona fide third rights are protected in accordance with the Palermo Convention. There is no specific legislation providing authority to void contracts where the parties knew or should have



known that said contract would prejudice the authorities' ability to recover financial claims under AML/CFT laws. However, it was asserted that the common law adequately provides for this contingency.

The Supervisory Authority may compile ML statistics and records. No similar responsibility for FT has been assigned to any agency; however the DPP and the Police Force keep statistics on such matters. A Confiscated Asset Fund has been established.

The FIU in Grenada operates as an independent statutory authority. Its prime function is the receiving, analyzing, obtaining and disseminating of suspicious transaction and activity report information. The FIU can provide information subject to conditions to the Police, the DPP and foreign FIUs. All financial institutions and persons engaged in a relevant business activity are mandated to report suspicious transactions to the FIU. The FIU can require the production of any information necessary to fulfil its functions. The FIU works in tandem with other law enforcement agencies and departments such as customs, immigration, the drug squad, CID etc and receives information from these agencies periodically.

The FIU keeps statistics on received suspicious activity reports, investigations and prosecutions. Interim reports every three months and an annual report are submitted to the Supervisory Authority. These reports include statistics on the number of suspicious transactions reports received etc.

The majority of the staff of the FIU comprises of police officers. The FIU has not been subject to any unauthorized influence in effecting its functions. The reporting relationships are adequate and functioning effectively. Although the FIU is adequately staffed, specific trained staff such as a forensic examiner may be needed. The FIU has cooperated informally by sharing information with other agencies in other jurisdictions.

The functions of the FIU do not specifically include investigative powers although its general responsibilities contemplate that these will be used in the conduct of investigations. The powers of arrest, search and seizure of the police and customs seconded to the FIU are preserved under the FIU enabling legislation. The FIU has the power to require the production of such information as it considers necessary to fulfil its functions and works closely with the police criminal investigations department and Drug Squad on fraud and drug related matters.

The FIU staff members have attended seminars, training and typologies exercises and an advanced investigations course. The police officers as well as the customs officers seconded to the FIU are accredited by the Caribbean Anti-Money Laundering Programme (CALP). The FIU has also had FT typologies training.

The Police engage in traditional methods of investigations including controlled delivery. Police officers have powers to seize and detain cash, which is being imported or exported from Grenada. Similar powers have been granted to officers of the Customs Department. Police can apply for production orders for investigating ML and predicate offences and ascertaining the whereabouts of



criminal proceeds. Police can obtain information about specific transactions from financial institutions through monitoring orders.

The Police Force and Customs Department are adequately staffed and funded. All police officers are trained. The FIU personnel conduct lectures on money laundering for the police force. In addition, the special units within the police force e.g. the drug squad are on a continual basis engaged in regional, international and domestic training in respect of these matters.

Grenada has a National Joint Headquarters (NJHQ), which acts as an inter-agency coordinating centre. Agencies represented in the NLHQ include customs, immigration, coast guard and police.

The DPP is assisted by two Crown Counsels and a Special Prosecutor on a part time basis. Currently there is need for one more lawyer. The DPP and the Crown Counsels have received training in ML and FT matters and continuous training is planned.

The FIU keeps statistics on received suspicious activity reports, investigations and prosecutions. As a matter of course, the DPP and the Criminal Records Department within the Police Force keep records on prosecutions and convictions. Information on such matters is also kept at the Criminal Registry.

Legal measures provide for mutual assistance in criminal matters between Grenada and Commonwealth and non-Commonwealth countries. Mutual assistance include obtaining evidence, locating or identifying persons, obtaining an article or thing, transferring of prisoners, serving documents, search and seizure, production of documents etc. The enforcement and registration of external confiscation orders is also provided for. Differing standards in requested and requesting jurisdictions concerning the intentional elements of the offence do not affect the ability to provide mutual legal assistance.

Grenada's programme of international cooperation is supported by bilateral agreements signed primarily with the United States of America. They include the Maritime Counter-Drug Operations, the Mutual Legal Assistance in Criminal Matters Treaty, and an Extradition Treaty, all signed in 1996. Grenada also signed a Mutual Legal Assistance Treaty with the UK in 1995.

The FIU under its enabling legislation can provide information concerning suspicious transaction or suspicious activity reports to any foreign FIU. The terrorism legislation allows for the exchange of information with another country regardless of the existence of a mutual legal assistance treaty. The Supervisory Authority can conduct investigations and enquiries on behalf of and provide the result to foreign counterpart authorities.

Cooperative investigations are allowed under law and all investigative techniques allowable under the legal system are employed in such investigations. There are provisions for the extradition of persons from Grenada who are accused of or convicted of the commission of offences which carry penalties of 5 years or more. No law prohibits the extradition of Grenadian citizens from Grenada. However, under the terrorism legislation, offences stipulated in the International Convention for the



Suppression of the Financing of Terrorism are not extraditable due to the exclusion of the convention from a schedule of extraditable offences.

The FIU has responded to 33 requests from foreign FIUs and police authorities. The Attorney General as the central authority and the Supervisory Authority maintain records of requests. The relevant authorities generally respond in a timely fashion. There are no outstanding mutual legal assistance treaty requests.

Grenada does not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organizations and is a signatory to the international and regional conventions, protocols and resolutions relating to such matters.

The Eastern Caribbean Central Bank (ECCB) is responsible for the supervision of the domestic financial sector of Grenada. The Grenada International Financial Services Authority (GIFSA) is responsible for the supervision and regulation of Grenada's offshore sector (offshore banks, offshore insurance companies, international business companies, and international trusts). An MOU between Grenada and the ECCB grants the ECCB authority for supervising the offshore banks in Grenada in conjunction with GIFSA. The MOU specifies that the Grenadian authorities shall collaborate with the ECCB in the processing of licence applications and in performing due diligence checks on applicants.

The ECCB and GIFSA carry out on-site examinations including compliance testing of anti-money laundering procedures. All banks in Grenada have been inspected for compliance with anti-money laundering requirements. By February 2003, GIFSA had conducted a comprehensive review of all offshore banks which resulted in the revocation of 40 offshore bank licenses.

Under the Exchange of information Act, No 2 of 2003, the ECCB has the power to provide information to foreign regulators on Grenadian banks, both domestic and offshore, including bank inspection reports. Proposed amendment to the Banking Act will allow the ECCB to share any information received or any report prepared by the Central Bank in the performance of its duties under the Banking Act, with any local or foreign authority responsible for the supervision or regulation of a financial institution on a reciprocal basis and subject to an agreement of confidentiality. GIFSA can cooperate with other regulatory, supervisory, administrative and similar bodies in the course of their investigative effort, through the sharing of confidential information on a mutually acceptable basis and for the exclusive use of the particular regulatory, supervisory or administrative body.

The supervisors are adequately staffed with examiners and lawyers who have been trained by institutions such as CEMLA, OCC, Department of Treasury and CALP in the area of AML/CFT. GIFSA and the ECCB have adequate budgets to facilitate the supervision of financial institutions. Both supervisors can tap into the resources of each other as well as other regional and international resources if and when specialised expertise is necessary.



The Supervisory Authority also acts as a regulatory body to ensure that all financial institutions and regulated businesses in Grenada are in compliance with the anti-money laundering requirements. The SA issued (new) guidelines on money laundering (dated September 2003) for all financial institutions, including those in the offshore sector. These guidelines have the force of law, a violation of which is subject to penalties. However, the competent authorities have not established specific sector related guidelines to assist financial institutions in detecting patterns of suspicious financial activity by their customers. Furthermore, the competent authorities haven't issued any guidelines on terrorist financing. And it must be noted that to date there have been no suspicious transaction report (STR) on CFT.

The SA has access to the information regarding anti-money laundering in the ECCB reports on domestic banks and conducts on-site inspections, in conjunction with GIFSA for the offshore sector. Regarding the domestic sector, as of February 2003 on-site inspections had been conducted on 2 real estate agents, 1 insurance company, 1 credit union, and 1 money remitter. In relation to the offshore sector, 6 banks and 6 registered agents had been inspected by February 2003.

Under present law, the ECCB doesn't have the power to revoke licenses; therefore the ECCB gives instructions to financial institutions on the basis of a MOU. The proposed amendments to the Banking Act will provide a graduated level of remedial action such as issuing a cease and desist order, and/or recommending to the Minister that the licence of the institution be restricted, varied or revoked. GIFSA has the authority to revoke, suspend or impose conditions on licence of financial institutions for failure to adhere to the ML and FT laws and regulations.

Grenada's AML/CFT regime is comprehensive in including most of the requirements stipulated in the FATF 40+8 Recommendations. Customer identification provisions generally comply with all FATF requirements; however there appears to be no legal obligation to renew identification when doubts appear as to the identity of customers in the course of a business relationship. Requirements for ongoing monitoring of accounts and transactions are compliant with most of the FATF Recommendations. While there is no effective measure in place to advise financial institutions of concerns about weaknesses in the AML or CFT of other countries, the SA does alert financial institutions through circulars when information becomes available. Although it is not addressed in the legislation, in practice most financial institutions do give special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.

Record keeping, suspicious transactions reporting and internal controls, compliance and audit requirements are detailed and generally compliant. In the legislation there is no specific requirement for a compliance officer at management level, however all financial institutions supervised by the ECCB have appointed compliance officers with management level positions. While there is no legislative requirement for financial institutions to screen their employees prior to hiring, screening before hiring and monitoring during employment appear to be the practice. It was indicated by the financial institutions that they didn't receive proper information about current ML and CFT techniques, methods and trends and specific training concerning TF from the competent authorities. The banks however have proper internal procedures in place to prevent their institutions



from being used for ML or FT purposes, but most of them didn't conduct any specific training for their personnel on terrorist financing.

While the legislative framework does provide some protection against financial institutions being acquired or controlled by criminal elements, the Government has recognized the need to improve the effectiveness of supervisory agencies by extending their powers with regard to fit and proper criteria and integrity standards. Under the present system the financial institutions indicated that shareholders who hold more than 20% of the voting rights must be reported to the ECCB for approval. The ECCB carries out due diligence on the specified shareholders. Under the Revised Banking Act the ECCB will issue fit and proper requirements and integrity standards.

Under the ECCB and GIFSA, the banking sector is the best regulated sector in Grenada. However, specific banking requirements in the areas of customer identification and on going monitoring of accounts need to be addressed. Some of these requirements include increased diligence with regard to higher risk customers, politically exposed persons, non face-to-face customers, opening of correspondent accounts, private banking operations, customers who have been refused banking facilities, and maintaining up-to-date customer identification information. This situation will be soon rectified by proposed legislative amendments and revised guidelines. While the requirements to allow foreign home country supervisors or auditors to conduct on-site examinations or access customer accounts are not addressed in legislation, proposed amendments to the Banking Act will allow the ECCB to provide access to a foreign supervisory authority. Similarly, the requirement concerning the exclusive use of information obtained through co-operative arrangements for lawful supervisory purposes will be addressed with the proposed amendment.

The Registrar of Insurance Companies is the supervisor of the insurance sector. No on-site examinations of insurance companies have been performed by the Registrar. The SA in its capacity as the regulatory body responsible for compliance of all regulated businesses with anti-money laundering requirements had by February 2003 inspected one insurance company. Sector specific requirements for the insurance sector in the areas of customer identification, ongoing monitoring of accounts and transactions, and record keeping are addressed in legislation. While the SA has issued guidelines, they offer no guidance for insurance companies to identify suspicious transactions. It is also not clear whether there are guidelines to ensure that insurance and reinsurance companies foster close working relationships between underwriters and claim investigators, but it was indicated that a close working relationship exists.

The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the regulatory body for the Eastern Caribbean Securities Market (ECSM) which includes Grenada. Sector specific requirements in the areas of customer identification, integrity standards are fully addressed while record keeping, internal controls, compliance and audit and enforcement powers and sanctions requirements are partially met in legislation. While the supervisor has authority to share both public and non-public information with domestic and foreign counterparts, specific mechanisms allowing for the exchange of information and provision of assistance are not stipulated in legislation.



It was not clear if enough measures were taken by the competent authorities to prevent the unlawful use of vulnerable non-financial entities such as shell corporations, charitable or not-for-profit organizations as conduits for criminal proceeds or FT.

Grenada's AML/CFT regime is comprehensive in including most of the requirements stipulated in the FATF 40+8 Recommendations. It has implemented and strengthened the administrative, regulatory, law enforcement framework and other measures to combat ML and FT. The main deficiencies revealed by the assessment concern enhancing the power of the ECCB to allow for a graduated system of intervention measures, issuing of specific fit and proper criteria and integrity standards, implementation of on-site examinations in the insurance sector, development of guidelines dealing with specific sector requirements and terrorist financing.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON MONTSERRAT

Montserrat has a relatively comprehensive legal and institutional AML/CFT framework, particularly with respect to measures to combat terrorism and terrorist financing; criminalization of offenses; confiscation of the proceeds of criminal conduct; international cooperation; and law enforcement and prosecution powers. Its legal framework contains many of the principal elements required for compliance with international standards and progress has been made in addressing a number of recommendations made in the KPMG Report.² Notwithstanding, significant impediments exist in the implementation of ML and FT laws, largely due to resource constraints associated with economic dislocation caused by the volcanic eruptions, and the absence of an effective supervisory regime for offshore banks.

As an Overseas Territory of the United Kingdom (UK), Montserrat is not able to ratify Conventions but depends upon extensions to it by the UK. Montserrat has implemented in local legislation the provisions of the Vienna Convention. Although the UN International Convention for the Suppression of the Financing of Terrorism has not been extended to it, relatively strong legislative measures have been introduced to implement the applicable provisions of this Convention, including UN Security Council Resolution 1373. The Palermo Convention has not been implemented and the UK is still to ratify and extend it to Montserrat.

Money laundering is criminalized and extends to the proceeds of all serious offences with the exception for money laundering by persons who had also committed domestic drug trafficking offences (self-laundering). There are significant dissuasive penalties for criminal conduct associated with ML and FT. The ML and FT offences apply to both individuals and legal entities and in most cases to criminal acts committed in Montserrat and in other jurisdictions. Additional steps are still required, however, to allow for the extradition of offenders associated with terrorist financing and money laundering, and for complying with the FATF 8 Special Recommendations on terrorism finance. The Montserrat authorities plan to adopt a number of provisions contained in the UK's Proceeds of Crime Act to strengthen its anti-money laundering regime.

Legal provisions for the seizure and confiscation of funds derived from or used for the financing of terrorism are strong. The laws allow the authorities to freeze property related to ML but only after criminal proceedings have been initiated. For FT-related crimes, ex parte restraint orders can be obtained once a criminal investigation has commenced but before proceedings have been instituted. Although adequate provisions exist that allow for the issue of orders for the production of material, they could be enhanced to provide for account monitoring and tracing orders to assist with the identification and tracing of property associated with ML. Account monitoring orders are available only for terrorist related offences. The authorities should also consider amending the CJICO provision relating to searches to remove the limitation to searches of offenders' premises. Some of the deficiencies identified could be remedied if Montserrat adopts the relevant provisions of the new

² 1999 UK Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda.



UK Proceeds of Crime Act, as currently envisioned. Adequate provisions exist in the legislation to protect the rights of bona fide third parties.

—Although some ML investigations have been conducted, there have been no prosecutions for ML or FT offences. Consequently, no property has been seized or confiscated and there is no immediate need to establish a system for keeping such statistics. A few police officers have been trained in basic ML investigations but no prosecution staff has been trained in either ML or FT issues.

A financial intelligence unit, the Reporting Authority (RA), was only recently created by law in September 2002 and is not as yet operational. Although its functions are to receive suspicious activity reports related to ML and forward them for investigation and prosecution, the law does not impose a specific duty to receive and analyze such reports. There is no specific provision in the law that requires reporting institutions to provide additional information to the RA upon request. With respect to FT cases, suspicious activity reports are to be provided directly to the police or to the Governor. The RA has access to financial, administrative and law enforcement databases and is authorized to disclose information to law enforcement authorities in Montserrat and abroad subject to certain safeguards on the use of such information and the protection of the rights of innocent third parties. In practice, the RA forwards reports of suspicious activity for investigation to the police or customs authorities and to the UK's White Collar Crime Investigation Team (WCCT) based in Florida, USA.

A non-mandatory ML Practice Code has been issued under the law to provide practical guidance to reporting entities for complying with the ML Regulations. Regulated entities that fail to report suspicious transactions may, as a general rule, be subject to certain sanctions including the suspension or revocation of their licenses. The authorities plan to draft amendments to the relevant law to enhance and broaden the legal scope of the RA's duties, including its power to request additional information from reporting parties. Specific provisions requiring that suspicious activity reports be disclosed to the RA rather than to the police are also recommended both for ML and FT matters. A tipping-off offence for drugs-related money laundering should also be introduced.

—The RA is comprised of the Attorney General, the Commissioner of Police and the Director of Financial Services/Commissioner. As of the date of the mission the RA had not met as yet and it is too early to ascertain the adequacy of its structure, staff and funding resources. Nonetheless, about 20 reports of suspicious activity have been filed by an offshore bank with the Financial Services Commission. These have all been referred to WCCT due to their international connection.

Law enforcement authorities have adequate powers to compel the production of financial records by applying to the Court for an order that requires financial institutions to make available material for investigations. More robust provisions that allow for obtaining account monitoring and tracing orders, similar to those contained in the new UK Proceeds of Crime Act and in the FT laws, would enhance the powers of the law enforcement authorities.

—Montserrat has trained only two police officers in basic ML investigation techniques in courses organized by the Trinidad and Tobago-based Caribbean Anti-Money Laundering Programme. No specialized training has been provided for prosecutors on ML but they have remained abreast of *ML*



issues through participation in regional seminars. No training on FT has been provided to either police or prosecution staff. In practice, police officers were not very familiar with the legal framework and tools available for investigating ML and FT offences. The use of investigation techniques such as controlled delivery and undercover operations is possible in Montserrat. However, these techniques have not been used in the past. To date no criminal or civil sanctions have been applied in ML or FT cases.

The law allows Montserrat to provide, on a discretionary basis, a wide range of assistance to foreign authorities in relation to criminal investigations and proceedings. Compulsory measures are also allowed under the legislation and in particular under an MLAT with the USA. There is also provision in the law for the authorities to enforce foreign confiscation and restraining orders in relation to both ML and FT cases, though for ML cases, there is a need for the issue of Orders designating jurisdictions whose orders are recognized by Montserrat. The RA can also share information freely with the Montserrat police and foreign law enforcement authorities. In addition, the police can access Interpol and a regional information sharing network (OTCRIS) to communicate with their counterparts in other jurisdictions. A main drawback to international cooperation is the inability under the law to extradite individuals for ML and FT cases. Nonetheless, the Governor is authorized to deport or exclude individuals from Montserrat who are deemed to be “undesirable”.

—In light of the small number of requests for legal assistance from other countries (approximately one every five years under the MLAT with the USA), there is no immediate need to maintain statistics and assign staff solely for this purpose. There have been no requests involving ML or FT cases.

Montserrat has established a Financial Services Commission (FSC) that is responsible for the supervision of financial institutions other than domestic banks, and is the agency primarily charged with the supervision of compliance with AML/CFT requirements. Significant staff and resource constraints, however, limit its ability to effectively supervise offshore banks in spite of ongoing efforts to involve the Eastern Caribbean Central Bank (ECCB) and overseas regulators in their supervision.

Montserrat has passed anti-money laundering Regulations and a non-mandatory Practice Code issued by the Governor under the ML legislation to give practical guidance to financial institutions for complying with the ML Regulations. Although the Code only represents good practice and is not mandatory, the Regulations provide that a court may take it into account in determining whether a person has complied with the Regulations. The Regulations and Practice Code apply to a wide range of financial institutions but do not specifically cover offshore banks, mutual funds and insurance business by reference to the applicable laws. Confidentiality and secrecy laws do not inhibit implementation of AML/CFT legislation. Neither the ML Regulations nor the Practice Code makes provision for FT issues.

With the creation of the FSC in 2001 as a relatively autonomous supervisory body, an appropriate mechanism was established to supervise for compliance with the ML Regulations and any related laws and guidelines. The FSC has supervisory responsibility for offshore banking, insurance, trust



and company service providers, investments and asset management services. To strengthen AML/CFT supervision, the FSC Act should provide the FSC with appropriate administrative and disciplinary sanctioning authority, in line with those contained in the Anguillan draft FSC Act.

The ability of the FSC to supervise for AML/CFT compliance is significantly constrained by the absence of a substantive physical presence by the offshore banks in Montserrat. Full implementation of the supervisory MOUs with the ECCB and the four overseas regulators should partly address this limitation but there is still a need to lift the restrictions on access to customer account information contained in some of these MOUs.

The ML Regulations require financial institutions to have procedures for conducting customer identification but not an explicit requirement to identify their customers, thus raising issues with regard to the enforcement and effectiveness of customer due diligence requirements. Procedures to maintain records of customer identification and transactions for five years are also required under the ML Regulations. An explicit requirement for customer identification and record keeping, with clear sanctions for non-compliance, would strengthen and clarify the customer due diligence requirements and make them more consistent with the Practice Code. The Montserrat authorities plan to introduce a number of improvements to the ML Regulations, broadly similar to those planned for Anguilla, including: (i) creating an affirmative obligation to conduct customer identification/due diligence and record keeping; (ii) provisions for internal audit; and (iii) an explicit requirement to retain records of customers and transactions, including for unusual and suspicious transactions. In addition, the authorities plan to introduce in regulations provisions for complying with the FATF 8 Special recommendations particularly those relating to funds (wire) transfers. Legislative initiatives are also planned with respect to money remittance firms which will come under the supervision of the FSC and/or the ECCB.

The ML Regulations provide a framework for filing suspicious activity reports but do not explicitly require the filing of such reports. The authorities plan to introduce an affirmative obligation in the law with appropriate sanctions for non-compliance. The Practice Code requires that reports be made promptly but does not give a timeframe by which they are to be submitted to the authorities. It also provides general guidelines for monitoring and identifying suspicious ML activity. In practice, very few STRs have been filed with the RA indicating a possible weakness in compliance. No industry guidelines have been issued for FT.

The main challenge facing the authorities is in the implementation of an effective mechanism for verifying compliance with AML/CFT requirements by the offshore banks. While the MOUs with foreign regulators and the ECCB should help address this concern, there could be practical and legal limitations to their full implementation that should be resolved, including the restriction on access to customer account information. There is also a need to upgrade the staff capacity of the FSC that, because of the volcanic threat to the Island, may not be easily achieved.

Overall, Montserrat's compliance with the FATF 40+8 Recommendations is relatively strong with respect to the legal framework. However, important improvements are required in the area of extradition, the regulations and the Practice Code. Adoption of some of the provisions of the new UK Proceeds of Crime Act would also strengthen the legal framework. Implementation of the



Recommendations particularly, those relating to the financial sector, is weak. The absence of an effective supervisory framework for AML/CFT in the offshore banking sector is of particular concern.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON ST. KITTS AND NEVIS

St. Kitts & Nevis has ratified the Vienna Convention, the Convention for the Suppression of the Financing of Terrorism and indicated that ratification of the Palermo Convention was expected to take effect from September 29, 2003. Money laundering (ML) has been criminalized in accordance with the Vienna and Palermo Conventions in the Proceeds of Crime Act (POCA). The POCA defines ML as engaging in a transaction involving property that is proceeds of a serious offence. Serious offence is defined as an offence triable on indictment, or hybrid offences and includes a wide array of grave offences. Provision is made for extra-territorial application of the predicate offence. Conviction for the predicate offence is a precondition for successful prosecution of ML.

Gaps in the full implement of relevant Conventions/Resolutions have resulted in an incomplete list of controlled drugs. Provisions dealing with the regulation of precursor drugs in compliance with the Vienna Convention do not exist. Additionally criminalization of secondary or participatory offences in line with the Vienna Convention is incomplete in the POCA.

Terrorism is criminalized in the Anti-Terrorism Act (ATA) on the basis of the Convention for the Suppression of the Financing of Terrorism. However in defining terrorist activity, UN Conventions are cross-referenced rather than detailing specific offences. This could affect the establishing of mens rea and actus reus (external acts). The crime of financing of terrorism (FT) is applicable irrespective of the location of the offence or the base of terrorist operatives.

With regard to ML, the element of reasonableness in the definition of the required state of mind allows objective standards to be used in determining mens rea. Both individuals and corporate or unincorporated bodies can be criminally liable for ML. In the case of FT, the ATA has similar provisions with regard to knowledge or reasonable cause for suspicion thereby allowing for objective considerations to be used. However certain FT offences do not have similar explicit references. Sanctions and penalties for ML and FT indictable offences are dissuasive and proportionate. However, it is doubtful if the relatively mild penalties for FT summary offences will have any deterrent effect.

It is observed that some of the critical legislative provisions are yet to be invoked in practice. For example, no money laundering prosecutions have been instituted pursuant to Part II of POCA. A similar observation can be made in respect of the offences under the ATA. The wire-tapping provision of ATA has also not been used.

The POCA provides for forfeiture orders covering property, proceeds or instrumentalities and confiscation orders against convicted persons. Provision for the confiscation of property of corresponding value is also made. In the case of ML, a Judge may grant a restraining order upon application by the DPP freezing any realizable property. Application for a restraining order may be made on an ex-parte basis by the DPP to a Judge in chambers. Similar provisions also apply to FT offences under the ATA. However it is not clear whether there exist authority for the confiscation



of property of corresponding value. For FT offences the High Court may grant a police officer a restraining order in cases where a forfeiture order may be made during proceedings.

There are provisions for forfeiture in the absence of a conviction, e.g. in cases where a person has absconded or in the context of terrorism, forfeiture of cash earlier detained without prior conviction. A police officer can apply ex-parte to a Judge in chambers for a production order for documentation. The DPP and the FIU can seek monitoring orders for financial institutions to produce business transaction information.

Customs and the police are authorized to seize and detain cash imported into or exported from the Federation. Police officers can apply for search warrants for tainted property and relevant documents. The FIU and the DPP can facilitate requests from a court or other competent authority of another jurisdiction to identify, trace, freeze, seize, or forfeit the property, proceeds or instrumentalities connected to ML offences.

Under the ATA, the police have broad powers to seek judicial approval to search and seize or gain access to relevant material. The DPP can also apply for monitoring orders in relation to the accounts of relevant businesses.

There is legislative protection of bona fide third party rights at various stages of proceedings for forfeiture or confiscation. In the case of terrorism, provision is made for the Court to hear arguments from a person claiming an interest in property targeted for forfeiture.

Under POCA, the Court is empowered to set aside conveyances and transfers of property made after the service of a restraining order, except in the case of a bona fide purchaser of the property for value, who did not have notice of the order. The team was not aware that similar provisions apply in the case of terrorism.

The Financial Intelligence Unit (FIU) is required to maintain all records received for a period of 5 years, and to establish a database for the purpose of detecting ML. The FIU has a general facility in place for the recording of figures and the production of statistics.

Legislation does not provide for the keeping of statistics with regard to property frozen relating to FT. However, the FIU is capable of collating such statistics. There has been no freezing of property in respect of FT.

Investigative personnel within the Police, FIU, and Customs have been exposed to some structured training through CALP, and are now fully accredited CALP financial investigators. There has been very limited exposure to training and awareness in this field on the part of the DPP, and none indicated by the magistrates and judiciary.

The POCA established the Forfeiture Fund, requiring all monies and proceeds from the sale of property forfeited or confiscated to be deposited in the Fund. The Organized Crime (Prevention and Control) Act also makes provision for a fund known as the Criminal Assets Recovery Fund to



receive confiscated property. There is currently no specific legislation providing for the sharing of assets with other jurisdictions.

The Financial Intelligence Unit Act 2000 (FIUA) established the FIU which became operational in May 2001. The functions of the FIU include the collection, receipt, analysis, and investigation of suspicious transaction reports (STR's), the dissemination of information on STR's to competent authorities, the establishment of a database for the purpose of detecting ML and liaising with foreign ML intelligence agencies.

The FIU appears to be managed on an autonomous basis and is required to produce a report to the Minister of National Security on an annual basis and reports of its operations on a quarterly basis to competent authorities. Persons engaged in a regulated business activity are required to submit STR's concerning ML to the FIU. Guidance Notes provide specific guidelines as to the types of suspicious transactions. Under the ATA, persons are required to report FT suspicions to the FIU while persons in professions, trade or other business are required to report to the police.

Police officers assigned to the FIU can apply ex parte to a Judge for production orders. It appears that no production orders have been applied for to date. The FIU has the authority to require the production of information relevant to its functions and has issued over 200 letters requesting information. While there is no specific provision enabling the FIU to have access to local administrative, financial and/or law enforcement information, the police force disseminates a daily crime report to the police officers assigned to the FIU.

Failure or refusal to provide information to the FIU or to report suspicions with regard to FT or information about terrorist property are offences liable to custodial or pecuniary penalties depending on circumstances. The FIU is legislatively empowered to disseminate financial information and intelligence to domestic authorities concerning suspected ML for necessary action. The police officers assigned to the FIU have the designated authority to commence criminal investigations into ML. There is no specific authority for the FIU to share financial information/intelligence about FT with domestic authorities.

The FIU may provide information relating to a ML offence to any foreign intelligence units subject to appropriate conditions. It can also receive information and enter into MOU arrangements with foreign FIUs. A manual register of STR's received; letters of request for information issued and court orders granted along with an electronic database to store information and intelligence are maintained. To date, the FIU has received some 150 STR's from which 3 ML investigations are still ongoing. There have been no ML convictions, forfeitures, confiscations or cash seizures to date.

The functioning body of the FIU is comprised of 6 staff members and includes 4 police officers with three assigned full time and one assigned on a part time basis as required. The FIU is to be funded from the Forfeiture Fund but with no forfeiture or confiscation having been made to date, the FIU is currently funded through the Consolidated Fund. It appears that their current budget is



inadequate especially to meet the FIU's obligations to educate and inform the public and financial businesses/entities of their obligations.

There is no designated unit within the Royal St. Christopher & Nevis Police Force for investigating ML and FT offences. There are suitably trained Police Officers within the Criminal Investigation Department of the Police, and assigned to the FIU as financial investigators that perform this task. While the FIU is required to forward to the police any ML matter needing investigation, the police officers within the FIU have been delegated to conduct investigations under the FIUA by a Memorandum of Understanding.

The legislative framework of St. Kitts & Nevis provides for various investigative techniques such as searches, tracing and monitoring, port and border controls, detention, and interception of communications. Wire tapping as an investigative technique is restricted under the Telecommunications Act. Traditional means of conducting investigations (including controlled delivery and electronic surveillance) are practised by the Police.

As regards the predicate offences, these are investigated by the Criminal Investigation Department and the Special Branch of the Police Force which shares information on a regular basis with regional intelligence counterparts. The Police and the FIU may also receive assistance in investigative techniques such as searches, tracing and monitoring, and in coastal water, port, and border controls by the Customs & Excise Department, and the Defence Force which assumes the coastguard duties for St. Christopher & Nevis.

Police officers may obtain documentation through production orders and information by way of monitoring orders and search warrants. The FIU has the authority to require the production of information relevant to its functions.

A Joint Intelligence Centre (JIC) staffed by representatives from Customs, Police and the Coastguard has been established to better facilitate joint operations and investigations into ML, FT and related predicate offences. The immigration department falls within the umbrella of the Police Force so that matters relating to border control are addressed by the police. This unit assists in collating intelligence on the movement of sea vessels and aircraft.

The Royal St. Christopher & Nevis Police Force currently has an establishment of 398 officers, 370 of whom are regular officers. Of that figure, 10 officers are trained and accredited through CALP as financial investigators. The Police Force cannot logistically place all 10 trained officers into the area of financial crime at one time due to constraints placed upon the organization. Four of the trained officers are currently assigned to the FIU. Three are full time in St. Christopher, and one part time in Nevis. The FIU officers have continued exposure to relative training, and have suitable administrative and technical support and resources within the FIU.

The Customs & Excise Department currently has an establishment of 103 officers; 5 of whom have received training as financial investigators through CALP, with four being fully accredited. None of those officers work in the area of financial crime, and the department has no unit investigating ML



and FT offences. The primary function of Customs is revenue collection, and to a lesser extent the detection of smuggling in goods and drugs.

The Defence Force consists of 560 soldiers. Their primary function is the security and protection of St. Christopher & Nevis, but they can assist with drug interdiction and regularly assist the Police in joint operations. The Coastguard is the only law enforcement at sea. Primarily, the Coastguard is responsible for patrolling the territorial waters of the islands, and assists both Police and Customs in joint operations. No member of the Defence Force has had any training in financial investigations (ML/FT) or drug interdiction.

The Office of the Director of Public Prosecutions (DPP) consists of the DPP and three prosecutors. Their primary function is to present matters before the court for prosecution. The DPP has had limited exposure to ML and FT training and awareness, and his staff have received none. The DPP indicated to the team that the Office needs more Crown Counsel to enable it to function at optimum capacity, but resource constraints appear to be a factor.

The FIU, Police, and Customs all keep relevant statistics. Generally, information is exchanged orally and informally between Police officers in relation to trends and typologies, but there does not seem to be any structured mechanism for reviewing and taking action on these matters on an inter-agency basis.

The FIU is providing continuous training and exposure to its staff, including Police investigators, with regard to ML and FT. There is currently very limited or no training and awareness provided to the judiciary, Magistrates, and the DPP's staff. Customs are not undergoing any further training of staff in ML and FT, mainly due to CALP discontinuing the availability of its financial investigation training programme to Customs officers in the region.

There appears to be a breakdown in communication between the Police, FIU, and the DPP. Matters are not being brought to the attention of the FIU in a timely manner for financial investigations to be initiated, with a view to commencing forfeiture or confiscation proceedings as appropriate. In addition, the DPP is not being made aware of matters that are suitable for such a forfeiture or confiscation process to be initiated. The result has been that no forfeitures or confiscations have been made to date. It would appear that the joint operations and investigations conducted by the Police, Customs, and Defence Force (Coastguard) through the JIC do not always run smoothly. There are often difficulties encountered in terms of communication, and confusion and disagreement on which agency adopts the lead role. There is a need for an MOU to be negotiated between these agencies in order to identify their respective roles and jurisdiction in such joint operations. This has been recognized by the authorities, and an MOU is expected to be in place shortly.

The principal legislative authority for rendering mutual legal assistance is the Mutual Assistance in Criminal Matters Act 1993 (MACMA), as subsequently amended. The team was not furnished with a copy of the amendment, and so the ensuing comments are based on the 1993 Act. The Central Authority responsible for receiving and reviewing requests, and transmitting requests on behalf of



St. Kitts & Nevis to other countries is the Attorney General. Provision is made for facilitating the execution of requests emanating from other Commonwealth countries, for securing evidence or information, obtaining documents and other material, identifying and locating individuals and facilitating the attendance of persons in the foreign country to give evidence. Further, restraining, confiscation or forfeiture orders made in a Commonwealth country may be registered in the St. Kitts & Nevis by order of the High Court. Safeguards are set out in the legislation to guard against abuse of the mutual assistance process.

Cooperation with foreign states is provided for by the FIUA, POCA and the Financial Services (Exchange of Information) Act 2002, which provides a structured framework for the exchange of information between the Financial Services Commission (FSC) and foreign regulatory authorities.

There has been no activation of MACMA in the critical area of registration of foreign confiscation or forfeiture orders. The DPP advised that his office has made successful applications for restraint orders from the courts, on request from foreign competent authorities, usually in the United States.

The MACMA contains certain constraints on the country's ability to grant assistance. Apart from certain requirements as to proper documentation and sufficient information from the requesting state, there is provision for mandatory and discretionary refusal of requests made by another Commonwealth country. One instance requiring mandatory denial is where the underlying conduct would not have constituted an offence under local law. Provisions for denial of requests are fairly customary in legislation of this nature, and it is not believed that this undermines the general framework for mutual assistance.

There have been 60 foreign requests for assistance, including the cases for restraint orders referred to above. The country has a Mutual Legal Assistance Treaty (MLAT) with the US. The MACMA has been extended to the US. The assessors were unable to verify whether MLAT's exist with other countries. No information was made available on the nature of bilateral or multilateral treaties or arrangements dealing with AML/CFT.

The FIU may provide information relating to a ML offence to any foreign intelligence units subject to appropriate conditions. It can also receive information and enter into MOU arrangements with foreign FIUs. Additionally, under the ATA the Chief of Police can share information about FT with a foreign competent authority.

MACMA provides a reasonably coherent basis for cooperative investigations between domestic and foreign competent authorities. The FSC is authorized as the ultimate regulatory body in the country, to accede to a request for assistance from a foreign counterpart conducting inquiries relative to its regulatory functions. There is also provision for the Attorney General, at the instance of the FSC, to seek an order from a Judge in Chambers compelling a person to comply with a request from the FSC.

There are no provisions for facilitating asset-sharing, nor was the team aware of any arrangements for coordinating seizure or forfeiture actions. The team was not provided with any discrete



legislation on extradition, although the ATA does contemplate the use of UN counter-terrorism Conventions as the basis for extradition between St. Kitts & Nevis and another state, where both countries are parties to the same Convention.

Although the state has recorded successes in restraining property pursuant to foreign requests (mainly US), this has occurred without an appropriate indemnity from the US authorities to cover any undertaking as to damages that the courts may require to give on applications to issue or vary restraining orders. The giving of undertakings as to damages in restraint applications is customary. While the courts have not yet required such undertakings, there is no guarantee that this approach will continue. This matter could adversely impact on the effectiveness of restraint proceedings.

The Financial Services Commission (FSC) has the overall regulatory responsibility for financial services in St. Kitts & Nevis. Separate Regulators for St. Kitts and Nevis carry out the actual supervision of institutions on behalf of the Commission. The Regulators are attached to the Financial Services Departments in both St. Kitts and Nevis. The Regulator is responsible for handling AML and CFT matters and verifies compliance through on-site examinations. The Financial Services Departments in Nevis has a staff of 12 persons and the Financial Services Department in St. Kitts has a staff of 4 persons. The Regulator has supervised some non-bank financial institutions on AML issues, and the results for those businesses with a high risk in regard to ML were rated inadequate. Continuing supervision is scheduled to take place.

Guidance Notes on the Prevention of Money Laundering (Guidance Notes) have been issued by the FSC to the financial institutions in regard to the FATF 40 recommendations. Issues regarding FT however are not included in these Guidelines. A draft of the amended Guidance Notes has recently been completed including the ATA as a relevant law and aspects regarding FT. The amended Guidance Notes will be implemented shortly in tandem with amendments to relevant legislation in relation to the revised 40 FATF recommendations.

The ECCB supervises the domestic banking industry and like the regulators verify compliance through on-site examinations. In 2002 the ECCB conducted AML examinations at most of the banks, and various deficiencies were identified. These deficiencies were the subject of Letters of Commitment (LOC) and Memorandum of Understanding (MOU) between the ECCB and the commercial banks for remedial action within a certain time frame. As a result of the follow up on the MOU and LOC most of the deficiencies should be corrected.

Under the existing legislation neither the ECCB nor the Regulator is provided with adequate powers of enforcement and sanctions against financial institutions and their directors or senior management for failure to comply with AML and CFT legislation. The draft Banking (Amendment) Act will give the Central Bank increased powers, and a wider range of sanctions will be in place for banks.

The Director General of the Financial Services Department has been appointed as Supervisor of Insurance. This is in accordance with a new draft Insurance Act. A timeframe for the introduction of the draft Insurance Act was not given. No AML examinations have taken place at any insurance business. The Insurance sector has however participated in several training sessions and seminars,



in combination with banks and other members of the financial sector, and is well aware of the AML Regulations and Guidance notes.

The securities sector is supervised by the Eastern Caribbean Securities Exchange Commission (ECSEC). Most of the securities sector specific criteria are incorporated into the Securities Act and securities regulations. Having regard to the limited scale on which the securities sector is operating, the risk for possible involvement with ML or FT seems to be very unlikely.

The Anti-Money Laundering Regulations (AML Regs) and the Guidance Notes contain most of the requirements stipulated in the general criteria for customer identification, ongoing monitoring of accounts and transactions, record keeping, suspicious transaction reporting, internal controls, compliance and audit. However, casinos and internet gaming businesses which are in operation in St. Kitts & Nevis are not mentioned in the AML Regs and Guidance Notes. With regard to internal controls, neither legislation nor the Guidance Notes address the requirements for an audit function to test a financial institution's AML systems and procedures, or the implementation of adequate screening procedures to ensure high standards when hiring employees.

With reference to integrity standards, the legislation applies mainly to banks and is implemented via due diligence and fit and proper checks carried out during the licensing stage for banks. Non-bank financial institutions are therefore not addressed, with the exception of the POCA which disqualifies persons eligible or licensed to carry on the business of a regulated business, when they are convicted of a serious offence under the Act. Enabling legislation of the FSC provides an adequate framework for co-operation between regulators both within the jurisdiction of St. Kitts & Nevis and internationally.

The banking sector is well regulated and compliant with most of the banking sector specific requirements. Some customer identification requirements not addressed in the legislation and the Guidance Notes include graduated customer acceptance policies and procedures for higher risk customers, senior management decision to enter into business relationships with higher risk customers, enhanced due diligence to private banking operations and for customers who have been refused banking facilities, policies and procedures for dealing with politically exposed persons and refusal of funds derived from corruption.

There is no legal requirement that banks should aggregate and monitor significant balances and activity in customer accounts on a fully consolidated worldwide basis nor conduct intensified monitoring for higher risk accounts. Additionally banks are not required to pay particular attention to relationships with respondent banks located in jurisdictions that have poor KYC standards or have been placed on the FATF's NCCT list.

With regard to banking specific requirements for internal controls, compliance and audit, neither legislation nor Guidance Notes address the requirements that banks have in place an adequately resourced compliance function, that banks and banking groups apply an accepted minimum standard of KYC policies and procedures on a global basis, and that banks have a routine for testing compliance against both home and host country KYC standards. With reference to integrity



standards the draft Banking Amendment Act will impose fit and proper criteria for directors, significant shareholders and managers.

In the area of cooperation, there are no legal provisions permitting host supervisors to allow foreign supervisors to carry out on-site inspections of or access customer information of local branches or subsidiaries of foreign banking institutions or share specific financial information.

The customer identification provisions of the AML Regulations also apply to insurance business carried on under the Insurance Act. In addition to the KYC guidelines, applicable for all regulated business, additional sector specific guidelines for the insurance sector are also given in the Guidance notes. Only one of the insurance sector specific criteria under internal controls, compliance and audit is partially addressed in the Insurance Act.

There are shell companies, not for profit organizations and companies that have been created for charitable-like causes. Bearer shares are also allowed, although they are immobilized. While such institutions are subject to verification procedures outlined, the critical point is that the entity must conduct a “regulated business activity”, as defined under POCA, in order for the Guidance Notes to be applicable. It is likely that many not-for profit organizations will fall outside the scope of the definition, and therefore not be amenable to the AML Regs and Guidance Notes.

St. Kitts & Nevis’s AML/CFT regime is compliant with most of the requirements of the FATF 40+8 Recommendations. While the legislative framework is comprehensive there are gaps which need to be addressed. There is a need for improved coordination among relevant agencies and continuous training in the related fields of ML and FT. The main deficiencies revealed in the assessment include incomplete compliance with relevant international conventions, extension of the AML regime to casinos and internet gaming, sector specific requirements regarding AML and FT, implementation of a supervisory regime for the insurance sector and enhancement of the powers of the supervisors.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON ST. LUCIA

St. Lucia has ratified the Vienna Convention 1988 and signed the Palermo Convention but has not signed the UN International Convention for the Suppression of Financing of Terrorism. Money laundering (ML) is criminalized under the Money Laundering Prevention Act 1999 (MLPA) and is based on the proceeds of prescribed offences, which are detailed in an appended schedule. The MLPA also makes terrorism a predicate offence, although there is no specific provision for financing of terrorism. Predicate offences in the Proceeds of Crime Act (POCA) are limited to drug offences at present but are to be expanded in a proposed amendment. The POCA has provision for dual criminality applicable to schedules offences.

The offence of ML is applicable to a body of persons, whether corporate or incorporate. The law does not specifically state that the intentional element of ML may be inferred from factual circumstances. While the law provides for criminal and civil sanctions for persons engaging in ML, there are no administrative sanctions.

Financing of terrorism (FT) is criminalized in the Anti-Terrorism Act 2003 (ATA) which comes into effect on October 1, 2003. Terrorist acts apply to acts committed inside and outside of St. Lucia. Penalties for FT are only custodial and are therefore inapplicable to financial institutions and there are no fines for corporate entities. Further, a person is not defined in the ATA to include a body corporate although this maybe inferred. While the ATA provides for criminal sanctions for persons engaged in FT, there are no provisions for civil sanctions and no sanctions for corporate bodies or institutions.

The MLPA 1999 provides for the freezing and forfeiture of the property of a person charged for or convicted of ML respectively. While the POCA provides for confiscation of property of corresponding value, this only applies to ML of proceeds from drug trafficking and related offences. There is no similar provision in the MLPA 1999 or 2003 or the ATA. A new MLPA is due to come into effect during the last part of 2003.

The POCA provides for tainted property to be forfeited where a person absconds in connection with a scheduled offence. Apart from this provision, there is no similar provision in the MLPA 1999 or 2003 which triggers forfeiture without a criminal conviction. The ATA provides for property, which is the subject of terrorist activity to be forfeited if the Judge is satisfied on a balance of probabilities of this allegation by the Attorney General.

Under law the police can enter premises of drug producers or suppliers to inspect records and search suspected persons. The Money Laundering Prevention Authority (MLP Authority) established under the MLPA 1999 can enter the premises of financial institutions to inspect records.

The ATA provides for detention orders to be made against property suspected of being used for terrorism. The ATA provides for the seizure of property when the Commissioner of Police has reasonable grounds to believe the property is or will be used to commit a terrorist activity. Under



the ATA the police also have the power to search and seize any building, place, vessel or property suspected of being used for terrorist activity; these may be subject to forfeiture under the Act.

Provision is made in the MLPA 1999 and 2003 and in the soon to be passed ATA for the protection of legitimate third party rights, and the authority is provided for voiding or rendering contracts unenforceable if they are used to alienate property that is likely to be the subject of confiscation.

The ATA provides for a detention order to give every person having an interest in the property the right to be heard. It does not specifically state that the contracts would be voided if it is found that the persons acquired the right to avoid seizure or forfeiture of the property, but this may be implied from the wording of the provision. It appears to provide for persons having a legitimate interest in the property. However this can be made clearer to avoid any doubt.

The MLPA provides for the MLP Authority to compile records and statistics. However no property has been seized or forfeited to date by the authorities. The ATA 2003 is not yet in force, therefore there is no legal basis to seize or forfeit property used for FT at this point in time.

Training has been provided to 6 police officers on AML procedures. No administrative staff has been trained on AML procedures. Two prosecutors from the Director of Public Prosecutions' (DPP) office are to be trained on AML procedures for freezing, seizing and confiscation of property by CALP in October 2003.

The MLPA 1999 provides for the establishment of an asset forfeiture fund. Currently there are no asset-sharing provisions provided for in the legislation in St. Lucia.

The Financial Intelligence Authority Act (FIAA) provides for the establishment of the Financial Intelligence Authority (FIA) and its functions which are to receive, analyse and disseminate financial information and to retain records of the information it receives for a minimum of 5 years. Under the MLPA 2003, the FIA is to take over the responsibilities of the MLP Authority. The FIAA provides for the FIA to receive suspicious transaction reports (STRs) from financial institutions pursuant to the POCA and the MLPA 1999. These institutions have been expanded to include money remitters, real estate agents, jewellery stores etc.

Under the MLPA 1999 the MLP Authority had the power to issue guidelines for the identification of large, complex or unusual transactions to financial institutions. Limited guidelines on anti-money laundering procedures have been issued to Registered Agents for companies and trusts. The ECCB has also issued limited guidelines on anti-money laundering and financing of terrorism to domestic banks. Neither the MLP Authority nor the FIA has issued any guidance on financing of terrorism. The new MLPA 2003 passes on the responsibility to issue guidelines to the FIA.

Under the FIAA, the FIA can require the production of information it considers necessary to fulfil its functions from any person. The MLPA 1999 provides for the MLP Authority to enter premises of financial institutions to inspect records. The FIA will have two police officers seconded to it and one customs officer; these persons will act as liaisons with the Police and Customs respectively.



Failure to produce information required by the FIA is an offence liable to a fine or imprisonment. There are no penalties for failure to file STRs except in the draft ATA with regard to STRs in relation to terrorism. The FIA is authorized to provide information to the Commissioner of Police, the DPP and any foreign Financial Intelligence Unit. There have been no protocols established or guidelines issued to deal with the flow of information to and from the FIA with foreign FIAs and the issue of confidentiality. No MOUs have been entered into either.

Under the MLPA the MLP Authority is responsible for compiling statistics and records of reports received from financial institutions. The new MLPA 2003 provides that the FIA should keep statistics and records. The statistics compiled by the MLP Authority will be handed over to the FIA once it is established and set up on October 1st, 2003 when the new Director takes office officially.

The newly formed FIA comprises of the Chairman and four other members with experience in the area of law, accounting and law enforcement. The FIA will be staffed with a Director, three financial analysts (one seconded from Customs and two from the Police) and there will be an Administrative Assistant who will file and compile data on STRs and follow up investigations.

The FIU has been established as an independent Government Authority which has its own budget from which it pays its rent, its staff and purchases equipment and funds its operational expenses. They have received assistance in cash and in kind from the US Embassy in Barbados in the form of equipment and computer programmes.

The FIA is designated with the responsibility for ensuring that ML and FT matters are properly investigated with respect to STR's and the determination of reasonable suspicion in the first instance. The general enforcement and application of appropriate investigative strategies to STR's and ML/FT offences originating from predicate crimes is the responsibility of the Commissioner of Police of the Royal St. Lucian Police Force (R.S.L.P.F).

While there were no provisions in any enacted law which permitted the use of wide ranging investigative techniques, "custom personnel and drug case investigators" informally utilized these strategies in respect of predicate crimes. The ATA and the Draft Proposed Amendments of the Evidence Act will address this requirement.

Under the MLPA 1999, Criminal Code and POCA law enforcement bodies are able to compel the production of a wide range of documents from banks, financial institutions, and individuals etc. Similar powers are also incorporated in the MLPA 2003.

There were no formal appropriate mechanisms in place to ensure adequate cooperation and information sharing among the different government agencies involved in the investigation of AML/FT matters. Exchange of information was undertaken "informally on an ad-hoc basis among Customs, Police and the FIU personnel". The authorities are in the process of establishing a National Intelligence Team, with representatives from all agencies within a three (3) month timeline.



The R.S.L.P.F (Major Crimes and Criminal Investigation Branch) staffed by thirty-two (32) personnel, is responsible for the effective investigation and enforcement of ML/FT related offences and predicate crimes. However, the investigators are not dedicated to the conduct of these matters only, but are also engaged in general investigations. The general awareness of ML/FT offences was not widespread among the membership of R.S.L.P.F.

There were six (6) trained and partially trained investigators in ML investigative processes and a general training budget of EC\$100,000 for the 800 strong establishment of R.S.L.P.F, which had 725 staff at the time of the visit. Prosecution of crimes, including drug trafficking, is done by the Prosecutorial Section of the R.S.L.P.F, which is staffed by eight (8) police officers with no formal legal training. The DPP provides the necessary guidance on a case-by-case basis.

There was no computerized record keeping of cases forwarded to the DPP, but a manual system was maintained. Legal requirements to keep statistics on the number of ML and FT investigations initiated on the basis of STRs and as a result of street crimes/predicate offences and on any criminal, civil or administrative sanction, are included in the MLPA 1999, the POCA and MLPA 2003. The R.S.L.P.F maintains statistics in respect of street crimes or predicate offences, but does not review them for the initiation of ML/FT offences. No effort was made or requirement noted for categorizing or breaking down statistics in accordance with FATF requirements.

The revamped FIA maintained a manual recording system of registration of STR's and had recorded receipt of eleven (11) reports. Initial investigation commenced in relation to five (5) reports and two (2) others were forwarded via the DPP to the Commissioner of Police for follow-up investigation. No prosecutions or convictions have resulted to date.

The Customs Authorities have a wide remit based on the Customs Act. They are engaged primarily in drug interdiction at the air and seaport and have achieved a high level of success within St. Lucia and in their cooperation with external agencies. They are also the lead agency working in tandem with the Special Branch Section of the R.S.L.P.F on intelligence gathering in drugs and proceeds of crimes matters, involving predicate crimes. They have a system for computerized data recording, analysis competence and records, which reflected information exchange between the MLP Authority and Customs.

The Office of the Director of Public Prosecutions was not adequately staffed, trained and resourced to handle ML/FT matters at the time of our visit.

Revision of typologies and trends on an interagency basis and information dissemination to law enforcement personnel on current ML/FT methods and techniques was not undertaken, except where individual law enforcement persons were exposed to formal training. However, this is a designated function of the recently constituted FIA and is to form part of its programmes

There has been limited exposure to training by administrative, investigative, prosecutorial and judicial authorities in the enforcing of the laws to combat ML and FT. This was particularly evident, in respect of the scope of predicate crimes/offences, ML/FT typologies, techniques to



ensure investigations, tracing of property that represents proceeds of crimes or used to finance terrorism and the procedures for ensuring seizure, restraint and confiscation.

The Mutual Legal Assistance in Criminal Matters Act (MLACMA) provides a wide framework for mutual assistance in criminal matters between St. Lucia and other Commonwealth and non-Commonwealth countries. The MLACMA makes provisions for obtaining evidence or information relevant to all criminal matters in relation to the country making such request and transferring of prisoners for the purpose of giving evidence.

Under the MLPA 2003 the FIA can share information relating to suspect ML or a suspicious activity report with a foreign FIU. The FIA can also enter into agreements with foreign FIUs. The MLPA 1999 provides for the courts in St. Lucia to cooperate with courts or competent authorities in a requesting state with respect to matters concerning money laundering. However, the MLACMA prohibits assistance for political crimes or requests contrary to the Constitution or the MLACMA.

The FIAA and the MLPA 2003 provide the framework for exchange of information regarding subjects of investigations with international counterparts. However, there are no set arrangements in place to deal with the exchange; this is done on a case-by-case basis. To date only one request for information exchange has been received. The authorities have had one request for mutual legal assistance from the United States. The MLP Authority keeps statistics on the number of requests for assistance received. The Police do not appear to keep statistics on requests received for information. No requests for assistance have been received with respect to FT. .

The authorities in St. Lucia provide informal mutual legal assistance to the UK and France in particular. The MLP Authority has provided assistance to the United States in the retrieving of information. A Mutual Legal Assistance Treaty exists between St. Lucia and the United States. St. Lucia is currently negotiating a treaty with France. St. Lucia provides a lot of intelligence assistance to the United Kingdom.

There are no express provisions in law or in treaties in St. Lucia that provide for the sharing of confiscated assets. There are no specific arrangements in place to coordinate seizure and forfeiture actions, apart from the legislative provisions that provide for this. Customs has carried out coordinated seizure operations and statistics on the value of goods and cash seized is being kept by Customs.

There is an Extradition Act, No. 12 of 1986 but ML and FT are not offences for which extradition can be sought. The ATA will provide for extradition of persons for FT on the basis of the counter-terrorism conventions. However, this Act is not yet in force, in addition St. Lucia must become a party to the UN Convention for the Suppression of Financing of Terrorism 1999, in order to give effect to the extradition provisions.

There will be five person employed at the FIA. It is not certain what budget the FIA will be operating with once it commences operations. Based on the scope of duties to be assigned to the FIA, doing on-site examinations of finance and finance type businesses to ensure there are



AML/CFT procedures in place, in addition to their usual FIA duties, it appears that the scope of work for five persons is too broad.

The Eastern Caribbean Central Bank (ECCB) is the supervisor and regulator of Saint Lucia's on-shore banking institutions. The ECCB assesses applications for banking licenses and conducts on-site inspections of banks including testing for compliance with AML requirements. It has authority to access all records, accounts and books of regulated institutions for inspection purposes. The ECCB under the Banking Act only has broad powers to compel a financial institution to take necessary remedial action. The ECCB may also recommend revocation of an institution's licence. The proposed amendment to the Banking Act will grant the ECCB a graduated system of intervention powers. The Minister of Finance has licensing responsibility for banks and acts on the recommendations of the ECCB when determining whether to grant a banking licence.

The ECCB has implemented a risk-based approach to supervision, using both off-site surveillance and on-site examination techniques. The staff appears to be well qualified and trained. All have received anti-money laundering training.

Regulation of the offshore sector is the duty of the Director of International Financial Services (DFS) and the Financial Services Supervision Unit (FSSU). The Director administers the Registered Agent and Trustee Licensing Act (RATLA), which provides for the regulation of all offshore entities through the registered agent and trustee. The Director's staff is comprised of six persons, four of whom are financial services regulators responsible for international insurance companies, international mutual funds, offshore banks, corporate service providers and trustees. Under the RATLA, the DFS can only recommend to the Minister, imposition of one of two possible extreme sanctions, suspension or revocation of a financial institution's licence. There are no provisions for intermediate sanctions.

The Registrar of Insurance operates under the Insurance Act, 1995 and is responsible for registering insurance companies, associations of underwriters, insurance agents, brokers and salesmen. The Registrar has broad powers covering reporting requirements, access to information, books, papers and documents, appointment of auditors, solvency and intervention. The Act does not provide for on-site inspections and there is currently no AML guidance for licensees. Staff of the Registrar's office was unfamiliar with the MLPA.

The Eastern Caribbean Securities Regulatory Commission (the Commission) was established in October 2001, pursuant to the Securities Act of St. Lucia. The Commission licenses intermediaries, oversees the securities market and supervises the Eastern Caribbean Securities Exchange. There is a shared securities exchange between the eight Eastern Caribbean states including St. Lucia, which is supervised by the Commission. The Commission has the basic legislative framework to obtain information and a wide array of powers under the Securities Act to address non-compliance with the Act. There are not much more than one or two trades on the exchange each week. Only two St Lucian companies trade over the exchange. The Commission has 5 dedicated technical staff members and one secretary.



The Commission has not conducted any on-site inspections of the securities industry of St. Lucia but they conduct due diligence on market intermediaries at the time of licensing application. On-site examinations are scheduled for December 2003 or January 2004. Market intermediaries currently licensed in St. Lucia are all banks and have been examined as banks for compliance with AML legislation.

Legislation covering general customer identification requirements includes most of the FATF standards, however it does not require financial institutions or businesses of a financial nature to identify their customers on the basis of an official or other identifying document. Guidance needs to be developed on appropriate identification documents for corporate entities and individuals in the case of occasional and usual transactions. There are no provisions requiring financial institutions to renew identification when doubts arise. Provisions in the MLPA may lead to different standards being applied in relation to the quality of identification documentation obtained by financial institutions. Additionally there are no legislative requirement for financial institutions including money remitters to include accurate and meaningful originator information on funds transfers and related messages or originator information to include name, address and account number.

With regard to the ongoing monitoring of accounts and transactions the MLPA does not specifically refer to complex, unusual large transactions or even to unusual patterns of transactions that have no apparent or visible economic or lawful purpose. There is no legal requirement for financial institutions to give special attention to business relations and transactions originating in jurisdictions that do not have adequate systems in place to deter ML or FT. There are no formal measures to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries. Neither the MLPA nor Guidelines require financial institutions to give enhanced scrutiny to wire transfers that do not contain complete originator information.

In the area of record keeping there appears to be a very good culture of record keeping for a minimum of 5 years. However there are no specific guidelines with respect to the type of information financial institutions need to collect from the customer. There is provision in the MLPA for records of transactions to be maintained for seven years but no period is specified for the record of customer identity. Guidelines stipulating that records should be kept for at least five years have only been issued to registered agents and trustees.

Most of the requirements for the general criteria for suspicious transaction reporting are addressed in the legislation however no guidelines have been issued to assist financial institutions to identify suspicious transactions. The offence of tipping off is not provided for under the ATA and no insurance specific guidelines have been issued to help identify suspicious transactions.

Legislation covering internal controls does not require the appointing of compliance officers at management level or for financial institutions to ensure that foreign branches and subsidiaries observe appropriate AML/CFT measures. No local financial institution in St. Lucia has a branch or subsidiary outside of St. Lucia.



The broad legislative framework generally addresses the integrity criteria but need to be enhanced. The amendments to the Banking Act including minimum criteria for determining whether a person is fit and proper to be a director, significant shareholder or manager of a financial institution should be enacted and implemented as soon as possible. Legislation need to be enacted to prohibit shell banks and to address due diligence for non-profit organizations.

With regard to international cooperation St. Lucia needs to enact legislation to enable the Eastern Caribbean Securities Regulatory Commission, Registrar of Insurance and the Registrar of Co-operative Societies to share information with foreign counterparts.

A substantial number of the banking sector specific requirements for customer identification have not been addressed in legislation. These include graduated customer acceptance policies and procedures, development of guidance addressing customer identification and verification for accounts opened by professional intermediaries, non-resident customers and establishment by banks of systemic procedures for identifying customers, closure of an account due to unresolved verification problems, obtaining identification information about trustees, settlers/grantors, beneficiaries and corporate vehicles, KYC responsibility in case of reliance on eligible introducers, policies and procedures for dealing with politically exposed persons and the opening of correspondent accounts and identification procedures for non-face-to-face customers.

With regard to sector specific criteria in other areas, there is partial compliance with some criteria and non-compliance with others. There are no specific legal requirements for banks to be able to aggregate and monitor significant balances and activity in customer accounts on a fully consolidated worldwide basis, have systems in place to detect unusual or suspicious patterns of activities, conduct intensified monitoring for higher risk accounts or pay particular attention when continuing relationships with respondent banks located in jurisdictions with poor KYC standards or have been identified as being non-cooperative.

In the area of internal controls banks and banking groups are not required to apply an accepted minimum standard of KYC policies and procedures on a global basis, however banks which are a part of a banking group do apply the KYC policies and procedures of their parent. There is no requirement for banks to have a routine for testing compliance against both home and host country KYC standards. Finally, there is no requirement in law permitting foreign home country supervisors or auditors to carry out on-site inspections to verify compliance with home country KYC procedures and policies of local branches or subsidiaries of foreign banks or to see inspection reports prepared by the host country.

The MLPA applies to insurance companies, which are included in the definition of financial institutions. There are no provisions in the Insurance Act or in the MLPA prohibiting insurance companies from entering business relationships or carrying out significant one-off transactions unless they have verified the identities of their customers. Guidelines need to be developed to help insurance companies recognize when they need to establish the identity of an underlying or undisclosed principal and to verify that person's identity. Insurance companies are not required to be alert to the implications of the financial flows and transaction patterns of existing policyholders.



There is no indication of the relevant supervisor requiring insurance entities to maintain records to assess initial proposal documentation, post-sale records and details of the maturity processing and/or claim settlement. The insurance sector does not appear to be compliant with the insurance sector specific criteria for internal controls, compliance and audit.

Legislation governing the securities sector incorporates most of the securities sector specific criteria. Criteria not addressed include the requirement stipulated in IOSCO Core Principle Section 12.5 and the need for licensees to develop written contracts of engagement with each customer and enhance their operational controls and appropriate segregation of key duties and functions.

The Registrar of Cooperative Societies was established under the Cooperative Societies Act 1999 for the registration and supervision of all societies. St. Lucia has 32 co-operatives and 16 credit unions. The Registrar's supervision does not include assessing compliance with AML requirements. Staff was unfamiliar with the MLPA.

While St. Lucia's AML/CFT regime has improved, there are gaps which need to be addressed. Some of these include imposition of sector specific requirements for banking, insurance and securities sector. The insurance and securities supervisory regimes should be improved and general customer identification and ongoing monitoring of accounts requirements should be enhanced.



SUMMARY OF THE MUTUAL EVALUATION REPORT ON ST. VINCENT AND THE GRENADINES

St. Vincent and the Grenadines (SVG) has ratified and implemented the Vienna Convention and the International Convention for the Suppression of The Financing of Terrorism 1999 (ICSFT) through comprehensive legislation. The Palermo Convention still awaits signing and ratification. As at September 2003, a bill was being drafted to implement the Palermo Convention.

SVG criminalizes ML consistent with the Vienna and Palermo Conventions. ML offences apply to the launderer and to a person who commits both the laundering and predicate offences and are effectively extended to all types of property that represent proceeds of crime. However, the view was expressed that the fundamental law of SVG is unlikely to be interpreted by the courts to allow for stand-alone ML offences. Predicate offences for ML extend to serious offences provided that there is a benefit involved.

FT is criminalized on the basis of the ICSFT. While FT offences are not listed as ML predicate offences, they can become so, once they are indictable or hybrid offences involving benefit. FT offences apply to any citizen of SVG wherever located and ML and FT offences apply to persons who knowingly commit acts of ML or FT. However, most ML and FT offences do not provide for inferring the intentional element of the offences from objective factual circumstances.

ML and FT offences extend to legal entities. Criminal sanctions for ML and FT are dissuasive and proportionate. There has been no ML prosecution since the enactment of an ML offence in the Drug Trafficking Offences Act 1993 due apparently to reluctance on the part of the former DPP. The elements, institutions and agencies necessary for the implementation of an effective AML/CFT system exist with the exception of the Customs Department, which requires a major review. Necessary assistance in this area should be sought forthwith, for Customs. Assistance would also be beneficial for the DPP's office and the Attorney General's office, which need legal draftspersons.

Legal measures provide for the confiscation of the proceeds of crime and laundered property of a defendant upon conviction of an offence involving benefit whether drug related or indictable or triable indictably or summarily. Property includes realizable property and while there is no specific provision to instrumentalities in the ML statute, the Court has the discretion for forfeiture of articles and instrumentalities involved in the offence as part of its sentence. The law provides for the forfeiture of money, property or instrumentalities of persons convicted of FT offences.

Provision for restraint of property of a defendant that may be subject to confiscation is adequately covered for ML and FT offences and can be done through ex parte restraint orders. The law also provides for seizure of cash being imported or exported from SVG. Provision is only made for court ordered restraint orders. The implications of this are that suspected ML connected property remains legally unfrozen until the court process can be prepared for and an order obtained from a judge.



Property of criminal organizations is liable to confiscation. Confiscation applies to property of corresponding value. SVG has no provisions for civil forfeiture. A sub-committee of the National Anti-Money Laundering Committee (NAMLC) has been appointed to look at the issue of civil forfeiture.

Legislation provides for production orders, search warrants and monitoring orders to identify and trace property suspected of being the proceeds of crime. Monitoring orders must be made by the DPP ex parte to a Judge in chambers. The Director of the Financial Intelligence Unit (FIU) has power to require the production of information from financial institutions.

Protection for innocent third parties is provided wherever property is restrained or confiscated. There are also provisions for the voiding of contracts where the parties knew or should have known they preclude the ability of authorities to recover financial claims.

The FIU only has figures for property frozen, seized, confiscated or forfeited related to money laundering since there has been no offence involving terrorist financing.

Much effort has been put into ongoing training for law enforcement personnel, prosecutors, judges and public legal sector personnel. All investigators attached to the FIU have been trained as accredited financial investigators. However with the exception of the Customs representative on NAMLC, there appeared to be a lack of awareness of ML issues among Customs management.

The AML/CFT system of SVG has no legal or legally binding provision for the identification of a terrorist, financier of terrorism or a terrorist organization. However, most banks have been queried and have checked for the existence of terrorist funds by reference to the UN lists of terrorists. A Confiscated Assets Fund has been established and provisions allow for the sharing of confiscated assets with other jurisdictions.

The FIU has developed and progressed at an impressive rate. It was established in May 2002 and is a member of the Egmont group. The FIU functions as an independent government statutory body, which reports to the Minister of Finance and NAMLC. It is the designated authority for the collection, analysis and dissemination of ML and FT suspicious transaction reports (STRs). It has police and customs officers on staff and can conduct investigations based on STRs when necessary.

Suspicious transaction reporting is mandatory for all financial institutions and persons engaged in a relevant business activity. In practice the STR system appears to be working well with reports being made promptly. The FIU has issued comprehensive guidelines for the identification of complex and unusual transactions, suspicious patterns of behaviour and the reporting of such transactions and behaviour. Reporting procedures are prescribed by law. However, the guidelines do not specifically address FT.

The Director of the FIU has the authority to require the production of information from financial institutions or relevant businesses when necessary. All financial institutions were fully supportive of the FIU. Law enforcement and regulatory information when requested from relevant



Government departments has always been provided on a timely basis in a spirit of mutual co-operation. Penalties for reporting parties who fail to comply with reporting obligations are severe. The law provides for the dissemination of information obtained by the FIU to domestic authorities and foreign counterparts.

The FIU of SVG keeps comprehensive statistics relating to STRs and money laundering investigations/prosecutions. Statistics on requests for assistance and referrals to both domestic and foreign authorities are also maintained by the FIU. Quarterly reports are prepared by the FIU for the Minister of Finance and NAMLC and annual reports are presented to the House of Assembly. The FIU carries out statistical analyses of suspicious activity reports, typologies and trends that are published in its reports.

The FIU is housed in a well-appointed, secure facility and has more than sufficient space for current staff and equipment, as well as room for future expansion. The FIU staff of eight is well trained and led by a highly motivated and well-qualified director. However, little technical equipment is available for the investigative functions currently being undertaken. The FIU's organizational structure is solid and is adequate to fulfil its current duties. There is nothing that indicates or suggests that any unauthorized outside influence has tried to compromise the FIU.

The relevant law enforcement and other agencies responsible for the implementation of SVG's AML/VFT regime include the St. Vincent and the Grenadines Police Force (SVGPF), the Customs Department, the Office of the Director of Public Prosecutions (DPP), and the FIU.

The Police Force's White Collar Crime Unit, Special Branch, Narcotics Squads and the Criminal Investigation Department are all specialized agencies within the Police Force that use a wide range of investigative techniques including undercover operations. Information is frequently forwarded to the FIU by these agencies. While the law does not make specific provisions for the use of new investigative techniques, the Commissioner of Police advised that controlled delivery methods have been used in joint operations.

The Central Intelligence Division supported by intelligence from Special Branch and the Narcotics section are responsible for ML and FT investigations working closely with the FIU. Most such investigations are conducted by the FIU. Investigations are funded through the consolidated fund, which is deemed adequate. Six police officers have received AML/CFT training from the FIU in conjunction with the Caribbean Anti-Money Laundering Programme (CALP).

The Customs Department is tasked with controlling goods entering and exiting SVG. The majority of the staff has little knowledge of AML/CFT measures. The relationship between the Police and Customs Department has been poor over the years. Few containers leaving port are subject to any sort of examination. The vessel assigned to Customs has been out of service for more than a year whilst waiting funding for repair. Airport facilities for Custom officers are minimal. Customs officers are demoralized with the lack of basic equipment and facilities. Information regarding cash seizures is not systematically stored. Customs has an investigative unit and utilizes a computerized



database linked with CCLEC. Persons departing from SVG are subject to profiling by Customs officers and the Customs Department has seen positive results.

The DPP which is authorized to prosecute ML and FT, has three attorneys and four court prosecutors from within the police force. The prosecutors have received limited ML and FT training. The DPP's office has not conducted any money laundering prosecutions to date.

The FIU is able to conduct criminal investigations arising out of suspicious activity reports. Where appropriate, matters are disclosed to the Commissioner of Police for investigation. The FIU itself does not use controlled delivery but does use many other investigative techniques including undercover operations. The FIU has on many occasions been able to compel the production of bank records etc through court orders and by letter from the director of the FIU. These methods have been highly effective in obtaining information. The FIU keeps statistics on all matters relating to ML, continually reviews typologies and trends and will collate FT statistics as they develop in the future.

The FIU has taken on a massive commitment to train relevant government agencies along with the private sector. The training program is still in its early stages but the benefit could clearly be seen from those interviewed who had received training who were positively distinguishable from those who had not.

The legislative machinery in SVG for giving effective international mutual legal assistance is in place. The framework for international cooperation is well supported by conventions, treaties and agreements. There are legal provisions, which allow SVG to give mutual legal assistance in criminal matters to Commonwealth, and non-Commonwealth countries with which SVG has signed a bilateral or multilateral treaty. Assistance includes obtaining evidence, locating or identifying persons, searches and seizures of articles, arranging for the attendance in a requesting state of a person for the purpose of giving evidence or assistance in a criminal matter, securing the transfer of prisoners, serving documents, tracing property, giving effect to a foreign court order, and obtaining freeze orders over property located in SVG. These provisions apply to AML/CFT investigations and prosecutions. ML and FT offences are extraditable.

With regard to the sharing of information, the FIU under the provisions of its enabling legislation may provide information relating to the commission of an offence to any foreign FIU and mutual legal assistance legislation also permits for the exchange of information. However, section 5 (1) of the Exchange of Information Act prohibits the disclosing of information by a regulatory authority without the consent of the source of the information. This has the clear potential to neutralize or short-circuit other provisions for furnishing information obtained under the Exchange of Information Act.

The FIU keeps adequate statistics on requests for exchange of information and responses to them. The target date for fulfilling requests for assistance is a maximum of three weeks. In respect of requests for assistance, the FIU had received 18 MLATs/Letters Rogatoires, 13 requests from foreign FIUs, 6 from international organizations, and 17 from local organizations. The FIU had



made 670 requests for information locally mainly to financial institutions, and 18 international requests. Responses to international requests for mutual assistance were generally made in a timely manner.

The police in cooperation with foreign counterparts have used techniques such as controlled delivery with reported success. Provisions for asset sharing are implemented on a policy of a 50-50 basis between the requesting state and SVG. Legal measures provide for SVG to have jurisdiction wherever an FT offence is committed thus effectively eliminating SVG as a safe haven in respect of FT offences.

The Eastern Caribbean Central Bank (ECCB) is legally responsible for the supervision of SVG's domestic financial services sector. All domestic banks and the non-bank financial institutions in SVG have been subject to on-site inspections regarding compliance with anti-money laundering requirements. In collaboration with the Offshore Finance Authority (OFA), the ECCB is also involved in the supervision of offshore banks in SVG through the assignment of an ECCB examiner to the OFA examinations. The Bank Supervision Department of the ECCB has an adequate level of qualified staff for its current assignments.

The ECCB is still without adequate powers of enforcement and sanction to effectively discharge its mandate as supervisor of the domestic banking system. Additionally, the SVG domestic banking statutes do not now provide the authorities with the power to require a bank to close down an establishment in a foreign jurisdiction. However, SVG financial institutions are not currently internationally active. The authorities advise that the Amending Banking Act is intended to finally provide the ECCB with an appropriate range of powers and a wider arsenal of sanctions to enable it to be more effective. The amendments will serve to enhance the current legal arrangements for supervisory cooperation by allowing necessary physical onsite access by overseas regulatory authorities and provide necessary powers to the supervisory authorities to take action to close overseas branches or subsidiaries where there are impediments to effective supervision.

The OFA is legally responsible for the supervision of all offshore entities including international insurance companies, and registered agents. The OFA conducted on-site inspection of all onshore banks in late 2002, and follow up inspections are currently taking place. The regular schedule for on-site inspections requires inspections of all licensed institutions and regulated businesses to be conducted every 12 to 18 months. The OFA has sanction powers, although these do not appear to apply to specific AML breaches or concerns.

The Registrar of Insurance, within the Ministry of Finance regulates domestic insurance companies. While the relevant statute allows for access to records there is currently no provision for on-going on-site examinations. Hence, no on-site examinations have yet been carried out for domestic insurance companies or an assessment of their adherence to AML/CFT standards and legal requirements.

The Registrar of Cooperatives regulates credit unions and the general level of supervision provided for that sector appears adequate. The staff of the Registrar of Cooperatives is trained and carries out



on-site reviews focusing on prudential issues. While they have also received AML training, their reviews have not yet been extended to cover AML issues.

The legal provisions and regulatory guidelines governing customer identification, monitoring of accounts and transactions, record keeping and reporting of suspicious transaction reporting as set out in legislations and AML Guidance Notes are reasonably robust and apply equally to all regulated financial institutions as well as other designated businesses. Formal KYC systems are legally required of all such entities and the law and the Guidance Notes establish the fundamental due diligence requirements that must be met. The beneficial ownership of accounts must be ascertained and anonymous accounts and accounts in fictitious names have been outlawed. The legal requirement regarding beneficial ownership also effectively captures situations involving nominee shareholders and bearer shares.

Financial institutions' legal obligations are almost fully in line with international best practice standards on compliance, audit and internal controls. However, the statute is inadequate as regards a comprehensive "fit and proper" requirement for shareholders, directors and management officers of all regulated institutions. While due diligence checks on shareholders, directors and managers are performed at the licensing stage for domestic banks, specific evaluations as to the integrity and expertise of individual directors and managers are not being done routinely or during on-site examinations. With regard to offshore institutions, while the OFA has specific power to approve or not, all directorial appointment and any changes in ownership or control, there is no specific legal requirement for applicants for banking licences to be "fit and proper" persons nor a minimum criteria for determining integrity and expertise. The supervisory regime for assessment of the integrity of the owners, directors and controllers of domestic insurance companies requires upgrading and the enshrining of fit and proper requirements.

Neither the statute nor the supporting regulations address the specific banking sector need for graduated customer acceptance policies with higher standards of diligence to be applied to high risk customers, nor is it a requirement that decisions to deal with such high risk customers be taken by senior level management. General KYC requirements notwithstanding, there are no specific legal or regulatory requirements for banks in SVG to apply stricter due diligence standards to private banking operations and customers refused banking facilities by other banks. This situation is mitigated by the fact that banks in SVG do not yet engage in private banking business; have stringent internal rules relative to non-resident customers and no longer open accounts for entities with bearer shares.

While detailed AML Guidance Notes applicable to the entire financial sector have been issued, they do not provide sector specific guidelines in respect to the insurance sector on the identification and reporting of suspicious transactions, the need for verification of underlying principals on whose behalf nominee customers act, or the need to verify recipients in instances where claims, commissions and other monies are paid to persons other than the policyholder. Additionally, there is no specific guidance on possible terrorist financing typologies.



The Registrar of the High Court regulates the one existing building society. Effectively it is unsupervised. At the request of the Government of SVG, the ECCB in 1996 carried out a full scope inspection.

There appears to be no specific legal measures to prevent vulnerable entities such as unincorporated charities, from being used as conduits for criminal proceeds or FT. One weakness in the Companies Act is that while a change of local directors to foreign directors is required to be notified, the law does not address concerns regarding the fitness of the individuals serving as directors.

The SVG statutes do not specifically address the issue of professional intermediaries nor are they listed in Guidance Notes as eligible introducers in the account opening process. The issue of politically exposed persons (PEP) is not addressed in law but is expressly dealt with in an August amendment to the AML Guidance Notes.

St. Vincent and the Grenadines's AML/CFT regime is comprehensive and is relatively strong with respect to compliance with the FATF 40+8 Recommendations. The Governments continued commitment is evident in that some identified deficiencies are to be dealt with in the proposed amendments to the Banking Act. These will specifically enhance the powers of the domestic banking supervisor, the ECCB. The other main concerns highlighted are the need to improve the AML/CFT regime for the insurance sector and strengthen CFT by providing appropriate guidance.