

**Barbados: Report on the Observance of Standards and Codes—
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for Barbados was prepared by the Caribbean Financial Action Task Force (CFATF), using the assessment methodology adopted by the FATF in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document, as well as in the full assessment report, are those of the CFATF and do not necessarily reflect the views of the Government of Barbados or the Executive Board of the IMF.

A copy of the full assessment report can be found on the website of the FATF at <http://www.CFATF.ORG>.



Caribbean Financial Action Task Force

BARBADOS

**Report on Observance of Standards and Codes (ROSC)—FATF Recommendations for
Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)**

Prepared by the Caribbean Financial Action Task Force (CFATF)

May 2008

ACCRONYMS

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| AMLA | Anti-Money Laundering Authority |
| ATA | Anti-Terrorism Act, CAP 158 |
| CBB | Central Bank of Barbados |
| CDD | Customer Due Diligence |
| DAPCA | Drug Abuse (Prevention and Control) Act, CAP131 |
| FIU | Financial Intelligence Unit |
| FCIU | Financial Crimes Investigation Unit |
| IBCs | International Business Companies |
| MACMA | Mutual Assistance in Criminal Matters Act, CAP 140A |
| ML | Money Laundering |
| MLAT | Mutual Legal Assistance Treaty |
| MLFTA | Money Laundering and Financing of Terrorism (Prevention and Control) Act, CAP129 |
| MVTs | Money Value Transfer services |
| POCA | Proceeds of Crime Act, CAP 143 |
| RBPF | Royal Barbados Police Force |
| SUTRs | Suspicious and Unusual Transactions Reports |
| TF | Terrorism Financing |

BARBADOS

Report on Observance of Standards and Codes (ROSC)—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

Prepared by the Caribbean Financial Action Task Force (CFATF)

A. Introduction

1. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering (AML) and 9 Special Recommendations on Combating the Financing of Terrorism (CFT) was prepared by the Caribbean Financial Action Task Force (CFATF).¹ The report provides a summary of the AML/CFT measures in place in Barbados and of the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The assessment is based on the information available at the time of the mission from December 4–16, 2006, and was conducted using the 2004 Assessment Methodology. The Mutual Evaluation Report on which this document is based was adopted by the CFATF during its May 5–8, 2008 plenary. The views expressed here, as well as in the full assessment report, are those of the CFATF and do not necessarily reflect the views of the Government of Barbados or the Executive Board of the IMF.

B. Key Findings

2. Barbados has criminalized money laundering (ML) broadly in compliance with international standards. However, while the definition of unlawful activity allows for a wide array of serious predicate offenses, human trafficking, corruption and bribery are not totally consistent with the requirements of the Palermo Convention. The low number of ML prosecutions and the factors attributed by the DPP for this suggest an ineffective use of ML provisions. Terrorist financing (TF) is criminalized in accordance with the TF Convention. Relevant forfeiture/confiscation powers are provided for under separate statutes. While there is no specific legislative authority to freeze terrorist funds or other assets of persons designated in accordance with S/RES/1267(1999), relevant provisions to effect restraint of property can be utilized. While the Financial Intelligence Unit (FIU) carries out its functions competently, it is hampered by a lack of resources. The law enforcement authorities and the Office of Director of Public Prosecutions are under-resourced in relation to their functions. The competent authorities continue to engage in a wide array of joint law enforcement initiatives.

¹ The evaluation team consisted of: Ms Rochelle Deleveaux (financial expert from the Central Bank of The Bahamas); Mr. Dougal James (financial expert from the International Financial Services Authority of St. Vincent & the Grenadines); Mr. Errol George (law enforcement expert from the Financial Investigation Agency of the British Virgin Islands); Mr. Kurt Rattray (legal expert from the Ministry of Justice, Jamaica); and Mr. Roger Hernandez from the CFATF Secretariat.

3. Preventive measures for financial institutions are comprehensive and generally in compliance with the FATF Recommendations. However, some of the requirements are set out in laws and regulations, while others are only enforceable on the licensees of the Central Bank of Barbados (CBB) and the Supervisor of Insurance. Regulation and supervision of the financial sector is shared among four regulatory authorities with varying supervisory powers. Except for trust and company service providers who are licensees of the CBB, there are no measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements. While the Registrar of Companies maintains a register with information on directors and registered offices of companies, there is no legislative requirement to disclose beneficial ownership information.

4. Domestic co-operation among law enforcement and supervisory authorities and other relevant government agencies is facilitated through the Anti-Money Laundering Authority (AMLA). While the Mutual Assistance in Criminal Matters Act (MACMA) allows for a wide range of mutual legal assistance for criminal matters, the instrumentalities of ML and TF are not included. Request for mutual legal assistance are routed through the Attorney General who is the Central Authority. It was not possible to assess effectiveness of the measures for Mutual Legal Assistance Treaties (MLATs) due to the fact that statistics are not sufficiently detailed in this area. ML is an extraditable offense. In general, law enforcement and the FIU can engage in a wide range of international co-operation. Comprehensive statistics are generally maintained.

C. Legal Systems and Related Institutional Measures

5. Barbados has broadly criminalized ML under the Money Laundering and Financing of Terrorism (Prevention and Control) Act (MLFTA) and specifically within the context of drug trafficking under the Drug Abuse (Prevention and Control) Act (DAPCA). ML offenses include receiving, possessing, concealing, disposing of, importing or exporting proceeds of unlawful activity. While the definition of unlawful activity allows for a wide array of serious predicate offenses, human trafficking, corruption and bribery are not totally consistent with the requirements of the Palermo Convention.

6. The offense of ML extends to any type of property and applies to persons who commit the predicate offense. Criminal liability extends to legal persons and proof of knowledge can be drawn from objective circumstances. There is some uncertainty as to the scope of extraterritoriality under the MLFTA with regard to whether it is necessary for a foreign crime to constitute a predicate offense in Barbados law. The scale of sanctions applicable to an individual and a corporate body (US\$100,000/5 years; US\$1million/25 years) for the primary ML offense is substantial and appropriately dissuasive. The low number of ML prosecutions and the factors attributed by the DPP for this suggest an ineffective use of ML provisions.

7. Terrorist financing is criminalized in accordance with the TF Convention in the Anti-Terrorism Act (ATA). The components of the terrorist financing offense are broad enough to capture funding for individual terrorists or terrorist organizations. Funds are defined in the ATA in accordance with the TF Convention. A range of secondary offenses are covered, TF offenses are predicate offenses for ML, and objective factual circumstances may be used to prove intent. Both natural and legal persons are subject to criminal sanctions, with individuals liable on conviction on

indictment to a 25 year term of imprisonment, and corporate bodies to a fine of BD\$ 2,000,000. There is no evidence of terrorist funds in Barbados and there have been no cases of TF in Barbados.

8. Relevant forfeiture/confiscation powers are provided for under Proceeds of Crime Act (POCA), MLFTA, and DAPCA. The POCA has a comprehensive forfeiture/confiscation regime which is however restricted to a narrow range of offenses. The scope of forfeiture provisions under the MLFTA, while substantially wider does not allow for the forfeiture of instrumentalities, and is limited to ML convictions. The forfeiture/confiscation regime under DAPCA covers only drug related offenses. POCA contains the most comprehensive provision for freezing/restraining property which can only be activated by a narrow range of criminal acts. There are two freezing provisions under MLFTA. Powers of search and seizure exist under POCA and DAPCA. Production or inspection orders are available under POCA. Monitoring orders can be sought under POCA and the MLFTA. Effective protection of bona fide third part rights consistent with the Palermo Convention is provided under the statutory scheme under POCA.

9. There is no specific legislative authority in Barbados to freeze terrorist funds or other assets of persons designated by the United Nations (UN) Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). However, the DPP can invoke relevant provisions of the ATA or POCA to effect restraint of property. An application for a freezing order may be made *ex parte* under the ATA. There is authority to restrain/freeze, forfeit or confiscate terrorist-related property under POCA, since terrorist acts and terrorist financing are scheduled offenses. The forfeiture scheme under the ATA is similar to that under MLFTA. There is no statutory power to authorize access to funds required to be frozen pursuant to the UN Sanctions Committee listing. Protection of bona fide third party rights is included in the ATA. No terrorist funds have been discovered in Barbados.

10. The Financial Intelligence Unit (FIU) is an administrative type FIU that was established in 2002 and operates within the framework of the AMLA. The AMLA is the designated body responsible for receiving all suspicious and unusual transaction reports (SUTRs). Analysis of SUTRs is presently done with computer-based software. Detailed analysis is hampered by lack of adequate resources (staff) within the FIU. A system of two-way feedback exists between the FIU and reporting institutions. The FIU has power to request information from any financial institutions and also has access to information from government bodies. The FIU is authorized to share information with a number of principal supervisory/regulatory authorities. The FIU has a statutory obligation to prepare and submit annual reports to the Attorney General, however due to a lack of resources, it has not been able to keep up to date with this obligation. The FIU has entered into several MOUs with Egmont affiliated FIUs.

11. Responsibility for the investigation and prosecution of ML and TF related offenses rests with the Royal Barbados Police Force's (RBPF) Financial Crimes Investigation Unit (FCIU) and the Office of the Director of Public Prosecutions. The FCIU has responsibility for completing investigations into all ML and TF related reports forwarded by the FIU, identifying and tracing criminal proceeds and conducting investigations pertaining to mutual legal assistance requests. The FCIU indicated that only a small number of reports forwarded by the FIU result in full scale investigations with fewer resulting in arrests and filing of criminal charges. The police Drug Unit (DU) has responsibility for investigating all drug offenses. The legal framework in Barbados does

not provide for the use of special investigative techniques but these are under consideration. The Police Force is understaffed and facing challenges in recruiting new officers. The Office of the Director of Public Prosecutions is largely autonomous and has responsibility for criminal prosecutions, extradition, mutual legal assistance, and asset forfeiture and confiscation proceedings. While the department is fully staffed it is under-resourced in relation to its wide range of functions. The competent authorities of Barbados continue to engage in a wide range of joint law enforcement operations and initiatives.

12. Currently Barbados has a cross-border disclosure system entailing the use of passenger embarkation/disembarkation cards to be completed by all persons entering and leaving Barbados via designated ports of entry. Suspicion of ML or TF or making of a false declaration were not mentioned as a basis for stopping and seizure of currency and negotiable instruments. The Customs and Excise Department has the authority to share information with foreign counterparts. Terrorist related funds would be subject to the same confiscation, freezing and seizing provision of any such funds. The competent authorities maintain and were able to produce adequate statistical data on cash seizures but there were no statistics to allow for an evaluation of the effectiveness of the cross-border disclosure system.

D. Preventive Measures – Financial Institutions

13. The MLFTA is the primary legislation with respect to customer due diligence (CDD) and defines those financial institutions subject to AML/CFT requirements. Financial institutions must comply with guidelines issued by the AMLA under the MLFTA. Anti-Money Laundering Guidelines were issued jointly by the AMLA and financial sector regulators and are enforceable where the requirements mirror obligations with sanctions under the MLFTA. The CBB and the Supervisor of insurance can exercise their general powers of sanctions as supervisory authorities over their licensees for non-compliance with the AML/CFT guidelines. Statistics on the use of administrative sanctions by the CBB relating to AML/CFT breaches were provided by the authorities. As such the CBB AML/CFT Guidelines and the AML/CFT Guidelines issued by the Supervisor of Insurance are considered enforceable means.

14. Customer due diligence measures are generally comprehensive and include customer identification, beneficial ownership requirements, ongoing due diligence, measures for politically exposed persons, correspondent banking and new technologies and non-face to face customers. Requirements for introduced business are also detailed. These measures are generally applied by all financial institutions. The main shortcoming is that some requirements are not set out in law or regulation as required by the FATF standards and others are only enforceable on the licensees of the CBB and the Supervisor of Insurance.

15. While there are no secrecy laws inhibiting the implementation of the FATF Recommendations, certain regulatory authorities are limited in their ability to either share or access information. Recordkeeping requirements are extensive and generally observed. However, there is no requirement in law or regulation for account files and business correspondence to be retained for five years after termination of the business relationship or for financial institutions to ensure that records are available on a timely basis to competent authorities. Wire transfer requirements are comprehensive and adhered to.

16. Requirements for monitoring of complex, unusual large transactions are only enforceable on licensees of the CBB and the Supervisor of Insurance. Financial institutions are not required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. There are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. Written findings of internal examinations of transactions is limited to transactions exceeding BD\$10,000. No countermeasures have been issued for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.

17. Financial institutions are required to report any transactions which they suspect on reasonable grounds may involve proceeds of crime. While proceeds of crime cover a wide range of predicate offenses, human trafficking, corruption and bribery are not adequately addresses in law. Financial institutions are not required to report attempted or aborted suspicious transactions. While there are safe harbor provisions for SUTR reporting, the immunity provision under the MLFTA is not referable to the mandatory reporting provision. Tipping off is prohibited. Several financial institutions indicated that they received no feedback from the FIU in relation to suspicious transaction reporting. While the number of SUTRs has been increasing since 2003, the number is low.

18. While the requirement for internal controls, policies and procedures in the MLFTA do not include the prevention and detection of TF, section 22F(b) states that the AMLA may issue guidelines in respect of the detection of funds allocated or used for the purpose of committing an offense under the ATA. There is no enforceable requirement for the designation of an AML/CFT compliance office at management level or development of policies and procedures for record retention. Requirements for an independent audit function, training in new techniques and trends in ML and TF, and screening procedures for new employees are only enforceable on the licensees of the CBB and the Supervisor of Insurance. The requirements for financial institutions to ensure that their foreign branches and subsidiaries observe equivalent AML/CFT measures or inform their home country supervisor if they cannot, are only enforceable on licensees of the CBB and the Supervisor of Insurance. There is no requirement for financial institutions to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations. Additionally, branches and subsidiaries in host countries are not required to apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ.

19. Regulation and supervision of the financial sector is shared among four primary regulatory authorities, namely the CBB, Securities Commission, Supervisor of Insurance, and the Registrar of Co-operative Societies. Each agency licenses and supervises their constituents in accordance with various statutes, regulations and guidelines. A framework for regulating and supervising Money Value Transfer (MVT) services provided by entities outside the present supervisory regime is in the process of development.

20. The CBB licenses, regulates and supervises commercial banks and offshore banks, finance companies, trust companies and merchant banks. Onsite and offsite examinations are conducted to assess the level of compliance with relevant statutes. The Securities Commission regulates and supervises the securities industry and conducts on-site examinations in conjunction with the CBB.

The Supervisor of Insurance is responsible for domestic and offshore insurance companies. Onsite inspections have been conducted by examinations staff. The Registrar of Co-operatives Societies is responsible for credit unions and co-operative societies. Off-site monitoring and on-site examination are conducted by the staff of the Co-operative Department.

21. Staff of the various regulatory authorities are suitably qualified for their positions and trained in AML/CFT matters. While the regulatory authorities are adequately funded, the Registrar of Co-operatives has an inadequate number of staff.

22. The CBB has adequate inspection powers under the relevant statutes. On-site inspections include comprehensive reviews of the AML/CFT framework of each licensee and transaction sampling. The Securities Commission's powers of inspection and compelling production or access to records are limited. The Supervisor of Insurance and the Registrar of Co-operatives have powers of inspection and access to all books and records of their respective licensees.

23. Criminal sanctions for AML/CFT breaches cover the areas of suspicious transactions reporting, record keeping and disclosure of information. Criminal sanctions are applicable to natural and legal persons and officers of licensees of all supervisory agencies. In addition to the above, the CBB has general sanctioning powers which provide for a range of penalties up to suspension of licenses. The Securities Commission has no administrative power to institute sanctions for AML/CFT or general sanctioning powers. The Supervisor of Insurance has the general power to issue directions following any inspection. Failure to comply with a direction is punishable. The Registrar of Co-operatives has no general sanctioning powers for unsafe and unsound practices.

24. The CBB utilizes fit and proper criteria approving directors, shareholders, beneficial owners and senior executive officers of licensees. The Securities Commission carries out limited due diligence on directors and senior management. There are no specific provisions dealing with the application of fit and proper criteria. The Supervisor of Insurance conducts due diligence on beneficial owners, directors and managers to ensure that they meet fit and proper requirements. There is no provision for the Registrar of Co-operatives to vet the appointment of senior management utilizing fit and proper criteria.

25. Both the CBB and the Supervisor of Insurance apply prudential regulatory and supervisory measures for AML/CFT purposes. The measures applied by the Securities Commission are not as stringent. AML/CFT risk is determined according to the size of the securities entity and whether or not it is regulated by another domestic regulator. Statistics for on-site inspections by all regulatory authorities demonstrate adequate coverage of relevant licensees. Most on-site examinations include an AML/CFT component.

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

26. The general definition of financial institution under the MLFTA would include the activities of DNFBPs as defined by the FATF. Except for trust and company service providers who are licensees of the CBB, there are no measures to monitor and ensure compliance of DNFBPs with AML/CFT requirements. No guidelines have been issued to DNFBPs except for those which are licensees of the CBB.

F. Legal Persons and Arrangements & Non-Profit Organizations

27. Under the Companies Act, the Registrar of Companies maintains a register with information on directors and registered offices of companies. There is no legislative requirement for companies to disclose beneficial ownership information. Companies are required to prepare and maintain at their registered office by-laws, shareholder and debenture holder information. Public access is possible on payment of a fee. International Business Companies (IBCs) are required to provide ultimate beneficial shareholder information on first application for registration to the office of the Director of International Business.

28. International trusts operate under the International Trust Act and are defined as financial institutions under the MLFTA. They are required to maintain information on all parties to the trust. Additionally, a trustee of an international trust must file information on the settlor and protector of the trust with the Director of International Business. Trust services in Barbados are provided mainly by the licensees of the CBB. Ongoing due diligence is required in the context of changes to any parties to the trust. This information is available to the relevant domestic supervisory authorities. While the DNFBPs activities of lawyers and accountants are included in the AML/CFT legal framework, there are no measures for monitoring and ensuring compliance with AML/CFT requirements in particular retention and control information for trusts. The same applies for international trusts.

29. The Charities Act provides a fairly elaborate framework for the registration and administration of charities. Charities are required to be registered with the Registrar of Corporate Affairs and Intellectual Property. Charities are required to keep proper accounting records. Information exchange regarding charities between the Registrar and other government departments is also possible. Sanctions for breaches of the Charities Act are not dissuasive.

G. National and International Co-operation

30. The AMLA is the national body responsible for AML/CFT policy in Barbados. Members of the AMLA include law enforcement and supervisory authorities and other relevant government agencies. Monthly meetings facilitate information sharing. The FIU maintains good relationships with other domestic competent authorities and reporting entities. The law enforcement authorities maintain a collaborative relationship among various agencies. The supervisory authorities collaborate in the performance of their functions. The review procedures of the AML/CFT infrastructure allows for formulation and drafting of new legislative requirements through a consultative process. The AML/CFT regime is under a continuous review process as attested by the various legislative amendments and other updates.

31. Barbados has signed and ratified the Vienna, Palermo and Terrorist Financing Conventions. Human trafficking, corruption and bribery are designated categories of offenses which are not adequately provided for in legislation. Barbados has given effect to UN Resolutions S/RES/1267(1999) and S/RES/1373(2001) by passing the ATA, however there is no requirement to freeze terrorist funds or other assets of persons designated by the UN Al-Qaida and Taliban Sanctions Committee.

32. While the Mutual Assistance in Criminal Matters Act (MACMA) allows Barbados to provide for a wide range of mutual legal assistance in criminal matters, the instrumentalities of ML and TF are not included. Provisions of the Act facilitate reciprocal assistance between Barbados and other Commonwealth and non-Commonwealth countries. Dual criminality is a precondition with the substance of the offense determining whether it is also a criminal offense in Barbados. There are provisions facilitating international co-operation under other legislation. Barbados has concluded a MLAT with the United States covering reciprocal assistance in investigation and proceedings relating to criminal matters. Requests for mutual legal assistance are routed through the Attorney General who is the Central Authority. Grounds for refusal of a request is on a discretionary basis and does not include fiscal matters, secrecy or confidentiality requirements. Compulsory evidence gathering and forfeiture powers under POCA are not available to the Central Authority. While statistics on MLATs were presented, it was not possible to assess effectiveness due to the limited number of MLATs.

33. ML is an extraditable offense under the Extradition Act. Extradition in connection with crimes of a political nature or request for purposes of prosecuting or punishing on the basis of race, tribe, religion, sex, nationality or political opinion will be refused. Extradition requires the establishment of dual criminality. Terrorism and TF are extraditable and subject to the same requirements and conditions for extradition as other similar offenses.

34. In general, law enforcement and the FIU can engage in a wide range of international co-operation. They attempt to render assistance to foreign authorities in a timely fashion and there is no legal hindrance to the constructive and effective provision of such assistance. Some supervisory authorities in Barbados have different constraints on sharing information with international counterparts.

H. Other Issues

35. Most of the competent authorities have adequate resources to carry out their functions. However, the FIU, law enforcement and prosecutorial authorities and the Registrar of Co-operative Societies are inadequately staffed.

36. Comprehensive statistics are generally maintained. However, there are no statistics on cross-border declaration reports and insufficient details on mutual legal assistance requests.

Summary Table of Observance and Key Recommendations

| FATF 40+9 Recommendations ² | Key Assessor Recommendations |
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| 1. Legal System and Related Institutional Measures | |
| Criminalization of Money Laundering R. 1 – LC R. 2 – LC R. 32 – LC | <ul style="list-style-type: none"> • The authorities should review the adequacy of the legislative coverage of human trafficking, corruption and bribery to ensure coverage of all designated categories of offenses. • The different <i>mens rea</i> elements of money laundering offenses under the MLFTA and section 19 of DAPCA should be harmonized. • The language of section 4 of the MLFTA should be reviewed with a view to removing the current limitation which requires that there be an intention for the extraterritorial act to be also committed in Barbados |
| Criminalization of Terrorist Financing SR. II – C R. 32 – LC | |
| Confiscation, freezing, and seizing of proceeds of crime R. 3 – PC R. 32 – LC | <ul style="list-style-type: none"> • The authorities should consider reviewing the forfeiture/confiscation regime to ensure that all serious offenses are covered; the various statutes are rationalized as far as possible to provide greater certainty in application. Specific attention should be given to adjusting the MLFTA forfeiture scheme so as to incorporate appropriate balancing features in keeping with recent case law. Further there should be greater particularity on various aspects of any approach, including factors to be taken into account by the court before issuing orders; coverage of instrumentalities; bona fide third party rights; variation/discharge of orders. • The coverage of instrumentalities under POCA should be extended to ensure property intended for use in the commission of the offense is caught. • The definition of “scheduled offense” under POCA should be extended to incorporate the serious offenses contemplated by the FATF’s “designated categories of offenses” • A specific provision should be enacted for the forfeiture of instrumentalities in MLFTA • Appropriate powers of production and inspection should be introduced in the MLFTA. For those offenses under DAPCA falling outside the scope of the POCA “scheduled offenses”, similar powers should also be incorporated. • The definitions of “financial institutions” under POCA and the MLFTA should be harmonized. |

² **Compliant (C)**: the Recommendation is fully observed with respect to all essential criteria. **Largely compliant (LC)**: there are only minor shortcomings, with a large majority of the essential criteria being fully met. **Partially compliant (PC)**: the country has taken some substantive action and complies with some of the essential criteria. **Non-compliant (NC)**: there are major shortcomings, with a large majority of the essential criteria not being met. **Not applicable (NA)**: a requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country.

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| | <ul style="list-style-type: none"> • Section 60 of POCA should be amended to enable government departments/entities, on appropriate grounds, to lodge objections to the disclosure of information. The scheme under section 57 in respect of the Commissioner of Inland Revenue may provide a useful precedent. • Section 6A (4) of the MLFTA should be amended to enable Government Departments to object to the release of information to the FIU Director on appropriate grounds. Section 57 of POCA as a guide requires the FIU Director to access data from Government departments only on the authority of a court order, as under sections 55 and 60 of POCA in relation to the DPP. • The standard of proof under sections 9 and 17 of POCA (abscondence) should be adjusted to explicitly require the civil standard. • The civil forfeiture scheme under section 47 of the DAPCA should be amplified to address such matters as the procedures to be followed and standard of proof. |
| <p>Freezing of funds used for terrorist financing SR. III – PC R. 32 – LC</p> | <ul style="list-style-type: none"> • The authorities incorporate into legislation requirements, a special mechanism to enable the freezing/restraint of assets owned or controlled by persons/entities designated by the UN Sanctions Committee, in keeping with UN Security Council Resolution 1267 of 1999. The requirements should also confer power to authorize the release of funds required to be frozen, for the purpose of meeting basic expenses associated with, e.g., the accused’s reasonable subsistence or defense of criminal proceedings. The 2002 Commonwealth Model Legislative Provisions on the “specified (listed) entity” regime provide a useful guide. • The authorities should critically review the freezing/restraint and forfeiture regimes under the ATA and POCA, with a view to amending the legislation to provide for a uniform approach to these measures. • The authorities should review the grounds needed to support an application for a freezing order under section 8(1) of the ATA, so as to ensure consistency between local cases and those arising from mutual legal assistance requests. • Expand the scope of the MLFTA to incorporate TF in sections 9-11. |
| <p>The Financial Intelligence Unit and its functions R. 26 – LC R. 30 – PC R. 32 – LC</p> | <ul style="list-style-type: none"> • The FIU should publicly release all outstanding annual reports and include in such reports, statistics, typologies and trends as well as information regarding its activities. • The FIU should seek to enhance the level of AML/CTF awareness within the local financial services sector with a view to providing more detailed guidance to reporting institutions as to their reporting obligations under Section 8 (b) of the MLFTA. This would seek to address concerns of possible under-reporting by financial institutions. • Authorities should consider giving the FIU greater access or control of its finances so as to enhance its current structure. This would allow the FIU to maintain and where possible increase its current level of staffing and further develop its IT capabilities so as to conduct more detailed analysis and investigation of SUTRs. |

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| | <ul style="list-style-type: none"> • The FIU should seek to follow through on its plans to further upgrade its IT capabilities. This would diminish its reliance on manual processes and the older and less reliable electronic storage systems (Microsoft access) currently being utilized to handle and store information. • While the FIU was able to produce adequate statistics relating to SUTRs, it should seek to broaden these statistics so as to include prescribed predicate offenses linked to SUTRs filed by reporting institutions. |
| <p>Law enforcement, prosecution and other competent authorities R.27 – C R. 28 – C R. 30 – PC R. 32 – LC</p> | <ul style="list-style-type: none"> • The authorities should consider implementing the necessary legal framework and guidelines to provide for use of special investigative methods and techniques (electronic surveillance, waiving or postponing arrests and controlled deliveries) by law enforcement agencies to advance ML, TF and other serious criminal investigations. • The prosecutorial and law enforcement agencies should strive to maintain and where necessary expand the type of ML and TF statistical data currently held by each agency. This will allow authorities to better review and measure the effectiveness of the country’s AML/CFT policies and programs on an ongoing basis. |
| <p>Cross Border Declaration or disclosure SR. IX– LC</p> | <ul style="list-style-type: none"> • The competent authorities should seek to broaden the type of statistical data maintained in relation to the cross-border declaration system. Apart from assisting the authorities in measuring the effectiveness of the cross-border declaration system, it will also assist in identifying existing weaknesses thus allowing the competent authorities to enhance the system where necessary so as to facilitate and ensure stricter compliance. • Suspicion of money laundering or terrorist financing or making a false declaration should provide grounds for stopping and seizure of currency and negotiable instruments. • The competent authorities should consider including penalties for the making of false declarations in accordance with the relevant section of the Customs Act on the Passenger Embarkation/Disembarkation card. |
| 2. Preventive Measures: Financial Institutions | |
| <p>Risk of money laundering or terrorist financing</p> | |
| <p>Customer due diligence, including enhanced or reduced measures R. 5 – PC R. 6 – PC R. 7 – LC R. 8 – PC</p> | <ul style="list-style-type: none"> • Financial institutions should be legislatively required to; <ul style="list-style-type: none"> ○ undertake CDD measures for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, or where there is a suspicion of money laundering or terrorist financing, or where the financial institution has doubts about the veracity or adequacy of previously obtained CDD; ○ verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person; ○ determine who are the natural persons that ultimately own or control the customer; ○ conduct on-going due diligence on business relationships; ○ verify individual customer identity using reliable, independent source documents, data or information (identification data); • Simplified CDD measures should not be acceptable whenever there is a |

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| | <p>suspicion of ML or TF.</p> <ul style="list-style-type: none"> • The enforceability of the following requirements should be extended from the licensees of the CBB and the Supervisor of insurance to all other financial institution; <ul style="list-style-type: none"> ➢ Scrutiny of transactions and updating of data or documents collected under the CDD process ➢ Measures for high and low risk categories of customers ➢ Timing of verification and failure to complete CDD and application of CDD requirements to existing customers. • The authorities should make the requirements for politically exposed persons as stated in the CBB and Supervisor of Insurance’s AML/CFT Guidelines enforceable on all financial institutions. • Financial institutions in gathering information about the quality of a respondent’s supervision should ascertain whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. • The authorities should make the requirements for non-face to face customers in the AML/CFT Guidelines enforceable on all financial institutions. |
| <p>Third parties and introduced business R. 9 – PC</p> | <ul style="list-style-type: none"> • The authorities should consider making the requirements for third party and introduced business as stipulated in the CBB AML/CFT Guidelines enforceable on all other financial institutions. • Financial institutions should be required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29. • Authorities should consider advising financial institutions about countries from which third parties that meet the conditions of being regulated and supervised and comply with CDD requirements can be based. |
| <p>Financial institution secrecy or confidentiality R. 4 – PC</p> | <ul style="list-style-type: none"> • The MLFTA should be amended to specify the reason for inspections by the AMLA i.e. review of compliance with MLFTA and AML/CFT guidelines generally • The FIA should be amended to allow the CBB to share information with domestic regulators • The CSA should be amended to permit the Registrar of Cooperative Societies to share information with domestic and foreign regulators without having to obtain a Court Order • An explicit legal provision allowing the Supervisor of Insurance to share information with other regulators should be enacted. • The Ministry of Economic Affairs and Development should be authorized to access information from its licensees and be able to share information appropriately with other competent authorities. |
| <p>Record keeping and wire transfer rules R. 10 – NC SR. VII –PC</p> | <ul style="list-style-type: none"> • The MLFTA should be amended to require the retention of all necessary records on all transactions for a period of five years after termination of the transaction; • Financial institutions should be legislatively required to maintain records of account files and business correspondence for at least five years following the termination of an account or business relationship or longer if requested |

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| | <p>by a competent authority.</p> <ul style="list-style-type: none"> • Financial institutions should be legislatively required to ensure that all customer and transaction records and information are available on a timely basis. • Stand-alone money remitters should be monitored for compliance with the requirements of SR VII. |
| <p>Monitoring of transactions and relationships R. 11 – PC R. 21 – NC</p> | <ul style="list-style-type: none"> • The requirements in the AML/CFT Guidelines should be enforceable on all financial institutions; • The AML/CFT guidelines should specifically require the retention of the findings of the internal examinations of all transactions for at least five years. • The AML/CFT guidelines should provide specific guidance with regard to requiring special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; • Written findings of all transactions with no apparent economic or lawful purpose from countries that do not or insufficiently apply the FATF Recommendations should be available for competent authorities; • Authorities should put in place measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries; • Authorities should consider issuing instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations. |
| <p>Suspicious transaction reports and other reporting R. 13 – LC R. 14 – PC R. 19 – C R. 25 – PC SR. IV – LC</p> | <ul style="list-style-type: none"> • The MLFTA should be amended to require the reporting of attempted or aborted transactions suspected of being involved in ML or TF. • The FIU should provide feedback to financial institutions with regard to suspicious transaction reports. • The FIU should maintain statistics on the number of currency exchanges of \$10,000 or more submitted. • Section 22A(5) of the MLFTA should be amended to remove the reference to voluntary reporting by financial institutions, and section 22A(6) should be revised to make it clear that immunity against liability applies to the financial institutions reporting under sections 8(1)(b) and (h) of the Act. |
| <p>Internal controls, compliance, audit and foreign branches R. 15 – PC R. 22 – PC</p> | <ul style="list-style-type: none"> • All legislative requirements for internal controls, compliance and audit should include the imposition of penalties and sanctions for failure to comply. • All financial institutions should be required to designate an AML/CFT compliance officer at management level and develop policies and procedures for record retention. • Requirements for an independent audit function, training in new techniques and trends in ML and TF, and screening procedures for new employees |

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| | <p>should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions.</p> <ul style="list-style-type: none"> • The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the requirements of Barbados and the FATF should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions. • Financial institutions should be required to pay particular attention that their foreign branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with requirements in Barbados and the FATF Recommendations. • Branches and subsidiaries in host countries should apply the higher standard where the minimum AML/CFT requirements of the home and host countries differ to the extent that host country laws and regulations permit. • The requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures should be extended from the licensees of the CBB and the Supervisor of Insurance to all financial institutions. |
| <p>Shell banks R. 18 – C</p> | <ul style="list-style-type: none"> • |
| <p>Supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) R. 17 – LC R. 23 – PC R. 25 – PC R. 29 – LC R. 30 – PC R. 32 – LC</p> | <ul style="list-style-type: none"> • The Securities Commission and the Registrar of Co-operative Societies should be given the administrative power to institute sanctions for AML/CFT breaches. • All regulators except for the CBB and the Supervisor of Insurance should have general powers of sanctions to effectively address breaches by licensees. • The Securities Commission and Registrar of Co-operatives should be given the power of approval over the appointment of directors and senior management and ownership of significant or controlling interests of their licensees. • The Securities Commission and the Registrar of Co-operatives should be required to use fit and proper criteria in approving directors, senior management and ownership of significant or controlling interests of their licensees. • There is need for the development and implementation of a framework for regulating and supervising MVT services that are not licensees of the Central Bank. • The Securities Commission should have the authority to conduct inspections of financial institutions, including on-site inspections to ensure compliance. |
| <p>Money value transfer services SR. VI – NC</p> | <ul style="list-style-type: none"> • It is recommended that the authorities proceed in developing a framework for the regulation and supervision of MVT services not provided by licensees of the CBB. |
| 3.Preventive Measures: Non-Financial Businesses and Professions | |
| <p>Customer due diligence and record-keeping</p> | <ul style="list-style-type: none"> • It is recommended that the authorities enact measures to apply the requirements of Recommendations 5, 6, 8 to 11, and 17 to DNFBPs not |

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| R. 12 – NC | licensed by the CBB. |
| Suspicious transaction reporting R. 16 – NC | <ul style="list-style-type: none"> It is recommended that the authorities enact measures to apply the requirements of Recommendations 5, 6, 8 to 11, and 17 to DNFBPs not licensed by the CBB. |
| Regulation, supervision, monitoring, and sanctions R. 24 – NC R. 25 – PC | <ul style="list-style-type: none"> It is recommended that the authorities take measures to ensure that the requirements of Recommendations 24 and 25 should apply to DNFBPs not licensed by the CBB. |
| Other designated non-financial businesses and professions R. 20 – C | |
| 4. Legal Persons and Arrangements & Nonprofit Organizations | |
| Legal Persons–Access to beneficial ownership and control information R. 33 –PC | <ul style="list-style-type: none"> The authorities should consider improving the present system for access to beneficial ownership by establishing a complementing national registry. The authorities should enact legislative requirements for legal persons to disclose beneficial ownership information. |
| Legal Arrangements–Access to beneficial ownership and control information R. 34 – PC | <ul style="list-style-type: none"> It is recommended that the authorities should implement measures for monitoring and ensuring compliance of international trusts supervised by the Ministry of Economic Affairs and Development, lawyers and accountants with AML/CFT requirements i.e. retention of beneficial ownership and control information. |
| Nonprofit organizations SR. VIII – LC | <ul style="list-style-type: none"> The authorities should carefully consider the FATF’s 2002 Best Practices Paper on Special Recommendation VIII, which advocates a number of measures for tightening the regime for NPO’s, including the incorporation of mechanisms to verify the actual allocation of charitable funds to the intended beneficiaries. Revise the sanctions for breaches of the Act to make them appropriately dissuasive in effect. |
| 5. National and International Cooperation | |
| National cooperation and coordination R. 31 – C R. 32 – LC | |
| The Conventions and UN Special Resolutions R. 35 – LC SR. I – PC | <ul style="list-style-type: none"> The authorities should fully implement; (i) the Palermo Convention by specifically legislating for human trafficking and updating the corruption/bribery laws; (ii) UN Resolutions S/RES/1373(2001) by explicitly legislating a mechanism to freeze assets of UN designated entities. |
| Mutual Legal Assistance R. 36 – PC R. 37 – C R. 38 – PC SR. V – PC R. 32 – LC | <ul style="list-style-type: none"> The definition of “serious offenses” under MACMA should be revised to make it applicable to offenses attracting at least a 4-year custodial penalty, in accordance with the Palermo Convention. The MACMA provisions dealing with restraint, forfeiture and confiscation should be amended to ensure instrumentalities of, or intended for use in, the relevant offenses are covered. The range of evidence-gathering powers available for the satisfaction of mutual assistance requests should be reviewed. In particular, monitoring order and other powers under POCA should be examined with a view to extending their application to serious offenses committed locally or abroad. |

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| | <ul style="list-style-type: none"> • The authorities should consider devising and applying mechanisms for dealing with dual jurisdictional conflict. • The authorities should consider increasing their capacity for information exchange under section 6C of the MLFTA by seeking to negotiate bilateral agreements or MOU's with foreign states. • The authorities should consider negotiating with the UK Government for another MLAT covering areas outside drugs dealing; and generally seek opportunities to progressively conclude MLAT's with a broader range of countries. • MACMA should be amended to enable Barbados or foreign states to seek reciprocal assistance in obtaining forfeiture/confiscation orders in the jurisdiction of the other country, where the suspect has been convicted of a serious offense in the requesting state. In particular, where Barbados's assistance is being sought, the forfeiture/confiscation powers under POCA should be made available. • The establishment of a dedicated forfeiture fund whose proceeds should be earmarked for law enforcement or other deserving purposes should be considered. • Extension of the existing statutory coverage of asset sharing with other countries so that the facility is available in cases of all serious crimes should be considered. |
| Extradition R.39 – C R.37 – C SR.V – PC R. 32 – LC | |
| Other Forms of Cooperation R. 40 – LC SR. V – PC R. 32 – LC | <ul style="list-style-type: none"> • The Ministry of Economic Affairs and Development should be authorized to share information with foreign counterparts. • The Registrar of Co-operative Societies should be empowered to share information with foreign counterparts without a Court Order • The authorities should maintain statistics on spontaneous referrals made by the FIU to foreign authorities. |
| 6. Other Issues | |
| Other relevant AML/CFT measures or issues | |
| General framework – structural issues | |

Authorities' Response

The following reflects Barbados' response to the Report on Observance of Standards and Codes (ROSC)—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT), prepared by the CFATF for publication by the International Monetary Fund. Barbados is pleased to take the opportunity to comment on a few points in the ROSC in an effort to present a more accurate representation of its AML/CFT framework.

For many years, Barbados has enjoyed and continues to enjoy a sterling reputation as a safe jurisdiction to conduct and transact legitimate business. The country also possesses a relatively low crime rate and social and political stability. The CFATF's Mutual Evaluation Report on Barbados that was adopted in June 2008 states, "*Barbados is a thriving and highly reputable centre for tourism, international business and financial services. Tourism and the financial services are the main sources of foreign exchange earnings...*" The Mutual Evaluation Report also referred to IMF Staff Report for the 2006 Article IV Consultation which stated of Barbados that "*Per capita income is the highest in the region and the country enjoys an investment grade rating...Business conditions are adequate, and corruption and crime are low.*"

The relevant Barbadian authorities assess, reassess and implement measures to improve the country's AML/CFT framework in the financial, legal and law enforcement sectors. In paragraph 29 of the ROSC, a general comment is made that there is an absence of measures for monitoring and ensuring compliance with AML/CFT requirements for retention of beneficial information and control information of trusts and international trusts. The comment is however incorrect as far as it relates to international trusts supervised by the Central Bank of Barbados.

In addition, by virtue of the Mutual Assistance in Criminal Matters Act Cap. 140 A of the Laws of Barbados, Barbados possesses the capacity to engaged in a wide range of legal assistance and cooperation with overseas territories. While there are a limited number of signed MLATs, this fact does not in any way hamper or obstruct the country's ability to render legal assistance. The legislation contemplates and facilitates assistance to both Commonwealth and non-Commonwealth territories. It is therefore submitted that the low number of MLATs is not an ideal gauge of the effectiveness of Barbados' capacity to render legal assistance to overseas jurisdictions.

Barbados remains committed to the dual amelioration of its AML/CFT regime and the improvement in the effectiveness of the operations of its financial, legal and law enforcement sectors. The country is of the view that both objectives can and will be achieved with the imminent corrective legislative and operational measures.