



# Mutual Evaluation Report

Anti-Money Laundering and  
Combating the Financing of  
Terrorism

## The Commonwealth of Dominica

JULY 2 2009

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## TABLE OF CONTENTS

|  |            |
|--|------------|
| <b>PREFACE - Information and methodology used for the evaluation of the Commonwealth of Dominica</b> .....   | 5          |
| <b>Executive Summary</b> .....   | 6          |
| <b>1. GENERAL</b> .....  | <b>11</b>  |
| General information on The Commonwealth of Dominica .....  | 11         |
| 1.2 General Situation of Money Laundering and Financing of Terrorism .....   | 17         |
| 1.3 Overview of the Financial Sector and DNFBPs.....   | 19         |
| 1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements .....  | 22         |
| <b>2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES</b> .....  | <b>32</b>  |
| 2.1 Criminalisation of Money Laundering (R.1 & 2).....   | 32         |
| 2.2 Criminalisation of Terrorist Financing (SR.II).....  | 37         |
| 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32) .....   | 40         |
| 2.4 Freezing of funds used for terrorist financing (SR.III).....   | 43         |
| 2.5 The Financial Intelligence Unit and its functions (R.26) .....   | 47         |
| 2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)..... | 57         |
| 2.7 Cross Border Declaration or Disclosure (SR.IX) .....   | 63         |
| <b>3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS</b> .....   | <b>70</b>  |
| 3.1 Risk of money laundering or terrorist financing .....  | 72         |
| 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8).....   | 72         |
| 3.3 Third parties and introduced business (R.9).....   | 84         |
| 3.4 Financial institution secrecy or confidentiality (R.4) .....   | 86         |
| 3.5 Record keeping and wire transfer rules (R.10 & SR.VII) .....   | 88         |
| 3.6 Monitoring of transactions and relationships (R.11 & 21) .....   | 91         |
| 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV).....  | 93         |
| 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22).....   | 97         |
| 3.9 Shell banks (R.18) .....   | 101        |
| 3.10 The supervisory and oversight system - competent authorities and SROs.....  | 102        |
| 3.11 Money or value transfer services (SR.VI) .....  | 118        |
| <b>4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS</b> .....  | <b>120</b> |
| 4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11, & .. 17) 120   |            |
| 4.2 Suspicious transaction reporting (R.16) .....  | 126        |
| 4.3 Regulation, supervision and monitoring (24-25).....  | 128        |
| 4.4 Other non-financial businesses and professions.....  | 130        |
| <b>5. LEGAL PERSONS AND ARRANGEMENTS &amp; NON-PROFIT ORGANISATIONS</b> .....  | <b>131</b> |
| 5.1 Legal Persons – Access to beneficial ownership and control information (R.33).....   | 131        |
| 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34).....  | 134        |
| 5.3 Non-profit organisations (SR.VIII) .....   | 135        |
| <b>6. NATIONAL AND INTERNATIONAL CO-OPERATION</b> .....  | <b>139</b> |
| 6.1 National co-operation and coordination (R.31).....   | 139        |
| 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I).....  | 142        |
| 6.3 Mutual Legal Assistance (R.36-38, & SR.V).....   | 148        |
| 6.4 Extradition (R.37, 39, SR.V) .....   | 153        |
| 6.5 Other Forms of International Co-operation (R.40, SR.V, R.32) .....   | 156        |
| <b>7. OTHER ISSUES</b> .....   | <b>160</b> |

|  |     |
|--|-----|
| 7.1 Resources and statistics .....   | 160 |
| 7.2 Other relevant AML/CFT measures or issues .....  | 161 |
| 7.3 General framework for AML/CFT system (see also section 1.1) .....  | 161 |
| <b>TABLES</b> .....  | 162 |
| Table 1. Ratings of Compliance with FATF Recommendations.....  | 162 |
| Table 2: Recommended Action Plan to Improve the AML/CFT System .....   | 174 |
| <b>ANNEXES</b> .....   | 192 |
| Annex 1: List of abbreviations .....   | 192 |
| Annex 2: Details of all bodies met on the on-site mission - Ministries, other government<br>authorities or bodies, private sector representatives and others. .... | 192 |

## **PREFACE - Information and methodology used for the evaluation of the Commonwealth of Dominica**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Dominica was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>1</sup>. The evaluation was based on the laws, regulations and other materials supplied by Dominica, and information obtained by the evaluation team during its on-site visit to Dominica from September 15<sup>th</sup>, to September 26<sup>th</sup>, 2008 and subsequently. During the onsite the evaluation team met with officials and representatives of all relevant Dominica government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the Mutual Evaluation Report.
2. The Commonwealth of Dominica had its first CFATF Mutual Evaluation in April of 1999 and the second round Mutual Evaluation in September of 2003. This Report is the result of the third Round Mutual Evaluation of the Commonwealth of Dominica as conducted in the period stated herein above. The examination team consisted of Mrs. Jo-Ann WILLIAMS-ROBERTS, Legal expert (British Virgin Islands), Mrs. Geraldine DAVIS YOUNG, Law Enforcement expert, (Belize), Ms. Marsha SEFERINA, Financial expert, (Netherlands Antilles) and Ms. Janet RICHARDS, Financial expert (Trinidad and Tobago). The team was led by Mr. Jefferson CLARKE, the Law Enforcement Advisor of the CFATF Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of the Commonwealth of Dominica.
3. This report provides a summary of the AML/CFT measures in place in the Commonwealth of Dominica as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out the Commonwealth of Dominica's levels of compliance with the FATF 40+9 Recommendations (See Table 1).

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

## Executive Summary

### Executive Summary

#### 1. Background Information

1. This Report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in the Commonwealth of Dominica at the time of the on-site visit (September 15<sup>th</sup> – 26<sup>th</sup> 2008), in connection with the 3<sup>rd</sup>-round mutual evaluation) and immediately thereafter. The Report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out the Commonwealth of Dominica's level of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Commonwealth of Dominica's government recognizes the importance of an effective AML/ CFT regime and continues to actively update its AML/CFT framework.
2. The Commonwealth of Dominica, commonly known as Dominica, is an island nation in the Caribbean Sea. Dominica is a parliamentary democracy within the Commonwealth of Nations. The current system of government consists of three branches: executive, legislative and judiciary. The Commonwealth of Dominica has a small free-market economy which is being largely driven by tourism, agriculture and the construction sectors. Its fledgling International Business Sector is generally underdeveloped and has made very little contribution to the gross domestic product.
3. Dominica's most prevalent offence for generating illegal proceeds is drug trafficking where the proceeds are laundered through the purchase of real estate, vehicles and also through the remitting of funds to individuals in other jurisdictions.
4. Financial sector supervisors are the Eastern Caribbean Central Bank, (ECCB), and the Financial Services Unit, (FSU).
5. The Commonwealth of Dominica's AML/CFT framework is comprised of the Ministry of Finance which has oversight of the FSU, the prudential oversight authority, the ECCB, the Minister of Legal Affairs who has responsibility for the FIU and the Money Laundering Supervisory Authority (MLSA), the Office of the Attorney General, which is the regulator for the Suppression of the Financing of Terrorism Act (SFTA), and the Ministry of National Security, which is responsible for the Dominica Police Force, as investigator of predicate offences and which has also been given special responsibilities under the SFTA.
6. The national authorities have not performed any detailed AML/CFT risk assessment. As a consequence, the application of AML/CFT measures to the financial system is not risk based.

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

7. The requirement for the criminalisation of money laundering as an offence on the basis of the Vienna and Palermo Conventions have to a large extent been

incorporated into the primary legislation of Dominica i.e. the Money Laundering (Prevention) Act and the Proceeds of Crime Act.

8. It should be noted however that the physical and material elements of articles of the Convention are not covered in the definition of the money laundering offence.
9. “Unlawful activity” incorporates any act or omission that constitutes an offence against a law in force in Dominica or against a law in any other country. However, all the designated categories offences have not been covered including extortion and piracy (pirates at sea).
10. The offence of money laundering extends to any property, regardless of its value, which directly or indirectly represents the proceeds of crime and includes money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situated (whether in Dominica or elsewhere) and includes any interest in such property.
11. A person can be taken to have engaged in money laundering where such person, either directly or indirectly engages in a transaction that involves money or other property, that is proceeds of crime; or that person receives, possesses, conceals, disposes of, or brings into or takes out of Dominica, any money or other property that is proceeds of crime or obtained or realized, such property directly or indirectly from some form of unlawful activity.
12. Dominica has had no money laundering investigations, prosecutions or convictions. Additionally, there have been no seizure of assets of any kind and consequently no confiscation applications or confiscation orders have been initiated to demonstrate that the ML provisions are effective.
13. Terrorist financing has been criminalised consistent with Article 2 of the terrorist financing Convention and extends to any person who wilfully provides or collects funds by any means, with the unlawful intention that such funds should be used to carry out a terrorist act. Terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee can be frozen pursuant to specific provisions detailed in the SFTA upon publication of the relevant order by the Attorney General.
14. In the Commonwealth of Dominica, the Financial Intelligence Unit is an autonomous creature of the MLPA, which has prescribed that it shall consist of a total of five persons. The FIU’s legislated powers and functions do not include the receipt of STRs from reporting entities and as such the FIU is not the national centre for receiving such reports. The receipt of money laundering related STRs is the purview of the MLSA which, as a part of its legislated AML functions, is required to consider and then send such reports to the FIU. Terrorist financing related suspicious transactions are received by the Commissioner of Police.
15. Owing to the fact that the MLSA has been somewhat inactive during the four year period, relevant to this MER, Dominica has continued to rely on a previous informal arrangement whereby the MLSA and the FIU share a common postal address and administrative secretary. This arrangement has allowed the FIU to have access to the

money laundering related STRs immediately as they are received from reporting entities.

16. The FIU has the responsibility of analysing the reports it receives from the MLSA. It is also responsible for gathering intelligence with a view to detecting ML and other financial crimes. In pursuit of any investigation by the FIU, reporting entities are bound to facilitate its requests for information. The FIU also has access to information held by law enforcement, customs and other similar agencies thereby ensuring that it can properly undertake its functions.
17. With regard to the filing of STRs, financial institutions have been complying with the anti-money laundering provisions, by submitting STRs to the MLSA. During the period 2004 to 2007 the financial sector filed a total of seventy-one STRs. The FIU has not provided any feedback to reporting entities. Instead, it has prepared annual reports for the consumption of the Minister of Tourism, Legal Affairs and Civil Aviation which is the Minister responsible for the FIU, under the MLPA. .

### **3. Preventive Measures – Financial Institutions**

18. The MLPA and the Money Laundering (Prevention) Regulations, (MLPR), prescribes the customer due diligence measures for the financial sector and designated non-financial businesses and professionals. AML guidelines, which are not considered to be “Other Enforceable Means”, were updated and re-issued by the MLSA in August of 2008. Whilst financial institutions and DNFBPs are required to comply with the provisions of the MLPA, the MLSA has been tasked with the responsibility of ensuring that they so do. The MLPA does not prescribe how this function will be discharged.
19. The customer due diligence measures includes customer identification and beneficial owner information requirements. As it relate to the obligation to ongoing CDD, financial institutions were required, upon the new guidelines coming into force, to conduct a complete review of all high risk clients and thereafter customer files of lower risk categories of clients were to be reviewed whenever there was client contact. Records that indicate the nature of the evidence and copies of the identification along with records of details of all business transacted during the course of the business relationship must be kept. There is however no clear requirement that such detail should be obtained as part of the ongoing due diligence process. The MLPA overarches the disclosure of information notwithstanding the existence of any obligation as to secrecy or other restrictions imposed by any law or otherwise.
20. Pursuant to the Exchange of Information Act, authority is vested in the Financial Secretary to compel the production of documents and information in relation to inquiries from foreign regulatory authorities. The ECCB can share information with local and foreign financial institutions on a reciprocal basis but only in circumstances where a MOU exists to facilitate this.
21. The MLPA and MLPR have sufficiently prescribed record keeping requirements for financial institutions. These requirements mandate that records must be kept for seven years and prepared and stored so as to be accessible within a reasonable time.

The nature of the records that must be kept has been itemised and include the need for the establishment of audit trails.

22. Guidance has been provided to all reporting entities as to their STR reporting obligations and a standard STR form is used throughout the sector. Suspicious transaction reporting is linked to complex, unusual large transactions, unusual patterns of transactions and transactions where money laundering is suspected. Financial institutions are required to file STRs, however this obligation does not extend to attempted transactions, neither is it linked to terrorism financing, terrorism, terrorist acts and terrorist organisations. There is no requirement for financial institutions to examine as far as possible the background and purpose of complex and unusual large transactions and set forth the results of the findings of such examinations in writing.
23. Not all financial institutions have internal AML/CFT procedures notwithstanding the legal obligation to do so. There has been an absence of onsite inspections and consequently financial institutions would not have been guided as to their adherence to the relevant Regulation.
24. The Dominican banking Act has mandated licensing requirements which should ensure that shell banks are not licensed to operate in the jurisdiction. There however are no expressed provisions which specifically prohibit the establishment or continued operation of shell banks neither is there any requirement for financial institutions to satisfy themselves that their respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
25. Criminal sanctions can be applied against financial institutions for committing ML offences, tipping off, not reporting STRs, falsifying, concealing, destroying or disposal of information likely to be material to an investigation. The FIU can force any financial institution to comply with specific provisions of the MLPA, by obtaining a mandatory injunction, granted by a Judge of the High Court, in terms that the court deems necessary. The MLSA and the FSU have no power of enforcement available to them.
26. The ECCB and the FSU are empowered to conduct on-site examinations and access records and other information relevant to monitoring compliance. The FSU, as regulator of the lone offshore bank licensed in the jurisdiction, has permitted the ECCB to conduct on-site examinations of that offshore bank on its behalf.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)**

27. Generally Dominica has made progress in updating its laws regulations and guidelines to ensure that the anti money laundering measures are applied equally to financial institutions and DNFBPs. The competent authorities are the FSU and the MLSA. Whilst the MLSA had the legal authority and basis to ensure compliance, it operated under major weakness such as a lack of administrative and technical support. The FSU, on the other hand, did not have the legal authority to license and also to enforce compliance through the conduct of on-sites or request off-site data from the DNFBPs under its purview.

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

28. Beneficial ownership information with regards to International Business Companies and Offshore banks is held by the licensed/registered agents. These registered agents are responsible for ensuring that the records are kept up-to-date. These records are not available to the general public but the FIU and the FSU can have access whenever required. As regards local companies, the FSU and the ECCB, in their capacity as domestic regulator can access beneficial ownership information from the owner of the business or the licensed agents who are expected to maintain this information. The FIU can access this information from the Companies Registry or the licensed agents.
29. There are no specific legislation, regulation or guidance notes that govern the non-profit organisations. They are required to apply to the Social Welfare Department which would then make a recommendation for approval to the Minister. NPOs voluntarily register with the Inland Revenue Division in order to enjoy tax exemptions. If it is to also enjoy government subventions then it must be incorporated and registered with the Registrar of Companies and then licensed by the Social Welfare Ministry. There is no formal enforcement regime for NPOs licensed in this manner. None of the competent authorities engage in any formal monitoring of NPOs.

#### **6. National and International Cooperation**

30. National cooperation and coordination is facilitated by the MLPA which empowers the FIU to consult with any person or organisation both within and outside the Commonwealth of Dominica. Cooperation and coordination domestically have been on an informal basis because there are no MOUs, policies or protocols in place that speak to this being facilitated or achieved.
31. Dominican authorities are able to provide a wide range of mutual legal assistance through legal provisions enshrined in the Mutual Assistance in Criminal Matters Act. However, dual criminality is a pre-condition to extradition.

#### **7. Resources and Statistics**

32. Given the available limited resources, the Commonwealth of Dominica has made efforts to provide their competent authorities with staff and resources. In spite of this, resource constraints have hampered the effectiveness of these entities and consequently the implementation of FATF Recommendations. In the area of staffing all of the competent authorities are negatively affected to the extent that the FSU has not been able to conduct on-site inspections. Constraints have also negatively affected the availability and use of information technology.
33. Statistics were not available from all the competent authorities with the exception of the FIU which has maintained comprehensive statistics on its operations, for the period under review.

## MUTUAL EVALUATION REPORT

### 1. GENERAL

#### 1.1 General information on The Commonwealth of Dominica

1. The Commonwealth of Dominica, commonly known as Dominica (French: Dominique), is an island nation in the Caribbean Sea. Dominica is a parliamentary democracy within the Commonwealth of Nations. Dominica has a small, open economy that faces unique challenges in sustaining economic growth. Structural factors continue to pose major challenges to the economy. Dominica recorded growth in Gross Domestic Product (at constant 1990 prices) of 3% in 2004, 3.3% in 2005 and 4% in 2006. This overall growth performance was driven largely by the tourism, agriculture and construction sectors. The International Business Sector is generally under-developed and consequently has made an insignificant contribution to the growth in Gross Domestic Product.
2. The economy of Dominica is vulnerable to environmental factors and external economic shocks. As a consequence of Hurricane Dean in 2007, Dominica recorded a marginal growth in Gross Domestic Product of approximately 1.5% in 2007. However, the Dominican economy is recovering from the damage caused by Hurricane Dean. The current international food and fuel crises are negatively impacting on the local economy and these external factors will pose serious challenges to the local economy for the foreseeable future. Currently, inflation is at 5.5%.
3. The Government of Dominica subscribes to the principles of transparency and good governance and has enacted the Finance Administration Act No. 4 of 1994 and the Audit Act No. 5 of 1994 to govern the management of Government finances. The Audit Department ensures that prudent, ethical and professional standards are maintained within the parameters of the cited Acts. The Government has also enacted the Integrity in Public Office Act No. 6 of 2003. This Act provides for the establishment of an Integrity Commission for the purpose of receiving declarations on the financial affairs of persons holding specific positions in public life, for the purpose of establishing probity, integrity and accountability in public life and for related matters. The Integrity Commission became operational on September 1, 2008.
4. The Money Laundering Prevention Act (MLPA) No. 20 of 2000 establishes two (2) statutory entities namely the Money Laundering Supervisory Authority (MLSA) and the Financial Intelligence Unit (FIU). The core functions of the MLSA are supervision and regulation of the FIs and DNFBPs listed in the Schedule to the MLPA, whereas the core functions of the FIU include analysis and investigation of financial crimes.
5. A mutually beneficial relationship exists between the FIU and FIs and DNFBPs that are subject to the provisions of the MLPA. Compliance Officers have been appointed in respective institutions with whom a very professional relationship exist. The FIU has direct access to the referenced officers on a timely basis with similar lines of communication available to the regulated entities. The FIU also has been involved in conducting training programs for regulated entities. In April 2008, the FIU in collaboration with the UK Security Advisory Team conducted a three day Anti-Money Laundering Workshop for public sector officers.

6. The FIU became a member of the Egmont Group in 2003 and consequently, subscribes to high international standards of operations. The MLSA, in April 2008 issued a revised edition of the Anti-Money Laundering Guidance Notes to scheduled entities for consideration.
7. As pertains to Combating of Financing of Terrorism, the FIU circulates UNSCR Terrorists Lists to financial institutions. Financial Institutions submit quarterly reports to the FIU on the existence of any terrorist funds at their institutions. To date, the FIU has not received any information on the existence of terrorists' funds in its Banking System.
8. There are no Self Regulatory Organisations (SROs) on the island However the Dominica Cooperative Societies League conducts some level of supervision of its membership which includes a component of AML.
9. Both the Government and people of the Commonwealth of Dominica expect to have a Police Force that is professional in conduct and responsive and effective in its operations. The Police Force is the premier law enforcement body which attempts to meet the changing demands of society in crime management, investigation, prosecution, and other related activities.
10. In that regard, the Laws of Dominica Chapter 14:01 makes provision for the establishment of a Police Force in Dominica.
11. Section 11 of that Act speaks to the powers of the police and Section 12 of that Act speaks to the duties of the police. While the police are given certain powers, there are checks and balances for the good conduct of the police therefore the Police Regulations and the Police Service Commission regulations both seek to regulate the conduct of the police.
12. The Police Force has a definitive and critical role to play in safeguarding the provisions of the Constitution, in particular the fundamental rights and freedom of the people, all Human Rights Conventions of the United Nations, and very importantly, in regulating and monitoring their implementation. These include:
  - i. Preserving the public peace;
  - ii. Preventing and detecting crimes and offences
  - iii. Apprehending and causing to be apprehended persons who have committed, or are charged with or suspected of having committed or having abetted the commission of, or being about to commit, a crime or offence;
  - iv. Preserving order and decorum in public places and places of public resort; and
  - v. Executing such other duties as may by law be imposed on a member of the Force.
13. In the event of war and other emergency, section 13 of the Police Act provides that the President may by proclamation direct the Force or any part thereof specified in the proclamation be a military force liable to be deployed on military duties in defence of the State. This provision assumes even greater significance when it is recognised that the Commonwealth of Dominica disbanded its military Force on April 30, 1981.

Dominica Police Force therefore remains the only national security service of significance in the country.

14. The main function of the Customs Division is the collection of revenue on goods imported into the state. The Customs Division also has additional roles as it relates to trade facilitation and the protection of society on which we place equal significance. In protecting society the concentration is on the interception of illicit firearms, ammunition, drugs, undeclared currency and all other goods, the importation of which is prohibited or restricted by any other enactment.
15. Customs officers carry out their duties at all the approved ports of entry that are the ports of Roseau, Portsmouth, Anse de Mai, Melville Hall and Canefield Airports. Officers are also stationed at the Roseau, Portsmouth and Marigot Parcel Post section and more recently at the Ross University Post Office.
16. Officers conduct various functions which include the examination and taking account of all goods imported into the state, boarding, rummaging and searching any aircraft or vessel within the waters of Dominica, searching any person or vehicle where the officer has reasonable ground to believe that the person or vehicle has goods liable for forfeiture.
17. All officers undergo training locally before they can be appointed to a Customs Officer position and a few officers have had specialized training in money laundering and financial investigation both locally and external.
18. In 2001 the Customs Division introduced a passenger declaration form where every traveller or a responsible member of a family, entering Dominica is required to complete a written customs declaration. Part of the declaration that has been made by the passenger is whether he/she is carrying currency or monetary instrument of \$10,000.00 or its equivalent.
19. Several instances of untrue declarations have been brought before the Comptroller of Customs who has adjudicated on the matters after having given the offenders the option of hearing the matter before a court of law or before the Comptroller.
20. The Comptroller has confiscated monies and imposed fines on offenders, imposed fines and restored the seized monies or occasionally restored the money to the individual.
21. The Customs and Excise Division has been mandated under law, with the authority of regulating the movement of persons and goods in and out of Dominica.
22. The principal authority under which the division operates is found in Chapter 69:01 of the revised laws of Dominica 1990 this piece of legislation is called "the Customs (Control and Management) Act.
23. This Act regulates all aspects of Customs management, the import and export of goods and the movement of persons, Aircraft and vessels in and out of our ports of entry.
24. Apart from the Customs (Control and Management) Act, the division also operate under numerous other pieces of legislation. Some of these are:

- Firearms Act
- Plant Protection Quarantine Act
- Money Laundering Act
- Supplies Control (Restricted Imports and Exports) order
- Caribbean Free Trade Association (origin of goods) Amendment Order
- Noxious and Dangerous Substances (control )Act
- Drug Prevention and Misuse Act
- Fiscal Incentives Act
- Duty Free Shopping Act
- Proceeds of Crime Act
- Embarkation Tax Act

25. These are but a few of the many acts that Customs are mandated to enforce in their daily task. Customs has an obligation to ensure that all relevant pieces of legislation, which governs the import and export trade and movement of persons, are strictly enforced.
26. Their ability to collect, and protect the nations revenue, and to safeguard its borders against importation and exportation of prohibited and restricted items would not be possible without having the necessary laws under which to operate.
27. The organization's structure consists of the following positions.

|                        |    |
|------------------------|----|
| Comptroller            | 1  |
| Deputy Comptroller     | 1  |
| Assistant Comptroller  | 2  |
| Supervisor             | 6  |
| Human Resource Officer | 1  |
| Grade I Officer        | 11 |
| Grade II Officer       | 17 |
| Grade III Officer      | 41 |
| Junior Clerks          | 4  |
| Messenger              | 2  |
| Customs Guard          | 10 |
| Boat Man               | 1  |

28. The division is arranged in sections to effectively carry out its functions.

|                  |                           |
|------------------|---------------------------|
| Intelligence     | Valuation                 |
| Investigations   | Warehousing               |
| Mobile Team      | Fiscal Incentive          |
| Analyst          | Export Control            |
| Compliance       | Duty Free Shop            |
| Entry Processing | Cargo & Passenger Control |

The outdoor sections are manned by Customs Officers and Customs Guards.

|            |   |
|------------|---|
| Portsmouth | 8 |
|------------|---|

|               |    |
|---------------|----|
| Melville Hall | 11 |
| Canefield     | 6  |
| Anse de Mai   | 1  |

29. The estimate of expenditure is approximately 4.5 million dollars with personnel emoluments accounting for 3.6 million of the budget.
30. Seizures of cash can be made by Customs and charges preferred in that regard. Section 64(1) of the Proceeds of Crime Act 4 of 1993 gives a Customs Officer the power to detain cash in excess of ten thousand dollars (EC\$10,000.00) where he has reasonable grounds for suspecting that it is proceeds of or intended for drug trafficking.
31. The section of Law states that a Customs Officer or member of the Police Service may seize and, in accordance with this section, detain any cash which is being imported into or exported from Dominica if its amount is not less than ten thousand dollars and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in drug trafficking.
32. Persons involved in bringing large sums of money into Dominica have done so mainly through illegal ports of entry using go fast vessels. Most currency seizures have resulted from joint routine patrols conducted by the police and customs at out bays around the island.
33. Passengers utilizing the ferry service between Guadeloupe, Martinique and Dominica have also been targeted for the carriage of money which was derived from the sale of drugs in the lucrative French market.
34. The most recently discovered trend in concealing monies entering the state is through the contents of regular food items, brought in boxes on the inter island vessels.
35. Dominica has passed *The Institute of Chartered Accountants of the Eastern Caribbean Agreement Act, No. 2 of 2003*. A Dominican Chapter of the said Institute has been established in Dominica pursuant to the Act with about twenty five members. Members of the Institute are themselves members of other international associations and as such are bound by the Code of Ethics of these organisations, some of which publish in their magazines the results of disciplinary matters concluded against members.
36. The Act provides for a range of matters including Disciplinary Procedures at PART IV. A Disciplinary Committee established under the said Act, upon conviction of a member thereof, may exercise its disciplinary powers to reprimand the member, impose a fine, suspend or exclude the member from membership of the said Institute.
37. The Finance Administration Act No. 4 of 1994 and the Audit Act No. 5 of 1994, provides for the administration of Government finance. The Constitution of the Commonwealth of Dominica establishes the Office of the Director of Audit whose responsibility includes ensuring that:
  - Government finances are spent in accordance with the provisions of the captioned legislations; Appropriation Acts and Supplementary Appropriation Acts.
  - appropriate parliamentary approval is sought on all expenses originating from the Consolidated Fund; and

- there is financial (*General*) oversight of the entire government service including statutory boards and funds established pursuant to statute.
38. The Office of the Director of Audit is a member of International Organisation of Supreme Audit Institutions (INTOSAI) and as such is bound by their principles and code of ethics. The Director of Audit is also a professional accountant and is bound by the guidelines of his professional accounting body and adheres to international auditing standards.
  39. All Accounting Officers within the service are guided by the principles of the Act. There are varied checks and balances in place by the Audit Department to ensure prudent, ethical and professional standards are employed in the administration of government's financing with very stringent sanctions for non-compliance.
  40. The court system in the Commonwealth of Dominica consists of the Magistrate's Court established by the Magistrate Code of Procedure Act, Chapter 4:20 and the Eastern Caribbean Supreme Court which itself consists of the High Court of Justice and the Court of Appeal.
  41. There are 13 Magistrates Courts spread across the island. Three of the courts are based in Roseau the capital and one in the second town of Portsmouth and these courts sit every day. The other magistrate's courts commonly called the 'country courts' sit mostly on a weekly basis but in some areas on a monthly basis. There are four (4) magistrates responsible for dealing with all magistrate court matters within the Commonwealth of Dominica.
  42. The Eastern Caribbean Supreme Court is a Superior Court of record for nine Member States, six independent (Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines) and three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat); and has unlimited jurisdiction in each Member State. It was established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967.
  43. The functions of the Court are to interpret and apply the laws of the various Member States of the Organization of Eastern Caribbean States; to decide cases of both civil and criminal matters and to hear appeals.
  44. The Headquarters of the ECSC is in Castries, Saint Lucia, where it is located on the second floor of the Heraldine Rock Building, Block B, on the Waterfront. The building houses the Justices of Appeal's chambers, the Court of Appeal Registry, the Judicial Education Institute, Library, and the Administrative Services.
  45. In addition, there are Court Offices in the nine Member States, which house the chambers of the High Court Judges and the offices of the High Court Registry. Each High Court Registry is headed by a legally trained Registrar who provides the necessary administrative and legal support for the functioning of the High Court.
  46. Lawyers are currently guided by a Code of Ethics adopted and published by the **OECS BAR ASSOCIATION** which establishes rules relating to the professional conduct of its members and to encourage good relations and understanding between the Bar and the Public. The Dominica Bar Association is currently a member of the OECS BAR

ASSOCIATION. Although this code of ethics is not law it is a guide for barristers / solicitors.

47. There is also a draft Legal Profession Bill which was drafted by the Government and is currently under review by the Dominica Bar Association.
48. FIs and DNFBPs are regulated by the Financial Services Unit (FSU) and the Eastern Caribbean Central Bank (ECCB).
49. Offsite surveillance for Domestic banks is done by the FSU, the domestic banks are mandated to forward copies of monthly, quarterly and annual reports to the FSU.
50. On-site evaluation of the Domestic banks is performed by the Eastern Caribbean Central Bank (ECCB), while on-site inspections of the other financial institutions are done by the Financial Services Unit, these other institutions comprises:
  - 14 Cooperative Credit Union
  - 10 Money Service Businesses
  - 2 offshore Banks
  - 18 Insurance Companies
  - One Industrial Bank
  - One Building and Loans
  - Car dealerships and Jewellers
51. Although the Cooperative Societies League performs on-site inspection and evaluation of the Credit Unions (Affiliates), the league does not have a legal responsibility for regulation, however this function performed by the Cooperative Societies league is one of development of the league's affiliates.
52. Compliance officers are in place at the domestic banks as well as credit unions. Compliance officers are expected to report incidences of suspicious transactions (STR's) to the office of the MLSA.
53. Financial institutions regulated by the FSU are expected to comply with AML/CFT procedures and guidelines. Regulation of financial institutions regarding AML issues are the responsibility of the MLSA.

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

54. The Money Laundering Prevention Act No. 20 of 2000 was enacted to provide for the prevention of money laundering and for related matters. This Act establishes a Supervisory/Regulatory Authority i.e. the Money Laundering Supervisory Authority (MLSA) and an Investigative/Analytic Authority via the Financial Intelligence Unit (FIU). The MLSA and the FIU became operational in 2001.
55. Currently, the FIU has a case portfolio of approximately 50 cases with a monetary value in the order of US\$11 million. Externally driven money laundering has been characterized by fraudulent investment and certification programs with placement at a liquidated off-shore bank. Subsequent to the liquidation of the off-shore bank, there has been a notable absence of this form of money laundering. Notwithstanding, the

Dominica FIU is investigating a regional fraudulent investment scheme where numerous Dominican nationals were lured into a well organised scheme. There has also been evidence of the Advance Fee Fraud Scheme in the Commonwealth of Dominica's jurisdiction.

56. Domestically driven money laundering has a nexus to drug related activities and are exhibited at the placement and integration stages of money laundering. However, in the absence of convictions for the predicate offence, the FIU is seriously considering the pursuance of Stand Alone Money Laundering cases. Recently, there has been a surge in the placement of euros in the banking system related to questionable activities in Guadeloupe and Martinique. Money remitters have also been used to transfer suspect funds to dubious locations.
57. The Suppression of the Financing of Terrorism Act No.3 of 2003 was enacted to suppress, prevent and detect activities respecting the financing of terrorism and for matters related thereto. Section 20 of Act No. 3 of 2003 provides the FIU with investigative powers. The FIU has transmitted to financial institutions names of individuals and entities on the UNSC Sanctions Committee Lists for compliance with the reporting requirements of Section 36 (1), (2) and (3) of Act No. 2 of 2003. To date, the FIU has not detected any evidence of terrorist financing in our jurisdiction.
58. STRs related to Money Laundering are to be forwarded to the MLSA, which is chaired by the Manager of the Financial Services Unit (FSU). These STRs are immediately referred to the FIU for analysis and investigation.
59. The Money Laundering (Prevention) Act, No 20 of 2000 has adopted the threshold approach in identifying predicate offences to money laundering. At Section 2 of the Act, predicate offences to money laundering are classified as all *hybrid and indictable* offences. (*See definition of Proceeds of Crime under the MLPA*)
60. The most prevalent of these offences that generate illegal proceeds is drug trafficking. Drug trafficking is primarily policed by the Drug Squad of the Commonwealth of Dominica Police Force with support from district police stations and intelligence from the National Joint Intelligence Centre among others. The laundering occurs with the purchasing of properties vehicles in particular, real estate and the remitting of funds to suspect individuals and questionable persons in certain locations in jurisdictions where drug trafficking is prevalent.
61. The use of Go-Fast boats in making large purchases, deliveries and the transportation of cash has been noticed. Several persons have been intercepted by the Coast Guard and prosecuted for drug trafficking. Some have had their boats seized by Customs and monies forfeited to the state.
62. Ongoing sharing of information and intelligence continues with neighbouring FIUs and other international law enforcement agencies with which strategic alliances have been forged.
63. Deception has been fairly prevalent in the execution of certain online schemes implemented by certain rogue elements in attempts to defraud persons of their monies. Schemes include the setting up of Universities purporting to be legitimate institutions of learning that in turn issue certificates, diplomas and degrees for a small fee.

Advance fee fraud (419 Scam) schemes appear to be prevalent in the jurisdiction with several persons falling victim. The possibility of receiving a large payment only having advanced a small amount of money has become increasingly appealing to persons. Some victims have received e-mails apprising of lottery winnings together with a request of funds to facilitate the lottery winnings payments. On payment of the requested funds there is an immediate disappearance of the organizers of the lottery. It has also been observed that money remitters have been used to transfer funds from questionable sources to dubious locations.

64. Money laundering in Dominica stems mainly from the proceeds of drug trafficking and international fraud. However, the effective regulation of AML in Dominica requires a properly constituted and operational MLSA with the requisite support staff. The MLSA has recently issued revised Guidance Notes for the consideration of financial institutions and scheduled entities.

### 1.3 Overview of the Financial Sector and DNFBS.

**Table 1: Institutions Conducting Financial Activities outlined in the Glossary of the FATF 40 Recommendations**

| <b>TYPES OF FINANCIAL INSTITUTIONS AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS</b>   |  |
|---|--|
| <b>Type of financial activity<br/>(See the Glossary of the 40 Recommendations)</b>  | <b>Type of financial institution that is authorized to perform this activity in Dominica</b>   |
| 1. Acceptance of deposits and other repayable funds from the public (including private banking)   | Four (4) Domestic commercial Banks, with consolidated Asset size of EC\$ 1.4 Billion, (FCIB 227.8m), NBD (753.4m). Two (2) registered Offshore Banks, one is functional (Griffon Bank Asset size EC\$69.2(m) the other Offshore Bank has not commenced operations, Fourteen (14) Cooperative Credit Unions, with Total Assets of EC\$ 408.5 Million. One (1) Building & Loan association asset size EC\$3.1(m). One (1) Industrial Bank with assets of EC\$ 125.2(m) |
| 2. Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)  | Domestic commercial Banks, Offshore Banks, Cooperative Credit Unions, Building & Loan association, Industrial Bank, D/ca Cooperative Societies League.<br>Fast Cash  |
| 3. Financial leasing (other than financial leasing arrangements in relation to consumer products)   | N/A  |
| 4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds) | Domestic commercial banks, Offshore banks, Credit Unions, Cooperative Societies League, MSB providers (Fast cash, Cambioman, western union, Sen.via, Map Cash, Itech, Suncard, Instant cash, Bureau de change.   |

|  |   |
|--|---|
| 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)   | Fast Cash, Map cash, National Bank of Dominica, Scotia Bank, Royal Bank of Canada, & First Caribbean Bank, Roseau Cooperative Credit Union, Central Cooperative Credit Union  |
| 6. Financial guarantees and commitments  |   |
| 7. Trading in:<br><br>a) money market instruments (cheques, bills, CDs, derivatives, etc.);<br>b) foreign exchange;<br>c) exchange, interest rate and index instruments;<br>d) transferable securities;<br>commodity futures trading | (a) 4 domestic commercial banks and two (2) Credit Unions offer checking facilities to their customers.<br><br>(b) Four (4) domestic commercial banks, one offshore bank and two Money service providers (CambioMan and Bureau de change) offer foreign exchange services to their customers. |
| 8. Participation in securities issues and the provision of financial services related to such issues   |   |
| 9. Individual and collective portfolio management  |   |
| 10. Safekeeping and administration of cash or liquid securities on behalf of other persons   |   |
| 11. Otherwise investing, administering or managing funds or money on behalf of other persons   | National Bank of Dominica's management of the Eastern Caribbean Brokerage (Dominica), Dominica Cooperative Societies League.  |
| 12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)   | Nineteen companies are registered to conduct Insurance business in the Commonwealth of Dominica. There are presently sixteen registered insurance agents representing the nineteen insurance companies  |
| 13. Money and currency changing  | Domestic commercial banks, CambioMan, Bureau de change.   |

The Dominica Cooperative Societies League is the Umbrella organization for Cooperative Societies on the island of Dominica. There are presently fourteen Cooperative Credit Unions on island, with Assets of four hundred and ten Million dollars (EC\$410M).

### DNFBPs

Table 2 Types of DNFBPs authorised to carry out financial activities outlined in the Glossary of the FATF 40 Recommendations

| TYPES OF DESIGNATED NON-FINANCIAL BUSINESS AND PROFESSION (DNFBP) AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS |  |
|--|--|
| Type DNFBP activity (See the Glossary of the 40 Recommendations)   | Type of DNFBP authorized to perform this activity in Dominica                      |
| a) Casinos (which also includes internet casinos).   | Three internet gaming companies are licensed to operate in Dominica (1) World Wide |

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|--|--|
|  | Wagering, First International Holding and Eagle Sports Wagering  |
|  |  |
|  |  |
| b) Real Estate Agents.   | CAS Estate Agent Ltd. Casaropa Real Estate, Insurance Brokers & Consultants, Real Property Management Ltd. Safe Haven Real Estate  |
| c) Dealers in precious metals.   |  |
|  |  |
| d) Dealers in precious stones.   |  |
| e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.  | <p><b>(Legal Professionals)</b><br/> Yearwood Dawn A, Williams and Horsford Chambers, Stowe Duncan G, Riviere William Chambers, Prevost and Roberts, Letang &amp; Ducreay Chambers, Lees Cicily, Lawrence Lennox Chambers, Felix Evans, Emanuel Isidore &amp; Associates, Dupigny Bruney &amp; Associates, De Fraitas De Fraitas &amp; Baron chambers, Christopher Don &amp; Co, Burton Gerald D. Chambers.</p> <p><b>(Accountants)</b><br/> Isidore Thomas, KPB Chartered Accountant, Marcus Hilton Certified Accountant, Moreau Winston &amp; co. Navigant Consulting Services, Dataplus Services, Winston &amp; Co.</p> |
| f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:<br><br>_ acting as a formation agent of legal persons;<br>_ acting as (or arranging for another person to act as) a<br>director or secretary of a company, a partner of a<br>partnership, or a similar position in relation to other<br>legal persons;<br>_ providing a registered office; business address or<br>accommodation, correspondence or<br>administrative | CCP Inc., Emmanuel & Isidore Chambers, IMT Inc., Alick C. Lawrence, Lennox Lawrence, Strategic Services Ltd., Michael E. Bruney, Griffon Bank Limited.   |

|  |  |
|--|--|
| <p>address for a company, a partnership or any other legal person or arrangement;</p> <p>_ acting as (or arranging for another person to act as) a trustee of an express trust;</p> <p>_ acting as (or arranging for another person to act as) a nominee shareholder for another person.</p> |  |
|--|--|

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

65. The *Interpretation and General Clauses Act, Chapter 3:01 of the 1990 Revised Laws of Dominica* defines a “person” as including a public body, company, partnership, trust, association or body of persons whether corporate or unincorporated.
66. The Companies Act, Act No. 21 of 1994 states at section 3 that, “*No association, partnership, society, body or other group consisting of more than twenty persons may be formed for the purpose of carrying on any trade or business for gain unless it is incorporated under the Act or formed under some other enactment*”.
67. Section 4 (1) of the said Act states that, “*subject to subsection (2), one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar and the name of every incorporator shall be entered in the company’s register of members as soon as may be after the company’s registration*”.
68. Subsection (2) states that, “*No individual who –*
- a. Is less than eighteen years of age;*
  - b. Is of unsound mind and has been so found by a tribunal in Dominica or elsewhere; or*
  - c. Has the status of a bankrupt, shall form or join in the formation of a company under the Act.*”
69. Section 17 of the Act states further that, “(1) *a company has the capacity, and subject to this Act, the rights, powers and privileges of an individual. (2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Dominica to the extent that the Laws of Dominica and of that jurisdiction permit. (3) it is not necessary for a by-law to be passed to confer any particular power on a company or its directors. (4) This section does not authorise any company to carry on any business or activity in breach of- (a) any enactment prohibiting or restricting the carrying on of the business or activity; or (b) any provision requiring any permission or licence for the carrying on of the business or activity.*”
70. A major component of the strategy to prevent money laundering and terrorist financing is to ensure that a legal basis exists to effectively address money laundering and terrorist financing. Thus the Government has exhibited its commitment to the strategy

by enacting the Money Laundering (Prevention) Act in 2000 together with the attendant Regulations and the Suppression of the Financing of Terrorism Act in 2003. Other supportive legislation is the Mutual Assistance in Criminal Matters Act No. 9 of 1990, the Proceeds of Crime Act No. 4 of 1993 and the Exchange of Information Act No. 25 of 2001. The Money Laundering (Prevention) Act creates the MLSA and the FIU while the Suppression of the Financing of Terrorism Act recognizes the FIU and the Commissioner of Police as the investigators of matters related to financing of terrorism.

71. The second component of the strategy is to provide the Regulator and the Investigator with the human and physical resources to discharge their statutory responsibilities. This aspect of the strategy has been extremely challenging due to limited resources coupled with extensive competing needs. Notwithstanding, the FIU has maintained international standards of operations as required by its membership in the Egmont Group. Other integral parts of this component of the strategy are capacity building and development of strategic alliances locally, regionally and internationally. Government has facilitated extensive training for the immediate past Chairperson of the MLSA and technicians at the FIU. Recently, the FIU in collaboration with the UK Security Advisory Team organised an Anti-Money Laundering Workshop for public sector technicians. The FIU operates in close collaboration with the MLSA, the DPP, the Office of the Attorney General, the Police Force, the Customs Department and the Ministry of External Affairs. The FIU has been involved in parallel investigations with the Police Force and has executed joint searches with the Police Force. The FIU has also developed working relationships with regional and international FIUs and other Law Enforcement Agencies.
72. The third component of the strategy is to ensure that the FIs and the DNFBNs have assigned Compliance Officers and effective Compliance Systems. The FIU has developed a mutually beneficial relationship with the Compliance Officers and provide the necessary technical support. The FIU has also conducted training programs to enhance capacities at FIs and DNFBNs. As pertains to Terrorist Financing, the FIU ensures that FIs have information on the UNSCR Committee Sanctions Lists in order to fully comply with the pertinent Act. The thrust of this component of the strategy is to proactively prevent tainted funds from entering the system and to promptly report any unusual and suspicious activities.
73. The Government is in the process of consolidating the Regulatory function by enacting the Financial Services Unit Bill. This Bill has the major objective of having the Financial Services Unit as the sole regulator in the jurisdiction in effect, subsuming the statutory responsibilities of the MLSA.
74. The following governmental authorities are integrally involved in the detecting, preventing and taking repressive action in relation to money laundering and terrorist financing. In the main, these authorities have been addressed elsewhere in the questionnaire thus this section contains an identification and brief description of the relevant governmental authorities.
75. The Financial Intelligence Unit (FIU) has statutory authority to analyse and investigate matters related to money laundering and terrorist financing by dint of the Money Laundering Prevention Act No. 20 of 2000 and the Suppression of the Financing of Terrorism Act No. 3 of 2003.

76. The Money Laundering Supervisory Authority (MLSA) is the Regulator for matters related to money laundering under the aegis of Act No. 20 of 2000.
77. The Director of Public Prosecutions is the authority for effecting any legal action as per Act No. 20 of 2000 and Act No. 3 of 2003.
78. The Minister for Legal Affairs has the responsibility for the FIU and MLSA.
79. The Attorney General is the Competent (Central) Authority for international cooperation especially as pertains to the Mutual Assistance in Criminal Matters Act No. 9 of 1990, the Exchange of Information Act No. 25 of 2001 and Act No. 3 of 2003. The Attorney General is cited as the regulator for Act No. 3 of 2003 and is a member of the MLSA.
80. The Minister of National Security is given special responsibilities as per Act No. 3 of 2003.
81. The Commissioner of Police is responsible for investigating predicate offences for money laundering, has investigative powers under Act No. 3 of 2003, is the custodian of the Proceeds of Crime Act No. 4 of 1993 and is a member of the MLSA. The National Joint Intelligence Centre (NJIC) is a section of the Police Force specializing in intelligence gathering and as such, the NJIC works in collaboration with the FIU.
82. The Comptroller of Customs is also involved in the investigation of predicate offences for money laundering and is a member of the MLSA.
83. The Financial Services Unit (FSU) is the regulator of financial institutions, is authorized to exchange information by dint of Act No. 25 of 2001 and is a member of the MLSA. The FSU is a division within the Ministry of Finance.
84. The Eastern Caribbean Central Bank is involved in the regulation of financial institutions and is authorized to receive quarterly reports as per Act No. 3 of 2003.
85. The Ministry of Foreign Affairs facilitates the communication of the UN Security Council Terrorists Lists to the FIU.
86. Governmental authorities have not adopted the risk-based approach to combating money laundering and terrorist financing. However, financial institutions have adopted variants of the risk-based approach in addressing money laundering.

**Progress made since last Mutual Evaluation:**

87. The below-mentioned Recommendations and Comments are exact excerpts from the 2004 Mutual Evaluation Report on Dominica. The italic, bold and underlined sections represent the progress that has been made pursuant to the recommendations:

**Recommendations and Comments**

- 1) Consideration should be given to an amendment of the POCA and the DPMA so as to allow for narcotic trafficking and money laundering to be tried indictably.

**No amendments have been made to the DPMA or POCA that allow for drug trafficking offence to be tried indictably. Currently, there is in force a Money Laundering (Prevention) Act No. 20 of 2000, which creates the indictable offence of money laundering.**

- 2) An amendment to the SFTA 2003 providing for knowledge, intent, purpose, belief or suspicion to be inferred from objective, factual circumstances with regard to FT offences should be considered.

**The SFTA of 2003 has not been so amended.**

- 3) Consideration should be given to reviewing the present duties of personnel especially attorneys who work with Government Legal Departments to reduce potential conflicts of interest and ineffectiveness through excessive work requirements.

**Currently, the Ministry of Legal Affairs is headed by the Minister of Legal Affairs who is a legal officer. The Ministry also has a separate and distinctive Attorney General who is the principal legal advisor to the Government. The legally trained staff complement at the Office of the Attorney General consist of the Solicitor General, a Legal Specialist, a Senior State Attorney and three other State Attorneys. The legally trained staff complement at the Office of the Director of Public Prosecution consist of the Director of Public Prosecution and two other Legal Officers.**

#### **Recommendations and Comments**

- 1) Consideration should be given to an amendment of the MLPA to allow for an application for an order for the freezing of property to be made on an ex parte basis.

**The MLPA has not been so amended to allow for application pursuant to section 22 (Freezing Order) to be made ex-parte.**

- 2) Legislative or administrative mechanisms should be established to allow the sharing of confiscated assets between Dominica and other jurisdictions.

**Not in Place. However, Dominica is considering mechanisms for sharing of confiscated assets with the US.**

#### **Recommendations and Comments**

- 1) The operations of the DPP's Office should be reviewed to determine whether staff is sufficient to meet work demands.

**The current staff at the DPP's office comprise of the DPP, two (2) junior legal officers and a Secretary. In order to effectively respond to the demands of the office in terms of workload, one (1) additional senior legal officer is required to provide critical support to the DPP and the junior staff in the DPP's absence.**

- 2) The NJHQ should be made fully operational as soon as possible.

*The NJHQ is now the National Joint Intelligence Center (NJIC), which is fully operational and consist of four (4) staff. The NJIC is equipped with the necessary tools and equipment to facilitate its intelligence gathering and analysis efforts, which includes the i2 Analyst Notebook v6.*

*Recommendations and Comments*

- 1) Legislative or administrative mechanisms should be established to allow the sharing of confiscated assets between Dominica and other jurisdictions.

*Not in Place. However, Dominica is considering mechanisms for sharing of confiscated assets with the US.*

*Recommendations and Comments*

- 1) Dominica has shown determination and good will by introducing a comprehensive legal framework in a short time. However, the IBU and the MLSA should be adequately staffed to enable them to perform their task, or a new Single Regulatory Unit established with proper authorities and staffing. Given Dominica's financial restrictions, consideration should be given to seeking assistance from international organizations like the IMF or World Bank.

*Presently the FSU consist of Five (5) members of staff, one (1) on vacation leave. It is the intention of Government to make the FSU the single regulatory unit re AML/CFT for Dominica, subsuming the responsibilities of the MLSA into its portfolio. A Draft FSU Bill has been given its first reading in parliament in an effort to give legal status to the Unit.*

*The MLSA is staffed as per section 10 of the MLPA.*

*Recommendations and Comments*

**Banking**

- 1) Guidance Notes should be amended to include the following;
  - The application by banks of enhanced due diligence.

*Paragraph 85 of the AML GN 2008 addresses the issue of enhanced due diligence.*

- The identification of beneficial owners of client accounts opened by professional intermediaries.

*Paragraphs 44, 62, 63, 64, 66 and 85 of the AML GN 2008 speaks to the issue of obtaining beneficial owner information on clients.*

- Policy and procedures for dealing with banking relationships with politically exposed persons.(PEP's).

**Paragraph 85 of the AML GN 2008 addresses the issue of PEPs.**

- Banks should not accept or maintain a business relationship if the bank knows or must assume that the funds derive from corruption or misuse of public assets.
- Banks should apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview and there must be specific and adequate measures to mitigate the higher risk accordingly.

**Section VI of the AML GN 2008 addresses the issues raised in this recommendation.**

- Banks should have policies and procedures (including minimum requirements) regarding the opening of correspondent accounts.

**Insurance**

- 2) An insurance supervisor should be appointed as soon as possible.

**No Insurance Supervisor has been appointed. The Manager of the FSU acts as defacto Supervisor.**

- 3) Legislation on the supervision and regulation of the insurance sector should be introduced and include the following;
  - The requirement for regular reporting to the insurance supervisor.
  - Provision for onsite inspection by the insurance supervisor.

**Insurance legislation is in Draft stage.**

- 4) Insurance specific AML/CFT guidelines should be issued. These guidelines should take into consideration the requirements of establishing and verifying the identity of the verification subject relevant to all applications for insurance business including underlying principals. Additionally, verification of persons other than policyholders who are to be paid claims, commissions and other monies should be included in the guidelines.

**No such Guidelines have been issued. The AML Guidance Notes 2008 has been issued to the insurance sector and do take into consideration “requirements of establishing and verifying the identity of the verification subject relevant to all applications for insurance business including underlying principals”**

- 5) The MLSA should reactivate their AML inspections of the insurance sector.

**No Inspections were done by the MLSA from 2004.**

**Recommendations and Comments**

- 1) The ECCB should verify implementation of remedial action recommended for the banks as a result of AML onsite examinations. This includes implementation of relevant systems to detect unusual or suspicious patterns of activities in all accounts, such as significant transactions relative to a relationship, transactions that exceed certain limits, very high account turnover inconsistent with the size of the balance, or transactions which fall out of the regular pattern of the account's activity.

Additionally, the implementation by the offshore bank of improved monitoring of higher risk accounts should be verified by the ECCB.

- 2) Paragraph 90 of the AMLGN should be expanded to give more guidance on what can be considered high risk customers.

**Changes have been made, as recommended, to the captioned paragraph which is now paragraph 85 in the AML GN 2008.**

- 3) Insurance specific AML/CFT regulations and guidelines should be introduced.

**No such Guidelines have been issued.**

- 4) Onsite examinations of the insurance industry should be legally provided for and implemented.

**Draft Insurance Bill refers.**

- 5) The insurance sector should be made aware of the AML/CFT requirements.

**The Insurance sector should be aware of their responsibilities under the MLPA & Regulations made thereunder and SFTA since both pieces of legislation were gazetted after passage in the House of Assembly. Additionally, the AML GN 2008 was circulated to insurance companies on island by the MLSA.**

#### **Recommendations and Comments**

- 1) Legislation should be enacted to improve and strengthen insurance supervision in keeping with international standards and should incorporate;
  - Mandatory regular reporting to the insurance supervisor.
  - Provisions for onsite inspections by the insurance supervisor.
  - Insurance specific AML/CFT Guidelines, which take into account the requirements stipulated in the criteria of the AML/CFT Methodology.

**Revised Insurance legislation in its draft stage refers.**

- 2) Consider amendment of the Securities (Conduct of Business) Regulations to deal with the duties of the board and management similar to section 29 of the Banking Act – management's duty of compliance with laws.

#### **Recommendations and Comments**

- 1) The legal obligations on reporting of suspicious transactions should be enforced on the insurance sector.

**The insurance sector has a legal responsibility under the MLPA to report suspicious activities to the MLSA. AML Guidance Notes has been issued to the industry by the MLSA detailing various typologies used in laundering proceeds through insurance mediums.**

- 2) Insurance companies should be made aware of their obligations.

**Insurance companies are classified as Financial Institutions under the MLPA and as such are bound by the provisions of the said Act, Regulations made thereunder and Guidance Notes issued.**

- 3) Supervision of the insurance sector should be implemented.

**An officer with special responsibility to the insurance sector has been appointed within the FSU with exclusive responsibility for the insurance sector.**

- 4) Training and guidance on the reporting of suspicious transactions to the FIU should be provided to the insurance sector.

**The reporting requirements are clearly set out in the MLPA and Regulations thereto and the Guidance Notes 2008 issued to the insurance sector. As it relates to training, no training has been provided to the insurance sector by the FSU or the MLSA.**

#### **Recommendations and Comments**

- 1) Existing legislation should be amended to address the need for audit tests for AML/CFT programs to be conducted. This is an operational issue and could be addressed in the AMLGN.

**Currently, neither the AML GN 2008 nor the MLPA & Regulations or the SFTA provides for audit tests for AML/CFT programs within FIs and DNFBPs.**

- 2) Training in FT should be provided for staff of FI's.

**No such training has been provided by the MLSA or the FSU**

- 3) A routine for testing compliance against both home and host country KYC standards for banks should be addressed in the Guidance Notes.

- 4) Measures should be introduced in the insurance sector with regard to AML/CFT programs that include internal procedures and policies, ongoing employee training, an audit function to test the system, compliance officer at management level and screening of employees.

**The AML guidance notes relates**

- 5) Legal provision should be introduced in the insurance sector to give the supervisor the authority to require insurance entities to have an ongoing audit function of a nature and scope appropriate to the nature and scale of the business.

**Draft insurance legislation refers.**

- 6) Measures should be taken in the securities sector to require a written contract of engagement with each customer and appropriate segregation of key duties and functions.

**(To be effected)**

**Recommendations and Comments**

- 1) The proposed amendment to the Banking Act that requires every person who is, or is likely to be a director, controlling shareholder, or manager of a licensed financial institution to be a fit and proper person to hold the particular position which he holds or is likely to hold should be enacted.

**(Fit and Proper requirements for directors of financial institutions reflected in legislation)**

- 2) Integrity standards for the insurance industry should be introduced.

**Draft insurance legislation relates**

**Recommendations and Comments**

- 1) Legislation providing supervisors or competent authorities with adequate powers of enforcement and sanction powers should be introduced. The ECCB should have a graduated system of sanctions and penalties. Similar enforcement and sanction powers should be introduced for the insurance sector.

**(Sanctions and penalties are reflected in the appropriate legislation)**

- 2) The amended Banking Act should be enacted to give the ECCB the power to use a wider range of sanctions where banks fail to observe internal procedures and regulatory due diligence requirements.

**Section (5) of the Banking Act provides the ECCB with a wide range of sanctions for banks that fail to observe the procedures and requirements mentioned above.**

- 3) The ECSRC should set accounting and reporting requirements.

**Recommendations and Comments**

- 1) The proposed amended banking act should be enacted to give the ECCB legal authority to share information with its foreign counterparts, to allow for permission by the host jurisdiction to a 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, and to allow for permission by the host jurisdiction of access by the foreign home country supervisors or auditors to information on sampled individual customer accounts to enable a proper evaluation of the application of KYC standards and risk management practices.

**Section 5 of the Banking Act 16 of 2005 relates.**

- 2) The MLSA and the IBU should be adequately staffed to carry out their functions.

**MLSA is staffed as per statute and the FSU has a current staff compliment of five (5) persons with one person on leave.**

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### *Laws and Regulations*

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

##### 2.1.1 Description and Analysis

##### *Recommendation 1*

##### **Criminilisation in accordance with UN Conventions**

88. The offence of Money Laundering is criminalized by a) section 3 of The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000, and by b) section 60 (2) of the Proceeds of Crime Act, 1993, Act 4 of 1993. Under the said legislation, the physical and material elements of the money laundering offence cover:
- Concealment, disguise and disposal;
  - Acquisition, possession and the use of property with knowledge at the time of receipt
89. However, the physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer.
90. Section 3 of The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000 states as follows: “A person who, after the commencement to this Act, engages in money laundering commits an offence”. Section 2 of The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000 defines the offence of money laundering as “(a) engaging in a transaction that involves property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime, or (b) receiving, possessing, managing, investing, concealing, disguising, disposing of, bringing into or taking out of Dominica any property that is the proceeds of crime knowing or believing the same to be the proceeds of crime”. By section 2 of The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000 the term “proceeds of crime” means “as any property derived or obtained through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere” .

##### **Property Defined**

91. Further, the term “property” is defined by section 2 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000 as including money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate (whether in Dominica or elsewhere) and includes any interest in such property.

92. Additionally, section 60 (2) of the Proceeds of Crime Act, 1993, Act 4 of 1993 states as follows: A person who, after the commencement of this Act, engages in money laundering commits an indictable offence and is liable on conviction, to
- (a) a fine of two hundred thousand dollars and imprisonment for a period of twenty years, if he is a natural person; or
  - (b) a fine of five hundred thousand dollars, if it is a body corporate.
93. By section 60 (3) of the Proceeds of Crime Act, 1993, Act 4 of 1993 a person shall be taken to engage in money laundering where –
- (a) the person engages, directly or indirectly, in transaction that involves money or other property, that is proceeds of crime; or
  - (b) the person receives, possesses, conceals, disposes of, or brings into Dominica, any money or other property that is proceeds of crime, and the person knows or ought reasonably to know, that the money or other property is derived, obtained or realized, directly indirectly from some form of unlawful activity.

#### **Property that represents the proceeds of crime**

94. In the Commonwealth of Dominica, also, the offence of Money Laundering extends to any property, regardless of its value, that directly or indirectly represents the proceeds of crime. The term “property” is defined by section 2 of The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Act No. 20 of 2000 as including money, investments, holdings possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situated (whether in Dominica or elsewhere) and includes any interest in such property. By section 2 of the Proceeds of Crime Act, 1993, Act 4 of 1993, a person shall be taken to engage in money laundering where (a) the person engages, directly or indirectly, in a transaction that involves money or other property, that is proceeds of crime. Further, by section 2 of the Proceeds of Crime Act, 1993, Act 4 of 1993 "property" is defined as including money and all other property, real or personal, including things in action and other intangible or incorporeal property.
95. In addition, the anti-money-laundering and legal officials with whom the team met considered that the Money Laundering offences as framed in the Money Laundering (Prevention) Act, 2000 and the the Proceeds of Crime Act, 1993, Act 4 of 1993, places no burden on the prosecution to prove the commission of or conviction for any predicate offence. They cited, for example, the United Kingdom’s House of Lords case *Regina V Montila* and others in support of the view that Prosecution is required to prove that the money is tainted, that it is the proceeds of crime, but, does not have to show a conviction for the predicate offence.
96. Further, in Dominica, the predicate offences for money laundering cover all serious offences. The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), defines the term, “*proceeds of crime*” as *any property derived or obtained through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere.*” This would mean that where an indictable or hybrid offence is committed by an offender provided he derives some financial benefit from committing that offence and he attempts to or launders money as per the definition of money laundering in the Money

Laundering (Prevention) Act, 2000 he will be guilty of committing the offence of money laundering. Moreover, under the laws of Dominica, an ‘indictable *offence*’ is one which can only be tried on an indictment after a preliminary inquiry to determine whether there is a *prima facie* case to answer. On the other hand, a hybrid or ‘triable either way’ offence allows the defendant to elect between trial by jury on indictment in the High Court and summary trial in the Magistrate’s Court

97. The qualification of “*hybrid*” offences in The Commonwealth of Dominica captures the category of offences that are punishable by a maximum penalty of more than one year’s imprisonment and by a minimum penalty of more than six months imprisonment.
98. Thus, the threshold approach is adopted by Dominica in complying with this criterion. All *hybrid and indictable* offences are predicate offences to the offence of Money Laundering.

### Designated categories of offences

99. The FATF designated categories of offences are not all criminalized under the laws of the Commonwealth of Dominica as indicated in the following table:

**Table 3: Criminalisation of designated categories of offences**

| Designated Categories Of Offences                                 | Relevant Legislative Provisions In Dominica  |
|---|--|
| Participation in an organised criminal group and racketeering     | Proceeds of Crime Act No. 4 of 1993  |
| Terrorism, including terrorist financing                          | Financing of Terrorism Act No 3 of 2003  |
| Trafficking in human beings and migrant smuggling                 | Immigration and passport Act, Cap18:01as amended by Act 19 of 2003   |
| Sexual exploitation, including sexual exploitation of children    | Sexual offences Act Cap 10:36  |
| Illicit trafficking in narcotic drugs and psychotropic substances | Drug (Prevention of Misuse ) Act 40:07   |
| Illicit arms trafficking  | Firearms Act 15:31<br>Exportation of Arm and Warlike stores Act, Cap15:53                                    |
| Trafficking in stolen and other goods                             | Customs Act, Cap 69:01<br>Theft Act, Cap 10:33   |
| Corruption and bribery  | Integrity In Public Office Act No 6 of 2003  |
| Fraud   | Theft Act, Cap 10:33<br>Proceeds of Crime Act No 4 of 1993   |
| Counterfeiting currency   | Counterfeit Currency Act, Cap 75:02<br>Forgery Act, Cap 10:34  |
| Counterfeiting and piracy of products                             | Forgery Act, Cap 10:34   |
| Environmental crime   | National Park and Protected Area Act, Cap 42:02<br>Mining And Pumice Act, Cap 57:02<br>Forest Act, Cap 60:01 |

|  |  |
|--|--|
|  | Forestry And Wild Life Act, Cap 60:02<br>Fisheries Act, Cap 61:60<br>Pesticides control Act, Cap 40:10<br>Land Management Authority Act, Cap 58:01 |
| Murder, grievous bodily injury                   | Offence Against The Person Act,10:31   |
| Kidnapping, illegal restraint and hostage-taking | Offence Against The Persons Act, Cap 10:31   |
| Robbery or theft                                 | Theft Act, Cap 10:33   |
| Smuggling  | Customs Act, Cap 69:01   |
| Extortion  | *****  |
| Forgery  | Forgery Act, Cap 10:34   |
| Piracy ( <i>Pirates at Sea</i> )                 | *****  |
| Insider Trading, & Market Manipulation           | Security Act No. 21 of 2001 (Sections 115-<br>Insider Trading; 118-Market Manipulation<br>and 122-Penalty for Market Manipulation)                 |

100. Further, under the laws of the Commonwealth of Dominica, predicate offences for Money Laundering, extends to conduct that occurred *Dominica or elsewhere.*”(Section 2 and 8 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07).
101. Additionally, the offence of ML-applies to persons who commit the predicate offence, as captured in sections 2 and 3 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07) in the definition of ML.
102. Section 4 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07) states that, “*A person who aids, abets, counsels or procures the commission of, or attempts or conspires to commit, the offence of money laundering commits an offence.*” Also, under the laws of The Commonwealth of Dominica, self-laundering would be criminalized.

#### **Additional Elements**

103. Since the offence of Money Laundering is only completed when it is established that the property in question originated from the proceeds of *crime*, whether committed in Dominica or elsewhere, if an act is committed in a jurisdiction outside of Dominica and that act would constitute a predicate offence for money laundering in Dominica though not in the jurisdiction where it was committed, it would constitute a money laundering offence in Dominica. In accordance with Section 8 stated below, a prosecution could be brought in Dominica against the perpetrator for the act committed outside of Dominica notwithstanding the fact that the act would not constitute an offence in the outside jurisdiction.

#### **Scope of liability**

104. By virtue of section 2 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07) the offence of Money Laundering apply to natural persons that engage in Money Laundering activity
105. Also, the law permits the intentional element of the offence of Money Laundering to be inferred from objective factual circumstances. Section 2 (2) of the Money

Laundering (Prevention) Act, 2000 states that “*Knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective, factual circumstances.*”

106. Further, the criminal liability for the offence of Money Laundering extends to legal persons. Section 2 and section 3 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07) “ defines person to ” include any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations”
107. The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), does not adequately detail what administrative proceedings may be employed in dealing with legal persons who have been found criminally liable.
108. Additionally, in the Commonwealth of Dominica natural and legal persons are subject to proportionate, dissuasive criminal sanctions for Money Laundering. The statistics do not allow the effectiveness of the sanctions to be evaluated. Criminal sanctions are provided for at sections 5 and 6 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), *By Section 5 & 6 A person who commits an offence under section 3 or 4 is liable, on conviction, to a fine not exceeding one million dollars, and to imprisonment for a term not exceeding seven years.*
109. In The Commonwealth of Dominica natural and legal persons are not subject to effective, proportionate and dissuasive Civil or administrative sanctions for Money Laundering. With regards to civil sanctions only sections 19 and 20 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), speaks to civil sanctions. Section 19 provides for the court to impose a financial penalty on a financial institution or person carrying on a scheduled business under certain circumstances. Section 20 prevents a person [natural or legal] who has been convicted of a money laundering offence, whether in Dominica or elsewhere from being eligible or licensed to carry on the business of a financial institution.
110. No administrative sanctions are provided for. Additionally, at section 11 of the MLPA which details the functions of the MLSA, no administrative powers are given to the MLSA to administer sanctions.

***Statistics (money laundering investigation/prosecution data)***

111. In The Commonwealth of Dominica, there are no comprehensive statistics maintained on Money Laundering investigations (ie, prosecution and the convictions; there have been no convictions thus far).

**Statistics**

112. Between the years 2005 to 2008, there has been no money laundering investigations prosecutions or convictions in the Commonwealth of Dominica.
113. In the Commonwealth of Dominica there are sufficient statutes within the legal framework to effectively ensure that it is comprehensive notwithstanding the non-

criminalization of extortion and Piracy (*Pirates at Sea*) insider trading, & market manipulation. Additionally, the primary statutes have been in force for many years. The absence of money laundering prosecutions and convictions suggests therefore that existing legislation is not being utilized effectively.

### 2.1.2 Recommendations and Comments

114. The laws of the Commonwealth of Dominica should be amended to:

- Cover conversion or transfer as two additional physical and material elements of the money laundering offence;
- Adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been found criminally liable;
- Provide for civil and administrative sanctions;
- Enact legislation criminalizing extortion and piracy (*Pirates at Sea*)
- Adopt an approach that would result in more effective use of existing legislation
- In The Commonwealth of Dominica, comprehensive statistics should be maintained with regard to Money Laundering investigations (ie, prosecution and the convictions if any).

### 2.1.3 Compliance with Recommendations 1, 2

|     | Rating | Summary of factors underlying rating <sup>2</sup>   |
|-----|--------|---|
| R.1 | PC     | <ul style="list-style-type: none"> <li>• <b>The physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer.</b></li> <li>• <b>Designated categories of offences Piracy (Pirates at Sea) and Extortion not criminalized.</b></li> <li>• <b>Ineffective utilisation of existing legislation.</b></li> </ul> |
| R.2 | LC     | <ul style="list-style-type: none"> <li>• <b>The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), does not adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been found criminally liable.</b></li> <li>• <b>No civil or administrative sanctions are provided for ML.</b></li> </ul>                          |

## 2.2 Criminalisation of Terrorist Financing (SR.II)

### 2.6.2 Description and Analysis

#### *Special Recommendation II*

2. <sup>2</sup> These factors are only required to be set out when the rating is less than Compliant.

## **Criminalisation of terrorist financing**

115. In the Commonwealth of Dominica Terrorist Financing is criminalised consistent with Article 2 of the Terrorist Financing Convention (Section 4 of The Suppression of the Financing of Terrorism Act, 31 of 2003).
116. By virtue of Section 4 of The Suppression of the Financing of Terrorism Act, 31 of 2003), Terrorist financing offences extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (i) to carry out a terrorist act(s); (ii) by a terrorist organisation; or iii) by an individual terrorist.

## **Definition of funds**

117. By section 2 of The Suppression of the Financing of Terrorism Act, 31 of 2003), Terrorist financing offences extend to any *funds* as that term is defined in the International Convention For The Suppression of The Financing of Terrorism; It includes funds whether from a legitimate or illegitimate source. In the said Act, “funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital evidencing title to or interest in, such assets including but not limited to bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
118. Further, in the Commonwealth of Dominica, Terrorist financing offences do not require that the funds: (i) were actually used to carry out or attempt a terrorist act(s) (section 4 (2) of the Suppression of the Financing of Terrorism Act, 31 of 2003. The said Act does not speak to the funds being linked to a specific terrorist act(s)
119. In addition, by section 4 (3) of The Suppression of the Financing of Terrorism Act, 31 of 2003 it is an offence to attempt to commit the offence of terrorist financing. Further, by section 4(3) it is an offence to engage in any of the types of conduct set out in Article 2(5) of the International Convention for The Suppression of The Financing of Terrorism.
120. By section 5 of The Suppression of the Financing of Terrorism Act, 31 of 2003, persons who commit terrorist financing offences are liable on conviction on indictment to a fine of one hundred thousand dollars or imprisonment for a term of twenty five years or to both such fine and imprisonment. Thus, terrorist financing offences are, in The Commonwealth of Dominica, predicate offences for money laundering. The definition of *proceeds of crime* at section 2 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), captures all *hybrid and indictable* offences as predicate offences to Money Laundering.
121. This definition denotes that all *hybrid or indictable* offences are predicate offences for Money Laundering. By extension, most of the terrorist financing offences are indictable offences and are captured in that category as a predicate offence for Money Laundering.

122. It is not clear that terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in the Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. In The Commonwealth of Dominica, the law does not specifically permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstances. Also, it does not speak to the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.
123. Natural and legal persons are subject to proportionate and dissuasive criminal, sanctions for terrorist financing offences. No civil or administrative sanctions are defined in law. The effectiveness of the regime has not been tested by actual cases.
124. Further, in the Commonwealth of Dominica, definition of terrorist, terrorist act and terrorist organization are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971),

***Statistics (terrorist financing investigation/prosecution data)***

125. There has been no investigation where FT is concerned. Hence, no such statistics exists.
126. There have been no convictions for FT offences and as such no statistics exists.

**2.2.2 Recommendations and Comments**

127. The laws should be amended to:
- State that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in the Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur ;
  - Permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstance;
  - To permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.
  - To address civil or administrative penalties; and
  - Ensure that the definition of terrorist, terrorist act and terrorist organization are in line with the term terrorist act as defined by the FATF

**2.2.3 Compliance with Special Recommendation II**

|              | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|--------------|---------------|--|
| <b>SR.II</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• <b>The law is not clear that terrorist financing offences apply,</b></li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <p>regardless of whether the person alleged to have committed the offence(s) is in the Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur .</p> <ul style="list-style-type: none"> <li>• The law does not specifically permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstance.</li> <li>• The law does not specifically speak to the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.</li> <li>• No civil or administrative penalties are defined in law.</li> <li>• The effectiveness of the regime has not been tested by actual cases.</li> <li>• The definition of terrorist, terrorist act and terrorist organization are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971),</li> </ul> |
|--|--|--|

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

### 2.3.1 Description and Analysis

#### *Recommendation 3*

#### **Confiscation of proceeds**

128. The laws provides for the confiscation of property that has been laundered or which constitutes: a) proceeds from; b) instrumentalities used in; and c) instrumentalities intended for use in the commission of any Money Laundering, Terrorist Financing or other predicate offences, and property of corresponding value.
129. Sections 17-23 of the Proceeds of Crime Act, No. 4 of 1993 provide for the confiscation of property that constitutes the proceeds in the commission of any Money Laundering (drugs) offence and property of corresponding value.
130. Part IV of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), provides for the freezing and forfeiture of assets in relation to money laundering. By section 23 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), the law provides, when a person is convicted of a money laundering offence, for the court to order the property, proceeds or instrumentalities derived from or connected or related to such an offence, be forfeited to the Government of Dominica. The section states that when, as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities cannot be forfeited, the court may order the forfeiture of any other

property of the person convicted, for an equivalent value, or may order the person convicted to pay a fine of that value.

131. By Sections 8 of The Suppression of the Financing of Terrorism Act, 31 of 2003, *where a person is convicted of an offence, in addition to any penalty the Court may impose, the Court may order forfeiture to the State of –*

- a. the funds collected or retained by that person or by any other person on behalf of the convicted person for the commission of the offence;*
- b. any property used for, or in connection with the commission of the offence; and*
- c. any funds, property or asset derived from any transaction by the convicted person or in relation to which the offence is committed*

132. By Sections 38 of The Suppression of the Financing of Terrorism Act, 31 of 2003, *The Attorney General may apply to a Judge for an order of forfeiture in respect of-*

- a. property owned or controlled by, or on behalf of a terrorist or terrorist group; or*
- b. property that has been, is being or will be used, in whole or in part to commit or facilitate the commission of a terrorist act.*

133. The forfeiture and confiscation above extend to property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime; (Section 2 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07). “*Proceeds*” means any funds derived from or obtained directly or indirectly through the commission of any offence under this Act. Reference is made to the definition of the word “*funds*”.

134. Also, the forfeiture and confiscation apply to all property referred related to the money laundering and terrorist financing offences regardless of whether it is held or owned by a criminal defendant or by a third party (Section 23 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), sections 8 and 38 of The Suppression of the Financing of Terrorism Act, 31 of 2003).

135. Further, laws and other measures provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation.

- 0) The Commissioner of Police may seize any property where he has reasonable grounds for suspecting that the property has been or is being used to commit the offence under this Act.
- 0) The Commissioner of Police shall, as soon as practicable after seizing any property under this section, make an application *ex parte* to a Judge of the High Court for a detention order in respect of that property.

136. In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made *ex-parte* or without prior notice.

#### **Powers to identify and trace property**

137. Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica have some but not adequate powers to identify and trace

property that is, or may become subject to confiscation or is suspected of being the proceeds of crime.

138. Under Section 15 (c) of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), The FIU has powers conferred on it which applies to all Financial Institutions (FI) and DNFBPs, to enter their premises during normal working hours and inspect, take notes and ask questions in relation to the records kept pursuant to section 15 (a) of the said Act; Section 18 of the said Act also gives the FIU powers to apply for Monitoring Orders that can be served on the FIs/DNFBPs, which would make it mandatory that they produce to the FIU information requested by the said Order; Additional powers of the FIU are found at section 14 and powers of search can be found at section 17 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), Under Section 47(1) of the Proceeds of Criminal Conduct Act, 1997, a police officer may apply to a Judge in Chambers for a Monitoring Order directing a financial institution to give information to a police officer. Such applications shall be made *ex parte* and should be in writing and accompanied by an affidavit.

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

139. Laws and other measures provide protection for the rights of bona fide third parties. Such protection is consistent with the standards provided in the Palermo Convention

#### **MLPA**

140. Section 23(4) of the MLPA states, that “In making a forfeiture order the court may give directions for the purpose of determining any dispute as to ownership of the property or any part thereof.” Also section 25 of the MLPA provides for the rights of *bona fide* third parties.
141. Persons claiming legitimate legal interests in property, proceeds or instrumentalities may appear in support of their claim and the court shall return the property, proceeds or instrumentalities to the claimant, when it has demonstrated to its satisfaction that the claimant has a legitimate interest in the property, proceeds or instrumentalities.
142. Under section 12 of the Proceeds of Criminal Conduct Act, Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order in respect of his interest in the property.
143. There is little authority in the Commonwealth of Dominica to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. The SFTA does not contain such provisions.

#### **Additional Elements**

144. The laws in The Commonwealth of Dominica do not (except for a limited power under the Suppression of the Financing of Terrorism Act, 31 of 2003), provide for the confiscation of: a) The property of organisations that are found to be primarily criminal in nature (i.e. organisations whose principal function is to perform or assist in the performance of illegal activities); b) Property subject to confiscation, but without a conviction of any person (*civil forfeiture*), in addition to the system of confiscation

triggered by a criminal conviction and c) Property subject to confiscation, and which require an offender to demonstrate the lawful origin of the property.

*Statistics (confiscation/freezing data)*

145. Competent authorities have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering & financing of terrorist investigations- prosecutions and convictions- and on property frozen; seized and confiscated because no property has been frozen with a nexus to the financing of terrorism. As it relates to ML, in 2005 an Application was made to the High Court by the FIU for a freezing order pursuant to section 22 of the MLPA, for the freezing of EC \$148,134.57 that was linked to a money laundering case brought against a foreign national who was engaged in human trafficking. The matter was subsequently discontinued by the Director of Public Prosecutions. The funds in question were returned to the subject.

Recommendations and comments

- The laws or measures in the Commonwealth of Dominica should allow an initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice, unless this is inconsistent with fundamental principles of domestic law.
- There should be authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

2.3.3 Compliance with Recommendations 3

|     | Rating | Summary of factors underlying rating  |
|-----|--------|---|
| R.3 | PC     | <ul style="list-style-type: none"> <li>• <b>In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice.</b></li> <li>• <b>Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica do not have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime.</b></li> <li>• <b>There is little authority in the Commonwealth of Dominica to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</b></li> </ul> |

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

#### 2.4.1 Description and Analysis

### **Special Recommendation III**

#### **Legal framework for freezing terrorist-related assets**

146. The Commonwealth of Dominica has effective laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). Such freezing takes place without delay and without prior notice to the designated persons involved. The Suppression of the Financing of Terrorism Act, 31 of 2003, notes as follows:

- (1) The Attorney General shall, upon publication of an Order under section 11(2), order a financial institution in Dominica requiring it to freeze any account, funds or property held by that financial institution on behalf of a person designated a terrorist or terrorist group.*
- (2) Any financial institution which freezes an account pursuant to subsection (1) shall, as soon as practicable, notify the holder of the account that the account has been frozen.*
- (3) Subject to subsection (4), an Order made by the Attorney General shall be effective for three months unless previously revoked by him or by order of the Court.*
- (4) The Court may, upon an application of the Minister, order the extension of a freezing order made pursuant to subsection (1) if the Court is satisfied that the conditions referred to in subsection (1) still apply.*
- (5) An application under subsection (4) may be heard ex parte.*
- (6) For the avoidance of doubt, an application filed pursuant to subsection (4) shall not operate as a stay of the freezing order in respect of which an order is sought.*

#### **Giving effect to foreign freezing orders**

147. The Commonwealth of Dominica has limited laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. The limited procedures ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. Section 27 of the Mutual Assistance in Criminal Matters Act, Chapter 12:19, which deal with requests from Commonwealth Countries and Non-Commonwealth Countries that are signatories to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998 (*Mutual Assistance in Criminal Matters (Amendment) Act No. 16 of 2002*) provides for foreign orders to be registered but the legislation does not speak of freezing property subject to such orders.

148. The freezing actions referred to in Criteria III.1 – III.3 do not, in the Commonwealth of Dominica, extend to: (a) funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations; and b) funds or other assets derived or generated from funds or

other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations.

149. The laws of the Commonwealth of Dominica do not speak to having an effective systems for communicating actions taken under the freezing mechanisms referred to in Criteria III.1 – III.3 to the financial sector immediately upon taking such action.

#### **Guidance to financial institutions**

150. The Minister responsible for national security has the responsibility of publishing an Order in the Gazette which essentially would designate persons to be terrorists or groups to be terrorists groups. Where such an Order has been published, it is then the responsibility of the Attorney General to order financial institutions in Dominica to freeze any accounts, funds or property held by or on behalf of such designated person or group. Section 15 of the SFTA prohibits financial institutions from dealing in any way with terrorist or terrorist groups designated by an Order of the Minister. No such orders have been issued by Dominican authorities. However, all of the financial institutions interviewed during the assessment were aware of the 1267 list and its declarations.

#### **De-listing procedures**

151. For the Commonwealth of Dominica, Sections 11, 12 and 13 of the Suppression of the Financing of Terrorism Act, 31 of 2003) also provide for effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.
152. Sections 11, 12, 13 and 37 (8) of the Suppression of the Financing of Terrorism Act, 31 of 2003) provides the Commonwealth of Dominica with effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person

#### **Access to funds for basic expenses**

153. The Commonwealth of Dominica does not have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses

#### **Right to challenge freezing order**

154. The Commonwealth of Dominica has appropriate procedures through section 13 of The Suppression of the Financing of Terrorism Act, 31 of 2003) whereby a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.

#### **Freezing, Seizing and Confiscation in other circumstances**

155. In the Commonwealth of Dominica the laws address Criteria 3.1 – 3.4 and Criterion 3.6 (in R.3) also apply in relation to the freezing, seizing and confiscation of terrorist-related funds or other assets in contexts other than those described in Criteria III.1 – III.10. The Suppression of the Financing of Terrorism Act, 31 of 2003, section 12, 12, 13 20(3), 23 (1) & (2), 37(1), and (38) has applicability here.

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

156. The SFTA provides protection for the rights of bona fide third parties. This is evident where provision is made for a ‘person’ who claims an interest in property that has been forfeited, can apply to the High Court to vary or set aside the forfeiture order. (Section 38 (7). Additionally, a Judge at the High Court, by virtue of section 38 (5) may require that any person who in that Judge’s opinion has an interest in property which is to be forfeited. In such circumstances such a person shall be entitled to be added as a respondent to the application for the forfeiture order.

#### **Monitoring compliance and sanctions**

157. The SFTA does not detail the competent authority which has the responsibility for monitoring and ensuring that the appropriate measures are effectively complied with. Section 4 criminalizes a range of conduct associated with the funding of terrorist acts, whilst pursuant to section 7, financial institutions found guilty of committing any offence under the SFTA is liable to having its license cancelled. There are no other sanctions created for non compliance with the obligations specific to SR. III.
158. The penalty imposed on persons pursuant to a conviction of an offence at section 4 is a fine of \$100,000 or imprisonment for a term of twenty-five years or to both. It is instructive to note that the SFTA interprets person to include entity whilst entity includes any form of business collaboration.

#### **Additional Elements**

##### ***Statistics (terrorist financing freezing data)***

159. Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Terrorist financing freezing data.

#### **2.4.2 Recommendation and Comments**

160. The Commonwealth of Dominica appear committed to ensuring that combating international terrorism is facilitated through its domestic legislation and has implemented some measures that would allow it to freeze assets pursuant to S/RES/1267 (1999) and S/RES/1373(2001). Notwithstanding, the Commonwealth of Dominica should:

- Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions;
- Implement effective mechanisms for communicating actions taken under the freezing mechanisms referred to in Criteria III.1 – III.3, to the financial sector immediately upon taking such action.

- Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999) that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.
- Issue clear guidance to financial institutions and persons that may be in possession of targeted funds or assets or may later come into possession of such funds or assets.

#### 2.4.3 Compliance with Special Recommendation III

|        | Rating | Summary of factors underlying rating  |
|--------|--------|---|
| SR.III | PC     | <ul style="list-style-type: none"> <li>• <b>The Commonwealth of Dominica has limited and need adequate laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</b></li> <li>• <b>The laws of the Commonwealth of Dominica do not speak to having an effective system for communicating actions taken under the freezing mechanisms</b></li> <li>• <b>The Commonwealth of Dominica do not have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses</b></li> <li>• <b>No guidance has been issued</b></li> </ul> |

#### Authorities

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

#### 2.5.1 Description and Analysis

161. The Financial Intelligence Unit (FIU) is an integral part of the Anti-Money Laundering/Counter Financing of Terrorism regime of the Commonwealth of Dominica. Section 12 of the Money Laundering Prevention Act (MLPA) provides for the establishment of the Unit and sets out its powers and functions. The FIU is staffed by four persons and serves as the secretariat for the Money Laundering Supervisory Authority (MLSA). The MLSA is ultimately charged with supervision of the Money Laundering Prevention Act.

#### Recommendation 26

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

162. The Financial Intelligence Unit (FIU) was established by dint of the Money Laundering (Prevention) Act No. 20 of 2000. The Act states that the Unit shall consist of three (3) police officers trained in the investigation of financial crimes and two other persons appointed by the Minister of National Security after consultation with the Commissioner of Police.
163. Several investigative powers are bestowed on the Unit at section 14 of the Act which includes the receipt and analysis of STRs received from the MLSA; gathering of intelligence to detect ML and financial crimes; liaising with other ML intelligence agencies outside of Dominica; compilation of statistics and the passing on of information to the Director of Public Prosecutions (DPP) for appropriate action.
164. The FIU currently comprises a staff of four (4), which include a Director, two (2) Financial Investigators and an Administrative Assistant.

### **Receipt and analysis of STRs**

165. The powers and functions of the FIU include the receipt via the MLSA, and independent analysis of Suspicious Transactions Reports (STRs) filed by Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs). On completion of the initial analysis, an investigation relative to the said STR is carried out, at the conclusion of which, a prosecutorial file is generated and submitted to the Director of Public Prosecutions (DPP), if there is sufficient evidence to prosecute for Money Laundering (ML).
166. The procedure that obtains presently in the filing of STRs by FIs and DNFBPs is that all reports are sent to the Money Laundering Supervisory Authority (MLSA) under confidential cover but are received by the FIU, which acts as a secretariat to the MLSA, which is the agency mandated with the responsibility under the MLPA (*Section 16 (2)*) to receive the reports.
167. Upon receipt of the said STRs, administrative filing procedures are employed with a copy of the STR sent to the FIU for their consideration, whilst another copy is placed in an independent filing system which is maintained by the FIU staff, at the FIU office, on behalf of the MLSA. The process includes data entry into a database, and the development of an electronic case management system specific to each STR received. All STRs are securely housed at the FIU.
168. Additionally, the FIU also gathers intelligence for the purpose of detecting money laundering and other financial crimes, and liaises with money laundering intelligence and law enforcement agencies outside Dominica in the execution of its functions.
169. Thus far, the FIU has experienced excellent cooperation from the financial institutions. The FIU is independent in its review, analysis and dissemination of SAR's information. Cross border transactions are also immediately reported to the FIU.
170. The FIU is located at the top floor of a concrete structure completely secured by steel burglar bars with a double entry door system to enter via the main door. Files are kept locked in filing cabinets in a secure room within the FIU. The FIU's network is 2-tier with sensitive information being stored on a secure VPN on a password protected

server devoid of internet access; the second part of the network is for Internet connectivity that allows access to Egmont, Mail and other secure and resource sites.

**STATISTICS**

**Table 4: STRs received broken down by year**

| <b>STRs</b>   | <b>YR</b>   | <b>YR</b>   | <b>YR</b>   | <b>YR</b>   | <b>YR</b>   |
|---------------|-------------|-------------|-------------|-------------|-------------|
|               | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> |
| Received      | 20          | 19          | 9           | 23          | 35          |
| Investigated  | 20          | 19          | 9           | 23          | 35          |
| Prosecuted    | -           | -           | -           | -           | -           |
| Convictions   | -           | -           | -           | -           | -           |
| Assets Frozen | -           | -           | -           | -           | -           |

**Guidance and procedures for reporting**

- 171. The Money Laundering Supervisory Authority (MLSA) has provided guidelines (*Guidance Notes 2008 – Revised*) to financial institutions (FIs) and designated non financial and business professionals (DNFBPs), regarding the manner and specification of reporting Suspicious Transaction Reports (STRs).
- 172. Section 11 of the MLPA Regulations and section 16 (2) address briefly the legal requirement for the reporting of STR’s.
- 173. However, the guidance on reporting of STR’s can be found at SECTION IX of the AML GN 2008.
- 174. A standard form for the reporting of STR’s can be found at Appendix 2 of the Guidance Notes 2008 and the Schedule to the MLPA Regulations.
- 175. The legislation provides for the submission of information by Financial Institutions and Designated Non-Financial Business Persons and the Guidance Notes sets out the format for reporting. The same reporting format is used by all reporting entities.

**Access to information**

- 176. The Financial Intelligence Unit has direct and indirect access on a timely basis to information from Financial Institutions and Scheduled Entities, Police, Customs and other similar agencies which enable the Unit to properly undertake its functions including the analysis of STRs.
- 177. Section 15 (c) of the MLPA allows the Unit access to information held by FIs and DNFBPs. Access is relative to all business transaction records, defined at section 2 of the MLPA.

178. Administratively, cooperation with and access to other governmental departments have been excellent.
179. According to section 14 (i) of the MLPA, the Unit (i) may consult with any person, institution or organization within or outside Dominica for the purposes of the exercise of its powers and duties under this Act;”
180. Pursuant to the exercise of the Unit’s functions under the MLPA, constant communications has been had with law enforcement authorities (*i.e. Police, National Joint Intelligence Center, Interpol, etc...*) in the investigation of cases.
181. Statistics are not kept on the number of times consultations with other LEAs have been conducted because of the nature of some of the consultations i.e. a police records check, access to Criminal Records Office, joint searches, sharing information with Drug Squad etc.
182. However, stats on Requests sent and responded to via INTERPOL are maintained by the Unit and are represented in the table below:

**Table 5: Statistics on Interpol requests sent and received**

| <b>INTERPOL REQUESTS</b> |             |                              |
|--------------------------|-------------|------------------------------|
| <b>REF. No.</b>          | <b>SENT</b> | <b>RECEIVED/INVESTIGATED</b> |
| 1.                       | 1           | 16                           |

183. The FIU is authorised at section 15 (c) of the MLPA to source additional information it may need to properly undertake its functions.
184. The Director of the FIU has the authority to request or authorize a visit by the staff of the Unit to obtain additional data from Financial Institutions and scheduled entities. The Unit can also request data from other agencies including the Police and other administrative agencies.
185. The Unit on occasion receives Diplomatic Notes from the US Embassy, Bridgetown, Barbados containing names of designated terrorist (s) individual (s) or organisation (s), which are forwarded to the financial institutions for consideration. There has been no positive response thus far. Once the STR is sent to the MLSA and the FIU receives its copy, it is analyzed for a nexus to money laundering. These STRs are then investigated by the Unit. In the case of those STRs that are established to not be related to money laundering but may be related to other financial crimes these are then passed on the respective agency for further action.
186. Upon receipt of these reports, the information contained therein is extracted and entered into an electronic database housed within the Unit. A copy of the STRs is placed in the MLSA’s general file, another copy is placed in the reporting institutions file and the third copy is placed in a case file that is generated and immediately passed on to the Director for his consideration.
187. On completion of his analysis of the same, if there is a nexus to money laundering, the

case is passed to the Financial Investigator for investigations. Additional analysis is conducted on the same, including but not limited to, tapping on the resources of sister intelligence agencies, LEAs administrative departments. If a nexus to a foreign jurisdiction is identified and a decision is taken by the Director to communicate the information via a Request for Assistance, Letters Rogatory or MLAT, the information is so communicated.

188. At the end of the investigation, pursuant to section 14 (j) of the MLPA, a prosecutorial case file is developed and passed on to the DPP for his consideration and necessary action. No such case file was passed to the DPP during the four years preceding the assessment.
189. All decisions relative to the analysis, dissemination, investigation and submission of case file to the Director of Public Prosecutions re ML is taken by the Unit. Parallel Legal guidance and instructions are always sought from the DPP and other legal officers during investigations which guide the financial investigator towards the evidence needed to build the case.
190. The FIU have a very large degree of operational independence and appears to be able to function without undue influence or interference. The decision to investigate an STR lies solely with the Director.
191. The office of the Unit is adequately secured. The FIU is located at the top floor of a concrete structure. Steel bars secure all windows and external doors of the building. A steel gate with a deadbolt lock and a wooden door secured by two locks secures the main entrance to the building. All offices within the FIU are secured by lock and key.
192. The files of the FIU are held in filing cabinets with locks, which are further secured in a private room within the building by wooden door and lock. Access to that room is managed by one person only.

#### **The FIU's database**

193. The FIU's database is housed on a server that is part of a Virtual Private Network (VPN) devoid of Internet access. All client machines within the FIU are given access to the server by the Network Administrator, who is a member of the Unit. Access to the server is gained by entry of a combination of Username and Password. All files stored on the server are further secured by a password that must be entered before access can be gained. The databases in which STRs, Egmont Requests, MLAT Requests etc are stored, are further secured by a Username and Password. All data is backed-up on a regular basis to magnetic tape. This backup is secured within the offices of the FIU.
194. The copies of the STRs maintained in the independent filing system on behalf of the MLSA are not computerised or protected in a similar manner to those of the FIU. They are simply placed in a filing cabinet that is secured by lock and key. The MLSA must be allowed unfettered access to these files and is therefore privy to the same information as the FIU. The FIU therefore does not have total control of the confidential information it receives from reporting entities.
195. Annual reports completed by the Unit pursuant to section 14 (k) of the MLPA are sent to

the Minister designate (*Minister for Tourism, Legal Affairs and Civil Aviation*) under the MLPA. These reports do include statistics, typologies and trends discovered in the investigation of ML cases.

196. The MLPA does not provide for the releasing of annual reports to the public and as such no FIU reports are made public as it is felt that it contains sensitive information.
197. Dominica-FIU is a member of the Egmont Group. Membership was obtained in July 2003.
198. Dominica-FIU has regards to the Egmont Group Statement of Purpose and its Principles of Information Exchange between Financial Intelligence Units for Money Laundering Cases, since it's a current member of the said Group.
199. The FIU adheres to the Egmont provisions for the Exchange of Information and shares information spontaneously with member countries. There is no legal requirement in Dominica for the signing of a Memorandum of Understanding in order for information to be shared with other competent authorities either local or international.

***Recommendation 30 (FIU)***

200. The staff of the FIU is made up of one (1) Director, two (2) Financial Investigators and an Administrative Assistant.
201. The Director of the Unit is appointed by the Public Service Commission after endorsement by the Cabinet. The appointment is for a period of two years in the first instance. The contract of employment speaks to the issue of conditions for dismissal. The police officers attached to the Unit are selected by the Commissioner of Police, based on the officers' experience and educational background, on secondment under continuous employment.
202. The FIUs budget is EC \$158,310.00 which is controlled by the accounting officer in the Ministry of Legal Affairs.
203. Administrative financial matters relative to the FIU's operation is subsumed in the overall budget of its Ministry, the Ministry of Tourism, Legal Affairs and Civil Aviation.
204. Resources have been provided to the FIU to assist it in the execution of its functions. These include training in ML, use of analytical software, database management, investigative techniques; the provision of tools to facilitate ML investigations i.e. laptops, i2 Analyst Notebook, RAID Database, digital camera, tape recorder, copier, fax machine, computers and other computing peripherals.
205. The FIU has been fully independent since its inception in July 2001. Decisions regarding the investigation of cases are decided on only by the FIU.
206. There has been no interference from government officials or other immediate supervisors in the operations of the Unit. As a general rule, all cases are investigated. Once there is sufficient information to prove a ML case, a case file is developed and passed on to the Director of Public Prosecution for direction and necessary action.

207. Staff of the FIU is of a high professional standard and applies applicable standards regarding confidentiality, i.e. Oath of Secrecy. Background checks are done on the officers attached to the Unit on a continuous basis to ensure that they maintain a high level of integrity.
208. Staff of the Unit have attended several ML workshops, seminars and courses including but not limited to courses in the use of the Real-Time Analytical Database (RAID) and the basic and advance courses in the use of i2 Analyst Notebook v6.
209. Issues covered in the training received includes but are not limited to:
- Interviewing techniques
  - Net worth analysis
  - Basic accounting
  - Data mining of a computing system/computer forensics
  - Following the money trail
  - Development of Prosecutors statements
  - Understanding FATF's 40 + 9 recommendations; 2004 Methodology and the MEQ/MER process having been trained as a Regional Assessor on AML/CFT
  - Gathering and Using Intelligence in Terrorism Investigations
  - Terrorism Financing: Methods and Preventative Measures
  - Border Control and Counter-Terrorism Measures
  - Mutual Legal Assistance/International Cooperation
  - Handling Hostage cases(Planning, Negotiation, Tactics, Command Issues, Safety and Release in operations)
210. One of the Financial Investigators has benefited from a FT course where a variety of subjects were covered. The information imparted during this weeklong course further enhanced the capacity of the FIU in combating the financing of terrorism. The staff of the FIU have received significant training on investigation techniques and other money laundering related issues.

***Statistics (FIU):***

211. To date there has been no investigations with a nexus to TF and as such, no statistics exist.
212. The table below represents the current ML statistics from inception to present relative to this essential criterion.
213. The types of institutions and DNFBPs mandated to report STRs as per the Schedule to the MLPA, as amended by Act No.13 of 2001, are not limited to the institutions listed below. The selected institutions and DNFBPs below were randomly selected to fill the void in the table but represent the actual data on hand relative to STRs received.
214. The low level of STRs submitted in 2006 is charged mainly due to the lack of supervision by the regulator. Over the years under review the STRs from the Offshore Bank were mainly concerned with false invoicing and incoming wires etc. Those from

Domestic banks were concerned mainly with large deposits or attempts to place funds.

**Table 6: STRs received**

| <b>STRs</b>         | <b>YR</b>   | <b>YR</b>   | <b>YR</b>   | <b>YR</b>   |
|---------------------|-------------|-------------|-------------|-------------|
|                     | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> |
|                     |             |             |             |             |
| <b>Received</b>     | 19          | 9           | 23          | 47          |
| <b>Analyzed</b>     | 19          | 9           | 23          | 47          |
| <b>Disseminated</b> | 19          | 9           | 23          | 47          |

**Table 7: Breakdown of entities reporting STRs and the resulting investigations**

| TYPES OF REPORTING INSTITUTIONS | Banks (Domestic)        | Offshore Banks | Credit Unions | Lawyers | Money Remitters   | Car Dealerships | Jewellery Businesses | St. Vincent Trust Service Ltd. |
|---------------------------------|-------------------------|----------------|---------------|---------|---|-----------------|----------------------|--------------------------------|
| 2005                            | 9                       | 3              | 3             | -       | 4   | -               | -                    | -                              |
| 2006                            | 4                       | 2              | 3             | -       | -   | -               | -                    | -                              |
| 2007                            | 14                      | 7              | 2             | -       | -   | -               | -                    | -                              |
| 2008                            | 27                      | 3              | 4             | -       | 1   | -               | -                    | -                              |
|                                 |                         |                |               |         |   |                 |                      |                                |
|                                 |                         |                |               |         |   |                 |                      |                                |
| <b>STRs</b>                     |                         |                |               |         | <b>YR</b>   | <b>YR</b>       | <b>YR</b>            | <b>YR</b>                      |
|                                 |                         |                |               |         | <b>2005</b>   | <b>2006</b>     | <b>2007</b>          | <b>2008</b>                    |
| <b>Investigated</b>             |                         |                |               |         | 19  | 9               | 23                   | 47                             |
| <b>Prosecuted</b>               |                         |                |               |         | -   | -               | -                    | -                              |
| <b>Convictions</b>              |                         |                |               |         | -   | -               | -                    | -                              |
| <b>Assets Frozen</b>            |                         |                |               |         | <b><u>*EC</u></b><br><b><u>\$148,13</u></b><br><b><u>4.57</u></b> | -               | -                    | -                              |
|                                 |                         |                |               |         |   |                 |                      |                                |
| <b>Other Reports</b>            |                         |                |               |         |   |                 |                      |                                |
|                                 |                         |                |               |         |   |                 |                      |                                |
| <b>Authority</b>                | <b>Request Received</b> |                |               |         |   |                 |                      |                                |
| Egmont                          | 32                      |                |               |         |   |                 |                      |                                |
| Regional FIUs                   | 17                      |                |               |         |   |                 |                      |                                |
| Interpol                        | 23                      |                |               |         |   |                 |                      |                                |
| MLATs                           | 19                      |                |               |         |   |                 |                      |                                |

*\*The Order freezing the amount of EC \$148,134.57 was subsequently rescinded by a Consent Order between the DPP on consultation with the FIU and the Defence Attorney due to several irregularities observed in the development of the case-file of this particular case.*

215. During the period under review there is one case that resulted from the submission of a Suspicious Transaction Report and one conviction resulted from information received from a money remitter.

216. Statistics maintained on STRs resulting in investigations, prosecutions or convictions

for ML or TF are maintained, as it relates to ML by the FIU and as it relates to TF, by the FIU and Police.

The statistics below represents reports received as well as drug statistics by the Commonwealth of Dominica Police Force.

**Table 8: Breakdown of drug trafficking predicate offences**

| <b>CRIMINAL RECORD OFFICE</b> |             |             |             |             |              |          |
|-------------------------------|-------------|-------------|-------------|-------------|--------------|----------|
| <b>Police Headquarters</b>    |             |             |             |             |              |          |
| <b>Roseau</b>                 |             |             |             |             |              |          |
|                               |             |             |             |             |              |          |
| <b>INDICTABLE OFFENCES</b>    | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>TOTAL</b> | <b>%</b> |
|                               |             |             |             |             |              |          |
| POSSESSION OF COCAINE         | 24          | 21          | 26          | 21          | 92           | 0.73 %   |
| POSSESSION OF CANNABIS        | 130         | 119         | 131         | 157         | 537          | 4.28 %   |
| OBSTRUCTION (DRUG ACT)        | 26          | 17          | 16          | 12          | 71           | 0.57 %   |

2.5.2 Recommendations and Comments

- 217. The FIU should be made the central authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing.
- 218. The FIU should have more control over its budget since the control currently maintained by the Ministry could impact the Unit’s operation and to some extent its independence.
- 219. Although the security of the database seems adequate, backup data should be housed off-site to ensure that in the event of a catastrophe at the Unit there would be the opportunity for the recovery of data.
- 220. The FIU should prepare an Annual Report which they would be able to disseminate to the public which would enhance awareness.
- 221. The staff of the Unit should be expanded to include a database administrator.

2.5.3 Compliance with Recommendations 26, 30

|             | <b>Rating</b> | <b>Summary of factors relevant to s.2.5 underlying overall rating</b>  |
|-------------|---------------|--|
| <b>R.26</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• <b>The FIU is not the central authority for the receipt of STRs concerning suspected ML activities.</b></li> <li>• <b>The FIU is not the central authority for the receipt of STRs</b></li> </ul> |

|  |  |   |
|--|--|---|
|  |  | <p><b>concerning suspected FT activities</b></p> <ul style="list-style-type: none"> <li>• <b>In practice STRs are filed with the MLSA and copies are made available to the FIU.</b></li> <li>• <b>STRs are received by the MLSA which is mandated to consider such reports before passing them to the FIU.</b></li> <li>• <b>The FIU does not have total control over the STRs it maintains on behalf of the MLSA.</b></li> <li>• <b>To the extent that the budget of the FIU is controlled by the Ministry this could impact on its ability to be operationally independent.</b></li> <li>• <b>The Annual report prepared by the Unit is not made public.</b></li> </ul> |
|--|--|---|

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

2.6.1 Description and Analysis

222. The FIU is the designated law enforcement authority charged with the responsibility of ensuring that ML offences are properly investigated. Chapter 14 of the Laws of Dominica governs the Commonwealth of Dominica’s Police Force, which is charged with the enforcement of any law enacted in Dominica. The Police can therefore take action once a breach of any law is identified.

***Recommendation 27***

**The Commonwealth of Dominica Police Force**

223. The Laws of Dominica Chapter 14:01 makes provision for the establishment of a Police Force in Dominica. Section 11 & 12 of the Act speaks to the powers and duties of the police. While the police are given certain powers to carry out their functions, there are checks and balances for the good conduct of the police in the execution of these duties. Therefore, the Police Regulations in Chapter 14:01 and the Police Service Commission regulations Chapter 1:01 contain codes of conduct for police officers.

**Functions**

224. The CDPF is charged with the responsibility of maintaining law and order in Dominica, the protection of property and life and the enforcement of Legislation which includes Suppression of Financing of Terrorism Act.

225. The Commissioner of Police may seize any property where he has reasonable grounds for suspecting that the property has been or is being used to commit the offence under this Act.

226. Where on an *ex parte* application made to a Judge in Chambers, the Judge is satisfied

that there are reasonable grounds to believe that there is property in respect of which an order of forfeiture may be made under section 8, the Judge may issue a warrant authorizing a police officer to search that property and to seize that property if found and any other property in respect of which that police officer believes, on reasonable grounds, that an order of forfeiture may be made under section 8.

### **Drug Squad**

227. This section of the Force is tasked with the responsibility of reducing the illicit drugs supply in Dominica. Its efforts are directed at eradication of local cultivations, interception of such imported drugs into Dominica and demand reduction through education.
228. The Drugs section compliments the drugs prevention unit in making presentation to community groups and organisations in order to reduce the demand for illicit drugs.

### **NJIC**

229. The National Joint Intelligence Centre (NJIC) is an intelligence unit currently located in the Ministry of National Security Immigration and Labour and consists of four specially trained Police officers in the field of intelligence gathering, analysis and dissemination.
230. The major task of the Unit includes:
  - a. Gathering and analyzing intelligence in support of the functionary of the Criminal Investigations Department in the fight against crimes such as drug trafficking, Money laundering, Human trafficking, Fire-arms trafficking, Terrorism.
231. In its pursuit to effectively suppress criminal activities both nationally and regionally, the NJIC works collaboratively with other local law enforcement agencies such as Customs, Financial Intelligence Unit, various sections of the Police Force and Inland Revenue Division.
232. The NJIC can gather data for foreign counterparts and are able to forward this information without a formal Memorandum of Understanding.
233. The FIU is responsible for the investigation of Money Laundering matters.
234. The role of the police in the investigation of these cases is relative to the predicate offences.
235. As it relates to the financing of terrorism the police receive the STR and along with the FIU are charged with investigating those cases.
236. The Suppression of the Financing of Terrorist Act (SFTA) provides for the FIU to investigate any suspected terrorist financing activity including any frozen funds. The Unit can request the financial institution or scheduled entities to produce all records and documents relating to the frozen property. The Financial Institutions are required to submit quarterly reports to the FIU indicating that they have no funds in their possession and in addition they are required to report to the

Commissioner of Police any transaction which they suspect might be related to terrorism. The Financial Institution is also required to send report to the FIU disclosing any property which is owned, controlled by or held on behalf of a terrorist group and any transactions relating to the property.

237. Section 36 of the SFTA provides for the Commissioner of Police to receive financial transactional information from FIs relative to FT.
238. To date, no reports with a nexus to FT have been received. Notwithstanding, the Unit on occasion receives Diplomatic Notes from the US Embassy, Bridgetown, Barbados containing names of designated terrorist (s) individual (s) or organisation (s), which are forwarded to the financial institutions for consideration. No response has returned positive.
239. The Customs Division may have information that can be used as evidence in ML and FT prosecutions.
240. The Police Force although not charged with the investigation of money laundering cases, are however responsible for investigating the predicate offences to Money Laundering and are charged with investigating any suspected terrorist financing. To date the Police have not had occasion to investigate any issues relating to terrorist financing.
241. There are no provisions in domestic legislation that allow authorities investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

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

242. There are no measures in existence in Dominica that allow for special investigative techniques to be employed in the investigation of ML and FT cases.
243. No measures exist in Dominica that allows for special investigative techniques to be employed in the investigation of ML and FT cases.
244. There is no special group of persons specialized in investigating the proceeds of crime except for the FIU, which derives its powers from the Money Laundering Prevention Act.
245. Cooperative investigations with other LEAs in other countries have been facilitated with various jurisdictions in the investigation of ML cases, i.e. United Kingdom, Guadeloupe, Antigua, St. Vincent etc..., but these investigations do not employ the use of special investigative techniques. These investigations focuses more on identification of assets, individuals, conducting investigations on subjects on behalf of other countries to determine the nature of their activities on island.
246. ML *modus operandis* are reviewed by the FIU and are used in some instances to inform other LEAs on the trends noticed. Instances of when such information would be shared include when high volumes of cash transactions are noticed being sent to villages/communities in countries known to have high reports of drug activities; trends

garnered from STRs received have assisted in the development of press releases by the FSU and Police to the public, on schemes employed by criminals to deprive persons of their monies. FT methods and techniques are not reviewed.

### **Recommendation 28**

#### **Powers to compel production (ML)**

247. The Money Laundering Prevention Act makes provision for the Court to grant production orders, monitoring orders, search warrants and seize orders to FIU if the Court is satisfied that money laundering is being committed or about to be committed.
248. The general power to compel the production of information is contained at section 18 which allows a Judge of the High Court to make an order compelling a person to produce documents relevant to identifying locating or quantifying any property. In the case of financial institutions and persons carrying on a scheduled business, such a Judge may also grant an order which compels such entities to forthwith produce to the FIU all information obtained about any business transaction.
249. The provision of the legislation ensures that the FIU have access to transaction records from Financial Institutions which would cover all details including customer due diligence information. All the data gathered can be used in the prosecution of money laundering, terrorist financing and other predicate offences. The Proceeds of Crime Act also provides for seizure of assets on conviction of Money Laundering and other criminal activity.
250. The SFTA makes provision for the FIU where it is conducting investigations relative to the prevention and suppression of terrorism to request the production of any records or documents in relation to any matter in connection to frozen funds or assets. There is however no provision in the SFTA which affords the FIU or even the commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations.

#### **Search Warrants**

251. Under section 17 of the MLPA, the FIU may obtain a search warrant issued by a Judge of the High Court authorizing the FIU to enter the premises belonging to on under the control of a financial institution or person carrying on a scheduled business where an officer or employee of either one of these entities is committing, has committed, or is about to commit a ML offence. Pursuant to any such warrant the FIU can search the premises and remove document or material found for the purposes of the FIU as ordered by the court. The POCA at section 46 (1), allows a police office to obtain a search warrant to search any premises for documents that is essential to the business activities of of a person who is either convicted of a scheduled offence or suspected to have committed any such offence.

#### **Customs powers to search**

252. The Customs Control and Management Act CAP69:01 of the revised Laws of Dominica 1990 authorizes a Customs Officer to request from a person concerned in the importation of goods (including money) to furnish him with any information

relating to those goods and to permit the officer to inspect and make copies of relevant documents (section 9 as amended by Act 9 of 1999).A Customs Officer has the powers to search premises and persons (sec.8 as amended by Act 9 of 1999 and section 82 respectively).

253. Investigators charged with the responsibility of the investigation of ML, TF and underlying predicate offences do have the power to take witness statements from prospective witnesses in the matters they investigate. There are rules that govern the taking of accused statements (i.e. Judges Rules). The same set of rules also provides certificates that should be appended to these accused statements including witness statements. The giving of statements by witnesses in criminal actions is voluntarily.

***Recommendation 30 (Law enforcement and prosecution authorities only)***

254. Although there are more than four hundred Police officers, this number is not totally adequate to meet the needs of the country at this time. There are in addition some shortcomings in the case of other resources for the Force.

**Police**

**Structure:**

Commissioner of Police – 1  
Deputy Commissioner of Police – 1  
Superintendents – 4  
Assistant Superintendents – 6  
Inspectors – 20  
Sergeants – 35  
Corporal -62  
Constables – 315  
Special Constables – 72 (*Not fulltime*)

255. The CDPF is divided in three Divisions, Southern, Northern and Central Division due mainly to the fact that there are 17 Out-Stations. Each Division is headed by a Superintendent. There are Area Inspectors within the respective Divisions in-charge of a group of police stations in the Southern and Northern Divisions.
256. In the Central Division there are several sections including Drug Squad, Special Service Unit, General Section, Criminal Investigations Department to name a few. These Sections are manned by Officers and Sectional Inspectors respectively and are staffed by police officers and civilians.

**Funding**

257. The CDPF's budget is EC \$22, 633,600.00. This budget is broken down as follows:
- i. Emoluments and Salaries: EC \$18, 009,935.00
  - ii. Administration: EC \$4,623,665.00

**Technical/Other Resources**

258. There is a vehicle to each out-district police station and at least one to each formation of the police force operating in Roseau. The offices of the several formations are fairly

furnished and are equipped with computers. The telecommunication needs of the Police are mainly provided by Cable and Wireless where all Police stations and departments are outfitted with phones and in some instances internet access and facsimile services.

### **Staffing**

259. There are several emerging new communities in Dominica as well as increasing commercial activities that demand the attention of law enforcement. There are several embassies where security has to be guaranteed and key points which crave police attention. The present established strength of the Police Force is four hundred and forty-four (444). This has been so for over thirty years now despite the fact that several recommendations suggesting that the strength be increased by at least five hundred to meet the ever increasing demands on the Force. A Commission of inquiry into the conduct and management of the police force, as well as several reviews of the police force recognised the deficiency and suggested that it be remedied.
260. Upon entry in the CDPF, all applicants to the Force are required to take an oath of secrecy.
261. All Officers are subject to the Police Act Chap: 14:01 that deals with disciplinary matters, the Police Service Commission Act Chap: 1:01 which deals with promotion, hiring, dismissing and disciplinary matters of Officers. Officer of the CDPF are also governed by the Public Service General Orders which sets standards for officers of the public service re procedural matters. However, there is no on going vetting of officers to ensure that they maintain a high level integrity. There are Units where a code of ethics has been developed and the officers of that Unit are required to adhere to these codes.
262. Selected members of the CDPF have been exposed to AML training held in Dominica from April 28 – 30, 2008. The AML Workshop focused on case-file development in the money laundering investigation.
263. Different types of ML prosecution were looked at namely Stand-Alone and Integrated Prosecution; preparation for an application for Production Order, Confiscation Order and Freezing Order. Workshop participants were also taught how to develop a Prosecutor's Statement.
264. Other members of the CDPF have also benefited from AML courses such as the Basic Financial Investigators Course, Advance Financial Investigators Course, and an Attachment to functioning FIUs to understudy their operations. These courses focused on the many of the requirements of the captioned essential criteria such as the scope of predicate offences, ML typologies, techniques to investigate and prosecute these offences, techniques for tracing property that is he proceeds of crime and ensuring that such property is seized, frozen and confiscated.

### **Additional Elements**

265. There is no evidence that there has been any educational programs provided for Judges relating to Money Laundering and Financing Terrorists and other predicate offences.

Additional Material

1.1.1 Recommendations and Comments

- Provisions should be made in domestic legislation that allow authorities investigation ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.
- Technical resource- The Police Force should be provided with better communication equipment.
- With the increased demand on the Police the numbers in the police contingent should be increased.
- Special training in money laundering and terrorist financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property.
- Legislation should be put in place to provide investigators of money laundering and terrorist financing cases with a wide range of investigative techniques including controlled delivery.
- There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.
- The SFTA should be amended to provide investigators with the ability to compel the production of business transaction records.
- There should be explicit legal provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records.
- There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.
- There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity.

2.6.3 Compliance with Recommendation 27 & 28

|      | Rating | Summary of factors relevant to s.2.6 underlying overall rating  |
|------|--------|---|
| R.27 | PC     | <ul style="list-style-type: none"> <li>• No consideration of taking measures providing for the postponement or waiving of arrest of suspects or seizure of money for the purpose of identifying suspects or for evidence gathering.</li> <li>• here is no group specialized in investigating the proceeds of crime.</li> </ul>  |
| R.28 | PC     | <ul style="list-style-type: none"> <li>• No provision in the SFTA which affords the FIU or the Commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations.</li> <li>• No explicit legal provision for predicate offences investigators to obtain search warrants to seize and obtain business transaction records.</li> </ul> |

2.7 Cross Border Declaration or Disclosure (SR.IX)

## 2.7.1 Description and Analysis

### *Special Recommendation IX*

266. The Customs Department is charged with the collection of revenues and the monitoring of cross border activity for the country of the Commonwealth of Dominica.

#### **Declaration system**

267. Section 64 of the Proceeds of Crime Act (POCA), No. 4 of 1993 in essence states that all persons entering or leaving Dominica are required to make a declaration to Customs as to whether they are carrying cash in excess of \$10,000 E.C. Failure to declare such monies may result in the money being seized by Customs or the Police if they have reasonable grounds for suspecting that it directly or indirectly represents any persons proceeds of, or is intended by any person for use in drug trafficking.

#### **Power to seize**

268. Additionally, pursuant to section 21 of the MLPA, any person bringing into or taking out of Dominica cash in excess of US \$10,000.00 must report that fact to the FIU. Failure to report such activity constitutes an offence and the person is liable on conviction to imprisonment of three months or a fine of ten thousand United States dollars or both and in addition the cash being transported may be confiscated. The currency declaration required on entering Dominica relates to cash, cheques or bearer instruments. A false declaration or non-declaration may result in the funds being seized. Seizure can be dealt with in Court or administratively. Administrative action may result in the funds being returned to the person after being charged a fine.
269. Anything which is liable to forfeiture may be seized or detained by an officer (section 116, Customs Control & Management Act) (CCMA).
270. Any person entering or leaving Dominica must answer all questions put to him by the proper officer with respect to his baggage and anything contained in it or carried by him. Once a false declaration is identified the Customs would endeavour to identify the source of the funds and the purpose for which it was intended. If it is suspected to be connected to ML/FT the information would be passed to the FIU for further investigation. In the case where the funds are suspected to be drug related then Customs would work with the Police to set up the charges. The Customs department has no legal authority to do further investigation
271. Customs maintains a database of all seizures and information on persons fined and suspect individuals. At section 64 of the Proceeds of Crime Act No. 4 of 1993, a customs officer may detain cash transported into Dominica, not less than EC\$10,000.00, for up to 48 hours for the purpose of determining the source or intended use of the funds.
272. Funds that are detained as a result of a false declaration can be retained for an indefinite period of time to ensure that customs authorities can ascertain the source of the funds. Under the Proceeds of Crime Act the initial 48 hours seizure may be

extended on application to a judge.

273. Customs maintains a data base of all seizures and information on persons fined and suspect individuals. Seizure reports contain persons personal information, photographs and a summary of the circumstances leading to the seizure are detailed therein. A case file is also developed with the charges, fines, and any action taken and any other information relevant or linked to the case. The legislative provisions however, do not provide for detention of currency or bearer negotiable instruments and the identification data of the bearer, where there is suspicion of ML or TF.
274. The F.I.U is notified of all seizures and detention of currency above the threshold stated in the Money Laundering (Preventive) Act 20 of 2000.

### **Local and foreign co-operation**

275. The FIU and the Customs department maintain a good working relationship and although there is no formal arrangement for the passing of information relating to suspicious cross border activity, any suspected activity is relayed to the Unit.
276. There is adequate cooperation and coordination among Customs and Police (Immigration) as it relates to cross border transportation of currency. At all the ports of entry the immigration and the customs work in close contact and either agency may assist the other in searches, detention of persons, sharing of information and carrying out of investigations. The agencies also share resources as vehicles, fax machine, telephone etc. Additionally, the agencies very often do joint patrols.
277. The Customs department is an active member of the World Customs Organization and as such share information with their international counterparts. They share information on the movement of persons convicted of drug transportation and the movement of vessels. They also share information on major seizures of drugs or currency in an effort to highlight the methodology being used. The Dominica Customs also maintain close relationship with the French Custom Authorities.

### **Sanctions**

278. The penalty for false declaration of currency under section 98 of the Customs (Control and Management Act can result in a fine of five thousand dollars and the forfeiture of such currency. When a false declaration has been established, the funds may be seized and if found to be the proceeds of or intended to be used in a drug trafficking, it can be forfeited. There are no other sanctions which can be imposed.
279. Any property suspected of being proceeds from; instrumentalities used in; and instrumentalities intended for use in the commission of any ML , FT or other predicate offence will be detained by customs and forwarded to the FIU for investigations.
280. The SFTA provides for the seizure, freezing and forfeiture of funds and other assets or persons designated by the UN Al-Qaida and Taliban Sanctions Committee. The Customs department has the ability to seize cash or other monetary instruments if it is not declared or falsely declared and held pending investigation into the source and purpose of the funds. Additionally, the Commissioner of Police, under section 23 (1) of the SFTA, may seize any property where he has grounds to suspect has been or is

being used in the commission of any TF offence.

281. The Customs department has the ability to provide information on unusual cross border movement of any goods and can assist its counterpart in establishing the source and destination of those goods.
282. There is no formal system in place for the international exchange of information relating to cross border transactions, however information would only be shared with counterparts. Through the Regional Security System in Barbados they share information on drug and currency seizures as well as modern concealment methods.

### **Additional Elements**

283. Dominica has considered implementing the measures set out in the Best Practices Paper for SR1X.
284. Cross border transactions are maintained in a computerized data base by the Customs department and are available for the FIU to access.

### ***Recommendation 30 (Customs authorities):***

#### **Resources and professional standards**

285. The Customs Division has recently established an Investigation Unit as well as an Intelligence Unit who would be tasked with any matter relating to Money Laundering and Terrorist Financing. The Unit consist of two officers each and operates with adequate operational independence and autonomy. The Officers at the units needs additional training and resources to effectively perform their function.
286. The Customs department is staffed by 97 persons consisting of a management team of 10 persons. The level of staff seems adequate. As a member of CECLEC the staff appears to be well trained in Customs issues. They liaise with the French annually to do exercises over land and sea. However, there is a need for training in issues related to AML/CFT.
287. All persons employed at the Customs Division are under an obligation of secrecy (section 6 of the CCMA). They are also subjected to the Public Service General Orders and the requirement of the Public Service Act.
288. The personnel background of staff is investigated prior to employment but there is no continuous vetting of staff to ensure that they maintain high integrity.

#### **Training**

289. Selected members of the Customs Department have been exposed to AML training held in Dominica from April 28 – 30, 2008. The AML Workshop focused on case-file development in the money laundering investigation. Different types of ML prosecution were looked at namely Stand-Alone and Integrated Prosecution; preparation for an application for Production Order, Confiscation Order and Freezing Order. Workshop participants were also taught how to develop a Prosecutor's Statement. There has been limited training available and undertaken in Money Laundering and Terrorism

Financing by Officers.

290. The staff of the Custom department is provided with training in Basic Customs issues and Narcotics identification. Some officers receive training in financial analyst in the US. Two members of staff have had some training in TF. Senior Management is well informed on issues of AML/CFT as they are part of the Money Laundering Supervisory Authority and have periodic meetings with the NJIC.

**Statistics**

**Table 9: Cash seized and fines levied by the Customs department**

| DATE       | OFFENCE                    | CASH SEIZED | CASH RETURNED | CURRENCY   | FINE IMPOSED CUSTOMS EC |
|------------|----------------------------|-------------|---------------|------------|-------------------------|
| 03/12/2005 |                            | 11,460.00   |               | EUROS      | \$11,000.00             |
| 23/01/2006 | Failing to declare cash    |             | 17,836.00     |            | \$2,500.00              |
| 31/01/2006 | Smuggling of goods by boat | 66,500.00   |               | EUROS      | \$2,000.00              |
| 07/03/2006 | Smuggling in container     | 7,000.00    |               | EUROS      | \$4,000.00              |
| 03/04/2006 | Failure to declare cash    |             |               |            | \$2,500.00              |
| 15/05/2006 |                            | 20,200.00   |               | EC DOLLARS |                         |
| 01/06/2006 | Failure to declare cash    | 31,880.00   |               | STERLING   | \$500.00                |
| 01/06/2006 | Failure to declare cash    | 10,935.00   |               | EUROS      | \$150.00                |
| 08/08/2006 | Failure to declare cash    |             | 4,000.00      | EUROS      | \$2,500.00              |
| 21/08/2006 | Failure to declare cash    |             | 3,940.00      | EUROS      | \$1,000.00              |
| 14/09/2006 |                            | 14,500.00   |               | EUROS      |                         |
| 04/10/2006 | Failure to declare cash    | 20,000.00   |               | US DOLLARS | \$300.00                |
| 19/10/2006 | Failure to declare cash    |             |               |            | \$4,000.00              |
| 07/12/2006 | Smuggling                  |             |               |            | \$11,000.00             |
| 14/02/2007 |                            | 17,000.00   |               |            |                         |
| 14/02/2007 | Failure to declare cash    | 4,500.00    |               | EUROS      | \$3,200.00              |
| 15/02/2007 |                            | 12,000.00   |               |            |                         |
| 23/02/2007 | Failure to declare cash    |             | 17,839.00     | EC DOLLARS | \$2,500.00              |
| 19/03/2007 | Failure to declare cash    |             | 4,180.00      | EUROS      | \$2,000.00              |
| 26/03/2007 | Failure to declare cash    |             | 7,120.00      | EUROS      | \$4,000.00              |
| 03/05/2007 |                            | 3,000.00    |               |            |                         |
| 14/05/2007 | Failure to declare cash    |             | 7,150.00      | EUROS      | \$1,500.00              |
| 01/06/2007 | Failure to declare cash    |             |               |            | \$7,000.00              |
| 27/07/2007 |                            | 30,000.00   |               |            |                         |
| 24/08/2007 | Drug smuggling exercise    | 8,800.00    |               | US DOLLARS |                         |
| 24/08/2007 | Drug smuggling exercise    | 302,300.00  |               | EUROS      |                         |
| 27/08/2007 | Failure to declare cash    |             | 5,160.00      | EUROS      | \$1,500.00              |
| 28/08/2007 | Failure to declare cash    | 4,280.00    |               | EUROS      | \$1,000.00              |
| 11/09/2007 |                            | 5,217.00    |               | US DOLLARS | \$1,500.00              |
| 25/09/2007 |                            | 20,000.00   |               | US DOLLARS |                         |
| 29/10/2007 | Failure to declare cash    |             | 14,000.00     | EC DOLLARS | \$1,500.00              |
| 20/11/2007 | Failure to declare cash    |             | 5,075.00      | EUROS      | \$2,000.00              |
| 06/01/2008 |                            | 6,000.00    |               | EUROS      |                         |
| 15/01/2008 |                            | 20,000.00   |               | EC DOLLARS | 1,000.00                |
| 17/01/2008 |                            | 7,000.00    |               | EUROS      | 6,000.00                |
| 07/05/2008 | Failure to declare cash    | 7,150.00    |               | US DOLLARS | 1,500.00                |
| 11/06/2008 | Failure to declare cash    |             | 2,050.00      | STERLING   | \$1,500.00              |
| 11/06/2008 |                            | 8,400.00    |               | US DOLLARS |                         |
| 19/06/2008 |                            | 6,057.46    |               |            |                         |
| 26/06/2008 |                            | 33,783.33   |               |            |                         |

|            |                         |           |  |            |            |
|------------|-------------------------|-----------|--|------------|------------|
| 27/06/2008 | Smuggled in goods       | 25,000.00 |  | EUROS      | Pending    |
| 03/07/2008 | Failure to declare cash |           |  |            | \$3,000.00 |
| 06/07/2008 | Concealed in shoes      | 15,000.00 |  | US DOLLARS | \$4,000.00 |
| 23/07/2008 | Failure to declare cash |           |  |            | \$3,000.00 |
|            |                         |           |  |            |            |

## Additional Material

### 2.7.2 Recommendations and Comments

- Customs should be given the authority to request further information relative to the origin of currency or bearer negotiable instruments
- Some formal arrangements should be entered into for the sharing of information on cross border transportation and seizures with International counter-parts and other competent authorities.
- Provide the legislative provisions that would allow cash or bearer negotiable instruments and the identification data of the bearer to be retained in circumstances involving suspicion of ML of TF
- Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations
- Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanctions, which can be applied to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF

### 2.7.3 Compliance with Special Recommendation IX

|       | Rating | Summary of factors relevant to s.2.7 underlying overall rating   |
|-------|--------|--|
| SR.IX | PC     | <ul style="list-style-type: none"> <li>• <b>No authority to conduct further investigations pursuant to false declaration.</b></li> <li>• <b>No dissuasive criminal civil or administrative sanctions are available for application where persons make false declarations.</b></li> <li>• <b>No dissuasive criminal civil or administrative sanctions are available for application where persons are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF.</b></li> <li>• <b>The declaration system does not allow for the detention of currency or bearer negotiable instruments and the identification data of the bearer where there is suspicion of ML or TF.</b></li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <ul style="list-style-type: none"><li>• <b>There is no evidence that there are formal arrangements in place for the sharing of information with international counterparts in relation to cross border transactions.</b></li></ul> |
|--|--|--|

### 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

#### General

291. The MLPR and the MLPA are the legislation with respect to CDD. The MLPA defines the financial institutions and scheduled business which are subject to the AML/CFT requirements of the Act. Section 2 (1) of the MLPA defines “financial institutions” as: “*Any person whose regular occupation or business is the carrying on of any activity listed in Part I of the Schedule*”. These activities are:

1. ‘Banking business and financial business’ as defined in the Banking Act;
2. ‘Banking business as defined in the Offshore Banking Act;
3. Venture risk Capital;
4. Money transmission services;
5. Issuing and administering means of payments (e.g. credit cards, travellers’ cheques and bankers’ drafts);
6. Guarantee and commitments;
7. Trading for own account or for account of customers in
  - a) money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc);
  - b) foreign exchange;
  - c) financial and commodity-based derivative instruments (e.g. options, interests rate and foreign exchange instruments etc);
  - d) transferable or negotiable instruments;
8. Money broking;
9. Money lending and pawning;
10. Money exchange (e.g. casa de cambio)
11. Mutual Funds
12. Credit Unions;
13. Building Societies;
14. Trust Business;
15. Insurance Business;
16. Securities Exchange.

292. The MLPA also defines “scheduled business” as: “*Any business activity for the time being listed in Part II of the Schedule*”. These activities are:

- a. Real estate business
- b. Car dealership;
- c. Casinos (gaming houses);
- d. Courier Services;
- e. Jewellery business;
- f. Internet gaming and wagering services;
- g. Management companies;
- h. Asset Management and advice-custodial services;
- i. Nominee service;
- j. Registered Agents;
- k. Any business transaction conducted at a post office involving money orders;
- l. Securities brokerage.

#### Anti-money Laundering Guidelines

293. The AML/CFT measures applicable to Dominican financial sector are primarily contained in legislation and Anti-Money Laundering Guidance Notes (“Guidance Notes”) issued by the Money Laundering Supervisory Authority (“MLSA”) of Dominica.
294. The Guidance Notes were issued in 2001. The MLSA updated and re-issued the Guidance Notes in August 2008, pursuant to section 11 (d) of the MLPA. It should be noted that these guidance notes were updated in conjunction with the financial sector.
295. Section 19 of the MLPR mentions that a person carrying on a relevant business may adopt and have regard to the Guidance Notes issued by the MLSA. Section 3 and 4 of the MLPA mentions that if a person commits, attempts to commit, aided abetted or conspired to commit the offence of money laundering, then such a person will be liable to the penalty of a fine not exceeding one million dollars and imprisonment for a term not exceeding seven years.

#### **Guidance Notes as “other enforceable means”**

296. The extent to which the Guidance Notes can be deemed as “other enforceable means” is an important aspect in the assessment of the Commonwealth of Dominica’s financial sector’s preventive measures. After careful analyses, the evaluation team concluded that OEM status could not be ascribed to guidelines and as such discounted the enforceability of its provisions which were not contained in the substantive legislation, MLPA or MLPR.
297. The FATF has provided guidance in their **NOTE TO ASSESSORS IN METHODOLOGY ON “OTHER ENFORCEABLE MEANS” (FEBRUARY 2008)**. There are three criteria to be considered to determine if a document can be considered, other enforceable means. These criteria are:
- 1) There must be a document or mechanism containing enforceable requirements regarding the obligations set out in the FATF Recommendations (does the document contain language which speaks to mandatory requirements);
  - 2) The document must be issued by a competent authority; and
  - 3) There must be sanctions for non-compliance with the document that are effective, proportionate and dissuasive.
298. The Guidance Notes satisfies criteria one and two in that the language used is mandatory and the Guidance Notes has been issued by the MLSA, which is a competent authority, (even though the MLSA has been somewhat inactive for a number of years). Nevertheless, there was no history or evidence that sanctions have been imposed by the competent authorities. Furthermore, the sanctions applicable for non-compliance with the provisions of the Guidance Notes are strictly criminal in nature and do not include administrative or civil penalties. Reliance is placed on the Courts for the imposition of any applicable sanctions and in such circumstances the Courts, as final arbiter, would always have the ability to exercise its discretion. The sanctions cannot in such circumstances be considered effective, proportionate and dissuasive. The conclusion is that the Guidance Notes are not “other enforceable

means” as defined or envisaged under the FATF Methodology.

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

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

299. There has not been a formal risk assessment of the financial sector as revealed by the FATF standards.
300. During the onsite interviews with the financial institutions it was determined that they have internal procedures with regard to applying risk based approach to their clients. Furthermore, it was noted that financial institutions kept business clients on an exempted list. This exempted list would have a threshold of exceeding EC 50,000 or depending on how large this business client is. The business client would not have to enter a source of fund declaration each time a deposit is made (larger than \$10,000).

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

##### 3.2.1 Description and Analysis

##### ***Recommendation 5***

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

301. Paragraph 48 of the Guidance Notes mentioned that the financial institution should not do business with persons using obviously fictitious names and should not keep anonymous accounts or accounts where it is impossible or difficult to identify the client. This is prohibited under Section 10 of the Offshore Banking Amendment Act No. 16 of 2000 and is also prohibited in the Banking Act.

##### **CDD requirements**

302. Regulation 5 of the MLPR states that the financial institutions or person carrying a business should undertake identification procedures in the following circumstances:
- a) Formation of a business relationship or business transaction.
  - b) Carrying out any single large transaction of \$5,000 or equivalent and over.
  - c) Carrying out that large series of transactions carried out by the same person in the total amount of \$5,000 or equivalent and over.
  - d) There is suspicion that the person that is handling the transaction is engaged in money laundering or carried out on behalf of another person engaged in money laundering.

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

303. Regulations 5 (5) (a) of the MLPR states that to enter into a business relationship or transaction the person carrying on a relevant business should obtain information on the nature of the business relationship or transaction. Financial institutions interviewed mentioned that they request this information prior to entering into a business relationship.

304. The threshold limit for a transaction is US\$ 5,000 or the equivalent in other currency or more is below the required FATF threshold of US\$ 15,000 resulting for CDD being required for a greater number of transactions.

#### **Identification and verification of natural persons**

305. Regulation 7 of the MLPR require that introducers verify the identity of all the applicants for business introduced to comply with the requirements of the regulations made there under, to maintain a record of the evidence of verification of identity and records of all transactions. In addition to supply to the person carrying on a relevant business immediately upon request evidence of the relevant identity in any particular case, and to inform the person carrying on a relevant business specifically of each case where the introducer is not required or has been unable to verify the identity of the applicant.
306. Paragraph 50 of the Guidance Notes deals with verification of the isolated transactions. It mentions that if the transaction seems unusual or questionable that additional requirement needs to be requested. For an isolated transaction the financial institution should request the following: the customer's background, Country of origin, public or high profile position, linked accounts, nature and location of activities, volume of transaction and business partners.
307. Paragraph 53 of the Guidance Notes refer to a financial transaction involving one-off payment by the client. If this wire transfer comes from an account in a regulated financial institution in Dominica, it may be unnecessary to verify client identity if the financial institution has evidence identifying the branch or office of the regulated Financial Institution and verifying that the account is in the name of the client. This does not remove the obligation to issue an STR if money laundering or terrorist financing is suspected.
308. Paragraph 56 requires financial institutions to obtain particulars of the identity of all customers at the opening of an account or at the initiation of a business relationship. Section VI of the Guidance Notes discusses the procedures that the financial institutions should maintain when they deal with verification of the above information.
309. The Guidance Notes state that identification should be obtained and recorded for the individual clients. Such clients are required to provide an official valid form of identification with photograph, signature and if applicable, an address. Such documents include:

- a. valid passport
- b. voter registration card
- c. national identity card
- d. driving license/ social security card

310. The Guidance Notes also state that if the passport or national identity card is not presented in person that a certified copy needs to be requested.

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

311. Paragraph 62 of the Guidance Notes specify that the following documents should be

usually obtained and recorded with regards to the client's identity:

- (a) full name and address of the company and address of registered agent or company manager;
- (b) place of incorporation;
- (c) certified copy of incorporation;
- (d) mandate a copy of company's resolution to establish business relationship. Powers of attorney and other types of powers can also be used;
- (e) evidence of authorisation for all account signatories;
- (f) statement of source of funds and purpose of the account; and
- (g) standard account opening forms should be completed and signed by authorized individuals.

312. Paragraph 64 of the Guidance Notes requires that identification documents should be obtained for at least two directors and authorized signatories in accordance with the general procedure of verification of the identity of the individuals.

313. Paragraph 65 of the Guidance Notes state that the following documents should be obtained for large corporate accounts:

Annual reports/audited financial statements for the previous 5 years (or commencement if less), description and place of principal line(s) of operation, list of major business units, suppliers and customers.

314. Paragraph 66 of the Guidance Notes require for clients who are closely held companies, the identification requirements as stated in paragraph 62 through 65 and also a copy of the register of members or a list of names and addresses of shareholders holding a controlling beneficial interest. It is also mentioned that at times it may be necessary to obtain identification documents as required from individual clients for the beneficial owners holding or controlling 5% of the issued shares of a company. In case the shareholder is a closely held company, the financial institution should request information regarding the ultimate beneficial owner and documentation that the company is in good standing.

315. If a corporate client is listed on a recognized stock exchange or if the shareholder or other intermediate shareholders are companies listed then evidence of listing, written statement of objectives and purpose, source of funds and verification of the identity of each beneficial shareholder holding more than 20% ownership interest in the company should be obtained as mentioned in paragraph 68 of the Guidance Notes.

316. In case of companies owned by partnerships, paragraph 70 of the Guidance Notes require the financial institution, in addition to the information in paragraph 62-68, to also request a copy of the partnerships agreement and identification information for the controlling partner or partners, particular the partner who has authority to represent the partnership.

317. Paragraph 73 of the Guidance Notes deals with partnerships and requires the financial institution to obtain a certified copy of the certificate of registration and good standing and also relevant information to that which should be received for large corporate accounts. In case of other unincorporated businesses or partnerships, paragraph 74 of the Guidance Notes requires evidence and verification of identity of a majority of the partners, owners or managers and the authorized signatories.

### **Beneficial ownership**

318. Furthermore, regulation 7 (5) of the MLPR requires the financial institutions to establish the true identity of each account holder. In the case of an account held by a business, trust, fiduciary agent, nominee company or professional intermediary such as an attorney, chartered accountant, certified public accountant or auditor, the financial institution must have or obtain sufficient evidence as to the true identity of the beneficial interests in the account. The nature of business and the source of funds of the account holder and beneficiaries should be verified
319. According to Regulation 7 (2), financial institutions should take reasonable measures to establish the identity of any person on whose behalf the applicant for business is acting and the applicant for business.
320. The Guidance notes mention that it may be necessary to obtain identification details which would be required of an individual client for individuals who are beneficial owners holding or controlling 5% or more of the issued shares of a company.

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

321. It is also mentioned in the Guidance Notes under corporate clients that the financial institutions should have an understanding of the nature of the business conducted.
322. The Guidance Notes has mandated at paragraph 32 that financial institutions should conduct a complete review of all high risk clients. Thereafter the customer files for lower risk categories should be reviewed whenever there is client contact. Financial institutions are also expected to implement a system of periodic review of customer account activity and reporting of unusual or suspicious transactions.
323. The Guidance Notes make mention of the requirement to obtain a source of funds declaration, the nature of business, and knowledge of the customer. The Guidance Notes however does not clearly state that this information should be obtained as part of the ongoing due diligence process.
324. Regulation 9(1) (2) of the MLPR requires that persons carrying on a relevant business should keep the records that indicate the nature of the evidence and copies of identification. Records should also be kept of details relating to all business transacted (including any business transacted during the course business relationship).
325. Paragraph 71 of the Guidance Notes mention that the financial institution should know if there are bearer shares certificates, if there are is any beneficial ownership right attached to these shares.
326. With regards to trusts, paragraph 80 of the Guidance Notes requires the trustees to verify the identity of a settler/grantor or any person adding assets to the trust. In addition, the name, address, business, trade or occupation and other procedures relating to verification should be obtained for the settlor or any person transferring assets to the trust, the beneficiaries, and protector. The purpose of nature of trust, source of funds and bank references should be available

327. One of the financial institutions that were interviewed mentioned that they only identify their clients and not verify them. During the onsite interviews with the financial institutions it was determined that they have internal procedures with regard to applying risk based approach on their clients which they do apply, their high risk clients are being reviewed regularly. Furthermore, it was mentioned to us that they keep business clients on an exempted list. This exempted list is only for business clients and does not entail that these clients will have to submit their due diligence documentations, but that they do not need to submit a source of fund declaration form with each transaction. This exempted list would have a threshold of not exceeding EC 50,000 or depending on the how large this business client is. The business client would not have to enter a source of fund declaration each time a deposit is made (larger than \$10,000) neither will the financial institution file a STR. Some of the clients are only 6 months with the financial institution before resulting on the exempted list. It was mentioned that this is only for business clients and that they can be taken off the list if they have no activity in their bank account. This is an easy way for the business clients to launder money, because they do not need to declare any source of funds when they are getting into a transaction.

### **Risk**

328. Paragraph 85 of the Guidance Notes addresses the issue of High Risk Customers and Jurisdictions and deals with the question of enhanced due diligence. The high risk customers discussed in paragraph 85 of the Guidance Notes are customers that are located in high risk jurisdictions, clients that are not regular in contact ( "hold mail" clients), and PEPs.
329. Paragraph 32 of the Guidance Notes states that for the existing clients and relationships established prior to the Guidance Notes, the financial institution needs to assess if they would need to perform additional due diligence. The financial institution should conduct a risk assessment on all of their clients and conduct a complete review on the high risk clients within 12 months.
330. Paragraph 85 of the Guidance Notes mentions that authorities or management may determine that persons from certain countries would be considered high risk and additional precautions are required to safeguard against use of accounts or other facilities by such persons or representatives. In this case financial institutions should request a letter of reference, additional identification requirements from a regulated bank that does not fall under the countries in matter.

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

331. Paragraphs 51 and 55 of the AML GN 2008 address the issue of simplified or reduced CDD measures to all customers.
332. Paragraph 51 of the Guidance Notes provide that for certain clients documentary evidence of identity will not normally be required. These clients should be (a) a central or local government statutory body or agency of government (b) an onshore financial institution regulated by the ECCB, (c) a broker member of the OECS Stock Exchange, (d) a regulated and supervised bank where the Central Bank has regulatory jurisdiction and is not situated in a high risk jurisdiction, (e) existing clients prior to the Guidance Notes, (f) a pension fund for a professional association, trade union.

333. It should be noted that paragraph 55 of the Guidance Notes states that financial institutions should be required to have the best available documentary evidence of identity available with regards to their clients. In cases where the clients are the elderly, the infirmed and minors, where the identification documents do not exist or are difficult to bring in personally, the financial institution is required to perform a risk assessment and analyse their transactions for any irregularity, then these clients may be considered low risk and a flexible approach applied to them. The financial institution can apply the procedures for non-face-to-face procedures such as certification of the documentation and independent contact at the bank and the identification documents from the parents of guardians that introduce or consent to the opening of accounts of minors.
334. One of the financial institutions interviewed mentioned that they do not apply the risk-based approach to their customers and that they are currently looking for an automated system. The other financial institutions interviewed stated that they apply the risk-based approach to their clients, but some also noted that even though they have a risk-based approach, no enhanced or ongoing due diligence is done on them.
335. Paragraph 53 of the Guidance Notes mentions that the financial institution may not take further steps to verify identity when a payment is made by cheque or electronically and sent by mail or electronically from an account in the client's name and a bank in a country that sufficiently applies the FATF 40+9 recommendations. This does not mean that the financial institutions are obliged to issue a STR where there is suspicion on money laundering and terrorist financing.
336. Financial institutions should have available a written risk assessment model which should be available for review by the FSU. Furthermore, it is mentioned that as well as individuals, there are countries that may require higher level of vigilance due to corruption and other illegal activities, the Guidance Notes refer to the financial bodies that can provide information with regard to financial regulation and anti-money laundering (appendix 12) which may be used in developing risk management systems.
337. Paragraph 55 of the Guidance Notes states that non-face-to-face customers may be used if they are unable to come in person, this includes certification of the documents that are presented and independent contact of customer at the bank.
338. If financial institutions, as mentioned in paragraph 60 of the Guidance Notes deal with prospective clients by mail or by coupon application and it would be difficult to meet the overseas client at the time the relationship or account is being established the application for business may be channelled to a reputable source such as a regulated bank in the prospective clients jurisdiction which can be relied on to perform the verification on the identity of the client.
339. In the case where the client is acting on behalf of a third party or as a trustee or nominee, as stated in paragraph 75 of the Guidance Notes the financial institution should verify and obtain appropriate information of the third parties for whom the client is acting. If the client is a trustee or nominee the financial institution should obtain identification information with regards to the principal for whom a nominee acts, the beneficiaries, any person whose instruction the trustee or nominee is prepared to act upon, the settlor or grantor from the trust, and the nature of the duties of the

trustee or nominee.

340. Particular care should be taken by the financial institutions that have clients that have bearer shares. The financial institutions should always know who the ultimate beneficial owners are. This is to conform to paragraph 47 of the Guidance Notes. If the beneficial owner of the bearer shares are not known to the financial institution then they should not enter into a relationship. Furthermore, paragraph 71 require that all identification information is to be submitted for the company and if bearer shares are issued, these bearer shares certificates should be under the control of the financial institution. They should at all times know who the ultimate beneficial owner is. If it is not possible for the financial institution to hold the bearer shares certificate then this should be held with a custodian of good repute and this custodian has to provide to the financial institution in writing that the bearer shares will not be released or the beneficial owner will not be changed without prior consent of the financial institution.
341. The IBC act at section 28(1)(e) requires that a company maintains a share register of shareholders with the total number of outstanding series issued to a bearer and section 31 mentions that the share issued to bearer shares is transferable by delivery of the certificate related to the share.

#### **Timing of verification**

342. Section VI of the Guidance Notes states that a business relationship should not be established unless and until evidence of identity of a prospective client is satisfactorily established. If a prospective client refuses or is unable to produce any of the information requested, the relationship should not be established. Furthermore, it mentions that it will not always be possible to obtain satisfactory verification of evidence immediately upon contact by a prospective client. In such circumstances evidence should be obtained as soon as reasonably practicable. Usually verification procedures should be substantially completed before the business relationship is established but there may be circumstances in which it is acceptable to proceed pending completion of those procedures.
343. Section VI of the Guidance Notes covers the verification procedures for clients, which includes timing of verification requirements. At paragraph 54 it notes that *“Satisfactory verification is not always possible immediately upon contact, so in those cases evidence should be obtained as soon as is reasonably practicable. In some circumstances it will be acceptable to proceed pending completion of the verification procedures. Transfers or payment of any money out to third parties are not carried out before adequate evidence is obtained”*
344. The AML GN 2008 addresses specific verification procedures from Paragraphs 61 to 83 in relation to corporate clients and individuals. Paragraph 84 deals with scenarios falling outside of the verification procedures so outlined and states that in any other circumstances, the Financial Services Provider should not proceed with the relationship or transaction.

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

345. Paragraph 41 and 42 of the Guidance Notes stipulates that a business relationship should not be established until the identity of the client is satisfactory established. If

the client refuses or is unable to produce the information, then this business relationship or transaction should not be established. In addition, the Guidance Notes state that if this leads to suspicion, the financial institution should report and request guidance from the MLSA. Section 16 (1) of the MLPA addresses the issue of filing an STR in such circumstances

### **Existing customers**

346. The Guidance Notes states that the verification of identity, which apply to Relevant Financial Transactions and new business relationships, apply to those conducted or established after the introduction of the guide. Good industry practice requires, however, that Financial Services Providers should take reasonable steps to ascertain whether further due diligence steps are necessary in relation to existing clients and relationships established prior to the Guidance Notes coming into effect. As a clear policy Financial Services Providers should conduct a risk assessment of all of their existing clients and to conduct a complete review of all high risk clients within twelve months. Thereafter know your customer files for lower risk categories should be reviewed whenever there is client contact. Financial Services Providers are also expected to implement a system of periodic review of customer account activity and reporting of unusual or suspicious transactions.
347. Paragraph 5 (1)) of the MLPR states that identification procedures maintained by the person carrying on a relevant business should be in accordance with the provisions of the MLPR. These procedures should require where no evidence of the identity is obtained, the business transaction not to proceed or shall proceed only on the direction of the Authority. There is no requirement to consider making a suspicious transaction report.
348. Paragraph 50 of the Guidance Notes mandates that verification of identity is needed if it is an isolated transaction. Where necessary the following information should be requested:
- i. the customer's background,
  - ii. country of origin and residence,
  - iii. public or high profile position, linked accounts,
  - iv. nature and location of the personal or business activities,
  - v. volume of transaction and business partner.
349. The financial institutions interviewed mentioned that isolated transactions are being handled as a regular transaction. One of the DNFBP's that were interviewed mentioned that they do not apply any due diligence on their clients, due to the fact that there is no cash involved, only wire transfers and that the banks would have already asked for and received information on these clients.
350. Conforming to paragraph 53 of the Guidance Notes, if the one-off payment by the client is remitted from an account in a regulated Financial Institution in Dominica, it may be unnecessary to take any further steps to verify client identity if the financial institution has evidence identifying the branch or office of the regulated Financial Institution and verified that the account is in the name of the client. This does not remove the obligation to issue an STR if money laundering or terrorist financing is suspected.

### ***Recommendation 6***

351. The requirements of political exposed persons are outlined in the Guidance Notes. The Guides Notes define PEPs as a person that has been entrusted with a public function in a foreign country, including Head of State or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, including family members or close associates of the political exposed person.
352. Paragraph 85 of the Guidance Notes states with regards to doing business with PEPs that the financial institutions should be much more vigilant. They should in addition to performing normal due diligence, put a risk management system in place to determine whether the customer or beneficial owners is a PEP. The financial institutions should check both the new and existing clients against the international watch lists which are published by the ECCB, the United Kingdom's Financial Services Authority, the FIU, the United Nations and United States Treasury Office of Foreign Assets Control. The financial institutions may also access electronic databases from commercial providers who provide international name checking services.
353. Furthermore, it is required that the employees obtain senior management approval for establishing business relationships with PEPs. The employee of the financial institution should also request and obtain senior management approval for the continuation of the business relationship if the customer or beneficiary is found to be or becomes a PEP after the start of the business relationship.
354. If the customer or beneficiary is found to be or becomes a PEP after the start of a business relationship the FSP should obtain senior management approval for the continuation of the relationship and should conduct ongoing enhanced monitoring of it. Financial Institutions should take reasonable measures to establish the source or wealth and source of funds of customers and beneficial owners identified as PEPs. The Guidance Notes do not contain any additional information on ongoing enhanced monitoring.
355. The financial institution should conduct ongoing enhanced monitoring and take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs. Interviewed banks were aware of PEPs as a specific high risk and have measures in place to identify and monitor them and enhanced due diligence is done. One of the non-bank mentioned that they treat a PEP as a regular individual and no enhanced due diligence is done on them. The banks interviewed noted that they need approval of the senior management to enter into a relationship with PEPs.
356. As mentioned in paragraph 85 of the Guidance Notes the financial institutions should conduct ongoing enhanced monitoring of PEPs.
357. The interviewed financial institutions were aware of PEPs as a specific high risk client, but not all of the financial institutions have measures in place to identify and monitor PEPs. The financial institutions that were interviewed also stated that the senior management approval is needed before getting into a relationship with PEPs. Not all the financial institutions would do enhanced due diligence on the PEP customers.

### **Additional Elements**

- 358. Dominica does not distinguish between domestic or foreign PEPs.
- 359. Dominica has ratified the 2003 United Nations Convention against Corruption.

### ***Recommendation 7***

- 360. The Guidance Notes and AML Legislation do not specifically address correspondent banking, however, Section VI of the AML Guidance Notes 2008 is applicable. Further, AML procedures pertaining to correspondent banking relationships generally covered financial institutions' regular verification procedures.
- 361. Correspondent accounts' requirements state that policy and procedures should at the minimum require a bank to fully understand and document the nature of the respondent bank's management and business; to ascertain that the respondent bank has effective customer acceptance and KYC policies and is effectively supervised; to identify and monitor the use of correspondent accounts that may be used as payable-through accounts; and not to enter into or continue a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management) and which is unaffiliated with a regulated financial group (i.e. shell banks).The above requirements are not addressed in the Guidance Notes or regulations.
- 362. The above requirements are not addressed in the Guidance Notes or regulations, under appendix 6 of the Guidance Notes there are several examples of suspicious activities.
- 363. During the interviews with the financial institutions, it was mentioned by one of the financial institutions that they are not aware if any due diligence was done on their correspondent relations, (this is usually a matter that would be handled by senior management). The other financial institutions mentioned that their correspondent relationships are sister companies and that the head office does due diligence checks on their correspondent relations.

### ***Recommendation 8***

- 364. The Guidance Notes have no provision for financial institutions to have policies in place or to take such measures with regards to the misuse of technological developments in money laundering or terrorist financing schemes.
- 365. Paragraph 55 of the Guidance Notes outlines the methods that should be taken in case of non-face-to-face clients. These are the certification of identification documents and an independent contact of customer by the Bank.
- 366. Paragraph 88 of the Guidance Notes requires financial institutions offering services over the Internet should implement procedures to verify and identify their clients. The financial institutions should obtain the same supporting documentation as for non-face-to-face clients. Due to the risk involved with doing business over the Internet, the financial institutions should monitor the clients account regularly.
- 367. Paragraph 65 of the Guidance Notes states that financial institutions should obtain

adequate documentary evidence of identity if they deal with prospective clients by mail or by coupon application. Where it is not practical to meet the overseas prospective clients at the time the relationship or account is established, then such an application for business should go through a reputable source such as a regulated bank in the prospective client's jurisdiction, which itself can be relied upon to verify identity in an appropriate and effective way and to provide copies of evidence. Furthermore, a decision to obtain evidence of identity should only be taken by senior management and properly recorded. Furthermore, when initiating a business relationship a passport or national identity card is not presented in person, a certified copy should be requested.

368. The financial institutions interviewed mentioned that they have policies in place with regards to non-face-to-face clients. They also stated that usually do not have non-face to face clients, in case that they get into business with a non-face to face client they require the clients to send them certified identification documents. One of the institutions mentioned that they do not do any verification on any of their clients. Furthermore, one of the financial institutions interviewed mentioned that they will eventually meet all their clients personally.

### **Additional Material**

#### 3.2.2 Recommendations and Comments

##### Recommendation 5

- The legislation should entail requirement to undertake CDD measures according to recommendation 5.
- The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable.
- Requirement for ongoing due diligence on the business relationships should be enforceable.
- Requirement to take reasonable measures to determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable.
- The Guidance Notes should include additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.
- Financial institutions should to perform enhanced due diligence for higher risk customers
- Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.
- The bank should not keep an exempted list for business clients so that they do not require to fill out a source of fund declaration form for each deposit.

Recommendation 6

- Recommendation 6 should be enforceable on the financial institutions.
- Financial institutions should apply risk based approach on their PEPs clients, and continue to do enhanced due diligence on them.

Recommendation 7

- The specific requirement to understand and document the nature of the respondent bank’s business and reputation, supervision of the institution and if they have been subjected to money laundering or terrorist financing activities or regulatory action should be introduced.
- Financial institutions should be required to assess all the AML/CFT controls of respondent.
- The financial institutions should document the AML/CFT responsibility of each institution in a correspondent relationship
- Financial institutions should require senior management approval before establishing new correspondent relationships.
- Financial institutions should ensure that for correspondent relationships, if involved in payable-through accounts, that the normal CDD obligations as set out in R5 have been adhered to and they are able to provide relevant customer identification upon request.

Recommendation 8

- Financial institutions should be required to have measures aimed to prevent the misuse of technological developments.

3.2.3 Compliance with Recommendations 5 to 8

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.5 | NC     | <ul style="list-style-type: none"> <li>• <b>The requirements that documents, data or information collected under the CDD process should be kept up to date by the financial institution is not enforceable.</b></li> <li>• <b>The obligation that financial institutions should perform ongoing due diligence on the business relationships is not enforceable.</b></li> <li>• <b>The determination by the financial institution as to who are the ultimate beneficial owners is not enforceable.</b></li> <li>• <b>No guidance for the insurance companies with regards to identification and verification of the underlying principals, persons other than the policyholders.</b></li> </ul> |

|     |    |   |
|-----|----|---|
|     |    | <ul style="list-style-type: none"> <li>• Financial institutions do not perform enhanced due diligence for higher risk customers.</li> <li>• Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.</li> <li>• The business clients on the exempted list of the banks do not submit a source of fund declaration for each transaction.</li> </ul>  |
| R.6 | NC | <ul style="list-style-type: none"> <li>• It should be enforceable on the financial institutions that they apply enhanced and ongoing due diligence on their PEPs.</li> </ul>  |
| R.7 | NC | <ul style="list-style-type: none"> <li>• No requirement to determine the nature of business, reputation and the quality of supervision of a respondent institution</li> <li>• No assessment of a respondent AML/CFT controls and responsibilities.</li> <li>• No provision to obtain senior management approval before establishing new correspondent relationships.</li> <li>• No condition to document respective AML/CFT responsibilities in correspondent relationships.</li> <li>• No requirement for financial institutions with correspondent relationships involving “payable through accounts” to be satisfied that the respondent</li> <li>• Financial institutions have not performed all normal CDD obligations on its customers that have access to the accounts.</li> <li>• No requirement for the financial institution to satisfy themselves that the respondent institution can provide reliable customer identification data upon request.</li> </ul> |
| R.8 | NC | <ul style="list-style-type: none"> <li>• There are no provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing.</li> </ul>  |

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

##### *Recommendation 9*

369. Third parties are addressed under Regulation 7 of the MLPR, which requires that the third party verify the identity of the introduced client, and comply with the regulations with regards to identification.

370. Regulation 14 (2) of the MLPR mentions that a person carrying on a relevant business may apply reliance on third parties in respect to details of payments and transactions by customers, provided that the third party is willing and able to retain, and if asked to produce in legible form, copies of the required information.

371. Paragraph 44 of the Guidance Notes states that financial institutions are responsible

for obtaining identification documents from their clients. The Guidance Notes also mentions that the financial institutions may rely on an introducing financial institution with regards to the due diligence procedures for their clients. This is possible if the client identification and verification has been done in accordance to the Guidance Notes by a regulated financial institution which is part of a corporate group, and that the introducing financial institution will make the copies of identification data and other CDD documentation mentioned in this guide available upon request. Furthermore, the financial institution should receive a written notification that the introducing financial institution has obtained identification documents and supply this before establishing a business relationship. If the introducing financial institution fails to provide adequate identification documents, the business relationship should be discontinued.

372. Under section VI of the AML Guidance Notes, Procedures for client verification, there is mention that the financial institution may rely on third parties to perform the due diligence of their clients. This may occur if the financial institution is part of a corporate group which has conducted client verification procedures substantially in accordance with this Guide, and where written confirmation is received from the Financial Institution that documentary evidence of identity has been obtained and will be supplied before establishing the relationship. Furthermore, the financial institutions should satisfy themselves that copies of identification data and other CDD documentation mentioned in this guide will be made available from the introducing financial institution upon request without delay.
373. The Guidance Notes at appendix 12 provides a listing of the websites of organizations through which useful additional material relative to financial regulation and AML could be had. The Guidance Notes does not show that the competent authorities have given additional guidance with regards to jurisdiction from where third parties are acceptable.
374. In case of the ultimate responsibility if there is an intermediary, paragraph 45 of the Guidance Notes mentions that the financial institutions are ultimately responsible for the CDD and verification.
375. The financial institutions interviewed indicated that they do not rely on third parties, and that they do their own CDD on all their clients.

### **Additional Material**

#### 3.3.2 Recommendations and Comments

- Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process detailed in Recommendation 5.3 to 5.6.
- The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made not enforceable.

- Competent authorities should take into account information on countries which apply FATF Recommendations in determining in which country the third party can be based.

### 3.3.3 Compliance with Recommendation 9

|     | Rating | Summary of factors underlying rating   |
|-----|--------|--|
| R.9 | PC     | <ul style="list-style-type: none"> <li>• No requirement for financial institutions to immediately obtain from all third parties necessary information concerning certain elements of the CDD process referenced in Recommendation 5.3 to 5.6</li> <li>• The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients is not enforceable.</li> <li>• Competent authorities should give guidance with regards to countries in which the third party can be based.</li> </ul> |

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

### 3.4.1 Description and Analysis

#### *Recommendation 4*

376. The ECCB, FSU and MLSA are the authorities with responsibility for overseeing the anti-money laundering and terrorist financing regime in Dominica.
377. Section 29 of the MLPA overrides the secrecy obligations imposed by other legislation or common law. It provides that subject only to the Constitution, that the provisions of the Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information. Section 30 of the MLPA protects persons making disclosures pursuant to the Act.
378. MLPA Section 14 - the FIU shall (b) gather intelligence with a view to detecting money trails; (i) consult with any person, institution or organization within or outside Dominica, for the purposes of the exercise of its powers and duties under this act; (j) shall pass on any relevant information relating to money laundering to the Director of Public Prosecutions with a view to taking the appropriate action. Section 15(c) permits the FIU to enter into any premises of the financial institution or person carrying a scheduled business during normal hours and inspect the business transaction records.
379. Section 70 of the Offshore banking act mentions that when a request is made to a attorney general for any information or assistance pursuant to any agreement or treaty entered into with any other country concerning mutual assistance in criminal matters, it shall be lawful for the attorney general to request any licensee to furnish such information.
380. Regulation 13 of the Money Laundering (Prevention) Regulations (MLPR) protects

any bona fide communication or disclosure made in accordance with regulations 10 and 11 from being treated as a breach of the duty of professional secrecy or any restriction upon the disclosure of information.

381. The Exchange of Information Act provides for assisting overseas regulators in obtaining information in the exercise of regulatory functions. Section 5 of the Act the Financial Secretary is granted the authority to direct or compel any person to produce documents, supply information or to provide other assistance in relation to inquiries from foreign regulatory authorities.
382. Section 32(1)(c) of the Banking Act provides that every information is secret except when the ECCB is lawfully required to make a disclosure to any court in Dominica. With regards to information sharing with local operations or foreign financial institutions the ECCB can do so on reciprocal basis, subject to a confidentiality agreement and a MOU between the ECCB and the foreign authority. During the onsite interview with the ECCB it was mentioned that the information with regards to how many MOUs there are with the Banks in Dominica is confidential information. Furthermore, it was mentioned that the Minister of Finance receives the reports of the on-site examination. It was also mentioned that they received a request from another regulator that this can be answered without consultation with the Minister of Finance.
383. Section 23(1) of the Banking Act requires the financial institution shall submit information and data as the ECCB may require for the proper discharge of its function and responsibility.
384. Section 112 of the International Business Companies Acts impose confidentiality obligations on officers, employees, agents, auditors and solicitors of offshore banking and trust corporations with regard to information relating to the business affairs of customers. Exemptions are provided in the following instances:
- a) conform to a written authorization of the company to which the information relates; or
  - b) conform to an order of a court of competent jurisdiction in Dominica.
385. Part VIII of the SFTA deals with disclosure and sharing of information. Section 34, 35 and 36 of the SFTA state the following:
- Competent Authority may disclose upon request from an appropriate authority from a foreign state any information that the competent authority of government department has in its possession with regards to actions or movements of terrorists or involved in terrorist acts, the use of forged travel documentation, traffic in weapons and sensitive materials by terrorists;
  - a person shall disclose information with regards to prevention of terrorist acts and securing the arrest or prosecution of a person under the SFTA to an officer not below the rank of inspector of police;
  - a person shall disclose to the Unit the existence of any property in his possession or control that is owned or controlled by a terrorist group and any information with regards to a (proposed) transaction.
386. Section 36 of the SFTA only states that the financial institution shall report every three months to the Unit and the ECCB that they are, or not in possession, control of any

property owned or controlled by or on behalf of a terrorist group. Most of the interviewed financial institutions mentioned that they do send this information to the relative authorities. One financial institution was not aware of any reports to be sent to the authorities.

387. Part III of the FSU Act deals with information gathering, and section 14 mentions that the director can be of assistance to the foreign regulatory authority.

**Additional Material**

1.1.1 Recommendations and Comments

- Dominica should enact provisions allowing the ECCB, FSU, the MLSA, the registered agents to share information with other competent authorities

3.4.3 Compliance with Recommendation 4

|            | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|------------|---------------|--|
| <b>R.4</b> | <b>PC</b>     | <b>Inability of the competent authorities to share information without an MOU or court order</b> |

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

3.5.1 Description and Analysis

***Recommendation 10***

388. Regulation 9 of the MLPR requires persons carrying on a relevant business to keep the following records for the period for at least seven years:

- i. a confirmation of a person’s identity in accordance with section 5 & 7 of the MLPR, that indicates the nature of the information and the date the business was completed;
- ii. records on single large transaction,
- iii. suspicion on the person that is handling a transaction and a transaction that is carried out on behalf of another person, and
- iv. records to formation of a business relationship.

389. In addition the financial institutions should keep accounts containing details with regards to business transactions in the course of the business relationship and the date of these business transactions.

390. Section 15(a) of the MLPA requires financial institutions or person carrying on a scheduled business to keep a business transaction record of all business transactions for a period of seven years after the termination of the business transactions.

391. Section VIII of the Guidance Notes prescribes record-keeping and itemizes the appropriate records that should be maintained to establish an audit trail. This should include evidence of identity and addresses, and sufficient details of accounts and transactions. The documentation should be prepared and stored and accessible within a reasonable time and available to comply with any court orders regarding disclosure of

information, restraint or confiscation of assets. Furthermore, it is suggested if practical that documentation such as evidence of client identification, account opening or new business documentation and adequate records identifying and describing financial transactions should be kept for a period of 7 years following the closure of an account, the end of the transaction or the termination of the business relationship.

392. Financial institutions that have reported suspicious transactions or are aware of an investigation into money laundering relating to a client are required to retain the transactions relating to that client.
393. Paragraph 35 of the Guidance Notes states that adequate records of client identity and the transactions involved should be maintained to assist in the investigation and prosecution of criminal offences according to section 8 of the MLPA.
394. Paragraph 58 notes that for one-off payment or mail shot payments the financial institution should keep a records indicating how the transaction arose in addition to a record of the relevant branch or office and the account name and number. It is important that the information retained be sufficient for initiating a money laundering investigation should the need arise. A minimum of seven years is required under Section 49 of the Proceeds of Crime Act.
395. Section 49 of the Proceeds of Crime act also requires the financial institution to retain documents relating to a financial transaction, such as opening and closing of accounts by a person with the institution, the transmission of funds between Dominica and a foreign country or between foreign countries on behalf of a person, for a minimum of seven years.
396. Section 15 (c) of the MLPA and section 14 (1) of the MLPA Regulations address the requirements of the above EC.
397. Regulation 14 (1) of the MLPR mentions that a person carrying on a relevant business should ensure that any records required to be maintained under the MLPA and MLPR shall ensure that such records are capable of retrieval in legible form and without undue delay.
398. The financial institutions in Dominica mentioned during the on-site interview that they keep the records of their clients and the records of the transactions that have been filed and not filed with the MLSA for at least seven years.

#### **Special Recommendation VII**

399. Paragraph 39 requires that users of the SWIFT<sup>3</sup> system for telegraphic fund transfers should include the names, addresses and/or account numbers of the ordering and beneficiary clients in all SWIFT MT 100 messages.
400. Guidance Notes appendix 6 gives a list of examples of suspicious activities that should be scrutinized, including wire transfer activity which is not consistent with the business or profession of the customer, accounts with large deposits in wire transfers

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3. <sup>3</sup> Society for Worldwide Interbank Financial Telecommunication

and customers who deposit loan proceeds borrowed from offshore institutions where the source of funds is unknown. Financial Institutions have been cautioned against proceeding with such transactions through the issuance of the guidance notes

401. The Guidance Notes does not mention the requirements with regards to domestic transfers. The interviewed financial institutions do adhere themselves to the FATF recommendations.
402. There is no mention with regards to the originator requirements. The interviewed financial institutions do adhere themselves to the FATF recommendation
403. There is no requirement for a receiving intermediary financial institution to keep a record of all the information received from an ordering financial institution in a situation where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related wire transfer.
404. There is no requirement mentioned in the Guidance Notes that financial institutions should have effective risk-based procedures in place to identify wire transfers lacking complete originator information as mentioned in the FATF recommendation.
405. There are currently no measures in place to effectively monitor the compliance of the financial institutions with rules and regulations implementing wire transfers obligations.
406. There are currently no measures in place to effectively monitor and compel financial institutions to comply with rules and regulations implementing wire transfers. For this reason the financial institutions do not have an obligation to comply.

***Additional Elements***

407. As stated before the Guidance Notes does not provide information with regards to the wire transfer coming into Dominica.

5.1.1 Recommendations and Comments

***Special Recommendation VII***

- It is recommended that the review of Dominica’s legislative and regulatory provision take consideration of all requirements of the Recommendation and appropriate legislation be enacted as soon as possible.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

|               | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|---------------|---------------|---|
| <b>R.10</b>   | <b>C</b>      | <ul style="list-style-type: none"> <li>• <b>The Recommendation is fully observed</b></li> </ul>   |
| <b>SR.VII</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• <b>No measures in place to cover domestic, cross-border and non-routine wire transfers.</b></li> <li>• <b>There are no requirements for intermediary and beneficial</b></li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <p><b>financial institutions handling wire transfers.</b></p> <ul style="list-style-type: none"> <li>• <b>No measures in place to effectively monitor compliance with the requirements of SR VII.</b></li> </ul> |
|--|--|--|

**Unusual and Suspicious Transactions**

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

3.6.1 Description and Analysis

***Recommendation 11***

408. Section 16 (1) of the MLPA requires a financial institution or person carrying on a scheduled business to pay attention to all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions and any transaction or other activity and relations and transactions with persons, including business and other financial institutions, from countries that have not adopted a comprehensive money laundering legislation. It was not clear from the institutions which were interviewed during the onsite visit that these obligations were strictly adhered to.
409. Notwithstanding the provisions of Section 16(1) there is no legal obligation requiring financial institutions to examine the background and purpose of the transactions enunciated above.
410. Further, the obligations at Section 16 (2) of the MLPA has linked transactions of the types mentioned, to suspicions of money laundering and further obligates financial institutions to report them as STRs, where applicable, as opposed to keeping them available for competent authorities and auditors.

***Recommendation 21***

411. Section 5 (3) (a) of the Banking act requires foreign institutions that want to establish business in Dominica, to submit to the Central Bank besides the regular documentation also a certificate showing that the home supervisor has no objection to them establishing business in Dominica, and documentation that it is subject to comprehensive supervision on a consolidated basis by the appropriate authority.
412. Paragraph 67.2 of the Guidance Notes mentions that where a shareholder of the corporate client is a closely held company consideration should be taken of whether the country sufficiently applies the FATF recommendations.
413. There are no sufficiently effective measures that require authorities to notify financial institutions about weaknesses in the AML/CFT systems of other countries.
414. Section 16 (1) (c) of the MLPA states that a financial institution or person carrying on a scheduled business is required to pay attention to the relations and transactions it conducts with persons including business and other financial institutions, from countries that have not adopted a comprehensive anti money laundering legislation. Upon reasonable suspicion, the financial institution shall promptly report the

suspicious transaction or activity to the Authority. There is no obligation to examine the background and purpose of such transactions nor to make the findings of any such examination available to competent authorities and auditors.

- 415. Section IX of the Guidance Notes pertains to suspicious transactions and not directly to transactions that have no apparent economic or visible lawful purpose. In addition, appendix 3 of the Guidance Notes contains the list of approved markets and exchanges that are regarded as sufficiently applying the FATF 40 + 9 Recommendations
- 416. Dominica has no counter-measures in place where a country continues not to apply or insufficiently applies the FATF recommendations.
- 417. The interviewed financial institutions mentioned that they do not send wire transactions to countries that do not apply the FAFT 40 + 9 recommendations and which do not have an AML/CFT legislation and regulatory framework in comparison to Dominica. The financial institutions also mentioned that their internal procedures include the countries that they should not do business with.

**Additional Material**

3.6.2 Recommendations and Comments

Recommendation 11

- The Commonwealth of Dominica should consider amending its legislation so as to mandate financial institutions to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose.
- The Commonwealth of Dominica should consider amending its legislation so that the financial institutions would be mandated to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose and set forth their findings in writing and to make such findings available to competent authorities and auditors.

Recommendation 21

- Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.
- There should be requirements to allow for the application of counter-measures to countries that do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.11</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• <b>No requirement for financial institutions to examine as far as possible the background and purpose of complex, unusual large transactions</b></li> </ul> |

|             |           |   |
|-------------|-----------|---|
|             |           | <b>and to set their findings in writing.</b>  |
| <b>R.21</b> | <b>NC</b> | <ul style="list-style-type: none"> <li>• <b>There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.</b></li> <li>• <b>There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.</b></li> </ul> |

### **3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)**

#### 3.7.1 Description and Analysis

##### ***Recommendation 13& Special Recommendation IV***

418. Section 16 (2) of the MLPA creates a legal requirement for financial institutions to report suspicious transactions to the MLSA. However this STR obligation is not linked to criminal activity or the designated categories of offences under Recommendation 1. Rather, it is linked to complex, unusual or large business transactions and to unusual patterns of transactions that have no apparent or visible economic or lawful purpose and any transaction or activity where there is a suspicion of Money laundering. Further, at Paragraph 102 of the AML Guidance Notes, Financial Services Providers are only obliged to report to the MLSA where there is reasonable suspicion that money laundering is about to occur, is occurring or has occurred.
419. There are no regulations to the SFTA and as such, no form for the reporting of terrorist related STRs.
420. The SFTA section 35(1) notes that a person that has information which will be of assistance in preventing the commission by another person of a terrorist act; or securing the arrest or prosecution of another person for an offence under this Act, shall forthwith disclose the information at a police station to an officer not below the rank of Inspector of Police. This section also mentions that if a person does not comply with the abovementioned requirements, an offence is committed and if convicted liable to imprisonment for a term of two years. Furthermore, section 36 of the SFTA mentions that a person shall disclose the existence of any property in his possession or control, which is to his knowledge, owned or controlled by or on behalf of a terrorist group, any information which the person has reasonable grounds to suspect is information regarding a transaction or proposed transaction in respect of any property.
421. The obligation to report suspicious transactions does not include attempted transactions
422. Furthermore, section IX of the Guidance Notes deals with recognition and reporting of suspicious transactions. Where there is reasonable suspicion that money laundering is about to occur, is occurring or has occurred, the Financial Services Providers should make a report to the MLSA as required.

### ***Additional Elements***

423. As stated in paragraph 102 of the Guidance Notes financial service providers should report to the MLSA if they have any suspicion that money laundering is about to occur, is occurring or has occurred.
424. The SFTA does not contain a mechanism that provide for the reporting of STRs relative to FT.
425. Section VI of the Guidance Notes obligates the reporting of all suspicious transactions to the MLSA. In addition, the suspicious transaction report should be filed immediately after a suspicion is formed and should not under any circumstances exceed 5 calendar days. Isolated transactions and declined business that raise suspicion should be reported immediately by telephone or other means to the MLSA before file a report.
426. Section 35 of the SFTA states that a person with information which will assist prevention of a terrorist act or securing the arrest or prosecution of another person for an offence under the said act shall disclose that information to a police inspector.
427. Section 36 of the SFTA mentions that a person shall disclose to the Unit any information on any property in his possession that is being controlled or owned by or on behalf of a terrorist group and any information regarding a transaction or proposed transaction of any property controlled or owned by or on behalf of terrorist group. No mentioning of reporting to the authority any suspicious transactions related to terrorism or terrorist acts. Section 20 of the act mentions that the Unit should investigate any transaction in foreign exchange currency or, securities, any transaction or credit or payment by, through or to any banking or financial institution to the extent that such transfer, credit or payment involves any interest of a foreign country or national thereof; or such moneys as may be frozen, this is all for the purpose involving the prevention and suppression of terrorism.
428. Section 31: The transactions described in section 16(1) of the MLPA are complex, unusual or large business transactions, whether completed or not. The attempted transaction does not fall under this criterion. The interviewed financial institutions mentioned that they would also report attempted transactions.
429. If there is a suspicion that the source of funds or that the client is involved in the criminal activity, the financial institutions should determine the course of action and determine if they will proceed with the business relationship or an investigation. If there is any reasonable suspicion that money laundering is about to occur, occurring or occurred, a report shall be made to the MLSA.
430. Section 16(5) of the MLPA makes non-compliance with the reporting requirements of a suspicious transaction an offence. Section 16(6) enforces on the financial institution and its employees or a person carrying on a scheduled business if convicted a fine of \$ 50,000. In addition, the license of the financial institution to operate can also be suspended or revoked.

### ***Recommendation 14***

### **Safe harbour protection**

431. According to Section 16 (4) of the MLPA, when a STR is made in good faith, the financial institution or person carrying on a scheduled business and its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication. Section 30 of the MLPA further extends an exemption from criminal liability to all persons when they make disclosures in compliance with the act.

### **Tipping off**

432. Section 16(3) of the MLPA mentions that the financial institution or person carrying on a scheduled business, shall not notify any person, other than the court, competent authority or other person authorized by law that information has been requested by or furnished to a court or the Authority.
433. Section 6 of the MLPA prohibits the exposing of information about money laundering investigations. Such action is deemed an offence liable on conviction to a fine not exceeding \$250,000 and to imprisonment for a term not exceeding 5 years. Furthermore, a person that falsifies, conceals, disposes, destructs knowingly important material to the investigation is liable on conviction to a fine not exceeding \$ 500,000 and to imprisonment to a term not exceeding ten years.

### **Additional Elements**

434. Currently, the regulations have no requirements with regards to keeping the names and personal details of employees who report a STR to the Authority confidential.

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

435. The MLPA does not legally authorize the Unit neither the MLSA to provide feedback to the FIs and DNFBPs on STRs filed and as such feedback is provided on a limited basis.
436. During the onsite interviews it was mentioned that in practice neither the MLSA nor the FIU provide feedback on the STRs filed. Occasional acknowledgments of receipts of STRs are sometimes sent to the reporting institutions when requested.

### ***Recommendation 19***

437. The implementation of computerized Currency Transaction Reporting (CTR) of transactions above a fixed threshold has not been implemented nor considered by the Commonwealth of Dominica.

### ***Additional Elements***

438. The implementation of computerized reporting of transactions above fixed threshold

has not been implemented on Dominica.

### *Statistics*

439. The FIU maintain statistics with regards to the STRs filed for money laundering and terrorist financing. The MLSA and the FSU have no statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing and are not aware of the STR's filed by the financial sector of Dominica.

### **Additional Material**

#### 3.7.2 Recommendations and Comments

##### Recommendation 13

- The financial institutions should be required to report STRs to the FIU.
- The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.
- The obligation to make a STR related to money laundering should apply to all offences to be included as predicate offences under Recommendation 1.
- The reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts.

##### Recommendation 14

- Extend the prohibition against tipping-off to the directors, officers and employees of financial institutions.

##### Recommendation 19

- The Commonwealth of Dominica is advised to consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FIU. In this regard the Commonwealth of Dominica should include as part of their consideration any possible increases in the amount of STRs filed, the size of this increase compared to resources available for analyzing the information.

##### Recommendation 25

- The MLSA should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs.

##### Special Recommendation IV:

- The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organizations or those who finance terrorism

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

|       | Rating | Summary of factors underlying rating   |
|-------|--------|--|
| R.13  | NC     | <ul style="list-style-type: none"> <li>• The requirement to report suspicious transactions should be linked to all transactions and not only to complex, large, unusual.</li> <li>• No requirement to report attempted transactions.</li> <li>• The reporting of an STR does not include transactions that are linked to terrorism financing, terrorism, terrorism acts, and terrorist organizations.</li> <li>• The legislation does not require the STR be reported to the FIU.</li> </ul> |
| R.14  | LC     | <ul style="list-style-type: none"> <li>• The prohibition against tipping-off does not extend to the directors, officers and employees of financial institutions.</li> </ul>  |
| R.19  | NC     | <ul style="list-style-type: none"> <li>• No evidence that Dominica has considered the feasibility and utility of implementing a fixed threshold currency transaction reporting system.</li> </ul>  |
| R.25  | NC     | <ul style="list-style-type: none"> <li>• Non issuance of specific guidelines to assist DNFBPs and other financial institutions with implementing the requirements of the AML/CFT regime.</li> <li>• Non issuance of guidelines by SROs and other competent authority (FSU) for DNFBPs.</li> <li>• The authority has not provided the financial sector with adequate and appropriate feedback on the STRs</li> </ul>  |
| SR.IV | NC     | <ul style="list-style-type: none"> <li>• The reporting of STRs does not include suspicion of terrorist organizations, terrorism, terrorist acts or those who finance terrorism.</li> </ul>   |

**Internal controls and other measures**

**3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

3.8.1 Description and Analysis

***Recommendation 15***

440. Not all the interviewed financial institutions have an internal procedure with regards to AML/CTF and one of the interviewed financial institutions has only internal procedures with regards to AML and not CFT. The ones that have internal procedures manuals have not all had them independently reviewed. There have not been on-site inspections recently, so the financial institutions would not know if they are in adherence to all the laws and guidelines with regards to money laundering and terrorist financing. There has not been any guidance by the local authorities with regards to AML/CFT.

441. Regulation 3 of the MLPR states that a person shall not form a business relationship or carry out any transaction with or for another person unless the person carrying on the relevant business maintains identification procedures, record keeping procedures, internal reporting procedures, and internal controls and communication procedures which are appropriate to forestall and prevent money laundering. Regulation 3(1)(b) of the MLPR requires all person carrying on a relevant business to make the employees aware of the provisions in the MLPR, MLPA and the Guidance Notes.
442. Regulation 10 of the MLPR mentions that the internal procedures should enable management, partners, key personnel to know to whom they need to report any knowledge or suspicious of money laundering activity, ensure that there is a clear reporting chain to the compliance officer, identify a compliance officer to whom a report should be made if there is knowledge or suspicion of money laundering, require the compliance officer to consider any report to determine if there is knowledge or suspicion of money laundering, ensure that the compliance officer has access to any information, and require that the information in the report is disclosed to the MLSA.

#### **Appointment of a compliance officer**

443. Section 16 of the MLPR requires a person carrying on a relevant business to appoint or designate a senior officer with relevant qualifications and experience as a compliance officer to be responsible for establishing and maintaining a manual of compliance procedures, for ensuring staff compliance with all legislative requirements and procedures, and to act as liaison between the business and the MLSA.
444. Section V of the Guidance Notes mentions that the financial institutions should establish a procedure to obtain and maintain appropriate evidence of client identity, and of financial transactions. Employees should have access to the Guidance Notes and any regulations for the prevention and detection of money laundering and train annually. The procedures should also monitor the compliance with the Guidance Notes, regulations, policies, internal controls and procedures relating to money laundering. Furthermore, internal procedures should be put in place for the reporting of suspicious transactions to a senior member, the compliance officer.
445. All the financial institutions had a compliance officer or a compliance function. These compliance offers do not hold management positions. The compliance officer of the interviewed financial institutions indicated that they have timely access to all systems and records.
446. Section VII of the AML Guidance Notes mandate that an independent compliance and internal audit function should be established to monitor and report on adherence to these requirements. The compliance officer should undergo in-dept training concerning all aspects of the anti-money laundering laws, regulations, guidelines, policies and procedure.
447. Section 18 of the MLPR requires a person carrying on relevant business arrange annually refreshment training to remind key staff of their responsibility and make them aware of any changes in the legislations requirements and internal procedures with regards to money laundering.

448. Section VII of the Guidance Notes mentions that all staff in particular the ones dealing with client accounts, assets, accounting and recordkeeping should be familiar with the risk of money laundering. Measure should be taken to ensure that upon hiring and routinely thereafter the staff is aware of the relevant guidelines and procedures related to avoidance, recognition and reporting of money laundering procedures. Senior management and staff responsible for internal audit and compliance should be familiar with all the relevant laws and regulations pertaining to money laundering. There should also be an extensive and continuing instruction on the validation and reporting of suspicious transactions. Section 17 of the MLPR also requires that there is staff training.
449. Not all the financial institutions interviewed provided their employees with training and ongoing training. One interviewed financial institution mentioned that they are using AML procedures that are outdated.

### **Training**

450. Paragraph 33 and 98 of the Guidance Notes state that proper screening procedures should be adopted to ensure that only honest and law-abiding persons are employed. The financial institutions that were interviewed mentioned that they do have procedures which ensure that high standards are maintained when employees are being hired.

### ***Additional elements***

451. The policies of the Local banks direct that the compliance officer reports to the Board of Directors. The cooperative Credit Union movement follows similar policies.
452. It is acceptable best practice that the compliance officers report to the BOD.
453. During the onsite interviews some of the financial institutions mentioned that they can act totally independent if they need to submit a STR. Other financial institutions mentioned that they will discuss any matter with the head compliance department in another jurisdiction before reporting anything to the authorities and other financial institutions mentioned that they will discuss with senior management before reporting. Furthermore, they submit a compliance report to their board indicating the compliance activities.

### ***Recommendation 22***

454. Paragraphs 38-40 of the AML Guidance Notes mandates financial institutions that are part of the international group, to adhere to the group policy in respect to money laundering prevention and detection procedures. This group policy can be followed to the extent that with regards to verification of identity, record keeping, detection, reporting suspicious activities and training, do not fall below the standard required by the Dominica's anti-money laundering legislation, regulations and the Guidance Notes.
455. Section 38 of the Guidance Notes mentions that the group policies should not fall under the standard required by Dominica's anti-money laundering legislation, regulations and Guidance Notes.

456. Section 39 of the Guidance Notes requires Financial Services Provider, where it has an overseas branch, subsidiary or affiliate over which control can be exercised, that a group policy be established to the effect that they should observe verification of identity and record keeping to a standard which is at least that required under Dominica's legislation. It is recognised that reporting procedures and the provisions of money laundering legislation in the jurisdiction in which the branch, subsidiary or associate carries on business must be adhered to in accordance with local laws.
457. There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to prohibition of local laws, regulations or other measures.

***Additional elements***

458. Section 11 (d) of the MLPA give the MLSA the authority to issue Guidance Notes to FIs and DNFBPs relative to ML. Section VI of the GN of 2008 deals with “Procedures for Client Verification”, which speaks to the mandatory CDD requirements placed on all FIs and DNFBPS on the island.
459. The Guidance Notes does not mention that the financial institutions should be required to apply consistent CDD measures at the group level.
460. Most of the interviewed financial institutions mentioned that their internal group policy is in line with Dominica’s AML/CFT procedures and mentioned that usually the AML/CFT group policy procedures are more stringent than Dominica. Only financial institutions were aware if their AML/CFT procedures adhered to Dominica and one mentioned that their internal procedure did not include CFT procedures.

**Additional Material**

3.8.2 Recommendations and Comments

Recommendation 15

- The requirement to maintain independent audit functions to test compliance with procedures, policies and controls should be adhered to.
- Requirement of the financial institutions to have internal procedures with regards to money laundering should also include terrorist financing.

Recommendation 22

- Financial institutions should be required 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 and measures.

3.8.3 Compliance with Recommendations 15 & 22

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>   |
|-------------|---------------|---|
| <b>R.15</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• <b>Financial institutions do not maintain an independent audit function to test compliance with policies, procedures and controls</b></li> </ul> |

|             |           |   |
|-------------|-----------|---|
|             |           | <ul style="list-style-type: none"> <li>• <b>Internal procedures do not include terrorist financing.</b></li> </ul>  |
| <b>R.22</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• <b>No requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to prohibition of local laws, regulations or other measures.</b></li> </ul> |

### **3.9 Shell banks (R.18)**

#### 3.9.1 Description and Analysis

##### *Recommendation 18*

461. Shell Banks are not approved and the legislation makes no provision for shell banks. The legislation and the Guidance Notes do not mention the prohibition of the establishment of shell banks and institutions having a relationship with these shell banks.
462. Section 5(1) of the BA requires an applicant for a financial institution license to submit information in Schedule 1 which includes the address of the location of the principal and other places of business where the applicant proposes to do business.
463. Paragraph 47 of the Guidance Notes mentions that financial institutions should be careful when they deal with clients that have no operations in the country where their registered office is located or when control is exercised through a shell company.
464. The Guidance Notes detailed examples of suspicious activities relevant to the Banks and Credit Unions. The examples include circumstances where accounts are used to receive and send wire transfers very often especially with countries considered high-risk money laundering jurisdiction, or those with strict banking secrecy laws, the financial institutions should pay special attention if operations of this type are made through shell banks.
465. The interviewed financial institutions mention that they and their correspondent banks do not do business with shell banks.

##### **Additional Material**

###### 1.1.1 Recommendations and Comments

- Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks
- Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.18 | NC     | <ul style="list-style-type: none"> <li>• <b>The requirement for domestic and offshore banks not to enter into correspondent banking relationship with shell banks is not enforceable.</b></li> <li>• <b>No requirement for financial institutions to satisfy themselves that the respondent financial institutions do not permit their accounts to be used by shell banks.</b></li> </ul> |

**Regulation, supervision, guidance, monitoring and sanctions**

**3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, & 25)**

3.10.1 Description and Analysis

***Designated supervisory authorities***

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

466. Section 9 of the Money Laundering (Prevention) Act establishes the Money Laundering Supervisory Authority (MLSA).

467. Section 10 of the Act states that the MLSA shall comprise of the following persons, (1) (a) the Manager of the International Business Unit, (b) the Commissioner of Police or his nominee, (c) the Attorney General or his nominee, (d) the Comptroller of Customs or his nominee, and (e) a person experienced in financial services appointed by the Minister. (2) A person who is involved in any of the activities set out in the schedule is disqualified for appointment under section (1).

468. Section 11 of the Act states the duties of the MLSA which are as follows:

- i. receive and consider reports issued by Financial Institutions and persons carrying on scheduled businesses pursuant to Section 16(1) & 16(2);
- ii. send reports referred to in paragraph (a) to the Unit;
- iii. develop anti-money laundering strategies for Dominica;
- iv. issue instructions and guidance notes to financial institutions and persons carrying on scheduled businesses, in respect of money laundering prevention, monitoring and reporting;
- v. create and promote training requirements for financial institutions and persons carrying scheduled businesses, in respect of the business transaction record keeping and reporting obligations under sections 15(a) and 16(2) respectively;
- vi. advise the Minister with regards to any matter relating to money

- laundering;
    - vii. conduct an inspection of each financial institution or scheduled business from time to time or whenever, in its judgment such inspection is necessary or expedient to determine compliance by the financial institution or scheduled business with the requirements of this Act, regulations made thereunder or any instructions relating to money laundering given by the Authority;
    - viii. carry out any under function as may be assigned to it by the Minister.
469. Pursuant to section 11 (1) the MLSA has the authority to issue Guidance Notes to FIs and DNFBPs relative to ML, which all institutions must comply with.
470. Meetings are convened when called by the Chairperson who is the Manager of the FSU.
471. As it relates to the regulation relative to CFT, section 9 of the SFTA refers.
472. **Section 9 (1) of the SFTA:** “Notwithstanding the provisions of any enactment, the Attorney General shall for the purposes of administering and implementing the provisions of this Act and for other purposes related to the suppression and prevention of terrorism regulate, prohibit, review or cause to be reviewed –
- i. any transaction in foreign exchange currency or securities; or*
  - ii. any transfer or credit or payment by, through or to any bank or financial institution to the extent that such transfer, credit or payment involves any interests of any foreign State or national thereof.*
473. No authority, save for the Attorney General, is tasked with the responsibility of regulating FIs and DNFBPs for CFT compliance.
474. The regulation and supervision of Financial Institutions (FI) and Designated Non Financial Business and Professions (DNFBP) is shared by the Eastern Caribbean Central Bank (ECCB) and the Financial Services Unit (FSU). The Cooperative Societies League performs on-site inspection and evaluation of the credit unions, but this is done on a moral suasion basis. It does not have legal responsibility for regulation.
475. The Financial Services Unit was established in 2005 by a Bill for an Act to Establish a Financial Services Unit and Provide for related Matters. The Bill is called the Financial Services Unit Act, 2005. The FSU Act under Section 5 provides for the appointment of a Director of the FSU, while Section 6 provides for the appointment for an Advisory Committee, who in essence advises the Minister on financial sector implementations and advises the Director of the FIU on the discharge of his duties. Section 9 details the principal functions of the Director which includes inter alia supervision of licensees, applications for licences for establishing financial institutions and monitoring compliance by regulated persons with AML legislation such as Acts, Regulations, Guidelines or Codes relating to money laundering and the suppression of

financing of terrorism Act.<sup>4</sup>

476. Despite the establishment of the Financial Services Unit Bill, it was recognized during the Mission that the FSU does not have any legal/legislative basis to discharge its functions as detailed under Section 9 of the Act.<sup>5</sup>
477. The FSU conducts off-site surveillance of domestic banks in the form of the submission of monthly balance sheets. The FSU is privy to ECCB's on-site reports. The FSU supervises and regulates credit unions (submission of annual financial reports), insurance companies (reporting of annual returns and licensing of products), international business companies (can investigate and take actions if have concerns), off shore banking sector, money remitters, buildings and loan societies, development banks. As regards the offshore banking sector the FSU has, between 2004 and 2008, conducted 2 on site examinations. There is some input by the Unit as regards licensing in consultation with the ECCB for the commercial banking sector. The FSU is responsible for the licensing of all offshore banks and International Banking Companies, financial institutions other than banks and DNFBP's where this requirement exists. Legislation does not currently exist which gives the FSU any supervisory or regulatory powers.
478. The Off Shore Banking Act gives the Minister of Finance the responsibilities of supervision and regulation. Under Section 10, the Financial Secretary is given the responsibility to assist the Minister in the discharge of his responsibilities.
479. The legislation relating to the supervision and regulating of insurance companies is in draft form. The FSU is responsible for the supervision and regulation of insurance companies. This is restricted to offsite monitoring in the form of receiving annual financial insurance returns and the approving of products. Formal supervision of the insurance sector is currently absent. Onsite supervision has not been conducted for the last four years. As regards AML the sector is subject to the MLPA and the Money Laundering Guidelines and its requirements for implementation, monitoring and compliance.
480. The ECCB is responsible for the onsite supervision and ongoing off site supervision of the domestic commercial banks. It licenses, regulates and supervises these institutions. These functions are discharged through the Banking Act. The Central Bank conducts both on and offsite supervision. Offsite supervision involves the submission of monthly financial data such as Statement of Assets and Liabilities, Income Statement, loan portfolio, ten largest depositors and capital adequacy. Onsite examinations were last conducted in 2007 and were conducted using the risk-based approach to supervision. Compliance onsite examinations for AML are conducted as part of regular

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<sup>4</sup> The FSU Bill giving the FSU the authority to supervise and regulate persons carrying out financial services business was enacted on December 10, 2008. The Bill under Section 4 details the objective of the Unit with subsection 4 (d) specifically referencing its supervisory and regulatory objective.

<sup>5</sup> Section 9 of the FSU Bill details the principal functions of the FSU Director who heads the Unit, as regards persons carrying on financial services business. However not all DNFBP's are captured within the ambit of the FSU's regulatory activities

onsite examinations. Financial Institutions are required to report to the ECCB on a quarterly basis the level of activity associated with Terrorist Financing. These reports are also forwarded to the FIU. Guidelines and Regulations have been issued with respect to prudential criteria.

481. The Anti-Money Laundering Guidance Notes (Revised Edition) 2008 Section V- Internal Controls and Procedures, requires the appointment of a Compliance Officer at all FIs and DNFBPs to which the MLPA and Guidance Notes applies. Section 16 of the MLPA 2000 Regulations require the appointment of Compliance Officer who must be at a sufficiently senior position. The compliance officers are expected to implement the requirements of the Guidance Notes and MLPA.
482. The Money Laundering Supervisory Authority is tasked with the responsibility of ensuring that FIs and DNFBPs comply with the requirements to combat money laundering. The law (MLPA) and the Guidance Notes does not detail how this function will be discharged. It should be noted that the MLSA has been inactive for the past four years. Monthly meetings or attempts to hold monthly meetings have been instituted within the last two months prior to the mission. As well onsite examination has not been conducted during the period 2004 to 2008.<sup>6</sup>
483. The Attorney General is tasked with the responsibility to ensure that FIs and DNFBPs comply with the requirements of the SFTA in combating terrorist financing. Similar to the MLSA, the administrative and technical duties associated with ensuring compliance with the requirements of the SFTA in combating terrorist financing is not discharged through any other competent body. All financial institutions (FI) and designated non financial professions and business (DNFBP's) are required to report on a quarterly basis to the Eastern Caribbean Central Bank on the Terrorist Financing activity in their institutions. These reports are then submitted to the Financial Intelligence Unit (FIU).

### ***Recommendation 30***

#### **Structure and resources of supervisory authorities**

##### **MLSA**

484. The MLSA (Authority) is an independent body whose core function is the supervision and regulation of FI's and DNFBP's for the AML programme. The Authority is staffed as per the structure indicated. There is no budget allocated nor is there any technical and administrative staffing attached other than as per the structure. Administrative and technical duties are performed by the Financial Intelligence Unit, on behalf of the Authority. This arrangement has no legal basis and can be challenged by any of the supervisees.

##### **Structure:**

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<sup>6</sup> Section 9 (b) gives the FSU the authority to monitor compliance by regulated persons with the MPLA, its regulations, guidelines, and the SFTA. Under Section 21(2) the FSU is also given the authority to conduct compliance examinations to ascertain compliance with the MPLA, its regulations, guidelines and codes.

The Manager of the International Business Unit (Chairperson);  
The Commissioner of Police or his nominee;  
The Attorney General or his nominee;  
The Comptroller of Customs or his nominee; and  
A person experienced in financial services appointed by the Minister.

**Funding:**

No Budget.

**Staff:**

As per Structure

485. The head of the FSU is the Financial Secretary, who is appointed by the Minister of Finance. The Unit's operational staff includes a Manager and staff of six. There is an examiner assigned to Offshore Banking, one examiner assigned to Insurance and one examiner assigned to Credit Unions. Staff is required to have as a minimum a BSc in business, accounting or economics. The position of manager is vacant. There is a proposal to increase the staff complement by five with the appointment of 2 senior examiners and 3 examiners. The Unit's technical resources include a dedicated server, which is in the process of being changed. There is an internal network, which allows Examiners to access data, as well all examiners are allocated computers. The Unit reports to the Minister of Finance and its operations are funded accordingly. Currently the ECCB has a team of twenty (20) examiners.
486. All members of the MLSA are bound by the Public Service General Orders and the requirements of the Public Service Act, save for the person experienced in financial matters. They are all required to take an oath of secrecy on entry into the Public Service.
487. Two (2) members of the MLSA have benefited from AML training locally.
488. FSU staff has attended a number of overseas and regional training courses. The staff has been exposed to regulatory and supervisory techniques as well as AML/CFT training. During 2008 the MLSA members were exposed to training conducted by the FIU in conjunction with a United Kingdom Advisory Team where a stand alone money laundering case was addressed and a predicate offence case was reviewed. The former Chairman of the MLSA was also exposed to AML/CFT training during her tenure.

***Authorities Powers and Sanctions – R.29 & 17***

489. *MLSA*- Section 11 of the MLPA details the functions and duties of the MLSA. . Section 15 (d) of the MLPA requires all FIs and DNFBPs engaging in a scheduled business as defined in Part 1 and Part 11 of the MLPA to comply with the guidelines and training requirements issued by the Authority in accordance with Section 11. Act No.13 of 2001 amends Section 11 (g) of the MLPA 2000 to give the Authority the responsibility to conduct an inspection whenever it so desires to ensure compliance with the requirements of the Act and its Regulation. No evidence exists to show that on-sites have ever been conducted or if they were conducted, the results of those examinations.
490. *FINANCIAL SECRETARY*- Section 10 of the OffShore Banking Act gives the Financial Secretary, access to all records, documents, or information necessary to ensure compliance with the Act. Under Section 10 (3) a court order is required only if

there is evidence of illegal activity and the Financial Secretary is unable to obtain the necessary information from the institution.

491. *ECCB*- Section 20(1) of the Banking Act gives the ECCB the authority to examine all books and records of a financial institution to determine its financial condition and for compliance with the requirements of the Banking Act. Insufficient information was obtained from the ECCB to effectively assess its role in regulation/ supervision and compliance of the banking sector to the MPLA, its Guidelines, and Regulations.
492. Section 21(1) of the Banking Act requires financial institutions to produce for the inspection of any examiner appointed by the Central Bank at such time as the Examiner specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business in Dominica as requested by the examiner for the purpose of the Act.
493. Section 23 (1) gives the Central Bank the right to require any information from any financial institution relating to its operations and that of its affiliates in Dominica.
494. The Commissioner of Co-operatives is directly responsible legally for Credit Unions under the Co-operative Societies Act. The Co-operative Societies League has appointed itself to be responsible for ensuring that credit unions observe, monitor and comply with the MPLA and the Money Laundering Guidance Notes. The League however has no legal status and has to rely on moral suasion to require compliance.
495. While the FSU supervises insurance companies, such supervision takes the form of approval of products and the submission of annual financial statements. There is no law which gives the Unit the authority to conduct onsite or to actively ensure compliance with AML/CFT requirements in Dominica. The Insurance Legislation is currently in draft form.
496. With the exception of the MLSA, no other supervisory or regulatory body has legal authority to monitor or ensure compliance with the Money Laundering Prevention Act. The Attorney General is the sole body legally authorized to regulate and supervise with respect to terrorist financing. The FSU is expected to ensure that credit unions, insurance companies, and DNFBP's comply with the MPLA and the Guidance Notes. However the FSU has no legal authority to enter any institutions conducting scheduled business to review records and determine compliance with the MPLA and Guidance Notes.<sup>7</sup>
497. While the MLSA has the authority to conduct inspections to ensure compliance with the MPLA and Guidance Notes, the Authority is hampered by the lack of supportive administrative and technical staff to conduct such inspections.
498. The ECCB is authorized under Section 20 (1) to conduct inspection of all financial institutions under its purview, which are commercial banks operating in Dominica. Section 21 (1) gives the Central Bank the authority to obtain access to books, records,

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<sup>7</sup> Under Section 21(2) and (3) the FSU is given the authority to conduct compliance inspections to determine adherence to the MPLA, its Regulations, Guidelines and Codes

policies and procedures.

499. There is no legislation that explicitly provides the FSU with the authority to conduct inspections on those financial institutions and DNFBPs under its purview. The Commissioner of Cooperatives has the authority under the Co-operative Societies Act to conduct examinations and obtain access to the books and records, however, there is no evidence of such action being taken. Onsite inspections of credit unions have been conducted by the FSU specific to credit risk and adequacy of provisioning.
500. Neither the MPLA nor its regulations gives the MLSA the authority to compel production of books, records, policies or procedures relevant to monitoring for compliance with money laundering. Section 11 of the MPLA which refers to the Authority's functions and duties speaks to consideration of reports submitted, development of anti money laundering strategies and guidelines, provision of training and advising the Minister and any other duties. Section 14(f) of the MPLA gives the FIU the authority to compel the production of records pursuant to Section 15(a). This requirement however is in relation to record keeping under the MPLA and requires the production of a court order.
501. The ECCB is authorized under Section 21(1) and Section 23(1) to compel the production of records, books, policies and procedures for the purpose of determining compliance.
502. Section 10(1) (b) of the Offshore Banking Act gives The Financial Secretary the power to examine returns and particulars of any license to determine compliance with the Act. Section 10 (1)(d) confers on him the authority to examine accounts and audited accounts. Section 10(2) confers on the Financial Secretary the authority to compel the production of and have access to books, records, vouchers, cash and securities, to request information for non compliance with off shore banking business, and to seek the assistance of any officer of the licensee for information.<sup>8</sup>
503. The Financial Secretary does not require a court order to obtain access to information for supervisory purposes, unless the licensee refuses to comply with the request of the Supervisory Authority. Similarly, ECCB does not require court orders to obtain access to information for supervisory purposes, unless the licensee refuses to comply with the instructions issued by the Central Bank.
504. There is no specific power of enforcement granted to the MLSA under the MLPA, its Regulations or in any of the two subsequent amendments to the MLPA. As well, the MPLA does not confer specific powers of enforcement or sanctions to the ECCB, the FSU, or the Financial Secretary financial institutions, their directors or senior management for failure to comply with or properly implement the requirements to combat money laundering, and terrorist financing consistent with the FAFT recommendations. While the MPLA Regulations impose fines for non-compliance by financial institutions and those institutions conducting schedules businesses, there is no

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<sup>8</sup> Section 21(2) of the FSU Bill gives the FSU the power to compel and examine documents for compliance purposes.

regulatory/supervisory body identified to enforce these fines.<sup>9</sup>

***Recommendation 17***

505. Criminal sanctions for not complying with the AML/CFT obligations are provided for in the MPLA and the Suppression of Terrorism Financing Act. Sanctions are applied towards committing the offence of money laundering, tipping off, non-reporting of suspicious or large and unusual transactions, falsifying, concealing, destruction, or disposal of information likely to be material to an investigation.
506. Section 16 (6) imposes a fine for non compliance for reporting suspicious or unusual transactions and states, “Without prejudice to criminal or civil liabilities for offences connected to money laundering, a financial institution and its employees or a person carrying on a scheduled business that fail to comply with the requirements of this Section are liable on conviction to a fine of fifty thousand dollars and in addition the licence of the financial institution to operate as such may be suspended or revoked by the competent authority”.
507. Act No. 13 of 2001 which is an Act to amend the Money Laundering Prevention Act 2000, says that “The Minister may by Regulations provide that the breach of any regulations made under the Act shall constitute an offence and may provide for penalties on conviction of a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding three years”.
508. Committing the offence of money laundering under the MLPA Section 5 will impose a fine of not more than one million and to not more than seven years imprisonment. Section 6(2) imposes a fine of not more than two hundred and fifty thousand dollars and imprisonment not exceeding ten years. Falsification, concealment and disposal of information are contained under Section 7 (2) where fines up to five hundred thousand dollars may be imposed or imprisonment for up to ten years.
509. The Regulations to the MPLA provide the imposition of fines in the following areas:
- Section 2- contravention of the provisions of the Regulations and is subjected to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years.
  - Section 7(6) in respect of identification procedures and conducting transactions on behalf of another- “an applicant for business who makes a false declaration for the purpose of the regulations commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars”
  - Section 10- in respect of non-compliance with the instituting of internal procedures-Section 10(4) provides for the imposition of a penalty of fifty thousand dollars if the Compliance Officer fails to maintain proper internal procedures with the provisions of the Regulations.

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<sup>9</sup> Section 22 (ii) of the FSU Bill confers powers of enforcement for contravention of the MPLA. However there is no clear definition of what these powers entail outside of revocation of a license.

510. The FSU has no legal power to impose sanctions or fines for non compliance with AML/CFT. Under the Off Shore Banking Act, sanctions, which are permitted, are in regards to the Minister of Finance powers and duties as regulator of the Offshore Banking sector and to the Financial Secretary in his/her role as the Minister's assistant as follows:

- Obstructing the Financial Secretary in the obtaining of information- Section 12 (4) a fine of ten thousand dollars and imprisonment of one year
- Transfer of assets after a cease and desist order was made- Section 13(2)(d) a fine equivalent to the value of assets transferred
- Restriction in the conduct of banking business-Section 18 (6)- a fine of ten thousand dollars and up to one year imprisonment. If the breach continues a fine of one thousand dollars for each day it continues,
- Failure to submit information, or submission of false or misleading financial information-Section 22 (5)- a fine of five hundred for each day the offence continues
- Failure to publish annual financial information-Section 23(2) a fine of one hundred dollars for each day the offence continues.

#### ECCB

511. The Banking Act authorizes the Central Bank to impose fines or sanctions in the following areas:

- Section 3 (5) for operating a financial institution without being licensed- fine of twenty thousand dollars or imprisonment for a term not exceeding two years or to both fine and imprisonment or if the offence continues, a further penalty of one thousand dollars for each day that the offence continues.
- Section 10 (1) lays out the conditions under which the Minister acting under the advice of the Central Bank can revoke the license of a of a financial institution to carry on the business of banking in Dominica,
- Section 11 (2) refusal to make available books, records and accounts for examination – fine not exceeding five thousand dollars or a term of imprisonment not exceeding six months or to both fine and imprisonment.
- Section 12 (4) non compliance with the requirement of the Act to pay annual license fees for conducting the business of banking, penalty fees and any other fees prescribed by the Minister- a fine not exceeding five thousand dollars and a further penalty of fifty dollars for each day the offence continues. These fines are applicable to the company and its officers (directors and senior management).
- Section 19(5) failure to comply with the requirement to appoint an auditor and to publish annual financial statements- penalty of 100 hundred dollars for each day the default continues.

512. Fines or Sanctions imposed on Directors and Senior Management:

- Section 26 (1) and (2) deal specifically with the circumstances under which a director can be removed and disqualified.
- Section 26 (3) imposes a fine not exceeding ten thousand dollars or imprisonment to a term not exceeding one year or to both for any contravention of Section 26 (1) and (2).

- Section 29 imposes fine not exceeding fifteen thousand dollars or imprisonment for a term not exceeding two years or to both for non compliance with the requirements of the Act.
513. The Commissioner of Co-operatives is directly responsible legally for Credit Unions. The Co-operative Societies League has appointed itself to be the body responsible for ensuring that credit unions observe, monitor and comply with the MPLA and the Money Laundering Guidance Notes. The League however has no legal status and has to rely on moral suasion to require compliance.
514. Specific criminal sanctions are provided for in the MPLA 2000 for the offences of tipping off (Section 6(1), non compliance with the reporting of suspicious transactions (Section 16 (6)), committing the direct offence of money laundering (Section 5) and the falsifying concealing, destruction, or disposal of information likely to be material to an investigation (Section 7(1). Sanctions for non-compliance with the Regulations of the MPLA such as contravention of the provisions of the Regulation (Section 3(2)), false declarations with regards to identification procedures and acting as an agent on behalf of another person (Section 7(6)), internal procedures, policies and controls (Section 10(4)) are reflected in the Regulations to the MPLA and are of an administrative nature.
515. **Section 19 of the MLPA:**“(1) A Judge of the High Court may, upon application by the Unit, grant a mandatory injunction against an officer or employee of a financial institution or person carrying on a scheduled business has failed without reasonable excuse to comply in whole or in part with any obligation as provided under section 15(a), (b), (c), and section 16(2).
- (2) In granting an injunction pursuant to subsection (1) the Court may order that should the financial institution or any officer or employee of that institution or person carrying on a scheduled business fail without reasonable excuse to comply with all or any of the provisions of that injunction the financial institution, officer or employee or person carrying on a scheduled business shall pay a financial penalty in the sum and in such manner directed by the Court.”
516. **Section 20 of the MLPA:** “A person who has been convicted of a money laundering offence, whether in Dominica or elsewhere, may not be eligible or licensed to carry on the business of a financial institution or in any manner whatsoever participate in the ownership, management or control of a financial institution.”
517. The Financial Intelligence Unit is charged with the responsibility of applying for a Mandatory Injunction pursuant to section 19 of the MLPA. This is where an application is made before a high court to make an order to obtain information. While sanctions are clearly available in the MLPA, it is not clear however which body is responsible for applying these sanctions without requiring a court order. As well, the process for applying sanctions is unclear.
518. The MPLA, where provisions have been made for the imposition of criminal sanctions has entrusted the FIU with discharging this duty. These sanctions are in respect of committing the offence of tipping-off, non-compliance with the reporting of suspicious transactions, committing the direct offence of money laundering, and the falsifying concealing, destruction, or disposal of information likely to be material to an

investigation. Section 16 (6) of the MPLA applies fines to financial institutions and to their employees, and also provides for the revocation of its license by a competent authority. However, the process for applying sanctions has not been detailed nor has the competent authority been identified for imposing these sanctions. Similarly, while the Regulations makes provisions for the imposition of administrative sanctions for non compliance, no competent body has been named for discharging this duty nor has the process for applying sanctions /fines been detailed.

519. The Offshore Banking Act –Section 17 (2) provides for a fine of twenty five thousand dollars to any person who has been bankrupt, sentenced by a court in any country to imprisonment, or has been the director of or directly concerned with the management of a financial institution that has its license revoked. There are no specific AML related sanctions.
520. The FSU has no specific authority as regards the imposition of fines/sanction for those financial institutions and DNFBP's that it supervises. However, it was indicated to the Mission that where during the course of ongoing supervision and in conducting onsite examination when instance of non-compliance with the MPLA and the guidance notes is discovered then these are reported to the FIU.
521. Similarly the Banking Act gives the ECCB the power to apply sanctions for non compliance with the provisions of the Act in areas of licensing, payment of fees, production of information for examinations, directors and senior management, etc. There are no specific AML/CFT related sanctions. Where during the normal course of an onsite inspection non-compliance is discovered with respect to the Guidance notes and the MPLA then the Minister is informed via the onsite examination report.
522. Section 16 (6) of the MPLA applies fines to financial institutions and to their employees, and also provides for the revocation of its license by a competent authority.
523. Similarly the Banking Act gives the ECCB the power to apply sanctions for non-compliance with the provisions of the Act. Specifically directors and senior management are subject to fines / sanctions where the nonpayment of banking fees is concerned (Section 12(4)), removal and disqualification where the Board of Directors so direct, for bankruptcy, conviction of fraud or general imprisonment (Section 27(1)), where they have been involved with a financial institution whose license has been revoked (Section 26 (2)).<sup>10</sup>

***Recommendation 23***  
***Markey entry***

524. Offshore Banking Act- The licensing requirement for offshore banking business is detailed under Part II of the Act.

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<sup>10</sup> Section 23(1) of the FSU Act 2008 gives the Director of the FSU the authority to recommend to the Minister that a licence be either revoked or suspended for a period not exceeding 90 days, in the first instance. Additional 90 day periods of suspension can be applied by the courts on the application of the Minister.

- i. Section 3 speaks to the Minister being the sole authority for the granting of a license to conduct offshore banking business and trust business.
- ii. Section 4(3) requires that all application be accompanied by a copy of a memorandum and articles of association or any other instrument under which the license is being sought.
- iii. Section 5(1) the Minister has the right based on information presented to grant or to refuse a license.
- iv. Section 5(3) details the kind of information the Minister will consider before granting a license
- v. Section 6 (1) makes mention of the need for a company to have a representative office in Dominica and the need to obtain the prior approval of the Minister to appoint two individuals to act as its agent and alternate authorised agent. Mention is also made of the Minister being notified of any changes to the address of the principal office and authorised agent, its ability to maintain permanent capital of at least five hundred thousand United States dollars, and to maintain adequate liquidity.
- vi. Section 8 addresses changes in articles of association and memorandum, disposals, acquisitions and the need to seek prior approval from the Minister.

#### ***ECCB***

525. The Banking Act-licensing requirements to conduct banking business in Dominica is detailed under Part 1of the Act. Specifically Section 4 details the factors which are considered by the Minister when grating a banking license. Subsection 2 states that the Minister shall request the Central Bank to conduct such investigations as he deems necessary to ascertain:
- i. the validity of the documents submitted
  - ii. financial condition and history of the applicant
  - iii. the character of the business of the applicant
  - iv. the experience of the person or persons who are to contribute to its management
  - v. the adequacy of the capital structure
  - vi. earnings prospects of the applicant
  - vii. the convenience and needs of the community to be served by the granting of the license

#### ***Credit Unions***

526. The Commissioner of Co-operatives is directly responsible legally for the supervision, regulation and registration of credit unions.
527. **Section 20 of the MLPA:** “A person, who has been convicted of a money laundering offence, whether in Dominica or elsewhere, may not be eligible or licensed to carry on the business of a financial institution or in any manner whatsoever participate in the ownership, management or control of a financial institution.”
528. The Offshore Banking Act provides, under Section 17 (i), the basis for debarring from management any person
- Who has been a director of, or directly concerned in the management of a financial institution which has had its license revoked

- Who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty; or
- Who has been or is or becomes bankrupt, suspends payment to or compounds with his creditors,<sup>11</sup>

Shall not without the expressed authorization of the Minister, act or continue to act as a director, manager, secretary or other employee of any financial institution.

529. The Banking Act under Section 8(1) (a), (b) provides for the Minister, acting under the recommendations of the Central Bank to be the sole approving authority for those persons who may acquire either directly or indirectly any portion of the paid up capital that would entitle them to twenty percent of the voting rights of all members and where no share capital exists, acquiring more than twenty percent of the voting rights of members..

530. Section 5(3) of the Off Shore Banking Act provides for the Minister to consider the following information when granting a license:

- i. The financial reputation and standing of the applicant
- ii. The applicant's record in international business
- iii. The satisfactory nature of verifiable records for three years immediately preceding the date of application
- iv. The financial net worth of each of the directors, associates, affiliates applying for a license under the Act,
- v. The character and standing of all the directors or proposed directors of the applicant
- vi. any other requirements he may in consultation with any financial advisers determine from time to time<sup>12</sup>

531. Section 4(2) states that the Minister shall request the Central Bank to conduct such investigations, as he deems necessary to ascertain:

- i. the validity of the documents submitted
- ii. financial condition and history of the applicant
- iii. the character of the business of the applicant
- iv. the experience of the person or persons who are to contribute to its management
- v. the adequacy of the capital structure
- vi. earnings prospects of the applicant

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<sup>11</sup> The FSU Bill under S27(2) provides the basis for determining if a director, controlling shareholder, or manager should be considered fit and proper, while subsection (3) refers to previous business conduct and activities and the areas to which any evidence collected should relate

<sup>12</sup> Section 27 (3) considers the fit and proper basis and the evidence or information which should be collected in conducting the assessment.

- vii. the convenience and needs of the community to be served by the granting of the license
- 532. Domestic commercial banks, offshore banks credit unions, money service providers (Fast Cash, Cambioman, Western Union, Sen Via, Map cash, Suncard, Instant cash Bureau de Change) are providers of money or value transfer services in Dominica. The domestic commercial banks that provide MVT services are required to be licensed under the Banking Act to conduct the business of banking and are subject to the provisions of the Act. DNFBP's such as money remitters e.g. Western Union, Moneygram, Fast Cash are not required to be licensed or registered to conduct MVT business in Dominica.
- 533. Within Dominica, other financial institutions (non-deposit taking institutions) include the Credit Unions, Building and loans Societies, and the Agricultural Industrial Development Bank. These institutions are supervised and regulated by the Financial Services Unit. Credit Unions however are additionally subjected to onsite examination by the Cooperative Societies League. The League also attempts to ensure compliance with the MPLA and the Guidance notes. The League however does not have any legal responsibility and relies on moral suasion to ensure compliance.
- 534. The FSU has conducted onsite examinations of the sector. However, there was no specific focus on AML/CFT compliance. As well the Building and Loan Societies and the Development Bank has also not been subject to oversight and supervision for AML/CFT purposes.

***Ongoing supervision and monitoring – R.23 & 32***

- 535. The Banking Act addresses specific requirements for licensing and structure. Changes in an institutions' structure requires the approval of the Minister. Risk management processes and the need for these processes to be instituted are captured in prudential guidelines issued by the ECCB. The Insurance Act has yet to be enacted. Currently the basis of supervision is restricted to the approval of products and submission of annual financial statements.
- 536. MVT providers are subject to the provisions of the MPLA of 2000 and the Money Laundering Guidance Notes (Revised) 2008. They are required to report all suspicious transactions to the MLSA c/o of the FIU. Each quarter terrorist financing reports are prepared and submitted to ECCB.
- 537. The MVT providers, who are not licensed by the ECCB, state that reports on their operations are submitted to the FSU when requested. There is no legal provision for MVT's who are not licensed under the Banking Act to be subjected to continuous on-site or off-site monitoring for AML/CFT purposes. However, MVT providers are subject to the provisions of the MLPA and the Money Laundering Guidance Notes (Revised) 2008. They are required to report all suspicious transactions to the MLSA c/o of the FIU. Each quarter terrorist financing reports are prepared and submitted to the ECCB.
- 538. The FSU has conducted two on site examinations at the Roseau Credit Union. These were not AML/CFT specific, but part of normal onsite monitoring. There were specific on-site examinations at six other credit unions that were targeted towards credit risk and the adequacy of loan provisioning.

539. Statistics on onsite inspections conducted by the ECCB were requested but never received.

**Table- 10 FSU Onsite Inspections**

| <b>2004</b>   | <b>2005</b>   | <b>2006</b>   | <b>2007</b> | <b>2008</b> |
|---------------|---------------|---------------|-------------|-------------|
| 2             | 6             | 2             | 0           | 0           |
| Offshore Bank | Credit Unions | Credit Unions |             |             |

**Guidelines – R.25 (Guidance for financial institutions other than on STRs)**

540. **ECCB-** guidelines have not been issued for domestic commercial banks as regards the implementation of AML/CFT requirements, as defined in the MLPA and Suppression of Terrorism Act. In conducting on-site examinations for compliance purposes at the domestic commercial banks the ECCB is guided by the MLPA and the AML guidance notes.
541. **FSU-** AML/CFT specific guidelines have not been issued to financial institutions and DNFBPs. Other prudential guidelines on applying for a banking license and instructions on the Contract of Concession, which must be signed by Internet gaming entities, have been issued.<sup>13</sup>
542. **MSLA-** under Section 11 of the MLPA, the MSLA is the only authority allowed to issue guidelines for AML, while the Attorney General is responsible for CFT. There are no specific CFT guidelines issued. The Anti –Money Laundering Guidance Notes (revised edition) 2008 which were issued in August 2008, gives guidance for the reporting of STRs, implementation of internal controls and procedures, procedures for client verification, staff training and education.

**Additional Material**

1.1.1 Recommendations and Comments

**Recommendation 17**

- The Commonwealth of Dominica anti-money laundering and terrorist financing laws have adequately provided for the imposition of fines and sanctions for non-compliance with the requirements of the AML and CFT regime. However, whilst the MLPA appointed the FIU to impose these sanctions, there is no clearly defined process for applying them.
- There should be a competent body designated to impose administrative and civil sanctions/fines for non-compliance with the requirements of the AML/CFT

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<sup>13</sup> Section 30 and 31 of the FSU Bill 2008 provides for the Minister and Director of the FSU to issue guidelines on the conduct and carrying out of financial services business.

legislation/regime. As well the legislation should define the process for applying these sanctions.

**Recommendation 23**

- The Commonwealth of Dominica seems to be unable to discharge the requirements and obligations imposed on its financial institutions and DNFBPs as regards its AML and CFT laws and regulations. The MLSA while having the legal basis to enforce compliance has been inactive and is severely hampered by the lack of administrative and technical resources. As well the FSU which appears to be the main domestic regulator has no legal basis / authority to enforce compliance and is also hampered by staff shortages and technical shortcomings.
- The FSU should be entrusted with the legal authority to ensure compliance with the MPLA, its Regulations and the Anti-Money Laundering Guidance Notes. As well the Unit should implement a structured work programme, approved by the Financial Director to ensure ongoing on-site and off-site monitoring. These measures should be applicable to all institutions under the regulation and supervision of the FSU. The Unit should also be legally entrusted with the responsibility to license or register DNFBP'S and those financial institutions not under the purview of the ECCB.

**Recommendation 25**

- The FSU in addition to the MLSA should issue specific guidance notes or other targeted guidelines that can assist financial institutions other than domestic commercial banks, as well as DNFBP's to effectively apply the provisions of the MLPA, and its Regulations.

**Recommendation 29**

- The FSU should be legally entrusted with the authority to monitor and ensure compliance with the AML/CFT requirements. As well the Unit should be able to conduct on-sites, request off site information and should be entrusted also with adequate powers of enforcement against its licensees and registrants that are not subject to the Off Shore Banking Act or the Banking Act.

**Recommendation 30**

- The FSU is not adequately staffed. The Unit's request for additional staff should be adhered to. It is also recommended that a restructuring of the Unit should be considered so that its regulatory and supervisory functions can be discharged effectively. As well the Unit should consider the establishment of databases to allow for effective off-site supervision.

**Recommendation 32**

- Databases should be established which can be shared by all authorities responsible for monitoring and ensuring compliance with the AML/CFT regime in Dominica.

3.10.3 Compliance with Recommendations 23, 29, 17, & 25

|      | Rating | Summary of factors relevant to s.3.10 underlying overall rating   |
|------|--------|---|
| R.17 | NC     | Lack of a designated regulatory body to apply sanctions/finances and the absence of a clearly defined process in the law or guidance notes.   |
| R.23 | NC     | No competent authority assigned the responsibility of monitoring and ensuring compliance with AML/CFT requirements. No specific body entrusted with the responsibility for conducting on-site examinations and regular off-site monitoring. |
| R.25 | NC     | Non issuance of specific guidelines to assist DNFBP's and other financial institutions with implementing the requirements of the AML/CFT regime.  |
| R.29 | PC     | FSU does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure effective monitoring and compliance.  |

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

#### 3.11.1 Description and Analysis (summary)

543. MVT service providers in Dominica include the four domestic banks, the one offshore bank, Roseau Credit Union, Central Co-operative Credit Union, Money service business (Fast Cash, Map Cash, Cambioman, Western Union, Sen.Via, Itech, Suncard, Instant Cash, Bureau de Charge). MVT providers that are licensees of the ECCB are subject to that institution's supervisory and regulatory regime. MVT providers that are not under the Banking Act, the Off shore Banking Act, and the Co-operative Societies Act are not required to be registered or licensed with the FSU which is the domestic regulator for Dominica.

#### *Special Recommendation VI*

544. There is no MVT legislation in place that establishes a competent authority that deals exclusively with the licensing and registration requirements. The FSU does some form of supervision that includes the provision of license.<sup>14</sup>

545. While the FSU is given the responsibility for licensing/registering MVT service providers, the law is not enforced. MVT providers are currently not licensed by the FSU. Entry into the market is facilitated in some instances by the use of a licensed agent, who handles correspondence with the Ministry of Finance and the Attorney General as regards compliance with the relevant laws and regulations, for establishing and conducting business in Dominica. A list of MVT service providers is maintained by the FSU and updated whenever a new provider enters the market.

546. The MLSA has a statutory responsibility to regulate MVTs and ensure that they comply with the provisions of the MLPA and Regulations made there under.

547. All MVTs are subject to FATF's Forty Recommendations in particular recommendations 4-11, 13-15 and 21-23 and the FATF's Nine Special

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<sup>14</sup> The FSU Act 2008 under Section 11 (1) and (2) provides for persons carrying on financial services or financial services business to obtain a license. It is not clear however, whether the functions granted to the FSU under this new Act include the responsibility of granting such licenses. The process for the issuance of these licenses was also not enunciated in this new Act.

Recommendations in particular SR.VII, to the extent that these recommendations are reflected in domestic legislation i.e. the MLPA and its Regulations, the SFTA, and the Guidance Notes issued pursuant to section 11 (d) of the MLPA.

548. With the exception of the reporting of suspicious transactions and the quarterly reports on terrorist financing, there is currently no system in place for monitoring MVT service providers and ensuring their compliance with FAFT recommendations. However as with all other DNFBPs they are required to report suspicious transactions to the MLSA, to comply with the requirements of the MPLA and the Anti Money Laundering Guidance Notes. They have in place compliance officers and adhere to the requirement to report to the ECCB, on a quarterly basis, any evidence of terrorist financing activity. It was revealed that the ECCB is now assisting the FSU with developing reports and data capture forms to facilitate ongoing monitoring and compliance.<sup>15</sup>
549. While it is not a specific legal obligation or a monitoring requirement imposed by the FSU, MVT service providers maintain a current list of their Agents for operational purposes. The Mission was advised that should the FSU request such a list then it would be provided to the Unit.
550. The following sanctions are some of the measures available to the MLSA and the FIU for non-compliance with the provisions of the requirements of the MLPA.
- a) Section 16 (5):“(5) A criminal offence is committed by a financial institution or its employees, staff, directors, owners or other authorised representatives or a person carrying on a scheduled business who, acting as such, willfully fail to comply with the obligations in this section, or who willfully make a false or falsified report referred to above.”
  - b) Section 16 (6):“Without prejudice to criminal or civil liabilities for offences connected to money laundering, a financial institution and its employees or a person carrying on a scheduled business that fail to comply with the requirements of this section are liable on conviction to a fine of fifty thousand dollars, and in addition the license of the financial institution to operate as such may be suspended or revoked by the competent authority.”
  - c) Section 19:“(1) A Judge of the High Court may, upon application by the Unit, grant a mandatory injunction against an officer or employee of a financial institution or person carrying on a scheduled business in terms the court deems necessary to enforce compliance, on being satisfied that a financial institution or person carrying on a scheduled business has failed without reasonable excuse to comply in whole or in part with any obligation as provided under section 15(a), (b), (c), and section 16(2).(2) In granting an injunction pursuant to subsection (1) the Court may order that should the financial institution or any officer or employee of that institutional or person carrying on a scheduled business fail without reasonable excuse to comply with all or any of the provisions of that injunction the financial institution, officer or employee or person carrying on a scheduled business shall pay a

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<sup>15</sup> Section 9 of the FSU Bill outlines the principal functions of the FSU. Specifically, subsections (b) and (n) attempts to deal with compliance issues as regards the MPLA, its regulations, guidelines and codes.

financial penalty in the sum and in such manner directed by the Court.”

551. The criteria in 17.1 to 17.4 also apply in relation to the obligation under SRV11. This is by virtue of the fact that the MVT service providers are considered under Part I of the MLPA’s schedule of financial activities and businesses to which the MPLA and the AML Guidance Notes apply.<sup>16</sup>

3.11.2 Recommendations and Comments

- With the exception of MVT service providers that are supervised and regulated under the Banking Act, the Off Shore Banking Act and the Cooperative Societies Act, there is no specific requirement for these entities to be licensed or registered. The FSU is charged with the responsibility of supervising and regulating these institutions, however the Unit has no legal basis to enforce or discharge its functions.
- There is no specific regulatory authority charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime.
- The FSU does not license or register these entities, nor does it provide ongoing supervision or monitoring. It is recommended that the FSU be entrusted with the responsibility of ensuring monitoring and compliance with the requirements of the AML/CFT regime.
- The FSU should be required to institute a programme of on-going onsite and off site monitoring for other regulatory and supervisory purposes.

3.11.3 Compliance with Special Recommendation VI

|              | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|--------------|---------------|--|
| <b>SR.VI</b> | <b>NC</b>     | <ul style="list-style-type: none"> <li>• <b>Lack of an effective supervisory or regulatory regime.</b></li> <li>• <b>No requirements for licensing and registration by the authorities.</b></li> </ul> |

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

**4.1 Customer due diligence and record-keeping (R.12)** (applying R.5, 6, 8 to 11, & 17)

**4.1.1 Description and Analysis**

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<sup>16</sup> The FSU Act 2008 at Section 21(3) gives the FSU the ability to conduct compliance examinations. However while, the results of these examinations may lead to enforcement actions, there are no specific civil or criminal sanctions applicable for non-compliance.

552. The MLPA defines Financial Institutions as per the institutions listed in the Schedule below. All institutions falling under the definition of FIs are subject to the provisions of the MLPA and its Regulations as well the Guidance Notes issued by the MLSA.

**SCHEDULE PART I**  
**ACTIVITIES OF FINANCIAL INSTITUTIONS**

1. “Banking business” and “financial business” as defined in the Banking Act;
2. “Banking business” as defined in the Offshore Banking Act;
3. Venture risk capital;
4. Money transmission services;
5. Issuing and administering means of payments (e.g. credit cards, travellers’ cheques and bankers’ drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in-
  - (a) money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
  - (b) foreign exchange;
  - (c) financial and commodity-based derivative instruments (e.g. options, interests rate and foreign exchange instruments etc.) ;
  - (d) transferable or negotiable instruments;
8. Money broking;
9. Money lending and pawning;
10. Money exchange (e.g. *casa de cambio*);
11. Mutual Funds
12. Credit unions;
13. Building societies;
14. Trust business;
15. Insurance Business.
16. Securities Exchange

Part II of the schedule to the MLPA covers DNFbps by what is referred to as Scheduled Businesses. The businesses covered are those listed in Part II of the Schedule below. These businesses are all subject to the provisions of the MLPA and its Regulations as well the Guidance Notes issued by the MLSA.

## **PART II**

### **ACTIVITIES OF SCHEDULED BUSINESS (*OR DNFBS*)**

1. Real estate business;
  2. Car dealerships;
  3. Casinos (gaming houses)
  4. Courier services;
  5. Jewellery business
  6. Internet gaming and wagering services
  7. Management companies
  8. Asset Management and advice – custodial services
  9. Nominee service
  10. Registered Agents
  11. Any business transaction conducted at a post office involving money orders
  12. Securities brokerage
553. The provisions of the MLPA, Regulations thereto and Guidance Notes issued by the MLSA mandates, among other things, the implementation of an AML Policy within these institutions, appointment of a Compliance Officer, CDD requirements, reporting requirements and record keeping.

#### ***Recommendation 12***

554. In Dominica DNFBS refer to casinos (Internet gaming entities), real estate agents, car dealerships, jewellers, courier service, management companies, nominee services, registered agents, securities brokerage etc. All businesses and services entered into and offered by DNFBS are considered as Scheduled Businesses and are subject to the provisions of the MPLA and the Anti Money Laundering Guidance Notes of 2008, as regards Dominica's AML/CFT programme. Section 15 (a) of the MPLA refers to the requirement for record keeping (R 10). The Regulations pursuant to the MPLA, details under Section 6, the requirement for identification procedures, and payment by post or electronically; Section 9 deals with recordkeeping requirements, while section 10 deals with internal reporting procedures. With the exception of the licensed agents who operate under the International Business Companies Act, The Companies Act and the Offshore Banking Act, other DNFBS are not subject to any law, regulation or supervision as regards their business operations.
555. Licensed or registered agents are very active in Dominica. They are usually lawyers,

accountants or companies registered to offer services such as incorporation of offshore companies (International Business Companies), Exempt Trusts, Insurances, Offshore Banking, and Economic Citizens Programme. However the core activities of these agents are the incorporation of offshore companies. Licensed or registered agents are required to be registered with the Registrar of Companies and pay an annual fee to operate. The licence to operate is renewed once the annual fee is paid. Non-registered agents are not allowed to conduct business purely by virtue of the fact that any attempt to register IBCs with the Registrar of Companies cannot be accomplished, unless fees have been paid. Licensed agents are subject to a form of monitoring by the Registrar of Companies. Agents are reminded by letter of the requirement to pay renew license fees. As well the Registrar of Companies can determine on a case-by-case basis if a license should be granted. The FSU is considered to be the official monitoring body for the agents, where they can visit and inspect the books, primarily with regards to the record keeping for IBC's for beneficial owners and changes in this information.

556. Real estate agents act as facilitators of real estate transactions. They do not transfer or receive monies from one party to another. They are not required to be licensed to conduct real estate business in Dominica.
557. Lawyers in Dominica are usually general practioners (practices general law). Forms of payment accepted are cash, to a very limited degree, cheques, wire transfers to a limited degree. It was noted that the requirements of the MPLA has acted as a deterrent to the acceptance of cash payments and hence they are usually reluctant to accept cash payments of \$10,000 EC or more. Due diligence is done on clients depending on the type of transactions that is required. Normally lawyers will rely on the police to conduct due diligence, arbitrary checks on the Internet or private investigators particularly for foreign clients. It was noted that most DNFBPs indicated that once payment for services is presented in the form of a bank manager's cheque, then reliance will be placed on the due diligence performed by the bank.
558. Dealers in precious stones who operate duty free businesses are licensed by Customs and Excise to whom an operators' fee of \$900.00 EC is paid.
559. No interviews were conducted with the Internet gaming officials, so that a proper assessment could not be made of the risk of money laundering and the manner of compliance with the MPLA and the Guidance Notes. A review however was made of the Contract of Concession that is signed between the Ministry of Finance and the Internet gaming officials as a prerequisite to conducting business.
560. All businesses and services entered into and offered by DNFBPs are considered as scheduled businesses and are subject to the provisions of the MPLA and the anti money laundering Guidance Notes of 2008 as regards Dominica's AML/CFT programme. While this is so, the FSU as the regulatory/supervisory body does not conduct onsite examinations, nor does the FSU conduct ongoing monitoring for AML/CFT compliance. With the exception of the requirement to report STRs to the MLSA no other form of compliance or monitoring is conducted on this sector.<sup>17</sup>

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<sup>17</sup> The FSU Bill 208 attempts to address the issue of non compliance with AML/CFT requirements by authorizing the FSU to conduct compliance examinations. As well Section 22 (1)(ii) gives the Director enforcement powers if a licensee is in contravention of the MPLA, its Guidelines, Regulations or the SFTA.

561. Section 15 (a): “A financial institution or person carrying on a scheduled business shall (a) keep a business transaction record of all business transactions of United States ten thousand dollars and over for a period of seven years after the termination of the business transaction so recorded” (*The words “of United States ten thousand dollars and over” were deleted pursuant to an amendment to the MLPA at section 8 of the Money Laundering (Prevention) (Amendment) Act No. 13 of 2001*).
562. Section 2 of the MLPA: business transaction” means any arrangement, including opening and maintaining an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and any related transaction between any of the persons concerned and another person;”
563. “business transaction record” includes where relevant to a business transaction-
- (a) the identification of all the persons party to that transaction;
  - (b) a description of that transaction sufficient to identify its purpose and method of execution;
  - (c) the details of any account used for that transaction, including bank, branch and sort code; and
  - (d) the total value of that transaction;”
564. Paragraph 48 of the AML GN 2008: Financial Services Providers should not do business with persons using obviously fictitious names and should not keep anonymous accounts, or accounts where it is impossible or difficult to identify the client. This is prohibited under Section 10 of the Offshore Banking Amendment Act No. 16 of 2000 and is also prohibited in the Banking Act.”
565. Section III of the AML GN 2008 defines the institutions that are classified as Financial Services Providers as stated below:
- i. Banking business” and “financial business” as defined in the Banking Act;
  - ii. Banking business” as defined in the Offshore Banking Act;
  - iii. Venture risk Capital;
  - iv. Money transmission services;
  - v. Issuing and administering means of payments (e.g. credit cards, travellers’ cheques and bankers’ draft);
  - vi. Guarantees and commitments;
  - vii. Trading for own account or for account of customers in-
    - 1. money market instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
    - 2. foreign exchange;
-

3. financial and commodity-based derivative instrument (e.g. options, interest rate and foreign exchange instruments etc.);
  4. transferable or negotiable instruments;
- viii. Money broking;
  - ix. Money lending and pawning;
  - x. Money exchange (e.g. *casa de cambio*);
  - xi. Mutual Funds;
  - xii. Credit unions;
  - xiii. Building societies;
  - xiv. Trust business;
  - xv. Insurance business;
  - xvi. Real estate business;
  - xvii. Car dealership;
  - xviii. Casinos (gaming houses)
  - xix. Courier services;
  - xx. Jewellery business;
  - xxi. Internet gaming & wagering services;
  - xxii. Management companies;
  - xxiii. Asset management and advice custodial services;
  - xxiv. Nominee service;
  - xxv. Registered Agents;
  - xxvi. Any business transaction conducted at a post office involving money orders;
  - xxvii. Securities brokerage;

566. The pertinent Paragraph of the AML Guidance Notes 2008 that addresses the requirements of Recommendations 6 and 8-11 referenced refers to “Financial Services Providers”, which is defined at Section III: Scope of the Guidance Notes and includes Financial Institutions as well as DNFBPs.

## Additional Material

### 4.1.2 Recommendations and Comments

- While Dominica has passed legislation capturing DNFBBs under its AML/CFT regime, there is no competent authority that ensures these entities are subject to monitoring and compliance with the requirements of the MPLA or the Guidance Notes.
- The licensed agents should be subject to ongoing monitoring and compliance given the role that they play in the keeping of and maintenance of beneficial owners' information for IBCs and other companies that they register.
- There should be some form of data capture during the year by the FSU outside of the reporting of STRs as required by the MPLA to the MLSA.

### 4.1.3 Compliance with Recommendation 12

|             | <b>Rating</b> | <b>Summary of factors relevant to s.4.1 underlying overall rating</b>                            |
|-------------|---------------|--|
| <b>R.12</b> | <b>NC</b>     | <b>The requirements of Recommendations 5, 6, 8 to 11 are not adequately enforced on DNFBB's.</b> |

## **4.2 Suspicious transaction reporting (R.16)** (applying R.13 to 15, 17 & 21)

### 4.2.1 Description and Analysis

567. Section 16 (1) (a) requires a financial institution or person carrying on a scheduled business shall pay attention to “all complex, unusual or large business transactions, whether completed or not. Section 16 (1) (b) speaks to all unusual patterns of transactions. Section 16 (2) requires that “upon reasonable suspicion that the transaction described in Section 1 could constitute or be related to money laundering, a financial institution or person carrying on a scheduled business shall promptly report the suspicious transaction to the Authority. Section 16 (1) (c) requires that scheduled businesses or persons should pay attention to relations and transactions with persons including business and other financial institutions from countries that have not adopted a comprehensive anti money laundering legislation. As regards DNFBBs in Dominica Recommendation 21 will be particularly applicable to money remitters who have specific requirements for conducting business with and in countries that are considered particularly susceptible to money laundering and drug trafficking.
568. Internal control requirements are detailed in the Regulations to the MPLA. Section 10 (1) speaks to the kinds of internal procedures required including the appointment of a Compliance Officer.
569. DNFBBs are subject to the relevant sanctions for AML/CFT as applied under Recommendation 17. No sanctions or fines are applied by the SROs nor by the FSU.

## **Recommendation 16**

570. All schedule of business as defined in the MLPA and the Money Laundering Guidance notes are subject to the requirements of the MLPA , its regulations and the guidance notes.
571. All businesses and persons are required to report STRs directly to the MLSA c/o of the FIU, which is the only body authorised to review, process and investigate STRs. STRs generated within the business must be reported to the Compliance Officer who is charged with the responsibility of reporting the STR to the MLSA/ FIU. However Section 13 of the MPLA Regulations seems to provide for exoneration from the duty of professional secrecy by providing that “*Any bonafide communication or disclosure made in accordance with regulation 10 or regulation 11 shall not be treated as a breech of the duty of professional secrecy or any other restriction upon the disclosure of information*”.
572. All schedule of business as defined in the MLPA and the Money Laundering Guidance Notes are subject to and expected to comply with the requirements for record keeping, internal controls policies and procedures, for example, all scheduled business are required to appoint a compliance officer of sufficiently high standing within the organisation, and conduct customer due diligence appropriate to the size and operations of their business.

### ***Additional elements***

573. The reporting requirement for AML/CFT does not appear to extend to the professional areas of accountants, including auditing.
574. It is unclear from the legislation whether DNFBBs are required to report to the FIU when they suspect or have reason to suspect that the funds employed are the proceeds of criminal acts that would constitute a predicate offence for money laundering domestically.

### ***Additional material***

#### **4.2.2 Recommendations and Comments**

- There is no specific body charged with the duty of applying sanctions to DNFBBs without requiring a court order. As well the FSU does not conduct ongoing monitoring and compliance checks on these entities or persons to ensure that the requirements of R 13-14, R 15 and 21 are complied with, particularly as regards the money remitters and licensed agents. It is recommended that a competent authority (FSU) be entrusted with the legal responsibility of imposing sanctions or fines as well as conducting ongoing monitoring and compliance.
- The STR reporting circumstances of DNFBBs should be in relation to the requirements set out in Recommendation 13, essential criteria 13.1-13.4 and not only in relation to complex unusual or large business transactions.

4.2.3 Compliance with Recommendation 16

|             | Rating | Summary of factors relevant to s.4.2 underlying overall rating  |
|-------------|--------|---|
| <b>R.16</b> | NC     | <ul style="list-style-type: none"> <li>• No effective application of R 13-14, R 15 and 21.</li> <li>• No competent body to impose sanctions/fines.</li> </ul> |

**4.3 Regulation, supervision and monitoring (24-25)**

4.3.1 Description and Analysis

575. There are no casinos in Dominica. There is only one active Internet gaming entity in Dominica, while the FSU currently has one other entity, which is requesting a license to operate. These entities are supervised and regulated by the FSU. The conditions under which these companies are to be regulated are detailed in the Contract of Concession which requires the licensee to pay an annual fee of 5% of earnings or US\$ 50,000 whichever is the greater. As well the licensee’s books of accounts must be open for inspection at any time by the authorities upon not less than two business days prior to notice of inspection. The Internet gaming entity is also required to submit quarterly reports on earnings and payments and number of local staff employed to the FSU within thirty days of the end of the quarter. Failure to pay the fees will result in cancellation of the license. The assessment team was not unable to conduct interviews with the gaming official as the FIU nor the FSU could locate the owners/management of the casino and as well were unable to provide a website where information could be obtained.
576. The FSU does not have any legal authority to regulate or supervise as regards AML/CFT. While there is an obligation on the Internet gaming body to submit reports to the FSU as part of its offsite monitoring programmes, these reports are not in regards to AML/CFT. Casinos however fall within the definition of scheduled businesses that are subject to the MLPA, its regulations and money laundering guidance notes and are therefore expected to comply with the provisions of those legislations.
577. The designated competent authority is the Money Laundering Supervisory Authority. The Authority’s power is captured under Section 11 of the MPLA. While there are sanctions for non-compliance with the MLPA, and AML Guidance Notes, it is not clear who is the competent body that can apply the sanctions. The FSU is charged with offsite monitoring for operating purposes and is considered the regulatory body.
578. Casinos operate under a contract of concession, which is signed at the time of application between the Ministry of Finance and the casino operator. Casinos are expected to report to the domestic regulator-FSU as regards the submission of financial statements. An annual license fee of \$ 50,000 dollars or 5% of income earned is payable.
579. The casinos license can be revoked by the Minister of Finance based on the recommendation of the FSU. The FSU’s recommendations are based on discussions

held with the FIU for AML/CFT related offences. At the time of application, information is requested on such areas as name and address of local agent or attorney, names and addresses of shareholders, names and addresses of directors, names and addresses of senior management, character references for shareholders, directors and senior officers and a notarized copy of the Certificate of incorporation, Memorandum of Association and or Articles of Association.

580. The MLSA through the issuance of Guidance Notes ensures that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. However given the lack of administrative or technical support staff for the MLSA, no other competent body has been entrusted with the responsibility to ensure that other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with the AML/CFT regime.
581. The MLSA through the issuance of Guidance Notes ensures that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. The FSU is responsible for regulation and supervision. However the FSU does not monitor for compliance with AML/CFT, nor can it apply sanctions. Similarly its unclear if the MLSA can apply sanctions for non compliance given that the neither the MPLA, its regulations or the Guidance Notes specify a process nor a competent body to impose or apply sanction.

#### **Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)**

582. Other than the AML guidelines, no other guidelines have been issued by the MLSA. The FSU has issued guidelines in relation to the requirements for licensing of Internet gaming entities. As well SRO's (Bar Association, Eastern Caribbean Association of Chartered Accounts) have not issued any such guidelines to its members.

#### **Additional material**

##### **1.1.1 Recommendations and Comments**

- Despite being charged with the responsibility of licensing casinos, the FSU is not entrusted with the legal responsibility to supervise and regulate the activities of these business entities. No evidence was obtained by the assessment team to determine the effectiveness of the AML/CFT regime in ensuring compliance with the laws and regulations by these entities as such it was determined that there is no comprehensive regulatory and supervisory regime that ensures compliance by casinos and other DNFBP's with the AML/CFT regime that is in place. As well, there is no designated regulatory body to discharge that function as well as to apply relevant sanctions/fines for non-compliance.
- It is recommended that a competent body, the FSU be charged with the responsibility of monitoring and ensuring compliance with the requirements of the regime as well as imposing sanctions.
- The AML/CFT legislation should also detail the process to be adopted when applying sanctions and the competent authority responsible for applying these sanctions.

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

|      | Rating | Summary of factors relevant to s.4.3 underlying overall rating  |
|------|--------|---|
| R.24 | NC     | <ul style="list-style-type: none"> <li>No regulatory/supervisory measures are in place to ascertain compliance with AML/CFT laws and guidelines or is the FSU charged with the responsibility of monitoring and ensuring compliance with AML/CFT requirements.</li> </ul> |
| R.25 | NC     | <ul style="list-style-type: none"> <li>Non issuance of guidelines by SRO's and other competent authority (FSU) for DNFBPs.</li> </ul>   |

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

Description and Analysis

*Recommendation 20*

583. Generally, non-financial businesses and professions are aware of their obligations to carry out due diligence procedures and to report an STR when required. Given the limited scope of the FSU to monitor and sanction and supervise to prevent misuse of DNFBPs and the lack of onsite examinations noted, there is little confidence in the effectiveness of any of the measures adopted for the sector.

584. The ECCB uses its threshold system as a modern secure transaction technique. Many professions face internal auditing and as such must keep update accounts and in particular escrow accounts for large sums to be held on deposit for their clients.

585. Depending on the nature of the business there is less reliance upon cash based transactions. In most instances, negotiable instruments are preferred and any complex, large sums tendered for a transaction would be treated as a trigger for reasonable suspicious as to the source of funds.

4.4.2 Recommendations and Comments

- More on-site inspections are required.
- Modern secured transaction techniques should be scheduled under the MLPA.

4.4.3 Compliance with Recommendation 20

|      | Rating | Summary of factors underlying rating                            |
|------|--------|---|
| R.20 | PC     | Procedures adopted for modern secure techniques are ineffective |

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

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

#### 5.3.2 Description and Analysis

##### ***Recommendation 33***

586. There is a Companies Registry in Dominica, which record all companies, both local and offshore companies. The Registry maintains differing level of information on these companies depending on whether they are local or offshore, as an example shareholders and directors' information. Local companies are mandated to provide the names and addresses of shareholders and directors to the Registry while this information is maintained by the Registered Agents in the case of the Offshore Companies. Companies incorporated under the IBC Act are required to maintain a registered office and a registered Agent in Dominica. Only Registered Agents are allowed to incorporate International Business Companies. These registered agents must be licensed with annual renewal requirements. Where a person ceases to be a registered agent for a company, the company needs to amend its Memorandum to indicate the change. Failure to do this can result in the company being struck off the companies register. There is also a penalty of US\$100 per day if the company does not maintain a registered office and agent in Dominica.
587. Under the Companies Act, No. 21 of 1994, certain information is required to be filed with the Registrar of Companies. Such information is usually available to members of the public on payment of a "search fee".

##### **Registration requirements**

588. Section 4 of the Companies Act which deals with incorporation of companies within the jurisdiction of Dominica states that, "One or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar and the name of every incorporator shall be entered in the company's register of members as soon as may be after the company registration".
589. Section 177: A company shall prepare and maintain a register of members showing
- (a) the name and the latest known address of each person who is a member;*
  - (b) a statement of the shares held by each member;*
  - (c) the date on which each person was entered on the register as a member; and the date on which any person ceased to be a member.*
590. Public companies Section 191: Upon payment of a reasonable fee and sending to a public company or its transfer agent the affidavit referred to in subsection (4), any person may upon application require the company or its transfer agent to furnish him, within fifteen days from the receipt of the affidavit, a list of members of the company, in this section referred to as the "basic list", made up to a date not more than thirty days before the date of receipt of the affidavit, which shall set out –
- (a) the names of the members of the company;*
  - (b) the number of shares held by each member; and*

*(c) the address of each member as shown on the records of the company.*

591. Under the International Business Companies Act at Section 3, “subject to the requirements of this Act a person may singly or jointly with others by subscribing to a Memorandum and Articles incorporate an International Business Company under this Act.
592. Section 13 (1) The Memorandum when submitted for registration must be accompanied by Articles prescribing regulations for the company.
- i. *The Articles must be subscribed to by a person in the presence of another person who must sign his name as a witness.*
  - ii. *The Articles when registered bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles subject to this Act.*

### **Information held by Registrar**

593. Section 14(1) of the International Business Companies Act states, “The memorandum and the Articles must be submitted to the Registrar who must retain and register them in a Register to be maintained by him and to be known as the Register of International Business Companies”.
594. According to Section 28 of the IBCA a company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing –
- i. the names and addresses of the persons who hold registered shares in the company;
  - ii. the number of each class and series of registered shares held by each person;
  - iii. the date on which the name of each person was entered in the share register;
  - iv. the date on which any person ceased to be a member;
  - v. in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and
  - vi. with respect to each certificate for shares issued to bearer –
    1. the identifying number of the certificate;
    2. the number of each class or series of shares issued to bearer specified therein; and
    3. the date of issue of the certificate,

But the company may delete from the register information relating to persons who are no longer members or information relating to shares issued to bearer that have cancelled. Competent Authorities do have powers under the MLPA to go in and inspect documents.

595. Despite these provisions, if the FIU (the Competent Authority in this case) wishes to use the information in any way then an application must be made to the Judge under Section 17 of the MLPA to obtain a search warrant.
596. Section 495 (1) of the companies act states that a person who has paid the prescribed fee is entitled during normal business hours to examine and make copies of extracts of documents filed at the Registry.

597. Section 13 of the IBCA mentions that when the memorandum is submitted for registration this should be done with the articles describing the regulations for the company. The Registrar should retain and register this documentation in the register of international companies.
598. Part III of the IBCA states that an IBC must have at all times a registered office and a resident agent in Dominica. The registered agent is responsible for the records and registers to be kept at the registered office.
599. Not all information relating to registered companies are filed with the Companies Registrar. The beneficial ownership information with regards to IBCs and Offshore banks is held with the licensed/registered agents. As well, changes to the structure and beneficial owners are also kept by the licensed/registered agents. These pieces of information are not available to the general public. However, it is available to the FSU and FIU when requested.
600. Competent Authorities would be able to do the regular searches like any other person in order to get information on the beneficial ownership and control of legal persons. In cases such as these the Companies Registrar would assist the authorities in their investigations so as to make the information available in a timely manner.
601. The domestic regulator (FSU) can access beneficial ownership from the owner of the business or from the licensed agents who is expected to retain this information and give the regulator access whenever requested. The ECCB can also access beneficial owner information under the Banking Act from the domestic banks or from the Companies Registry. The FIU, in its capacity as investigator for AML/CFT offences, can access information from the Companies Registry and from the licensed agents.

### **Bearer shares**

602. Section 29 of the Companies Act does not allow the issuance of bearer shares or bearer share certificates. Furthermore, the IBC act mentioned that if bearer shares are issued, the total number of each class and series of shares issued to bearer, the identifying number of the certificate, the number of each class or series shares issued to bearer and the date of issue of the certificate.
603. During the interview with the Registrar of Companies they mentioned that there are no bearer shares with local companies. The information with regards to bearer shares and beneficial owner information for the IBC's are not kept at the Companies Registrar's office, but with the registered agent.

### **Additional material**

#### **5.1.2 Recommendations and Comments**

- There is a need to ensure that licensed agents are subjected to ongoing monitoring and supervision in such areas as maintenance of up-to-date information on beneficial owners, licensing and registration, particularly for IBC's incorporated by the agent.

- It is recommended that the FSU institute the process of ongoing monitoring and compliance for both AML/CFT purposes and for general supervisory and regulatory purposes.
- There should be measures to ensure that bearer shares are not misused for money laundering.

### 5.1.3 Compliance with Recommendations 33

|      | Rating | Summary of factors underlying rating  |
|------|--------|---|
| R.33 | PC     | <ul style="list-style-type: none"> <li>• <b>Lack of ongoing monitoring and compliance. The FSU should implement such a programme for AML/CFT purposes as well as general supervision and regulation.</b></li> <li>• <b>No measures are in place to make sure that the bearer shares are not misused for money laundering</b></li> </ul> |

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

### 5.2.1 Description and Analysis

604. As regards the requirement for trusts, the relevant act, *International Exempt Trust Act, No. 10 of 1997 (IETA)* pertains. The Companies Registrar has indicated that there has been no active trust business since 2002. Additionally, the licensed/registered agents and lawyers registered to act as agents for trust have said that no trust business is currently conducted. However the law is in place should any such business be conducted.
605. Section 2 of the IETA defines an international trust under the IETA. The IETA and makes provisions for three types of international trust. They re the spendthrift, charitable and non-charitable international trusts. Registration of these trusts is mentioned in section 36 of the IETA.
606. The certificate of registration under section 37 of the IETA is issued and is valid for one year. Renewal of this certification should be made within one year of expiration. Inspection of the register is only open when a trustee or trust in writing authorizes a person to inspect the entry of the trust on the register as mentioned in section 39 of the IETA. The legislation makes no mention of updating information in the register with regards to the beneficial owners.
607. International Trust must be registered with the Registrar and are required to be renewed annually. However, details of the settler, beneficiaries etc. does not appear to be given to the Registrar, only information on the registered office of the trust.
608. There is no evidence that competent authorities have access to beneficial ownership of trusts. The law provides for the Trustee to approve access to the register of the trust.
609. The domestic regulator can access beneficial ownership from the owner of the business

or from the licensed agents who is expected to retain this information and give the regulator access whenever requested. The ECCB can also access beneficial owner information under the Banking Act.

**Additional elements**

There is no evidence that financial institutions can have access to beneficial ownership of trusts unless written a trustee grants approval.

5.2.2 Recommendations and Comments

- Information on the settlors, trustees and beneficiaries of Trusts should be made available to the Registrar or if not recorded there should be available from the registered agent on request without the written consent of the Trustee.
- Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion.
- Even though currently there are no trust activities in Dominica, the authorities in Dominica should include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trust.

5.2.3 Compliance with Recommendations 34

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.34 | NC     | <ul style="list-style-type: none"> <li>• <b>The Authorities should include current and accurate information of the beneficial ownership and control as part of the register information on international trusts</b></li> <li>• <b>Registration of Trusts does not include information of the settler and other parties to a Trust</b></li> <li>• <b>Competent Authorities do not have access to information on the settler, trustees or beneficiaries of a Trust.</b></li> </ul> |

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

5.3.1 Description and Analysis

*Special Recommendation VIII*

610. According to Part III of the Companies Act, section 326, every company without a share capital is described as a non-profit company. Section 328(2) of the companies act mentions that in order to qualify for approval, a non-profit organization must restrict its business to one that is patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like.

611. Section 25(n) of the Income Tax Act states that the NPOs will be tax exempted if they

receive income of any religious, charitable, or educational institution of a public character if so far as the income is not derived from business carried on by it for profit.

### **Review of the non-profit sector**

612. No review has been undertaken by the authorities of Dominica with regards to the adequacy of domestic laws and regulations that relate to non-profit organizations.
613. There is no specific law that governs the establishment of an NGO. However, they are required to make an application, which is scrutinized by the Social Welfare department and recommended for approval to the Minister. The Social Welfare department is the Unit that has the most involvement with NGOs. That involvement however, is limited to the extent that staff of the department serves as members of the Board of the NGO. Although there is a reporting requirement, there are no sanctions for non-compliance.

### **Protecting the NPO sector from terrorist financing through outreach and effective oversight**

614. There are no measures for conducting domestic reviews and an outreach to the NPO sector with a view of protecting them from the abuse of terrorist financing.
615. NPOs are not subject to the provisions of the MLPA, its Regulations and to the anti money laundering Guidance Notes that have been issued.
616. There are no provisions for NGOs to report any donations, unusual or otherwise, to the Social Welfare Department. There is limited access to their financials by the Inland Revenue Department, only to the extent of verifying P.A.Y.E. contributions for staff and some cases the verification of donations made by a resident. No training has been given to this sector to ensure that they are cognizant of AML.CFT issues.
617. The Government of the Commonwealth of Dominica provides a subvention to a total of ten (10) charitable organisations to the tune of EC \$1,208,079.00. EC \$1,208,079.00 of that figure is donated to the Dominica Infirmary. As such, some level of supervision is done by the Social Welfare Division relative to the funds disbursed.
618. There is no direct supervision of the activities or financial resources of the NGO.
619. Pursuant to the section 66 of the Income Tax Act Chapter 67:01, all businesses are to register with the Inland Revenue Division (IRD) for tax purposes. Hence, NPOs are mandated to register since they stand to benefit from the tax exemptions they qualify for under section 25 (n) of the said Act.
620. The supervision that is conducted by the IRD is to ensure that once registered NPOs are not engaged in other forms of business outside of their stated purpose and income is generated, that the additional income is assessed and taxed accordingly.
621. All NPOs that are registered as companies are required to satisfy the IRD that the company is in fact incorporated and all the incorporation documents, including the names and addresses of the beneficial owners, director etc. are submitted to the IRD. If not produced, the same can be obtained from the Registrar of Companies. At the time

of registration information on the directors and members of the Board are submitted to the Registrar, however, although required to keep this information updated it is not always done.

622. The Registrar of Companies noted that the NPOs may register, but this is not written anywhere in the legislation, so this is done on a voluntary basis. The records kept by the Register of Companies are public records and are available to the authorities. There is no review done to see if the NPOs keep the information such as documentation on beneficial owners.
623. NPOs are required to submit annual reports to the Social Welfare Division on the usage of funds allocated. This is not currently done. Sanctions are not applied for non-compliance. There is no supervision on the NPOs so no sanction is applicable if there are violations of oversight measures.
624. NPOs are required to register with the Inland Revenue Department (IRD) for tax purposes, the Registrar of Companies, if incorporated and to be licensed by the Ministry to make the organisation eligible for subventions. As previously mentioned the NPOs may register. It could be possible that the authorities do not have accurate information.
625. The Social Welfare Division is unclear as to what information is maintained by the NPOs. Monitoring visits are not conducted due to staff constraints. It is only in instances where a member of staff of the Division sits on the Board of Directors of the NPO will the Division become aware of the NPO's activities.
626. NPOs are not subject to the requirements of the MPLA, its Regulation and Guidance Notes. Their business/activities are not covered under the scheduled businesses/activities or persons detailed in the MPLA.
627. During the onsite it was mentioned that staffing is one of the reasons for not being able to investigate and gather information on NPOs
628. The FSU and the FIU can access information held by the Social Welfare division. However where the IRD is concerned, its secrecy provisions ensures that information on any company or person can only be provided in the form of statistics. During the onsite examination it could not be determined that the authorities were sharing information on the NPOs in order to make sure that they are not prone to potential terrorist financing concern.
629. During the interview with IRD and social welfare division it was mentioned that the NPOs are not supervised and they need to submit information yearly, but the NPOs do not comply with this and there are no sanction related to this non-compliance.
630. Furthermore, it was mentioned that the some NPOs receive grants from overseas parties and that this information does not need to be disclosed by the NPOs. In addition some of the NPOs appoint and hire their own board of directors, local or foreign. Appointments and change of board of directors are not submitted to the IRD and the social welfare division.
631. The Registrar of Companies mentioned that the NPOs may register, but this is not

written anywhere in the legislation, so this is done on a voluntary basis. The records kept by the Registrar of Companies are public records and are available to the authorities.

632. The on-site interview with the NPO, was cancelled so a proper analysis of their adherence to AML/CFT measures, if any could not be done.

### **Additional material**

#### 1.1.1 Recommendations and Comments

- The Social Welfare Department should be charged with the supervision of the NGOs and be adequately staffed to take on this task.
- Sanctions should be put in place for non-compliance as it relates to the annual reporting requirements.
- NGOs should be required to report unusual donations to the Supervisory Authority.
- NGOs should be sensitized to the issues of AML/CFT including how they could be used for terrorist financing,
- NGOs should be encouraged to apply fit and proper standards to officers and persons working in and for the NGO.
- The requirements of the MLPA, its Regulations and the Guidance Notes should be extended to NPOs and their activities.
- The Authorities should undertake a review of the domestic laws and regulations that relate to Non-profit organizations.
- Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.
- Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.
- The Authorities should monitor the NPOs and their international activities.
- Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.
- There should be measures to protect NPOs from terrorist abuse.
- There should be sanctions for violation rules in the NPO sector

### 5.3.3 Compliance with Special Recommendation VIII

|          | Rating | Summary of factors underlying rating   |
|----------|--------|--|
| SR. VIII | NC     | <ul style="list-style-type: none"> <li>• NPOs not subject to AML/CFT regime</li> <li>• There is no proper supervision of NGOs</li> <li>• There are no sanctions in place for non-compliance with the reporting requirements.</li> <li>• There are no guidelines to aid the NGO in selecting its management</li> <li>• There are no requirements for the NGO to report unusual donations</li> <li>• The NGOs have not been sensitized in issues of AML/CFT</li> <li>• No review of the laws and regulations that relate to NPOs by the authorities</li> <li>• No measures for conducting reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing.</li> <li>• No assessments of new information on the sector’s potential vulnerabilities to terrorist activities are conducted.</li> <li>• No efforts at raising the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse.</li> <li>• No sanctions for the violations of the rules in the NPO sector.</li> <li>• No monitoring of NPOs and their international activities.</li> </ul> |

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

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

#### 6.1.1 Description and Analysis

#### *Recommendation 31*

633. Section 14 (i) of the MLPA states: “The Unit may consult with any person, institution or organization within or outside Dominica for the purposes of the exercise of its powers and duties under this Act”
634. Pursuant to the preceding section, the Unit has sought assistance with numerous agencies, units and organizations within Dominica in the exercise of its powers under the MLPA. The Unit continues to receive optimal support relative to the assistance sought. Strategic alliances have been forged with Customs, Legal Affairs Department, the Financial Services Unit, the Dominica Cooperative Societies League, Registered Agents, the Commonwealth of Dominica Police Force and its many subsets inclusive

of the Drug Squad, Criminal Investigations Department (CID), the National Joint Intelligence Centre (NJIC), Financial Institutions and DNFBPs with whom formal and informal relationships have been established and the Director of Public Prosecution (DPP) who was is a former police Inspector.

635. The Unit serves as the Secretariat of the MLSA and maintains the Authority's files within its office. The Unit also sits in at MLSA meetings and contributes to the Agenda and activities of the MLSA, hence cooperation with this Regulator is without friction.
636. Many times information is received by the Unit that denotes some form illegal activity may be in the process of being executed, based on historical data against which the information analyzed. If it's of a drug nature the information is immediately shared with the Drug Squad. If not, it's shared with the appropriate intelligence agency i.e. NJIC, Customs Preventive Section, CID and Interpol etc.
637. Section 14 (j): "The Unit shall pass on any relevant information relating to money laundering to the Director of Public Prosecutions with a view to taking the appropriate action"
638. There is constant communication/cooperation between the FIU and other law enforcement agencies including Regulators, Legal Department as well as with Financial Institutions and DNFBPs in the execution of activities to combat ML and FT.
639. There are often joint operations between the Customs department and various sections of the Police. There is also a good working relationship between the FIU and the other law enforcement agencies. However, there are no inter-agency meetings held to develop policies as it relates to AML/CFT. The interviewed authorities mentioned that there are no MOU between each other, but they will request information from each other when needed. The interviewed DPP mentioned that he has a closely relationship with the FIU.

#### **Additional elements**

640. The FIU endeavors to sensitize all Financial Institutions and other scheduled entities about issues in AML/CFT. But there is no evidence that the MLSA has over the years taken on this role for the DNFBPs. The recently revised Guidance Notes were however, widely circulated and comments were requested from all concerned entities.

#### **Recommendation 32**

- A review of the Guidance Notes of 2001 was conducted and circulated to various stakeholders for their input. The 2008 Revised Guidance Notes is now in circulation.
- The standard letter of request used pursuant to section 15 (c) of the MLPA has been revised in collaboration with the legal input of the Attorney General. The review was done due mainly to a High Court ruling in Antigua and Barbuda, *Hilroy Humphreys Vs. FirstCaribbean International Bank (Barbados) Limited*.
- Compliance Officer Codes have been developed and issued to compliance officers to protect their identity.

- A network utilising the Groove software has been set up with key persons of respective agencies/departments and used in the sharing of information, intelligence and other matters.
- Efforts have been made to revive the Money Laundering Supervisory Authority (MLSA) with the appointment of persons from the Attorney General's Office, Customs, Police and FIU. Additionally, discussions are being held with key persons to shift the responsibility of the MLSA to the Financial Services Unit (FSU).
- The first of its kind, a local three (3) day training workshop was conducted for law enforcement, magistrates, judges, legal, supervisory and regional FIU personnel sponsored by United Kingdom Security Advisory Team (UK SAT) and the Ministry of Tourism and Legal Affairs.
- AML training has been conducted with the entire Cooperative Credit Union League on island and Western Union staff.

641. The MLSA has recently been active again. They have been inactive for a long time and have not had meetings to discuss the AML/CFT regime. It could be noted that the process of review of the AML/CFT regime is ongoing in Dominica. The MLSA has recently revised the Guidance Notes and issued them so most of the interviewed financial institutions have not gotten the chance to review the Guidance Notes and include the changes into their internal procedure manual. Before issuing the Guidance Notes they have had a meeting with the financial sector to receive their views.

### ***R.30 Resources (Policy makers)***

642. The MLSA has no budget. Meetings are convened by the Chairperson who is also the Manager of the Financial Services Unit (FSU). The establishment of the FSU if adequately staffed, will remove the shortcomings of the present MLSA.

643. The MLSA currently consists of the Manager of the International Business Unit, the Commissioner of Police or his nominee, the Attorney General or his nominee, the Comptroller of Customs or his nominee. Section 11 of the MLPA states the duties of the MLSA.

644. All members of the MLSA are bound by the Public Service General Orders and the requirement of the Public Service Act. They are all required to take an oath of secrecy on entry into the Public Service. Although the officers of the MLSA are senior ranked personnel there is nothing in place to ensure that they maintain a high level of integrity. It was mentioned that the staff of the FIU are part of the police force, and they will need to take a polygraph test, when applying for the job at the FIU.

645. During the interview with the MLSA it was also noted that they have not attended any trainings and conferences with regards to combating ML and FT. It was also determined that one of the staff members of the FIU has been on several ML training sessions.

### **Additional material**

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

- The Supervisory Authority needs to expand its activity so as to ensure that all entities who may be susceptible to be used for Money laundering or Terrorist Financing are aware of these dangers and take the necessary precautions.
- There should be established and maintained regular inter-agency meetings where policies and actions are developed.
- There should be a closer link between the Supervisory Authority and the DNFBBs.
- Dominica should keep on monitoring the effectiveness of their system for money laundering and terrorist financing.
- There should be measures to allow the authorities to coordinate in Dominica with each other concerning developments with regards to money laundering and terrorist financing.

### 6.1.3 Compliance with Recommendations 31

|             | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
|-------------|---------------|--|
| <b>R.31</b> | <b>PC</b>     | <ul style="list-style-type: none"> <li>• <b>There are no joint meetings dedicated to developing policies and strategies relating to AML/CFT</b></li> <li>• <b>No measures in place so that the authorities can coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT.</b></li> </ul> |

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

### 6.2.1 Description and Analysis

#### *Recommendation 35*

646. The Commonwealth of Dominica is a party to The 1988 UNC Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (*The Vienna Convention*) Status: Ratified -June 16, 1993. The Commonwealth of Dominica is not a party to The 2000 UNC against Trans-national Organized Crime – (*The Palermo Convention*) Status: Not Ratified. The Commonwealth of Dominica is a party to the 1999 UN International Convention for the Suppression of the Financing of Terrorism was ratified on September 14, 2004.

#### *Special Recommendation I*

647. In the Commonwealth of Dominica the 1999 UN International Convention for the Suppression of the Financing of Terrorism was ratified. Implementation of the requirements of the said Convention came in the form of the enactment of the Suppression of the Financing of Terrorism Act, 31 of 2003, and the delegation of responsibilities to the Commissioner of Police, the FIU and the Attorney General.

648. The Commonwealth of Dominica has implemented many but not all of the United Nations Security Council Resolutions relating to S/RES/1373(2001).

649. A synopsis of the application of the provisions of the conventions in the jurisdiction follows:

**Table: 11 Compliance with relevant Treaties**

| <b>Treaty</b>   | <b>Articles</b>   | <b>Legislative provisions in Dominica</b>  |
|---|---|--|
| <b>Vienna Convention (1988)</b>                           | 3 (Offences and Sanctions)  | Partially covered by section 3 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07),   |
|   | 4 (Jurisdiction)  | No legal provisions  |
|   | 5 (Confiscation)  | Covered by section 12-23 of the Proceeds of Crime Act, No 04 of 1993, section 15 and Part IV of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), |
|   | 6(Extradition)  | Extradition Act Chap: 12:04  |
|   | 7(Mutual legal assistance)  | Mutual Assistance in Criminal Matters Act Chap: 12:19  |
|   | 8 (Transfer of Proceedings)                                       | No legal provisions  |
|   | 9 (Other forms of co-operation and training)                      | Bi lateral treaties, Exchange of Information Act, Act 25 Of 2001; Interpol, competent authorities,   |
|   | 10 (International Co-operation and Assistance for Transit states) | No legal provisions  |
|   | 11 (Controlled Delivery)  | No legal provisions  |
|   | 15 (Commercial carriers)  | No legal provisions  |
|   | 17 (Illicit traffic at sea)                                       | No legal provisions  |
|   | 19 (Use of mail)  | No legal provisions  |
|   | <b>Palermo Convention</b>   | 5(Criminalization of participation in an organized criminal group)   |
| 6(Criminalization of laundering of the proceeds of crime) |   | Money Laundering (Prevention) Act No. 20 of 2000<br><br>Proceeds of Crime Act No. 4 of 2003  |
| 7 (Measures to combat money laundering)                   |   | Money Laundering (Prevention) Act No. 20 of 2000   |
| 10 (Liability of legal persons)                           |   |  |

|  |  |  |
|--|--|--|
|  | 11 (Prosecution Adjudication and sanction)                             |  |
|  | 12 (Confiscation and Seizure)  |  |
|  | 13 (International Co-operation for the purposes of confiscation)       | Mutual Assistance in Criminal Matters Act Chap: 12:19  |
|  | 14 (Disposal of confiscated proceeds of crime or property)             | Proceeds of Crime Act No. 4 of 2003<br><br>Money Laundering (Prevention) Act No. 20 of 2000  |
|  | 15 (Jurisdiction)  | Money Laundering (Prevention) Act No. 20 of 2000   |
|  | 16 (Extradition)   | Extradition Act Chap: 12:04  |
|  | 18 (Mutual Legal Assistance)   | Mutual Assistance in Criminal Matters Act Chap: 12:19  |
|  | 19 (Joint Investigations)  | No legal provisions  |
|  | 20 (Special Investigative Techniques)                                  | No Legal Provisions  |
|  | 24 (Protection of witnesses)   | No Legal Provisions  |
|  | 25 (Assistance and protection of victims)                              | No Legal Provisions  |
|  | 26 (Measures to enhance co-operation with law enforcement authorities) | Mutual Assistance in Criminal Matters Act Chap: 12:19<br><br>Sharing of Intelligence Act Among Member States of the Eastern Caribbean Community Act No. 1 of 2007<br><br>Suppression of the Financing of Terrorism Act No. 3 of 2003<br><br>Money Laundering (Prevention) Act No. 20 of 2000 |
|  | 27 (Law enforcement co-operation)                                      | Money Laundering (Prevention) Act No. 20 of 2000   |
|  | 29 (Training and technical assistance)                                 | No legal provisions  |
|  | 30 (Other measures)  | No legal provisions  |
|  | 31 (Prevention)  | No legal provisions  |
|  | 34 (Implementation of the Convention)                                  | No legal provisions  |

|                                       |   |   |
|---------------------------------------|---|---|
| <b>Terrorist Financing Convention</b> | 2 (Offences)  | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 4 (Criminalization)   | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 5 (Liability of legal persons)  | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 6 (Justification for commission of offence)   | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 7 (Jurisdiction)  | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 8 (Measures for identification, detection, freezing and seizure of funds)   | Suppression of the Financing of Terrorism Act No. 3 of 2003 |
|                                       | 9 (Investigations & the rights of the accused)  | No legal provisions   |
|                                       | 10 (Extradition of nationals)   | Extradition Act Chap: 12:04                                 |
|                                       | 11 (Offences which are extraditable)  | Serious offences  |
|                                       | 12 (Assistance to other states)<br>13 (Refusal to assist in the case of a fiscal offence)<br>14 (Refusal to assist in the case of a political offence)<br>15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)                                    | No legal provisions   |
|                                       | 16 (Transfer of prisoners)  | No legal provisions   |
|                                       | 17 (Guarantee of fair treatment of persons in custody)  | No legal provisions   |
|                                       | 18 (Measures to prohibit persons from encouraging or organising the commission of offences and to facilitate STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions and facilitating information exchange between agencies) | No legal provisions   |

### Additional elements

650. In the Commonwealth of Dominica the following other relevant international conventions have been treated as indicated below:

The Counter-Terrorism Conventions listed below have all been *Signed*:

1. Convention on Offences and certain other Acts committed on Board Aircraft signed at Tokyo on 14<sup>th</sup> December, 1963;

**Status: Signed on September 14, 2004**

2. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16<sup>th</sup> December, 1970.

**Status: Signed on September 14, 2004**

3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23<sup>rd</sup> September, 1971.

**Status: Signed on September 14, 2004**

4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14<sup>th</sup> December, 1973.

**Status: Signed on September 14, 2004**

5. International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17<sup>th</sup> December, 1979.

**Status: Signed on September 14, 2004**

6. Convention on the Physical Protection of Nuclear Material adopted at Vienna on 3<sup>rd</sup> March, 1980.

**Status: Signed on September 14, 2004**

7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 24<sup>th</sup> February, 1988.

**Status: Signed on September 14, 2004**

8. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10<sup>th</sup> March 1988.

**Status: Signed in August 2001**

9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed platforms located on the Continental Shelf, done at Rome on 10<sup>th</sup> March, 1988.

**Status: Signed on September 14, 2004**

10. Convention on the Making of Plastic Explosive for the Purposes of Detection, signed at Montreal on 1<sup>st</sup> March, 1991;

**Status: Signed on September 14, 2004**

11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly at the United Nations on 15<sup>th</sup> December, 1997;

**Status: Signed on September 14, 2004**

12. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9<sup>th</sup> December, 1999.

**Status: Signed on September 14, 2004**

13. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; and

**Status: Not acceded to**

14. The 2002 Inter-American Convention against Terrorism

**Status: Signed on September 14, 2004**

### 6.2.2 Recommendations and Comments

651. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – (*The Palermo Convention*) and fully implement Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)

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

|      | Rating | Summary of factors underlying rating   |
|------|--------|--|
| R.35 | PC     | <ul style="list-style-type: none"><li>• The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (<i>The Palermo Convention</i>).</li><li>• In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented.</li><li>• In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, &amp; 34 of the Palermo</li></ul> |

|             |           |   |
|-------------|-----------|---|
|             |           | <p><b>Convention have been implemented.</b></p> <ul style="list-style-type: none"> <li>• <b>In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented.</b></li> <li>• <b>In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) are not fully implemented.</b></li> </ul>  |
| <b>SR.I</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• <b>The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (<i>The Palermo Convention</i>).</b></li> <li>• <b>In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented.</b></li> <li>• <b>In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, &amp; 34 of the Palermo Convention have been implemented.</b></li> <li>• <b>In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented.</b></li> <li>• <b>In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373 are not fully implemented.</b></li> </ul> |

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

#### 6.3.1 Description and Analysis

##### ***Recommendation 36***

652. The Commonwealth of Dominica is able to provide a range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings as follows:

(a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons;

*(Provided for under sections, 20 and 22 of the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19;*

(b) the taking of evidence or statements from persons *(Provided for under section 20 of the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19);*

(c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items *(Provided to some extent under section 20 of the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19;*

(d) effecting service of judicial documents *(Provided for under section 25 of the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19;*

(e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country (*Provided for under section 23 of the; Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19;*

(f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value (*Provided for under section 27 and 28 of the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19)*

653. During the mission, the examiners were satisfied that in the Commonwealth of Dominica, assistance to requesting countries can be provided in a timely, constructive and effective manner to Commonwealth countries without any undue delay save for instances where there are legal clarifications that may need to be sought or the location of the items requested may prove difficult to locate etc.
654. In the Commonwealth of Dominica, section 19 of the Mutual Assistance in Criminal Matter Act, Act 9 of 1990, Chapter 12:19 sets out that a request for assistance duly made shall be accepted and it lists a number of situations that would cause a request to be refused. The list of reasons for refusing a request however do not prohibit or make such request subject to unreasonable, disproportionate or unduly restrictive conditions. There are provision for refusing to grant assistance in the law on the grounds that judicial proceedings have not commenced in the requesting country; requiring a conviction before providing assistance; or strict interpretations of the principles of reciprocity. There is a ground for dual criminality.
655. During the mission, the examiners found that the Office of the Attorney General had a clear and efficient process for the execution of mutual legal assistance requests in a timely manner and without undue delays. Staff is sensitized to know that such matters are to be dealt with in a timely manner.
656. There are no provisions in the laws of the Commonwealth of Dominica or the Mutual Assistance in Criminal Matter Act, Act 9 of 1990, Chapter 12:19 upon which a request would be refused on the sole ground that the offence is also considered to involve fiscal matters.
657. Under the laws of the Commonwealth of Dominica, it does not appear that a request for mutual legal assistance could not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP, except where the relevant information was obtained in circumstances where legal professional privilege or legal professional secrecy applies. Requests for mutual legal assistance are not refused on the grounds of laws that impose secrecy or confidentiality on financial institutions or DNFBPs.
658. Under the laws of the Commonwealth of Dominica, it appears that the powers of competent authorities required under R.28 are available for use in response to requests for mutual legal assistance; the competent authorities are able to obtain documents and information for use in those investigations, and in prosecutions and related actions. it should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence (Mutual Assistance in criminal Matter Act,

Act 9 of 1990, Chapter 12:19 )

659. There are no provisions in the Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19 which deal with the resolution of conflicts of jurisdiction.

**Recommendation 37 (dual criminality relating to mutual legal assistance)**

660. In the Commonwealth of Dominica, mutual legal assistance cannot be rendered in the absence of dual criminality, in particular, for less intrusive and non compulsory measures. Section 19 (2) (d) of the MACMA which states that a request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for Dominica the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Dominica, would not have constituted an offence under the criminal law of Dominica.
661. For extradition and those forms of mutual legal assistance where dual criminality is required, The Commonwealth of Dominica (as the state rendering the assistance) has no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. Technical differences between the laws in the requesting country and The Commonwealth of Dominica, such as differences in the manner in which each country categorises or denominates the offence, do not under the laws pose an impediment to the provision of mutual legal assistance.

**Recommendation 38**

662. In the Commonwealth of Dominica, The Mutual Assistance in Criminal Matters Act , No. 9 of 1990, provides the legal mechanism by which international and regional cooperation can be facilitated. There are appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of:
- i. laundered property from,
  - ii. proceeds from,
  - iii. instrumentalities used in, or
  - iv. instrumentalities intended for use in, the commission of any ML, FT or other predicate offences.
663. On receipt of a Mutual Legal Assistance Request (MLAT) by the Office of the Attorney General, the appropriate domestic law enforcement agency of government best suited to facilitate execution of the Request is tasked with the responsibility. Dominica is also party to a bi-lateral treaty with the US re cooperation in criminal matters which Dominica signed on October 10, 1996, committing to provide assistance as mentioned above.
664. The laws are unclear as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.
665. The laws are unclear as to whether The Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.

**Special Recommendation V**

666. It appears that the Commonwealth of Dominica would be able to provide the widest possible range of mutual legal assistance in CFT investigations, prosecutions and related proceedings identical to matter discussed above in 36. 1- 6.
667. In the Commonwealth of Dominica, mutual legal assistance cannot be rendered in the absence of dual criminality, in particular, for less intrusive and non compulsory measures. See Section 19 (2) (d) of the MACMA which states that A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for Dominica the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Dominica, would not have constituted an offence under the criminal law of Dominica;
668. For extradition and those forms of mutual legal assistance where dual criminality is required, The Commonwealth of Dominica (as the state rendering the assistance) have no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. Technical differences between the laws in the requesting and The Commonwealth of Dominica , such as differences in the manner in which each country categorises or denominates the offence, do not under the laws pose an impediment to the provision of mutual legal assistance.

***R.30 Resources (Central authority for sending/receiving mutual legal assistance/extradition requests)***

669. In The Commonwealth of Dominica FIUs, law enforcement and prosecution agencies, supervisors and other competent authorities involved in combating money laundering and terrorist financing are adequately structured, funded. However, additional legal staff would assist in efficiency. Also, the staff should be provided with sufficient technical and other resources to fully and effectively perform their functions.
670. In the Commonwealth of Dominica Staff is required to maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.

**Table 12: Other Statistics**

| <b>Recommendation 32</b> |             |  |                  |
|--------------------------|-------------|--|------------------|
| <b>MLAT STATS:</b>       |             |  |                  |
| <b>NO. OF REPORTS</b>    | <b>YEAR</b> | <b>NATURE</b>  | <b>REMARKS</b>   |
| 5                        | 2004        | Money Laundering – 3<br>Identification of Assets - 2 | Granted/Executed |
| 2                        | 2005        | Money Laundering - 2                                 | Granted/Executed |
| 3                        | 2006        | Money Laundering – 1<br>Fraud – 1<br>Tax Evasion - 2 | Granted/Executed |
| 2                        | 2008        | Fraud - 1<br>Tax Evasion - 1                         | Granted/Executed |

671. In the Commonwealth of Dominica the Competent authorities do not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. However, annual statistics on Mutual legal assistance or other international requests for co-operation and all mutual legal assistance and extradition requests are maintained.
672. The MLPA also makes provision for the establishment of a Forfeiture Fund at section 24 which mandates that 80% of funds forfeited shall be deposited into the said Fund to be used for the purpose of anti-money laundering activities and for the purpose of the administration of justice and law enforcement. However, such a Fund has not been established.
673. Save for the two (2) exceptions mentioned above, all monies forfeited are **to be** deposited to the Consolidated Fund.

**Additional elements**

674. Foreign non-criminal confiscation orders as described in criterion 3.7 (c) are not recognised and enforced.

6.3.2 Recommendation and comments

- To avoid conflicts of jurisdiction, The Commonwealth of Dominica should consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country.
- The Commonwealth of Dominica should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.
- The Commonwealth of Dominica should consider authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.
- The laws are unclear as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.
- The laws are unclear as to whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V

|      | Rating | Summary of factors relevant to s.6.3 underlying overall rating  |
|------|--------|---|
| R.36 | LC     | <ul style="list-style-type: none"> <li>• <b>The Commonwealth of Dominica has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to</b></li> </ul> |

|             |           |  |
|-------------|-----------|--|
|             |           | <b>prosecution in more than one country.</b>   |
| <b>R.37</b> | <b>C</b>  |  |
| <b>R.38</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• <b>Unclear legislation regarding request relating to property of corresponding value.</b></li> <li>• <b>Unclear legislation regarding arrangements for co-ordinating seizure and confiscation actions with other countries.</b></li> <li>• <b>No consideration of the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited</b></li> <li>• <b>No consideration of authorising the sharing of assets confiscated when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.</b></li> </ul>   |
| <b>SR.V</b> | <b>PC</b> | <ul style="list-style-type: none"> <li>• <b>Factors in Recommendations 37 and 38 are also applicable</b></li> <li>• <b>Unclear laws as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.</b></li> <li>• <b>Unclear as to whether the Commonwealth of Dominica could have arrangements for co-coordinating seizure and confiscation actions with other countries.</b></li> <li>• <b>No measures or procedures adopted to allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.</b></li> <li>• <b>No evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).</b></li> </ul> |

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

##### 6.4.1 Description and Analysis

##### ***Recommendation 39***

675. In the Commonwealth of Dominica, Money laundering is an extraditable offence and there are laws and procedures to extradite individuals charged with a money laundering offence. Section 28 of the MLPA states: “Money laundering is an offence for the purpose of any law relating to extradition.”
676. The Extradition Act Chap: 12:04 establishes the procedures to extradite persons charged with money laundering.
677. In the Commonwealth of Dominica the laws do not specifically prohibit the extradition of its own nationals.

678. Section 8 of the MLPA states: “An offence under this Act, whether or not it occurred in Dominica or any other territorial jurisdiction, may be investigated by the Unit or a person authorised by the Unit and tried, judged and sentenced by a court in Dominica, without prejudice to extradition when applicable, in accordance with the law.” In addition to the lack of power to prohibit extradition of nationals, in the Commonwealth of Dominica, where a national is not extradited, The Commonwealth of Dominica, has the power under section 8 of the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), at the request of the country seeking extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. In such cases, the competent authorities would have to take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of The Commonwealth of Dominica.
679. Section 8 of the MLPA states: “An offence under this Act, whether or not it occurred in Dominica or any other territorial jurisdiction, may be investigated by the Unit or a person authorised by the Unit and tried, judged and sentenced by a court in Dominica, without prejudice to extradition when applicable, in accordance with the law.”
680. This section would facilitate the prosecution of persons that are not extradited, once jurisdiction is established. Notwithstanding, section 8 of the MLPA applies.

**Table 13 Extradition requests**

| NO. OF REQUESTS | REQUESTING COUNTRY       | REQUESTED COUNTRY | STATUS                                    |
|-----------------|--------------------------|-------------------|---|
| 4               | US Department of Justice | Dominica          | Extradited-1<br>Discharged-2<br>Unknown-1 |
| 2               | United Kingdom           | Dominica          | Extradited-(Self)<br>Unknown              |
| 1               | Dominica                 | Tortola           | Unknown                                   |

681. In the case referred to in criterion 39.2(b), it appeared to examiners that the authorities were willing and able to cooperate with others, in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution.
682. There are no specific measures or procedures other than the ordinary extradition procedures adopted in The Commonwealth of Dominica that will allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay.

***Recommendation 37 (dual criminality relating to extradition)***

683. In the Commonwealth of Dominica, Extradition is not rendered in the absence of dual criminality.
684. For extradition and those forms of mutual legal assistance where dual criminality is

required, the Commonwealth of Dominica (as the rendering the assistance) have no apparent legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence does not appear to pose an impediment to the provision of mutual legal assistance.

685. In the Commonwealth of Dominica the laws do not specifically prohibit the extradition of nationals.
686. In the Commonwealth of Dominica, terrorist acts and the financing of terrorism are an extraditable offence and there are laws and procedures to extradite individuals charged with terrorist acts and the financing of terrorism offences. Section 25 of the Suppression of the Financing of Terrorism Act, is amended in the Schedule to that Act which sets out the extradition crimes by the insertion of the following item immediately after item 28 thereof : “ 29. An offence against the law relating to the suppression of financing of terrorism.”
687. The Extradition Act Chap: 12:04 establishes the procedures to extradite persons charged with terrorist acts and the financing of terrorism related offences.
688. In the case referred to in criterion 39.2(b), it appeared to examiners that the authorities were willing and able to co-operate with others, in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution.
689. There are no specific measures or procedures other than the ordinary extradition procedures) adopted in The Commonwealth of Dominica that will allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism related offences to be handled without undue delay.

#### 6.4.2 Recommendations and Comments

- There should be in The Commonwealth of Dominica measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay.
- In the Commonwealth of Dominica the laws should not prohibit the extradition of nationals.
- There should be measures or procedures adopted in The Commonwealth of Dominica that will allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.

#### 6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V

|             | <b>Rating</b> | <b>Summary of factors relevant to s.6.4 underlying overall rating</b>   |
|-------------|---------------|---|
| <b>R.39</b> | <b>LC</b>     | <ul style="list-style-type: none"> <li>• <b>No measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay</b></li> </ul> |

|             |           |                                     |
|-------------|-----------|-------------------------------------|
| <b>R.37</b> | <b>C</b>  |                                     |
| <b>SR.V</b> | <b>PC</b> | • <b>See factors in section 6.3</b> |

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

### 6.5.1 Description and Analysis

#### ***Recommendation 40***

690. In the Commonwealth of Dominica, the competent authorities are able to provide the widest range of international cooperation to their foreign counterparts. The Central Authority for Dominica has a wide range of powers to assist foreign counterparts upon receipt of international cooperation requests. The Mutual Assistance in Criminal Matters Act (Mutual Assistance in criminal Matter Act, Act 9 of 1990, Chapter 12:19) provides the legal mechanism by which international and regional cooperation can be facilitated.
691. Pursuant to Statutory Rules and Orders (SRO) 47 of 2002, the Attorney General was appointed as the Central Authority for Dominica. The following types of assistance can be rendered pursuant to the said Act:
- i. Assistance to countries in obtaining evidence including but not limited to:
    - 1) Written statements;
    - 2) production of judicial records;
    - 3) production of sample, specimen or other item from a person;
  - ii. Assistance in locating or indentifying persons including the execution of search warrants;
  - iii. Assistance in arranging the attendance of persons to give or provide evidence or assistance relevant to any criminal matter;
  - iv. Assistance in the transferring of prisoners to give or provide evidence or assistance relevant to any criminal matter;
  - v. Assistance in the service of documents
  - vi. Assistance in tracing property
  - vii. Assistance relative to certain Orders i.e. registration of Confiscation Orders, Restraint Orders, imposition of a pecuniary penalty relative to the value of the property derived or obtained from the commission of the criminal offence;
  - viii. Assistance in obtaining a restraining order.
692. On receipt of a Mutual Legal Assistance Request (MLAT) by the Office of the Attorney General, the appropriate domestic law enforcement agency of government best suited to facilitate execution of the Request is tasked with the responsibility.
693. Dominica is also party to a bi-lateral treaty with the US re cooperation in criminal matters which Dominica signed on October 10, 1996, committing to provide assistance as mentioned above.
694. The Financial Secretary by powers bestowed on her by the Exchange of Information Act No. 25 of 2001, has the authority to provide information to foreign regulatory agencies to assist them in their regulatory functions. No information provided can be used for criminal proceedings (*Section 4 (2) (f)*).

695. In the exercise of powers under the said Exchange of Information Act, the Financial Secretary may seek the assistance of the FIU, the Registrar of Companies, the Registrar of Insurance and the Attorney General.
696. Section 31 (1) of the Banking Act prohibits the ECCB from disclosing information on any financial institution under its purview. However the Central Bank is currently in the process of establishing an MOU with other regulatory bodies in the Caribbean. This is to be effected through the Caribbean Group of Supervisors.
697. Dominican Authorities reported that assistance requested is provided as quickly as possible relative to the resources available. Where the information is evidentiary in nature it has to go through the Attorney General. There was however no evidence to show the process by which the submission of information will be accomplished or if the FSU or MLSA had ever received such requests and provided the information.
698. In the Commonwealth of Dominica, assistance is able to be provided in a rapid, constructive and effective manner relative to the resources available.
699. The CDPF is a member of Interpol the world's largest international police organization with 186 member countries which facilitate cross-border police co-operation and supports and assist all organizations, authorities and services whose mission is to prevent or combat international crime.
700. One of its missions is to promote communication and co-operation among the world's law enforcement agencies. Interpol manages databases of information on criminals and criminality that are accessible to all National Central Bureaus (NCB). The information in the databases, which comes from queries, messages, intelligence and submissions from police in member countries, relates to: nominal data, photographs, stolen and lost documents, child sexual abuse images, stolen works of art, stolen motor vehicles, fingerprints, drugs, DNA profiles and notices.
701. Interpol intellectual property Crime Action Group, whose members include police customs representatives from member countries, international organizations and industry bodies, work to raise awareness of this threat among policymakers and the general public through promotional, training and operational support.
702. Being a member of the organization, information is shared on a regular basis through requests made to and from member countries.
703. In the Commonwealth of Dominica the said exchanges of information are possible: (a) both spontaneously and upon request, and (b) in relation to both money laundering and the underlying predicate offences. For example, these exchanges of information requests are possible by sending a request via the Egmont Secure Web, and E-mail, a request via OAS Groove Network or by a simple telephone call once the caller has been identified and appropriately referred.
704. In the Commonwealth of Dominica all the competent authorities are authorised to conduct inquiries on behalf of foreign counterparts. The FIU, the Central Authority, the FSU, Interpol and other competent authorities on the island are authorised to conduct enquiries on behalf of foreign counterparts.

705. In the Commonwealth of Dominica, the FIU is allowed to consult and liaise with domestic and international law enforcement agencies in responding to requests for assistance. Upon receipt of such requests, the FIU database is searched as well as that of the Police for criminal records information. The FIU also has access upon request, to the Registrar of Companies information, Customs information, Drug Squad information as well as NJIC's database.
706. In the Commonwealth of Dominica, the law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts; other competent authorities are authorised to conduct investigations on behalf of foreign counterparts, where permitted by domestic law. Interpol can facilitate foreign investigations. In this regard the Exchange of Information Act 25 of 2001 applies.
707. In the Commonwealth of Dominica exchanges of information are not made subject to disproportionate or unduly restrictive conditions. The Exchange of Information Act 25 of 2001 demonstrates this.
708. There are no unduly restrictive conditions on the exchange of information. In the case of Interpol, its Head Office considers all racial, religious, political and military data before it is disseminated.
709. There is no evidence that in The Commonwealth of Dominica requests for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.
710. The examiners found in relation to Money Laundering the law reads as follows: Section 29 of the MLPA: "Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise."
711. Section 31(1) of the Banking Act creates a prohibition on the disclosure of information relating to any financial institutions licensed under the Act except where under Subsection (c) such information is lawfully required to make disclosure by any court of competent jurisdiction within Dominica and Subsection (d) where under the provisions of any law in Dominica or agreement among the participating governments.
712. Section 70(1) of the Offshore Banking Act provides for where a request is made to the Attorney General for any information or assistance pursuant to any Agreement or Treaty entered into with any other country concerning Mutual Assistance in Criminal Matters, it shall be lawful for the Attorney General to request any licensee by way of a notice to furnish such information as is required within such period as may be specified in the notice.
713. In the Commonwealth of Dominica there are controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner. All request referred to the FIU by the Central Authority are securely held in files, filing cabinets and a secure FIU office. Additionally, requests received by the Central Authority are securely held within the Ministry of Legal Affairs filed away in the Ministry's vault.

*Additional elements*

714. There is nothing in place which would prevent the exchange of information with non-counterparts but it is the preferred method that these exchanges be done with their Dominican counterpart.
715. The FIU can obtain information from other competent authorities in relation to an information request from a foreign FIU.

***Special Recommendation V:***

716. The provisions listed as it relates to Money laundering also relate to Terrorist Financing.

*Additional elements*

717. The FIU can obtain information from other agencies within Dominica as it relates to Terrorist Financing on behalf of a foreign counterpart FIU.

***Statistics:***

718. Some statistics on requests are kept by the Attorney General's office. There is no evidence that statistics are kept by the FIU on the number of requests for assistance received or made and whether they were granted or refused. It is unclear as to whether statistics are maintained by the MLSA on formal requests for assistance by supervisors relating to or including AML/CFT and on whether the request was granted.
719. While the examiners found that some statistics were kept, the examiners finds that the competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.

6.5.2 Recommendations and Comments

- There is no evidence that in the Commonwealth of Dominica a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.
- The examiner could find no evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).
- The competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.

6.5.3 Compliance with Recommendation 40, Special Recommendation V

|      | Rating | Summary of factors relevant to s.6.5 underlying overall rating   |
|------|--------|--|
| R.40 | LC     | <ul style="list-style-type: none"> <li>• There is no evidence that in The Commonwealth of Dominica a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.</li> </ul>   |
| SR.V | PC     | <ul style="list-style-type: none"> <li>• Factors at 6.3 are also applicable.</li> <li>• There is no evidence that in the Commonwealth of Dominica a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.</li> <li>• No evidence that a request for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).</li> </ul> |

## 7. OTHER ISSUES

### 7.1 Resources and statistics

|      | Rating | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating   |
|------|--------|--|
| R.30 | NC     | <ul style="list-style-type: none"> <li>• The staff of the FIU consists of only four persons where the Sr Investigator functions as the systems administrator who in the absence of the Director also has to take on those duties.</li> <li>• There is not a sufficient staff compliment in the Police, the FIU and the Supervisory Authority to be able to completely deal with issues relating to ML, FT and other predicate offences.</li> <li>• There is also only limited continuous vetting of officers to ensure that the highest level of integrity is maintained.</li> <li>• The FSU should be adequately staffed to discharge its functions.</li> </ul>   |
| R.32 | NC     | <ul style="list-style-type: none"> <li>• Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering &amp; Financing of Terrorist investigations- prosecutions and convictions- and on property frozen; seized and confiscated</li> <li>• Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Terrorist financing freezing data.</li> <li>• No statistics maintained on the nature of the request and the time frame for responding.</li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <ul style="list-style-type: none"> <li>• <b>There are no statistics kept on formal requests made or received by law enforcement authorities relating to ML and FT, including whether the request was granted or refused.</b></li> <li>• <b>No statistics are kept on on-site examinations conducted by supervisors relating to AML/CFT and the sanctions applied.</b></li> <li>• <b>There is no statistics available on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether the request was granted or refused.</b></li> <li>• <b>Lack of databases to facilitate sharing of information between authorities responsible for discharging AML/CFT requirements.</b></li> <li>• <b>The Supervisory Authority is not effective in relation to some entities in the financial sector.</b></li> <li>• <b>The effectiveness of the money laundering and terrorist financing system in Dominica should be reviewed on a regular basis.</b></li> </ul> |
|--|--|--|

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

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

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

## TABLES

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

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

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

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

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

| <b>Forty Recommendations</b>                           | <b>Rating</b> | <b>Summary of factors underlying rating<sup>18</sup></b>  |
|--|---------------|---|
| <b>Legal systems</b>                                   |               |   |
| 1. ML offence  | PC            | <p>The physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer.</p> <p>Designated categories of offences, Piracy (Pirates at Sea) and Extortion not criminalized.</p>  |
| 2. ML offence – mental element and corporate liability | LC            | <p>The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), does not adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been found criminally liable. No civil or administrative sanctions are provided for ML.</p> <p>No powers are given to administer administrative sanctions.</p>   |
| 3. Confiscation and provisional measures               | PC            | <p>In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice.</p> <p>Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica do not have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime.</p> <p>There is little authority in The Commonwealth of Dominica to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of</p> |

<sup>18</sup> These factors are only required to be set out when the rating is less than Compliant.

|   |    |  |
|---|----|--|
|   |    | <b>those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</b>   |
| Preventive measures                                 |    |  |
| 4. Secrecy laws consistent with the Recommendations | PC | <b>Inability of the competent authorities to share information without an MOU or court order</b>   |
| 5. Customer due diligence                           | NC | <p><b>The requirements that documents, data or information collected under the CDD process should be kept up to date by the financial institution is not enforceable.</b></p> <p><b>The obligation that financial institutions should perform ongoing due diligence on the business relationships is not enforceable.</b></p> <p><b>The determination by the financial institution as to who are the ultimate beneficial owners is not enforceable.</b></p> <p><b>No guidance for the insurance companies with regards to identification and verification of the underlying principals, persons other than the policyholders.</b></p> <p><b>Financial institutions do not perform enhanced due diligence for higher risk customers.</b></p> <p><b>Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.</b></p> <p><b>The business clients on the exempted list of the banks do not submit a source of fund declaration for each transaction.</b></p> |
| 6. Politically exposed persons                      | NC | <b>It should be enforceable on the financial institutions that they apply enhanced and ongoing due diligence on their PEPs.</b>  |
| 7. Correspondent banking                            | NC | <p><b>No requirement to determine the nature of business reputation of a respondent and the quality of supervision.</b></p> <p><b>No assessment of a respondent AML/CFT controls and responsibilities.</b></p> <p><b>No provision to obtain senior management approval before establishing new correspondent relationships.</b></p> <p><b>No condition to document respective AML/CFT responsibilities in correspondent relationships.</b></p> <p><b>No requirement for financial institutions with</b></p>  |

|   |    |   |
|---|----|---|
|   |    | <p>correspondent relationships involving “payable through accounts” to be satisfied that the respondent.</p> <p>Financial institutions have not performed all normal CDD obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to satisfy themselves that the respondent institution can provide reliable customer identification data upon request.</p>   |
| 8. New technologies & non face-to-face business | NC | <p>There are no provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing.</p>   |
| 9. Third parties and introducers                | PC | <p>No requirement for financial institutions to immediately obtain from all third parties necessary information concerning certain elements of the CDD process referenced in Recommendation 5.3 to 5.6</p> <p>The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients is not enforceable.</p> <p>Competent authorities should give guidance with regards to countries in which the third party can be based.</p> |
| 10. Record keeping                              | C  |   |
| 11. Unusual transactions                        | PC | <p>No requirement for financial institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.</p>  |
| 12. DNFBP – R.5, 6, 8-11                        | NC | <p>The requirements of Recommendations 5, 6, 8 to 11 are not adequately enforced on DNFBP’s.</p>  |
| 13. Suspicious transaction reporting            | NC | <p>The requirement to report suspicious transactions should be linked to all transactions and not only to complex, large, unusual.</p> <p>No requirement to report attempted transactions.</p> <p>The reporting of an STR does not include transactions that are linked to terrorism financing, terrorism, terrorism acts, and terrorist organizations.</p> <p>The legislation does not require the STR be reported to the FIU.</p>   |
| 14. Protection & no tipping-off                 | LC | <p>The prohibition against tipping-off does not extend to the directors, officers and employees of financial institutions.</p>  |

|  |    |  |
|--|----|--|
| 15. Internal controls, compliance & audit          | PC | <p>Financial institutions do not <del>should</del> maintain an independent audit function to test compliance with policies, procedures and controls</p> <p>Internal procedures do not include terrorist financing.</p>   |
| 16. DNFBP – R.13-15 & 21                           | NC | <p>No effective application of R 13-14, R 15 and 21.</p> <p>No competent body to impose sanctions/fines.</p>   |
| 17. Sanctions                                      | NC | <p>Lack of a designated regulatory body to apply sanctions/fines and the absence of a clearly defined process in the law or guidance notes.</p>  |
| 18. Shell banks                                    | NC | <p>The requirement for domestic and offshore banks not to enter into correspondent banking relationship with shell banks is not enforceable.</p> <p>No requirement for financial institution to satisfy themselves that the respondent financial institutions do not permit their accounts to be used by shell banks.</p>            |
| 19. Other forms of reporting                       | NC | <p>No evidence that Dominica has considered the feasibility and utility of implementing a fixed threshold currency reporting system.</p>   |
| 20. Other NFBP & secure transaction techniques     | PC | <p>Procedures adopted for modern secure techniques are ineffective</p>   |
| 21. Special attention for higher risk countries    | NC | <p>There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries.</p> <p>There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.</p> |
| 22. Foreign branches & subsidiaries                | PC | <p>Requirement to inform the home country supervisor when local laws and guidelines prohibit the implementation.</p>   |
| 23. Regulation, supervision and monitoring         | NC | <p>No competent authority assigned the responsibility of monitoring and ensuring compliance with AML/CFT requirements. No specific body entrusted with the responsibility for conducting on-site examinations and regular off-site monitoring.</p>   |
| 24. DNFBP - regulation, supervision and monitoring | NC | <p>No regulatory/suervisory measures are in place to ascertain compliance with AML/CFT laws and guidelines nor is the FSU charged with the responsibility of monitoring and ensuring compliance with AML/CFT requirements.</p>   |
| 25. Guidelines & Feedback                          | NC | <p>Non issuance of specific guidelines to assist DNFBPs and other financial institutions with implementing the requirements of the AML/CFT regime.</p> <p>Non issuance of guidelines by SROs and other competent authority (FSU) for DNFBPs.</p>   |

|                                     |           |   |
|-------------------------------------|-----------|---|
|                                     |           | <b>The authority has not provided the financial sector with adequate and appropriate feedback on the STRs</b>   |
| Institutional and other measures    |           |   |
| 26. The FIU                         | <b>PC</b> | <p><b>The FIU is not the central authority for the receipt of STRs from reporting entities.</b></p> <p><b>In practice STRs are filed with the MLSA and copies are made available to the FIU.</b></p> <p><b>The FIU does not have total control over the STRs it maintains on behalf of the MLSA.</b></p> <p><b>Although the FIU has almost immediate access to the STRs submitted by the Financial Institutions and other scheduled entities, the MLPA charges that the STRs should be sent to the Money Laundering Supervisory Authority (MLSA) who is then charged with sending it to the FIU. At the same time the legislation requires that STRs relating to the TF should be sent to the Commissioner of Police.</b></p> <p><b>The data held by the FIU however, all backup data are housed on site which effectively defeats the purpose of having the backup done.</b></p> <p><b>To the extent that the budget of the FIU is controlled by the Ministry this could impact on its ability to be operationally independent.</b></p> <p><b>The annual report prepared by the Unit is not made public.</b></p> |
| 27. Law enforcement authorities     | <b>PC</b> | <p><b>No consideration of taking measures providing for the postponement or waiving of arrest of suspects or seizure of money for the purpose of identifying suspects or for evidence gathering.</b></p> <p><b>There is no group specialized in investigating the proceeds of crime.</b></p>  |
| 28. Powers of competent authorities | <b>PC</b> | <p><b>No provision in the SFTA which affords the FIU or the Commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations.</b></p> <p><b>No explicit legal provision for predicate offences investigators to obtain search warrants to seize and obtain business transaction records.</b></p>  |
| 29. Supervisors                     | <b>PC</b> | <b>FSU does not have the authority to conduct inspections of financial institutions, including on-site inspections to</b>   |

|                                       |    |  |
|---------------------------------------|----|--|
|                                       |    | <b>ensure effective monitoring and compliance.</b>   |
| 30. Resources, integrity and training | NC | <p>The staff of the FIU consists of only four persons where the Sr Investigator functions as the systems administrator who in the absence of the Director also has to take on those duties.</p> <p>There is not a sufficient staff compliment in the Police, the FIU and the Supervisory Authority to be able to completely deal with issues relating to ML, FT and other predicate offences.</p> <p>There is also only limited continuous vetting of officers to ensure that the highest level of integrity is maintained.</p> <p>The FSU should be adequately staffed to discharge its functions.</p> <p>The staff, and budget and Anti-money laundering/combating of terrorist financing training of the staff in the DPP Office is in adequate</p>   |
| 31. National co-operation             | PC | <p>There are no joint meetings dedicated to developing policies and strategies relating to AML/CFT</p> <p>The Supervisory Authority does not adequately supervise the DNFbps and other entities in the financial sector at this time.</p> <p>There should be measures in place so that the authorities can There are, coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT.</p>   |
| 32. Statistics                        | NC | <p>Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering &amp; Financing of Terrorist investigations- prosecutions and convictions- and on property frozen; seized and confiscated</p> <p>Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Terrorist financing freezing data.</p> <p>In the Commonwealth of Dominica the Competent authorities do not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. Annual statistics are however maintained on</p> |

|  |    |   |
|--|----|---|
|  |    | <p><b>Mutual legal assistance or other international requests for co-operation and all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including whether it was granted or refused but no statistics maintained on the nature of the request and the time frame for responding.</b></p> <p><b>While the examiners found that statistics were kept, the examiners finds that the competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.</b></p> <p><b>There are no statistics kept on formal requests made or received by law enforcement authorities relating to ML and FT, including whether the request was granted or refused.</b></p> <p><b>No statistics are kept on on-site examinations conducted by supervisors relating to AML/CFT and the sanctions applied.</b></p> <p><b>There is no statistics available on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether the request was granted or refused.</b></p> <p><b>Lack of databases to facilitate sharing of information between authorities responsible for discharging AML/CFT requirements.</b></p> <p><b>The Supervisory Authority is not effective in relation to some entities in the financial sector.</b></p> <p><b>The effectiveness of the money laundering and terrorist financing system in Dominica should be reviewed on a regular basis.</b></p> <p><b>No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.</b></p> |
| 33. Legal persons – beneficial owners      | PC | <p><b>Lack of ongoing monitoring and compliance. The FSU should implement such a programme for AML/CFT purposes as well as general supervision and regulation.</b></p> <p><b>Measures should be in place to make sure that the bearer shares are not misused for money laundering</b></p>   |
| 34. Legal arrangements – beneficial owners | NC | <p><b>The Authorities should include current and accurate information of the beneficial ownership and control as part of the register information on international trusts.</b></p>  |

|                                      |    |  |
|--------------------------------------|----|--|
|                                      |    | <p><b>Registration of Trusts does not include information of the settler and other parties to a Trust.</b></p> <p><b>Competent Authorities do not have access to information on the settler, trustees or beneficiaries of a Trust.</b></p>   |
| International Co-operation           |    |  |
| 35. Conventions                      | PC | <p><b>The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (The Palermo Convention).</b></p> <p><b>In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented.</b></p> <p><b>In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, &amp; 34 of the Palermo Convention have been implemented.</b></p> <p><b>In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented.</b></p> <p><b>In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)are not fully implemented.</b></p> |
| 36. Mutual legal assistance (MLA)    | LC | <p><b>The Commonwealth of Dominica has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.</b></p>   |
| 37. Dual criminality                 | C  |  |
| 38. MLA on confiscation and freezing | PC | <p><b>Unclear legislation regarding request relating to property of corresponding value.</b></p> <p><b>Unclear legislation regarding arrangements for co-ordinating seizure and confiscation actions with other countries.</b></p> <p><b>No consideration of the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited</b></p> <p><b>No consideration of authorising the sharing of assets confiscated when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.</b></p>  |
| 39. Extradition                      | LC | <p><b>The Commonwealth of Dominica do not have specific measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay</b></p>  |
| 40. Other forms of co-operation      | LC | <p><b>There is no evidence that in The Commonwealth of Dominica requests for cooperation would not be refused on the sole ground that the request is also considered to</b></p>  |

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|                                       |               | involve fiscal matters.  |
| Eight Special Recommendations         | <b>Rating</b> | <b>Summary of factors underlying rating</b>  |
| SR.I<br>Implémentation UN instruments | <b>PC</b>     | <p><b>The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (<i>The Palermo Convention</i>).</b></p> <p><b>In the Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented.</b></p> <p><b>In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, &amp; 34 of the Palermo Convention have been implemented.</b></p> <p><b>In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented.</b></p> <p><b>In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)are not fully implemented.</b></p>  |
| SR.II Criminalise terrorist financing | <b>PC</b>     | <p><b>The law is not clear that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur .</b></p> <p><b>The law does not specifically permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance.</b></p> <p><b>The law does not specifically speak to the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.</b></p> <p><b>No civil or administrative penalties are defined in law.</b></p> <p><b>The effectiveness of the regime has not been tested by actual cases.</b></p> <p><b>The definition of terrorist, terrorist act and terrorist organization are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)</b></p> |

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| SR.III Freeze and confiscate terrorist assets            | PC | <p>The Commonwealth of Dominica has limited and need adequate laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</p> <p>The laws of the Commonwealth of Dominica do not speak to having an effective system for communicating actions taken under the freezing mechanisms</p> <p>The Commonwealth of Dominica do not have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses</p> <p>No guidance has been issued.</p>   |
| SR.IV Suspicious transaction reporting                   | NC | <p>The reporting of STRs does not include suspicion of terrorist organizations, terrorism, terrorist acts or those who finance terrorism.</p>   |
| SR.V International co-operation                          | PC | <p>Factors in Recommendations 37 and 38 are also applicable.</p> <p>Unclear laws as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.</p> <p>Unclear as to whether the Commonwealth of Dominica could have arrangements for co-coordinating seizure and confiscation actions with other countries.</p> <p>No measures or procedures adopted to allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.</p> <p>No evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).</p> |
| SR VI AML requirements for money/value transfer services | NC | <p>Lack of an effective supervisory or regulatory regime. No requirements for licensing and registration by the authorities.</p>  |
| SR VII Wire transfer rules                               | NC | <p>No measures in place to cover domestic, cross-border and non-routine wire transfers.</p>   |

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|   |    | <p>There are no requirements for intermediary and beneficial financial institutions handling wire transfers.</p> <p>No measures in place to effectively monitor compliance with the requirements of SR VII.</p>  |
| SR.VIII Non-profit organisations            | NC | <p>NPO's not subject to AML/CFT regime.</p> <p>There is no proper supervision of NGOs.</p> <p>There are no sanctions in place for non-compliance with the reporting requirements.</p> <p>There are no guidelines to aid the NGO in selecting its management.</p> <p>There are no requirements for the NGO to report unusual donations.</p> <p>The NGOs have not been sensitized in issues of AML/CFT.</p> <p>No review of the laws and regulations that relate to NPOs by the authorities.</p> <p>No measures for conducting reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing.</p> <p>No assessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted.</p> <p>No efforts at raising the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse.</p> <p>No sanctions for the violations of the rules in the NPO sector.</p> <p>No monitoring of NPOs and their international activities.</p> |
| SR.IX Cross Border Declaration & Disclosure | PC | <p>No authority to conduct further investigations pursuant to false declaration.</p> <p>No dissuasive criminal civil or administrative sanctions are available for application where persons make false declarations.</p> <p>No dissuasive criminal civil or administrative sanctions</p>  |

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|  | <p><b>are available for application where persons are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF.</b></p> <p><b>The declaration system does not allow for the detention of currency or bearer negotiable instruments and the identification data of the bearer where there is suspicion of ML or TF.</b></p> <p><b>There is no evidence that there are formal arrangements in place for the sharing of information with international counterparts in relation to cross border transactions.</b></p> |
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**Table 2: Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT System  | Recommended Action (listed in order of priority)  |
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| <b>1. General</b>   | <b>No text required</b>   |
| <b>2. Legal System and Related Institutional Measures</b> |   |
| Criminalisation of Money Laundering (R.1, 2)              | <p><b>The laws of the Commonwealth of Dominica should be amended to:</b></p> <ul style="list-style-type: none"> <li>• Cover conversion or transfer as two additional physical and material elements of the money laundering offence;</li> <li>• Criminalize all the Designated categories of offences and in particular Piracy (Pirates at Sea) and Extortion.</li> <li>• Adequately detail what administrative proceedings may be employed in dealing with legal persons who have been found criminally liable;</li> <li>• Provide for civil and administrative sanctions;</li> <li>• Adopt an approach that would result in more effective use of existing legislation</li> </ul>   |
| Criminalisation of Terrorist Financing (SR.II, R.32)      | <p><b>The laws should be amended to:</b></p> <ul style="list-style-type: none"> <li>• State that Terrorist financing offences do not require funds be linked to a specific terrorist act(s);</li> <li>• State that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur ;</li> <li>• Permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance;</li> <li>• To permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.</li> <li>• To address civil or administrative penalties; and;</li> <li>• Ensure that the definition of terrorist, terrorist act and terrorist organization are in line with the term terrorist act as defined</li> </ul> |

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| <p>Confiscation, freezing and seizing of proceeds of crime (R.3)</p> | <p><b>by the FATF</b></p> <ul style="list-style-type: none"> <li>• <b>The laws or measures in the Commonwealth of Dominica should allow an initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice, unless this is inconsistent with fundamental principles of domestic law.</b></li> <li>• <b>There should be authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</b></li> </ul>  |
| <p>Freezing of funds used for terrorist financing (SR.III)</p>       | <p><b>The Commonwealth of Dominica should:</b></p> <ul style="list-style-type: none"> <li>• <b>Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions</b></li> <li>• <b>Implement effective mechanisms for communicating actions taken under the freezing mechanisms</b></li> <li>• <b>Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999)</b></li> <li>• <b>Issue clear guidance to financial institutions and persons that may be in possession of targeted funds or assets or may later come into possession of such funds or assets.</b></li> </ul> |
| <p>The Financial Intelligence Unit and its functions (R.26)</p>      | <ul style="list-style-type: none"> <li>• <b>The FIU should be made the central authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing.</b></li> <li>• <b>The FIU should have more control over its budget since the control currently maintained by the Ministry could impact the Unit's operation and to some extent its independence.</b></li> <li>• <b>Although the security of the database seems adequate, backup data should be housed off-site to ensure that in the event of a</b></li> </ul>   |

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|   | <p>catastrophe at the Unit there would be the opportunity for the recovery of data.</p> <ul style="list-style-type: none"> <li>• The FIU should prepare annual reports which they would be able to disseminate to the public which would enhance awareness.</li> </ul>   |
| <p>Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</p> | <ul style="list-style-type: none"> <li>• Provisions should be made in domestic legislation that allow authorities investigation ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.</li> <li>• Technical resource- The Police Force should be provided with better communication equipment.</li> <li>• With the increased demand on the Police the numbers in the police contingent should be increased.</li> <li>• Special training in Money Laundering and Terrorist Financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property.</li> <li>• Legislation should be put in place to provide investigators of Money Laundering and Terrorist Financing cases with a wide range of investigative techniques including controlled delivery.</li> <li>• There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.</li> <li>• The SFTA should be amended to provide investigators with the ability to compel the production of business transaction records.</li> <li>• There should be explicit legal provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records.</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.</li> <li>• There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity.</li> </ul>  |
| <p>2.7 Cross Border Declaration &amp; Disclosure (SR IX)</p>                     | <ul style="list-style-type: none"> <li>• Customs should be given the authority to request further information relative to the origin of currency or bearer negotiable instruments</li> <li>• Some formal arrangements should be entered into for the sharing of information on cross border transportation and seizures with International counter-parts and other competent authorities.</li> <li>• Provide the legislative provisions that would allow cash or bearer negotiable instruments and the identification data of the bearer to be retained in circumstances involving suspicion of ML or TF</li> <li>• Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations</li> <li>• Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanctions, which can be applied to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF</li> </ul> |
| <p><b>3. Preventive Measures – Financial Institutions</b></p>                    |   |
| <p>3.1 Risk of money laundering or terrorist financing</p>                       |   |
| <p>Customer due diligence, including enhanced or reduced measures (R.5 to 8)</p> | <p><b>Recommendation 5</b></p> <ul style="list-style-type: none"> <li>• The legislation should entail requirement to undertake CDD measures according to recommendation 5.</li> <li>• The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be</li> </ul>  |

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|  | <p><b>enforceable.</b></p> <ul style="list-style-type: none"> <li>• Requirement for ongoing due diligence on the business relationships should be enforceable.</li> <li>• Requirement to take reasonable measures to determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable.</li> <li>• The Guidance Notes should include additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.</li> <li>• Financial institutions should to perform enhanced due diligence for higher risk customers</li> <li>• Financial institutions are required to perform CDD measures on existing clients if they have anonymous accounts.</li> <li>• The bank should not keep an exempted list for business clients so that they do not require to fill out a source of fund declaration form for each deposit</li> </ul> <p><i>Recommendation 6</i></p> <ul style="list-style-type: none"> <li>• Recommendation 6 should be enforceable on the financial institutions.</li> <li>• Financial institutions should apply risk based approach on their PEPs clients, and continue to do enhanced due diligence on them.</li> </ul> <p><i>Recommendation 7</i></p> <ul style="list-style-type: none"> <li>• The specific requirement to understand and document the nature of the respondent bank's business and reputation, supervision of the institution and if they have been subjected to money laundering or terrorist financing activities or regulatory action.</li> <li>• Financial institutions should be required to assess all the AML/CFT controls of</li> </ul> |
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|   | <p><b>respondent.</b></p> <ul style="list-style-type: none"> <li>• <b>The financial institutions should document the AML/CTF responsibility of each institution in a correspondent relationship</b></li> <li>• <b>Financial institutions should require senior management approval before establishing new correspondent relationships.</b></li> <li>• <b>Financial institutions should ensure that the correspondent relationships if involved in payable through accounts that they normal CDD obligations as set out in R5 have been adhered to and they are able to provide relevant customer identification upon request.</b></li> </ul> <p><b><i>Recommendation 8</i></b></p> <ul style="list-style-type: none"> <li>• <b>Financial institutions should be required to have measures aimed to prevent the misuse of technological developments.</b></li> </ul> |
| <p>Third parties and introduced business (R.9)</p>                | <ul style="list-style-type: none"> <li>• <b>Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process detailed in Recommendation 5.3 to 5.6.</b></li> <li>• <b>The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made not enforceable.</b></li> <li>• <b>Competent authorities should take into account information on countries which apply FATF Recommendations in determining in which country the third party can be based.</b></li> </ul>   |
| <p>Financial institution secrecy or confidentiality (R.4)</p>     | <ul style="list-style-type: none"> <li>• <b>Dominica should enact provisions allowing the ECCB, FSU, the MLSA, the registered agents to share information with other competent authorities</b></li> </ul>  |
| <p>Record keeping and wire transfer rules (R.10 &amp; SR.VII)</p> | <p><b><i>Special Recommendation VII</i></b></p> <ul style="list-style-type: none"> <li>• <b>It is recommended that the review of Dominica’s legislative and regulatory</b></li> </ul>  |

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|   | <p>provision take consideration of all requirements of the Recommendation and appropriate legislation be enacted as soon as possible.</p>   |
| <p>Monitoring of transactions and relationships (R.11 &amp; 21)</p>                     | <p><b><i>Recommendation 11</i></b></p> <ul style="list-style-type: none"> <li>• The Commonwealth of Dominica should consider amending its legislation so as to mandate financial institutions to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose.</li> <li>• The Commonwealth of Dominica should consider amending its legislation so that the financial institutions would be mandated to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose and set forth their findings in writing and to make such findings available to competent authorities and auditors.</li> </ul> <p><b><i>Recommendation 21</i></b></p> <ul style="list-style-type: none"> <li>• Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.</li> <li>• There should be requirements to allow for the application of counter-measures to countries that do not or insufficiently apply the FATF Recommendations.</li> </ul> |
| <p>Suspicious transaction reports and other reporting (R.13-14, 19, 25 &amp; SR.IV)</p> | <p><b><i>Recommendation 13</i></b></p> <ul style="list-style-type: none"> <li>• The financial institutions should be required to report STRs to the FIU.</li> <li>• The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.</li> <li>• The obligation to make a STR related to money laundering should apply to all offences to be included as predicate offences</li> </ul>  |

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|  | <p><b>under Recommendation 1.</b></p> <ul style="list-style-type: none"> <li>• <b>The reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts.</b></li> </ul> <p><i>Recommendation 14</i></p> <ul style="list-style-type: none"> <li>• <b>The offence with regards to tipping off should be extended to directors, officers and employees of financial institutions.</b></li> </ul> <p><i>Recommendation 19</i></p> <ul style="list-style-type: none"> <li>• <b>The Commonwealth of Dominica is advised to consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FIU. In this regard the Commonwealth of Dominica should include as part of their consideration any possible increases in the amount of STRs filed, the size of this increase compared to resources available for analyzing the information.</b></li> </ul> <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> <li>• <b>The Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs.</b></li> </ul> <p><i>Special Recommendation IV</i></p> <ul style="list-style-type: none"> <li>• <b>The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organizations or those who finance terrorism.</b></li> </ul> |
| <p>Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</p> | <p><i>Recommendation 15</i></p> <ul style="list-style-type: none"> <li>• <b>The requirement to maintain independent audit functions to test compliance with procedures, policies and controls should be adhered to.</b></li> <li>• <b>Requirement of the financial institutions to have internal procedures with regards to money laundering should also include terrorist financing.</b></li> </ul> <p><i>Recommendation 22</i></p> <ul style="list-style-type: none"> <li>• <b>Inform their home country supervisor when a foreign branch or subsidiary is unable to</b></li> </ul>  |

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|  | <p>observe appropriate AML/CTF measures because this is prohibited by local laws, regulations and measures.</p>   |
| <p>Shell banks (R.18)</p>  | <ul style="list-style-type: none"> <li>• Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks</li> <li>• Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>  |
| <p>The supervisory and oversight system - competent authorities and SROs<br/>Role, functions, duties and powers (including sanctions) (R.23, 29, 17, &amp; 25)</p> | <p><b>R17-</b></p> <ul style="list-style-type: none"> <li>• There should be a competent body designated to impose administrative and civil sanctions/fines for non-compliance with the requirements of the AML/CFT legislation/regime. As well the legislation should define the process for applying these sanctions.</li> </ul> <p><i>Recommendation 23</i></p> <ul style="list-style-type: none"> <li>• The FSU should be entrusted with the legal authority to ensure compliance with the MLPA, its Regulations and the Anti-Money Laundering Guidance Notes. As well the Unit should implement a structured work programme, approved by the Financial Director to ensure ongoing on-site and off-site monitoring. These measures should be applicable to all institutions under the regulation and supervision of the FSU. The Unit should also be legally entrusted with the responsibility to license or register DNFBP'S and those financial institutions not under the purview of the ECCB.</li> </ul> <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> <li>• The FSU in addition to the MLSA should issue specific guidance notes or other targeted guidelines that can assist financial institutions other than domestic commercial banks, as well as DNFBP's to effectively apply the provisions of the MPLA, and its Regulations.</li> </ul> |

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|  | <p><i>Recommendation 29</i></p> <ul style="list-style-type: none"> <li>• The FSU should be legally entrusted with the authority to monitor and ensure compliance with the AML/CFT requirements. As well the Unit should be able to conduct on-sites, request off site information and should be entrusted also with adequate powers of enforcement against its licensees and registrants that are not subject to the Off Shore Banking Act or the Banking Act.</li> </ul>   |
| <p>Money value transfer services (SR.VI)</p>                                   | <ul style="list-style-type: none"> <li>• With the exception of MVT service providers that are supervised and regulated under the Baking Act, the Off Shore Banking Act and the Cooperative Societies Act, there is no specific requirement for these entities to be licensed or registered. The FSU is charged with the responsibility of supervising and regulating these institutions, however the Unit has no legal basis to enforce or discharge its functions.</li> <li>• There is no specific regulatory authority charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime.</li> <li>• The FSU does not license or register these entities, nor does it provide ongoing supervision or monitoring. It is recommended that the FSU be entrusted with the responsibility of ensuring monitoring and compliance with the requirements of the AML/CFT regime.</li> <li>• The FSU should be required to institute a programme of on-going onsite and off site monitoring for other regulatory and supervisory purposes.</li> </ul> |
| <p><b>4. Preventive Measures –Non-Financial Businesses and Professions</b></p> |   |
| <p>Customer due diligence and record-keeping (R.12)</p>                        | <ul style="list-style-type: none"> <li>• The deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report are also applicable to DNFBBPs. The implementation of the specific recommendations in the relevant sections of this report will also be applicable to DNFBBPs.</li> </ul>  |

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|   | <ul style="list-style-type: none"> <li>• While Dominica has passed legislation capturing DNFBPs under its AML/CFT regime, there is no competent authority that ensures these entities are subject to monitoring and compliance with the requirements of the MPLA or the Guidance Notes.</li> <li>• The licensed agents should be subject to ongoing monitoring and compliance given the role that they play in the keeping of and maintenance of beneficial owners' information for IBC's and other companies that they register.</li> <li>• There should be some form of data capture during the year by the FSU outside of the reporting of STR's as required by the MPLA to the MLSA.</li> </ul> |
| <p>Suspicious transaction reporting (R.16)</p>          | <ul style="list-style-type: none"> <li>• There is no specific body charged with the duty of applying sanctions to DNFBPs without requiring a court order. As well the FSU does not conduct ongoing monitoring and compliance checks on these entities or persons to ensure that the requirements of R 13-14, R 15 and 21 are complied with, particularly as regards the money remitters and licensed agents. It is recommended that a competent authority (FSU) be entrusted with the legal responsibility of imposing sanctions or fines as well as conducting ongoing monitoring and compliance.</li> </ul>   |
| <p>Regulation, supervision and monitoring (R.24-25)</p> | <ul style="list-style-type: none"> <li>• There is no comprehensive regulatory and supervisory regime that ensures compliance by casinos and other DNFBP's with the AML/CFT regime that is in place. As well, there is no designated regulatory body to discharge that function as well as to apply relevant sanctions/fines for non-compliance.</li> <li>• It is recommended that a competent body, the FSU be charged with the responsibility of monitoring and ensuring compliance with the requirements of the regime as well as imposing sanctions.</li> <li>• The AML/CFT legislation should also detail the process to be adopted when applying</li> </ul>                                    |

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|  | <b>sanctions.</b>   |
| Other designated non-financial businesses and professions (R.20)                   | <ul style="list-style-type: none"> <li>• <b>More on-site inspections are required.</b></li> <li>• <b>Modern secured transaction techniques should be scheduled under the Money Laundering (Prevention) Act, 2000 (Chapter 40:07),</b></li> </ul>  |
| <b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>            |   |
| Legal Persons – Access to beneficial ownership and control information (R.33)      | <ul style="list-style-type: none"> <li>• <b>There is a need to ensure that licensed agents are subjected to ongoing monitoring and supervision in such areas as maintenance of up-to-date information on beneficial owners, licensing and registration, particularly for IBC's incorporated by the agent.</b></li> <li>• <b>It is recommended that the FSU institute the process of ongoing monitoring and compliance for both AML/CFT purposes and for general supervisory and regulatory purposes.</b></li> <li>• <b>There should be measures to ensure that bearer shares are not misused for money laundering.</b></li> </ul>   |
| Legal Arrangements – Access to beneficial ownership and control information (R.34) | <ul style="list-style-type: none"> <li>• <b>Information on the settlors, trustees and beneficiaries of Trusts should be made available to the Registrar or if not recorded there should be available from the registered agent on request without the written consent of the Trustee.</b></li> <li>• <b>Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion.</b></li> <li>• <b>Even though currently there are no trust activities in Dominica, the authorities in Dominica should include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trust.</b></li> </ul> |
| Non-profit organisations (SR.VIII)   | <ul style="list-style-type: none"> <li>• <b>The Social Welfare Department should be charged with the supervision of the NGOs</b></li> </ul>   |

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|  | <p>and be adequately staffed to take on this task.</p> <ul style="list-style-type: none"><li>• Sanctions should be put in place for non-compliance as it relates to the annual reporting requirements.</li><li>• NGOs should be required to report unusual donations to the Supervisory Authority</li><li>• NGOs should be sensitized to the issues of AML/CFT including how they could be used for terrorist financing.</li><li>• NGOs should be encouraged to apply fit and proper standards to officers and persons working in and for the NGO.</li><li>• The requirements of the MLPA, its Regulations and the Guidance Notes should be extended to NPOs and their activities.</li><li>• The Authorities should undertake a review of the domestic laws and regulations that relate to Non-profit organizations.</li><li>• Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.</li><li>• Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.</li><li>• The Authorities should monitor the NPOs and their international activities.</li><li>• Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.</li><li>• There should be measures to protect NPOs from terrorist abuse.</li><li>• There should be sanctions for violation rules in the NPO sector</li></ul> |
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| <b>6. National and International Co-operation</b>        |   |
| National co-operation and coordination (R.31 )           | <ul style="list-style-type: none"> <li>• <b>The Supervisory Authority needs to expand its activity so as to ensure that all entities who may be susceptible to be used for Money laundering or Terrorist Financing are aware of these dangers and take the necessary precautions.</b></li> <li>• <b>There should be established and maintained regular inter-agency meetings where policies and actions are developed.</b></li> <li>• <b>There should be a closer link between the Supervisory Authority and the DNFBPs.</b></li> <li>• <b>There should be measures to allow the authorities to coordinate in Dominica with each other concerning developments with regards to money laundering and terrorist financing.</b></li> </ul> |
| The Conventions and UN Special Resolutions (R.35 & SR.I) | <ul style="list-style-type: none"> <li>• <b>The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – (<i>The Palermo Convention</i>) and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, &amp; 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)</b></li> </ul>  |
| Mutual Legal Assistance (R.36-38 & SR.V)                 | <ul style="list-style-type: none"> <li>• <b>To avoid conflicts of jurisdiction, the Commonwealth of Dominica should consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.</b></li> <li>• <b>Commonwealth of Dominica should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</b></li> <li>• <b>The Commonwealth of Dominica should</b></li> </ul>  |

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|  | <p>consider authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.</p> <ul style="list-style-type: none"> <li>• In the Commonwealth of Dominica, mutual legal assistance cannot be rendered in the absence of dual criminality, in particular, for less intrusive and non compulsory measures.</li> <li>• The laws should clarify whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.</li> <li>• The laws should clarify whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.</li> </ul> |
| <p>Extradition (R.39, 37, SR.V &amp; R.32)</p>       | <ul style="list-style-type: none"> <li>• There should be in the Commonwealth of Dominica measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay.</li> <li>• In the Commonwealth of Dominica the laws should not prohibit the extradition of nationals.</li> <li>• There should be measures or procedures adopted in the Commonwealth of Dominica that will allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.</li> </ul>   |
| <p>Other Forms of Co-operation (R.40 &amp; SR.V)</p> | <ul style="list-style-type: none"> <li>• In the Commonwealth of Dominica it should be made clear that a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.</li> <li>• The examiner could find no evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal</li> </ul>  |

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|  | <b>professional privilege or legal professional secrecy applies).</b>  |
| <b>7. Other Issues</b>                   |  |
| 7.1 Resources and statistics (R.30 & 32) | <ul style="list-style-type: none"> <li>• <b>The staff of the Unit should be expanded to include a database administrator.</b></li> <li>• <b>The FSU is not adequately staffed. The Unit’s request for additional staff should be adhered to. It is also recommended that a restructuring of the Unit should be considered so that its regulatory and supervisory functions can be discharged effectively.</b></li> <li>• <b>The FSU should consider the establishment of databases to allow for effective off-site supervision.</b></li> <li>• <b>Technical resource- The Police Force should be provided with better communication equipment.</b></li> <li>• <b>With the increased demand on the Police the numbers in the police contingent should be increased.</b></li> <li>• <b>Special training in money laundering and terrorist financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property</b></li> <li>• <b>There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.</b></li> <li>• <b>There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.</b></li> <li>• <b>There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity</b></li> <li>• <b>Databases should be established which can be shared by all authorities responsible for</b></li> </ul> |

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|   | <p><b>monitoring and ensuring compliance with the AML/CFT regime in Dominica.</b></p> <ul style="list-style-type: none"> <li>• <b>With respect to MLA and other international request the Commonwealth Dominica should maintain statistics on the nature of such requests and the time =frame for responding.</b></li> </ul> |
| Other relevant AML/CFT measures or issues |  |
| General framework – structural issues     |  |

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

| <b>Relevant sections and paragraphs</b> | <b>Country Comments</b> |
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## **ANNEXES**

**Annex 1: List of abbreviations**

**Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**

## ANNEXE 1

### ABBREVIATIONS

| <b>No.</b> | <b>ACRONYMS</b>   | <b>MEANING</b>                                |
|------------|-------------------|---|
| 1          | FIU/Unit          | Financial Intelligence Unit                   |
| 2          | MLSA              | Money Laundering Supervisory Authority        |
| 3          | NJIC              | National Joint Intelligence Centre            |
| 4          | CID               | Criminal Investigations Department            |
| 5          | Interpol          | International Police                          |
| 7          | SFTA              | Suppression of the Financing of terrorism Act |
| 8          | MLPA              | Money Laundering (Prevention) Act             |
| 9          | POCA              | Proceeds of Crime Act                         |
| 10         | MACMA             | Mutual Assistance in Criminal Matters Act     |
| 11         | FSU               | Financial Services Unit                       |
| 12         | ECSC              | Eastern Caribbean Supreme Court               |
| 13         | CISNET            | CARICOM Intelligence Sharing Network          |
| 14         | CDPF              | Commonwealth of Dominica Police Force         |
| 15         | SRO               | Self Regulatory Organisations                 |
| 16         | GN/AML GN<br>2008 | Guidance Notes 2008                           |
| 17         | CTR               | Currency Transaction Reporting                |
| 18         | MLAT              | Mutual Legal Assistance Treaty                |
| 19         | CCMA              | Customs Control & Management Act              |

CONTRIBUTING BODIES:

| No. | DEPARTMENTS/UNITS/MINISTRIES/AGENCIES   |
|-----|---|
| 1   | Financial Intelligence Unit (Lead Coordinator)                                |
| 2   | Financial Services Unit   |
| 3   | Ministry of Tourism and Legal Affairs   |
| 4   | Ministry of Community Development   |
| 5   | Inland Revenue Department   |
| 6   | Customs and Excise Department   |
| 7   | Commonwealth of Dominica Police Force   |
| 8   | Ministry of Foreign Affairs   |
| 9   | Ministry of Finance   |
| 10  | Establishment, Personnel and Training   |
| 11  | Public Service Commission   |
| 12  | Director of Audit   |
| 13  | Maritime Administration Unit  |
| 14  | Social Welfare Division   |
| 15  | Institute of Chartered Accountants of the Eastern Caribbean Dominican Chapter |

## Annex 2

### **Bodies met during the onsite visit**

Minister of Legal Affairs  
Attorney General  
Permanent Secretary Ministry of Tourism and Finance  
Offshore Regulator Financial Services Unit  
Money Laundering Supervisory Authority  
Dominica Cooperative Societies League  
Financial Intelligence Unit  
Superintendent of police in charge of the Criminal Investigations Department (CID)  
Deputy Comptroller of Customs  
Officer (Acting) in charge of Immigration  
Officer in charge of INTERPOL  
Director of Public Prosecutions  
Coordinator of National Joint Intelligence Centre (NJIC)  
ECCB Representative  
Money remitter – Fast Cash  
National Bank of Dominica  
First Caribbean International Bank (Barbados LTD)  
Bank of Nova Scotia  
Roseau Cooperative Credit Union Limited  
Central Credit Union  
Griffon Bank Limited – Offshore bank  
Royal Bank of Canada  
Jewellers International  
CCP Inc – Registered Agent  
CLICO International Life Insurance Ltd  
Auto Trade Limited – Car Dealership  
Safe Haven Real Estate

2009

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