



Anti-money laundering and counter-terrorist financing measures

Barbados

2nd Enhanced Follow-Up Report &
Technical Compliance Re-Rating

February 2021





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BARBADOS: 2nd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The mutual evaluation report (MER) of Barbados was adopted in November 2017. This is Barbados' 2nd Enhanced Follow-up Report (FUR). This follow-up report analyses Barbados' progress in addressing certain technical compliance deficiencies which were identified in Barbados' MER. Re-ratings are given where sufficient progress has been made. This report also analyses Barbados' progress in implementing new requirements relating to FATF Recommendations which have changed since Barbados' assessment: R. 2, 5, 7, 15, 18 and 21. This report does not address what progress Barbados has made to improve its effectiveness.

2. FINDINGS OF THE MER AND 2nd FUR

2. The MER rated Barbados as follows for technical compliance:

Table 1. Technical compliance ratings, November 2017

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	PC	LC	LC	NC	NC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	LC	C	LC	LC	LC	PC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	LC	PC	PC	LC	C	C	LC	PC	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	PC	PC	PC	LC	PC	LC	PC	LC	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Barbados' Mutual Evaluation Report, February 2018,

<https://www.cfatf-gafic.org/documents/4th-round-meval-reports/9146-barbados-4th-round-mer-1/file>

3. Given these results and Barbados' level of effectiveness, the CFATF placed Barbados in enhanced follow-up.¹ The following experts assessed Barbados' request for technical compliance re-rating with support from Legal Advisor, Sunita Ramsumair and the CFATF Secretariat's Mutual Evaluation Team:

- Ms. Kylene Dowden, Director, Legal Services, Financial Intelligence Unit of Trinidad and Tobago, Trinidad and Tobago

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the CFATF's policy that deals with members with significant deficiencies (for technical compliance and/or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.



- Ms. Nihaila Sambo, Bank Examiner, Central Bank of Curaçao and Sint Maarten, Curaçao

4. Section 3 of this report summarises Barbados' progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Barbados' progress to improve its technical compliance by:
- a) addressing certain technical compliance deficiencies identified in the MER, and
 - b) implementing new requirements where the FATF Recommendations have changed since Barbados' assessment (R. 2, 5, 7, 15, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER.

6. Barbados has made progress to address the technical compliance deficiencies identified in the MER and requested a re-rating (including the revised standards) in relation to the following Recommendations:

- R. 7 and 8 which were rated NC;
- R. 1, 4, 19, 20, 23, 24, 29, 32, 33, 34 and 38 which were rated PC;
- R. 2, 5, 18 and 21 which were rated LC; and
- R. 15 which was rated C.

7. As a result of this progress, Barbados has been re-rated on Recommendations 1, 4, 7, 8, 19, 20, 29, 32, 33, 34 and 38. For Recommendations 2, 5, 18, 23 and 24 the ratings remain and for Recommendations 15 and 21 the rating has been downgraded.

3.1.1. Recommendation 1 (originally rated PC)

8. In its 4th Round MER, Barbados was rated PC with R.1. The key technical deficiencies related to the fact that the NRA was conducted but limited in risks and vulnerabilities identified; the NRA did not assess the threats and vulnerabilities; no application of a risk based on the limitation of the NRA; no process of the information used; no policies and procedures have been created because of the NRA; and no specific obligations for FIs and DNFBPs to take enhance measures to manage and mitigate risk. Other deficiencies included the response provided by Barbados does not address criterion 1.3; no mechanisms to provide information on the results of the NRA to all relevant competent authorities, SRBs, FIs and DNFBPs; and no information provided as to whether DNFBPs are required to implement the obligations of R.1.

9. In addressing the deficiencies, Barbados conducted an updated NRA in January 2019 based on threats and vulnerabilities identified using data for the period 2017-2018. Barbados'



NRA gives the commitment that the NRA will be updated on a 2-year cycle. The methodology used for Barbados' 2019 NRA enabled the country to gather a comprehensive view of the extent to which criminals launder proceeds of crime or finance terrorism through Barbados' financial and non-financial sectors and the vulnerabilities of these sectors to these threats. The consequential impact of these threats, after consideration of the vulnerabilities of each sector, resulted in Barbados' overall risk rating of the financial and non-financial sectors. Barbados also conducted an assessment of the vulnerabilities of the legal persons that are formed within its jurisdiction which took into consideration the threats which are faced by these entities. This assessment enabled Barbados to obtain a better understanding of which legal persons were more at risk to the threats identified. The methodology utilised also enabled the engagement of the Barbados Revenue Authority, the Central Bank of Barbados, the Customs and Excise Department, the Royal Barbados Police Force, the Financial Intelligence Unit, the Financial Services Commission, the International Business Division, the Office of the Attorney General, the Office of the Director of Public Prosecutions and the Registrar of Corporate Affairs & Intellectual Property Office. This represents a comprehensive cross section of the competent authorities in Barbados which are engaged in the AML/CFT regime, including the financial sector and non-financial sector regulators, law enforcement authorities and prosecutorial authorities.

10. The NRA focused on the identification and assessment of inherent ML/TF threats and the residual risk after taking into consideration mitigating factors and the vulnerabilities of the financial and non-financial sectors including legal persons. It took into consideration the money laundering and terrorist financing threats as well as the vulnerabilities of the Banking Sector, which included MVTs, the Non-Banking Sector, which included credit unions and the securities sector, and other unregulated persons which included standalone credit card issuers, money lenders and VASPs. The vulnerabilities were also assessed for the DNFBPs operating in Barbados as well as NPOs and Legal Persons. The threat assessments considered quantitative factors such as the value of the proceeds of crime generated for each predicate offence and the extent to which FIs and DNFBPs were being misused for ML and TF, as well as qualitative factors, such as the criminal actors' knowledge, skills, expertise, networks and resources. Barbados ensured that its threat assessment took into account the full range of predicate offences designated by the FATF.

11. Barbados' NRA identified that the highest threats for ML were fraud and drug trafficking, followed by money laundering as a stand-alone offence. The threat assessment for TF revealed that Barbados had a low threat of TF, however it also considered its proximity to jurisdictions it believed had high threats of terrorism and recognised that a threat of being misused for TF was still possible.

12. The highest sectors at risk of ML/TF were found with its Lawyers, Real Estate Agents and Corporate and Trust Service Providers and certain Financial Institutions namely, Long Term Insurers and International Banks (Commercial Operations), Commercial banks, Deposit-Taking Finance Companies, Non-Deposit Taking Finance Companies, and Unregulated Cards.

13. When assessing the overall risk of its legal persons, Barbados considered the threats identified as they related to the inherent vulnerabilities of the legal persons. Barbados' Summary of Assessed Inherent Risk Levels by Legal Persons includes an assessed risk level



for all the legal persons that were identified in its 2018 MER. These are namely, Foundations, Limited Partnerships, Private Trust Companies, International Trusts and domestic trusts registered under the Trust (Miscellaneous Provisions) Act. Assessed Risk Levels for foundations and limited partnerships were found to be medium, private trust companies, international trusts and domestic trusts were found to be high risk.

14. Barbados' 2018 Mutual Evaluation noted that gambling (gaming arcades) was identified as a higher risk area based on the volume and prevalence of the said activity in the jurisdiction and that the ML/TF risks associated with gaming institutions should be assessed, as a priority action, and if merited gaming institutions should be regulated and supervised for AML/CFT purposes. A review of Barbados' NRA reveals that only casino gambling was assessed and is prohibited while cruise ships are berthed in Barbados. There is no indication in the NRA whether the gambling (gaming arcades) or gambling institutions as specified in the 2018 MER were assessed in the NRA. Similarly, no risk assessment was done for legal arrangements as highlighted to be done in the 2018 MER.

15. Barbados' mechanism for dissemination of the results of the NRA was built into its National Action Plan. Additionally, Barbados' Supervisors Committee which comprises the CBB, FSC, IBU, CAIPO and the FIU, formulated a multiyear outreach plan, targeted at all supervised entities, including NPOs, Charities, Banks, Credit Unions, Insurance, Investment Advisors, CTSPs, DNFBPs, MVTs, as well as Regulators and Government which included disseminating the results of the NRA. Furthermore, the FIU incorporated training on the NRA in its 2019 training plan as well as made provision for continued training for entities identified in the NRA as medium and high risk. The results of the NRA can be found on the websites of all Supervisors and is easily accessible to the public.

16. As a result of the NRA, Barbados has implemented various policies and procedures including the National AML/CFT Strategy, the "Follow the Money" Policy and the National Action Plan. While low risk areas were identified, Barbados opted to continue to apply all of the FATF Recommendations to all FIs and DNFBPs. Therefore, all financial institutions and DNFBPs continue to be required to take all actions.

17. Further, the Supervisory Authorities have each implemented risk based supervisory frameworks which include sector assessment methods and questionnaires for the collection of relevant data in line with the NRA. The RBPF and the DPP have increased human resources for the purpose of ML/TF investigations and prosecution. This appears to be allocated based on the assessment of drug trafficking and fraud as being of the highest threat to ML in Barbados. The IBU also received additional resources for the oversight of CTSPs which was rated as very high risk. The IBU also enhanced its supervision of these entities with the creation of AML/CFT onsite and offsite manuals, a working paper for the conduct of onsite inspections, the implementation of a supervisory policy procedure and enhanced collection of risk related data. Real Estate Agents, which also fell into the High-Risk Category, were considered by Barbados' Supervisory Committee and included under the broad category of non-TCSP DNFBPs that would be supervised by the Compliance Unit of the AMLA. Barbados has indicated that this Unit was recommended to Barbados' Cabinet for creation via a report from the Supervisor's Committee which took into consideration the findings of the new NRA.



18. Additionally, the CBB updated its licensees' risk profiles through the most recent NRA and the FSC has strengthened its supervisory framework based on the outcomes of the NRA through legislative amendments, enhancement of AML/CFT Guidelines, upgrading of supervisory manuals, the development of entity risk profiles and the introduction of risk assessment questionnaires to keep these risk profiles up to date. These updates are in keeping with the sectoral vulnerability assessment which identified entities under the supervision of the CBB as having highest inherent risks for ML/TF.

19. Updated guidelines were published by the FSC, IBU and CBB to provide guidance to their supervised entities on implementing a risk based approach to their AML/CFT frameworks. The guidance explains circumstances in which enhanced due diligence would be applicable and also requires the supervised entities to incorporate the outcomes of the NRA into their risk assessments.

20. The FSC's guidelines also indicated higher risk scenarios for their supervised entities and specify that simplified due diligence cannot be applied in such circumstances. Section 5.1 of the said guidelines guides the institutions to the use of a risk-based approach and specifies that they must apply enhanced due diligence to customers where the risk of being used for money laundering or terrorist financing is high.

21. The AMLA, in conjunction with the Registrar and the FIU, also approved similar guidelines for NPOs and the DNFBP sector which includes Attorneys-at-Law, Accountants, Real Estate Agents, Dealers in Precious Metals and Stones. When compared to the DNFBPs identified in Barbados' NRA, these appear to cover all DNFBPs in the jurisdiction. The latter guidelines were issued in accordance with section 17 of the MLFTA.

22. The IBU's guidelines to TCSPs, which notably pre-dated the 2018 MER, contain guidance on the application of a Risk Based Approach and identifies an enhanced due diligence section where if an institution determines that a customer is high risk because of the customer's business activity, ownership structure, nationality, residence status, anticipated or actual volume and types of transactions, the institutions should apply appropriate countermeasures in line with the higher risks identified.

23. Barbados has indicated that DNFBPs are required to implement the obligations under R.1. The Combatting Terrorist Financing Guidelines for Charities and Non-Profit Organisations as issued by the AMLA in December 2019 at section 6.0 states the importance for charities and NPOs to understand the risks they face and take appropriate measures to mitigate these risks. Reference is made in the Guidelines to the MLFTA which provides the legislative authority compelling charities and NPOs to identify, assess and understand the ML/TF risks they are exposed to and to take the required AML/CFT measures to effectively and efficiently mitigate and manage these risks. Section 6.0 also indicates that charities and NPOs should have a Risk Based Approach which allows them to document their risk assessments. Section 6.1 identifies the criteria for charities and NPOs to use in determining risk, including size, international activities and geographical and other exposures.

24. The AML/CFT/PF Guidelines for Attorneys at law issued by AMLA in November 2019, sets out at section 7.0 the requirement in the MLFTA for the application of a risk-based approach in this sector. Section 7.1 indicates that the risk assessment may be informed by the



findings of the NRA and that the risk assessment should be subject to ongoing monitoring and review during the course of the client relationship. The Guideline for Accountants, Dealers in Precious Metals and Dealers in Precious Stones and Real Estate Agents, revised and issued by AMLA in November 2019 contains the same provisions as the guidelines for attorneys at law, at sections 7.0 and 9.0 of each of these Guidelines.

25. Paragraph 29 of the IBU 2019 Guidelines indicates that any risk assessments undertaken by TCSPs should be informed by risk assessments conducted by IBU or in a National Risk Assessment. Paragraph 31 of IBU 2019 Guidelines outlines the key elements of a risk-based approach to be applied by TCSPs. TCSPs are therefore required to implement the requirements of R. 1.

26. Lastly, as indicated above, a review of Barbados' NRA reveals that casino gambling is prohibited while cruise ships are berthed in Barbados and even if gambling occurs prior to entering and after departing Barbados, there is no record of the involvement of individuals and/or organised crime groups or individuals being detained with cash or bearer negotiable instruments at ports of entry. Barbados' gaming sector was therefore rated low risk. It may be inferred that for this reason, casinos are not required to implement the requirements of R. 1.

27. **On this basis, Barbados is re-rated as largely compliant with R.1.**

3.1.2. Recommendation 4 (originally rated PC)

28. In its 4th Round MER, Barbados was rated PC with R.4. The key technical deficiencies related primarily to the confiscation of instrumentalities used or intended to be used to commit a scheduled offence is not possible if the instrumentalities are gifted or placed in the control of a third party; there are no provisions which enable the confiscation of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisation. The requirement to confiscate property of corresponding value is not permitted. A fine cannot substitute equivalent value confiscation; the voiding of actions includes the ability to intervene where a transaction (conveyance or transfer) has already occurred does not appear to be covered in the legislation; the issue of third parties does not appear to be covered; and no mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated. The MER also noted that the measures at s.39 of the MLFTA seem restricted to supervisory enforcement of FIs.

29. In addressing these deficiencies, Barbados enacted a new Proceeds and Instrumentalities of Crime Act, 2019 (PIOCA) which, *inter alia*, makes provisions for the forfeiture and confiscation of the proceeds and instrumentalities of crime when gifted or otherwise placed in the control of third parties.

30. Section 13 of the PIOCA 2019-17 refers to the ability to make a forfeiture order for a "tainted gift" which is defined in section 9 to include a gift of property made by the defendant which was as a result of or in connection with the defendant's criminal conduct. Additionally, the PIOCA enables Barbados to take into consideration the instrumentalities of crime when making a general order for confiscation of the property of a criminal defendant or a third party. Pursuant to section 15 of the PIOCA, the court is required to consider the "recoverable amount". Section 17 of the PIOCA confirms that the "recoverable amount" to be confiscated



from a defendant will include the value of all tainted gifts. This ensures the ability to recover the instrumentalities of crime from a third party.

31. Additionally, recoverable property is defined in section 73 of the PIOCA as including “tainted property” which includes the instrumentalities of crime. Tainted property is recoverable even when disposed of, as long as it is held by a person into whose hands it can be followed. Section 77(3) of the PIOCA goes further to explain that one of the instances in which recoverable property may not be recovered is if it has already been taken into account for the purposes of a confiscation order. The confiscation of the instrumentalities of crime is therefore possible even if the instrumentalities are gifted or placed in the control of third parties.

32. In relation to the lack of provisions to enable the confiscation of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisation; the requirement to confiscate property of corresponding value is not permitted; and a fine not being able to substitute equivalent value confiscation, Barbados amended its Anti-Terrorism Act in 2019 and changed the name to the Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act (ATCPWMDA). The ATCPWMDA criminalises the financing of terrorism, terrorist acts and organisations at section 4. When this is read in conjunction with the PIOCA 2019, the financing of terrorism, terrorist acts and organisations would amount to a criminal offence for the purposes of the PIOCA. Section 13(2)(a) of the PIOCA permits the court, on the application of the prosecutor or on its own motion, where a defendant is convicted by the Court of an offence, to make an order confiscating any benefit that the defendant has obtained as a result of, or in connection with, the commission of the offence. For clarity in the operation of this section, it is useful to note that the confiscation of the “benefit” obtained as a result of or in connection of the offence, includes the actual property obtained as a result of or in connection with the offence, by virtue of section 4(1)(a) of the PIOCA which explains what “benefit from criminal conduct” means for the purposes of the PIOCA.

33. Section 13(2)(b) further permits the Court to make an order forfeiting any property that is an instrumentality of the offence. Instrumentality is defined in the PIOCA as meaning property used in, or in connection with, or intended to be used in, or in connection with, the commission of an offence. Finally, section 13(2)(c) permits the Court to make an order forfeiting any property that the defendant obtained as a result of or in connection with the commission of the offence, including any tainted gift. A tainted gift includes a gift made by a defendant which was obtained by him as a result of his criminal conduct.

34. In consideration of the definition of “confiscation”, it is submitted that the three pronged approach contained in section 13(2) of the PIOCA, which allows for the confiscation of the benefit of the offence, the forfeiture of the instrumentality of the offence and the forfeiture of any property, including any tainted gift, obtained as a result of the commission of the offence, demonstrates that Barbados is able to ensure the permanent deprivation of funds or other assets obtained as a result of or in connection with a criminal offence, including the offence of the financing of terrorism, terrorist acts and organisations, by the Court.

35. Further, Part III of the PIOCA provides for civil proceedings for the recovery of property used or intended to be used for unlawful conduct. Specifically, through section 82 which allows Barbados’ Recovery Authority to apply to the Court for a “recovery order” for



the recovery of property. Section 92 goes further to explain the process through which the Court may make the recovery order which would result in the property being vested in a recovery trustee. Thereafter, in section 93, the recovery trustee would be required to secure the detention, custody or preservation of the property vested in him. “Recoverably Property” is construed in section 73 as property obtained through unlawful conduct as well as tainted property. Tainted property therefore covers the proceeds of crime as well as the instrumentalities of crime. It is also noted in section 73(2) that even if the recoverable property has been disposed of it is still considered recoverable property once it can be followed into the hands of the person who obtained it on a disposal. The provisions of Part III of the PIOCA therefore provides for the permanent deprivation of funds or other assets obtained as a result of or in connection with a criminal offence by the Court and this permanent deprivation would include both the proceeds of crime and the instrumentalities of crime by virtue of the definitions of recoverable property and tainted property. This permanent deprivation through vesting the property in the recovery trustee fulfils the requirement of confiscation of the proceeds and instrumentalities of crime even in civil proceedings.

36. Division 3 of the PIOCA (sections 108 to 118) also provides for the recovery of cash in Summary Proceedings. This Division gives law enforcement in Barbados the ability to recover “cash” which is deemed to be recoverable property or is intended to be used by any person in unlawful conduct.

37. Both Parts III and Division 3 would include the financing of terrorism, terrorist acts and organisations since this has been deemed a criminal offence in Barbados by virtue of section 4 of the ATCPWMDA aforesaid.

38. As it relates to the confiscation of property of a corresponding value of property used or intended for use in, ML/TF or predicate offences section 13(2) of the PIOCA can be interpreted as including the confiscation of property of a corresponding value of that which was the proceeds of criminal conduct or unlawful conduct. This interpretation arises as section 13(2)(a) enables the confiscation of any “benefit” that the defendant has obtained as a result of, or in connection with, the commission of the offence. When one examines the making of a confiscation order pursuant to section 15 of the PIOCA it is clear that the court, in determining the amount to be confiscated, also called “the recoverable amount”, must consider the requirements of section 17. Section 17 specifies that the recoverable amount is an amount equal to the defendant’s benefit from the criminal or unlawful conduct. Reading further, section 18 of the PIOCA explains how the court should determine the actual benefit obtained by the defendant for his criminal conduct. This is done through consideration of the conduct itself and the property obtained during the period the conduct took place. Reverting to section 15 and applying the provisions of sections 17 and 18 to the making of a confiscation order, it can be seen that the court can in fact make a confiscation order requiring the defendant to pay an amount equal to the property obtained during the period the criminal conduct had occurred.

39. Additionally, section 17 allows the court, for the purposes of making an order to confiscate the amount equal to the property obtained by the defendant during the course of the conduct, to take into consideration all the realisable property held by the defendant and all tainted gifts. Realisable property means any property held by the defendant or even the recipient of a tainted gift. Section 7 of the PIOCA and section 10 of the PIOCA respectively



describe how the value of property obtained from criminal conduct and the value of tainted gifts may be calculated.

40. Drawing reference again to FATF’s definition of confiscation, it is noted that Section 13(2)(b) provides for the making of an order for the forfeiture of property that is an instrumentality of the offence. Section 49 of the PIOCA further makes provisions in the event that the court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an offence, but the property cannot be located; has been transferred to a third party and the transfer cannot be voided; is located outside of Barbados; has been substantially diminished in value or rendered worthless; or has been commingled with other property that cannot be divided without difficulty. In such a case the Court may order the person to pay an amount equal to the value of the property to be forfeited. It is therefore submitted that section 49 of the PIOCA provides for the forfeiture of property of a corresponding value to the instrumentalities of an offence through the payment of an amount equal to the value of the property which would be subject to the forfeiture order.

41. Further, Part III of the PIOCA deals with the civil recovery of the proceeds and instrumentalities of crime. Section 74 of the PIOCA which falls within Part III makes provisions for the tracing of the property, including tainted property, even if it has been disposed of by being able to recover property which “represents the original property”. Section 74(1) specifies that such property which represents the original property would also be deemed recoverable property for the purposes of the making of a recovery order under section 92, Part III of PIOCA. Section 74(2) further explains that where a person enters into a transaction whereby recoverable property is disposed of and other property is obtained in place of it, this “replacement property” would represent the original property and would therefore still be recoverable. Although this section does not specifically ensure that the “replacement property” is in fact of corresponding value to the original property which are the instrumentalities of a criminal offence, it shows that Barbados has legislative provisions in place which may permit it to recover property which may be of corresponding value to the instrumentalities of a criminal offence in civil proceedings.

42. Barbados, therefore, has legislative provisions in place for the confiscation of property of a corresponding value to the proceeds of ML/TF or predicate offences as well as the confiscation of property of a corresponding value to property used or intended to be used in connection with ML/TF or predicate offences which can be done through the operation of sections 13(2)(a) and section 49 of the PIOCA which are bolstered by the civil recovery proceedings under Part III of the PIOCA.

43. Additionally, section 46 of the PIOCA 2019 now provides for the voiding of conveyances or other transfers of property that occurred after the seizure of the property or the service of a restraining order. The rights of bona fides third parties are also protected in this section as it provides that the conveyance or transfer cannot be set aside if it was made for valuable consideration to a person acting in good faith.

44. In accordance with section 53 of the PIOCA, which explains the process for an application for a restraining order, a prosecutor may make an application without notice to a judge in Chambers to restrain property that is an instrumentality of an offence or obtained as a result of, or in connection with, the commission of an offence including a tainted gift, once a



forfeiture or confiscation order is likely to be made in respect of such property. Thereafter, in accordance with section 54 of PIOCA, a law enforcement officer may seize the property. The effect of section 46 of the PIOCA is that the transfer or conveyance of the property that is the subject of the restraining order or that has been seized pursuant to the restraining order can be voided to ensure that confiscation can still occur.

45. Section 74 of the PIOCA also provides for the tracing of recoverable property, in the event that it was transferred to a third party prior to being confiscated and allows for the property to be recovered from the third party through the operation of section 74(3).

46. Section 133 (3) of the PIOCA explains that Part IV of the PIOCA titled “Investigations” applies to DNFBPs as it does to Financial Institutions. This Part contains 6 Divisions which each provide for the use of various court orders by police officers and prosecutorial authorities during the course of investigations into criminal recovery, civil recovery and money laundering generally.

47. Division 2 provides for the making of unexplained wealth orders and freezing orders in relation to unexplained wealth orders. Division 3 provides for the making of disclosure orders, customer information orders and account monitoring orders. Division 4 contains provisions for the protection of statements and disclosures made in respect of the aforementioned court orders and the variation of any of these orders for the benefit and protection of a person affected by the order. Division 5 provides for the obtaining of an order for the disclosure of tax information and the protection of the information so obtained. Finally, Division 6 provides for police officers to obtain search and seizure warrants pursuant to a criminal recovery, civil recovery or money laundering investigation. These Divisions do not appear to be limited to Financial Institutions and DNFBPs but apply to any person under investigation for criminal or civil recovery or money laundering.

48. Criminal recovery investigation is defined in the PIOCA as an investigation into whether a person has benefited from his criminal conduct; the extent or location of a person’s benefit from his criminal conduct; the amount available to a person, as described in section 17(2) or the extent or location of realisable property available for satisfying a confiscation order made in respect of the person; or whether particular property is an instrumentality of an offence, who holds the property or the extent or location of the property.

49. Civil recovery investigation is defined in the PIOCA as an investigation to determine whether property is recoverable property or associated property; who holds particular recoverable property or associated property; or the extent or location of particular recoverable property or associated property.

50. Money laundering investigation is defined in the PIOCA as an investigation into whether a person has committed a money laundering offence. A money laundering offence is further defined in the PIOCA as an offence under section 6 of the MLFTA, an attempt, conspiracy or incitement to commit such an offence or aiding, abetting, counselling or procuring the commission of such an offence.

51. Based on these definitions and the application of and breadth of Part IV of the PIOCA to assist with these investigations, Barbados has increased its legislative provisions to enable



its law enforcement and prosecutorial authorities to take appropriate investigative measures for confiscation and provisional measures.

52. Section 157 of the PIOCA additionally imposes a criminal penalty on any person who knowingly transfers or otherwise disposes to property that is subject to a restraining or freezing order.

53. Section 43(4) of the PIOCA provides for any person who claims interest in property subject to a forfeiture order to appear at the hearing of the application to amend it. Section 44(4) provides that the court shall have regard to the rights of third parties when considering whether a forfeiture order should be made. Section 47 provides again for a third party to apply to the court for an order in respect of his interest in property before a forfeiture order is made against that property. As it relates to confiscation, section 57(7) and section 58(7) of the PIOCA 2019 provides for persons holding interest in property subject to a restraining order to have the opportunity to make representations to the court before permitting a management receiver or an enforcement receiver to take possession of or dispose of the property. The protection of the rights of bona fide third parties in relation to the confiscation of property are therefore protected in this regard.

54. Lastly, mechanisms are in place for managing and disposing of seized, frozen and confiscated property as per sections 57 and 58 of the PIOCA 2019. Where a restraining order is made in accordance with section 54 of the PIOCA 2019, section 54(9) specifies that the restrained property may then be seized by a law enforcement officer to prevent it from being removed from Barbados. Such seized property will be dealt with in accordance with the Court's direction. Section 57 further identifies that the court may appoint a management receiver on the application of the prosecution. The management receiver is authorised to manage the restrained property which includes, inter alia, selling the property. Section 123 of the PIOCA also provides for testing and safekeeping of "listed assets" which have been seized.

55. Additionally, for civil recovery proceedings, section 87 of the PIOCA provides for the management and disposal of property subject to a freezing order. In such instances, a receiver may be appointed by the court to secure the detention, custody or preservation of the property to manage it. Pursuant to sections 92 and 93, in civil recovery proceedings, the court may vest the recoverable property in a trustee.

56. **On this basis, Barbados is re-rated as compliant with R. 4.**

3.1.3. Recommendation 8 (originally rated NC)

57. In its 4th Round MER, Barbados was rated NC with R.8. The key technical deficiency primarily related to the Barbados having not completed a risk-based approach for NPOs that are inherently high risk; no ensuring sector assessment provisions; no policies for promoting accountability and public confidence in the administration and management of the NPOs; no obligation for targeted risk-based supervision or monitoring of NPOs; and no legal obligation to gather and investigate NPOs. Other deficiencies relate to Barbados not identifying the nature of threats posed by terrorist entities to NPOs which are at risk as well as how terrorist actors abuse those NPOs; Barbados has not periodically reassessed the sector by reviewing new



information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

58. Barbados' NRA Report identified that an assessment of the inherent vulnerabilities of Non-Profit Organisations (NPOs) at risk was conducted to identify any organisations with activities and characteristics which put them at risk of TF abuse. The factors identified in the NRA as having been considered are comprehensive and in line with the FATF definition of NPOs, i.e., the type of NPO; primary purpose for which funds are raised and distributed; international activities; geographic reach; nature & extent of activities; nature of recipients of NPO services; and whether anonymous donations are permitted. Additional inherent vulnerabilities of NPOs were also considered, including, the risk associated with an NPO or charity having access to considerable funds (examination of statement of accounts and financial statements), whether the NPO/ charity was cash intensive (the survey required a breakdown of the types of transactions undertaken) and whether the NPO/charity had a global presence (i.e., whether it was a sub-set of an international body). These considerations establish Barbados' comprehensive understanding of the vulnerabilities of NPOs to TF risk.

59. The surveys to the NPOs which informed the findings of the NRA took into consideration the breakdown of the types of transactions undertaken by the NPOs to determine whether they were cash intensive and whether the NPO had a global presence. Additionally, the FIU, law enforcement and DPP were engaged to determine whether there may have been evidence of NPOs being misused for TF. The results of this engagement indicated that there was no evidence of such misuse as there were no STRs, typologies, intelligence reports, investigations or prosecutions into any such threats. The NRA identified 4 charities and 5 NPOs as higher risk, 8 of these were large organisations with international reach.

60. This risk assessment has informed the creation of the Proposal by the Registrar, Corporate Affairs and Intellectual Property to the AMLA with respect to the Supervision of Non-Profit Organisations/Charities. A desk-based review was also conducted by CAIPO in November 2019 to determine the relevant data necessary for the effectiveness of a CAIPO survey into NPOs. The NPO Guidelines, NRA and the CAIPO survey have identified the NPOs which are likely to be at risk for TF abuse. Further, Barbados' NRA contains a commitment to continue to conduct an overall re-assessment every two years, therefore the next NRA becomes due in 2021. Barbados should ensure this periodic reassessment is conducted to ensure effective implementation of measures.

61. Additionally, Barbados' Counter Financing Terrorism Strategy, assessed the risk and threat of terrorist activity, both from a worldwide and local perspective, as being low. Although this document has identified the training/outreach for financial institutions/DNFBBPs and NPOs on TF and how to identify TF transactions as one of the strategies for implementation by the FIU. This strategy indicates ongoing work to ensure FIs, DNFBBPs and NPOs are able to identify threats which may arise.

62. Barbados has reviewed the adequacy of its laws and regulations as they relate to NPOs at risk. This review has resulted in amendments being made to the Charities Act and the Companies Act in 2019 which now provides for PEPs to disclose their involvement in NPOs. The implementation of this policy at a legislative level provides for the promotion of accountability and public confidence in the administration and management of NPOs. The



identification of risks in the NRA, which is a publicly available document, is another such policy in line with promoting accountability. The proposal by CAIPO for the supervision of the sector also indicates that there is a move toward the development of a policy for NPOs to be supervised. However, this proposal has not yet been effected and therefore the sector is not yet subject to AML/CFT supervision and monitoring.

63. Barbados has begun conducting outreach to raise and deepen awareness among NPOs about their vulnerabilities to misuse for TF. The outreach to the sector conducted by CAIPO in conjunction with the FIU represents another step towards working with NPOs to address issues with the sector. The counter terrorist financing strategy also supports the continued outreach and guidance to the sector by the FIU. As part of its Counter Financing Terrorism Strategy, Barbados has identified NPOs as one of the sectors which will be subject to training and outreach on TF and on how to identify TF transactions. This is in keeping with the risk-based approach to TF to be implemented by the FIU in accordance with the said counter financing terrorism strategy. The Supervisory Committee has also developed and implemented an outreach plan. In January 2020, as part of its ongoing outreach to the NPO sector and those who provide services to the NPOs, an information session was held which was attended by NPOs, Charities, Banks, Credit Unions, Insurance, Investment Advisors, CTSPs, DNFBPs, MVTs, Regulators & Government.

64. Barbados published the Combatting Terrorist Financing Guideline for Charities and NPOs in December 2019. This guideline aids in ensuring that NPOs are aware of their responsibilities and adhere to these guidelines to ensure accountability of their administration and management.

65. The Guidelines also guide NPOs to taking a risk-based approach to mitigate potential ML/TF risks and aids in their understanding of due diligence requirements, record keeping and other compliance functions. The guideline also provides at section 8 that charities and NPOs should carry out transactions through the financial system when possible. However, this is the only indication of such encouragement. Barbados should consider taking further action to encourage NPOs to conduct transactions via regulated financial channels, wherever feasible.

66. In accordance with criterion 8.4, Barbados has indicated that NPOs are required to be registered, disclose their purpose and objectives, identify and keep up to date information on beneficial ownership and control, issue annual audited financial statements, have appropriate controls in place in compliance with the NPO Guidelines which includes conducting due diligence and following a “know your beneficiary” rule as well as ensuring records are kept for a period of 7 years. However, Barbados has not provided information which shows that there are appropriate authorities to monitor the compliance of NPOs with these requirements.

67. Barbados has also indicated that CAIPO used the information gathered from its NPO survey to assess who the members of the donor community were. This exercise revealed that donations to NPOs were received mainly from the public through various types of drives and funding initiatives. In light of this, Notices were placed in the daily newspapers to serve as outreach to the donor community and the Supervisors’ outreach program includes public outreach and information targeted to donors.



68. Barbados has indicated that a monitoring program was rolled out in the 2nd half of 2019, however, no documentation was provided to substantiate this statement. Barbados also indicated that NPOs which did not respond to the survey carried out by CAIPO or who were deemed non-compliant after responding, were targeted to be struck off the register. As of August 2019, 57 NPOs were removed and in December 2019 another 86 charities and 10 NPOs which were non-compliant was removed from the register. While this information demonstrates that Barbados can apply the sanction of removal from the register for violations by NPOs and Charities, this action is not indicative of a proportionate and dissuasive approach. Barbados has also indicated that a targeted monitoring approach was being developed for higher risk NPOs however, this has not yet been evidenced.

69. Barbados has demonstrated that its law enforcement authorities and FIU have the authority to cooperate and share information generally through the MOU between LEAs, which include the FIU, Customs and Excise Department, Immigration Department and the RBPF. It is also noted that the MOU between CAIPO and the RBPF permits the sharing of information in the possession of CAIPO generally with the Special Branch of the RBPF. While both MOUs mentioned do not speak specifically to NPOs, they are broad enough to include information sharing that may relate to investigations involving NPOs. The MOUs do provide a means for effective cooperation, coordination and information sharing to the extent possible among appropriate authorities that hold relevant information on NPOs, that is, between the CAIPO and the RBPF and the FIU and the RBPF, Customs and Immigration. Section 8 of the Charities Act, which was available at the time of the MER also grants the Registrar (which is defined as CAIPO), the ability to share information in its possession between tax authorities and other government departments.

70. To ensure that it has investigative expertise and capability to examine NPOs suspected of being exploited or actively involved in terrorist activity or terrorist organisations or to ensure full access to information on NPOs during the course of an investigation, inclusive of financial and programmatic information, Barbados has begun training its LEAs in November 2019 on the FATF Standards on Counter Financing of Terrorism. Two workshops were held on this in November 2019. The first included understanding the role the Private Sector plays in combating TF, TF disruption and understanding TF risks and typologies the difference/overlaps with ML typologies and TF typologies applicable to the region. The second included assessing TF Risks and TFS, the concept of ML versus TF, CFT investigative techniques and regional and international cooperation on CFT investigations. Both workshops included practical exercises to reinforce learning. Barbados should continue to train LEAs and other relevant investigative bodies to ensure continued investigative expertise and capability.

71. Barbados indicates that the Attorney General has the legislative authority to examine and inquire into NPOs generally, through section 38(1) of the Charities Act and specifically, for investigating an offence under the Anti-Terrorism Act through section 38(1A). Section 38(2) of the Charities Act specifies that the Attorney General may appoint public officer or any person to make such inquiry or investigation. However, save for the appointment for the purpose of undertaking the NRA, no such person is appointed to carry out such investigations or inquiries on a general basis. It is also acknowledged that various MOUs exist between LEAs and other relevant authorities who hold information on charities and NPOs so that the relevant investigative authorities should be able to access information from these bodies during the



course of an investigation. However, it is not clear whether this information would include the administration and management information of particular NPOs including financial and programmatic information.

72. The MOU between CAIPO and the RBPF provide a mechanism by which, if CAIPO has information it believes may assist the Special Branch to perform its functions, CAIPO may freely provide this information to the Special Branch for an investigation. However, with the lack of a monitoring authority to ensure the NPOs are complying with the necessary requirements it is unclear whether CAIPO is able to form a suspicion or have reasonable grounds to suspect that a particular NPO is committing any of the activities listed in criterion 8.5(d) to enable it to trigger the provisions of the MOU.

73. Notwithstanding this shortcoming, Barbados has identified other mechanisms through which, if there is a suspicion or reasonable grounds to suspect that a particular NPO is involved in any of the activities listed in criterion 8.5(d), this information would be promptly shared with competent authorities, in order to take preventative or investigative action. These mechanisms include mandating all licensees and registrants of the CBB, IBU and FSC, who are financial institutions, to report, in accordance with section 23(1) of the MLFTA, any NPOs who are customers of these entities who are identified to be partaking in a suspicious activity. This requirement specifies that the financial institution is to monitor business transactions and report promptly to the Director of the FIU any suspicious or unusual transactions including transactions which are suspected to involve the financing of terrorism. Bearing in mind paragraph 50 of the NPO guidelines which encourage NPOs to conduct transactions through the financial system, this mechanism should be useful.

74. **On this basis, Barbados is re-rated as partially compliant with R.8.**

3.1.4. Recommendation 19 (originally rated PC)

75. In its 4th Round MER, Barbados was rated PC with R.19. The key technical deficiency related to Barbados not disseminating CFATF and FATF notices pertaining to high-risk jurisdictions and the AML/CFT guidance issued by the CBB, FSC and the IBD requires FI's to consider these notices, and no specific provisions or measures in place to enable Barbados to apply countermeasures proportionate to the risks when called upon to do so by FATF, or independently of any call by FATF to do so.

76. Section 7.4 of the CBB AML/CFT guideline regulates the enhanced due diligence to be performed by a licensee based on the level of risk of certain countries by carefully observing the FATF and CFATF issuances of natural and legal persons and financial institutions from listed countries. Furthermore, this section of the CBB guidelines allows Barbados to independently apply countermeasures which are effective and proportionate to the risks identified from listed countries, either when called to do so by the FATF and CFATF or independently of any call to do so, such as:

- a. Requiring financial institutions to apply specific elements of enhanced due diligence;
- b. Prohibiting financial institutions from establishing subsidiaries, branches or representative offices in the country concerned, or otherwise taking into account the



fact that the relevant subsidiary, branch or representative office would be in a country that does not have adequate AML/CFT systems;

- c. Limiting business relationships or financial transactions with the identified country or persons in that country;
- d. Prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the CDD process;
- e. Requiring increased supervisory examination and/or external audit requirements for branches and subsidiaries of financial institutions based in the country concerned; and,
- f. Requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.

77. Based on the revised versions of the IBU and FSC guidelines, similar provisions allow Barbados to take countermeasures in relation to any country that appears on the list or when called to do so by FATF and CFATF, however not independently of a call. Further links are placed on the websites of CBB, IBU and the FSC in relation to the FATF lists and other sanctions lists for compliance by the respective licensee. The materiality of the sectors supervised by the FSC and the IBU and fact that the CBB has oversight of a significant segment of the financial sector was noted.

78. **On this basis, Barbados is re-rated as largely compliant with R.19.**

3.1.5. Recommendation 20 (originally rated PC)

79. In its 4th Round MER, Barbados was rated PC with R.20. The key technical deficiencies related to no requirement in the MLFTA for SARs to be reported promptly to the FIU.

80. Section 23(1) of the MLFTA states that financial institutions are required to file STRs to the Director. Section 4 of the MLFT (Amendment) Act, 2019-22 amended section 23(1) to insert after the word “report”, the word “promptly”.

81. **On this basis, Barbados is re-rated as compliant with R.20.**

3.1.6. Recommendation 23 (originally rated PC)

82. In its 4th MER, Barbados was rated PC with R.23. The key technical deficiencies primarily related to no statutory or enforceable requirement to promptly report suspicious transactions to the FIU; no statutory or enforceable requirement to appoint a compliance officer at the management level; no statutory or enforceable requirement to implement screening measures when hiring employees and ongoing employee training; and no evidence that Barbados is positioned to apply any form of risk adjusted countermeasures against high risk jurisdictions either independently or at the specific request of FATF.

83. Section 4 of the MLFTA provides for the Act to apply to non-financial business entities and professionals set out in the Second Schedule, as it applies to financial institutions. As a result, section 23(1) of the MLFTA as amended by the MLFT (Amendment) 2019-22 requires DNFBPs to report STRs promptly to the Director.



84. Additionally, based on the revised IBU guidelines (2019), all institutions should designate a suitably qualified person at the management level, with the appropriate level of authority, seniority and independence as Compliance Officer, as well as licensees should undertake due diligence on prospective staff members.

85. Based on the updated AML/CFT Guidelines for Attorneys-at-law, Accountants, Real Estate Agents and DPMS, these DNFBPs are required to regularly review their AML/CFT systems and test them for effectiveness, however there is no requirement that the audit function be independent.

86. There is no requirement for DNFBPs to apply any form of risk adjusted countermeasures against high-risk jurisdictions either independently or at the specific request of FATF.

87. Further, Barbados did not sufficiently address the deficiencies in relation to R.21 nor the relevant changes to the standards in relation to R.21 and as such the rating for R.21 remains PC.

88. **On this basis, Barbados remains partially compliant with R.23.**

3.1.7. Recommendation 24 (originally rated PC)

89. In its 4th Round MER, Barbados was rated PC with R.24. The key technical deficiencies related to no specified ML/TF risk assessment specific to all forms of legal persons; whilst there is an obligation to maintain the basic and beneficial ownership at a location notified by the company registry, the discretion to maintain the record at some other place in Barbados as designated by the directors of the company mitigates against timely access; no provisions that mandate basic and beneficial ownership to be accurate and updated on a timely basis; no dual requirements to give immediate notification to the company registry of a change in the place where BO is held; no requirement in the governing legislation for company to keep basic and BO information for 5 years; no timely access provision by competent authorities; and no legal obligation to expressly provide for the use of bearer warrants. Other deficiencies include Barbados should require that BO information is accurate and as up-to-date as possible; Barbados has not addressed c24.8; there is no dual obligation within the COMPA to disclose the identity of the nominator to the Registrar for it to be included in the relevant Register; the CTSPA does not contain a provision to mandate the maintenance of nominator information nor a proviso to make this information available to the Registrar. Neither does the MLFTA have an obligation to make those BO information records specific to nominators, available to the Registrar; with respect to CAIPO, within the COMPA, there is an absence of penalties for legal persons such as the striking off the Register. There is also the absence in law of graduated administrative sanctions moving from a suspension to revocation of licence for legal persons; in relation to sub-criterion (a) and (b), based on the legal framework the extent to which BO information can be exchanged is still unclear, this include the exchange of information on shareholders; there has not been any specific information of competent authorities using their investigative powers, pursuant to the law to obtain BO information on behalf of foreign counterparts. Consequently, although the above stated measures do provide for an exchange of information, the requirement of this sub criterion is that countries should rapidly provide international cooperation, and the information provided does not mandate rapid sharing of



information; and there is no information that Barbados monitors the quality of assistance it receives from other countries in response to requests for basic and BO information or requests for assistance in locating beneficial owners residing abroad.

90. The 2019 NRA provided for a ML/TF risk/vulnerability assessment specific to the forms of legal persons identified in the country. This legal person’s vulnerability assessment captured the extent to which legal persons were vulnerable to being misused for the purposes of laundering money obtained through the threats identified as well as for the purposes of the financing of terrorism.

91. Having regard to the threats for ML and TF faced by the country and the vulnerabilities of its sectors and all legal persons in the country, Barbados was able to identify the consequential impact of these threats on its legal persons. It should be noted, that although Barbados’ National Risk Assessment contained terminology which spoke specifically to “inherent risks and inherent vulnerabilities”, a review of the methodology used and sanitised risk profiles resulted in the understanding that Barbados did in fact take into consideration threats that were external to the legal persons as well as their inherent vulnerabilities which led to an overall determination of the level of risk faced by each legal person based on their inherent vulnerabilities. Furthermore, Barbados received the input of law enforcement authorities who provided information garnered from reports made to them and information collected during their investigative stages into the risk assessment. This information formed the threats identified which were then considered together with the inherent vulnerabilities of the legal persons in the jurisdiction to give the resulting risk rating for the respective types of legal persons.

92. Further, the risk assessment included the following forms of legal persons that could, at that time, have been created in the country: Foundations (subsequently repealed by The Foundation (Repeal) Act, 2019-46), Limited Partnership, Foreign Sales Corporation, Non-Incorporated Business/Sole Establishment and Firms, Private Company Limited by Shares, Segregated Cell Company, Incorporated Cell Company, Private Trust Company, International Business Company, International / Exempt Society with Restricted Liability, Public Company (Listed), Public Company (Unlisted), International Bank, Domestic Society with Restricted Liability, Branches of Foreign Companies. These represent the full set of legal persons that exist within the country. Barbados should conduct an assessment of the risks as they apply to all types of legal persons in the country.

93. Additionally, Barbados amended its Companies Act through the Companies (Amendment) Act 2019-19 to delete section 170(5) which effectively removed the discretion previously afforded to the company to maintain BO information at some other place as designated by the directors of the company. A new section 170(5) replaces the previous section and now mandates that the beneficial ownership register shall be maintained at the registered office of the company. This means that the onus remains on the company to maintain this information at its registered office in Barbados. Section 169(2) also requires companies to notify the Companies Registrar of any change in the company’s registered office within 15 days. This allows any change in the location of the company’s BO information to be communicated to the Companies Registrar in a timely manner. It should be noted that Limited



Partnerships are not required to keep or disclose the beneficial ownership of its partners who are body corporates.

94. Further, the obligation to ensure the accuracy of the beneficial ownership information rests with the company as set out at section 170(2) of the Companies Act as amended by the Companies (Amendment) (No.2) Act, 2019. Section 170(2)(b) provides for the company to maintain, on its register of shareholders, a statement of the shares held by each shareholder. It is not apparent from this provision that it is mandatory for this statement to contain the number of shares held and the categories of shares, including the nature of the associated voting rights. However, it is acknowledged that the voting rights assigned to each share is stated in the Articles of Incorporation which is kept by the Registrar and is publicly available. Barbados' statement that the statement of shares held by each shareholder includes the number and category of shares cannot be verified. There are sanctions in place for the keeping of insufficient or inaccurate information at section 175A of the Companies Act. This section sets out that a person who fails to comply with section 170(2) is liable on summary conviction to a fine of \$10,000. This provision provides an enforceable means through which Barbados can ensure the company keeps accurate BO information.

95. The obligation to keep beneficial ownership information up to date is also placed on the company as set out in the amendments made to section 170(2)(d) of the Companies Act through the Companies (Amendment) (No.2) Act 2019. The company must now maintain a register of all shareholders at its registered office in which the company must enter the date on which a person was entered in the register and the date on which any person ceased to be a shareholder. However, there does not appear to be a time within which this information must be updated. This leaves room for the register to be out of date until such an update occurs. Therefore, it cannot be concluded that Barbados ensures this information is kept as up to date as possible.

96. The Companies (Amendment) (No.2) Act 2019 also amended section 15A(1) to include a requirement to file information on directors, secretaries, beneficial owners and PEPs in a company's annual return. The information filed in the annual return must also be certified.

97. Private trust companies, societies with restricted liability, companies and societies with foreign currency permits are also subject to the requirements of the Companies Act referred to above since they must be incorporated either under the Companies Act or the Societies with Restricted Liability Act. Companies incorporated under the Societies with Restricted Liability Act are also subject to the provisions of the Companies Act by virtue of section 65 of the Societies with Restricted Liability Act.

98. For Limited Partnerships, the identities of the Partners any changes to the partners or the name of a partner must be delivered to the Registrar within 7 days of the change, pursuant to section 8 of the Limited Partnerships Act. However, it is noted that section 3(4) of the Limited Partnerships Act permits a body corporate to be a limited partner. This Act does not provide for the disclosure of the beneficial owner of the partner who is a corporate limited partner. Foreign Partnerships or Limited Partnerships with a Foreign Partner must have its corporate service performed by a Corporate and Trust Service Provider, however, this does not address the issue of maintaining accurate and up to date beneficial ownership information of the partnership.



99. In accordance with section 392A of the Companies Act, certain companies required to have a licensed CTSP to perform their corporate services. These are listed in this section as: any company described in section 15A(7)(h) that does not hold a licence under the Financial Institutions Act, Cap. 324A; is not registered or licensed under the Financial Services Commission Act, 2010 (Act 2010-21); and is not itself a service provider who holds a licence issued under the Corporate and Trust Service Providers Act, 2015 (Act 2015-12); and any external company that does not hold a licence under the Financial Institutions Act, Cap. 324A and is not registered or licensed under the Financial Services Commission Act, 2010 (Act 2010-21). In the case of such companies, the CTSP will be responsible for acquiring and having up to date basic and BO information which the director of the IBU can obtain under the CTSP Act.

100. As noted in section 392A of the Companies Act, companies that hold a license under the FIA, are required to be registered with the FSC, isn't an external company falling into any of these categories, or is not itself a CTSP, would be required to cooperate with its respective supervisory authority (i.e., the CBB, FSC or IBU), in ensuring accurate and updated BO information is reported to those authorities.

101. Section 392A also specifies that the companies which are required to utilise the services of a CTSP are described in section 15A(7)(h) of the Companies Act. Section 15A(1), as amended by the Companies (Amendment) (No. 2) Act, 2019-51, specifies that every company, except an external company to which section 343 applies, shall (a) file with the Registrar and annual return in the manner and form prescribed; and (b) at the time of filing, pay the prescribed fee. Section 15A(7) explains that subsection (1), as explained above, does not apply to certain entities, therefore the entities listed in this sub-section, need not file an annual return in the manner and form prescribed. Section 15A(7)(h) specifies that "a company the gross revenue of which, as shown in the most recent financial statements referred to in section 147, exceed \$1 000 000" is also exempt from filing an annual return as required in subsection (1). When read together, it is clear that section 392A creates an obligation for any company with a gross revenue, as shown in its most recent financial statements, exceeding \$1,000,000, is obligated to have its corporate services provided by a CTSP.

102. CTSPs are required by virtue of Section 19A of the CTSP (Amendment) (No. 2) Act, 2019 – 48 to give the IBU written notice of the change in beneficial ownership in its client at least one month prior to the intended date of change. Provisions to ensure that BO information is kept as accurate and up-to-date as possible are not available for companies who are not licensed or registered with the FIA, FSC or employ the services of a CTSP, other than those of section 170(2) of the Companies Act, which, as stated previously, has some shortcomings.

103. There are no Foundations in Barbados, and with the passage of the Foundations (Repeal) Act, 2019 (Act 2019-46), foundations can no longer be created. International Trusts have been discontinued since the enactment of the Trusts (Miscellaneous Provisions) Act. All other companies are subject to the provisions of the Companies Act as amended in 2019.

104. Pursuant to section 19A of the Corporate Trust and Service Providers Act, as amended in 2018, CTSPs in Barbados are accountable to the Director of the IBU to provide written notice of a change in respect of, inter alia, the beneficial ownership of the majority of shares or quotas for all of its clients who are companies and societies respectively. Such notice must be



given at least one month in advance of the change. Notably, section 25 of the Corporate Trust and Service Providers Act, 2015 places an obligation on the CTSP to provide the Director of the IBU with any books and any information the Director may require for enforcement of the Act and compliance with the MLFTA. The provisions of sections 19A and 25 of the Corporate Trust and Service Providers Act operate to require CTSP's, a DNFBP in Barbados, to be authorised by companies which are its clients, and accountable to the IBU as a competent authority for providing all basic information and available beneficial ownership information and giving further assistance to the authorities.

105. While the provisions in the CTSP Act adhere to the requirement of criterion 24.8(b) to some extent, CTSPs do not provide services for all legal persons in Barbados. However, criterion 24.8(c) permits countries to take other comparable measures, specifically identified by the country, to ensure that co-operate with competent authorities to the fullest extent possible in determining the beneficial owner.

106. Barbados identified sections 10 and 107 of its Financial Institutions Act. This Act applies to Banking and other Financial Institutions licensed under it. Section 10 of this Act ensures that these Financial Institutions seek the approval of the Central Bank before acquiring a significant interest in the financial institution. Section 107 ensures that these financial institutions produce the documents or information requested by the Central Bank pursuant to an examination conducted by the Central Bank.

107. While the aforementioned provisions do require Financial Institutions to cooperate with the Central Bank pursuant to an AML/CFT examination, they do not provide a specific measure for these financial institutions to co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. However, it is acknowledged that should the Central bank require such cooperation pursuant to an examination, these financial institutions would be required to do so.

108. Similarly, the provisions of the FSCA are to ensure that the financial institutions licensed or registered under that Act are in compliance with that Act and their obligations under the MLFTA. While the legislation provided by Barbados may assist, to an extent, with ensuring financial institutions and CSTPs assist their supervisory authorities when required, and this assistance may extend to the provision BO information, the provisions are very broad and do not specifically relate to BO information.

109. Barbados also does not address the other companies which are formed in the jurisdiction but have not and are not required to engage a CTSP and are not licensed or registered as a financial institution under the FIA or the FSCA.

110. Section 383 of the Companies Act as amended by the Companies (Amendment) (No.2) Act 2019-51 creates an obligation for information and records to be maintained for at least 6 years after the date of the dissolution of the company.

111. In relation to non-cooperation, LEAs have the ability to obtain basic and some BO information from competent authorities such as the CAIPO. The RBPF also has the ability to obtain the information from the CAIPO through the MOU between them. Clause 4.5 of the MOU provides for the ability to make urgent requests for information and clause 5.3 specifies that an urgent request for assistance shall be expedited as much as is reasonably practicable.



112. LEAs have also been granted additional powers pursuant to the PIOCA 2019 such as under section 140 which permits a police officer to apply to a judge in chambers to serve a notice on a person requiring that person to provide information specified in the notice in the time and manner specified. Additionally, under section 84(1) of the Magistrates Court Act, the police may obtain a warrant for search and seizure from any premises.

113. Since the Companies (Amendment) Act now provides a mechanism by which the company must maintain accurate and up to date beneficial ownership information, LEAs may now use this method set out under PIOCA or under the Magistrates Court Act to require the company to produce this information upon request. However, the mechanisms provided do not address sufficiently the concern of timely access as delays in the court process to obtain the necessary orders may occur.

114. Additionally, if the update to the register of BO information held by the company is delayed, LEAs or other competent authorities seeking to retrieve such information from the register may obtain outdated information. This limits the power of competent authorities to obtain up to date BO information on a timely basis.

115. Barbados has put forward provisions which indicate the powers of other competent authorities to access documents from companies which they supervise, however, these provisions were not updated since the 2018 MER and do not address the deficiencies that remain.

116. Further, Section 29 of the Companies Act of Barbados expressly states that no company shall issue bearer shares or bearer share certificates. While no provision in the primary legislation has been cited which expressly permits or prohibits the use of bearer share warrants, the amendments to the CBB Guidelines and FSC and IBU Guidelines all provide for the immobilisation of both bearer shares and bearer warrants as a means of monitoring the identity of the company. While companies are given the discretion to apply the means they see most fit to immobilise the bearer shares and bearer share warrants, there is a mandatory requirement to ensure that whatever means they choose to use adequately immobilises the instruments.

117. At clause 2(2) of the First schedule of the CTSPA, the CTSPs in Barbados are able to act as a nominee director or shareholder for specified entities listed at the First Schedule of the CTSPA. There is no clear requirement for the CTSP to keep the information on the nominator director or shareholder or to provide such information to the Registrar for it to be included in the relevant register. There have been no changes to the legislation to address the deficiency noted and Barbados has not provided a submission which demonstrates that it applies any of the mechanisms listed at criterion 24.11 to ensure that these legal persons are not misused. Notwithstanding the provision in the CTSPA, the COMPA does not provide an avenue through which the companies not listed in the First Schedule of the CTSPA may nominate a nominee director or shareholder. Further, there is no clear requirement in the CTSPA for the CTSP to keep records on the information on the nominator director or shareholder. There have been no changes to the legislation to address the deficiency noted and Barbados has not provided a submission which demonstrates that it applies any of the mechanisms listed at criterion 24.12 to ensure that these legal persons are not misused.



118. Further, section 175A of the Companies Act sets out a Bd\$10,000 penalty for contravention of section 170(2) which mandates that companies maintain accurate and up to date beneficial ownership information at their registered offices within Barbados. Other penalties identified by Barbados are not specific to the requirements of Recommendation 24, although the penalty at section 432 of the Companies Act for making false statements or omitting material facts may assist with compliance with some of the requirements of recommendation 24. The penalties mentioned are not graduated and the ability to strike a company off the register appears to be limited to failure to file a document and not for compliance with the requirements of this recommendation.

119. In order to rapidly provide international cooperation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40, Barbados utilises its MACMA for international cooperation together with the MOUs signed between domestic regulatory authorities for the exchange of information. Additionally, an MOU between the CAIPO and the RBPF was signed in November 2019 for the exchange of information relating to all entities under CAIPOs purview.

120. Barbados notes that mechanisms in place that have been acknowledged in the MER as set out in R. 37 and 40 relating to international cooperation are applicable to exchange of BO and basic information. However, it is noted that the MER identified that there was no clear process concerning timeliness and prioritization of international cooperation.

121. Barbados has the ability to obtain BO information from legal persons and the measures in place to exchange such information among competent authorities. It is acknowledged that the MACMA can be used to facilitate international cooperation in relation to basic and beneficial ownership information. However, the lack of a provision in the MACMA to ensure the rapid provision of cooperation, restricts Barbados' ability to provide this international cooperation rapidly.

122. Additionally, if the up-to-date BO information required is held at the company's registered address as required by the Companies Act, the RBPF is still required to obtain an order of the court to obtain such information. Delays in the court process may also hinder the rapid provision of international cooperation in this regard.

123. Barbados' law enforcement authorities are able to use the investigative powers available to them under the domestic legislation to obtain Disclosure Orders to obtain information requested by foreign counterparts. Their powers under section 4 of the Police Service Act, which has been expanded by the POCA, can be used to freeze, restrain and seize property pursuant to an investigation if necessary, to fulfil a request by a foreign counterpart. It is acknowledged that the MACMA can be used to facilitate international cooperation in relation to basic and beneficial ownership information. However, the lack of a provision in the MACMA to ensure the rapid provision of cooperation, restricts Barbados' ability to provide this international cooperation rapidly.

124. Lastly, the FIU's Operations Manual contains a section on Feedback which confers that the FIU Barbados should provide feedback to overseas FIUs on, *inter alia*, whether the information provided was actionable, whether it triggered a new investigation, the timeliness of the information received, and the quality of the information received. While this



demonstrates that Barbados' FIU is monitoring the quality of the assistance received from other FIUs, there is no indication that the quality of information received through other means, such as through the MACMA, is being monitored.

125. **On this basis, Barbados remains partially compliant with R.24.**

3.1.8. Recommendation 29 (originally rated PC)

126. In its 4th MER, Barbados was rated PC with R.29. The key technical deficiencies related to the FIU Director, while empowered to request information or a document from a public authority, can do so only where there are reasonable grounds to believe that an investigation should be conducted; the FIU does not have access to the widest possible range of information; inability for the AMLA-FIU to fulfil its legislative obligation to produce an annual report within the stipulated time; no explicit measures provision for the FIU to conduct strategic analysis; no measures allowing the dissemination of information spontaneously and upon request from other entities; and the independence and autonomy of the FIU and its distinct functions from the AMLA is ambiguous. The MER also noted that the security clearance level and the understanding of responsibilities which relates to handling sensitive and confidential information by some Administrative personnel should be addressed by the FIU. There are no detailed rules or procedures governing the security and confidentiality of the FIU's database and process for the dissemination of financial intelligence to competent authorities.

127. Section 30(3)(b) the MLFTA was amended to give the FIU Director the power to request information from a public authority for the purposes of an enquiry rather than an investigation. The country explained that an enquiry is broader than an investigation and is used to collect intelligence and information generally that can support the identification of evidence. The country also explained that amending the legislation to use a suspicion rather than a belief that an investigation should be conducted lowers the threshold for the FIU to make a request for information. Therefore, the FIU now has a wider scope within which it can request information.

128. Section 29(1) of the MLFTA was amended to allow the FIU to provide a wide range of information to both public authorities and law enforcement authorities, namely the RBPF, the Barbados Revenue Authority, Customs and Excise Department and Immigration. Given that a public authority is defined in the MLFTA to include a regulatory authority this satisfies the spontaneous dissemination of information to the CBB, FSC and IBU by the FIU. The letters from CAIPO, the Electoral Officer, Immigration Department, Land Registry and the Supreme Court Registry to the FIU in March – August 2020 evidences permission granted to the FIU to have access to the databases of the Electoral Office, CAIPO, Immigration Department, Land Registry and Supreme Court Registry. The dissemination of intelligence to local competent authorities occurs through a confidential, secure means, utilising a manual process to ensure that confidential information is exchanged directly or indirectly to the intended recipient. In the case of a direct exchange, the documents are hand delivered to the recipient. Indirect exchange occurs through electronic means and the documents to be exchanged are password protected. The dissemination of information internationally takes place over the Egmont Secure Web. The obligation to utilise these confidential and secure means of disseminating information is specified in the FIU's Operations Manual.



129. On November 29, 2019 Barbados presented a compendium of its annual reports for the period January 2013 to December 2018 to the Attorney General of Barbados. This compendium is published on the website of the FIU. The FIU's Confidential Operations Manual, which was viewed via video conference, also indicates specified timelines for completion of the Annual Report. These timelines involve collating information from quarterly reports for the period under review and having a final report in place by the third week of January. This is then followed by the completion of the first draft by the 2nd week in February when the 1st draft will also be forwarded to AMLA, by the 1st week in March a 2nd draft is scheduled to be forwarded to AMLA. By the 2nd week in March the schedule indicates that the Annual Report must be reviewed and sent to the printery. In the last week in March the final Annual Report will be sent to the Minister. These operational timelines are intended to ensure the Annual Report is completed by the statutory deadline of March 31 every year.

130. Further, the FIU's Operations Manual contains the explicit provision that the FIU should conduct strategic analysis which is a mandatory requirement for all FIUs consistent with Egmont Group requirements. In conducting strategic analysis, the FIU uses the data/information it obtains from reports filed with it as well as other information at its disposal (which includes data provided by other competent authorities) to general results and provide insights into the activities, behaviours and environments of interest. The FIU is also able to demonstrate the conduct of such strategic analysis through its published Typology Reports in March 2019 that have been shared with LEAs and Supervisory Authorities. The FIU is also undertaking a strategic analysis project on the Misuse of MVTs for Illicit Financial Flows. Further, the FIU has demonstrated that it conducts operational analysis, as it has received SARs and disseminated intelligence reports to law enforcement, as indicated at paragraph 263 of Barbados' 2018 MER. The FIU utilises its analytical process to formulate different hypotheses on potential suspicious activities which, in turn, leads to the production of reports which outlines patterns, targets, relationships among subjects, investigative leads and criminal profiles.

131. Further, FIU's Operations Manual indicates that all FIU personnel are required to maintain security protocols. The security protocols extend to access to the premises of the FIU and password, combination codes and other security codes which must be maintained by the requisite staff member and are not to be disseminated to other employees or third parties without authorisation. Database security access is secured through a graded process for access. Access Levels are restricted to members of staff without appropriate authorisation. Requests for information and intelligence both internationally and locally have restricted access and are not to be removed from the FIU without the express permission of the Director.

132. Lastly, the functions of the AMLA and the FIU are contained in the AMLA mandate which was established in May 2019. This mandate explains that the functions of the AMLA is to, inter alia, establish training requirements and provide training for financial institutions, issue and review guidelines in conjunction with the regulatory authority, compile statistics and disseminate information, authorise a member of its staff to be trained for the purpose of conducting inspections, give directions to a financial institution to take certain actions or cease from engaging in certain activities, and impose administrative sanctions or pecuniary penalties on financial institutions.



133. The Mandate delineates the functions of the AMLA from the FIU by indicating that the FIU falls within the office of the Attorney General with its budget being formulated in accordance with the public sector budgetary process. The Supplemental Mandate of the AMLA, developed in December 2019, specifies that the secretary to the Board of the AMLA is also the secretary of the FIU.

134. Additionally, the functions of the AMLA have been specified in the AMLA mandate and Supplemental Mandate of 2019, which show a role separate and apart from the FIU. Sections 23, 24, 28, 29, 32 and 40 of the MLFTA 2011-23 clearly set out the sections which apply to the Director of the FIU. The MLFTA 2011-23 also clearly sets out the sections which apply to the Director of the FIU. However, there is still some ambiguity concerning the operational independence of the FIU since the AMLA can still delegate much of its functions to the Director and it appears that the dissemination of information to foreign FIU's may be done in accordance with the directions of the AMLA. No changes have been made to the MLFTA to further clarify the operational independence of the FIU in these circumstances. Notwithstanding the ambiguity in the legislation, the FIU is able to demonstrate that, in practice, it operates autonomously to fulfil its functions as an FIU. Additionally, the functions of the FIU in the MLFTA to receive STRs, conduct investigations, report suspected offences to the Commissioner of Police and disseminate information to a public authority do not appear to be impacted by the AMLA. The sections in the legislation which enable the AMLA to delegate functions to the FIU and the discretion for the Director of the FIU to disseminate information to foreign FIUs as directed by the AMLA are therefore seen as minor shortcomings but should still be rectified to clarify the FIU's operational independence. Therefore, the operational independence and autonomy of the FIU has not been fully clarified. The country has expounded upon the independence of the FIU through its daily activities and expressed that its autonomy is evidenced through its practices.

135. **On this basis, Barbados is re-rated as largely compliant with R.29.**

3.1.9. Recommendation 32 (originally rated PC)

136. In its 4th MER, Barbados was rated PC for R.32. The key technical deficiencies related to no declaration or disclosure system for outgoing cross border currency transactions; no legal obligation to seize cash which is above the threshold provided it is disclosed; no legal obligation to stop and restrain currency for a reasonable time to ascertain whether evidence of ML/TF is present; and no legal obligation to ensure the proper use of the information collected through the declaration system. Other deficiencies included whilst section 5 of the CUSA generally endows all Customs officers with the same powers given by law to members of the RBPF, the specificity of the need for competent authorities to be able to request and obtain further information in the context of a false declaration has not been articulated, neither has it been articulated as a power held by law enforcement officers; neither the CUSA nor the Interpretation Act Chapter 1 includes currency or BNIs as a 'good'; where currency or BNIs are involved, because currency and BNIs are not identified as a 'good', this may inhibit Barbados from having a sufficient range of options in which to impose an adequate sanction; the Barbados authorities have indicated that the focus of Customs is on cash and not BNIs therefore the extent of the application for the MOU is limited; no measures speaking to sanctions in cases where persons are found physically transporting currency or BNIs, related



to ML/TF or predicate offences was provided by the Barbados authorities; and no provisions for confiscation measures to be applied where a person is found physically transporting currency or BNIs, related to ML/TF or predicate offences.

137. In accordance with the Customs (Amendment) (No.2) Act, 2019, which repealed and replaced section 242 of the Customs Act Cap 66, every importer and exporter shall use the appropriate forms prescribed by the Comptroller to be used to the purpose of implementing any customs enactment. The Currency/Bearer Negotiable Instruments (BNI) Transfer Form was developed between the Customs and the FIU and applies to the movement of all currency and Bearer Negotiable Instruments as defined in section 2 of the Customs Act Cap 66 as amended by the Customs (Amendment) (No. 2) Act, 2019. The form indicates that both incoming and outgoing passengers shall declare the total amount of currency or BNI being imported or exported and the type of currency, whether foreign or local, and where it is coming from or going to. This form appears to be enforceable and the underlying legislative provision that requires outgoing passengers to make such a declaration for currency or foreign current of more than Bd \$10,000 is contained at section 24(1) of the MFLTA. This section also explicitly requires a person transferring Barbadian currency or foreign currency that is more than \$10,000 in value, into or out of Barbados to make a report of the transfer in accordance with the said section 24, unless permission for the transfer was obtained under the Exchange Control Act. Additionally, paragraph 5 of part III of the Fourth Schedule of the Exchange Control Act, stipulates that “without prejudice of any proceeding provisions of this Part, any person who, on any occasion, is about to leave the Island or arrives in the Island (which person is hereafter in this paragraph referred to as “the traveller”) shall, if on that occasion he is required so to do by an officer of customs or an immigration officer – (a) Declare whether or not he has with him anything prohibited to be imported or exported, by any of the provisions of the said part V except with the permission of the authority; and produce any such thing as aforesaid which he has with him. These legislative provisions operate together with the Currency/Bearer Negotiable Instruments (BNI) Transfer Form to ensure that there is a disclosure system for both incoming and outgoing currency and BNI transfers. Additionally, the amendment to the definition of “goods” at section 2 of the Customs Act as amended by the Customs (Amendment) (No. 2) Act, 2019, now includes “currency”. The effect of this is that Customs authorities should be able to use the provisions of section 250B of the Customs Act to request and obtain further information as it applies to currency or BNIs. However, due to the specificity of this section in requiring further information to satisfy the comptroller that the declared value of the “goods” represents the total amount actually paid or payable for the imported goods, this section cannot be applied to currency and BNI, despite the change in the definition of “goods”. Notwithstanding this shortcoming, Customs is still able to seize currency or BNI and pursuant to the Customs Act, any objections to the seizure must be sent within one month of the date of the notice of seizure. Upon the expiration of this time the goods shall be deemed to be forfeited. The penalty in section 245 of the Customs Act can now be applied to false declarations of currency and BNI since the amendment of the definition of goods in the Customs Act. While this is a useful provision, it does not address the deficiency cited. There appears to be a further limitation to section 250B as the section relates to imported goods and not outgoing goods.

138. The provisions of the Customs Act at section 209A, as amended by the Customs (Amendment) (No. 2) Act, 2019, indicate that a proper officer may carry out a lawful search,



inspection, audit or examination under the Customs Act. If the goods that come into his possession during the search are suspected of being property obtained through unlawful conduct or intended to be used for money laundering or terrorism, the officer conducting the search may take possession of or retain the goods. Section 209B also provides for the seizure of goods without a warrant where it is being imported or exported from Barbados and there is reasonable ground to believe that the goods were obtained in contravention of any law. The amendment can therefore now be used to stop and restrain currency for a reasonable time where there is a suspicion of ML/TF or a predicate offence in accordance with sections 209A and 209B of the Customs Act. Also, as a result of this amendment to the definition of “goods”, the penalty, on conviction on indictment, of a fine of \$150 000 or 3 times the value of the goods, whichever is greater, or to imprisonment under section 245 of the Customs Act Cap.66 can now be applied to matters where currency or BNI are involved. Additionally, Customs can now include currency and BNI when utilising the MOU, thus eliminating the previous limitation.

139. Additionally, under the First Schedule of the Customs Act, goods seized by Customs may be held by Customs for a period of one month, within which any objections to the seizure must be filed, if no objections are filed it may be forfeited. Barbados has also indicated that any currency or BNI recorded at the point of importation is reported to the FIU. From the operation of the sections mentioned herein, it is clear that currency/BNI can be stopped or restrained where there is a false declaration or disclosure. The period of time the currency or BNI can be restrained for may vary from at least a month to up to 6 months. This provides reasonable time to ascertain whether evidence of ML/TF can be found. However, it is not clear from the legislation that this is one of the purposes for which the retention of the currency/BNI occurs.

140. Section 4A of the Customs Act provides for the confidentiality of the information obtained and instances where the information may be disclosed for the purpose of administering any customs enactment. All public service officers, which includes customs and immigration officers dealing with cross border transactions, are required to abide by their code of ethics which ensures that they shall not misuse their official position outside of their official duties to further their private interests or those of others. Additionally, Article II of the MOU Regarding Mutual Assistance and Cooperation for the Prevention and Repression of Customs Offences in the Caribbean Zone contain provisions to ensure that the information obtained will not be used otherwise than for the administration or enforcement of customs laws.

141. In relation to sanctions, persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to ML or predicate offences are subject to the maximum penalty of \$2,000,000 and up to 25 years imprisonment for the offence of money laundering under the MLFTA. Barbados also explains that this would be applicable to persons transporting currency or BNIs related to TF since TF is known to be supported by the proceeds of crime. However, it should be noted that this may not necessarily be the case as currency or BNI to be used for TF may not be the proceeds of a crime. Additionally, it is unclear how the penalty for the offence of money laundering would apply to what may be an offence of the financing of terrorism. Notwithstanding this, it is noted that the ATCPWMDA has criminalised the financing of terrorism and, as such, a person carrying out a physical cross-border transportation of currency or BNIs for the purpose of TF would be subject to the criminal sanctions stated under section 4 of the ATCPWMDA. However, these sanctions represent the



highest penalty which may be imposed and may not reflect proportionality to the offence. Section 207 of the Customs Act applies to the ability of any officer or constable to seize or detain anything which is liable to forfeiture. Section 109 of the PIOCA relates to the ability of a law enforcement officer to search any person for recoverable cash if there are reasonable grounds to suspect that the person is carrying such cash. Section 111 of the PIOCA ensures that cash which has been seized can be detained for the appropriate period of time. Section 114 of the PIOCA relates to the forfeiture of the whole or any part of the cash. Section 209B of the Customs Act permits a customs officer to seize and detain goods.

142. Barbados indicates that it considers the aforementioned ability to seize, restrain and forfeit (by virtue of the provisions in the Customs Act and the PIOCA) the currency or BNI being carried also represents a sanction against the person carrying out the physical cross border transportation. However, it is unclear how proportionate or dissuasive these additional sanctions are in relation to the offence being committed.

143. The transportation of currency or BNI related to ML/TF is considered by Barbados to be an offence of money laundering or terrorist financing. Pursuant to section 13(2) of the PIOCA, once a defendant is convicted by a court of an offence or offences, the court may, on the application of the prosecutor, or on its own motion, make an order confiscating the benefit the defendant obtained as a result of or in connection with the commission of the offence, forfeiting any property that is an instrumentality of the offence or forfeiting any property that the defendant obtained as a result of or in connection with the commission of the offence.

144. In addition, section 108 of the PIOCA identifies “recoverable cash” as cash intended by any person for use in unlawful conduct. Once a law enforcement officer has reasonable grounds to suspect that a person is carrying recoverable cash, the officer may detain the person and conduct a search of the person. It is specified in section 109 of the PIOCA that this power to detain and search is conferred upon a customs officer once he has reason to believe that the unlawful conduct is related to an assigned matter.

145. The law enforcement officer may thereafter seize the cash pursuant to section 110 of the PIOCA and detain the cash in accordance with section 111. Section 114 of the PIOCA then permits a police officer to apply to a magistrate for the forfeiture of the cash detained under section 111.

146. These sections permit Barbados to confiscate currency or BNI from persons who are carrying out a physical cross-border transportation of such currency or BNI once the person is convicted of an offence in the case of section 13(2), and once a police officer has reasonable grounds to believe that the cash is intended for use in unlawful conduct, or the customs officer has reasonable grounds to believe that the unlawful conduct relates to an assigned matter in section 114.

147. Barbados’ ability to confiscate currency or BNI from persons who are carrying out a physical cross-border transportation of such currency or BNI is limited in section 13(2) of the PIOCA to cash or BNI held by criminal defendants, and in section 114 to cash and not BNI. The measures for confiscation of currency/BNI do not appear to be entirely consistent with all the criteria of recommendation 4.

148. **On this basis, Barbados is re-rated as largely compliant with R.32.**



3.1.10. Recommendation 33 (originally rated PC)

149. In its 4th MER, Barbados was rated PC for R.33. The deficiency related to no obligation for Barbados to maintain comprehensive statistics relating to the efficiency of Barbados' AML/CFT system.

150. Pursuant to the National AML/CFT Strategy, all competent authorities are mandated to maintain comprehensive statistics. The National Action Plan, which was viewed via video conference, encapsulates the National AML/CFT Strategy and mandates the maintaining of comprehensive statistics by all stakeholders, including for mutual legal assistance.

151. Further, the FCIU has implemented a database to collect all statistics relating to AML/CFT matters. Further, the Operational Plan of the FCIU 2019-2020 has embedded within its goals, provisions to support the collation and maintenance of statistics. In addition to registers which are in use at the FCIU, a statistical database was developed at the FCIU to capture statistics including:

- After the report arising out of the STR is received from FIU, the report is logged internally at the FCIU and the movement and status of the files are tracked internally at the department. This process continues until the investigation is completed. The FIU is then notified of the outcome. ML/TF investigations as well as any prosecutions relating to these matters and convictions.
- All property which comes into the possession of the FCIU by way of a seizure, confiscation and freeze order is also accounted for in the database.
- It also includes matters relating to Mutual Legal Assistance as well as other international requests made and received at both formal and informal levels.
- The categories captured in the database include but are not limited to:
 - Confiscation Orders
 - Disclosure Orders
 - Forfeiture Orders
 - Restraint Orders
 - Civil Forfeiture
 - STRs
 - MLATs (incoming & outgoing)
 - ML investigations inclusive of investigations & prosecutions
 - Informal requests for information (incoming & outgoing)

152. Additionally, the FIU's confidential Operations Manual, which was viewed via video conference, requires FIU to maintain comprehensive statistics including on the number and types of reports received e.g., STRs, local requests, overseas requests, disseminations, information received report, spontaneous referrals and mutual legal assistance requests handled.



153. No information has been provided by Barbados on statistics for properties frozen, seized and confiscated by other CAs. Statistics are currently only being kept for the properties which comes in possession of the FCIU by way of a seizure, confiscation, and freeze order.

154. **On this basis, Barbados is re-rated as largely compliant with R.33.**

3.1.11. Recommendation 34 (originally rated PC)

155. In its 4th MER, Barbados was rated PC with R.34. The key technical deficiencies were that the FIU is dependent on the AMLA to issue guidelines to DNFBPs; and no provision for the FIU to provide feedback to reporting entities on the usefulness of the reports they provide.

156. This criterion requires competent authorities and supervisors to establish guidelines. Barbados' legislation provides for such guidelines to be issued by the AMLA in conjunction with the respective regulator for financial institutions and DNFBPs as defined in the MLFTA. However, the FIU does not have the legal authority to issue or establish guidelines on its own and is wholly dependent on the AMLA for the issuance of guidelines for AML/CFT. Notwithstanding this, guidelines have been issued by the AMLA, in consultation with the FIU in 2019, for Accountants, Attorneys at Law, Dealers in Precious Metals and Stones and Real Estate Agents.

157. Notwithstanding the lack of a provision for the FIU to issue guidelines on its own, it has demonstrated that it has provided guidance to the DNFBPs under its purview and also to FIs on their AML/CFT obligations and the filing of STRs. The FIU provides this guidance through the periodic and ongoing outreach it conducts with these sectors. The FIU's outreach plans for 2019 and 2020 demonstrates this constant guidance.

158. It is noted that for the other DNFBPs, TCSPs are licensed and registered under the International Business Unit which issued guidelines for this sector in 2016. The Central Bank of Barbados supervises MVTs and has issued guidelines to all its supervised entities including this category. However, there is no indication that the FIU has issued guidelines on its own as a competent authority, for example, guidance on the filing of SARs or other reports required to be filed with the FIU.

159. Lastly, the FIU's Operations Manual provides the FIU with the directive to give feedback to entities on a quarterly basis. Additionally, in accordance with the FIU Operations Manual, the FIU is required to provide feedback on an immediate basis if poor quality STRs are received and during training and outreach sessions. The FIU provides feedback on general reporting requirements during training and outreach sessions and feedback on comprehensive STR reporting in closed sessions with MLROs/Compliance Officers and others with AML/CFT reporting and oversight responsibilities. The FIU's typology report also provides feedback in the form of outcomes from the STRs received.

160. **On this basis, Barbados is re-rated largely compliant with R.34.**

3.1.12. Recommendation 38 (originally rated PC)

161. In its 4th MER, Barbados was rated PC with R.38. The key technical deficiencies related to no legal basis for the confiscation of property of corresponding value; no legal provision to



address non-conviction-based proceedings; and no policy for asset forfeiture and sharing of assets between countries. The MER also noted that the MACMA does not consider the timeliness or expeditious action in response to requests made for the purpose of R.38.

162. The MACMA enables Barbados to provide mutual legal assistance to foreign and commonwealth countries in respect of criminal matters. Other than indicating that mutual legal assistance to obtain court orders are brought before the court under certificate of urgency, Barbados has not submitted the authority by which they are able to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, money laundering, predicate offences, or terrorist financing; or property of corresponding value. .

163. Further, by the PIOCA 2019, the MACMA was amended to include a definition of “criminal conduct” which now enables Barbados to provide mutual legal assistance to commonwealth countries for conduct which would constitute an offence had it occurred in Barbados, as well as if it was an offence in a Commonwealth country had it occurred there. The definition of “criminal matter” in the MACMA was since amended by the PIOCA 2019 to include the ability to freeze dealings with property, proceedings for the recovery of property and to impose pecuniary penalties calculated from the value of the proceeds of criminal conduct. Section 26 of the MACMA 1993 enabled Barbados to register an Order made by a commonwealth country to confiscate property derived from the commission of a specified offence or a pecuniary penalty under the Order. The PIOCA 2019 has since amended section 26 of the MACMA to permit Barbados to use the provisions of the PIOCA in order to enforce such an Order from a foreign country. This results in Barbados now having the ability to use section 13(2) of PIOCA 2019 to enforce an order in respect of a request to confiscate property of a corresponding value by a commonwealth country. This is done by making an application, on behalf of the requesting state, for an order under the PIOCA to confiscate any benefit that the defendant obtained as a result of, or in connection with, the commission of the offence or offences with which the defendant was convicted in the commonwealth country in accordance with section 13(2)(a); an order forfeiting any property that is an instrumentality of the offence or offences in accordance with section 13(2)(b); or an order forfeiting any property that the defendant obtained as a result of, or in connection with, the commission of the offence or offences, including any tainted gift in accordance with section 13(2)(c).

164. Section 13(2)(a) enables the confiscation of any “benefit” that the defendant has obtained as a result of, or in connection with, the commission of the offence. In accordance with section 4(1)(a) of the PIOCA, a person “benefits” from conduct where he “obtains property” or “a pecuniary advantage”. Therefore “benefit” also includes the actual property.

165. When one examines the making of a confiscation order pursuant to section 15 of the PIOCA it is clear that the court, in determining the amount to be confiscated, also called “the recoverable amount”, must consider the requirements of section 17. Section 17 specifies that the recoverable amount is an amount equal to the defendant’s benefit from the criminal or unlawful conduct. Reading further, section 18 of the PIOCA explains how the court should determine the actual benefit obtained by the defendant for his criminal conduct. This is done



through consideration of the conduct itself and the property obtained during the period the conduct took place.

166. In reading section 15 and applying the provisions of sections 17 and 18 to the making of a confiscation order, it can be seen that the court can in fact make a confiscation order requiring the defendant to pay an amount equal to the property obtained during the period the criminal conduct had occurred. Additionally, section 17 allows the court, for the purposes of making an order to confiscate the amount equal to the property obtained by the defendant during the course of the conduct, to take into consideration all the realisable property held by the defendant and all tainted gifts. Realisable property means any property held by the defendant or even the recipient of a tainted gift. Section 7 of the PIOCA and section 10 of the PIOCA respectively describe how the value of property obtained from criminal conduct and the value of tainted gifts may be calculated. Regarding the confiscation of the corresponding value to the instrumentalities of crime, it is noted that sections 13(2)(b) provides for the making of an order for the forfeiture of property that is an instrumentality of the offence. Section 49 of the PIOCA further makes provisions in the event that the court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an offence, but the property cannot be located; has been transferred to a third party and the transfer cannot be voided; is located outside of Barbados; has been substantially diminished in value or rendered worthless; or has been commingled with other property that cannot be divided without difficulty. In such case, the Court may order the person to pay an amount equal to the value of the property to be forfeited. It is therefore submitted that section 49 of the PIOCA provides for the forfeiture of property of a corresponding value to the instrumentalities of an offence through the payment of an amount equal to the value of the property which would be subject to the forfeiture order.

167. There is, therefore, a legal basis through the use of the amended MACMA and section 13(2)(a),(b) and (c) of the PIOCA 2019 to respond to requests by commonwealth countries to confiscate property of corresponding value to the proceeds and instrumentalities of money laundering, predicate offences or terrorist financing. Section 29 of the MACMA specifies that the Act also applies to countries with whom Barbados has a bilateral treaty and any country which is party to the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 1988. A consequential amendment by ATA (Amendment) Act, 2015-28 to MACMA replaced the old section 29 with a new one which includes a reference to the conventions in the ATCPWMDA. If a request is made by a country under the latter 2 conventions, assistance will be rendered on the basis of reciprocity.

168. Further, section 2(1) of the MACMA, as amended by the PIOCA, 2019, amends the definition of “criminal matter” to include forfeiture proceedings or proceedings to restrain or freeze dealings with property or proceedings for the confiscation or recovery of property whether the proceedings are criminal or civil, and as such, permits cooperation for such non-conviction-based confiscation proceedings. Section 26 of the MACMA, as amended by the PIOCA, provides for the registration and enforcement of forfeiture, confiscation and restraint orders from commonwealth countries whether or not the proceedings to which the order to be enforced are civil or criminal. The amendment of section 26(7) of the MACMA through the PIOCA 2019 now enables the enforcement of such forfeiture or confiscation orders from commonwealth countries using sections 37, 38 and 58 of PIOCA 2019.



169. Sections 37 and 38 of the PIOCA make provisions for the making of a confiscation order where a defendant absconds before being convicted or absconds and is neither convicted nor acquitted. In such circumstances Barbados would be able to implement the provisions of section 26(7) of the MACMA to enforce the non-conviction-based confiscation order of a commonwealth country by reason of the absence or flight of the perpetrator. The provisions in the PIOCA, however, do not allow for a confiscation order to be made in the case of death of the perpetrator or if the perpetrator is unknown. Similarly, sections 50 and 51 of PIOCA make provisions for the forfeiture of property without a conviction on the basis that the perpetrator has absconded. A request for cooperation made on such a basis can be provided through section 26(7) of the MACMA as amended by the PIOCA, 2019 using sections 50 and 51 of PIOCA. The provisions in the PIOCA, however, do not allow for a confiscation order to be made in the case of death of the perpetrator or if the perpetrator is unknown.

170. Notwithstanding the above, the PIOCA makes provisions at section 58 for a prosecutor to apply to the court for the appointment of an enforcement receiver in respect of specified property where an external order in relation to the recovery of property is registered in Barbados. Once the external order is so registered, section 58(2) enables the court to appoint an enforcement receiver who can take possession of and manage the specified property or realise the property in any manner which the court may specify. The court may also require any person holding an interest in the specified property to pay the enforcement receiver such amount as the court specifies and to transfer, grant or extinguish the beneficial interest in the property.

171. Also, in terms of external orders, section 52 of the PIOCA, 2019 permits a prosecutor to make an application for a restraining order against property once an external order is accepted. The PIOCA, 2019, does not specify that a conviction is a prerequisite for the registration or enforcement of an external order for the recovery of property.

172. Barbados has provisions in its MACMA which allow for Barbados to grant requests from commonwealth countries for mutual assistance to seize and confiscate property pursuant to a criminal matter. Sections 8 and 21 of the MACMA permits Barbados to lend assistance for the seizure of any article or thing related to a criminal matter. Sections 15, 16, 16A, 26, 27 and 27A allow Barbados to lend assistance in relation to restraining property and confiscation and forfeiture of proceeds and instrumentalities of crime, through the registration and enforcement of the requesting country's court orders via section 52 of the PIOCA, 2019. Section 29 of the MACMA specifies that the Act also applies to countries with whom Barbados has a bilateral treaty and any country which is party to the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 1988.

173. Barbados has amended the PIOCA to ensure that there are mechanisms in place for managing, and when necessary disposing of, property frozen, seized or confiscated pursuant to the PIOCA. Requests for mutual legal assistance in criminal matters, received via the MACMA, can be actioned through the country's corresponding laws, in this case, the PIOCA. Therefore, once a request is received from a Commonwealth country for the seizure, freezing or confiscation of property, the authorities in Barbados may employ the provisions of the PIOCA to restrain, freeze and confiscate the said property. As noted at c. 4.4, The PIOCA provides for a restraining order to be made in accordance with section 54.



174. Since the enactment of the PIOCA in 2019 which consequentially amended the MACMA, Barbados is able to conduct proceedings for civil asset forfeiture domestically. Utilising the provisions at section 26(7) of the MACMA, Barbados would be able to provide mutual assistance for civil asset forfeiture proceedings for Commonwealth countries. Section 29 of the MACMA specifies that the Act also applies to countries with whom Barbados has a bilateral treaty and any country which is party to the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 1988. If a request is made by the latter countries, assistance will be rendered on the basis of reciprocity.

175. Lastly, Barbados has provided a draft agreement for the sharing of assets between its government and that of the USA. Although Barbados is in the process of enabling itself to share confiscated property with the USA, this has not yet been finalised. Barbados' ability to share confiscated property is currently limited to signatories of the regional CARICOM agreement for asset sharing, however, not all members of CARICOM are signatories to this agreement. There is limited ability to share confiscated property with other countries.

176. **On this basis, Barbados is re-rated as largely compliant with R.38.**

3.2. Progress on Recommendations which have changed since Barbados' Mutual Evaluation Report

177. Since the adoption of Barbados's MER, the FATF has amended Recommendations 2, 5, 7, 8, 15 and 21. This section considers Barbados' compliance with the new requirements and how the country is addressing the deficiencies included in the MER.

3.2.1. Recommendation 2 (originally rated LC)

178. In its 4th MER, Barbados was rated LC with R.2. The key technical deficiencies related primarily to no policies being informed by the risks identified and regularly reviewed; and no evidence of structured meetings between the FIU and law enforcement for ML/TF operational and strategic matters. The MER also noted that with respect to the combatting of the FP of WOMD specifically, the Assessors found no evidence that the competent authorities had any form of coordinated strategy in place.

179. The Methodology was amended in October 2018 in order to reflect the February 2018 amendments to the FATF Standards (R.2) which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules and build on the conclusions of RTMG's report on inter-agency CT/CFT information sharing.

180. Barbados indicated that several policies and procedures emanated from the NRA (C1.6). Furthermore, additional resources have been assigned to several units. Besides other efforts to improve its AML/CFT framework, Barbados indicated that it has developed a 3-year National Action Plan that also emanated from the NRA and that it is being monitored on an ongoing basis.

181. As for the committees established, their purposes are clear. Based on C2.2, the AMLA maintains oversight of the national AML/CFT framework which seems in line with the mandate of the Cabinet Sub-Committee.



182. The MLIC functions as an overarching committee and is chaired by the RBPF and comprised of Immigration Department, Customs, Barbados Revenue Authority, FIU and the DPP's Office. Decisions arising out of MLIC inform policy proposals considered by LEAs and Supervisors as well as AMLA. The MLIC also informs on recommendations to strengthen the implementation of policies at the operational level. Minutes were provided in order to verify the frequency of these meetings, the stakeholders that indeed attended the meetings, and the topics being discussed.

183. Barbados specified that the TFSCC was established in November 2019. Chaired by the FIU, the committee is made up of representatives from the DPP, RBPF, FSC, IBD, CBB, CAIPO, Compliance Unit and the Ministry of Foreign Affairs and Foreign Trade. As a sub-committee of AMLA the TFSCC is AMLA's coordination point for TF/FP matters. Other responsibilities include contributing to the national counter terrorism strategy, expediting updates to the sanctions list to AML/CFT stakeholders and reporting on frozen assets.

184. Barbados recently enacted a Data Protection Act, 2019. However, no information was provided on the relationship between the Data Protection Act, 2019 and the ability to promote domestic inter-agency information sharing among competent authorities.

185. **On this basis, Barbados remains largely compliant with R.2.**

3.2.2. Recommendation 5 (originally rated LC)

186. In its 4th MER, Barbados was rated LC with R.5. The technical deficiencies related to the legislation not expressly addressing the issue of criminalization of an act by a terrorist organization or an individual unless it is linked to a specific offence; TF offences are designated ML predicate offences; however, it was noted that the definition of fund in the ATA differ from the definition of property and this may mitigate against consistency; and the ATA does not include sanctions for an attempted offence for both individuals and legal persons for offences occurring inside or outside Barbados

187. The Methodology was amended in February 2017 and criterion 5.2 bis was included so that TF offences should include financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

188. Section 7 of the Anti-Terrorism (Amendment) Act, 2019-34 repealed and replaced section 4(1) of the ATCPWMDA and creates the offence of terrorist financing where the funds or financial services are directly or indirectly, unlawfully and willingly provided to persons with the intention that the funds or services are to be used, or with the knowledge that the funds or services are to be used, in full or in part (b) by a person in respect of whom a terrorist designation order is in force. Section 3(1) provides that such acts include an act that constitutes an offence under any of the treaties listed in the second schedule to the Act. In consideration of these treaties, such acts include terrorist acts; or by persons in respect of whom a terrorist designation order is made, which includes individual terrorists or terrorist organisations. Section 4(2) provides for the criminalising of terrorist financing regardless of whether the funds



or services were used to carry out an offence. However, the application of section 4(1)(b) is limited to only those terrorist organisations or individual terrorist designated by Barbados.

189. Section 4(1)(b) of the ATCPWMDA now includes a provision criminalising the provision of funds or financial services, directly or indirectly, unlawfully and wilfully, to persons with the intention that the funds or services are to be used in full or in part for the travel of an individual to a state other than his state of nationality or residence for the purpose of committing, planning, preparing for, or participating in, an act described in section 3(1) or of providing or receiving training in committing, planning, preparing for, or participating in such an act. This therefore meets the requirements of Criterion 5.2bis.

190. The amendment to the MLFTA in 2019 harmonises its definition of “property” with the definition of “funds” in the ATCPWMDA. The definition of Property in the MLFTA is now identical to the definition of Funds in the ATCPWMDA, and the definition of property in the ATCPWMDA includes “funds” as defined in the ATCPWMDA.

191. Section 12A of the ATCPWMDA includes sanctions for an attempt to commit an offence under that Act by a person. When read in conjunction with section 36(1) of the Interpretation Act, it is clear that the provision applies to both individuals and legal persons. Section 4(1) of the ATCPWMDA also now provides that the financing of terrorism is an offence whether the person who commits the offence is inside or outside of Barbados. As section 12A now provides that an attempt to commit an offence under the Act is an offence itself, the attempt to finance terrorism by a person whether in or out of Barbados is now considered an offence under the ATCPWMDA.

192. **On this basis, Barbados remains largely compliant with R.5.**

3.2.3. Recommendation 7 (originally rated NC)

193. In its 4th MER, Barbados was rated NC for R.7. In November 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing related UNSCRs.

194. The ATCPWMDA provides a mechanism for the implementation of UNSCRs related to the proliferation of weapons of mass destruction and its financing. This mechanism is through obtaining a counter-proliferation order under section 10B of the ATCPWMDA. Section 10B provides for the application to be made against a “listed person” which includes any individual, entity or vessel included in a UNSC list for the prevention, suppression etc. of the proliferation of WMDs and its financing. Section 10B sets out the legal basis for the application to be made without delay and without notice. This is further supplemented by Practice Direction No. 1 of 2020 which sets out the procedure for the hearing and determination of applications for orders to designate terrorist entities and for applications for freezing orders pursuant to such a designation. Paragraph 2 of this Practice Direction explains that the phrase “without delay” means, ideally, within hours of a designation by the UNSC or relevant Sanctions Committee. Further to this, the DPP issued internal guidance on December 3, 2019 to ensure that the procedure leading to the receipt of the Court’s order is conducted in such a manner to ensure the designation order and freezing order are obtained without delay.



195. In tandem with making an application for a counter-proliferation order under 10B, a restraining order under section 10B(3) must also be applied for. Additionally, section 10C sets out the legal basis for this restraining order to be made without delay for the freezing of all property of a related state actor, a person controlled by a related state actor and a person acting on behalf of or at the direction of a related state actor. The definition of “related state actor” as set out in section 10A makes it clear that the freezing order will apply to any individual entity or government which has been identified pursuant to a UNSCR for TFS related to PF. Therefore, these provisions relating to the freezing of property of a listed person are applicable to all UNSCRs. However, the provision at section 10(B)(1), by the use of the word “may”, indicates that the DPP has the discretion to apply for the counter-proliferation order. Since the freezing order is dependent on the counter-proliferation order being made, this discretionary section does not clearly establish an obligation on the country to implement the targeted financial sanctions. Additionally, Barbados has not listed any entities or individuals accordingly.

196. Part IVA of the ATCPWMDA identifies the DPP as the competent authority responsible for implementing and enforcing TFS with the provisions of the MLFTA applying mutatis mutandis to the provisions of the ATCPWMDA with regard to obligations on Financial Institutions and DNFBPs. In such cases, the relevant competent authority for the Financial Institutions and DNFBPs have the responsibility of ensuring these entities comply with the court orders in relation to TFS. To this end, a Guidelines on Targeted Financial Sanctions was issued by the regulators of the financial institutions and DNFBPs in November 2019. This Guideline communicates the roles of the supervisory authorities, the DPP and the Courts and the obligations of the financial institutions and DNFBPs pursuant to a freezing order.

197. Part IVA of the ATCPWMDA establishes the legal authority to implement TFS. It identifies the DPP as the competent authority for making the application for the counter-proliferation order and restraining order against the property of the listed person.

198. Section 10(1) of the ATCPWMDA places the obligation on the DPP to publish notice of the Order immediately, via electronic means as well as in the Gazette and at least 2 daily newspapers in circulation in Barbados. Section 10(2) of the ATCPWMDA as well as the DPP’s Guidance Note to comply with “Without Delay”, indicates that the Order applies to all natural and legal persons within the country. The Order itself also specifies that the DPP shall publish notice of the Order immediately. The DPP also communicates the Order directly to the Supervisors and Regulators under cover letter which specifies that the Supervisors and Regulators must immediately disseminate the Order to their licensees for action in accordance with section 10(1) of the ATCPWMDA.

199. Funds are defined in the ATCPWMDA to include assets of every kind and property is defined as including funds whether situated in Barbados or elsewhere and any legal or equitable interest whether full or partial, in property. In particular, section 10B(3) of the ATCPWMDA states that the restraining order extends to the property of the designated person or entity and are not linked to a particular act, threat or plot of proliferation. It also extends to property owned or controlled wholly or jointly, directly or indirectly by the designated person or entity, property that is generated from other property owned or controlled directly or indirectly by the



designated person or entity or property of a person acting on behalf or at the direction of a designated person or entity.

200. Section 10B(3)(b) of the ATCPWMDA provides that the court may make an order prohibiting the listed person, directly or indirectly, from possessing, controlling or having access to any property. Additionally, the new sections 4(1)(c) and (d) of the ATCPWMDA directly prohibit any person, in or outside of Barbados from providing funds or financial services with the intention or knowledge that the funds or services would be used by a person in respect of whom a counter proliferation order is made. A breach of this section is an offence that carries a sentence of imprisonment for 30 years. This section creates an enforceable means by which nationals or any persons within Barbados are prevented from making funds or other assets available to designated entities. The provisions of section 54(3) and (3A) of the PIOCA 2019-17 also provide for the authorisation of access to funds or other access where the exemption conditions set out in UNSCRs 1718 and 2231 are met.

201. Restraining Orders for TFS are made in accordance with the PIOCA 2019. As such the provisions as they relate to bona fides third parties who may have an interest in property subject to a restraining order under section 55 of the PIOCA will apply to bona fides third parties whose interests are affected by a restraining order in relation to TFS. Such third parties may apply to the court to vary or discharge the Order under section 55(1) of the PIOCA. A party whose interests are affected by this restraining order can include a third party affected by the implementation of the designation as well as the person against whom the designation is made as the provision applies to any bona fides third party with whose interests are affected by the restraint of the property subject to the order. Additionally, in accordance with section 57(7) and 58(7) of the PIOCA, where a management receiver or enforcement receiver is appointed by the court pursuant to a restraining order, these receivers cannot take action before any person holding interest in the property subject to the restraining order is given the opportunity to be heard before the court in respect of his rights. This variation or discharge may be applied for if a person is affected by an order on the basis of a false positive. Through this section such a person may apply to the court to vary or discharge the restraining order. Once there is a change to the restraining order, the omnibus TFS guidelines indicate that Financial Institutions and DNFBPs must take steps to unfreeze the funds.

202. Barbados cites that the DPP is required, pursuant to section 9(1) of the ATCPWMDA (which also applies to counter proliferation orders as specified in section 10C(5)) to review the counter proliferation order every 6 months to determine whether the circumstances which led to the counter proliferation order have changed or no longer exists. In such circumstances, the DPP shall, in a timely manner, apply to a judge for the variation or setting aside of the order. However, other than the process to enable a person affected by a restraining order to apply to the court to vary or set aside the order pursuant to section 55 of the PIOCA, Barbados has not provided information which details publicly known procedures to unfreeze assets or funds of persons who may have the same or similar name of a designated entity, and as such, may have had their funds frozen by a financial institution or other person based on this false positive.

203. The Omnibus TFS Guidelines for financial institutions and DNFBPs provide generally for compliance with Orders for freezing and unfreezing of funds subject to TFS. The Guidelines issued by the FSC and the CBB also contain provisions to indicate that non-compliance with



the guidelines would result in administrative sanctions being imposed pursuant to section 34 of the MLFTA. The IBU's Enforcement Manual contains provisions for onsite and offsite monitoring to ensure TFS compliance. It is also noted that the risk based supervisory frameworks of the FSC and the CBB provide for compliance monitoring including ongoing assessments for compliance with legislative requirements. With respect to DNFBPs, the MLFTA gives the AMLA the authority to conduct onsite inspections to ensure compliance with guidelines issued under s. 26 of the MLFTA. The sanctions under the MLFTA can apply to TFS related to proliferation with the amendment to the ATCPWMDA in 2019. These sanctions can be imposed against FIs and DNFBPs. The sanction under the PIOCA for breach of a restraining order can be imposed against any person or entity.

204. Barbados has not made submissions in relation to the procedure to submit a de-listing request to the Security Council. Barbados has not provided submissions which establish that there are publicly known procedures for listed persons and entities to petition a request for de-listing at the Focal point for de-listing, or for informing designated persons or entities to petition the Focal Point directly.

205. Section 54(3) of the PIOCA 2019-17 provides for the authorisation of access to funds or other access where the exemption conditions set out in UNSCRs 1718 and 2231 are met.

206. The amendment to the PIOCA to insert a new section 156A provides for the treatment of contracts, agreements or obligations which arose prior to the date on which the account became subject to the TFS through the restraining order. The court has the authority in such cases to make provisions for payment under such contracts or obligations it deems fit.

207. **On this basis, Barbados is re-rated as largely compliant with R.7.**

3.2.4. Recommendation 15 (originally rated C)

208. In its 4th MER, Barbados was rated C for R.15. In October 2019, R.15 was substantially amended to include virtual assets and virtual asset service providers into the AML/CFT landscape.

209. Barbados indicated that VASP would naturally be captured under schedule 1 of the MLFTA and hence would be treated as FIs. However, based on the definition of FIs in the MLFTA it is not clear that the services offered by VASPs are covered by the definition of FIs. In addition, it is not clear whether only a FI can offer the services of a VASP or if this is allowed by the DNFBP sector as well. This therefore has a negative cascading effect into criteria 15.4, 15.6-15.9.

210. Barbados indicated that VASP/Mobile wallet have been assessed but only as part of the NRA. A comprehensive risk assessment of the VA/VASPs has not been conducted. It is not clear if the limited results of the NRA led to a risk-based approach followed by measures to prevent or mitigate money laundering and terrorist financing commensurate with the risks identified.

211. Barbados has initiated actions to identify natural or legal persons that carry out VASP activities. However, given that VASPs do not fall within the definition of FIs, nor has Barbados



taken any steps to bring VASPs under a licencing or registration regime, this criterion is not addressed.

212. With respect to TFS, section 10(1) ATCPWIMDA provides that the DPP shall, where a judge makes, confirms, varies or sets aside a terrorism designation order or a related restraining order, cause notice of the decision to be published electronically immediately; and in the Official Gazette and at least 2 daily newspapers in circulation in Barbados, as soon as possible. However, there are no mechanisms to address sub-criteria 6.5(e), 7.2(d), 7.2(e), 7.3 and 7.4(d).

213. With respect to criterion 15.11, this criterion refers to R.37-40. Criteria 37, 39 and 40 were rated largely compliant and as such the deficiencies would affect the assessment of criterion 15.11.

214. Regarding R.38, Barbados' ability to provide assistance in relation to non-conviction-based confiscation proceedings is limited to circumstances whereby the perpetrator has absconded before or after being convicted. Barbados' ability to share assets between itself and the USA has not yet been finalised and it is currently limited to asset sharing with the signatories of the CARICOM regional agreement. R. 38 has been re-rated largely compliant (see analysis at paragraphs 88-95 above).

215. **On this basis, Barbados is re-rated as partially compliant with R.15.**

3.2.5. Recommendation 18 (originally rated LC)

216. In its 4th MER, Barbados was rated LC for R.18. The technical deficiency related to the IBD AML/CFT Guidelines not addressing the requirements of sub-criterion 18.3.

217. In February 2018 criterion 18.2(b) and related footnotes were revised to reflect the November 2017 amendments to the Interpretive Note to R.18.

218. Based on the revised IBU Guidelines of November 2019, where a group whose headquarters is in Barbados operates branches or controls subsidiaries in another jurisdiction, it should ensure that such branches or subsidiaries observe this Guideline and apply the higher of local and host standards. However, there is no requirement for financial groups to apply appropriate additional measures to manage the ML/TF risks, if the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements.

219. The revised CBB Guideline provides that licensees should implement group-wide AML/CFT programmes which should include the provision at group-level compliance, audit, and/or AML/CFT functions, of a customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This includes information and analysis of transactions and activities which appear unusual (if such analysis was done). Similarly, branches and subsidiaries should receive such information from these group level functions when relevant and appropriate for risk management. However, no similar provision has been provided for the FSC.

220. **On this basis, Barbados remains largely complaint with R.18.**



3.2.6. Recommendation 21 (originally rated LC)

221. In its 4th MER, Barbados was rated LC for R.21. The technical deficiency related tipping-off not being applicable where STRs or other information are in the process of being filed or not yet filed with the FIU.

222. In February 2018 criterion 21.2 was revised to reflect the November 2017 amendments to the Interpretive Note to R.18 and R.21.

223. Section 43 of the MLFTA prohibits a person who knows or suspects that an investigation or enquiry into money laundering or financing of terrorism has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document and divulges that fact or other information to another person whereby the investigation or enquiry is likely to be prejudiced. This section does not prohibit the tipping off of STRs in the process of being filed, or not yet filed with the FIU.

224. Furthermore, paragraph 111 of the CBB guidelines states that it is against the law for employees, directors, officers or agents of a licensee to disclose that a suspicious transaction report or related information on a specific transaction has been reported to the Authority and that these provisions are not intended to inhibit information sharing within financial groups. FSC's AML/CFT & PF Guidelines provides that AML/CFT programmes must include adequate safeguards on the confidentiality and use of information exchanged, including the prevention of tipping-off and that these provisions are not intended to inhibit information sharing with financial groups. However, there is no prohibition in the law on employees, directors, officers, or agents of a licensee with respect to disclosure that an STR is being filed with the FIU. As such the provisions are not sufficiently strong to prohibit tipping off.

225. **On this basis, Barbados is re-rated as partially compliant with R.21.**

3.3. Brief overview of progress on other Recommendations rated NC/PC.

226. Barbados reported progress in the other Recommendations rated NC/PC. For Recommendation 31, amendments to the PIOCA addressed 1 of the 3 deficiencies while the others are in the process of being addressed. In relation to Recommendation 36, Barbados is in the process of enacting new legislation to implement the Merida Convention, while the new Integrity in Public Life Bill, 2020 and the Prevention of Corruption Bill, 2020 are both intended to replace the Prevention of Corruption Act, 2012.

4. CONCLUSION

227. Overall, Barbados has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on 13 Recommendations.

228. No recommendations are NC. Barbados fully addressed the deficiencies in Recs. 4 and 20 which are re-rated as C. Barbados has also addressed most of the technical compliance deficiencies identified on Recs. 1, 7, 19, 29, 32, 33, 34 and 38 such that only minor shortcomings remain, and these Recommendations are re-rated as LC. Recs. 2, 5 and 18



maintain the rating of LC while Recs. 23 and 24 maintains the rating of PC. Rec. 8 was upgraded to PC and Recs. 15 and 21 were downgraded to PC.

229. In light of Barbados's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, November 2020

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
<i>LC</i>	LC	LC	<i>C</i>	LC	LC	<i>LC</i>	<i>PC</i>	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	LC	LC	<i>PC</i>	LC	LC	LC	<i>LC</i>	<i>C</i>
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
<i>PC</i>	LC	PC	PC	LC	C	C	LC	<i>LC</i>	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	<i>LC</i>	<i>LC</i>	<i>LC</i>	LC	PC	LC	<i>LC</i>	LC	LC

230. Barbados will remain in enhanced follow-up on the basis that it has a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes (11 in total). According to the enhanced follow-up process, Barbados will continue to report back to the CFATF on its progress to strengthen its implementation of AML/CFT measures.



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Anti- money laundering and counter-terrorism measures in Barbados

2nd Enhanced Follow- up Report and Technical Compliance Re-rating

This report analyses Barbados' progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of February 2018.

The report also looks at whether Barbados has implemented new measures to meet the requirements of the FATF Recommendations that have changed since its 4th Round Mutual Evaluation assessment.