



Anti-money laundering  
and counter-terrorist  
financing measures

# Antigua and Barbuda

Mutual Evaluation Report

July 2018



## CONTENTS

EXECUTIVE SUMMARY.....	5
Key Findings .....	5
Risks and General Situation .....	7
Overall Level of Effectiveness and Technical Compliance .....	9
Priority Actions .....	13
Effectiveness & Technical Compliance Ratings .....	15
MUTUAL EVALUATION REPORT .....	18
Preface .....	18
CHAPTER 1. ML/TF RISKS AND CONTEXT.....	19
ML/TF Risks and Scoping of Higher-Risk Issues .....	19
Materiality .....	24
Structural Elements.....	25
Background and other Contextual Factors .....	26
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION .....	34
Key Findings and Recommended Actions .....	34
Immediate Outcome 1 (Risk, Policy and Coordination) .....	35
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES .....	43
Key Findings and Recommended Actions .....	43
Immediate Outcome 6 (Financial intelligence ML/TF) .....	46
Immediate Outcome 7 (ML investigation and prosecution).....	58
Immediate Outcome 8 (Confiscation).....	67
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION .....	74
Key Findings and Recommended Actions .....	74
Immediate Outcome 9 (TF investigation and prosecution).....	75
Immediate Outcome 10 (TF preventive measures and financial sanctions).....	77
Immediate Outcome 11 (PF financial sanctions).....	81
CHAPTER 5. PREVENTIVE MEASURES.....	83
Key Findings and Recommended Actions .....	83
MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA .....	2

Immediate Outcome 4 (Preventive Measures) .....	84
CHAPTER 6. SUPERVISION.....	97
Key Findings and Recommended Actions .....	97
Immediate Outcome 3 (Supervision) .....	99
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS.....	115
Key Findings and Recommended Actions .....	115
Immediate Outcome 5 (Legal Persons and Arrangements).....	116
CHAPTER 8. INTERNATIONAL COOPERATION.....	127
Key Findings and Recommended Actions .....	127
Immediate Outcome 2 (International Cooperation).....	127
TECHNICAL COMPLIANCE ANNEX .....	132
Recommendation 1 - Assessing Risks and applying a Risk-Based Approach .....	132
Recommendation 2 - National Cooperation and Coordination .....	134
Recommendation 3 - Money laundering offence .....	135
Recommendation 4 - Confiscation and provisional measures.....	138
Recommendation 5 - Terrorist financing offence.....	140
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing .....	142
Recommendation 7 – Targeted financial sanctions related to proliferation .....	145
Recommendation 8 – Non-profit organisations.....	146
Recommendation 9 – Financial institution secrecy laws .....	148
Recommendation 10 – Customer due diligence .....	149
Recommendation 11 – Record-keeping .....	153
Recommendation 12 – Politically exposed persons.....	155
Recommendation 13 – Correspondent banking.....	155
Recommendation 14 – Money or value transfer services .....	156
Recommendation 15 – New technologies .....	157
Recommendation 16 – Wire transfers.....	158
Recommendation 17 – Reliance on third parties .....	160
Recommendation 18 – Internal controls and foreign branches and subsidiaries .....	161
Recommendation 19 – Higher-risk countries.....	163
Recommendation 20 – Reporting of suspicious transaction .....	164
Recommendation 21 – Tipping-off and confidentiality .....	165
MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA .....	

Recommendation 22 – DNFBPs: Customer due diligence .....	166
Recommendation 23 – DNFBPs: Other measures .....	167
Recommendation 24 – Transparency and beneficial ownership of legal persons .....	167
Recommendation 25 – Transparency and beneficial ownership of legal arrangements .....	175
Recommendation 26 – Regulation and supervision of financial institutions .....	178
Recommendation 27 – Powers of supervisors.....	181
Recommendation 28 – Regulation and supervision of DNFBPs.....	182
Recommendation 29 - Financial Intelligence Unit .....	184
Recommendation 30 – Responsibilities of law enforcement and investigative authorities .....	188
Recommendation 31 - Powers of law enforcement and investigative authorities .....	189
Recommendation 32 – Cash Couriers.....	192
Recommendation 33 – Statistics.....	195
Recommendation 34 – Guidance and feedback.....	197
Recommendation 35 – Sanctions .....	198
Recommendation 36 – International instruments .....	200
Recommendation 37 - Mutual legal assistance .....	200
Recommendation 38 – Mutual legal assistance: freezing and confiscation .....	203
Recommendation 39 – Extradition .....	204
Recommendation 40 – Other forms of international cooperation .....	205
Summary of Technical Compliance – Key Deficiencies .....	211
TABLE OF ACRONYMNS .....	217

## EXECUTIVE SUMMARY

1. This report provides a summary of the Anti-Money Laundering / combating the financing of terrorism (AML/CFT) measures in place in Antigua and Barbuda as at the date of the on-site visit June 5<sup>th</sup> – 16<sup>th</sup>, 2017. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Antigua and Barbuda's AML/CFT system and provides recommendations on how the system could be strengthened.

### *Key Findings*

- Antigua and Barbuda, with the use of the World Bank Risk Assessment Tool, had identified and assessed its ML/FT risks and the Assessors were satisfied that there is a reasonable understanding of these risks by the jurisdiction. It should be noted that the exercise was only concluded one month prior to onsite assessment, and at the time of the assessment the country had yet to develop a corresponding policy to address the findings and conclusions of the exercise or prioritise actions.
- The mechanisms for cooperation and coordination exist in Antigua and Barbuda, however they are not being fully utilized by the domestic competent authorities to develop evidence and trace criminal proceeds related to ML, predicate offences and terrorist financing leading to confiscation.
- Licensing controls are generally robust for commercial banks, international banks which are otherwise preferred to as offshore banks, insurance companies, Money Services Business (MSBs), Credit Unions, Trust Business, Corporate Services Providers (CSP), casinos and internet gambling and sports betting operations, with the FSRC and ECCB conducting a variety of checks at application and on an ongoing basis. However, fit and proper requirements are not employed consistently.
- There is no licensing or registration process for the following entities: Pawning; Real Property Business; Dealers in Precious Metals, Art or Jewellery; Car Dealerships; and Travel Agents.
- AML/CFT supervision is not consistent across the Designated Non-Financial Businesses and Professions (DNFBP) sector and far less coverage is provided as compared to the FIs. As with the FIs the authorities have not demonstrated that institutions are reviewed based on their ML/FT risks. Further the examinations appear to be rules-based rather than on a risk-based approach.
- The authorities have not demonstrated that institutions are reviewed based on their ML/FT risks. The examinations are rules-based rather than on a risk-based approach.

- Antigua and Barbuda has a range of remedial measures that can be imposed on financial institutions. However, application of these measures has been limited and ineffective.
- Financial sector supervisors are well-respected and Financial Institutions (FIs) welcome the close contact they have on a regular basis. The Guidelines produced by the ONDCP are comprehensive.
- IBCs and other legal persons do not consistently extend the obligation to ascertain the identity of Beneficial Owners to identifying the natural person who is the Ultimate Beneficial Owner.
- There is a high level of understanding of ML/TF risks among the Banking sector but this is varied in other sectors.
- The Banking sector has formally adopted a risk-based approach to AML/CFT mitigation. Implementation of a risk-based approach to AML/CFT mitigation for all other FIs and DNFBPs is low.
- FIs and DNFBPs do not consistently refuse business where CDD information is incomplete. EDD and mitigation measures for PEPs and other high-risk customers are not consistently applied by FIs and DNFBPs for all customers, particularly in the case of legacy customers.
- The quality and levels of SARs reported by FIs and particularly by DNFBPs is low.
- Financial intelligence and other information generated by Office of National Drug and Money Laundering Control Policy (ONDCP) can be accessed and are used by the relevant competent authorities
- Investigations conducted by the RPFAB are predominantly with regards to drug trafficking offences, cash seizure investigations and at a minimum extent related to ML. Investigations conducted by the ONDCP into predicate offences also involves parallel financial investigations to determine whether there is evidence of ML offences.
- The analysis conducted by the ONDCP is spontaneously disseminated to the RPFAB (Royal Police Force of Antigua and Barbuda) through a formal arrangement. There is dissemination of information to other competent authorities namely the IRD (Inland Revenue Department) CED (Customs and Excise Department) and the FSRC (Financial Services and Regulatory Commission). The security and protection of confidentiality materials used and exchanged is a high priority for the competent authorities.
- ML investigations are being conducted by the competent authorities in Antigua and Barbuda. The ONDCP has prosecuted stand-alone ML matters. However, third party money laundering although investigated has not been prosecuted. The country has identified and prosecuted predicate offences. The ONDCP conducts financial investigations into reports of cash seizures

to determine whether ML can be established at the criminal standard of beyond a reasonable doubt and in instances when it is determined that evidence is not sufficient to reach the criminal standard, civil cash provisions are then utilized. ML prosecutions are not generally pursued when there is a substantial amount of cash seized by the RPFAB. ML prosecutions by both the ONDCP and RPFAB are low.

- The country has identified and prosecuted predicate offences and stand-alone ML.
- The civil asset recovery procedures under the POCA have not been utilized in cases when ML convictions are not secured. However, civil forfeiture and civil cash forfeiture under the MLPA have been utilized to a large extent with significant success.
- Antigua and Barbuda generally provides timely mutual legal assistance and facilitates extradition in keeping with the laws of Antigua and Barbuda. The country provides formal and informal cooperation to other countries in combating ML/TF.
- There are clear guidelines to address the identified TF risks. However, the competent authorities have limited experience in the investigations and prosecutions of terrorist financing.
- Sanctions on UNSCR 1373 have not been fully addressed with regard to the designation of targeted financial sanctions for specific persons and organisations when requested by another country.
- The country has been unable to identify whether there are Non-profit Organisations (NPOs), as defined by the recommendations, which pose a threat of TF and ensure that appropriate measures are in place to mitigate this risk.

### *Risks and General Situation*

2. Antigua and Barbuda is strategically located in the chain of islands which comprises the Caribbean. The area of Antigua is 108 square miles, while Barbuda is 62 square miles. The population as at 2015 was 91,818 and the capital and largest port and city is St. John's, on Antigua. The twin island is located in the middle of the Leeward Islands in the Eastern Caribbean, roughly 17 degrees north of the equator. To the south are the islands of Montserrat and Guadeloupe, and to the north and west are Nevis, St. Kitts, St. Barts, and St. Martin. Antigua and Barbuda is a member of the Eastern Caribbean Currency Union (ECCU). The Eastern Caribbean Central Bank (ECCB) issues a common currency (the East Caribbean dollar "EC") for all members of the ECCU. With that ECCB has responsibility for managing monetary policy and regulates and supervises commercial banking activities. The GDP of the country was estimated to have grown by 4.3%, in 2016, when compared to the previous year according to the ECCB; this was due to buoyancy in the hotels and restaurants; construction; and wholesale and retail and trade sectors.

3. Antigua and Barbuda's financial sector includes six (6) domestic banks, 12 international banks which are otherwise referred to as offshore banks, 20 insurance companies, one (1) international insurance company, four (4) MSBs and six (6) credit unions, with total assets in excess of US\$4.6 billion. The eight (8) internet gaming and sports betting businesses reported an asset size of US\$ 104 million at the end of 2016. Overall, the financial services sector is varied in terms of the assets size of the various types of FIs operating in Antigua and Barbuda. The total size of industry, excluding domestic banks, is about USD \$2.4 billion relative to balance sheet assets and USD\$ 0.5 billion in relation to off balance assets. This is largely attributable to International Banks which constitutes the offshore sector. One International Bank accounted for about half of the total figure and is therefore regarded by the Financial Services Regulatory Commission as a systemically important financial institution (SIFI).

4. With respect to AML/CFT there is a clear and high level of political commitment to the identification and mitigation of money laundering and terrorist financing (ML/TF) risk within the country. There is some degree of enforcement in Antigua and Barbuda and great efforts have been made to enact new legislation to combat ML/TF and to implement the international standards.

5. Antigua and Barbuda has undertaken a National Risk Assessment. At the time of the on-site visit, the exercise and a draft report had been completed demonstrating the understanding on the AML/CFT risk situation through a comprehensive presentation. The ML/TF risks identified in terms of threats, were: 1) drug trafficking, due to its location and porous borders; also the country is considered a major international hub for the trans-shipment of drugs. 2) breaking and entering, larceny, fraud, money laundering and corruption (both domestic and international). Being an offshore centre and a cash-based economy was also an identifiable ML/TF risk for Antigua and Barbuda but the specific risk factors were not expounded upon. The country reported that the money laundering threat appears to be in relation to the proceeds of external criminal activity and the vulnerability to such activity being the offshore banking sector. Drug trafficking has been cited as the leading concern. Money laundering, narcotics trafficking, breaking and entering, larceny, fraud and corruption are major threats in the country. The risks associated to NPO sector are not adequately understood and mitigated. Terrorism has been identified as a low risk within the NRA. There have been no investigations conducted into terrorist activities and a small number into terrorist financing which is consistent with the NRA rating. Proliferation of Weapons of Mass Destruction (PWMD) has been criminalized. However, targeted sanctions have not been addressed or implemented by the Authorities.

6. In terms of vulnerabilities in the financial sector, the most vulnerable sectors are International Banks, Money Service Businesses and the Insurance Sector. In the DNFBP sector, the highest vulnerabilities were identified in Real Estate, Attorneys, Accountants, car dealerships and particularly car rentals and gaming arcades which are cash intensive. The used car market is unregulated and unsupervised, and systems have not been implemented to ensure that this market is not abused by criminals. This is of concern since the assessors noted that used cars accounted for the majority of car imports, making this part sector more significant and vulnerable to ML. NPOs are vulnerable to ML/TF due to inter alia, lack of proper supervision, and there was an inability by the jurisdiction to determine or identify those NPOs that fit the FATF definition.

7. Antigua and Barbuda also operates a Citizenship by Investment Program (CIP) (also known as economic citizenship) which is the granting of citizenship status to an individual (and immediate family

members) contingent upon a specified and quantifiable investment in the country. The ML/TF vulnerability for the programme has been rated as medium high after conducting an assessment based on interviews to various stakeholders including Attorneys, registering agents, and persons involved in the application process at the Citizenship by Investment Unit (CIU). The legal framework enacted, the internal governance structure and the due diligence process were identified as mitigating factors. The contributing factors were limited to lack of compliance supervision; there are no formal requirements to conduct ML/FT risk assessment, limited audit functions, and a lack of documented policy. The authorities have stated several recommendations to improve the programme which are being implemented, such as the CIP Agents being subjected to AML/CFT reporting, and a published report on payments received through the CIP and the implementation of an external audit.

### *Overall Level of Effectiveness and Technical Compliance*

8. Antigua and Barbuda has a relatively robust framework to combat ML and TF which was developed through the enacting, amending and implementation of legislation to correct technical deficiencies identified in the AML/CFT regime from the Third Round Mutual Evaluation in 2008. The relevant legislation aimed to strengthen the various competent authorities and stakeholders in AML/CFT regime both in the private and public sectors.

9. Regarding effectiveness, Antigua and Barbuda appears to have a good level of understanding of the main ML risk, however the TF risk appears to be not fully understood by all the competent authorities. The competent authorities in Antigua and Barbuda are able to gather and use financial intelligence and other information, domestic coordination and cooperation are adequate both at the policy and Law Enforcement Authorities (LEAs) levels. Although, the ONDCP and RPFAB have collaborated to some extent in the investigation of predicate offences and money laundering, greater efforts need to be placed in the prosecution of ML. Antigua and Barbuda has achieved moderate level of effectiveness in seven (7) IOs and low level of effectiveness for four (4) IOs.

### *Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

10. Antigua and Barbuda has completed the National Risk Assessment (NRA) exercise as well as a draft report during the second quarter 2017. Based on the exercise conducted, the jurisdiction has demonstrated an understanding of the risks faced by the country. However, as to the time of the on-site AML/CFT policies and strategies had not been fully implemented to mitigate against the risks identified. Antigua and Barbuda has implemented mechanisms to provide information on the results of the NRA to relevant stakeholders. FIs were the first to be sensitized on information collated from the NRA. The results of the NRA have not yet been disseminated to all FIs, DNFBPs and competent authorities.

11. For the completion of the NRA, Antigua and Barbuda demonstrated that both the public and private sectors stakeholders were involved in the process and were part of the various working groups. The risks posed by a cash-based economy were not addressed in the NRA.

12. Antigua and Barbuda coordinates the development of mechanisms to combat ML/FT through the National Anti-Money Laundering Oversight Committee (NAMLOC). The ONDCP also plays an integral role as the focal point for implementation of measures related to combatting ML/FT.

13. The coordination and cooperation among the LEAs need further improvements in terms of a holistic approach of the LEAs in relation to joint operations in tracing and identifying criminal proceeds, and money laundering investigations as well as the mechanisms to combat terrorism financing.

### *Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

14. Antigua and Barbuda has demonstrated that financial intelligence and other information are being used by all the relevant competent authorities primarily in the investigations of predicate offences, cash seizures and ML investigations. The financial intelligence produced by the Financial Analytical Unit (FAU) at the ONDCP is disseminated to the Investigations Department and other operational units within the ONDCP for the investigations of predicate offences primarily drug offences and money laundering. Financial intelligence produced by the ONDCP is also shared with the RPFAB in the investigations of both predicate offences and cash seizures.

15. The information and intelligence at the ONDCP can be accessed by other LEAs such as the Police and Customs on a basis of request. From the first quarter of 2017 financial intelligence is spontaneously disseminated to the RPFAB through the establishment of a formal arrangement.

16. The creation of the Joint Intelligence Group (JIG) has enhanced the sharing of intelligence and information among the intelligence agencies resulting in the disruption of criminal activities and numerous cash seizures and drug interdictions.

17. The Royal Police Force of Antigua and Barbuda (RPFAB) has made strides in identifying and investigating predicate offences and ML offences above a particular threshold. However, the number of investigations and prosecutions with regard to money laundering is very low in comparison to the country's money laundering risk profile. ML investigations and criminal confiscations are not generally pursued by the RPFAB. The investigations and prosecutions of stand-alone money laundering matters have been pursued by the ONDCP, there have been investigations into third party money laundering however, there have been no prosecutions. The ONDCP conducts investigations through the analysis of Suspicious Activity Reports (SARs). Notwithstanding, there have not been prosecutions of money laundering cases through the analysis or investigations of Suspicious Activity Reports (SARs). The authorities in Antigua and Barbuda have made significant arrests and seizures with regard to the predicate offence of drug trafficking.

18. Antigua and Barbuda has been successful in the cash seizures and forfeitures at the various ports of entry and exit as well as through law enforcement operations. There have been significant and highlighted coordination and cooperation among the intelligence agencies, Customs and the ONDCP in intercepting and disrupting criminal activities and recovery of the criminal cash proceeds stemming from the predicate offences. However, criminal assets confiscation cases are low and are mainly pursued by the ONDCP.

Additionally, as to the time of the onsite, there were two asset recovery cases being considered by the ONDCP but none have been litigated at the Courts.

### *Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

19. Antigua and Barbuda has assessed the TF risks to be low. This is based on a number of factors including the quarterly submission of a TF report pursuant to the reporting legislation, UNSCR designations, the analysis of SARs, geographic location, demographics and proactive measures employed by the country. Consequently, investigations by the LEA in TF appear to be low and there is limited experience in TF investigations and the prosecution of matters related to TF.

### *Preventive Measures (Chapter 5 - IO4; R.9-23)*

20. The Banking sector has a good understanding of its ML/TF risks and the legal obligations which they are required to meet. There are varied levels of understanding among other FIs. There is particular inconsistency regarding the level of understanding among small FIs and DNFBPs. Risk assessments of new technologies and productions are generally applied by larger FIs such as banks and Insurance Companies. However, assessments are not routinely conducted by all FIs and DNFBPS.

21. The Banking sector has formally adopted a risk-based approach to AML/CFT mitigation implementation and apply enhanced Customer Due Diligence (CDD) for higher risk customers and PEPs. Most other FIs and DNFBPs have not formally adopted a risk-based approach and as such customers are not consistently rated commensurate with the level of risks that their activity presents. EDD mitigation measures for PEP and high-risk customers are also not consistently applied by DNFBPs.

22. The legal obligation on FI and DNFBPs to identify Beneficial Ownership (BO) of International Business Corporations (IBCs) and other legal persons does not consistently extend in practice, to identifying the natural person who is the Ultimate Beneficial Owner.

23. Some FIs and DNFBPs do not sufficiently monitor and update client information and may only do so when a client conducts a transaction. This weakens the adequacy of any risk mitigation measures that are put in place and impacts the levels of SARs reported. The quality and levels of reporting of SARs is low and, in most cases, do not stem from any ML/TF indicators.

### *Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

24. To a large extent, licensing, registration and other controls implemented by Antigua and Barbuda adequately prevent criminals and their associates from entering the financial sector. However, with respect to the DNFBP sector there is no licensing or registration process for the following entities: Pawning; Real Property Business; Dealers in Precious Metal, Art or Jewellery; Car Dealerships; and Travel Agents.

25. Prior the completion of the NRA the ONDCP had established an AML/CFT supervisory framework for the financial sector and the DNFBP sector. While some targeted AML/CFT supervision has taken place,

the frequency, scope and intensity of such supervision is not sufficiently ML/TF risk-based. Whilst the banking sector was considered high risk and required onsite reviews every 12 to 18 months, other highly vulnerable sectors such as attorneys, accountants and dealers in precious metals had not been prioritized.

26. The ONDCP has a wide enough range of powers to sanction, including administrative fines for breaches to AML/CFT legislation. However, despite several deficiencies identified through examinations of FIs and DNFBP, further supported by the deficiencies highlighted by the NRA, the application of remedial actions has been inadequate.

27. The skills, experience and expertise of supervisory staff, as well as the number of staff and tools available to supervisors to conduct surveillance and supervision need augmentation to deepen the implementation of the risk-based approach to supervision to facilitate the appropriate level of intensity and frequency of supervisory interventions across the financial sector and DNFBP sector.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 - 105; R. 24-25)*

28. Antigua and Barbuda has implemented mechanisms to ensure that basic information on the types and forms of legal persons which can be created, is publicly available. The authorities by the conduct of an NRA were able to identify, assess and understand the vulnerabilities posed by the misuse of legal persons and arrangements in the country. In addition, to the NRA there has been sector assessment by the FSRC which is responsible for regulation, supervision and monitoring of IBCs, it has an oversight programme which includes both an onsite and offsite examination. These examinations are performed jointly or severally by the FSRC and the ONDCP and ensure compliance with obligations under the CMTSPA 2010 and the MLPA.

29. Measures have been implemented to prevent the misuse of legal persons and legal arrangements. Recent legislative amendments now provide for annual attestation of BO information which will be recorded at a central Registry.

#### *International Cooperation (Chapter 8 - 102; R. 36-40)*

30. Antigua and Barbuda provides a wide range of mutual assistance to various countries as well as extradition requests. The domestic competent authority coordinates their efforts in meeting their obligations under international treaties, bi-lateral agreements or MOUs.

31. Based on the feedback received from the various countries it appears that the assistance rendered by Antigua and Barbuda is provided in a timely manner.

32. Antigua and Barbuda also has agreements with the US and the UK for the Exchange of Information on Tax matters, Mutual Legal Assistance (MLA) on criminal matters and asset sharing agreements in force with the US, UK and Canada.

33. Antigua and Barbuda is a member of the Harare Scheme which is designed to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters.

34. Antigua and Barbuda maintains the statistics related to MLA requests, extraditions and other investigative matters sent by other countries to Antigua and Barbuda.

35. The competent authorities can source BO information from the Financial Services Regulatory Commission (FSRC), who is the offshore regulator, and the Registrar of Intellectual Properties who is responsible for company registration. Once this information is obtained it can be shared with foreign counterparts in response to formal requests and as permitted, informal requests.

### *Priority Actions*

- The results of the NRA should be used to establish a set of actions to generate financial intelligence in relation to the offshore sectors such as further development of red flag indicators, dedicated supervision, development of investigative techniques and proactive international cooperation.
- The ONDCP/FSRC should work with the FIs/DNFBPs to help them to develop I.T and other tools to spot suspicious transactions.
- Antigua and Barbuda should provide timelines on the sharing of the results of the completed NRA to the relevant stakeholders to develop the risk-based approach to ML/TF.
- The RPFAB, FSRC and CED should formulate ML/TF strategies and policies predicated on the completed NRA.
- The ONDCP should update its ML/TF strategies and policies predicated on the completed NRA.
- The ONDCP and the RPFAB should improve the mechanism for cooperation and coordination in the investigations of predicate offences to money laundering, complex money laundering cases and TF.
- The use of financial intelligence and other information by the various competent authorities should be better utilized in the investigations of predicate offences, ML and TF.
- Antigua and Barbuda should create a designated unit within the RPFAB for the confiscation of assets.
- There needs to be further development and strengthening of the CFT regime. There should be written policies for investigating and prosecuting Terrorism. Both the ONDCP and the RPFAB should improve their ability to address issues of terrorism activities and financing through capacity building. Additionally, specialised training should be considered.

- Antigua and Barbuda should ensure that more targeted training is given to the judiciary and prosecutors in relation to the nature of evidence required, guidance into the recovery of assets and on matters specific to ML and TF cases. LEAs should also be trained on how to effectively and efficiently gather the evidence needed in these cases.
- Examinations conducted on FIs by the ONDCP-FCU and the FSRC should be ML/FT risk focussed.
- Antigua and Barbuda should utilise its range of remedial measures to ensure that all institutions implement the required AML/CFT measures.
- An MOU between the ECCB and the ONDCP should be put in place to ensure adequate cooperation and coordination of AML/CFT measures commensurate to the risks and consolidated supervision.
- A mechanism should be implemented by the ONDCP to ensure that management and control of the DNFbps are governed by fit and proper requirements which are verified.
- The ONDCP-FCU should ensure that AML/CFT supervision is adequately applied across the DNFbps sector and that inspections undertaken are risk-based.
- The ONDCP should issue sector specific Guidelines on ML risk mitigation.
- The Authorities must provide training to FIs and the DNFbps sector to increase understanding of ML/TF risks including enhanced procedures and systems for monitoring.
- The ONDCP and FSRC should increase training among Compliance Officers and ML Reporting Officers of FIs and DNFbps, to ensure understanding of legal requirements to report SARs and procedure to file SARs.
- The ONDCP - FCU should ensure that CIP Agents, Wealth Advisors and used Car Dealers which have been bought under the AML/CFT supervisory regime receive training to enable them to demonstrate and implement systems and controls commensurate to their risks.
- Antigua and Barbuda should move to implement the provisions of recently enacted legislation in relation to the provision of BO information and the respective registry functions in that regard.
- Legislation should be enacted to further and adequately address the issue of PWMD.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

<b>IO.1</b> Risk, policy and coordination	<b>IO.2</b> International cooperation	<b>IO.3</b> Supervision	<b>IO.4</b> Preventive measures	<b>IO.5</b> Legal persons and arrangements	<b>IO.6</b> Financial intelligence
<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>
<b>IO.7</b> ML investigation & prosecution	<b>IO.8</b> Confiscation	<b>IO.9</b> TF investigation & prosecution	<b>IO.10</b> TF preventive measures & financial sanctions	<b>IO.11</b> PF financial sanctions	
<b>Low</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Low</b>	

### Technical Compliance Ratings

#### AML/CFT Policies and coordination

<b>R.1</b>	<b>R.2</b>
<b>LC</b>	<b>LC</b>

#### Money laundering and confiscation

<b>R.3</b>	<b>R.4</b>
<b>LC</b>	<b>LC</b>

## Terrorist financing and financing of proliferation

<b>R.5</b>	<b>R.6</b>	<b>R.7</b>	<b>R.8</b>
<b>C</b>	<b>PC</b>	<b>NC</b>	<b>NC</b>

## Preventive measures

<b>R.9</b>	<b>R.10</b>	<b>R.11</b>	<b>R.12</b>	<b>R.13</b>	<b>R.14</b>
<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>
<b>R.15</b>	<b>R.16</b>	<b>R.17</b>	<b>R.18</b>	<b>R.19</b>	<b>R.20</b>
<b>C</b>	<b>LC</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>
<b>R.21</b>	<b>R.22</b>	<b>R.23</b>			
<b>LC</b>	<b>PC</b>	<b>LC</b>			

## Transparency and beneficial ownership of legal persons and arrangements

<b>R.24</b>	<b>R.25</b>
<b>LC</b>	<b>LC</b>

## Powers and responsibilities of competent authorities and other institutional measures

<b>R.26</b>	<b>R.27</b>	<b>R.28</b>	<b>R.29</b>	<b>R.30</b>	<b>R.31</b>
LC	LC	PC	LC	LC	LC
<b>R.32</b>	<b>R.33</b>	<b>R.34</b>	<b>R.35</b>		
LC	LC	C	PC		

## International cooperation

<b>R.36</b>	<b>R.37</b>	<b>R.38</b>	<b>R.39</b>	<b>R.40</b>
LC	PC	LC	LC	PC

# MUTUAL EVALUATION REPORT

## *Preface*

1. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by Antigua and Barbuda, as well as information obtained by the evaluation team during its on-site visit to Antigua and Barbuda from June 5<sup>th</sup> – 16<sup>th</sup>, 2017.
3. The evaluation was conducted by an assessment team consisting of: Ms. Ana Folgar, Mission Leader (CFATF Secretariat); Mrs. Joanne Hamid, Co-Mission Leader (CFATF Secretariat), Ms. LaTeisha Sandy, Legal Expert (Saint Vincent and The Grenadines); Mrs. Kenisha Bacchus, Financial Expert (Turks and Caicos Island); Mrs. Jennifer Clarke-Murrell, Financial Expert (Barbados) and Mr. Floyd J. Theodore, Law Enforcement Expert (Dominica); with the support from the CFATF Secretariat's Mutual Evaluation Team. The report was reviewed by Mr. Duwayne Lawrence, Cayman Islands, Ms. Kim Berkeley, Trinidad and Tobago, Ms. Nihaila Sambo, Curacao, Mr. Richard Berkhout, IMF and the FATF Secretariat.
4. Antigua and Barbuda previously underwent a FATF Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The June 23<sup>rd</sup>, 2008 Evaluation and FURs to May 2015, have been published and are available at [www.cfatf-gafic.org](http://www.cfatf-gafic.org). For the sake of brevity, on those topics where there has not been any material change in the situation of Antigua and Barbuda or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation but includes a cross-reference to the detailed analysis in the previous report as relevant.
5. Antigua and Barbuda's 2008 Mutual Evaluation concluded that the country was compliant with six (6) Recommendations; largely compliant with seven (7); partially compliant with thirteen (13); and non-compliant with fourteen (14). Antigua and Barbuda was rated compliant or largely compliant with five (5) of the sixteen (16) Core and Key Recommendations. Antigua and Barbuda started the 3<sup>rd</sup> Round Follow-Up Process in April 2009, at which time the country was placed in Enhanced Follow-Up. Antigua and Barbuda exited the follow-up process at the May 2015 Plenary on the basis of having achieved a level of compliance at least equivalent to an 'LC' in all the Core and Key Recommendations that were rated PC/NC.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

6. Antigua and Barbuda is a twin island State, which is part of the Leeward Islands with an area size of 170 sq. miles. The population of Antigua and Barbuda is 93,581 as of 2016. The GDP per capita is U.S \$24,100 at the 2016 estimate, while the total GDP is estimated at U.S \$1.303 billion as of the 2016 estimate. The official language is English and the official currency is the East Caribbean Dollar (ECD). However, US currency is in wide circulation and easily accepted. Antigua and Barbuda is a unitary, parliamentary, representative democracy in which the Queen of the United Kingdom is Head of State and appoints a Governor General who appoints the Councils of Ministers on the advice of the Prime Minister. Executive power is exercised by the ruling party in government and legislative power is vested both in the Government and two Chambers of Parliament: The Senate consists of 17 members appointed by the Government and Opposition and is approved by the Governor-General. The House of Representatives consists of 17 members elected through the ballot (first past the post system).

7. Tourism is the core of the national economy and accounts for nearly 60% of GDP and 40% of investment. The economy of Antigua and Barbuda faces many challenges due to its focus on the domestic market and constraints such as the limited water supply and labour shortages due the lure of higher wages in tourism and construction. Additionally, the 2009 global economic recession impacted the private sector, resulted in a decline in tourist arrivals and a rise in national debt. Antigua and Barbuda has not returned to the pre-recession economic growth. The government continues to invest heavily in the tourism sector and growth is dependent on tourist arrivals mainly from Europe, Canada and the United States of America (USA). The government is aware that tourism could be hampered by unforeseen world events and natural disasters such as hurricanes.

### *ML/TF Risks and Scoping of Higher-Risk Issues*

#### *Overview of ML/TF Risks*

8. Antigua and Barbuda has completed a NRA exercise and demonstrated an understanding of the ML/TF risks. The country utilised the World Bank tool and the ONDCP was the authority which was charged with the responsibility to coordinate the exercise. The exercise took almost 3 years and was a collaborative effort between the public and private sectors, where several stakeholders participated in several working groups to complete the various modules. The working groups utilised tools such as meetings with FIs and other stakeholders, one-on-one solicitation and questionnaires. The working groups organised for the NRA concluded that the key predicate offenses for the country were: drug trafficking, breaking and entering, larceny, fraud, ML and corruption (both domestic and international). The most vulnerable sectors were identified as: Real Estate Agents, MSB, Lawyers (some CSPs, real estate escrow), Accountants, International Banks and Car Dealerships. It was noted that while the major part of the exercise was completed as at the onsite to Antigua and Barbuda, the national AML/CFT policy and procedures to

affect the results of the NRA were incomplete and not all stakeholders were informed of the results or the way forward.

9. The NRA assesses drug trafficking to be a high risk, due to Antigua and Barbuda's geographical and strategic location that allows it to be used as a transshipment point for trafficking narcotics. This has led to drug trafficking offences being a major predicate offence to ML. Antigua and Barbuda is hampered by the lack of man-power to effectively patrol its territorial waters. The disguise of criminal assets creates difficulties in identifying the true ownership. Fraud was also assessed as high-risk, and the NRA noted that the offence of fraud was prevalent among employees and individuals in the insurance and banking sectors. However, this activity was said to be underreported so that institutional reputation could be safeguarded. The NRA also identified and assessed larceny as medium-high, and robbery as a major issue since stolen items are sold below the market value. Antigua and Barbuda was identified in the NRA as having a cash-based economy, the authorities assess that there was an increased cash flow of the ECD and US Dollar, however, the origins of the cash in circulation in the country cannot be determined (legitimate or illegitimate means). The NRA assessed corruption to be high between the range of ECD \$1000 to ECD \$1,000,000 being corruptly transacted. However, these corrupt transactions or activities are not generally reported to law enforcement. Domestic ML was assessed to be medium- high. In instances when, ML was not pursued, factors such as the penalties already imposed in the adjudication of the predicate offences were considered sufficient. Considerations are also given to human and financial resources which would have to be used in cases where the defendants are known "low level players.

10. The NRA assesses the terrorist financing (TF) threat as low. The measures taken in Antigua and Barbuda to assign this rating include the following: a) the quality of the CFT framework , including the issuance of Directive #5 of 2011 which mandates and provides guidance to FIs on how to conduct a review of all suspicious transactions reports (STRs) in relation to TF; b) the automatic systematic search on suspicious activities before a suspicious activity report (SAR) is filed by any financial institution (FI), c) a proactive approach by the various Intelligence Units operating within Antigua and Barbuda and d) UN security checks conducted on a regular basis. After taking these measures, the NRA concluded that there are no known domestic terrorists or terrorist organisations. Additionally, there have been no reports of terrorist activity. With regards to TF, the NRA exercise noted that SARS filed with the ONDCP and assessed, showed no links to TF. Furthermore, quarterly reports submitted by financial institutions identified that there were no links to terrorist properties or terrorist financing activities in Antigua and Barbuda.

### *Money Laundering and Terrorist Financing Vulnerabilities*

11. Antigua and Barbuda's NRA considered 22 variables from the World Bank Tool dealing with ML/TF vulnerability. Although the Citizenship by Investment Programme (CIP) was not considered initially in the NRA, the jurisdiction assessed it as a vulnerability for the AML/CFT regime of Antigua and Barbuda, due to the importance of the programme which was said to generate approximately 25% of Antigua and Barbuda's government total revenue. As at April 2017, there were 987 applicants in the CIP programme, with the majority of applicants from China (41%). Other significant groups of applicants included persons from: Russia (5%), Lebanon (5%), Bangladesh (4%), Libya (3%), Iran (3%), and U.S.A (3%). The vulnerability rating of medium-high was assigned by the Authorities to this programme, after

having assessed the mitigating factors and stringent measures, as well as the legal framework for the CIP. Additionally, various stakeholders of the Citizenship by Investment Unit (CIU), CIP Agents and real estate developers which facilitate the CIP were interviewed by the different working groups responsible for conducting the NRA. One area which was cited in the NRA and on the onsite, is that CIP has no formal requirement for conducting AML/CFT risk management. Antigua and Barbuda should be recognized for including the CIP into the assessment of ML/TF risks.

12. For the financial sector, the NRA assessed the vulnerability to be medium due to the adoption of various AML/CFT requirements including new laws, regulations and guidelines as well as strengthening on the AML/CFT oversight capacity of the Supervisory Authority and Financial Services Regulatory Commission (FSRC). The DNFBPs were considered at varying levels of vulnerability due to the inconsistency of supervision, low level of control by the supervisors, the under reporting of breaches, inadequate enhanced due diligence and the widespread use of cash inter alia.

13. The NRA concluded that there were low entry controls in the DNFBP sectors, this was supported by the fact that there were no licensing or registration requirements for pawning firms, real property dealers, dealers in precious metals, arts or jewellery, car dealerships or travel agents.

14. With respect to the NPOs, while these entities are required to be registered, there was widespread non-compliance with the requirement for the submission of the annual returns with the Registrar of Companies. The absence of information regarding cash flow by the NPOs has increased the vulnerability of the non-banking sector.

15. Antigua and Barbuda has developed an AML/CFT Policy which should be further strengthened through the NRA in identifying ML/TF risks. The objectives of the Policy are the establishment of a central source of information to provide the country with the legal, regulatory, and law enforcement frameworks to give effect to the FATF Recommendations and internationally accepted AML/CFT standards, measures and practices. Additionally, there are several recommendations which Antigua and Barbuda formulated as a result of the NRA exercise for future implementation. These include the establishment of a Serious Crimes Court, the purchase of a Coast Guard Surveillance System, the purchase of specialized equipment for border and port security, the creation of a counter-terrorism unit, improvement of the AML/CFT legislative framework; more specifically supervision of DNFBPs, and NPOs. During the on-site, there were various amendments made to address deficiencies noted in the NRA; such as an amendment to the Money Laundering and Financing of Terrorism Guidelines (MLFTG) Section 2 guidance on the Risk Based Approach (RBA).

### *Country's risk assessment & Scoping of Higher Risk Issues*

16. The NRA process began in 2014 using the World Bank Tool. As previously indicated, both private and public stakeholders were involved in the NRA process through 4 working groups consisting of: Group A dealing with threats and vulnerabilities; Group B dealing with banking; Group C dealing with insurance and Group D dealing with DNFBPs and a Coordinating Group. At the time of the on-site mission, Antigua and Barbuda had completed the NRA exercise but had not completed the report for public review since the Government had not perused the findings. However, Antigua and Barbuda conducted a presentation for the

mutual evaluation mission, during which the process to conduct the NRA and the achievements in the understanding of their risks, were indicated.

17. The National Anti-Money Laundering Oversight Committee (NAMLOC) was established as an oversight committee for the AML/CFT framework of Antigua and Barbuda as well as combatting the proliferation of weapons (as stated in the terms of reference of the NAMLOC, the membership of NAMLOC comprises 9 key stakeholders including the Prime Minister and the Attorney General (AG). The Director of the ONDCP is also a member of NAMLOC and the ONDCP was designated as the authority to coordinate the completion of the NRA, while the NRA process was managed by NAMLOC through formal Cabinet recognition.

18. The NRA exercise was completed, and higher risks areas and institutional and legal gaps were identified. While the NRA identified drug trafficking and fraud as high risk, larceny and ML were identified as medium-high risk. However, the Authorities moved ML to high risk, after the assessment conducted by (Law Enforcement Authorities/Agencies (LEAs). Several factors were identified and considered such as the intelligence gathering and analysis of criminal networks in Antigua and Barbuda, the investigations and prosecutions conducted for predicate offences or under the proceeds of crime (e.g. cash forfeiture) has indicated that criminal proceeds are being generated. Additionally, when assigning ML as a high risk, the sentences at the courts are mainly for predicate offences, while there are ML investigations, the prosecutions for ML is limited.

19. It is noted that the CIP was assessed to be medium-high in terms of vulnerability to ML/TF. The CIP was set up in 2013 by the enactment of the Antigua and Barbuda Citizenship by Investment Act 2013. The main function of the CIP is to attract foreign investment into the economy of Antigua and Barbuda by providing three investment options as follows: (1) An investment of at least US\$400,000 into an approved real estate project (2) An investment of a minimum of US\$1.5 M directly into an eligible business as a sole investor or joint investment involving at least two persons in an eligible business totalling at least US \$5 M and each of those person individually invest at least US\$400,000 and (3) A contribution to the National Development Fund (NDF) of a minimum non-refundable amount of US\$200,000.

20. For all three options of the CIP, there is an application process before the granting of citizenship. The applications are facilitated through the CIP agents and then, these are forwarded to (CIU) who then process the applications. There is a vetting of all applications through a multi-tiered approach, which includes the following due diligence process: a) the applicants are checked against several internet portals such as the OFAC list and World Check; b) the applicants' names are submitted to various contracted international due diligence firms for vetting and finally, c) the names are sent to Interpol and the Joint Regional Communication Centre (JRRC) in Barbados for any information. Prior to the aforementioned due diligence process, there is a first level vetting done by the CIU agents before the application is submitted to the CIU. For the approval of citizenship once all criteria are met, the applicants must visit Antigua and Barbuda for 5 days. Within that period, the applicant must pledge allegiance to Antigua and Barbuda. The passport is issued for a five-year period. The AG after consultation with the Ministry of Foreign Affairs can revoke a passport at any time although there are no revocation clauses in the Citizenship by Investment Act, legislative provisions in the Immigration and Passport Act can be applied.

21. In cases where there is a denial of citizenship, the applicants can file an appeal through a review committee set up primarily to address appeals for denial of citizenship through the CIP.

22. The CIP agents are also vetted by the CIU, the agents must be citizens of Antigua and Barbuda and residents in Antigua and Barbuda for seven years. The agents must be a 'fit and proper' person with ECD \$3 Million in professional indemnity. The CIP agents are licensed and there is an annual renewal of the license with the CIU. For the renewal of a license, the CIP agents go through a vetting process by the CIU. In the recent amendment to the Citizenship by Investment Act 2013, the CIU maintains records on all the CIP agents.

23. With regards to other sectors, the NRA showed that the most vulnerable sectors are the MSB, Lawyers, Accountants, CIP Agents, Company Service Providers, Car Dealerships, Real Estate Agents, and Casinos. Other FIs such as Insurance Companies, Commercial Banks, International Banks, and Internet Gaming were assessed to be lower.

24. There is a plan to roll out the findings as per sector. Antigua and Barbuda has also implemented an action plan to update the NRA on a 3-4 year basis and there have been recommendations made to various stakeholders such as the financial institutions to address some of the shortcomings.

25. The Assessors considered the results and conclusions of the NRA as reasonable as they covered a wide spectrum of the ML/TF regime of Antigua and Barbuda. The NRA however, did not fully assess the risk posed to Antigua and Barbuda in the context of a cash-based economy. Additionally, the threat of TF was generally fully assessed by the various working groups, more specifically the threat and or vulnerability working groups, several factors were considered in rating TF as low. The Assessors are of the view that the methods used, the analysis and assessments of TF were adequate in concluding TF as low.

26. During the on-site visit, the assessment team focused on the ML/TF risks which were considered significant/high in the scoping note based on both publicly available information and that provided by Antigua and Barbuda prior to the on-site visit. Below is an outline of the threats and vulnerabilities considered.

### ***Threats***

#### ***Criminal Activities***

27. Foreign Bribery and Corruption: Criminal proceeds in relation to bribery and corruption by foreign nationals domiciled outside of Antigua and Barbuda which are deposited in offshore banks in Antigua and Barbuda. Consequently, focus on the mechanisms and the ML cases in Antigua and Barbuda which resulted in confiscation and forfeiture of assets.

28. Drug trafficking: In Antigua and Barbuda, drug trafficking is cited as the leading ML concern. Antigua and Barbuda has been targeted by criminal organizations as a trafficking route for illicit drugs from Latin America to Europe and North America. Assessors focused on the cooperation and coordination of law enforcement, the level of investigation and prosecution, the effectiveness of the confiscation measures utilized and the dissuasiveness of the sanctions.

29. Human Trafficking: Antigua and Barbuda is considered as a destination and transit country for sex trafficking and forced labour of men, women and children. Criminal networks participate in people smuggling and exploiting vulnerable migrants to make a profit. Assessors focused on the mechanism and procedures in Antigua and Barbuda in relation to human trafficking and the effectiveness of these systems.

### *Vulnerabilities*

30. Misuse of Legal persons and legal arrangements: Legal persons and legal arrangements have been misused in Antigua and Barbuda for the investment of laundered funds. The financial system has been vulnerable to ML of funds from corruption and foreign public companies as noted earlier. The Assessors reviewed the systems implemented by Antigua and Barbuda to combat ML/TF.

31. Offshore sector: There were concerns regarding the robustness of the licensing regime, especially the measures implemented to prevent criminals and their associates from holding or being beneficial owners of a significant or controlling interest or a management function of international business companies, especially offshore banks and international gaming and wagering companies. In addition, in the case of offshore banks, attention was placed on the risk classification of customers and the implementation of CDD measures for doing business with high risk customers including those who reside in high risk jurisdictions and PEPs. The Assessors focused on how well ML/TF risks are mitigated by TCSPs.

32. Citizenship by Investment Programme (CIP): The CIU is responsible for administering the applications for the CIP. The robustness of the procedures implemented was reviewed. The review focussed on the processes in obtaining economic citizenship including, the procedures for application, the due diligence measures, the requirements to become a CIP agent and the roles and function of the CIU.

33. Casinos and internet gaming companies: Casinos fall under the regulatory preview of the Inspector of Casinos and was rated high risk for ML/TF by the Authorities. However, the number of AML/CFT examinations conducted by FCU, ONDCP for the period 2012- 2016 in the casinos was low. On the other hand, Internet Gaming companies are regulated by the FSRC and were rated medium with respect to ML/TF risks. Further, data on supervision for AML/CFT suggests regular reviews and reporting to the ONDCP with respect to these entities.

### *Materiality*

34. The financial services sector is varied in terms of the assets size of the various types of FIs operating in Antigua and Barbuda. Domestic banks dominate the financial sector with an asset size of USD\$2.2B, the size of the rest of the industry is about USD\$2.4B relative to on Balance Sheet assets and USD\$ 0.5 M in relation to off Balance Sheet assets. International Banks are the major contributors to this figure. As at December 31, 2016 there were 6 domestic banks, 3 of which are indigenous banks, 2 owned by large Canadian banks and 1 regionally owned. There are 12 international banks operating in Antigua and Barbuda; nine held a class 1 licence, one held a class 2 licence and one held a composite bank and trust

license. However, it is noteworthy that one international bank accounted for about half of the total figure and is therefore regarded by the FSRC as a Systematically Important Financial Institution SIFI

35. Antigua and Barbuda's insurance sector is dominated by domestic insurance companies as there is only one international insurance company licensed in the country with an asset size of USD\$8.9M. On the domestic side, there were nineteen (19) insurance companies operating in Antigua and Barbuda as at December 31, 2016 which control over USD\$189.2M in terms of assets. Twelve (12) of those companies held General Insurance licenses, 4 held Life licenses and 3 held a Composite license.

36. There were 6 Credit Unions operating in Antigua and Barbuda as at December 31, 2016. The asset size of the league is considerable in the amount of USD\$93.5M. The majority of this figure is attributable to the two largest credit unions. As at December 31, 2016, there were 4MSBs operating in Antigua and Barbuda maintaining an asset size of USD\$1.3M. Overall, there are ten MSB locations which include a small network of sub-licensees. For the (5) Online Gaming/Wagering companies the asset size is USD \$39.6 M.

37. As at December 31, 2016, there were also 26 (Corporate Management and Trust Service Providers (CMTSP) all of which only engage in Corporate Services. Four (4) licensees were exempt from licensing requirements. There are two (2) credit institutions and one (1) International Bank which offers trust services as an additional service.

38. There are also several DNFBPs and other non-regulated entities in Antigua and Barbuda. These include money lenders and other micro-financiers (5), real estate agents and developers (35), dealers in precious metals, art or jewellery (17), car dealerships (6) and travel agencies (7). Additionally, there are a number of used car dealers, CIP Agents and Wealth and Investment Advisors, which came under the definition of DNFBPs as at June 2017. However, there is no information on the size of these entities and their materiality in the jurisdiction.

### *Structural Elements*

39. The key structural elements for effective AML/CFT controls are present to a great extent in Antigua and Barbuda. Antigua and Barbuda is generally considered to be a very stable democracy where the rule of law is applied. There are well established systems of political and institutional stability and accountability. Antigua and Barbuda has demonstrated a clear high-level commitment to implement the FATF Standards, with a view to establishing an overall effective AML/CFT framework based on the involvement of the AG and the Prime Minister. There have been amendments made to legislation to address deficiencies cited by Assessors during the 3rd Round Mutual Evaluation process and because of the NRA process. There is an independent judiciary in Antigua and Barbuda, however, in terms of having an effective system greater effort should be made in ML/TF investigations, confiscation of assets and training for the judiciary and law enforcement agencies.

## *Background and other Contextual Factors*

40. Antigua and Barbuda established the Anti-Corruption Unit (ACU) in 2014 to address domestic corruption in Antigua and Barbuda, however since its establishment, the ACU has only reviewed and developed policies and is not fully functional to adequately fulfil its mandate. Additionally, the Integrity Commission was also established in 2014 and comprise a three-member team of Commissioners who are responsible for fulfilling the mandate under the Integrity in Public Office Act. Both the ACU and the Integrity Commission are limited in terms of investigative and enforcement powers.

41. Additionally, the authorities in Antigua and Barbuda have identified the lack of human resources at the LEAs as hampering the ability to pursue ML/TF and predicate offences such as corruption in a timely manner. Notwithstanding, the LEAs have pursued 9 cases of corruption related offences in the public sector.

42. The ONDCP is a mature organisation that was established as an administrative sub-unit of the Prime Minister's Ministry in 1996 with its sole purpose to enforce the provisions of the Money Laundering (Prevention) Act of 1996. In 2003 the ONDCP Act was passed establishing the organization as an independent law enforcement agency with specific authority to investigate reports of suspicious activity concerning specified offences and the proceeds of crime.

43. The Director, ONDCP serves as the Supervisory Authority for financial institutions (under the Money Laundering Prevention Act (MLPA) inclusive of the enforcement of Antigua and Barbuda's Prevention of Terrorism Act (PTA) and its anti-terrorism financing provisions. Additionally, the ONDCP fulfils the role as Antigua and Barbuda's primary counter narcotics investigation interdiction agency inclusive of the collection, development and dissemination of intelligence on drugs.

### *Overview of AML/CFT strategy*

44. Prior to the completion of the NRA, Antigua and Barbuda prepared a National AML/CFT policy document, with the following objectives: a) to provide a central source of information where the Government can give effect to the FATF Recommendations within the country's legal and regulatory framework; b) to provide a central source of information for the Cabinet of Antigua and Barbuda (for the decision makers), in respect of any legislative and regulatory changes to the ML/TF framework; c) to facilitate the legal and regulatory framework, by considering the criminal and administrative justice system, and preventive systems to counter ML/TF and d) to guide the best way to allocate resources for the prevention, investigation and prosecution of ML and TF.

45. The NAMLOC was constituted to give effect to the obligations of Antigua and Barbuda to address the FATF Recommendations after the 3rd Round Mutual Evaluation. In 2016, the NAMLOC was given formal Cabinet recognition in preparation for the 4th Round Mutual Evaluation of Antigua and Barbuda. NAMLOC has renewed its mandate to continue to give effect to the FATF Standards on AML/CFT through its legal and supervisory framework and to provide a structure to the jurisdiction.

46. During the onsite the Government of Antigua and Barbuda gave a firm commitment to improve their AML/CFT framework to meet the FATF Standards. The Authorities clearly noted that although terrorism and TF are considered low risk, the Government is committed to creating a counter terrorism (CT) policy and strategy. At present, there is no policy and strategy on CT in Antigua and Barbuda.

### *Overview of the legal & institutional framework*

47. Antigua and Barbuda is a common law jurisdiction based on the English Common Law. Antigua and Barbuda is a unitary, parliamentary, representative democracy. The administration of justice consists of the judiciary, with a makeup of inferior and superior courts, which holds the responsibility for decisions over cases. The Eastern Caribbean Supreme Court, with headquarters in St Lucia, is responsible for the administration of justice in the Organisation of Eastern Caribbean States (OECS), which includes Antigua and Barbuda. The High Court has 16 Judges, two of whom are permanently resident in Antigua and Barbuda and preside over serious/indictable offences. The High Court's jurisdiction includes fundamental rights and freedoms, and constitutional issues. The Magistrates' Court has control over less serious/summary offences. The Court of Appeal is itinerant where appeal matters from the respective OECS jurisdictions are heard. The final appellate Court is currently the UK Privy Council; however, there are plans to enable the Caribbean Court of Justice to fulfil this role. The laws of Antigua and Barbuda consists of— (a) the common law; (b) statute law. A person aggrieved by a decision of the Magistrates' Court may appeal to the superior courts, namely the High Court, the Court of Appeal and the Privy Council, in that order. The Director of Public Prosecutions (DPP) is responsible for all criminal prosecutions. The DPP has right of appeal on matters of law and sentencing.

48. The Agencies responsible for the formulation and implementation of AML/CFT policies are:<sup>1</sup>

**National Anti-Money Laundering Oversight Committee (NAMLOC)** - is an oversight committee for giving effect to the FATF Recommendations and to meet the FATF international standards on AML/CFT through the legal and supervisory framework.

**Office of National Drug and Money Laundering Control Policy (ONDCP)** – The ONDCP was established pursuant to the ONDCP Act No. 3 of 2003. The ONDCP is also referred to as the Financial Intelligence Unit of Antigua and Barbuda pursuant to Section 1B of the ONDCP (Amendment) Act No.9 of 2017. The ONDCP is a hybrid FIU with, analytical, investigative and supervisory functions. Below are the three (3) distinct units within the ONDCP. The Director of the ONDCP is the Supervisor Authority for AML/CFT, this role is carried out by the Financial Compliance Unit (“FCU”) and spans all FIs and DNFBPs. The ONDCP was appointed by the Cabinet of Antigua and Barbuda to be the lead agency in the conduct of the NRA.

---

<sup>1</sup> Department information provided by incepts from the government of Antigua and Barbuda National AML/CFT policy

**ONDCP-FCU-** The Financial Compliance Unit was established to perform the AML/CFT supervisory functions of the Supervisory Authority; i.e. monitoring and compliance and the examination of FIs and DNFBPs to assess compliance with AML/CFT legal and regulatory requirements.

**ONDCP-ID-** The Investigation Department. is a unit which forms part of the ONDCP and is responsible for financial investigations, investigation of ML/TF and predicate offences.

**ONDCP-FAU-** The Financial Analytical Unit is a unit which forms part of the ONDCP and is responsible for analysis of SARs, as well as operational and strategic analysis.

**National Joint Coordination Centre (NJCC)** - acts as the focal point for the collection and dissemination of information among law enforcement agencies at both the national and regional level. The NJCC also targets intelligence development and analysis to assist in the facilitation of joint operations between local law enforcement agencies in the national counter-drug effort. Additionally, the NJCC is also responsible for disseminating and receiving general intelligence between the Regional Intelligence Fusion Centre (RIFC) and the Regional Security Services (RSS). There is a National Point of Contact (NPC). This position is currently held by the Director of the ONDCP. There is also an alternate NPC, namely the Head of the Intelligence Unit of the Antigua and Barbuda Defence Force. The NPC liaises with the RSS and RIFC for intelligence gathering and dissemination.

**Royal Police Force of Antigua and Barbuda (RPFAB)** - was established pursuant to the Police Act Cap. 330, with responsibility for the prevention and detection of crime, the repression of internal disturbance and the protection of life and property and the enforcement of all criminal laws. The RPFAB is a member of the NAMLOC and has AML/CFT functions. There are specialized units within the RPFAB responsible for AML/CFT matters in the jurisdiction.

**Serious Crime Unit (SCU)** - This is a Unit within the RPFAB responsible for the investigations of financial crimes and ML investigations.

**The Financial Services Regulatory Commission (FSRC)** - The Commission is comprised of a Board and is responsible of the regulatory and supervisory functions for the financial services business. It was established under the Financial Services Regulatory Commission Act 2013 (FSRCA) as the prudential regulator. Among the functions of the Board is the regulation and supervision of financial services business. The FSRC, in performing its regulatory function can cooperate with domestic and international authorities with a view to reducing the risk of financial services business being used for ML or other crime. The ONDCP and the FSRC signed an MOU in 2010 to increase cooperation in combating ML/TF. The FSRC is a member of NAMLOC.

**The Eastern Caribbean Central Bank (ECCB)** - was officially commissioned on 1 October 1983, replacing the Eastern Caribbean Currency Authority (ECCA) which had been established in March 1965. The Agreement establishing the ECCB as the monetary authority for the eight ECCB participating governments, was signed on 5 July 1983 in Trinidad and Tobago. The ECCB is the monetary authority for a group of eight Island economies namely - Anguilla, Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines. The primary

objective of the ECCB is to maintain the stability of the Eastern Caribbean Currency and the integrity of the banking system.

**Antigua and Barbuda Intellectual Property Office (IPO)** – The IPO includes (1) the Companies Registry: This incorporates domestic companies – (a) private and public companies with limited liability incorporated under the Companies Act. Such companies are formed for carrying on a trade or business for gain and conduct their business in or from Antigua and Barbuda. Public companies are domestic companies where any part of shares or debentures are or were part of a distribution to the public; (b) Non-Profit Companies – these are private companies without share capital incorporated under the Companies Act for non-profit purposes. (2) The Registry of Friendly Societies: This incorporates charities known as friendly societies under the Friendly Societies Act. The Non-Profit companies and Friendly Societies (NPOs) are restricted to carrying on businesses of a non-profit nature, such as charitable, educational, scientific, literary, artistic or sporting activities. The list of permitted activities is outlined in Section 328(2) of the Companies Act and Section 5 of the Friendly Societies Act.

**The Citizenship by Investment Unit (CIU)** – This was established by the Government of Antigua and Barbuda with responsibility for the Citizenship by Investment Programme. The CIU is responsible for processing all applications for CIP Agent’s Licenses as well as the applications for Citizenship through the CIP.

**Immigration Department** - In 1945, the Immigration and Passport Act Cap. 208 was introduced to control the movement of persons. The establishment of the Department commenced as a section within the RPFAB, which was a common trend across the Commonwealth Caribbean. Presently, the Immigration Department is an independent body. The intent and purpose of the Immigration Department was initially to manage the flow of persons entering and departing the State of Antigua and Barbuda. The Department’s mandate now has a wider scope of border management to include not only detection and deterrence at ports of entry but also land surveillance, prosecution and enforcement in an effort to combat human smuggling or trafficking and to combat ML/TF.

**Custom and Excise Division (CED)** - is a member of NAMLOC and under the AML/CFT framework is tasked with the investigation of customs offences from cross border movements of cash, false declaration and predicate offences such as smuggling of goods. Under the general functions the CED is tasked with processing documents for the importation and exportation of goods; collection of import and export duties (customs revenue); accounting for customs revenue; enforcing import and export prohibitions and restrictions in accordance with law; facilitates the clearance of legitimate imports and exports at ports, airports, warehouses, parcel post, courier services and sufferance wharves; facilitating the entry and departure of ships and aircrafts to and from ports, airports and marinas; facilitating bonds and deposits relative to import and exports, including private warehouses and in-bond facilities. These functions provide vital data which feeds into the AML.CFT framework.

**Commissioner of Inland Revenue** - this is a statutory appointment, which is responsible for the administration of the tax framework in Antigua and Barbuda. The Commissioner of Inland Revenue has been appointed as the Competent Authority for international treaties, both bilateral and multilateral, concerning tax transparency and exchange of information. The Commissioner is also the Competent

Authority for USA Foreign Account Tax Compliance Act (FATCA) in relation to which the Government has signed an Inter-Governmental Agreement(IGA).

**Attorney General’s Chambers--** This Office provides advice to the Government and serves as the Central Authority for mutual legal assistance in criminal matters.

**Director of Public Prosecutions -(DPP) --** is responsible for criminal prosecution including ML and TF. The DPP also advises the LEAs.

**Anti-Corruption Unit - (ACU)-** established in 2014 and is tasked with receiving information from the public regarding corruption.

**Integrity Commission:** Antigua and Barbuda has also established an Integrity Commission where person who are in public life file voluntary reports of assets etc. for any given period under review.

**Trafficking in Persons Committee:** Antigua and Barbuda has also established a Trafficking in Persons Committee which comprises members of various competent authorities.

*Overview of the financial sector and DNFBPs*

49. The financial sector of Antigua and Barbuda consists of both onshore and offshore FIs which includes banks, trust companies, money service businesses, credit unions, insurance companies and money lenders. The DNFBPs sector includes: casinos, internet gamers, dealers in precious metals and stones, car dealerships, real estate agents and developers, attorneys and accountants. The types and numbers of financial institutions and DNFBPs authorized to conduct business in the country are:

**Table 1  
Financial Institutions**

<b>Banking and Financial Business</b>	
<i>Commercial Banks</i>	6
<i>Development Banks</i>	2
<i>Mortgage Companies</i>	1
<i>Credit Institutions</i>	1
<b>International Offshore Banking Business</b>	
<i>Offshore Banks</i>	12
<b>Money Transmission Services</b>	4
Sub-Licensees	7
<b>Issuing &amp; Administering means of Payment</b>	1
<b>Money Lending &amp; Pawning</b>	
<i>Money Lending</i>	4
<i>Pawning</i>	1
<b>Credit Unions</b>	6
<b>Trust Business</b>	

<i>Local</i>	2
<i>Offshore</i>	1
<b>Insurance Business</b>	
<i>Local</i>	16
<i>Offshore</i>	4
<b>Total</b>	<b>61</b>

Source of information: Data provided by ONDCP and FSRC.

**Table 2**  
**DNFBPs**

Dealers in Precious Metal, Art or Jewellery	17
Real Property Business	35
Casinos	3
Internet Gambling	4
Sports Betting	4
Car Dealerships	6
Travel Agents	7
Company service providers	26
Attorneys-at-law (who conduct financial activity as a business)	
Notaries (who conduct financial activity as a business)	
Accountants (who conduct financial activity as a business)	
<b>Total</b>	<b>102</b>

Source of information: Data provided by ONDCP and FSRC.

50. The size of assets<sup>2</sup> for financial institutions within the sector is as follows:

**Table 3**  
**Asset size by year (USD \$Mil)**

Financial Institutions	2012	2013	2014	2015	2016
Commercial Banks	2,172.7	2,033.9	2,037.3	2,220.3	2,189.6
International Banks	2,542.6	2,547.8	2,737.2	2,319.8	2,058.6
Development Banks	19.9	19.3	11.3	9.5	12.6
Cooperative Credit Unions	57.3	62.8	73.6	79.3	54.0
Credit Institutions	98.6	100.7	101.0	100.3	108.9
Money Service Businesses	0.9	0.7	1.2	0.9	1.4
Money Lending and Pawning	4.0	5.0	5.3	6.4	7.7
Domestic Insurance	169.1	174.5	185.5	198.6	189.2
International Insurance	10.2	9.0	9.3	8.7	8.9
<b>Total</b>	<b>5,075.4</b>	<b>4,953.6</b>	<b>5,161.7</b>	<b>4,943.8</b>	<b>4,630.9</b>

Source of information: Data provided by ONDCP and FSRC.

<sup>2</sup> Converted from EC \$ at a conversion of 0.37037 USD to 1 EC \$  
MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA

### *Overview of preventive measures*

51. The Supervisory Authority has issued the MLTFG pursuant to the MLPA 1996 (as amended) and the PTA 2005 (as amended). These Guidelines are considered enforceable and sanctions can be applied for non-compliance. Section 11(1)(f) of the MLPA (as amended) provides the power to make such guidelines to FIs relating to ML. A similar empowering provision exists in Section 43 of the PTA. Part I of the MLTFG relates to ML and applies to all FIs and DNFBPs. Part II relates to the TF and applies only to FIs (Banks) as defined by the PTA.

52. In addition, the FSRC has also issued extensive guidelines for International Banks, the Insurance sector and the gaming sector in order to assist these sectors to meet AML/CFT requirements and other industry international best practices. In addition to the MLTFG all FIs and DNFBPs must comply with the AML/CFT requirements in the Money Laundering Prevention Regulations 2007 (MLPR) – which in 2017 were updated with amendments.

### *Overview of legal persons and arrangements*

53. Laws provide for the incorporation of the following types of companies: (1) Domestic companies – private and public companies with limited liability incorporated under the Companies Act 1995. (2) Non-profit companies – private companies without share capital incorporated under the Companies Act and the Friendly Societies Act. (3) IBCs – incorporated under the International Business Corporations Act (IBCA) and formed for carrying out international trade or business from Antigua and Barbuda. (4) International banks – incorporated under the International Banking Act, 2016. (5) International limited liability companies (ILLCs), international trust (ITs) and international foundations (IFs) – are all entities established and (6) Unincorporated Business incorporated under the Unincorporated Business Act, 2016.

54. Provision is made in law for the creation of ordinary trusts and international trusts (International Trust Act 2007 (ITA)). Ordinary trusts are recognised and created under the common law framework and have no governing statutes. There is no obligation for ordinary trusts or foreign trusts (defined as trusts which are governed by the law of a jurisdiction other than Antigua and Barbuda) to be registered in Antigua and Barbuda. However, ordinary trusts that operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for income tax purposes.

### *Overview of supervisory arrangements*

55. As indicated earlier, the Director of the ONDCP is the Supervisor Authority for AML/CFT. This role is carried out by the FCU and spans all FIs and DNFBPs. The FSRC assists the ONDCP in its statutory role in overseeing compliance with AML/CFT requirements, for those entities which are regulated by that agency which are: International Banks, Credit Unions, Insurance Companies, Internet Gaming and Wagering and Development Banks.

56. As a result of an MOU signed in 2010 the FSRC and the ONDCP agreed to, inter alia, conduct single or joint examinations where in some instances the FSRC as part of the prudential examination includes an AML/CFT component and thereafter the report is submitted to the ONDCP-FCU for further action. In other instances, the FSRC and the ONDCP-FCU together conduct joint examinations for AML/CFT. In all instances, the ONDCP-FCU is the recipient of the report for further action in respect of AML/CFT.

57. The FSRC is also the licensing/registration authority for:

- International Banking & Trusts
- International and Domestic Insurance
- International Wagering and International Gaming
- Corporate Management and Trust Service Providers
- Money Remitters
- Development Banks
- Money Lenders and
- Cooperatives

58. The Eastern Caribbean Central Bank (ECCB) is the Monetary Authority for a group of eight island economies including Antigua and Barbuda. The primary objective of the ECCB is to maintain the stability of the Eastern Caribbean Currency and the integrity of the banking system. The regulatory framework of the domestic banking system has two main legislative components. First, there is the ECCB Agreement Act, 1983 gives the Eastern Caribbean Central Bank the power to “regulate banking business on behalf of and in collaboration with Participating Governments. Secondly, there are the Banking Acts of the various territories of the Participating Governments which govern the regulation of banking business in those territories.

59. The ECCB is the licensing/registration authority for Domestic Banks and Credit Institutions.

60. The AML/CFT supervisory regime is relatively mature with the ONDCP, in the function of the Supervisory Authority being in that role as far back as the 3rd round Mutual Evaluation in 2008. However, at that time due to the dual role as FIU, it had been left to the various regulatory agencies (FSRC, ECCB, Registrar of Co-operative Societies, and Registrar of Insurance) with the requisite expertise to ensure compliance of their licensees with the MLPA. The responsibility for regulating money remitters for compliance with the MLPA however resided with the ONDCP. The supervisory arm of the ONDCP (FCU) was only formed in 2011 resulting in the change to the supervisory framework that existed at the time of the onsite.

61. The ECCB was recently charged by the OECS Council of Ministers to be the AML/CFT Supervisor for all licensees in the jurisdictions which they operate. This would be a relatively new role for this agency, whose AML/CFT reviews were very limited in scope up to this point, focusing on general compliance.

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- Antigua and Barbuda has completed the identification and assessment of their ML/FT risks by conducting a NRA exercise through the utilization of the World Bank Risk Assessment tool. The NRA was completed in the second quarter of 2017 and as a result of the completion of this exercise the jurisdiction has developed a reasonable understanding of the ML/TF risks. However, at the time of the onsite the findings on the risks identified and assessed were only shared with some members of a particular sector namely FIs and not all the relevant stakeholders including DNFBPs.
- The NRA process involved the participation of a wide array of persons including representatives from both the public and private sector; and involved contributions from high-ranked government officials to the process. The involvement of the latter demonstrates the country's commitment at the highest level in completing the process. The NRA process was spearheaded by the ONDCP who was appointed by the country's Cabinet of Ministers.
- Antigua and Barbuda has developed a national AML/CFT Policy working document. The policy document amongst other things took into consideration the findings of the completed NRA and speaks to the implementation of a risk-based approach to ensure that measures are in place to prevent and mitigate ML/TF risk commensurate with the risk identified. However, not all entities or competent authorities apply measures on a risk-based approach based on the risk identified in the NRA as the result of the NRA has not been disseminated to all FIs and DNFBPs.
- NAMLOC is the oversight committee that sets out the AML/CFT legal and supervisory framework of Antigua and Barbuda through recommendations and proposals to the appropriate authorities.
- There is high level of coordination and cooperation at the policy level in Antigua and Barbuda but this does not trickle down to the operational level of the competent authorities.
- The ONDCP is the leading agency in the implementation of measures related to AML/CFT, while other competent authorities appear to take a secondary or less involved role. However, there seems to be a moderate level of coordination among the competent authorities in combatting ML/TF and investigating predicate offences.

### ***Recommended Actions***

- The authorities should make aware the FIs and DNFBPs on the results of the NRA and their responsibilities which arise from it and require them to review and update their own systems and controls commensurate to the risks identified in the NRA.
- The authorities should provide outreach to all relevant stakeholders based on the results of the NRA, this should include: guidance on conclusions from the risk assessment, consultation on policies and legislation and input on risk assessments. Clear timelines should be established for the outreach activities and the publishing of the NRA should be considered.
- The authorities should develop a detailed national policy/strategy to deal with the risk identified in the NRA. This policy should also take into account results of this report to set priorities of work.
- The authorities should develop clear timelines to share the findings of the NRA to all relevant stakeholders. The publishing of the NRA should be considered.
- The various stakeholders are to implement ML/TF measures commensurate with the risk identified.
- ML/TF risk assessment should be kept updated through a periodic review mechanism.
- Antigua and Barbuda should develop clear policy guidelines and effective measures to address deficiencies identified in the assessment of TF.
- The level of coordination between the ONDCP and RPFAB should be strengthened in implementing measures to combat ML/TF.

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

62. Antigua and Barbuda had identified key predicate offenses for the country such as: drug trafficking, breaking and entering, larceny, fraud, ML and corruption (both domestic and international). They have identified their most vulnerable sectors as: Real Estate Agents, MSB, Lawyers (some CSPs, real estate escrow), Accountants, International (offshore) Banks and Car Dealerships. These threats and vulnerabilities were identified through a detailed analysis which utilized an NRA tool and concluded just prior to the onsite process and determined the risk posed to the jurisdiction. The assessors were satisfied that the exercise undertaken by the country facilitated a reasonable level of understanding of the ML/FT risks of the

jurisdiction. Having identified the gaps during the NRA process, the country developed and implemented measures to mitigate these risks. These measures included: increased resources of authorities, changes to legislations to align them to the standards e.g. inclusion of CIP Agents falling under the supervision of the ONDCP, restructuring of operational policies based on the threat of drug trafficking which mandated parallel financial investigations into drug trafficking operations, the restructuring of units within the ONDCP and RPFAB, the implementation of specific strategies and the plan to update AML/CFT policy document to address risks identified in the NRA.

63. Antigua and Barbuda has completed the identification of ML/TF risks within the framework of the NRA. However, at the time of the on-site visit, the final report for the NRA was outstanding. Notwithstanding this, Antigua and Barbuda provided an oral presentation to the assessment team on the identification and analysis of ML/TF risks in the jurisdiction. A considerable amount of resources and efforts were invested by the jurisdiction to collect and analyse information and data, which began in the 3rd quarter of 2014 and finished in the 2nd quarter of 2017. Upon the recommendation of the NAMLOC, the ONDCP was designated by the Cabinet of Ministers of Antigua & Barbuda as the lead authority for undertaking the NRA. The World Bank's National Risk Assessment Tool was used to conduct the NRA. The process involved the receipt, collation and assessment of information along with knowledge of prevailing ML/FT issues held by LEAs, other competent authorities and the Supervisory Authority. There were four working groups (Group A dealing with threats and vulnerabilities, Group B dealing with banking and other non-bank financial institutions, Group C dealing with insurance and Group D dealing with DNFBPs) formed during the NRA to identify the ML/TF risks. Through the foregoing, the country was able to gain an understanding of the overall ML/FT risks.

64. The NRA process also involved a wide cross section of stakeholders. These stakeholders represent both public and private and included the FSRC, the Honourable AG's Chambers, Ministry of Finance, Inland Revenue Department, RPFAB, CED, Immigration Department, FIs, DNFBPs, NPOs and the ECCB.

65. Preliminary analysis of data and statistics have added to the consensus of the LEAs, that most reported, investigated, charged or convicted cases in relation to predicate offences to ML are not of any major significance having reported values of generally under ECD \$2,000 (USD736.13- exchange rate of 2.7169). In most of these cases, the mandatory sentences as provided in relation to the offence is deemed proportionate to the crime. Additionally, the institutional / national cost to pursue ML charges in many of these cases could not be justified or warranted.

66. It has been further determined that the major ML cases (by value) handled by the LEAs have originated via Mutual Legal Assistance Treaty (MLAT) requests. Assistance on these matters has resulted in the confiscation and forfeiture of assets in excess of USD \$65M over the past five years. Most of these matters have involved assets that have been channelled through the Offshore Banking sector thereby suggesting that this sector may be more susceptible/vulnerable to ML. Further vulnerabilities identified in the various sector which were assessed to be high are MSBs, Lawyers doing business as CSPs and Accountants. CIP Agents, Company Service Providers, car dealerships, real estate agents and Casinos were assessed to be medium/high.

67. The Authorities identified that the main ML threat is in relation to the proceeds of external criminal activities, namely corruption and bribery that are committed by foreign nationals. The Authorities had determined through the receipt of MLATS and other international requests for information that there were threats emanating from foreign predicate offences namely: investment fraud, tax evasion, foreign corruption/ bribery, money laundering and illegal online pharmaceutical sales. The authorities in Antigua and Barbuda namely the ONDCP, FSRC, Central Authority, DPP and RPFAB do have systems in place for the investigations of matters from the offshore sectors. Due to the mechanisms that are in place in Antigua and Barbuda, a significant case regarding foreign corruption was investigated and through the coordination of LEA's and other Competent Authorities as well domestic and international cooperation resulted in the forfeiture of criminal proceeds of over US \$66,000,000.00. The offshore banking sector is viewed as the vehicle used to launder the proceeds of these external crimes and is therefore considered to be a vulnerable sector. On a national/local front drug trafficking has been cited as the leading concern to the authorities and have been cited within the NRA as being high risk for ML due to the country being used as a transshipment point for narcotics. The offences of fraud, burglary and ML were rated as a high risk. The offences of corruption, theft and robbery were rated as medium high and TF as low.

68. There is no indication that the TF is taking place through the facilities of the jurisdiction's FIs. This is as a result of the mandatory quarterly returns submitted by FIs under the provisions of the Prevention of Terrorism Act (PTA) have not to date provided any positive match to a specified designated terrorist or terrorist organisation. However, continuous scrutiny by FIs and the vigilance by the FIU to alert institutions of updates to the UN Security Sanctions List has aided towards significantly reducing the possibility of such conduct, and also creates the preventative landscape which will alert institutions of any subtle attempts that could be made to take advantage of the financial system for purposes of TF. There is presently no reason to anticipate changes in the situation. However, the suspected techniques of TF are so close in resemblance to ordinary ML that it is a concern that this could be expected that banks and MVTS are likely to be the vehicles seen as most vulnerable to mask TF activity.

69. Antigua and Barbuda took into consideration its CIP program in its NRA and the potential threat to this program by criminals including money launderers. The CIP was rated medium-high ML/FT vulnerability. Control mechanisms are in place to safeguard against ML. Applicants are vetted both at the level of the CIP agent and by the CIU once an application is received for processing. The CIP agents are required to conduct due diligence and background checks on the applicant which is then independently verified by the CIU.

70. During the onsite visit, the Assessment team met and interviewed Attorneys, as well as CIP agents, the employees of the CIU, the Chief Immigration Officer, the Prime Minister and the Minister for Foreign Affairs to determine the measures in place to guard against the abuse of the CIP by criminals including money launderers. It was noted that there are several AML/CFT measures taken into consideration by the authorities such as the reporting to the Cabinet of Ministers to demonstrate the transparency and accountability of the process, the role of the compliance officer, the quarterly report to the Prime Minister, the due diligence process, the functions of the CIU, the legislative provisions as well as the application process. The Assessors were informed that CIP agents are subject to the AML/CFT reporting requirements as of the first quarter of 2017. Applicants for the CIP are subject to a three – tier due diligence process. Tier 1: Due diligence conducted by reputable US firms; Tier 2: 2nd due diligence by an international company

and Tier 3: Checks conducted by the JRCC on the applicant. The purpose of the due diligence process is to identify the applicant as a fit and proper person. The process entails checks of any false information on application, any criminal investigations or prosecution against the applicant, the national security risk posed by the applicant, as well as any activity committed by the applicants which would cause disrepute to Antigua and Barbuda.

71. The application process appears to be open and transparent. The decision to grant economic citizenship is made by the Prime Minister in consultation with the Cabinet following a review of the documents in the application file submitted by the CIU. This Unit is responsible for submitting reports to the Cabinet of Ministers on application of all aspects of the CIP. There are published reports of the number of application process and the applicant's country of origin, which are found on the CIP website. The use of the funds generated from the CIP is determined by the Cabinet of Ministers and not by any single Minister of Government.

72. While the NRA exercise is a comprehensive measure to ensure the understanding ML/FT risk, the country, prior to completion of the exercise, had demonstrated some understanding of the risk as evident by a number of factors, which included: The identification of the threats of foreign predicate offenses; the determination of the risk posed by offshore financial institutions; and consideration of the potential risk posed by persons travelling to high risk jurisdiction. The country assessed the risk to the offshore sector as high, which resulted in heightened mitigating measures which included: increased frequency of examinations (see para. 80), joint onsite examinations between the FSRC and the ONDCP and training provided to the sector inclusive of typologies. With regard to the potential risk posed by persons from high risk jurisdictions who reside in Antigua and Barbuda (see para 221 and 222), this was also considered and resulted in the requirement to add a process for cash declaration and investigation of source of funds surrounding this activity. The country also noted that this activity was not extensive.

73. The authorities in Antigua and Barbuda seemingly have a reasonable understanding of the AML/CFT risks pre and post the NRA. The assessment team arrived at this conclusion through the discussion with public and private sector representatives and as well as the presentation on the NRA process and results to the assessors. However, based on the presentation made by the Authorities on the NRA process and its conclusions, the Assessors are of the view that there is a reasonable understanding of the ML/FT risks, taking into consideration all threats and vulnerabilities to which the jurisdiction is exposed.

#### *National policies to address identified ML/TF risks*

74. Antigua and Barbuda has developed a working document which is referred to as the "Government of Antigua and Barbuda National AML/CFT policy" (AML/CFT policy). The objectives of this policy document are (a) establish one central source of information where the Government can give effect to the FATF Recommendations within the country's legal and regulatory framework; (b) establish for the decision makers, the Cabinet of Ministers of Antigua and Barbuda, a central source of information in respect of any legislative and regulatory changes to the ML/TF framework; ((c) establish a central source of information to facilitate the legal and regulatory framework, by considering the criminal and administrative justice

system, and preventive systems to counter ML/FT and (d) establish the best way to allocate resources for the prevention, investigation and prosecution of ML and TF.

75. The AML/CFT policy document also took into consideration the findings of the recently concluded NRA exercise. Page 15 of the document states, based on the identification of risks made, that Antigua and Barbuda will implement and apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate ML and TF are commensurate with the risks identified. This approach will continue to strengthen and enforce an essential foundation to efficient allocation of resources across the AML/CFT regime and the implementation of risk-based measures based on the FATF Recommendations.

76. The policy document further stated that wherever Antigua and Barbuda identify higher risks whether while conducting the NRA exercise or based on other intelligence, the Competent Authorities will ensure that their respective areas of the AML/CFT regime adequately addresses such risks. It went on to state that wherever Antigua and Barbuda identify lower risks, whether in the NRA or based on other intelligence, the Competent Authorities will, if appropriate, decide to allow simplified measures for some of the FATF Recommendations under certain conditions, thereby more effectively assigning resources to combat ML/FT.

77. The policy document concluded by stating that Antigua and Barbuda will continue to enforce the requirement to have FIs and DNFBPs identify, assess and take effective action to mitigate their ML/FT risks.

78. At the time of the onsite many of the key stakeholders had been sensitized through meetings held with the stakeholders as to the results of the NRA and the measures which ought to be adopted based on the findings contained in the NRA. (Refer to para. 239)

79. In addition to the AML/CFT policy there were a series of activities conducted by Antigua and Barbuda, to address the identified ML/TF risks. The Authorities stated that in recognition of the need to ensure that ML activities are effectively combated, primarily the movements of cash, including cross border, the RPFAB established the Proceeds of Crime Unit (PCU) in May 2011. The police officers within this Unit have received and continue to receive specialized training that allows them to competently exercise powers in accordance with Section 18A (1) of the MLPA. Furthermore, police officers within the jurisdiction continue to seize cash suspected of being proceeds and instrumentalities of crime and referring them to the PCU for investigation. The PCU is dealing with a growing number of these seizures which are occurring at more and more regular intervals. Many of these cash seizures have resulted in successful applications for forfeiture of the cash.

80. Moreover, in January 2015, the ONDCP expanded and restructured by creating the Investigations Division (ID) to better facilitate the coordination and enforcement of a revised operational policy mandating that parallel financial investigations be conducted for all drug trafficking operations in light of drug trafficking being a high risk for ML.

81. NAMLOC was instrumental in coordinating the integral approach to AML/CFT. The composition of NAMLOC includes the Attorney General, Director of ONDCP, Commissioner of Police, CEO of the FSRC, Comptroller of Customs, DPP, Financial Secretary and the Commissioner of the Inland Revenue and the objectives and responsibilities of NAMLOC are, inter alia, to review, enhance or upgrade whenever necessary, the AML/CFT legal and supervisory framework and to provide a structure to the jurisdiction for achieving the same.

### *Exemptions, enhanced and simplified measures*

82. Prior to the NRA, the results of risk assessment conducted of FIs and DNFBPs by the Supervisory Authority and the FSRC have been utilized as a basis for determining the frequency of onsite AML/CFT examinations of entities within these sectors. An examination cycle has been established from this ML/FT assessment that was conducted on the FIs and DNFBPs. The assessment team was informed that it has been determined that all offshore financial entities (banking and gaming) represent the highest risk to Antigua and Barbuda and will be examined annually, whilst other higher risk entities such as banks are examined on an 18 – 24 month cycle. The authorities noted that entities deemed to be of moderate to low risk will be examined on an 18 – 36 month cycle.

### *Objectives and activities of competent authorities*

83. The ML/TF risks identified in the NRA have provided the Competent Authorities with the basis for the development of policies and activities to mitigate these risks. During the NRA process, the LEAs have recognized that activities and objectives of individual agencies should be realigned to mitigate the ML risks posed to Antigua Barbuda. Both the ONDCP and the RPFAB have increased their human resources and realigned their organizational structures to address the ML risks identified. The activities and policy to mitigate against TF risks are commensurate with the level of the risk determined through the NRA process. The RPFAB is responsible for investigating terrorism activity. The ONDCP is the lead agency with responsibility for activities to detect and prevent TF and has issued guidelines to FIs and DNFBPs in respect to TF risks. The ONDCP is also proactive in relation to TF screening and conducting coordination activities with regional and international agencies. Furthermore, based on the interviews conducted during the onsite visit, it was identified that there is some collaboration between the ONDCP and RPFAB in implementing measures jointly to combat ML/TF. Such measures include the spontaneous dissemination of information and financial intelligence through an established mechanism has been implemented.

### *National coordination and cooperation*

84. The NAMLOC serves as the oversight committee for matters of AML/CFT and is responsible for cooperation and coordination on the policy level. The NAMLOC seeks to establish the national anti-money laundering and counter financing of terrorism and proliferation policy as a system of principles to guide decisions and achieve national outcomes. Additionally, there are other crime fighting frameworks such as the National Security Framework consisting of various groups and councils that work together in synergy to create a holistic approach to the national security and crime agenda. These groups and councils comprise of LEAs, specifically designated individuals and the Head of Government. The NSC, Heads of Security

Agencies, JIG and NJCC create the complement of this framework. Each group has a defined role and function which includes cooperation and coordination at both the policy and cooperation level.

85. The National Security Council (NSC) established in 2006 and comprising of various Ministers of government to include the Prime Minister, government advisers and heads of LEAs in performing its mandate, aims to establish priorities among the activities that address national security interests and requirements; ensure the collection and collation of information and intelligence relating to the national security of Antigua and Barbuda; ensure the integration of national security information and intelligence into the Government's domestic, foreign and security policies amongst other functions. Furthermore, Head of Security Agencies forum addresses current security threats to the various agencies, with the information being shared between the respective security agencies. The Director of the ONDCP also shares alerts and intelligence with other members of the group. The Joint Intelligence Group (JIG) consist of Antigua and Barbuda Defence Force (ABDF), RPFAB, Immigration Department and Customs and Excise Division and the ONDCP. This group share intelligence and develop strategies on intelligence matters. Several joint operations were undertaken between the members of the JIG during the period 2012-2016 during which intelligence and information were shared between the agencies resulting in the seizure of US, ECD and Euro Currency, drugs and firearms. The National Joint Coordination Centre (NJCC) was established in 1997, on the recommendation of the "Study of Maritime Counter-Drug Cooperation in the Caribbean". A MOU was established between the RPFAB, Immigration Department, CED, ABDF and the ONDCP for the sharing of information and intelligence. The NJCC is the focal point for the collection and dissemination of information among LEAs at both the national and regional level. The NJCC also targets intelligence development and analysis, to assist in the facilitation of joint operations between local law enforcement agencies in the national counter drug effort. Additionally, the NJCC is also responsible for disseminating and receiving intelligence between the RIFC and the RSS located in Barbados. The national point of contact between the jurisdiction and the RSS and RIFC is the Director of the ONDCP with his alternate being the Head of the Intelligence Unit of the ABDF. Alerts pertaining to threats within the region are sent from the RIFC to the NJCC, who then disseminates this information to the local law enforcement agencies. The NJCC has disseminated a total of 36 alerts and 11 'Hit' alerts to LEAs in Antigua and Barbuda including Immigration and CED advising them of a myriad of threats including travel patterns of persons from high risk jurisdictions.

86. Furthermore, in terms of domestic cooperation and coordination of policies, there is currently a MOU, between the ONDCP and the CED. The MOU creates a policy whereby, currency declaration forms are collected on a weekly basis by the ONDCP for information and analysis. Additionally, the CEDs and ONDCP collaborate with each other on investigations involving ML or monies derived from the proceeds of crime. Moreover, the interagency MOU involving the CED, ONDCP and the RPFAB agrees to facilitate communications and cooperate in the investigations or law enforcements operations related to drug trafficking, ML, the proceeds, profit and instrumentalities of crime and terrorist activities.

87. Antigua and Barbuda has demonstrated a moderate level of national coordination and cooperation amongst the various competent authorities at the operational level. Furthermore, the jurisdiction appeared to have made efforts to increase its focus on AML/CFT with changes to the internal policies and procedures of the law enforcement Agencies with the RPFAB and ONDCP establishing and restructuring several departments to address ML.

### *Private sector's awareness of risks*

88. The private sector, including representatives from the banking sector, insurance sector and DNFBP sectors, was involved in the NRA process from its earliest stages and participated in the working groups.

89. Upon the completion of the NRA exercise, some of the FIs were the first to receive the awareness training on the results of the NRA. This was done through various presentations to compliance officers and industry practitioners. The overview of the risk faced by the financial sectors were highlighted along with, the process, findings, areas of high risks and vulnerabilities. However, this was delivered only through an oral presentation and DNFBPs and other competent authorities had up to the time of the onsite mission, had not been made aware of the results of the NRA.

### *Overall Conclusion for Immediate Outcome 1*

90. Antigua and Barbuda has completed the identification of ML/TF risks within the framework of the NRA. There has been participation from a wide cross section of representatives from the public and private sector and had support from the highest level of the Government. The jurisdiction has also demonstrated that there is a reasonable understanding of the ML/TF risks. Although the final report on NRA has not yet been issued widely, the ML/TF risks are identified and understood and there is a commitment by FIs and DNFBPS to develop mechanisms to mitigate the ML/TF risks identified in the NRA. Prior to the NRA exercise, Antigua and Barbuda had identified some ML terrorism and TF risks. Although the risks of terrorism and TF have been identified as low, the Government intends to create a new unit within the LEAs to address these risks. During the NRA exercise both the ONDCP and RPFAB restructured their respective organizations by creating new units based on information and recommendations from the NRA. The ONDCP who lead the NRA process on the authorization of the Cabinet of Ministers has restructured its operational policy based on the threat of drug trafficking being identified in the NRA as high risk and has now mandated parallel financial investigations into drug trafficking operations. Additionally, ML/TF risks assessments conducted by the FSRC and the FCU ONDCP, was implemented to determine ML/TF risks.

91. Antigua and Barbuda has demonstrated that there is adequate coordination and cooperation at policy level via NAMLOC and the operational level with MOUs between the different LEAs and the conduct of joint operations through the use of task force. Whilst the results of the NRA exercise have provided the basis for a national AML/CFT policy which identifies changes in the approach to mitigate and combat ML/TF risks by the competent authorities, this policy has not yet been fully coordinated and implemented.

92. **The rating for Immediate Outcome 1 is a moderate level of effectiveness.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **Immediate Outcome 6**

- The financial intelligence produced by the ONDCP can be accessed by other competent authorities in Antigua and Barbuda to assist in their functions or mandate related to ML/TF investigations.
- The information related to ML/TF and predicate offences are collected and accessed by all competent authorities in Antigua and Barbuda for investigations related to predicate offences and ML/TF.
- There is limited use of financial intelligence for the investigations of ML, TF and predicate offences by RPFAB, CED and other Competent Authorities.
- The ONDCP-FAU access and use of additional information to conduct its analyses is limited.
- The relevant information related to ML, predicate offences and TF held by LEAs is not adequately shared by all competent authorities to develop evidence and trace criminal proceeds.
- The dissemination of information and intelligence among the various units of the ONDCP is high.
- The information collected by the ONDCP is properly secured and a high level of confidentiality is maintained.

##### **Immediate Outcome 7**

- ML prosecutions are not sufficiently pursued when the predicate offences are being investigated. The RPFAB do not place adequate focus on ML charges when predicate offences are being investigated. The ONDCP initiates ML investigations when predicate offences are being investigated.
- The mechanisms and procedures for initiating ML charges from the investigation stages up to prosecutions are not clearly understood by all units within the RPFAB.
- The RPFAB has recently implemented parallel financial investigations when predicate offences are being investigated. There is a recently introduced referral form which is submitted to the PCU by other departments within the RPFAB when dealing with matters with a monetary threshold of EC\$10,000.00 for

ML investigations and confiscations. However, during the on-site the RPFAB did not demonstrate that criminal confiscation was being pursued.

- There are staffing and human resource issues at the various competent authorities which hamper the dedicated effort in investigation of ML, TF and predicate offences.
- Antigua and Barbuda has established an ACU and the Integrity Commission with independent functions. However, these units are at the embryonic stages and at present do not perform investigative or prosecutorial functions. It is to be highlighted that the RPFAB i.e. the SCU has investigated and prosecuted several individuals for corruption activities.

### **Immediate Outcome 8**

- There is a mechanism related to criminal confiscation within the RPFAB. However, this mechanism is not being fully utilized by units within the RPFAB.
- Criminal confiscation appears not be a key objective of the RPFAB when the predicate offences are investigated. Additionally, post-conviction criminal confiscations are not pursued in regard to assets.
- There is a mechanism to pursue criminal confiscation at the ONDCP and criminal assets have been confiscated.
- Civil forfeiture cases are well investigated by both the ONDCP and the RPFAB and there are numerous successful forfeiture applications granted by the Courts. Cases have not been pursued by the ONDCP and the RPFAB from the recently enacted civil asset recovery provisions under the POCA.

### **Recommended Actions**

#### **Immediate Outcome 6**

- Antigua and Barbuda should improve the timely access to financial intelligence and the utilisation of the financial intelligence and other relevant information for investigations into predicate offences ML, and TF investigations.
- Antigua and Barbuda should increase the cooperation between the LEAs, more specifically the ONDCP and the RPFAB in combating predicate offences specifically drug trafficking, ML and TF.
- All units and departments within the RPFAB should improve on and increase information sharing with units within the ONDCP in combating predicate offences specifically drug trafficking, ML and TF.
- Antigua and Barbuda should improve or further develop the existing mechanisms to share financial intelligence and other relevant information related to trends, typologies, cash declarations and financial profile among the Competent Authorities with formal feedbacks.

- Antigua and Barbuda should undertake a review of its analytical process to enhance its output in effectively meeting and reflecting the identification of risks posed to the country and to increase its use in bringing about ML/TF investigations.
- Operational and strategic analyses needs to be further developed by requisite policies and human resources capacity augmented.
- Antigua and Barbuda should increase cooperation between the FSRC, ONDCP and the RPFAB in order to review the impact of the intelligence and information sharing mechanism through a joint task force.

#### **Immediate Outcome 7**

- The LEAs should place greater focus on ML charges when predicate offences other than drug offences are being investigated.
- The RPFAB should place greater focus on parallel financial investigations with a view to ML prosecutions when the predicate offences are being investigated
- The RPFAB should have clear mechanisms, policies and procedures for initiating ML investigations.
- Antigua and Barbuda should address the staffing and human resource issues at the various competent authorities in particular the RPFAB and the ONDCP which hampers effort in investigation of ML, TF and predicate offences.
- The RPFAB should engage the public prosecutors at the initial stages of investigations for collated the best possible evidence for ML and clear procedures or guidelines should be established.
- The RPFAB should place greater focus on ensuring that ML is investigated and prosecuted with regard to persons engaged in drug trafficking and the movement of cash in or out of the jurisdiction as these offences appear to be frequent.
- The ONDCP should increase pursuance of third party laundering and ML investigation other than those related to drug trafficking.

#### **Immediate Outcome 8**

- Antigua and Barbuda should develop policies and guidelines on confiscation which should be updated by all the competent authorities.
- The RPFAB should form a designated unit or broaden the powers of the Proceeds of Crime Unit for the confiscation of criminal assets and civil asset recovery

- Antigua and Barbuda should vigorously push for criminal confiscation as a form of dissuasiveness to criminals. The authorities should increase focus on asset confiscation other than cash to make crime unprofitable and reduces both predicate crimes and ML.
- Antigua and Barbuda should establish a serious offences court to deal with matters of ML, TF, and civil recovery proceedings.
- Antigua and Barbuda needs to establish asset sharing policies/guidelines.
- Antigua and Barbuda should ensure that the civil recovery is pursued as a policy objective in “taking the profit out of crime” by all LEAs.

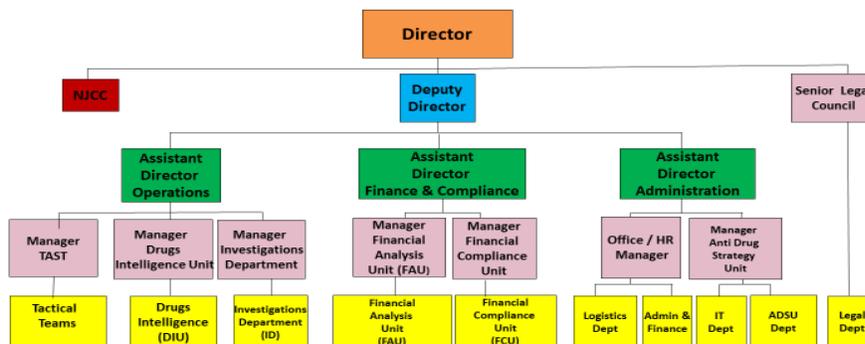
The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

### Immediate Outcome 6 (Financial intelligence ML/TF)

#### Use of Financial Intelligence and Other Information

93. The ONDCP serves as the Financial Intelligence Unit (FIU) of Antigua and Barbuda. It is a hybrid model of FIU which carries out administrative, law enforcement and supervisory functions and comprises a tactical and surveillance unit. The Director of the ONDCP, is also the Supervisory Authority for AML supervision. The ONDCP-FAU is the authority for conducting analysis of SARs and other data to produce FIU products and dissemination of reports. The ONDCP is a unique agency with several units within its organizational chart, as indicated below.

#### Organizational Chart of the ONDCP



94. There have been recent legislative changes to the ONDCP Act which has established the ONDCP as the Authority for receipt and analysis of SARs and other financial disclosures such as TPRs received from the scheduled financial institutions and cash declaration reports from the CED. The ONDCP-ID and the ONDCP-FAU are the main competent authorities within the ONDCP. The ONDCPID is the lead unit responsible for the investigations of ML/TF and predicate offences. The ONDCP-FAU is responsible for the analysis of the SARs, TPRs, Significant Payment Reports (SPRs) Cash Declaration Reports, and its conversion to financial intelligence. The principal recipient of intelligence from the ONDCP-FAU is the ONDCP-ID. The RPFAB is responsible for the investigations of predicate offences. The SCU of the RPFAB is also tasked with the investigations of activities related to money laundering and terrorist financing. The ONDCP is also part of the JIG comprising of the ABDF, RPFAB, Immigration Department and CED.

95. The ONDCP facilitates information exchanges by way of face to face meetings and intelligence reports submitted to the ONDCP-ID, DIU and the RPFAB. By way of example, the ONDCP-FAU passes intelligence reports to the ONDCP-ID and DIU which resulted in smurfing activity being identified and 2016 the DIU was able to carry out a successful counter narcotic operation, where one of the smurf was apprehended with 170 lbs. of cannabis.

96. As a result of the legislative amendments and the institutional framework existent in Antigua and Barbuda, the RPFAB are able to use the financial intelligence disseminated by the ONDCP to develop evidence and trace criminal proceeds. By way of example, the Proceeds of Crime Unit Or the Serious Crime Unit within the CID has shown that it uses intelligence provided by the ONDCP in applying for forfeiture under the proceeds of crime legislation. The intelligence provided by the ONDCP are also used in the financial profiling of suspects and developing case files on suspected criminals.

97. With regards access to information, the ONDCP has regular access to a number of public sector databases to include Inland Revenue, Registry and the Traffic Department. The information obtained is used by the ONDCP-FAU during analysis of SARs and by the ONDCP-ID in the investigations of ML, civil recovery and predicate offences. In addition, the ONDCP has access on a per request basis to the data bases of the CED. This access is based on gathering information on movements of cash across the borders, information on importers and exporters and other information held by the Customs and Excise which are used in investigation of ML and predicate offences and analysis conducted by the ONDCP-FAU. In terms of use of information, the ONDCP provides information to RPFAB, FSRC, CED, Immigration department, and IRD and NJCC and JIG, both formally and informal. The requests of information have been made by these various agencies, as a result of investigations being carried out in relation to predicate offences and ML investigations. The agencies accessed information from the ONDCP through letters of requests. The table 1 below shows number of requests made by the ONDCP and information provided by various agencies from 2014-2016 to facilitate investigations into ML and predicate offences.

**Table 1**  
**Number of requests made by the ONDCP to LEAs**  
**and other agencies where information were provided from 2014-2016**

Agency	2014	2015	2016
Antigua & Barbuda Transport Board	67	116	79
Antigua & Barbuda Social Security Board	67	115	85
Intellectual Property	19	5	12
Inland Revenue Dept.	3	1	3
Criminal Records Dept.	13	15	16
Land Registry	1	0	3
Customs & Excise Division	5	11	23
Immigration Dept	20	92	78
<b>Total</b>	<b>195</b>	<b>355</b>	<b>299</b>

Source of information: ONDCP self-assessment document.

98. The ONDCP also receives requests for information from various agencies and competent authorities in Antigua and Barbuda with the purpose of facilitating ML and predicate offences investigations being conducted by these agencies. The table below shows the number of requests sent by these agencies between 2012-2016 to the ONDCP.

**Table 2**  
**Requests for information received by the ONDCP per year**

Name of Agency	2012	2013	2014	2015	2016
Immigration Department	32	21	34	39	34
Royal Police Force of Antigua and Barbuda	7	4	4	8	4
The Passport Office	2	0	0	0	0
Antigua and Barbuda Social Security Board	1	10	9	9	14

Source of information: ONDCP

99. The JIG usually shares information and the financial intelligence from the ONDCP is used by the group for operational purposes related to predicate offences, terrorism and money laundering. As a result of information sharing and intelligence among the stakeholders, there have been successful operations conducted from 2012 to 2016 resulting in seizure of about 10,092.28 lbs of cannabis and 538.85 Kilos of cocaine with an approximate wholesale street value of US\$14,128,569.00, US \$58,903.00 in cash and two (2) pistols and twenty five (25) rounds ammunitions. The table below shows internal and external requests received by the JIG from various agencies in 2015 and 2016.

**Table 3**  
**Internal and External Requests and Responses for 2015, 2016 by the JIG**

Name of Agency/Department	No. of requests/ responses sent in 2015	No of requests received in 2015	No. of requests/responses sent in 2016	No. of requests received in 2016
Regional Intelligence Fusion Center	15	16	18	25
RSS	1	0	11	0
ONDCP	36	48	27	36
RPFAB	12	2	28	0
ABDF	0	1	11	0
Custom and Excise Department	1	0	10	0
Passport / Immigration Offices	1	0	12	0

Source of information: Data provided by Joint Intelligence Group

100. The JIG has disseminated fifty-eight (58) alerts to the LEAS after collating information to include financial intelligence received from the ONDCP advising them on threats ranging from travels patterns from high risk jurisdiction, human trafficking / smuggling, cybercrime and use of fraudulent documents. This has enable agencies to increase vigilance at all ports of entry and exits to detect or prevent threats to national security.

101. Intelligence reports from the ONDCP are also forwarded to the Inland Revenue Department (IRD) where the analysis of SARs concluded that the suspicious activity reported in the SAR was related to tax evasion. Similarly, intelligence reports for STRs relating to drug trafficking are disclosed to the Drug Intelligence Unit (DIU) within the ONDCP. RPFAB request information from the ONDCP on subject profiles, identification of accounts at financial institutions, money transfer transactions and other financial records.

102. The ONDCP also shares financial intelligence and information with the FSRC; the information requested of the FIU includes: the number of SARs submitted by a financial institution and the quality of SARs submitted by financial institutions, which is used in FSRC’s assessment of the effectiveness of an institution’s compliance programme.

103. The ONDCP-FAU also analyses currency declarations submitted by the CED. The CED is responsible for obtaining information from customs declaration system implemented where travellers with cash equivalent to US\$10,000.00 must submit a declaration form to the CED. Which is submitted to the ONDCP-FAU on a monthly basis. The analysis conducted on the receipts of the customs declaration are used by the ONDCP for statistical purposes, to identify trends, cash inflows and outflow and subject/suspect profiling. However, the analysis has not resulted in ML investigations or prosecutions and TF prosecutions.

*STRs received and requested by competent authorities*

104. The ONDCP is the single authority to receive SARs and Quarterly Terrorism Property Reports from the scheduled FIs as well as Cash Declaration Reports from the CED. The ONDCP receives SARs via hard copy letter as well as through e- mail; SARs received via hard copy or through by email are analysed and uploaded into the ONDCP database. The ONDCP-FAU is responsible for the STR analysis and dissemination to the ONDCP-ID for investigations. The table below shows the number of SARs received from 2012-2015 and the actions taken by the ONDCP.

**Table 4**  
**The number of SARS received from 2012-2015 and actions taken. SARS and actions taken**

Year	SARs Received	To Be Analysed	SARs Under Analysis	SARs Being Monitored	SARs Information Disseminated	SARs Filed for Intelligence
2012	172	-	-	108	36	19
2013	213	-	-	138	6	17
2014	253	-	84	12	36	80
2015	309	66	75	34	31	92

Source of information: Data provided by ONDCP-FAU

### *Operational needs supported by FIU analysis and dissemination*

105. In performing their duties, the ONDCP disseminates information as a result of requests made by the PCU of the RPFAB. The requested information is related to persons who are under investigations by the PCU. This information assists the PCU in the financial profiling of individuals under investigation. The PCU Officers confirmed that the information received from the ONDCP has supported their investigations and has concluded in successful prosecutions of offenders related to predicate offences, cash seizures and forfeitures.

*Case example:*

*On the 20th of November 2016, the PCU was informed that three individuals were arrested on suspicion of ML and had in their possession in excess of US\$60,000.00. The monies were claimed by one individual, further investigation was conducted and an application for further detention was applied for. The unit conducted both ML and cash seizure investigation and using information from various agencies to include the ONDCP which provided financial information on the suspects. An application for forfeiture was subsequently filed. The matter concluded in March 2017 with a total of US\$74,760.00 being forfeited to the State.*

106. The LEAs and other agencies in Antigua and Barbuda, also request information from the ONDCP to support their operational needs. The table below shows requests of information received by the ONDCP from law enforcement and other agencies to assist in their operational needs.

**Table 5**  
**Requests of information received by the ONDCP from law enforcement and other agencies**

Agency	2012	2013	2014	2015	2016
Antigua & Barbuda Transport Board	29	24	38	45	38
Antigua & Barbuda Social Security Board	1	10	9	9	14
RPFAB	7	4	4	8	4
Immigration Dept/Passport Office	34	21	34	39	34
Customs Department	5	6	5	11	23
<b>Total</b>	<b>71</b>	<b>65</b>	<b>85</b>	<b>112</b>	<b>113</b>

Source of information: Data provided by ONDCP

107. The assessment team requested the operational and strategic analysis products from the ONDCP, the authorities cited the analyses on trends and typologies identified and uploaded to their website. There is strategic analysis conducted by the FAU, which is publicly available on the ONDCP's website. It was not possible to determine to the full extent that operational analysis is conducted due to the sensitivity of the information. However, based on the successful operations conducted by the various LEAs and competent authorities stemming from operational analysis it was agreed Antigua and Barbuda are carrying out operational analysis. The FSRC and the units within the ONDCP, RPFAB, CED and Immigration Department indicated that at stemming from the operational analysis conducted by the ONDCP-FAU, there have been targeted surveillance, joint operations, focused inspections, focused investigations of ML and predicate offences.

108. One case example in terms of the receipt of this type information from the ONDCP-FAU allowed the ONDCP-FCU to identify weaknesses in a supervised entity, select focus areas for examination, and assess and address deficiencies in an institution's compliance programme. In 2016, a report made by the ONDCP-FAU to the ONDCP-FCU resulted in the sanctioning of an institution with a financial penalty of ECD\$75,000.00, and a three-year financial commitment towards promoting AML/CFT safety awareness, effectiveness and skills within the jurisdiction. Additionally, ONDCP-FAU shares information with the PCU who were able to use the unit to successfully obtain sixteen (16) production orders for period 2012-2016, in the enhancement to their investigative process.

109. Relevant information was provided to the RPFAB by the ONDCP-FAU which facilitated the Serious Crime Unit bringing thirteen nine (39) charges under Larceny Act Chapter 241 to include fraud, uttering, forgery and conversion with a monetary value of ECD \$120,000.00 against one individual as well as investigations into corrupt practices at a government statutory body. At the time of the onsite, the matters were pending at the High Court.

110. The ONDCP receives cash/currency declaration reports from the CED on a monthly basis for analysis and development of intelligence by the ONDCP-FAU. The Immigration, Customs and Port Authority work collaboratively to detect cash and goods smuggling at the various ports of entry and exits.

111. The ONDCP can access the databases of both scheduled entities and other government agencies to support its ONDCP-ID investigations and ONDCP-FAU analytical functions. In the process of accessing the databases to support the ONDCP-FAU's needs, the ONDCP-FAU has implemented an analysis process which includes the following: a) A hypothesis is formed based on the information received; b) A determination is made of what information is already known; c) A determination is then made of what information needs to be obtained and where it is to be sourced d) All of the information collected is then analysed and a determination is made as to how likely it is that the hypothesis may be proven.

112. As indicated before, the ONDCP-FAU conducts analysis of cash/currency declarations submitted by the CED. However, the analysis conducted on currency declaration by the FAU-ONDCP is not spontaneously disseminated to other Competent Authorities. The tables below show the number of currency declarations submitted by the CED to the ONDCP for the period 2012 to 2015.

**Table 6**  
**Currency Declaration Report from 2012-2015-Arrival and Departure**

Year	Arrival		Departure	
	Currency Declared	Number of Declarations	Currency Declared	Number of Declarations
2012	US\$20,000.00	1	US\$ 28,819.66	2
2013	US\$117,347.71	4	US\$ 685,159.00	6
2014	US\$642,907.72	16	US\$1,117,014.00	15
2015	US\$614,793.19	23	US\$2,858 237.542	31

Source of information: Data provided by Antigua and Barbuda Customs and Excise Department

113. TF quarterly reports are submitted by financial institutions and other scheduled entities to the ONDCP –FAU and analysed. There were no investigations conducted for the period under review due to nil finding submitted by the financial institutions. The dissemination of the analysis by the ONDCP-FAU is primarily to the units within the ONDCP and the FSRC.

114. Analysis and dissemination conducted by the ONDCP –FAU has contributed to the operational needs of the RPFAB, CED and the FSRC. Some of the exchanges and dissemination are often informal and are not recorded, However, during the interview with the LEAs it was noted that they receive analysis products from the ONDCP to enhance their effort to combatting ML/TF. Examples of information provided includes trends and typologies, financial information, financial profiles of suspects. The Proceeds of Crime Unit indicated that the financial intelligence and other information disseminated to the Unit from the ONDCP-FAU has assisted the Unit to apply for several cash forfeiture matters.

115. The intelligence shared assisted in presenting cases with sufficient evidence under the POCA for civil cash forfeitures. For the period 2012-2016, the Proceeds of Crime Unit investigated eighteen (18) cases and applied for forfeiture for twelve (12) of these cases. A total of ECD \$110,874 and US \$16,078.00 was forfeited. Additionally, the ONDCP-FAU, through its dissemination of information and intelligence, has led to the seizure of cash totalling ECD \$ 1,642,837.45 and forfeiture of cash totalling ECD \$557,143.83. For the period, 2012-2016, the ONDCP-ID and ONDCP-Legal Department have used information provided by the ONDCP-FAU in the investigations resulting in six (6) prosecutions and three (3) convictions for ML. The ONDCP has disseminated information to CED related to Eastern Europeans bringing in ATM skimming machines and this has led to the interception of one individual in 2017, who stole over ECD \$28,000.00 from ATM Machines in Antigua and Barbuda. This individual fled from the jurisdiction and was arrested in a neighbouring country as a result of the sharing of information among the CED, ONDCP and the RPFAB with the neighbouring jurisdiction. He was subsequently charged by the RPFAB under the Larceny Act.

116. Based on information provided by the ONDCP, the Antigua and Barbuda Airport Authority in 2012 intercepted 120 lbs of cannabis. Additionally, due to intelligence provided by the ONDCP 2333lbs of cannabis was intercepted within the territorial waters of Antigua and Barbuda. The ONDCP-FAU provides financial intelligence to the Antigua Port Authority on new entrants which a being vetted for employment at the various ports of entries/exits. This is in an effort to ensure that fit and proper persons are employed in such sensitive areas.

117. In the execution of its duties and given its institutional structure and mandate the ONDCP through the ONDCP-FAU disseminates financial intelligence to the DIU in close collaboration with the ONDCP-ID. This close collaboration has aided the DIU in the disruption the illegal drug trade where the arrest of several individuals and cash proceeds have been intercepted.

118. In 2014, as a result of analysing several s/SARs, the FAU identified three (3) subjects as suspected drug traffickers based on their financial activity patterns and the financial activity patterns of their associates. These financial intelligence reports were disseminated to the DIU, all 3 individuals were known to the DIU as drug traffickers or were associated to drug trafficking syndicates. The ONDCP-FAU financial intelligence reports along with intelligence report compiled by the DIU aided in the disruption of illegal

drug transactions and the arrest of 2 of the individuals. The following case example shows the how operational needs of units within the ONDCP are supported.

**Case Example:**

*In 2016, the FAU received a SAR indicating that a male had been frequenting a local MSB and remitting funds to multiple recipients in another Caribbean country. The MSB became suspicious since they believed that his occupation could not provide him with the financial capacity to conduct transactions of such amounts and frequency. Inquiries conducted did not reveal current employment or source of income for the subject. Based on the destination of the funds, the ONDCP-FAU theorized that the transactions may be related to drug trafficking activity. After consultation with the DIU, it was revealed that they had intelligence of an impending drug shipment involving an unidentified male residing in the same area as the subject of the SAR. The ONDCP-FAU provided the DIU with details of the subject and also disseminated the case to the ONDCP-ID to facilitate a money laundering investigation.*

*Prior to DIU receiving the SAR from ONDCP-FAU, the DIU had intelligence of a local drug syndicate which imported large amounts of marijuana. The syndicate also utilizes several persons using the services of MSBs to remit funds to another Caribbean country to purchase the illegal drugs.*

*Owing to the information provided by both units, the ONDCP Tactical Unit and the ONDCP-ID conducted an operation on the drug syndicate, which resulted in discovery of 170lbs 6ozs of compressed cannabis and the arrest of the male identified by the ONDCP-FAU and a known drug trafficker of the same syndicate after the. Subsequent to the operation, the ONDCP-ID arrested and charged three (3) individuals for drug trafficking offences. In addition to these charges, money laundering charges are being considered against two of the three individuals who were arrested. Comprehensive financial profiles are being created on the individuals by the ONDCP-FAU.*

119. The narration below shows how ONDCP- FAU analysis and dissemination supports the operational needs of competent authority:

**Use of Financial Intelligence by Law Enforcement Agencies**

*The PCU is an arm of the RPFAB that is tasked with the responsibility of investigating financial crimes where there is a financial or property benefit to be derived. The PCU conducts parallel financial investigations with the Criminal Investigations Department for the cash seizures and confiscation of benefits derived from criminal activity. The ONDCP-FAU supports the operational needs of the PCU by providing information and intelligence based on the requests for information submitted by the PCU. The information and intelligence received from the ONDCP-FAU is generally used to identify the FIs to which an accused person or a defendant has an account. This information gives guidance as to the FIs and account number relevant to the investigation; and is ultimately used to obtain a production order by the police. Furthermore, the financial intelligence and information is used for financial profiling and intelligence gathering. There is also informal sharing of information which occurs on a case by case basis. These types of informal sharing are not captured by statistics and the extent to which it supports the operational analysis cannot be effectively assessed. However, the law enforcement agencies external to the ONDCP, expressed appreciation to the support in terms of information they received from the ONDCP-FAU although they believe that more collaboration and information sharing should be done.*

The ONDCP consist of many units to include the ONDCP-ID which has a role as the lead AML/CFT investigative unit. The ONDCP-FIU uses the financial intelligence generated by the ONDCP-FAU when establishing new ML cases, enhancing the existent ML investigations, enhancing drug trafficking investigations, trace or identify the assets of persons under investigations and enhancing of investigations into any other predicate offences under its purview.

120. The following table represents information used by the ONDCP-ID, within the ONDCP:

**Table 7**  
**Request for Financial Information from the ONDCP-FAU by the ONDCP-ID (2012-2016)**

Ser #	Category of use	No. of requests
1	New Matters for Investigations	44
2	Enhances existing ML Investigations	2
3	Enhancing Drug Trafficking Investigations	41
4	Tracing of assets	5
5	Enhance investigations of Predicate offences	5

Source of information: Data provided by ONDCP-FAU

***Use of FIU Information by AML Supervisors***

*There has been an effort to increased co-operation and information sharing among ONDCP-FAU and the ONDCP- FCU (the AML supervisory arm of the ONDCP), and the FSRC. As the FAU has observed that the information contained in SARs submitted by many financial institutions lack relevant and complete including transaction details, suspicious activity indicators and nature or category of suspicion which has to be rectified by the AML supervisors.*

121. Based on the analysis conducted and the information provided by the ONDCP-FAU, the FCU has recognized that the SAR information submitted reflects deficiencies in the institutions’ CDD processes. For example, one such instance occurred where a report was submitted on a customer whose CDD information had not been updated since the 1980s but was reported because his transactions were not consistent with his profile. The analysis revealed that the customer was engaged in perfectly legitimate business activity; however, the institution failed to implement adequate procedures to keep their customers’ information current. The receipt of this type of information allows the ONDCP-FCU to identify weaknesses in a supervised entity, select focus areas for examination, and assess and address deficiencies in an institution’s compliance programme.

122. Additionally, in 2016, a report made by the ONDCP-FAU ’s to the ONDCP- FCU resulted in the sanctioning of an institution with a financial penalty of \$75,000.00, and a 3-year financial commitment towards promoting AML/CFT awareness, effectiveness and skills within the jurisdiction.

123. The ONDCP also maintained a website on which information is kept on the analysis of SARs and the understanding of the ML/TF risks faced by Antigua and Barbuda. This analysis has assisted in the development of trends and typologies. These trends and typologies link platform is accessed by all the competent authorities for operational use.

124. The ONDCP also disseminates information to the Commissioner of Inland Revenue in relation to tax matters. The information provided enables the tax authority to profile individuals and to enforce laws related to tax matters. On occasions where the analysis of a SAR concluded that the suspicious activity reported was related to tax evasion, an intelligence report is forwarded to the Commissioner of Inland Revenue.

### *Cooperation and exchange of information/financial intelligence*

125. Financial intelligence from the ONDCP is shared with the RPFAB through formal and informal channels. The formal arrangements have been instituted for the sharing of financial intelligence with all law enforcement agencies effective from 1 January 2017. Subsequently, the FAU has spontaneously disseminated information to the RPFAB relating to fourteen (14) SARs. The ONDCP also facilitates information exchanges by way of face to face meetings and through the use of intelligence reports with the DIU in order to address the drug trafficking and resulting ML concerns within the jurisdiction. These exchanges have resulted in the identification of targets, whose financial transactions suggest that they may be engaged in drug trafficking activity. In particular, the ONDCP-FAU disseminates intelligence pertaining to individuals engaged in smurfing activity who are suspected to be operatives of drug trafficking organizations.

126. There is an interagency MOU amongst the ONDCP, RPFAB, Antigua and Barbuda Immigration Department, NJCC and the CED which facilitate easy exchange of information. In the MOU, it is clearly stated that each agency on its own initiative or upon request, is required to provide the other agencies listed in the MOU with information that it has, relevant to the other agencies discharging their functions and carrying out their legal responsibilities. The information exchange shall be prompt and timely with regards to persons or organisation suspected of being involved in the illegal importation or exportation of drugs and related activities, ML and terrorist activities. During the course of investigations, each agency shall supply every other agency, as appropriate with intelligence and information relevant to the other agency role in the investigation with particular attention to the other agency's area of specialisation and legal responsibility.

127. In practice, the MOU appears to facilitate cooperation and exchange of information among the various agencies. However, this sharing of intelligence and information appears to be shared more bi laterally rather the broad multi agency approach. For example, there is sharing of information or intelligence between the two supervisory authorities, the ONDCP and the FSRC in relations onsite inspections of FIs or DNFBBs, the ONDCP provides due diligence support to the FSRC to the fit and proper requirement of senior officials of regulated entities and reciprocal support on matters related to the training of personnel within the financial institutions.

128. There is a great level of cooperation and exchange of information between the CED, Immigration and Port Authority at the various designated ports of entry. Additionally, there is intelligence sharing among the mentioned agencies and there is a collaborative approach in terms of operations. The CED and the ONDCP have demonstrated a high level of cooperation in combating ML by the sharing of intelligence and submission of cash declaration report for analysis. The ONDCP and the RPFAB appears to a lesser extent to cooperate and exchange information at the operational level. The ONDCP being the supervisory authority for AML/CFT compliance by scheduled entities also shares information related to ML/TF with

the FSRC. The relationship appears to be outstanding and feedback is also given, Feedback to the FIs on SARs is provided via different methods, such as feedback letters, training sessions and face-to-face meetings and other verbal communication. The FAU also provides feedback through training to the FIs with a focus on Effective SAR Reporting and CDD. Presentations include practical examples of how institutions may be used for ML; typologies and sanitized cases. These help to illustrate what effective and ineffective reporting looks like, as well as highlight the necessity of proper CDD practices.

129. The ONDCP maintains contacts with other departments including: Antigua and Barbuda Transport Board, Antigua and Barbuda Social Security Scheme, Land Registry, IPO, Commissioner of Inland Revenue when conducting investigations into ML and predicate offences through the provisions of Section 11(vi) of the MLPA which enable the ONDCP to seek such assistance.

130. The ONDCP is granted indirect access to the databases of Antigua and Barbuda Transport Board, Antigua and Barbuda Social Security Scheme, Land Registry, IPO, Commissioner of Inland Revenue by hand delivering official letters of request for information which are handled by designated employees of the above agencies. For added security, the tipping off provisions of the MLPA and the applicable penalties for unauthorized divulging of information, are included on all correspondence to external agencies. Information received by the ONDCP from these authorities include: income and tax declarations, vehicle, property and business registration.

131. The Assessors were informed that good cooperation exist between Antigua and Barbuda and competent authorities both regional and internationally. The Assessors were also informed that high priority is given to requests sent by foreign counterpart agencies where in the request urgent actions is needed. It is a policy decision by the ONDCP that request from foreign counterpart agencies are prioritized and dealt with expeditiously.

### *Protection and Confidentiality of Information*

132. With respect to the protection and confidentiality of information the ONDCP has established protocols in relation to receipt of SARs and dissemination of reports in protecting the security of FIU records and information. To prevent unauthorized disclosure of information all employees of the FIU are polygraph vetted before given security clearance and are subject to continuous vetting every 12 to 18 months. SARs, SPRs, and TPRs are hand delivered to the Supervisory Authority in sealed envelopes which are opened only by Administrative personnel designated by the Supervisory Authority.

133. Additionally, these reports are submitted via email which are also only accessible by designated personnel and cannot be accessed by all members of staff. A physical log of each SAR received is maintained by the ONDCP and a designated Manager is required to acknowledge receipt by signing the said log.

134. SARs are maintained in duplicate copies, with the original kept maintained in a locked cabinet and the duplicate used as a working copy for use by the assigned analyst. Until November 2016, electronic copies of SARs were maintained in an online record management system which is only accessible to members of the department.

135. All documents pertaining to reports received by the ONDCP-FAU are maintained in a unique system which is only accessible to the ONDCP-FAU personnel. There was improvement of the system by the upgrading of software which has increased security of ONDCP-FAU records as there is a log maintained for all data entered into the system and analysts are blocked from deleting these logs. The ONDCP -FAU is staffed with a manager who is the head of analysis and three (3) other Financial Analysts. These Financial Analysts as well as the manager of the ONDCP-FAU are all trained in analysis. The ONDCP-FAU uses the i2 IBM ibase database programme as well as i2 IBM Analyst Notebook as analytical tools in assessment of matter related to ML, TF and predicate offences. The Director of the ONDCP also has the capability of limiting an analyst's access to a particular file or of restricting access to sensitive files.

136. Furthermore, the inter-agency MOU specifically addressed protection and confidentiality and agreed that all information should be maintained at the strictest level of confidentiality and only addressed to the authorities on a need to know basis.

137. The employees of the ONDCP were interviewed and the physical location was visited by the Assessors. There are several security protocols which must be adhered to access the building, as well as the internal databases. The sharing and dissemination of information are done through secure and protected channels. The management team of the ONDCP informed the Assessors that to date, there have not been any security breaches at the physical location or through the ONDCP databases. The ONDCP provides a safe and secure storage for the cash/currency declaration submitted by the CED. Based on the onsite visit and the security protocols observed, the protection and confidentiality of information is a high priority of the ONDCP. The Assessors are of the view that this system of security has adequately addressed the confidentiality and protection of information exchanged or used.

### *Overall Conclusion on Immediate Outcome 6*

138. Antigua and Barbuda has demonstrated some characteristics of an effective system in the use of information for investigations and the utilization of financial intelligence. The authorities can access, collect and use a wide variety of relevant information and intelligence to conduct investigations into predicate offences and ML and to some extent TF when the need arises. The financial intelligence generated by the FAU is used in the investigation of drug offences, cash seizure investigations and money laundering investigation by the ONDCP-ID as well as the PCU within the RPFAB.

139. The ONDCP has direct access to a wide array of information and intelligence collated by most of the government agencies and other LEAs. The mechanism for sharing information appears to be well structured and understood by the various competent authorities. The ONDCP uses the access to the information in the databases of these agencies to augment the analysis of the FAU and for the investigations of predicate and ML offences.

140. Through the use of the JIG and other LEAs, there is a good and close level of cooperation among the agencies. However, it appears that due to the unique makeup of the ONDCP, more of the information and intelligence related to AML/CFT are disseminated among the agencies within it. The LEAs are able to conduct investigations and access information from the ONDCP which is based on formal or informal requests for information and financial intelligence. The LEAs use the information and intelligence to

conduct analysis, pursue financial investigations, investigate predicate offences, ML and civil cash forfeiture.

141. **The rating for Immediate Outcome 6 is a moderate level of effectiveness.**

### ***Immediate Outcome 7 (ML investigation and prosecution)***

142. The ONDCP is one of the agencies within Antigua and Barbuda designated to investigate predicate offences, financial crimes and money laundering offences. Within the ONDCP, the Investigation Department is responsible for money laundering investigations. The RPFAB is also a designated agency to investigate predicate offences, financial crimes and money laundering.

143. The ONDCP recognizes that drug trafficking and offences involving foreign corruption form a part in the risk profile of the country. There is a specialised unit within the ONDCP referred to as the Financial Investigation Department with a primary role for the investigation of ML, financial crimes, specific predicate offences for money laundering. According to the ONDCP Authorities, the standard operating procedure for all investigations is that, regardless of the type of predicate offences that initiates the investigations, a parallel ML investigation is undertaken. The parallel ML investigations by the ONDCP have provided evidence for the initiating of prosecutions into several individuals. For the period 2012-2016, there have been six (6) prosecution and three (3) convictions for ML. (See Table 13).

144. Having concluded the NRA exercise, Antigua and Barbuda has assessed that ML was rated as medium high. The other proceeds generating offences as identified in the NRA were drug trafficking, larceny, fraud and domestic and international corruption. Subsequent to the analysis, the authority took a decision to move the rating for ML to a high-risk category of offence. The decision to increase the risk of ML to high was based on several factors including inadequate prosecutions and lack of adequate human resource.

145. In recent years, the trend observed through the analysis of the cases investigated by the ONDCP is that the persons who have been intercepted or arrested for these predicate offences are low level players who have little or no assets that can be forfeited or confiscated. The ONDCP has conducted a number of financial investigations with the expectation that enough evidence can be obtained to support ML charges.

146. For the period 2012 to 2016 the predicate offences and money laundering offences investigated by the ONDCP are shown in Table 7 below:

**Table 8**  
**Data on Predicate and Money Laundering Offences from 2012-2016**

<b>Predicate offences</b>	<b>Year</b>	<b>No. of Reports</b>	<b>No of Cases</b>	<b>Closed Undetected</b>	<b>Under Inquiries</b>	<b>Pending at the Court</b>	<b>Cases Prosecuted</b>	<b>Convicted Cases</b>	<b>No. of Persons (convicted)</b>
<b>Drug Offences</b>	2012	6	6	0	1	1	5	5	9
	2013	7	7	0	2	2	5	5	5
	2014	13	11	0	2	2	7	7	13
	2015	5	3	0	2	2	1	1	1
	2016	10	10	0	9	9	1	1	1
<b>Firearm &amp; Ammunition</b>	2012	1	1	0	0	0	1	1	
	2013	1	1	0	0	0	1	1	1
	2014	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0
	2016	1	1	0	0	0	1	1	1
<b>Fraud</b>	2012								
	2013	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0
	2016	1	1	0	0	0	0	0	0
<b>Corruption</b>	2012	0	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0	0
	2014	1	1	0	1	0	0	0	0
	2015	0	0	0	0	0	0	0	0
	2016	1	1	0	1	0	0	0	0
<b>ML</b>	2012	3	3	0	1	0	2	1	2
	2013	2	1	0	1	0	1	1	1
	2014	0	0	0	0	0	0	0	0
	2015	1	1	0	1	0	1	1	1
	2016	0	0	0	0	0	0	0	0

<b>Failing to Declare</b>	2012	5	5	0	0	0	5	5	5
	2013	3	3	0	0	0	3	3	3
	2014	4	4	0	0	0	1	1	1
	2015	5	5	0	2	0	1	1	1
	2016	0	0	0	4	0	0	0	0
<b>Foreign Corruption/through MLAT</b>	2012	10	0	0	0	0	0	0	0
	2013	4	0	0	0	0	0	0	0
	2014	4	0	0	0	0	0	0	0
	2015	4	0	0	0	0	0	0	0
	2016	6	0	0	3	0	0	0	0

Source of information: Data provided by RPFAB and ONDCP

147. The predicate offences of human trafficking, maritime piracy, illegal fishing, migrant smuggling, terrorism, terrorist financing and cyber-crimes were categorized, however, there were no reports, cases, prosecutions or convictions. The Table 8 below shows the predicate offences for 2012-2016 and the ML charges and outcomes:

**Table 9**  
**Investigation of Money Laundering through predicate offenses from 2012-2016**

Predicate Offences	Number of Cases from 2012-2016	ML Cases Investigated	ML Cases Prosecuted	Number of ML Convictions	Number of Persons Convicted	Amount of Proceeds frozen of seized	Amount of Proceeds Forfeited
<b>Drug Offences</b>	37	2	1	1	1	\$1,100,000.00	\$1,100,000.00 in addition to four parcels of land and two (2) vehicles
<b>Firearm &amp; Ammunition</b>	3	0	0	0	0	Nil	Nil
<b>Fraud</b>	1	5	0	0	0	Nil	Nil
<b>Corruption</b>	2	0	0	0	0	Nil	Nil
<b>ML</b>	5	5	3	2	2	\$188,384.47	\$188,384.47
<b>Foreign Corruption Investigation</b>	28	5	0	0	0	\$66,800,000.00	\$66,800,000.00

Source of information: Data provided by RPFAB and ONDCP

148. The majority of the investigations undertaken by the ONDCP-ID during the assessment period were initiated pursuant to predicate offences and intelligence reports disseminated from the ONDCP-FAU. The table above illustrates the investigations conducted into predicate offences and ML by the ONDCP from 2012-2016. Drug related offences are predominantly investigated as a predicate offence to ML.

149. The RPFAB is another authority which is designated to investigate financial crime, predicate offences, and money laundering. There is a specialised unit within the RPFAB referred to as the SCU tasks with the responsibility for investigations of serious offences. In the SCU, there is the PCU that is directly responsible to undertake investigation based on financial crimes and criminal proceeds. The investigations of ML by the SCU are based on a threshold of a benefit value of ECD \$10,000.00. In 2017, there were changes to the internal policy of the RPFAB whereby parallel investigations are required to be carried out when the predicate offences are being investigated. The SCU has also developed a form referred to as a “Form 6” which accompanies all predicate offences with criminal benefits. This form is filled out by investigators and passed on the SCU for consideration to be given towards pursuing a ML investigation. If charges are to be instituted by the RPFAB, it can be done under the POCA with a FIAT from the DPP, or an alternative provision exist where charges could be brought under the MLPA with a FIAT from the DPP or the Director of the ONDCP before ML charges are instituted. The RPFAB has indicated that obtaining these FIATs have not hampered the prosecution of ML but in some instances lengthens the investigative process.

150. The Anti-Corruption Unit does not investigate bribery or other corruption related offences, but only makes recommendations into the report for the government. All investigations are passed to the RPFAB for investigations. Essentially, the unit only does self-assessment and policy implementation.

*ML identification and investigation*

151. As stated in I.O 6, the ONDCP and other LEAs have access to a wide range of information to conduct investigations into financial crimes and ML. LEAs also uses production orders as an investigative tool to obtain financial information to assist in ML investigation. The table below shows the number of production order applications made from 2012-2016 by the RPFAB and the ONDCP.

**Table 10  
Production Order Applications from 2012-2016 by the RPFAB and ONDCP**

<b>Year</b>	<b># of Orders</b>
2012	39
2013	11
2014	16
2015	10
2016	37

Source of information: Data provided by RPFAB and ONDCP

152. The number of production order applications to obtain information from the financial institutions to facilitate ML investigations appears to be consistent based on the number of predicate offences and ML offences being investigated. Additionally, as indicated in Table 5 on currency and cash declaration in IO 6, the ONDCP collects and analyses cash and currency declaration. The table below demonstrates the court orders applied for relative to the ML investigations being conducted by the ONDCP.

**Table 11**

**Court Order applied for by the ONDCP from 2012-2016**

<b>Year</b>	<b>ML Investigation</b>	<b>Forfeiture Orders</b>	<b>Confiscation Orders</b>	<b>Detention Orders</b>	<b>Restraint Orders</b>
2012	15	6	1	21	14
2013	13	8	1	12	8
2014	11	5	0	4	4
2015	31	5	1	20	0
2016	3	5	0	11	0

Source of information: Data provided by ONDCP

153. The procedure used by the ONDCP-ID for identification of potential ML or predicate offences cases is based on the analysis conducted by the ONDCP-FAU. The information is used to conduct an initial ML assessment in determining whether a production order is needed to further the investigations. The ONDCP-ID places focus on bringing ML charges wherever a specified predicate offence is being investigated. However, in practice these investigations often result in the prosecution of the predicate offence or the forfeiture of the cash rather than the ML prosecutions. The Assessors were informed that when there are cash seizures by the CED, the cases are immediately referred to the ONDCP for investigations. All incidents relating to false cash declarations that are reported to the ONDCP become the subject of a money laundering investigation. Where it is deemed that the funds in question were derived from or intended for use in illicit activity, charges are advanced and/or the funds forfeited. Please see examples cited below.

*SA v PR 2012*

*PR was in-transit from Dominica to the UK when she arrived at the V C Bird International Airport with £35,200 concealed in a bag that was obscured by her wheel chair. The cash was found and the matter was handed over to the Customs who later handed the matter to the ONDCP. The ONDCP seized the cash and the matter was investigated. A LOR was sent to Dominica to obtain information which subsequently dispel the story given by PR. Information was also obtained from the UK and based on that investigation, the money was subsequently forfeited. Drug trafficking was the potential money laundering activity identified.*

*SA v CD 2012*

*CD in route to Trinidad and Tobago when he was intercepted at the V C Bird International Airport with US\$15,800 concealed in his carryon bag. The matter was reported to Customs and upon examination, it was ascertained that CD had failed to declare the cash. The matter was referred to the ONDCP and the cash was seized. Under investigations, CD gave a number of explanation as to the source of and intended use of the cash. He also indicated that the cash was kept in a safe at his father's house in St. Maarten. During the investigation, a number of irregularities were observed and as a result a LOR was sent to St. Maarten and Officers flew to St. Maarten to be present during the interviews. CD was subsequently arrested in France for cocaine possession. With the assistance of the French Authorities via a LOR, CD was served with the necessary documentation. The cash was subsequently forfeited. Drug Trafficking was the potential money laundering activity identified*

*SA v SJ 2012*

*In a joint operation between the ONDCP and Customs (ABC), J, who was en route to St. Maarten was stopped at the V C Bird International Airport and found to be in possession of US\$ 10,022 for which he failed to declare. He was interviewed, and a number of inconsistencies were observed. It was also recognized that he was acting on the*

*instructions of an individual and he was taking the money to another. The money was seized and he was charged and convicted for failing to declare. The monies were subsequently forfeited. Fraud was the potential money laundering activity identified. In addition, arising from the SJ matter, a larger scale investigation has commenced*

154. The ONDCP in determining whether to proceed with ML charges against an individual, sends an informal request to the local governmental partners to determine if the subject owns property or other assets. Internal requests are also sent to the FAU to determine if SARs have been filed on the subject and in some cases in determining if the subject of the financial investigation has bank accounts with the domestic banks on the island.

155. Data provided by the ONDCP and the Court records provided by the Authorities show that there have been six prosecutions and three convictions for stand-alone ML for the period 2012-2016. These records also show that the ONDCP has been very successful in pursuing many drug related offences. However, this has not lead to an increase in the number of ML cases being prosecuted at the Courts from the investigations into these drug related offences. Within the ONDCP, financial investigations are conducted in parallel with the drug investigations to reveal the assets held by a defendant. Those assets indicate the likelihood that the person charged with drug offences has also engaged in ML as ML is committed by using property. Therefore, property held influences whether ML charges should be brought or further ML investigations pursued. These investigations often reveal that the individuals are either cash or drug couriers who have assets only of a minimal value which is not worth confiscating or that indicate the person has been laundering. Within the RPFAB, the identification and investigation of ML through predicate offences is limited, the rationale stated by the authorities is that during the preliminary investigations it is often revealed that these individuals are either cash or drug couriers who do not have assets worth confiscating and therefore it would not be beneficial to pursue further ML investigations. The Assessors are of the view that the identification and investigation of ML through these predicate offences are guided by the assets that could be confiscated or forfeited, instead of the ML itself.

156. The table below shows data for the period 2012 -2016 with regard to ML investigations and prosecutions.

**Table 12**  
**Money Laundering Investigations for the period 2012-2016**

Year	Number of Investigations	Number of Prosecutions	Number of Convictions	Sanctions
2012	15	3	3	10 months each and money forfeited 9 months and money forfeited
2013	13	0	0	
2014	11	0	0	
2015	31	3	0	None. Two (2) matters were withdrawn. One (1) dealt with under the civil forfeiture provision.
2016	3	0	0	

Source of information: Data provided by ONDCP

157. The SCU and the PCU in the RABPF utilise provisions under the POCA and have carried out ML investigation and have made a number of arrests. However, during such investigations, the civil cash

forfeiture provision of the POCA were used at the Magistrate’s Courts and the monies were forfeited to the State. The use of the MLPA provisions to pursue ML charges by the RPFAB is a low priority.

*Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

158. Antigua and Barbuda through the NRA has identified drug trafficking, fraud, larceny, money laundering and corruption as the major threats to Antigua and Barbuda combatting ML/TF.

159. Antigua and Barbuda mentioned that during the period 2012 - 2016 more than half of the ML investigations conducted by the ONDCP-ID were triggered as a result of from drug operations. Additionally, many of the investigations which stemmed from the receipt of intelligence reports were suspected to be related to narcotics trafficking offences whilst those which were related to cash seizures at the airport were suspected of being the proceeds or instrumentalities of drug offences.

160. From the SARs disseminated from the ONDCP it is realized and suspected that traffickers have been utilizing money remitters to send large sums of money to source countries with the aid of smurfs or illicit cash couriers. The ONDCP-ID is a unit within the ONDCP responsible for the investigation of financial crimes, TF and ML. The data below shows the number of SARs disseminated to the ONDCP-ID.

**Table 13**  
**SARs sent to the ONDCP-ID from the FAU for investigations for 2012-2016**

<b>Year</b>	<b>SARs disseminated to the FID</b>	<b>SARS received and no financial investigation initiated</b>	<b>Financial Investigations Initiated</b>	<b>Ongoing Financial Investigations</b>	<b>Financial Investigations closures</b>
2012	35	13	11	5	6
2013	6	0	6	1	5
2014	36	10	14	12	2
2015	29	19	6	4	0
2016	35	21	7	7	0

Source of information: Data provided by ONDCP-FAU

161. The ONDCP-ID has a policy of investigating all matters as it relates to money laundering. Every counter-drug operation and investigation is accompanied by a corresponding money laundering investigation. However, the rate of prosecution for ML is low. The authorities have accepted the low prosecution for ML and have indicated that measures such as freezing of assets and the forfeiture of the proceeds and the instrumentalities of crime are used effectively in the investigation ML.

162. Money laundering activities are investigated by the police under the POCA and MLPA. On the onsite, the Assessors were informed that the police have not fully prosecuted ML but has commenced a policy objective to conduct parallel financial investigation using a threshold of ECD \$10,000.00. Furthermore, Antigua and Barbuda expressed that that in the normal course of prosecution of all offences

requires the approval of the DPP. In Antigua and Barbuda the DPP is the direct conduit for prosecutions, however the MLPA provides an alternate in ML matters under the MLPA as outlined by Section 27(1) of the MLPA. 27(1) No prosecution in respect of any offence committed under this Act or the regulations made thereunder shall be instituted except by, or with the consent in writing of the Supervisory Authority or the Director of Public Prosecutions. It should also be noted that under the Sect 61 and 62 of the POCA for which the RPFAB need no FIAT from the SA. The Police have all the necessary authority to investigate and prosecute ML charges. It should be further noted that the Police have had the power to investigate and bring money laundering charges since 1993.

163. The LEAs in Antigua and Barbuda can access a wide range of information and intelligence. However, the type of ML cases prosecuted appear to be low for all categories of schedule offences including the offences of drug trafficking, larceny, fraud and corruption which were categorized as high or medium high in the NRA. The assessment team is of the view that the type of ML activities being investigated is consistent with Antigua and Barbuda threats and risk profiling. However, the level of prosecutions for ML is low.

### *Types of ML cases pursued*

164. ML investigations on stand -alone ML cases, third party laundering, and laundering in relation to foreign and domestic predicate offences are low. There is a legal department within the ONDCP, which is tasked with advising on legal issues arising from predicate offences and ML investigations. During the period 2012-2016, there have been six prosecutions and three convictions for stand-alone money laundering offences. Within the ONDCP, the Tactical Team, Surveillance Team and DIU engage in many counter drug operations and with the support of the ONDCP Legal Department and the Police Prosecution Unit have had many successful prosecutions for drug related offences however the related ML prosecutions are low.

165. The LEAs in Antigua and Barbuda have pursued the predicate offences, however in instances where ML is linked to the predicate offences ML charges are not pursued by the RPFAB. The RPFAB have cited many factors for the decision not to pursue money laundering charges. These factors included: the sentences given for the predicate offences are considered satisfactory limited human and financial resources and most of the individuals arrested for the predicate offences do not have assets worth confiscating. The RPFAB having assessed the cost benefit ratio before pursuing ML prosecutions. a decision is often taken to pursue only the predicate offence or to have the monies forfeited to the state especially in cases where circumstantial evidence may suffice for civil proceedings. This has resulted in fewer cases of ML being prosecuted.

166. The ONDCP initiates parallel investigations into predicate offences as well as ML investigations. The main acquisitive domestic predicate offence is drug trafficking. The ONDCP has acknowledged that the number of ML cases is low and have cited that, there is assessment of the facts of the drug trafficking cases and it is determined that based on the investigation and understanding of ML, the circumstances of these cases do not support ML charges. In cases, where there are assets but insufficient evidence for ML to the criminal standards, the predicate offence is pursued. In the investigations of ML, the ONDCP has discovered that most of the defendants have minimum to no assets, consideration is often on whether further investigation is likely uncovered hidden assets or trace criminal proceeds, the resources that will have to be

expended as well as the public interest into the matter. The ONDCP has pursued stand-alone money laundering cases involving substantial amount of cash and has had three (3) convictions. ML cases linked to predicate offences are heard at the Magistrates Courts as a preliminary inquiry and once a prima facie case is established the case is sent to the High Court for determination. Prior to 2013, the ONDCP adopted the policy of prosecuting ML cases before consultation with the DPP, however, in 2013 there was a change in policy where the DPP was consulted prior to ML charges being instituted. This has led to better coordination of criminal matters, to include the investigations of ML by the ONDCP however, there have not been an increase in the number of ML prosecutions by the authorities.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

167. The sanctions for ML as provided in the MLPA are - on summary conviction to a fine of ECD \$200,000.00 or imprisonment for 3 years or to both; on a conviction on indictment to a fine of ECD \$1,000,000.00 or imprisonment for 7 years or both. The Authorities state that investigation is instituted firstly for the purpose of gathering sufficient evidence to satisfy the criminal standard, so as to institute ML charges. Secondly, when cash is seized on suspicion of criminality and or suspected of being the proceeds of or instrumentalities to criminal offences, the monies are detained pending further investigations. Civil recovery methods are always considered when ML convictions are not secured. However, they are not pursued before it is determined that there are no criminal charges that can be secured, as there is an obligation to pursue criminal convictions first. Where sufficient evidence is obtained then cash forfeiture proceedings are instituted under Section 18B of the MLPA. Where other properties are involved a freezing order is obtained under Section 19 (1) of the MLPA. If investigators are satisfied that there is evidence to prove that the property is derived from money laundering activity or is an instrumentality, then Civil Forfeiture proceedings are instituted. Alternately, under the POCA, if investigators are satisfied that there is evidence to prove that the property is derived from money laundering activity or is an instrumentality, then civil forfeiture proceedings are instituted under the POCA. In Antigua and Barbuda, the sanctions imposed for offences have not been sufficiently dissuasive in term of imprisonment. To date the stiffest sanction in terms of imprisonment was ten (10) months and terms of cash, the confiscation of US \$60,000 as part of ML sentencing. It is the view of the assessment team that these sentences are not very effective, proportionate and dissuasive.

### *Application of other Criminal Measures*

168. Where a criminal conviction is not possible for ML, the alternative is to institute proceedings against the tainted property to include cash. The Authorities utilized measures to seize and forfeit cash by the way of civil forfeiture whereby the magistrate on hearing the applications for forfeiture of cash, makes forfeiture orders for complete forfeiture of the seized cash to the State. When it is real property this is known as Civil Recovery as captured in the Proceeds of Crime (Amendment) Act 2014 and Civil Forfeiture under the MLPA. To date there have not been any civil recovery cases where the civil recovery provisions had to be utilized.

169. The CED, Port Authority and Immigration Department have collaborated to ensure that cash stemming from criminal proceeds are intercepted at the various ports. When persons are intercepted with cash, the matters are handled in coordination with the ONDCP and RPFAB. The evidence is provided to

the Magistrate's Court and once satisfied sanctions are imposed. The instrumentalities of crimes are also seized and forfeited to the State.

### *Overall Conclusion on Immediate Outcome 7*

170. Overall, Antigua and Barbuda demonstrated few characteristics of a effective system where ML offences and activities are investigated and prosecuted. There were six (6) prosecutions and three (3) stand-alone ML offences for the period 2012-2016. Antigua and Barbuda has recognized foreign corruption as part of its risk, and has demonstrated the cooperation with foreign counterparts in identifying criminal proceeds and investigating ML related offences. The RPFAB has commenced parallel financial investigations, however the successes so far are limited.

171. Antigua and Barbuda should ensure that there is closer collaboration among all authorities to investigate ML link to the main predicate offence of drug trafficking. Additionally, due the significant cash seizures, the authorities should increase their efforts in the pursuit of convictions for ML offences. The cash forfeiture cases resulting from cash seizure investigations as well as parallel financial investigations have shown that the authorities in Antigua and Barbuda have conducted investigations into disrupting the flow of criminal proceeds. However, the pursuit of ML charges, prosecutions and convictions in relation of large cash seizures should be considered. The use of all legislative investigative techniques should be used to investigate ML as well as all legislative powers available to the LEAs and prosecutors.

172. In order to ensure success in ML prosecutions and convictions, the ONDCP and the RPFAB will need to engage in the pursuit of a greater number of investigations into scheduled predicate offences linked to money laundering.

173. There is also room for improvement with the investigation of SARs. To date, there have not been any prosecution or convictions stemming from a SAR filed by a scheduled entity in Antigua and Barbuda.

174. The sanctions given by the court in so far as cases prosecuted are not very stringent. The fines and prison terms imposed by the Court in most instances are not sufficiently dissuasive.

175. **The rating for Immediate Outcome 7 is a low level of effectiveness.**

### *Immediate Outcome 8 (Confiscation)*

176. Antigua and Barbuda has made improvements in confiscating the proceeds and instrumentalities of crime. There have been both criminal and civil proceedings to confiscate proceeds and instrumentalities related to criminality. Undeclared currency and monetary instruments are seized for investigation if they appear to be derived from illicit origin or are intended for use in criminal activities. There are limited mechanisms to manage seized and confiscated assets, additionally, there are no agreements or provisions for sharing assets with foreign counterparts apart from the United States of America. Assets sharing with

other countries are considered on a case to case basis. There has been a recent case with the British Virgin Islands where assets sharing was implemented

*Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

177. Confiscation of criminal proceeds, instrumentalities and property of equivalent value is an ONDCP policy objective, however the pursuit of criminal instrumentalities and properties appears to be minimal compared to the assets frozen and seized and the number of convictions for predicate offences. The authorities in Antigua and Barbuda have suggested that for every criminal case brought there is automatically an assessment as to whether the case would be appropriate for confiscation upon a conviction. However, in practice, there is limited evidence as to how and when this assessment is done. The LEAs utilize various investigative tools such as production orders to obtain relevant information on assets owned by the accused. Once the relevant information is obtained application for restraint order is considered. The table below shows data indicating the freezing or restraining of assets from 2012-2016.

**Table 14**  
**Data on Assets seized for the period 2012-2016 in pursuit of ML investigations**

Years	Seized/Frozen Assets			
	Vessels	Cars	Property	
			House	Land
2012	2	12	1	7
2013	0	3	0	2
2014	2	13	0	2
2015	1	1	0	0
2016	1	4	0	0
Total	6	33	1	11

Source of information: Data provided by ONDCP-ID

178. The assessment into criminal proceeds, instrumentalities and property for the application for restraint orders is considered on a case by case basis depending on whether the defendant has benefited from crime and the extent to which he or she has benefited from the proceeds of crime.

179. Upon conviction, if the matter is related to drugs under the Misuse of Drugs Act, the prosecutor will be instructed to apply for forfeiture under Section 27 of the Misuse of Drugs Act. If under Section 27 forfeiture is not achieved, then application for forfeiture under Section 5 of the POCA will be made as well as an application for confiscation which takes into account the criminal benefit, realizable assets and the recoverable amount. There have also been cases where civil forfeiture has been applied for drug related matters.

180. As a means of identifying criminal proceeds, instrumentalities and property, the RPFAB in 2016 developed a policy whereby a parallel financial investigation is initiated when schedule or predicate offences are being investigated. The PCU has developed a flier document indicating that “Taking the Profit Out of Crime” is a policy objective of the Unit. The development of adequate procedures and mechanisms

are being formulated which is hampered notably by human and financial resource constraints. However, the RPFAB particularly the SCU and the PCU have focussed on the criminal proceeds generated from the predicate offences of drug and corruption offences. This new initiative is a significant step in fulfilling the aim set out by the Competent Authorities in taking the profit out of crime as a policy objective. A parallel financial investigation initiated when predicate offences are being investigated will enable Antigua and Barbuda to effectively develop a robust AML/CFT framework.

### *Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

181. The Authorities are not confiscating proceeds and instrumentalities moved to another country or proceeds which are located abroad. They have indicated legal and judicial hurdles both domestically and internationally for the lack of these confiscations. In addition, the confiscation of proceeds from foreign predicate offences is lacking as the competent authorities are driven by external actions, that is, they act on requests received from other jurisdictions, rather than initiating the relevant domestic legal provisions for the confiscation of the criminal proceeds. The authorities however, have disrupted the flow of criminal proceeds into and out of Antigua by pursuing cash seizure and forfeiture provisions under the MLPA and POCA legislations. (See Table No's 16 and 17).

182. Many of the investigations conducted by both the ONDCP and the RPFAB into cash found inland or at the various ports in Antigua and Barbuda which are believed to be the proceeds of criminality have been seized and the application for forfeiture granted by the Magistrate's Court.

183. The table below shows the cash seizure cases investigated by the PCU and the ONDCP from 2012-2015. There has been a significant increase in the amount of cash seized and forfeited from 2012 to 2016 by the PCU.

**Table 15**  
**Data on Cash Seizure by the Proceeds of Crime Unit**

Year	Total number of Cases Investigated	Total number of cases application filed	Total amount of money seized		Total amount of money forfeited	
2012	2	2	EC\$17,800.00	US\$10,000.00	EC\$17,800.00	US\$10,000.00
2013	4	2	EC\$8,365.00	US\$376.00	EC\$8,365.00	US\$376.00
2014	3	2	EC\$42,735.00	US\$4,712.00	EC\$5,700.00	US\$3,670.00
2015	9	6	EC\$83,334.00	US\$2,840.00	EC\$ 79,009.00	US\$2,032.00
<b>Total forfeited</b>					<b>EC\$110,874.00</b>	<b>U.S\$16,078.00</b>

Source of information: Data provided by RPFAB

**Table 16**  
**Data on Cash Seizure and Forfeitures by the ONDCP**

Year	Cases	Application filed	Total money seized	Total money forfeited
2012	10	7	EC\$ 535,915.66	EC\$ 194,864.47
2013	4	2	EC\$ 119,429.10	EC\$ 71,214.16
2014	6	4	EC\$ 607,195.51	EC\$ 183,781.39
2015	18	11	EC\$ 380,297.18	EC\$ 107,283.81
<b>Total forfeited</b>			<b>EC\$ 1,642,837.45</b>	<b>EC\$ 557,143.83</b>

Source of information: Data provided by ONDCP-ID

184. The ONDCP has the powers under the POCA to initiate cash forfeiture proceedings as well as civil recovery proceedings. The ONDCP has cited the following case sample example as confiscation of proceeds from foreign and domestic predicate:

*Case Sample:*

*In 2012, an Antiguan business man was arrested in Puerto Rico and charged with conspiracy to import cocaine into the United States. Subsequently, all of his property was frozen under Section 19 of the MLPA on the basis that the charges in the United States came within the definition of money laundering offence under the MLPA. Upon his conviction in 2015, an application was made to forfeit the frozen property, and this was successful. On 20<sup>th</sup> November 2016, three individuals were arrested with excess of US\$70,000.00. One individual claimed the cash belongs to him. A money laundering and cash seizure investigations into the seized cash was initiated and at the conclusion of investigations pursuant to the civil forfeiture provision under the POCA, the total of US\$74,760.00 were forfeited to the government of Antigua and Barbuda.*

*Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

185. The CED is responsible for managing and controlling the movements of goods into and out of Antigua and Barbuda. There is a customs declaration system implemented and travellers with cash equivalent to US\$10,000.00 must have to submit a declaration form to the CED.

186. Section 124 of the Customs Control and Management Act, 1993 (Power to compound offences and mitigate penalties) gives the Comptroller of Customs the authority to levy penalties of any breach of the Customs Act. However, all cases of undeclared outbound monies during this period were handed over to the ONDCP for further investigations. In cases of false declarations, the cases are dealt with administratively by the Comptroller of Customs or a criminal case is brought against the defendant in the Magistrate's Courts by the Police. Additionally, in some cases the ONDCP is contacted and the case will be investigated under the MLPA. Antigua and Barbuda has placed great effort in detecting and confiscating undeclared cross border movements of cash with the training of the Customs Canine unit, the partnership of Customs with the UNODC in the implementation of the airport security programme as well as the partnership with the US Immigration and Custom Enforcement personnel in detecting cross border currency and intelligence gathering.

187. There is a policy agreement between the ONDCP and the CED. The policy has been operationalized by the head of both departments and has been yielding results in terms of joint investigations and analysis by officers of both LEAs. The policy states that the ONDCP Officers will collect all Currency Declaration Forms on a weekly basis from the CED. The CED Officers will call or inform the ONDCP officials of any currency declarant who after being interviewed is suspected of being involved in money laundering or in possession of monies derived from crime. This has been working in practice and the data is maintained by the ONDCP.

188. The tables below show the seizures of currencies on arrival and departure which were not declared and the outcome of the matters.

**Table 17**  
**Seizures of Currency 2012 - 2015 Arrival**

Year	No. of Seizures	Types of Currency	Amount Seized	Reason	Conclusions
2012	4	US\$, £ & EC\$	US\$50,530.00 £35,220.00 EC\$560.00	Failure to Declare	Monies were forfeited under Money Laundering Prevention Act.
2013	1	US\$	US\$13,470.00	Failure to Declare	Monies returned
2014	2	US\$	US\$220,855.00	Failure to Declare US \$200,000.00 was declared but was seized for further investigation after interviews were done.	US \$20,855.00 was forfeited under the Money Laundering Prevention Act & the US \$200,000.00 was returned after investigations proved that monies were legitimately obtained
2015	1	US\$	US\$58,903.00	Failure to Declare ML	Monies forfeited under the Customs Management Act No. 3 of 2013 and the Money Laundering Prevention Act.

Source of information: Data provided by Antigua and Barbuda Customs and Excise Department

**Table 18**  
**Seizures of Currency 2012 - 2015 Departure**

Year	No. of Seizures	Types of Currency	Amount Seized	Reason	Conclusions
2012	3	US\$ & EC\$	US\$48,022.00 EC\$54,560.00	Failure to Declare	An administrative charge was levied by the Comptroller of Customs for Failure to Declare and the monies were returned to the passenger after investigations proved monies to be legitimately obtained. In another instance monies were forfeited under The Money Laundering Prevention Act. In the last instance monies were returned and no charges were levied against the passenger.
2013	1	US\$ & £	US\$17,255.00 £100.00	Failure to Declare	A fine was imposed under the Money Laundering and Prevention Act and monies were returned.

Source of information: Data provided by Antigua and Barbuda Customs and Excise Department

189. The tables below show the currency declarations for arrivals and departures for the period 2012-2015. The tables indicate that there has been a significant increase in the number of declarations submitted from 2012 to 2015.

**Table 19**  
**Currency Declaration 2012 - 2015 Arrival**

Year	Currency Declared	Number of Declarations
2012	US\$20,000.00	1
2013	US\$117,347.71	4
2014	US\$642,907.72	16
2015	US\$614,793.19	23

Source of information: Data provided by Antigua and Barbuda Customs and Excise Department

**Table 20**  
**Currency Declaration 2012 - 2015 Departure**

Year	Currency Declared	Number of Declarations
2012	US\$28,819.66	2
2013	US\$685,159.00	6
2014	US\$1,177,014.00	15
2015	US\$2,858,237.54	31

Source of information: Data provided by Antigua and Barbuda Customs and Excise Department

190. The CED, ONDCP and The RPFAB in their MOU agree to facilitate and enhance interagency communication, mutual assistance and cooperation in the investigation or law enforcement operations relating to illegal importation or exportation of drugs, terrorist activities, activities relating to proceeds, profits and instrumentalities of crime and money laundering. In this regard the Comptroller of Customs has used his powers in the following two cases:

*Case 1: On the 10th of April 2016, one individual was intercepted at the VC Bird International Airport by Customs Officers while attempting to leave Antigua and Barbuda with in excess of US\$10,000.00 Joint investigations conducted by the CED and the RPFAB led to the individual being arrested and taken before the Comptroller of Customs. A total of US\$17,946,00 was forfeited to the government of Antigua and Barbuda.*

*Case 2: On the 16th of April 2016, one individual was intercepted whilst attempting to leave the state with in excess of US \$10,000.00. An investigation was conducted by the CED and the RPFAB which resulted in the forfeiture of US\$ 16,628.00 by the Comptroller of Customs.*

*Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.*

191. The investigations of law enforcement agencies in Antigua and Barbuda regarding ML are based primarily on drug trafficking which according to the NRA is a high risk. The investigations of drug trafficking offences resulting in charges pursuant to the Misuse of Drug Act do not conclude with the confiscation of assets of the defendants. The NRA concluded that the majority of person convicted do not

have significant assets. Based on the data in table 15: Data on assets seized for the period 2012-2016 in pursuit of ML investigations, Antigua and Barbuda has seize or frozen are number of realizable assets pending the criminal trial leading to the application for confiscation. The number of realizable assets confiscated by Antigua and Barbuda is minimal. Additionally, the identifying of the true ownership of criminal assets and subsequently locating them was a major problem in Antigua and Barbuda owing to the use of third parties and the fact that proceeds were easily incorporated because it is a cash economy, consequently limiting confiscation of certain assets.

192. There have been a number of successful cases of cash seizure and cash forfeiture resulting in the forfeiture of significant cash which generally stemmed from drug trafficking, other assets such as land, houses and vehicles are being forfeited in drug trafficking matter. In some criminal cases, assets are frozen pending confiscation. For the other predicate offences which were considered high risk in the NRA such as larceny, fraud, corruption, and money laundering, the confiscation of assets resulting from investigations into these offences, is low.

193. The Authorities have indicated that in reviewing the ML/TF risk and national AML/CFT policies and procedures it was realized that there is needed for a re-evaluation of the threshold which determined which cases would be considered for confiscation. In an effort to have a more holistic and dissuasive approach, the threshold was established so that other LEAs could examine their respective cases where persons could have benefited from the proceeds of their criminal activities in the application for confiscation.

#### *Overall Conclusion on Immediate Outcome 8*

194. Antigua and Barbuda provides for the confiscation of criminal proceeds and instrumentalities. The cash provisions in the POCA legislation and MLPA are being effectively used by the law enforcement authorities in taking the profit away from crime. It is noted that the PCU and the ONDCP are seizing and forfeiting cash in Eastern Caribbean Dollars (ECD) and US currencies. The authorities have utilized the legislative measures in freezing assets to prevent dissipation and in the confiscation of criminal properties where criminal convictions are secured. The RPFAB have not fully utilized the investigative tools and procedural techniques to trace, identify and seize criminal properties.

195. The authorities in Antigua and Barbuda have cooperated with their international partners in identifying criminal proceeds, instrumentalities and properties, several cases involving countries were identified but procedural issues for sharing are not clearly stated and have not taken place. The management mechanism for dealing with assets is not established.

196. Overall, Antigua and Barbuda has demonstrated some characteristics of an effective system for confiscating the proceeds and instrumentalities of crime. The ONDCP are utilizing the legislative measures in the confiscation of criminal properties in some instances when criminal convictions are secured. The use of civil recovery provisions is also minimal in the recovery of assets. The ONDCP have been successful in civil asset forfeiture under the MLPA in forfeited assets to include real estate, vessels and vehicles. Antigua and Barbuda appears to be effective in the forfeiture of cash proceeds from criminalities.

197. **The rating for Immediate Outcome 8 is a moderate level of effectiveness.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **Immediate Outcome 9**

- The competent authorities have received limited training to investigate and prosecute terrorist financing.
- The ONDCP is the dedicated unit responsible for the investigation of Terrorism Financing

##### **Immediate Outcome 10**

- There are clear mechanisms to deal with UN designations.
- Sanctions on UNSCR 1373 have not been fully addressed with regard to the designation of targeted financial sanctions for specific persons and organisations when requested by another country.
- The country has been unable to identify whether there are NPOs, as defined by the recommendations that pose a threat of TF and ensure that appropriate measures are in place to mitigate this risk.

##### **Immediate Outcome 11**

- The risks relating to PF of WMD have not been identified and assessed. Therefore, there has not been cooperation and coordination in the development and implementation of policies and activities to combat the financing of proliferation of WMD.

#### **Recommended Actions**

##### **Immediate Outcome 9**

- The LEAs should proactively initiate investigations in line with the country's TF risk profile.
- There should be specialised training in identification, investigation and the prosecution of terrorist financing.

### **Immediate Outcome 10**

- Antigua and Barbuda should implement regulations to give effect to all aspects of TFS pursuant to UNSCR1267 and its successor resolutions and UNSCR1373 without delay.
- Antigua and Barbuda should assess the NPO sector to identify the characteristics and features of NPOs that are vulnerable to TF abuse and implement appropriate countermeasures in line with a risk-based approach.

### **Immediate Outcome 11**

- Legislation, policies and procedures should be drafted and implemented to give effect to sanctions for PWMD without delay.
- There should be outreach to FIs and DNFBPs to ensure that they understand PF.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

### ***Immediate Outcome 9 (TF investigation and prosecution)***

198. The criminalisation of TF is covered under the provisions of the PTA and the MLPA. However, the authorities have indicated that there has not been any terrorist activity or financing of terrorism activity in Antigua and Barbuda. The ONDCP as the supervisory authority is responsible for receiving and analysing SARs related to TF; they also receive the quarterly reports from all scheduled financial institutions regarding terrorist property.

#### ***Prosecution/conviction of types of TF activity consistent with the country's risk-profile***

199. The NRA exercise conducted by Antigua and Barbuda assessed the risk of terrorist financing to be low. The authorities have indicated that there have been no prosecutions and convictions of offenders in relation to TF. The authorities have indicated to the Assessors steps which have been initiated in relation to addressing to TF namely: Directive 5 of 2011 mandates and provides guidance to all financial institutions to conduct a review of all suspicious transactions in relation to TF. An Automatic Systematic Search is conducted on suspicious actions/activities before a SAR is filed by any FI. A proactive approach by the various Intelligence Units operating within Antigua and Barbuda with additional help from regional and international agencies and LEA. In addition, annual returns from NPOs registered under the Friendly Societies Act have also been examined to determine the use of monies. Jurisdictions which are placed on the FATF list of non-cooperative jurisdictions are published on the ONDCP's website and circulated to the Financial Institutions to be monitored for transactions from those countries. There is constant monitoring of the international news to monitor terrorist activities to verify if there exist locally any links

to those countries. Training in analysis of Terrorist Financing received by staff of the FAU and by the ONDCP on investigating Terrorist Financing. The Authorities indicated that a Request has been made to the US for further training in Investigations and Analysis of the Financing of Terrorism.

200. The considerations used in determining the risk profile of TF include inter alia the geographic location; the fact that none of the various compliance departments have identified any TF suspicious activity; analysis within the FIU; or that no intelligence groups within Antigua and Barbuda or the region (Regional Intelligence Fusion Centre and the Regional Security System) and their international partners and LEAs (UK, USA, Canada) have observed or provided any intelligence /information to suggest that TF is being conducted within Antigua and Barbuda. The Authorities also considered the demographics of the country which includes inter alia, the small population size, a culture in which most residents are Christian, and in their belief, do not embrace religious radicalism, a lack of known religious radicals in Antigua and Barbuda and that there has been no indication that any individual or group is actively engaged in TA/TF. Also, awareness and commitment among the policy makers, law enforcement, FIU and intelligence community to fight TF. As it relates to the NPOs that are listed under the Friendly Society Act, these were examined. The NPOs were found to have no international connections and were basically community-oriented associations. Through the NRA process there is an identified weakness for those registered under the Companies Act to provide the relevant information for adequate analysis. A medium vulnerability rating was assigned to NPOs. There are also a number of proactive measures that aid in detection as highlighted above. The lack of prosecutions and convictions seems to be consistent with this finding as it relates to the country's TF risk profile.

#### *TF identification and investigation*

201. There is a Multilateral Interagency MOU between the LEAs. This MOU stipulates the Agencies and Units which have responsibility for Terrorism and TF. The ONDCP is the agency tasked with the responsibility of investigating TF. The ONDCP is the Supervisory Authority that receives reports related to SARs filed on TF as well as the quarterly report by financial institutions on terrorist property. However, it was confirmed that there have been no SARs filed on TF cases identified and investigated. Antigua and Barbuda has not received foreign requests for information concerning TF and there have been no reports or investigations of individuals linked with terrorism traveling through Antigua and Barbuda. Consequently, there has been no identification of specific roles played by terrorist financiers.

#### *TF investigation integrated with and supportive of national strategies*

202. The ONDCP has the lead role in matters relating to TF under the PTA. The Authorities employ a number of mechanisms for the identification and designation of terrorists, terrorist organisations and terrorist support networks. A number of intelligence sources are mined for information in relation to TF activities and there are procedures in place which are followed by the FIU, if there are grounds to suspect that a person is a terrorist or concerned in TF. Financial institutions are required to conduct a search of their records every quarter to ascertain whether they hold accounts or conduct business with terrorist entities or terrorist financiers. Reports are submitted to the Supervisory Authority. If the institution records a positive hit, the TPR will be accompanied by a SAR. Analysts in the FIU conduct preliminary assessment of incoming SARs, assign a priority rating and forward potential cases (based on suspected TF indicators, MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA

UNSC list of specified entities, information from public agencies, foreign FIUs and open source information to the FAU Manager who will review and forward the case to all relevant law enforcement agencies and the NJCC on the authorization of the Director. Priority ratings are calculated on the basis of likelihood and consequence of an adverse event occurring and scores assigned on a scale of zero (0) to ten (10). Case reports for SARs assessed at a priority rating of 5 or higher are to be expedited and disseminated within 7 days. Upon a TF dissemination being sent to Investigations Department, there is a procedure outlined for the investigation of suspected TF offence.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

203. The PTA allows for any person who commits offences to be sentenced to a term of imprisonment not exceeding 25 years on indictment. Other offences under the Act allows for the imprisonment of persons not exceeding 15 years on indictment. To date, no TF offences have been identified or investigated within this jurisdiction. The police are unable to measure the effectiveness of the sanctions because no investigations were conducted nor any arrests were made. There has never been a case to test the effectiveness of sanctions. However, the sanctions are considered proportionate by the Assessors.

### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

204. There has never been an investigation or prosecution for TF, therefore there has been no opportunity to measure the effectiveness of alternative measures should a conviction not be possible.

### *Overall Conclusion on Immediate Outcome 9*

205. Antigua and Barbuda has developed a policy which integrates TF investigations with and supports national counter terrorism strategies and investigations.

206. The lack of reports by financial institutions, lack of international requests of money linked to terrorist activities originated in Antigua and Barbuda, or suspected to occur in Antigua and Barbuda, lack of intelligence reports among the Intelligence Agencies of the Caribbean, the lack of alerts of positive matches with the UN sanctions lists and the results of the NRA, suggested that there are no activities of TF taking place in Antigua and Barbuda. Training should be provided to prosecutorial authorities in the area of TF.

207. **The rating for Immediate Outcome 9 is a moderate level of effectiveness.**

### *Immediate Outcome 10 (TF preventive measures and financial sanctions)*

208. Antigua and Barbuda has applied measures to implement UNSCRs 1373 and 1267 and all its successor resolutions. There are mechanisms in place in Antigua and Barbuda to freeze the assets of designated individuals and entities without delay.

### *Implementation of targeted financial sanctions for TF without delay*

209. The UN Security Council sanctions list is systematically gazetted, but prior to that the Attorney General sends a Notice to financial institutions to review their customer databases for declarations and deletions from the UN watchlist and this has the same effect. The ONDCP also disseminates the UN Security Council sanctions list to the relevant DNFBPs.

210. This is done to a large extent except as it relates to requests coming from another country; there are no mechanisms in place to provide for this requirement. Designations are received by the Minister of Foreign Affairs who sends it to the AG to prepare the Order. After the Order is prepared the Minister of Foreign Affairs signs it, then it is dispatched by the AG. The Authorities expect to implement a measure to ensure that if the Minister of Foreign Affairs is out of State, the Prime Minister signs the Order and if the Prime Minister is out, the AG will sign as acting Prime Minister, as absences happen often. This was stated to be an adjustment to an existing policy to improve effectiveness and efficiency; therefore, this is just an operationalization of the process, but it is not enshrined in the law. For UNSCR1267, there is no freezing obligation in law that applies within hours of UN designations (only a theoretical procedure that may eventually lead to a criminal freezing order once property is detected) and that for UNSCR1373, there is no implementation.

### *Targeted approach, outreach and oversight of at-risk non-profit organisations*

211. The Registrar of Friendly Societies is required under Section 4 of the Friendly Societies Act (FSA) as amended by Section 4 of the FSA 2014 to provide the Director of the ONDCP on an annual basis with a copy of the Annual Returns of Societies. This should include the name, address, contact details, purpose, objective, activities and the identity of persons who own, control or direct the society. Upon receipt of this information, it can be tabulated and discussed with the Registrar, in an effort to ascertain anything anomalous in the functioning of these entities. The Registrar also has access to information from the annual returns required to be filed under Section 28 of the FSA, and to include information on receipts, expenditure, funds and effects of the society. It should also be noted that NPOs registered under the Companies Act are only required to file annual returns.

212. The Registrar and the Director of the ONDCP are able to better understand the status of Friendly Societies from this perspective.

213. One NPO interviewed by the Assessors reported that there was no requirement to file annual returns or provide information to the Registrar. Further, they were not registered under the Friendly Societies Act with the FSA. However, it was indicated by the Authorities that this NPO is registered under the Companies Act and there is a legal requirement to file annual returns.

214. At the time of the onsite Antigua and Barbuda had not identified specific NPOs vulnerable to TF abuse; consequently, the country has not applied focused and proportionate measures to specific NPOs as defined by the recommendations.

215. The NRA process confirmed that the NPO sector was inadequately regulated, there was inconsistent treatment of NPOs captured under the FSA and the Companies Act and there was an inability to determine vulnerability to TF risks.

### *Deprivation of TF assets and instrumentalities*

216. Antigua and Barbuda has no cases warranting application for the forfeiture of assets and instrumentalities. There has been no reported TF activity. However, there is in place the machinery necessary to detect and report such activity under the PTA. Section 4 provides for the Minister of Foreign Affairs to implement UNSCRs regarding specified entities. Section 3 provides for the AG to independently declare specified entities and to issue notices to financial institutions to check their customer databases and immediately freeze assets of specified entities. All mandated terrorism and TF offences have been criminalized under Sections 5-20 of the PTA. Forfeiture of property is provided by Section 37 of the PTA.

### *Consistency of measures with overall TF risk profile*

217. The NRA conducted by Antigua and Barbuda has assessed the risk of terrorist financing to be low. The measures implemented are consistent with the low risk of TF identified by the country. Through the NRA process there is an identified weakness for NPOs registered under the Companies Act to provide the relevant information for adequate analysis. A medium vulnerability rating was assigned to NPOs. A cross-section of the annual returns submitted by NPOs registered under the Friendly Societies Act were examined and the results show that most are community-oriented service NPOs. The authorities have indicated that based largely on the nil reporting of FIs of having terrorist property, the lack of terrorist reports and the lack of groups generally associated with radicalism, the TF risk profile is low.

218. The financial institutions have implemented measures to monitor financial transactions for any suspicious activity which has the appearance of TF. The result is that measures are in place and monitored for anything that has the appearance of TF.

219. Antigua and Barbuda has implemented measures to prevent the moving and using of funds for the financing of terrorism. There have been instances of persons traveling with cash to countries with high risk profile. However, prior to the traveling, scrutiny and measures have been applied and as a result, it has been found that the purpose of these cash movements involves movements of cash intended for family purposes and not linked to terrorist financing as these were going to jurisdictions where wire transfers were not possible. The amount of funds leaving the jurisdiction ranged from USD\$10, 000 to USD\$27, 000.

220. It must be noted that the investigation process of individuals seeking authorization to remove monies from the state is an informed and formal process. Persons are required to submit a copy of their passport, their travel itinerary, letter of employment or business certificate, approved letter from the Financial Secretary, a statement as to the reason for travel and show bank statement or bank receipts for purchase of US currencies. An examination is conducted looking at documentation, rational, frequency of travel, amount of monies to be taken, transfer history and personal history of the individual before approval is given.

221. A person desirous of visiting/vacationing in their home country that is designated as a high-risk area or conflict zone embarks on a process for requesting authorization to take currencies out of Antigua and Barbuda. This process entails writing to the Financial Secretary for approval then filling out Cash Declaration Forms and submitting these along with other required documentation to the ONDCP before travel. An in-depth investigation is conducted to determine the source of funds/source of wealth of the traveller and whether there are any links to ML or TF, prior to approval being granted. Following which the traveller submits the authorized form to Customs upon their departure. Even if taking cash for someone else, they are required to declare.

222. Investigations are conducted to find any inconsistencies, red flags or issues of concern raised by the traveller, source of the money of its intended use, which could give reasonable cause to deny the money being taken out of the country or seized. A proper investigation is done on every request regarding cash transportations to other jurisdictions. During the investigation for the period 2012-2016 are number of travellers applying to transport cash have been rejected and in the case of cash transportation application to specific high- risk area only 20 applications were accepted. During the investigations, various checks are performed, including travel history, employment checks, banking, verification of source of funds, checks at the ONDCP database and other intelligence law enforcement database. Travellers are also interviewed and documents to support their application are obtained. Information are also obtained from international partner agencies to determine links to TF organization or to obtain information related TF.

**Table 1**  
**Number of persons transporting cash to high-risk jurisdictions between 2012-2016**

Year	Number of Persons
2012	1
2013	2
2014	10
2015	4
2016	3

Source of information: Data provided by ONDCP

223. During the interview conducted with the FIs to include the MSBs, they were all aware of their legislative responsibilities to immediately report/file, identify terrorist financing or TPRs, the freezing mechanism, and the screening of customers against the UN and OFAC lists.

### *Overall Conclusion on Immediate Outcome 10*

224. Antigua and Barbuda is in the process of developing a Counter Terrorism Policy which is aimed at addressing issues dealing with terrorism and terrorist financing. At present, there is a Multilateral Interagency MOU between the LEAs which outlines the functions of the Agencies responsible for TF and Terrorism and provides clarity on the roles and functions of the said Agencies. The ONDCP is the lead in matters relating to FT under the PTA. Antigua and Barbuda has shown that it adheres to the UN Security Council sanctions list which is systematically gazetted. The AG sends a notice to FIs to review their customer databases for declaration and deletions from the UN watchlist. The action plan or strategies for dealing with particular threats or trends based on risks or policies or strategies put in place by the AML/CFT

competent authorities needs improvement. The country has identified that monies have left the county to areas of the world which are high risk for terrorist activities but have outlined the reasons for this and the procedures for ensuring that there are checks and balances in the process. The investigative tools used by LEAs needs improvement in identifying and investigating terrorist financing related matters.

225. The country has been identified weakness for NPOs registered under the Companies Act to provide the relevant information for adequate analysis. A medium vulnerability rating was assigned to NPOs to the Authorities must ensure that appropriate measures are in place to mitigate this risk. The Authorities have however indicated that as a result of the identified weaknesses recommendations were made as a part of the Action Plan for NPOs under the Companies Act to be required to submit necessary data to the FIU for analysis.

226. **The rating for Immediate Outcome 10 is a low level of effectiveness.**

### *Immediate Outcome 11 (PF financial sanctions)*

227. At the time of assessing this Immediate Outcome there were no legislative provisions addressing WMD and Proliferation Financing. Legislation was subsequently enacted to address WMDs but it does not address the requirements of IO 11.

### *Implementation of targeted financial sanctions related to proliferation financing without delay*

228. There were no measures in place in relation to the implementation of targeted financial sanctions related to proliferation financing without delay. Effectiveness therefore could not be assessed.

### *Identification of assets and funds held by designated persons/entities and prohibitions*

229. The Authorities have not identified assets and funds held by designated persons or entities and prohibitions.

### *FIs and DNFBPs' understanding of and compliance with obligations*

230. Owing to the lack of legislation in this area, there were no obligations in relation to proliferation for FIs and DNFBPs to understand and comply with.

### *Competent authorities ensuring and monitoring compliance*

231. Owing to the lack of legislation in this area, there were no obligations in relation to proliferation for competent authorities to monitor.

### *Overall Conclusion on Immediate Outcome 11*

232. While steps have been taken to legislatively address the proliferation of weapons of mass destruction, they did not take into account the requirements of Recommendation 7 as it relates to the implementation of TFS without delay to comply with UNSCRs adopted under Chapter VII of the Charter of the United Nations relating to the prevention, suppression and disruption of PWMD and its financing.

233. **The rating for Immediate Outcome 11 is a low level of effectiveness.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

- There is a high level of understanding of ML/TF risks among the Banking sector but this is varied in other sectors.
- Risk assessments of new technologies and products are not applied by all FIs and DNFBPs.
- Whilst the Banking sector has formally adopted a risk-based approach to AML/CFT mitigation, the implementation of a risk-based approach by all the FIs and DNFBPs is low.
- FIs and DNFBPs are not consistently refusing business when CDD information is incomplete. EDD and mitigation measures for PEPs and high-risk customers are not consistently applied by FIs and DNFBPs for all customers and particularly in relation to legacy customers.
- The obligation to identify the BO of IBCs and other legal persons does not consistently extend to identifying the natural person who is the Ultimate Beneficial Owner.
- The quality and levels of reporting of SARs by FIs and DNFBPs is low particularly among DNFBPs.

#### **Recommended Actions**

- The ONDCP and FSRC should take steps assist FIs and DNFBPs to understand ML/TF risks commensurate with the results of the NRA and conduct training on how to improve the quality annual risk assessments
- FIs and DNFBPs should use the results of the NRA to review the internal systems and controls and enhance them commensurate to the national identified ML/TF risks and vulnerabilities.
- Training to FIs and the DNFBP sector to increase understanding of ML/TF risks including enhanced procedures and systems for monitoring.
- The ONDCP should issue sector specific Guidelines on AML risk mitigation.
- The ONDCP and FSRC should increase training among Compliance Officers and ML Reporting Officers of FIs and DNFBPs, to ensure understanding of legal requirements to report SARs and the procedure to file SARs.

- The ONDCP-FAU should provide specific feedback to FIs and DNFBPs on the quality of SARs received.
- The ONDCP should continue to develop red flag indicators and work with the FIs/DNFBPs to help them to develop IT tools to spot suspicious transactions or activities.
- The ONDCP - FCU should ensure that CIP Agents, Wealth Advisors and used Car Dealers which have been bought under the AML/CFT supervisory regime receive training to enable them to demonstrate and implement systems and controls commensurate to their risks.

The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

#### *Immediate Outcome 4 (Preventive Measures)*

234. It is estimated that in Antigua and Barbuda the Assets under management amount to approximately US \$ 5 billion dollars of which US \$ 4.2 billion falls under the purview of International and Domestic Banks. Insurance counts for US \$200,000,000.00. This sector has adequate controls and as have been noted in the report “FIs and particularly banks, dominate the financial landscape in Antigua and Barbuda and have a greater appreciation and understanding of ML/TF risks.” These larger FIs are estimated to control approximately 85% of assets under management, which is significant and demonstrates the materiality of the FI sector which largely implements the required mitigation measures. It is accepted that there are weaknesses within a small component of the Financial landscape, but this does not translate to fundamental weaknesses across the whole sector.

235. The financial services sector is varied in terms of the assets size of the various types of FIs operating in Antigua and Barbuda. Domestic banks dominate the financial sector with an asset size of USD\$2.2B, the size of the rest of the industry is about USD\$2.4M relative to on Balance Sheet assets and USD\$ 0.5 M in relation to off Balance Sheet assets. International Banks are the major contributor to this figure. As at December 31, 2016 there were 12 international banks operating in Antigua and Barbuda. Of this number, nine (9) held a class 1 licence, one (1) held a class 2 licence and one (1) held a composite bank and trust license. However, it is noteworthy that 1 International Bank accounted for about half of the total figure and is therefore regarded by the FSRC as a systemically important financial institution (SIFI).

236. Antigua and Barbuda’s insurance sector is dominated by domestic insurance companies as there is only 1 international insurance company licensed in the country with an asset size of USD \$8.9 Million. On the domestic side, there were 19 insurance companies operating in Antigua and Barbuda as at December 31, 2016 which control over USD \$189.2 Million in assets. 12 of those companies held General Insurance licenses, 4 held Life licenses and 3 held a Composite license.

237. There were 6 Credit Unions operating in Antigua and Barbuda as at December 31, 2016. The asset size of the league is considerable in the amount of USD \$93.5 Million. The majority of this figure is attributable to the two largest credit unions. As at December 31, 2016, there were four (4) MSBs operating

in Antigua and Barbuda maintaining an asset size of USD \$1.3M. Overall, there are ten (10) MSB locations which include a small network of sub-licensees. For the five (5) Online Gaming/Wagering companies the asset size is USD \$39.6 Million.

238. As at December 31, 2016, there were also 26 Corporate Management and Trust Service Providers (CMTSP) licensees – 4 licensees were exempt from licensing requirements. 22 licensees offer solely corporate management services; 3 offer trustee services of a trust and 1 licensee offer asset management services.

239. The National Risk Assessment draft report has been disseminated to a select group of stakeholders which included banks, insurance companies, credit unions, car dealers, MSBs, CMTSPs, real estate agents, compliance officers, and the CIP Unit. There remain key industry stakeholders such as lawyers and gaming institutions who are not aware of the results of the NRA and the identified risks, threats and vulnerabilities faced by the country.

240. Whilst the larger FIs such as domestic and international Banks and Insurance companies appeared to have systems in place which enabled them to understand their risks, smaller FIs such as MSBs, CMTSPs and Gaming institutions did not appear to fully understand the risks faced by the sector. Additionally, DNFBPs such as Dealers in Precious Metal, Art or Jewellery, real estate agents and money lenders to a lesser extent, appear to be awaiting the results of the NRA in order to get a fuller understanding of the risks.

#### *Understanding of ML/TF risks and AML/CTF obligations*

241. The Banking sector has formally adopted a risk-based approach to AML/CFT risk identification and mitigation and has demonstrated a good understanding of its ML/TF risks concerning its products, services, geography and customers (including, business activity of customers, the legal structure of clients and inherent risks involved in maintaining clients which are PEPs). While banks, large credit unions and some insurance companies indicated that assessments are conducted on products to determine the associated risks before they are launched, the level of implementation of a risk-based framework to AML/CFT for the other FIs and DNFBPs such as real estate agents, car dealerships, gaming institutions and Dealers in Precious Metal, Art or Jewellery is low. Some real estate agents in particular indicated that they did not have any high risks and/or that their entire client base was low risk. This assertion was provided despite the NRA suggesting that the ML vulnerability to this sector was High, and the sectors are subject to annual risk assessments as outlined in Regulation 15 of the MLPR.

242. This calls into question the effectiveness of the annual risk assessment which is conducted by the noted sectors. The robustness of the annual assessments has also been assessed by the ONDCP, as regulator, in some cases to be below acceptable standards. One casino noted during the onsite mission that deficiencies have been identified by ONDCP in respect to its risk management systems which it is now working to correct.

243. Some non-banking financial sectors have an understanding of ML/TF risks posed by their customers however there is no consistent understanding across all the sectors. Moreover, FIs in sectors such

as the Insurance, CMTSPs and MSB when interviewed indicated that more emphasis was placed on the customers' risks and did not demonstrate depth of understanding of the enterprise risks faced by the FI.

244. Many DNFBNs such as dealers in precious jewellery and real estate agents indicated that their ML/TF risks were low because they do not deal with high values of cash and cash volumes are kept to a minimal. The requirement to have a compliance officer, regular training of senior or other relevant staff in AML/CFT measures, measures to identify and verify the identity of clients and the use of additional measures if the transaction involved amounts above particular thresholds were posited as justification of the determination that the sectors were low risk.

245. Despite the fact that training is generally provided to FIs and DNFBNs at least once per year by the Supervisory Authority, many FIs and DNFBNs indicated a need for greater sector specific engagement. Along with the need for greater sector specific engagement, the assessors have noted that other than the Guidance in MLTFG and gaming sector there is little sector specific guidance and typologies and such deficiencies may be inhibiting factors to a more comprehensive understanding of ML/TF risks and obligations.

246. Pursuant to Regulation 15 of the MLPR, FIs, MSBs and the gaming industry are required to submit to the Supervisory Authority an annual review and audit which indicates the extent to which it understands its AML/CFT risks and implements risk mitigation measures. While the preparation of these annual risk assessments is commendable and there appears to be a high level of compliance among FIs and DNFBNs with this requirement, the results of on-site inspections have indicated deficiencies in some cases relating to the quality of the reports which may be indicative of a low understanding of ML/TF risks. With respect to the gaming industry, a major identified risk emanates from non - face-to-face customers. There has however there has been a significant investment in the development of guidelines for this sector which has clearly facilitated greater understanding of ML/TF risks.

247. MSBs have demonstrated an understanding of general AML/CFT risks emanating from the products and services that are offered and the cash intensive nature of their business. The sector identified additional risks due to the de-risking activities locally and globally and some Banks have indicated that MSBs are considered as being consistently high risk and in most cases too risky to enter or continue business relationships with. As a result, there has been a clear de-risking exercise particularly among large commercial banks which are a part of an international group structure.

248. CIP agents and DNFBNs such as real estate agents or real estate developers which facilitate the acquisition of property that form part of the required investment into the CIP do not appear to have a full understanding of the ML/TF risks posed to the sector. The legislation which enabled the Citizenship by Investment Programme as a marketing tool by real estate agents and developers was introduced in 2013. Until recently participants in the CIP were not obligated to understand or implement AML/CFT measures. At the very end of the Onsite Mission CIP Agents were legislatively brought under the AML/CFT framework on the country. FIs such as some of the interviewed domestic banks as well as real estate developers who are also involved in the CIP initiative indicated that there is some understanding of possible ML/TF risks stemming from that initiative.

249. In relation to understanding of AML/CFT obligations, domestic and international banks, large credit unions and some insurance companies have a stronger AML/CFT compliance culture than other FIs demonstrating a better understanding of their obligations. Given that used car dealers, CIP Agents and Wealth and Investment Advisors were not captured in legislation as falling within the schedule of FIs until the end of the onsite mission, it was not possible to assess implementation with the legal obligations under the MLPA and its subsidiary legislation.

250. FIs and DNFBPs are generally aware of their legislative obligations as set out in the MLPA, MLPR and MLPTG with regard to CDD, record keeping, training, internal reporting, employee screening and to conduct annual risk assessments. However, this as noted before has not transcended into full understanding of how these obligations relate to business activity conducted. Moreover, it is only the larger FIs which have demonstrated implementation of these requirements.

251. The implementation of effective AML/CFT systems and controls among DNFBP is also low in many cases. The majority of FIs interviewed understood customer identification and verification and how to implement risk-based systems and controls to some extent. However, DNFBPs did not demonstrate that they understood that this obligation should be applied in all cases. Because of this, the extent to which customers of DNFBPs have been identified and verification undertaken appears to be low. Even in the case of FIs enhanced measures are not consistently applied for PEPs and other high-risk customers. In particular, there did not appear to be a full appreciation of how risk-based measures are applied in relation to PEPs and other high-risk customers. This was most evident for domestic PEPs where it was indicated that once a person is identified as a PEP that they remain a PEP. Some FIs and DNFBPs, particularly online gaming institutions indicated that all of its customers are inherently high risk and therefore PEPs are not viewed any differently from other customers simplified CDD was being undertaken as opposed to the EDD which is required for higher risk customers. Some FIs and DNFBPs continue to place a great reliance on local knowledge obtained through personal observation and interaction within the social and working environment in Antigua and Barbuda rather than the requirements of international AML/CFT standards, to verify the identity of customers. This validates the view of assessors that all FIs and DNFBPs do not fully understand their AML/CFT obligations.

252. The risk management and compliance programs of some Insurance companies, DNFBPs such as real estate agents and some CMTSPs are in many cases inadequate. There is a correlation between the extent to which FIs and DNFBPs clearly understand the AML/CFT obligations and the demonstration of this understanding through the implementation of AML/CFT policies and procedures. Although the AML/CFT policies and procedures have been implemented by the majority of FIs it has not been fully implemented among FIs and DNFBPs such as some CMTSPs, smaller insurance companies, real estate agents, jewellers and car dealerships as demonstrated in some cases through the results of onsite examinations which showed generally low compliance rating with meeting the required standards in relation to risk management and internal controls. The gaming sector were of the view that its systems were sufficiently robust to prevent penetration by criminal elements and all have some level of internal controls with risk indicators, for instance relating to deposit restrictions, which would allow it to pick up red flags for questionable behaviours and patterns of activity which would lead to the filing of STRs. However, there is a need in the gaming sector for greater understanding of obligations relating to identification and verifying source of funds and payment options.

253. The CMTSPs and other DNFBPs interviewed asserted that they are aware of and understood the need to identify the BO of IBCs and other legal persons. However, the value of that assertion is diminished by that fact that CMTSPs and other DNFBPs disclosed during the onsite mission that they do not consistently drill down and identify the natural person who is the ultimate beneficial owner in all cases. Consequently, risk management frameworks of these DNFBPs do not in all cases adequately address the required FATF standards for identification and verification of the natural persons who are beneficial owners of legal persons.

254. Whilst it was noted that there has been a significant effort by FIs and DNFBPs to appoint compliance officers to facilitate a more effective implementation of AML/CFT policies, systems and controls. There are impediments to the full implementation of these procedures such as the full implementation of procedures to identify beneficial owners of legal persons in all cases, and identify PEPs and address risks emanating from PEPs and to establish a procedure to effectively monitor their clients and report SARs which begs the question of the effectiveness of the Compliance Officer. Further, authorities must ensure that adequate training of these individuals is undertaken in order to increase understanding of the AML/CFT risks.

255. MSBs understand the general AML/CFT risks emanating from the products and services that are offered and the cash intensive nature of their business. The MSB sector is also vulnerable to additional risks emanating from the possible local and global de-risking of MSBs. The regulated activity of MSBs is operated mainly through sub-licensees who are legally subject to the same level of regulatory control of the principal license holder. MSBs have indicated that under the terms of its franchising arrangements and sub-licensee agreements, in practice, their agents are contractually obliged to maintain the same standard of the principal license holder. Additionally, it was asserted that because MSBs operated under a group structure that this has enabled the implementation of a robust monitoring system of all transaction which are undertaken and enables unusual transactions or patterns of unusual activities to be identified. It was stated that MSBs not only focus on volumes of transactions but other relevant risk factors. Onsite visits and offsite reviews are undertaken on both the principal and the sub licensee. Moreover, it is required, like other FIs, for MSBs to submit an annual review and audit to the Supervisory Authority pursuant to Regulation 15 of the MLPR, to indicate the extent to which it understands its AML/CFT risks and implements risk mitigation measures.

256. There has been an introduction of a regulatory regime for MSBs under the Money Services Business Act 2011 which established safeguards to ensure that controller and key personnel are fit and proper and also establishing a reporting and sanctions regime to enforce compliance. As has been indicated above, despite these measures there has been a clear de-risking exercise particularly among large commercial banks which are a part of an international group structure.

257. Notwithstanding, increases in the number of compliance staff across FIs and DNFBPs is a positive movement. Authorities must continue to ensure that adequate training of these individuals is undertaken in order to increase understanding of the AML/CFT risks. This is particularly important in relation to the risks that have been identified by the NRA. It is also worth noting that the submission of annual risk assessments to the Supervisory Authority is a positive step and there is a high compliance rate of submitting the reports.

However, the quality of these submissions must adequately be analysed by the FCU of the ONDCP and greater work must take place to reduce gaps in the quality of the assessments.

258. A major risk facing the gaming industry results from non-face to face customers. The assessors found that industry participants pay adequate focus on CDD information and risk management systems are sufficiently robust to adequately address the AML/CFT risks emanating from this type of business. There has been a significant investment in the development of guidelines for this sector which has clearly facilitated greater understanding. Whilst, across the gaming sector, the preparation of annual risk assessments which are submitted to the supervisory authority is commendable, the results of onsite inspections have indicated deficiencies in other DNFBPs relating to the quality of the reports and the compliance policies and programs implemented to mitigate identified risks. Based on information provided there appears to be low level of implementation of risk management systems and procedures particularly for DNFBPs such as car dealerships and to a lesser extent real estate agents.

259. The findings from AML/CFT onsite examinations conducted do not clearly demonstrate a high level of understanding regarding the ML/TF risks by the DNFBP sector. Further, the majority of the sanctions imposed over the period 2012 – 2016 were for breaches by DNFBPs. Although it has been stated that DNFBPs have gained an understanding of the ML/TF risks posed by PEPs and it is noted that such understanding is increasing over time, as previously mentioned the mitigating systems and controls do not fully address implementation of the required standards.

260. CIP agents, FIs and DNFBPs which facilitate the CIP to have a greater understanding of the ML/TF risks. The legislation which enabled the CIP as a marketing tool by real estate agents and developers was introduced in 2013. It is only recently, at the very end of the Onsite Mission that CIP Agents were legislatively brought under the AML/CFT framework on the country. FIs interviewed who are also involved in the CIP initiative indicated that there is some understanding of possible ML/TF risks and that risks were mitigated by the enhanced measures in place, both by the Agents in terms of the acceptance of clients and the CIU<sup>3</sup> in respect of the vetting of applications submitted by CIP Agents. The CIU<sup>4</sup> also applies restrictions in terms of the countries from which applications may be received and that such country restrictions are consistent with the FATF restrictions and other restrictions that may be issued by the UN. These lists are circulated by the Supervisory Authority. However, DNFBPs which interact with CIP Agents have noted that there are different standards of accountability and oversight applied as between their activities and those of CIP Agents. Real Estate developers for the CIP in particular have indicated that they will refuse a customer where inadequate CDD information is provided. Despite these measures little ongoing monitoring and vetting appears to take place after the customer is accepted and the initial scrutiny undertaken.

---

<sup>3</sup> The Citizenship by Investment Unit (CIU) was established by the Honourable Prime Minister of Antigua and Barbuda and is the Government authority responsible for processing all applications for Agent's Licenses, and all applications for Citizenship by Investment by applicants and their family.

<sup>4</sup> The Citizenship by Investment Unit (CIU) was established by the Honourable Prime Minister of Antigua and Barbuda and is the Government authority responsible for processing all applications for Agent's Licenses, and all applications for Citizenship by Investment by applicants and their family.

## *Application of risk mitigating measures*

261. FIs are required by law to annually review their systems and procedures for combating money laundering and the financing of terrorism and have implemented risk management systems. The MLPR also requires an annual audit report to be conducted and a copy maintained for regulators and the Supervisory Authority. FIs have been submitting the reports as required. However, the onsite inspections have revealed that in some cases the risk mitigating measures implemented by some FIs were not commensurate to ML/TF risks identified in the annual assessments submitted to the Supervisory Authority under the MLPR. Therefore, the measures implemented by FIs do not effectively mitigate against the AML/CFT risks that are identified through the annual assessments. Moreover, given the results of the NRA is in its infancy stage of dissemination, FIs have not yet had an opportunity to adjust mitigating measures to address the risks to the sector identified at a national level. This gives rise to a concern as to whether FIs fully understand the correlation between the risks and the compliance measures that are required to mitigate the risk.

262. Although it is recognized that the domestic and international banks, credit unions and large insurance sectors have a better understanding of the risk mitigation measures that are required and that CMTSPs, asset management companies, car dealerships, gaming institutions, real estate companies and accountants have not yet moved to adopt a formal risk mitigation process in compliance with the MLPR, the level of sanctions and dissuasive measures applied against the latter sectors for compliance appears to be quite low. The ONDCP applies a ladder of sanctions for compliance breaches. The number of sanctions applied over the period ranges from 0 to about 5 at its peak. This will be discussed further in Chapter 6.

263. Generally, across the regulated sectors which includes banks, gaming companies, CMTSPs, MSBs, credit unions and insurance companies, FIs appear to have implemented documented policies and procedures geared at mitigating risks including those risks from high risk customers and PEPs. Most FIs require board approval to commence or continue a relationship with a person who becomes a PEP. Client on-boarding procedures are robust and are applied on a risk sensitive basis in most cases. Many FIs particularly domestic and international banks indicated that they have systems in place for ongoing monitoring of clients. The bank which is considered to be a SIFI checks its high-risk customers on a quarterly basis and conducts an annual review on low and medium risk customers. Some FIs indicated that monitoring is determined by the risk rating assigned to each client. However, such systems and controls are not consistently practiced by all FIs. The authorities indicated that such policies and procedures are reviewed as a part of the offsite surveillance and is considered in determining the risk rating of the FI and the need for onsite inspection and there is general satisfaction that the documents meet the necessary legal standards.

264. The parameters for reliance on CDD and verifications measures of intermediaries and introducers of non-face to face business is set out in Regulation 4(5)(a) to (d), (f) of the MLPR. Most of the FIs and DNFBPs interviewed during the onsite mission indicated that there are systems and controls in place to mitigate risks arising from non-face-to-face customers. For FIs such as micro-financiers and credit unions their customer interaction is face to face with the end user client and the risk in their view is effectively mitigated by not taking on board such clients as they have been deemed too risky. International Banks which may have clients that has been introduced also conduct CDD and verification measures on the end

user client. Real estate agents and developers involved in CIP transactions sometimes engage in non-face to face business activity. However, it has been indicated that in practice such FIs and DNFBPs prefer performing their own CDD and verification measures on the ultimate customer. As a result, assessors were satisfied that there is a good level of effectiveness in compliance with this standard for the majority of FIs and DNFBPs.

265. Practitioners within the Banking and Insurance sector are committed to implementing policies systems and controls to address the ML/TF risks faced by the sector. These included establishing appropriately resourced compliance function to build culture and ensure that procedures were put in place and complied with. In some cases, the compliance function has been outsourced. Although this is permitted by law, in the cases where this has been done there is a demonstrable reduced knowledge and understanding by senior management of the FI of AML/CFT risk mitigation measures. Some FIs such as credit unions indicated that they take a proactive approach to mitigation measures and that in many cases the measures implemented go beyond and are stronger than the minimum standards set by the Supervisory Authority.

266. For the gaming sector, there are clearly documented measures in place which have been implemented for example limits to the buy-ins and requirements for CDD for pay-outs over predetermined limits, machines which only accept US currency, limits on the amount of a single win, limits on cash out in EC Dollars and the requirement to present a ticket to the cashier along with additional information for cash outs. The sector has taken substantial steps to comply with AML/CFT measures. However, there is a sense that the risk mitigation triggers focus more on the volume of funds involved than ML/TF indicators.

267. For the Insurance sector, the preliminary indications from the NRA are that only a third of the sector has controls in place to facilitate a risk-based assessment of the ML/TF risks. In context there are only three insurers providing life insurance products and another three with composite licences. Many of these are a part of a group structure and apply a group wide approach to risk mitigation which in some respects is higher than the standards required in Antigua and Barbuda. The concern of the assessors remains that this is not consistently practised by all practitioners.

268. DNFBPs generally have varying degrees of the implementation of ML/TF risk mitigation measures. This is commensurate with the diverse levels of understanding of AML/CFT obligations. Despite this, all DNFBPs and FIs clearly demonstrated an understanding of record keeping obligations. There is some level of CDD controls that have been implemented by dealers in precious metals, art or jewellery, car dealers and real estate agents. However, among these DNFBPs this is not consistently implemented and does not in all cases meet the required CDD standards. Neither are these measures applied by such DNFBPs in every case on a risk sensitive basis and on-going monitoring is not always consistently applied by all DNFBPs.

### *Application of enhanced or specific CDD and record keeping requirements*

269. There is general adherence to requirements in the MLPA, MLPR and MLTFG for FIs and DNFBPS to comply with CDD measures. However, some DNFBPs indicated that CDD is only verified in exceptional circumstances outside of transactions perceived to be normal. In the case of legal persons, the institutions interviewed during the onsite all indicated that the natural beneficial owner must be identified and verified.

However, it remains a concern of the assessors that for a few of the FIs requirements to identify and verify identification occurs only for new customers and the same standards, although generally applied by those FIs, in some instances, are not consistently applied for existing or legacy customers with respect to ongoing monitoring. Some FIs stated that updated information is requested at the time that transactions are conducted. The majority of legal persons are said to involve non-complex and straight forward structures. Structures such as Trusts are not widely utilised in Antigua and Barbuda. The assessors were pointed to the fact that there are only three CMTSPs licensed by the FSRC to provide trustee services. Many practitioners indicated that risk management solutions and screening through World Check and World Compliance is most commonly utilised. A few FIs and DNFBPs also indicated the use of more tailored solutions offered by BDO (Auditors). Others indicated reliance on google searches and social media searches.

270. Additionally, there is some concern regarding the practice by some FIs of establishing business relationships before verifying the identity of the customer. The main players in the financial system such as credit unions and domestic and international banks have indicated that where insufficient CDD and BO information is provided that the establishment of the business relationship will be declined. One real estate developer also indicated in relation to CIP purchases that the DNFBP had declined business where insufficient or unsatisfactory information was provided on the CIP applicant. Likewise, another DNFBP which also provides CIP services indicated that a business relationship had been refused on the basis of negative results from due diligence checks. Besides these examples, there is no evidence that all FIs and DNFBPs are refusing business, on a consistent basis, in the cases when the CDD is incomplete. Therefore, although a significant portion of FIs and DNFBPs were seen to have a general knowledge of the requirements with respect to CDD and specifically beneficial ownership information, the Assessors are not of the view that beneficial ownership information is consistently identified and verified throughout the entire industry and are concerned about the point at which the verification occurs.

271. The results of onsite inspections conducted by the supervisory authority and the FSRC have noted deficiencies in the quality of the CDD information obtained and the conduct of CDD procedures and verification. Casinos, were found to be non-compliant with the required CDD standards. During the onsite mission FIs and DNFBPs were pointedly asked to explain procedures for verifying identity and other pertinent CDD information such as the source of funds/wealth of clients and addresses of natural or legal persons. DNFBPs and to a lesser extent, FIs placed heavy reliance on knowledge obtained from personal and social interaction. For the gaming sector, although not widely used in practice, online gaming can be facilitated through the use of third party payment services and prepaid credit cards. There is a small concern regarding the use of such services and whether this allows source of funds to be verified particularly where pre-paid credit cards are used. There is a general presumption that some level of due diligence is conducted by the third-party providers. However, this could not be substantiated during the onsite visit.

272. Real estate agents have in the past also received low compliance results in onsite examinations for CDD measures. Nevertheless, the authorities indicate that breaches relating to CDD requirements is now lower and that there is a growing trend toward more compliance. However, the paucity of information relating to actions taken or sanctions applied in keeping with the MLPR for CDD breaches may be indicative that sanctions are not being adequately applied.

273. A high level of compliance across large FIs in all sectors has been indicated in respect of the record retention requirements. It has been asserted that FIs generally exceed the retention period. The position is less clear with respect to DNFBPs which have the same obligations as FIs. Notably, although there is a clear understanding across all sectors of the length of time that records must be maintained, the same does not hold true in terms of what information must be maintained. Despite this, most large FIs and DNFBPs indicated that certain records, particularly CDD records and some transaction records are maintained in fire proof safes and in some cases, have been backed up electronically.

274. Record keeping however, continues to be a challenge for smaller FIs and DNFBPs. Some DNFBPs such as dealers in precious metals, art or jewellery indicated that although they generally record the name and address of customers, copies of IDs and other information to verify the identity of the customer, this information is not requested in all cases. This was borne out in the results of onsite inspections for provided during the onsite mission by some real estate agents. Records of external training with the FSRC and ONDCP along with internal training logs and internal SARs are not maintained with the same degree of diligence. Such practices inhibit the extent of records that are maintained for AML/CFT purposes and proactive review and monitoring of systems and controls to prevent ML/TF.

275. Taken as a whole, there is a good level of compliance with requirements to apply EDD or specific CDD and record keeping measures. Strengthening of the measures taken by a small section of FIs and DNFBPs that do not fully meet the requirements can bolster the effectiveness to greater level.

#### *Application of EDD measures*

276. Most FIs and DNFBPs interviewed indicated that they have policies and procedures for CDD which establish a framework for dealing with PEPs and high-risk customers. However, as has been indicated there are a few entities which have gaps in the level of understanding of risk and the implementation of risk management and compliance procedures which reduces the effectiveness of EDD conducted on PEPs by those institutions. Neither were any details provided on whether the policy and procedures fully cover the requirements for EDD as stated in the MLPR and MLTFG. The lack of emphasis placed on monitoring is a significant gap for those entities.

277. All the FIs interviewed during the onsite understood that senior management approval is required to maintain or commence a business relationship with a person who is or becomes a PEP. For DNFBPs one real estate agent indicated that there was no particular sign off for PEPs which highlighted that compliance with legal requirements are not strictly adhered to. The FI which is systematically important to the jurisdiction indicated that High Risk clients and PEPs are reviewed quarterly. The FSRC also keenly reviews the mechanisms of FIs which it regulates for on-boarding and monitoring of PEPs in relation to transaction monitoring.

278. Most FIs and DNFBPs through their own initiative or in some cases when circulated by the Supervisory Authority, will review their client base against the FATF list of high risk jurisdictions or the UN Sanctions list. However, freezing of assets against this list has not been done as no person on the sanctions list has been identified among the client base. In the Gaming sector, enhanced measures and

procedures are also undertaken to block IP addresses from persons in an identified high-risk jurisdiction. It has been asserted that this coupled with the normal CDD measures adequately addresses requirements to apply enhanced measures on persons from high risk jurisdictions.

279. Relevant FIs such as banks are required to implement specific procedures in relation to wire transfers and correspondent banking and these systems and controls are generally adequate. No FI in Antigua and Barbuda provides correspondent banking services. All banks indicated that they use SWIFT and the protocols are set. As a result of the increasing de-risking activities, FIs in Antigua and Barbuda are now looking at non-traditional markets such as in the Asian Financial market to obtain correspondent banking services.

280. Some FIs and DNFBPs have systems and controls for mitigating ML/TF risks including assessing product risks and specifically risks relating to new technologies and products. Where the risk assessment of new products is conducted it is done prior to the launching of the same.

281. FIs and DNFBPs are required to file Terrorist Property Reports (TPRs) on a quarterly basis to the Supervisory Authority. No incidents of terrorist property or terrorism activity have been observed and no SARs relating to terrorism have ever been reported. This leads to the conclusion that known specified entities do not hold accounts with the reporting institutions. On the onsite, the FIs and DNFBPs did not provide information on instances where transactions of persons with the same or similar identification data that are flagged but then appeared not to be the designated entity or person, after a check with authorities.

### *Reporting obligations and tipping off*

282. The following table shows the number of Suspicious Activity reports submitted to the FIU between 2012-2016.

**Table 1**  
**Suspicious Activity reports submitted to the FIU**

<b>Reporting Entities</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Banks, Credit Unions & Trusts	89	69	104	89	77
Money Remitters	37	86	113	180	138
Insurance Companies	0	4	22	13	6
Internet Gaming	4	52	7	24	11
Real Estate	0	0	3	0	0
Dealers in Precious Metals, Art & Jewellery	0	2	2	0	0
Attorneys, Accountants	1	0	1	0	0
Regulators	0	0	1	3	2
<b>Total</b>	<b>131</b>	<b>213</b>	<b>253</b>	<b>309</b>	<b>234</b>

Source of information: Data provided by ONDCP.

283. There has been no indication of the reason behind the variance from year to year or the variance in the proportion of the FIs and DNFBPs who are reporting. The results of the NRA exercise, have shown that there is a concern that despite the numbers of SARs reported there has been very little in terms of quality

reports. This again seems to stem from the earlier observations that there is no consistent understanding among FIs and DNFBs of their AML/CFT obligations.

284. The information reveals that MSBs have almost consistently filed the greatest number of SARs followed by Banks, credit unions and trusts. In 2016 MSBs filed 138 or 59% of the SARs. In the prior year MSBs had filed 180 or 58% of the SARs.

285. All the other sectors, particularly the DNFBPs, have filed low amounts of SARs. In 2016, apart from casinos which filed 11 SARs (roughly 4% of SARs filed for that year), other DNFBPs filed no SARs.

286. In the case of Banks there has also been some fluctuation in the number of reports that has been submitted in 2015 89 (29%) of the SARs file in that year. For 2016 the Banks filed 77 (33%) of the SARs.

287. There is a clear recognition by the Supervisory Authority that the level of SARs reported is inadequate. The level of SARs reported has a direct correlation to the level of ongoing monitoring. This is particularly the case for DNFBPs which as noted before inadequately apply systems and procedures relating to ongoing monitoring.

288. Many FIs and DNFBPs have noted that they do not receive any formal acknowledgement and feedback of the SARs submitted, however this conflicts with the position of the Supervisory Authority which indicated that a formal letter of acknowledgement is sent for all SARs. The Supervisory Authority further indicated that feedback is factored into typologies published by the Supervisory Authority. Some FIs indicated that there are a higher number of internal SARs submitted which are then vetted internally to determine whether there is a need to file an external SAR report.

289. The FIU has noted that there are deficiencies in the quality of the SARs filed. These deficiencies do not allow for adequate analysis and on some occasions the FIU has had to request further details in order to determine any ML/TF indicators. It has been recognised that in some cases, where the CDD information is not kept up to date any changes and deviations from the original profile is viewed as a suspicious activity and results in the filing of an SAR.

290. Although, according to the FI and DNFBPs, no direct feedback is given with respect to the specific SARs submitted, the FIU communicates the deficiency to the FCU who uses the information to assist in assigning risk ratings to FIs and DNFBPs for the purposes of determining the schedule and focus of onsite inspections. Despite awareness of deficiencies and the dissemination of typologies to garner more awareness in respect of reporting obligations, the level of SARs reported decreased in 2016 rather than increased as would have been expected.

### *Internal controls and legal/regulatory requirements impending implementation*

291. As previously noted, FIs and DNFBPs have its ML/TF systems and controls audited annually and these are submitted to the Supervisory Authority. Furthermore, it was indicated by the Supervisory Authority that the annual assessments are used to shape the schedule of onsite examinations. There is a high

level of compliance with the implementation of these controls although there remain gaps in terms of the quality of the system and in relation to adherence and consistency of implementation.

292. No STRs submitted to the Supervisory Authority were triggered as a result of suspicion of proceeds to finance terrorism or emanating from terrorism. As noted above, Terrorist Property Reports are also submitted to the Supervisory Authority quarterly. These reports have never generated a TF hit which may suggest that there are no known specified entities holding accounts with the reporting institutions in the jurisdiction.

#### *Overall Conclusion on Immediate Outcome 4*

293. Many FIs have demonstrated an understanding of their risks and as a consequence have implemented a number of preventative measures ,including CDD, EDD, Internal controls and SAR reporting. The same level of implementation of ML/TF preventative measures is not evident among DNFBBs. FIs and particularly banks, dominate the financial landscape in Antigua and Barbuda and have a greater appreciation and understanding of ML/TF risks. There remain gaps in terms of the understanding of ML/TF risks by DNFBBs which filters down into the mitigating measures including, implementation of EDD measures, monitoring of PEPs and high-risk customers and SAR reporting.

294. The introduction of more extensive guidance, particularly in the gaming sector has led to greater understanding of ML/TF risks. Systems and controls used by smaller FIs and DNFBBs to monitor the status of low, medium and high-risk clients is varied and hinders effective risk mitigation. DNFBBs such as Company Services Providers, car dealerships and real estate agents, many of whom engage in one-off customer transactions rather than ongoing business relationships, were determined to have a medium high vulnerability to ML/TF risks. Risk mitigation measures implemented by smaller FIs and DNFBBs do not consistently meet the required standard. Measures undertaken to establish, verify and monitor beneficial ownership information is addressed by large FIs but is insufficiently applied by smaller FIs and DNFBBs outside of client on boarding. All FIs require senior management approval to enter or continue a business relationship with a PEP and large FIs regularly reviews and monitors high risk customers. Measures to mitigate risks emanating from PEPs are not regularly used in practice by smaller FIs and DNFBBs despite the fact that they have established documented policies and procedures for interactions with PEPs. It is to be noted that the NRA exercise, as stated in paragraph 12, has determined that the vulnerability of the entire financial sector is medium. Efforts to correct the gaps identified above has commenced and once continued would address the ML/TF risks for this sector commensurate with the findings of the NRA.

295. Taken as whole these gaps contributed to the low levels of SARs and by extension the number of ML/TF investigations and prosecutions. It results in an inconsistent approach to AML/CFT efforts by FIs and DNFBBs and reduces the level of ML/TF detection and prevention in Antigua and Barbuda. While the larger FIs are consistent in the application of preventive and mitigation measures, it remains for the smaller FIs and DNFBBs to develop and implement a consistent approach to AML/CFT efforts to improve the level of ML/TF detection and prevention in Antigua and Barbuda.

**296. The rating for Immediate Outcome 4 is a moderate level of effectiveness.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **Financial institutions**

- Licensing controls are generally robust for commercial banks, offshore banks, insurance companies, MSBs, Credit Unions, Trust Business, CSP, casinos and internet gambling and sports betting operations, with the FSRC and ECCB conducting a variety of fit and proper checks at application and on an ongoing basis.
- Antigua and Barbuda's financial system is vulnerable to money laundering, which the authorities have recognised. Whilst the NRA is in its infancy it goes some way to identifying the vulnerabilities in the system, specifically the vulnerabilities posed by financial institutions.
- ONDCP-FCU has not demonstrated that institutions are reviewed based on their ML/FT risk profiles, hence AML/CFT examinations appeared to be rules-based rather than on a risk-based approach.
- There has been limited and ineffective application of the range of remedial measures.
- The ONDCP and the FSRC are well-respected and FIs welcome the close contact they are able to have on a regular basis. Guidelines produced by the ONDCP are comprehensive and FIs spoken to found them useful. These authorities have promoted a clear understanding of AML/CFT obligations of the respective institutions.
- Credit union had outsourced their compliance function, this included the position of the Compliance Officer. This breach of the law was condoned by the ONDCP-FCU and the FSRC.
- There is no formal process or agreement, (e.g. a MOU) between the ECCB and the ONDCP for the cooperation and coordination of AML/CFT matters.
- The AML/CFT knowledge and expertise of the supervisory staff at the ONDCP-FCU and FSRC were considered adequate. However, these units do not have sufficient resources to conduct adequate risk-based AML/CFT supervision of all entities under their purview. The Assessors are of the view that this restricts the ONDCP-FCU and FSRC from being able to optimally and effectively perform their supervisory mandates.

##### **DNFBPs**

- There is no licensing or registration process for the following entities: Attorneys and Accountants, Pawning; Real Property Business; Dealers in Precious Metal, Art or Jewellery; Car Dealerships; and Travel

Agents. Consequently, there are no fit and proper measure observed to deter criminal and their associates from entry of the market through these businesses.

- AML/CFT supervision is not consistent across the DNFBP sector and far less coverage is provided as compared the FIs. As with the FIs the authorities have not demonstrated that institutions are reviewed based on their ML/FT risks. Further the examinations appear to be rules-based rather than on a risk-based approach.

### ***Recommended Actions***

- The country needs to implement mechanisms to ensure that management and control of all FIs and DNFBPs are governed by fit and proper requirements and that these are verified.

- On the basis of the NRA, supervisory activity should closely target ML/TF risks.

- Examinations of FIs should be risk focussed i.e., risk posed by the specific sector should be considered, given the NRA results, and risk posed by the specific institution based on considerations of: customer, product, delivery and geographic channels. Inspection cycles and focus should then be tailored to suit.

- Antigua and Barbuda should employ its range of remedial measures on financial institutions to ensure compliance with AML/CFT requirements.

- The ONDCP-FCU and the FSRC should ensure that all financial institutions comply with all AML/CFT laws and guidelines.

- A formal agreement, such as a MOU, between the ECCB and the ONDCP should be put in place to ensure adequate cooperation and coordination of AML/CFT measures commensurate to the risks identified and consolidated supervision.

- Supervisory resources should be properly aligned to risk posed by the FIs and DNFBPs, to ensure adequate supervision and follow-up of corrective actions.

- Ensure that AML/CFT supervision is adequately applied across the DNFBP sector.

- The deficiencies in legislation as detailed in the Technical Compliance Annex for Recommendations 26 to 28 and 35 should be remedied.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

### *Immediate Outcome 3 (Supervision)*

297. **ONDCP and the FSRC.** In Antigua and Barbuda, the Director of the ONDCP is the Supervisory Authority for AML/CFT. The FSRC assists the ONDCP in its statutory role in overseeing compliance with AML/CFT requirements. As a result of a MOU signed in 2010 the FSRC and the ONDCP, agreed to amongst other things, to conduct single or joint examinations where in some instances the FSRC as part of the prudential examination includes an AML/CFT competent and thereafter the report is submitted to the ONDCP-FCU for further action. In other instances, the FSRC and the ONDCP-FCU together conduct joint examinations for AML/CFT. In all instances, the ONDCP-FCU is the recipient of the report for further action in respect of AML/CFT.

298. **ECCB.** The ECCB is the Monetary Authority for a group of eight island economies including Antigua and Barbuda. The primary objective of the ECCB is to maintain the stability of the Eastern Caribbean Currency and the integrity of the banking system.

299. The regulatory framework of the domestic banking system has two main legislative components. First, there is the ECCB Agreement Act, 1983 and its amendments, which under Article 3 Paragraph 2(e) of the ECCB Agreement Act gives the Eastern Caribbean Central Bank the power to “regulate banking business on behalf of and in collaboration with Participating Governments.” Second, there are the Banking Acts of the various territories of the Participating Governments which govern the regulation of banking business in those territories.

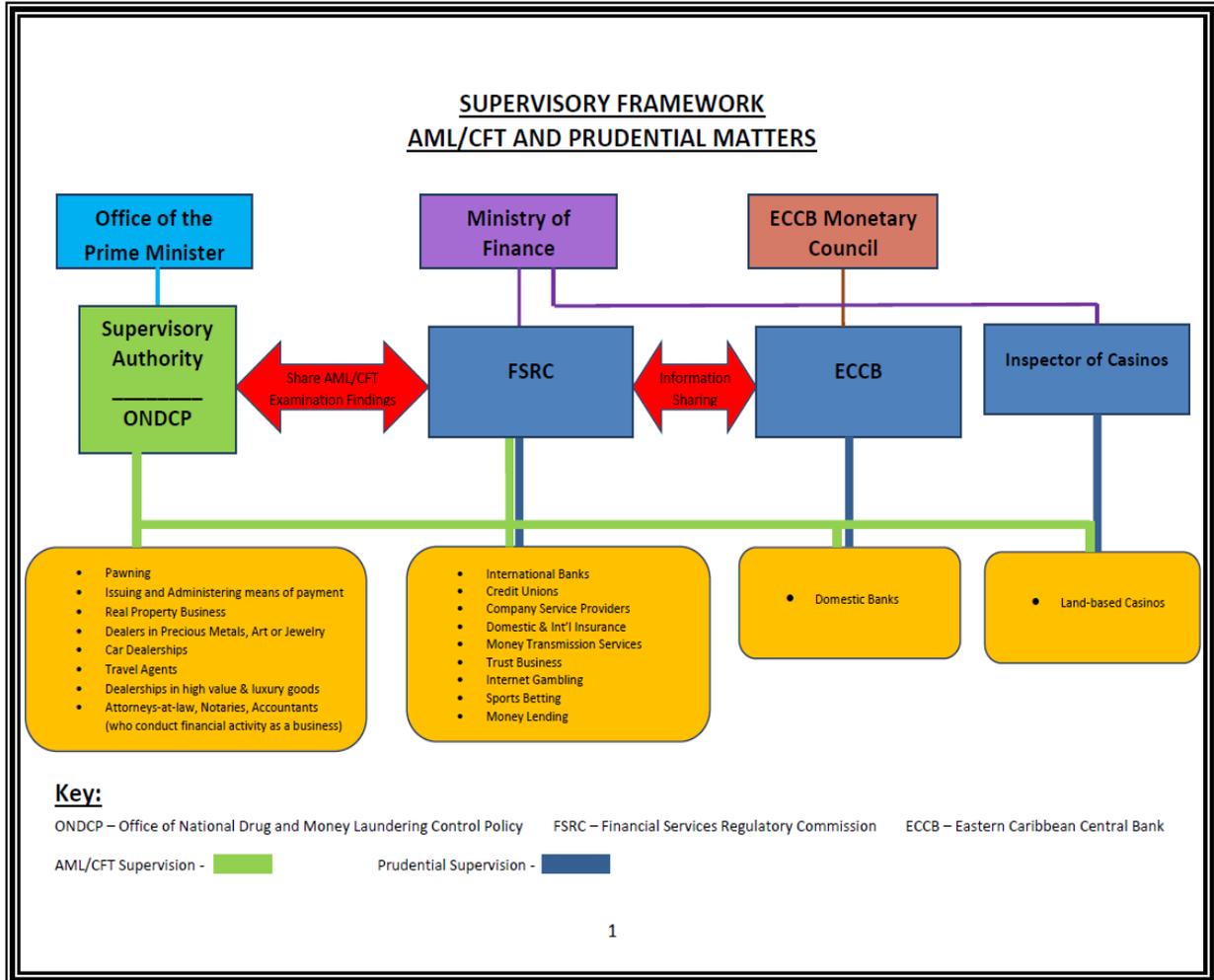
300. The AML/CFT supervisory regime is relatively mature with the ONDCP, in the function of the Supervisory Authority being in that role as far back as the 3rd round Mutual Evaluation in 2008. However, at that time due to the dual role as FIU, it had been left to the various regulatory agencies (FSRC, ECCB, Registrar of Co-operative Societies, and Registrar of Insurance) with the requisite expertise to ensure compliance of their licensees with the MLPA. The responsibility for supervising money remitters for compliance with the MLPA however resided with the ONDCP. The supervisory arm of the ONDCP (FCU) was only formed in 2011 resulting in the change to the supervisory framework that existed at the time of the onsite.

301. During the onsite mission, the Assessors were informed that the ECCB was recently charged by the Council of Ministers to be the AML/CFT Supervisor for all licensees in the jurisdictions which they operate. This would be a relatively new role for this agency, whose AML/CFT reviews were very limited in scope up to this point, focusing on general compliance. Further there is no MOU between the ECCB and the ONDCP with the purpose of coordinating joint examinations on AML/CFT matters. The ECCB is seeking to fulfil this mandate by:

- Undertaking capacity building in bank supervision and legal services department.
- Building collaborative frameworks with local authorities;
- Drafting legislation - this has been prepared but is not finalized;
- Having a transitional period under a multilateral MOU with ONDCP and ECCB involving information sharing and joint examinations; and building capacity with the US Treasury.

302. The Inspector of Casinos is a division of the Ministry of Finance. Land based casinos are licensed by the Ministry of Finance. The Inspector of Casinos acts as the regulatory body which ensures that all games at casinos are operated fairly. This done be ensuring that playing cards are changed frequently, tables are on level surfaces, dice are balanced etc. Inspectors are also present during casino operating hours to arbitrate customer disputes and monitor activities for any illicit gaming behaviour.

303. The supervisory framework in Antigua and Barbuda:



**Table 1**

<b>Financial Institutions / DNFBPs as per First Schedule MLPA</b>	<b>No.</b>	<b>Licensing/Registration Authority</b>	<b>Prudential Supervisor</b>	<b>Supervisor for AML/CFT</b>
Banking & Financial Business - Commercial Banks - Development Banks - Credit Institutions	6 1 3	ECCB FSRC ECCB	ECCB FSRC ECCB	ECCB ONDCP
International Banks	12	FSRC	FSRC	ONDCP
Money Transmission Services <sup>5</sup>	4	FSRC	FSRC	ONDCP
Issuing & Administering means of Payment	1	-	-	ONDCP
Money Lending & Pawning - Money Lending - Pawning	4 1	FSRC -	FSRC -	ONDCP
Real Property Business	35	-	-	ONDCP
Credit Unions	6	FSRC	FSRC	ONDCP
Insurance Companies	19	FSRC	FSRC	ONDCP
Dealers in Precious Metal, Art or Jewellery	17	-	-	ONDCP
Casinos	1	Ministry of Finance	Inspector of Casinos	ONDCP
Internet Gambling & Sports Betting	8	FSRC	FSRC	ONDCP
Car Dealerships	6	-	-	ONDCP
Travel Agents	7	-	-	ONDCP
Company Service Providers	26	FSRC	FSRC	ONDCP
Attorneys-at-Law, Notaries, Accountants (who conduct financial transactions as a business)	*	As per relevant financial activity	As per relevant financial activity	ONDCP

**Immediately above is a table which illustrates the Licensing and Registration Framework of Antigua and Barbuda**

\*The Authorities have indicated that this category would be captured under the specific financial service offered by the business professional. Source of information: Data provided by ONDCP and FSRC.

### *Licensing, registration and controls preventing criminals and associates from entering the market*

304. All domestic banks licensed to carry on banking business are required to be licensed under the Banking Act and are regulated by the ECCB. As part of the ongoing supervision, licensed FIs are required

<sup>5</sup> Two (2) of these licensees had a total of seven (7) sub-licensees as part of their local operations

to submit quarterly returns to the ECCB, reporting on their ownership and control. In addition, the ECCB also verifies the information submitted by conducting onsite examinations of commercial banks.

305. FSRC performs due diligence background checks on all Key Persons (includes management shareholders, ultimate beneficial owners), Directors and entities, both upon the entry of new licensees and/or registrants, and as a continual measure depending on the circumstance, for the following sectors: International Banking & Trusts; International and Domestic Insurance; International Wagering and International Gaming companies (IGWC); Corporate Management and Trust Service Providers; and Money Transmission Services (MVTs).

306. Both the FSRC and the ECCB employ stringent measures to ensure that persons exercising management and control over their licensees are fit and proper, thereby preventing criminals and their associates from exercising control over those institutions. The vetting process is undertaken at the licensing stage and when there is a change in officers, shareholders and directors. The 'fit and proper' test looks not only at the qualifications of the relevant persons but also their character, including whether they are guilty of any illegal offenses amongst other factors. Further, during the annual renewal of licenses the FSRC ensures that there are no changes to ownership and control. The ECCB imposes a similar requirement. The fit and proper tests include the requirement to submit due diligence documentation for persons exercising control, such as: certified photo ID, copy of police record, bank references, curriculum vitae; and character references. Enhanced due diligence is performed through tools such as the World Check and the use of reliable due diligence service providers which perform searches against several databases which include law enforcement and sanction lists globally.

307. There are varying thresholds used in determining when fit and proper tests are applied across FIs and DNFBPs. With respect to Commercial Banks the requirement is a minimum of 10% ownership; International Banks 5% ownership; Insurance Companies and MSB requirements speak of "significant" ownership; and for Internet Gaming and Wagering the requirement is "key persons and stakeholders". However, in respect to MSBs "significant shareholder" means a person who either alone or with an affiliate or related or connected person, is entitled to exercise or control 10% or more of the voting power at a general meeting of the licensee or another company of which the licensee is a subsidiary. While for IGWCs the FSRC considers personal information at the application stage for each key person, director, partner and chief executive officer of the applicant and each shareholder with five percent (5%) or more ownership of or controlling interest in the applicant. It was further explained that the 5% with respect to International Banks, and we presume the IGWCs reflected the increased risk associated with those entities. The authorities are satisfied measures applied are proportionate to each sector individually and determined on the basis of risk and materiality. The assessors are satisfied that there was strict application by the regulators (ECCB/FSRC) to ensure that criminals and their associates are unable to access ownership and control of these entities.

308. With respect to credit unions, the FSRC implements the requirement for nominees for Boards and Committees to be submitted to the Regulator 7 days after the close of nominations. The person(s) nominated as a director or a member of a committee has to fulfil the fit and proper person requirements, similar to that of the other FIs. The FSRC would determine whether the candidates are qualified or disqualified and inform the credit union within 7 days.

309. There is no licensing or registration process for the following entities: Pawning; Real Property Business; Dealers in Precious Metal, Art or Jewellery; Car Dealerships; and Travel Agents. This makes it difficult to monitor the activities of these entities as some businesses engaged in these activities may go unnoticed. Further, no process has been identified to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function in these institutions.

310. Further, the Authorities were unable to identify the Attorneys, Notaries and Accountants that would be considered as DNFBPs. The NRA further supported this premise by indicating that lawyers and accountants providing escrow services for clients were not supervised for AML/CFT. This led the Assessors to conclude that the authorities are unable to adequately ensure that this sector is not vulnerable to persons that are criminals or their associates.

*Supervisors' understanding and identification of ML/TF risks*

311. Antigua and Barbuda completed the NRA exercise just prior to the onsite mission, therefore while the supervisors have identified and generally understand ML/FT risks the effective implementation of a policy aligned to this assessment has yet to be undertaken. With respect to the vulnerability to ML/FT risks of the various sectors the NRA revealed the following results:

**Table 2**

<b>High Vulnerability</b>	<b>Medium/High Vulnerability</b>	<b>Medium Vulnerability</b>	<b>Medium/Low Vulnerability</b>	<b>Low Vulnerability</b>
MSB	CIP Agents	Insurance Companies <i>(International and Domestic)</i>	Development Bank	Mortgage companies
Lawyers <i>(some CSPs, real estate escrow)</i> Accountants	Company Service Providers Car Dealerships Real Estate Agents Casinos	Commercial Banks International Banks Internet gaming Dealers in Precious Metals and Stones Credit institutions NPOs Money Lending & Pawning	Credit Unions	Travel Agents

Source of information: Data provided by ONDCP.

312. The country reported that an initial ML/FT risk assessment was completed (2010 -2011) of the institutions and the sectors on behalf of the Supervisory Authority which enabled the identification of the ML/FT risks associated within the institutions and sectors. While the Supervisors were unable to provide the Assessors with detail on the assessment process, the Examiner's Manual indicated that some of the information the compliance officer would want to gather for the profile were:

- Company Structure (organizational chart)
- Number of branches/business locations
- Types of products, services, operation
- Results of Compliance questionnaire
- Outstanding compliance issues (if any)
- Contact information (compliance officer, senior manager)
- Annual report (if available)
- Number and types of reports submitted (SARS, TPR, and SPR)
- Training sessions conducted with the institution by the FCU
- Total value and number of transaction conducted; and
- Any potential safety risks to the Examiner that may be associated with an on-site visit.

313. The initial risk assessment, titled the Risk Management Framework for FIs, was based on a self-assessment survey which all financial institutions were required to complete and submit to the Supervisory Authority. The collation and analysis of this document provided an assessment of measures implemented by financial institutions to manage and mitigate ML and TF. This resulted in documented results, detailing summary ratings for each institution and each sector, based on ratings of High, Medium and Low risk. The ratings for sectors were assign as follows:

- Commercial Banks – Low
- Offshore Banks – Low
- MSBs – Medium
- Real Estate Agents - High
- Credit Unions – Low
- Insurance Companies – Low
- Dealers in Precious Metals, Art and Jewellery - High
- Casinos – High
- Internet Gaming & Sports Betting – Medium
- Car Dealerships – High
- Travel Agents - High

314. Further to the initial risk assessment, the agency indicated to the Assessors that based on the FCU's revised risk assessment of financial institutions gathered from the examination process, it has been recognized that banking businesses were high risk institutions. Other high-risk sectors were identified as Real Estate (including developers), CSPs, Money Lenders, MSBs and Gaming institutions. While the Credit Unions were considered medium risk. These rating differed from the initial ratings and although no documentation was provided to support these revised ratings, the new ratings are more closely aligned to the ratings in the NRA.

315. While it is appreciated that there was an attempt to risk assess the institutions supervised by the ONDCP-FCU, this summary document presented has not provided sufficient detail to satisfy the assessors that this process is adequate. The main focus for examinations was the banking sector, however the agency has not indicated whether there is consideration of risks posed by specific entities when compared to others.

316. The Assessors concluded that while the Supervisory Authority did undertake a process to understand its ML/FT risks posed by FIs and DNFBPs, the processes could not be validated, and the results varied from those concluded in the NRA exercise. However, the Authority did identify banking business, including offshore banking as high risk, and have prioritised these institutions for onsite reviews. Other sectors stated to be high risk such as Real Estate (including developers), CSPs, Money Lenders, MSBs and Gaming institutions were not similarly prioritised. Therefore prior to the completion of the NRA exercise the Assessors could not conclude that the Authority fully understood the risks and therefore could not implement appropriate mitigation measures. However, the conclusion of the NRA exercise provides a good understanding of the risks going forward.

### *Risk-based supervision of compliance with AML/CTF requirements*

317. The ONDCP-FCU indicated that there was a risk-based approach utilised to ensure compliance with ML/FT risks. The Risk Management Framework was first utilised in 2010 – 2011 and assigned risks to each institution and each sector. This is to be used to assist in determining which institutions are selected for AML/CFT examinations. The Examination schedule process is documented as follows:

- High Risk - Where a financial institution is considered High Risk, it shall be examined annually to 18 months, both onsite and offsite;
- Medium Risk - Where a financial institution is considered Medium Risk, it shall be examined every 18 to 24 months, and examinations shall be onsite and offsite;
- Low Risk – Where a financial institution is rated Low Risk, it may be examined every three years, and where appropriate, examinations may be by offsite assessment only.

318. The following tables (table 3) represent the AML/CFT onsite inspections conducted over the last 4 years across the various sectors. The ONDCP-FCU is the Supervisory Authority for AML/CFT matters and through an MOU agreement the FSRC supports these efforts by providing resourcing, facilitating joint inspections and sharing reports on AML/CFT reviews with the ONDCP. With respect to AML/CFT supervision the ONDCP-FCU provides the framework for inspections, which includes: the procedures (FCU Compliance Unit Examiners Manual), working papers, questionnaires and the report template. The assessment team had no concerns about the structure of this arrangement given the limited resources of the ONDCP-FCU, the close relationship between the two organisations, the synergies provided by both offices and the regulatory coverage of the FSRC.

**Table 3**  
**AML/CFT Inspections**

AML/CFT Examinations by Sector	No. in Sector	2012			2013			2014			2015			2016		
		FSRC	ONDCP	JOINT												
<b>Banking &amp; Financial Business</b>																
- Commercial Banks	6	-	-	-	-	2	-	-	5	-	-	4	-	-	2	-
- Development Banks	2	-	-	-	-	-	-	-	1	-	-	-	-	-	1	-
- Mortgage Companies	1	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
- Credit Institutions	1	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
International Banks	12	12	-	-	10	1	1	5	-	4	7	1	1	-	-	1
Money Transmission Services	4	-	-	-	-	1	-	-	-	1	1	1	-	-	1	-
Issuing & Adm means of Pymt	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Money Lending & Pawning																
- Money Lending	4	-	-	-	-	3	-	-	-	-	-	1	-	-	3	-
- Pawning	1	-	-	-	-	1	-	-	-	-	-	-	-	-	1	-
Money Exchange	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Real Property Business	35	-	2	-	-	2	-	-	8	-	-	1	-	-	1	-
Credit Unions	6	-	-	-	6	-	-	5	6	-	2	-	-	4	1	-
Trust Companies	1	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
<b>AML/CFT Examinations by Sector</b>	<b>No. in Sector</b>	<b>2012</b>			<b>2013</b>			<b>2014</b>			<b>2015</b>			<b>2016</b>		
		FSRC	ONDCP	JOINT												

<b>Insurance Companies (Domestic &amp; Offshore)</b>	19	-	-	-	5	-	-	4	5	-	2	7	-	5	3	-
<b>Dealers in Precious Metals, Art or Jewelry</b>	17	-	1	-	-	3	-	-	4	-	-	-	-	-	-	-
<b>Casinos</b>	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
<b>Internet Gambling &amp; Sports Betting</b>	8	5	1	-	6	-	-	5	-	-	-	2	-	-	2	-
<b>Car Dealerships</b>	6	-	2	-	-	3	-	-	1	-	-	2	-	-	-	-
<b>Travel Agents</b>	7	-	2	-	-	4	-	-	3	-	-	-	-	-	-	-
<b>Company Service Providers</b>	20	-	-	-	-	-	-	-	-	-	4	1	-	-	-	-
<b>Attorneys-at-Law, Notaries, Accountants (who conduct financial transactions as a business)</b>																
<b>- Attorneys-at-Law</b>		-	-	-	-	-	-	-	2	-	-	3	-	-	1	-
<b>- Notaries</b>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>- Accountants</b>		-	-	-	-	-	-	-	1	-	-	3	-	-	-	-
<b>Total</b>		17	8	0	27	20	1	19	38	5	16	27	1	9	18	1

Source of information: Data provided by ONDCP and FSRC.

319. The statistics confirm that a number of onsite visits have been conducted across FIs and DNFBPs both by the ONDCP-FCU and the FSRC. As indicated by the supervisor, focus was largely on the banking sector, while other highly vulnerable sectors, as identified by the NRA and the initial risk assessment of the ONDCP, did not receive as much attention. These sectors include: Real Estate Agents, MSB, Lawyers and Accountants (some CSPs, real estate escrow, CIP), car dealerships and dealers in precious metals. The inspections undertaken were therefore not fully aligned to those entities that were considered to pose the highest vulnerability to ML/FT risk.

320. It is important to note that the FSRC's risk assessments framework did not include AML/CFT as a driving factor. Therefore, inspections undertaken would have been driven primarily by other risks taken into account that the FSRC is a prudential regulator. However, the ONDCP is able to coordinate with the FSRC to include AML/CFT reviews where inspections are planned for their licensees as may be required by the ONDCP.

321. The number of persons used in the conduct of examinations varied in relation to the size of the entity being examined. Joint ONDCP/FSRC examinations utilise 2 from each unit (4 persons). Major institutions with ONDCP only, utilise 3 to 5 persons while smaller institutions (ONDCP or FSRC) utilise a minimum of 2 persons. Duration of examinations range from 3 to 5 days for major institutions and 1 to 3 days for small institutions.

322. The ONDCO-FCU has indicated that human resources were limited given the volume and intensity of supervision required. (See table 4) It was noted that the required level of staffing was 7 officers, however two positions were vacant and the Assessors were informed that there has been a high level of turnover in the department. The ONDCP-FCU's partnership with the FSRC provides other resources, however the resources within that agency are also required to undertake a broader range of prudential reviews. The level of qualifications requirements coupled with the AML/CFT training undertaken suggests that AML/CFT knowledge and expertise of the staff members in both organisations appear to be adequate, however these units do not have sufficient resources to conduct adequate risk-based AML/CFT supervision of all entities listed. The Assessors are of the view that this restricts the ONDCP-FCU and FSRC from being able to optimally and effectively perform their supervisory mandates.

**Table 4**  
**Supervisory Staff**

Regulatory Unit	Number of Staff
<b>FSRC (includes Regulatory Directors)</b>	
International Banking and Co-operatives	6
International and Domestic Insurance and Non-Bank Financial Institutions	5
Corporate Management and Gaming	6
<b>ONDCP-FCU (includes the Director)</b>	
All Institutions	6
<b>TOTAL:</b>	<b>23</b>

Source of information: Data provided by ONDCP and FSRC.

323. The ONDCP has not been able to demonstrate that they have fully identified attorneys, accountants and notaries that would qualify as DNFBPs. It was noted that these professionals are captured in the First Schedule to the MLPA and are considered FIs when conducting when conducting financial activities. However, the list of inspections conducted by that agency suggests that there were limited inspections carried out on these businesses. While it was explained that their activities are captured and supervised as FIs rather than as attorneys, accounts and notaries per se, discussions with one such entity revealed that CSP services were reviewed but escrow and CIP service were not. Hence confirming that not all financial activities were supervised. It was also noted that the NRA indicated that these professionals, particularly the Attorneys and Accountants were highly vulnerable to ML/FT risks. The CSP sector and CIP sector had a medium high vulnerability.

324. The used car dealerships are of concern to the Assessors since this sector is unregulated and unsupervised and cash intensive, making it vulnerable to ML risk. The table below (table 7) depicts the number of new and used car imports over a 4-month period January – April 2017. The majority of used cars are imported by the unregulated sector.

**Table 5**  
**Vehicle Imports 02/01 to 04/05, 2017**

<b>Total</b>	<b>Used</b>	<b>New</b>	<b>% of used to Total Cars</b>
1615	1229	386	76.1%

Source of information: Data provided by Caribbean Motors.

*Remedial actions and effective, proportionate, and dissuasive sanctions*

325. The ONDCP as the AML/CFT Supervisor is fully responsible for imposing of remedial actions against FIs and DNFBP. The range of powers and ladder of sanctions available to the ONDCP includes: warning letters, compliance directions, restrictions and revocations. The ONDCP can also pursue criminal sanctions through the Courts. (See Table 6)

**Table 6**  
**Ladder of Intervention**

<p>Ladder of Intervention should be used to impose graduated sanctions as follows:</p> <p>Require remedial action – in a post exam report, these are the steps required to be taken with clear deadlines for implementation; they are not usually considered a sanction. Where an assessment of a financial institution becomes necessary because of extraordinary circumstances, this could be any communication to the financial institution;( this may well be considered a sanction, and if so, it should be communicated clearly to the financial institution, and recorded in the sanctions record).</p> <p>Warning letter – this is to be sent where the remedial action called for has not been implemented or has been done inadequately. (This is a sanction.)</p> <p>Notice of Non-Compliance – this is a formal notification of breach to the financial institution with the clear implication that sanctions are attached or are likely to follow. (This is a sanction.)</p> <p>Imposition of administrative sanctions.</p> <p>Alternately or at the same time, if warranted, recommendation to the Investigations Department of the appropriateness of instituting criminal charges.</p>
--

Source of information: Data provided by ONDCP.

326. The Authorities stated that for instances of non-compliance, meetings are held with the officials and management of the non-compliant institution and a strategy is put in place to address the instances of non-compliance along with timelines. Over the last 5 years the authority has only issued 5 notices of non-compliance and 1 financial sanction for breaches of AML/CFT legal requirements. (See Table 10 & 11) The low number of remedial actions applied by the supervisor and level of the actions concerns the assessors that remedial measures were not being adequately applied.

**Table 7**  
**Number of Institutions Issued Notices of Non-Compliance**

<b>SECTOR</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Car Dealership	1			
Dealers in precious metals and stones	1			
Real property businesses	1			
Travel agents	1			
Commercial Banks				1
Other				
<b>Total</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>

Source of information: Data provided by ONDCP.

**Table 8**  
**Financial Sanctions for Breaches to the AML/CFT Legal Requirements**

<b>SECTOR</b>	<b>2016</b>
Commercial Banks	1

Source of information: Data provided by ONDCP.

327. During the onsite visit the assessors reviewed a number of examinations files to understand the end to end process of onsite reviews. From this review the Assessors noted that, while the authorities indicated that notices of non-compliance would be issued when entities did not implement corrective action in the specified time period, in 4 out of 9 examinations files reviewed this action was not taken.

328. The supervisor did confirm that the follow-up process for examinations was severely impacted, as there were numerous instances where remedial actions were not received by the department. The receipt of remedial measures from the examined institutions was measured at 58% in 2013 with significant improvement to 88% in 2016. The supervisor advised that non-receipt of these measures was mainly attributed to the staffing issues at the ONDCP-FCU, as well as IT related matters. This however could not be verified and further compounded the issue. The assessors concluded that remedial measures were not adequately traced or applied by the ONDCP. In some circumstances timelines for remedial actions had passed and there was no heightened action.

329. Credit Unions, which came under the regulation of the FSRC in 2013, did not comply with the requirement for annual audits, as required by MLPR and the MLTFG. The supervisor advised and demonstrated that there was a directive implemented in 2015 which was intended to exempt financial institutions from this requirement once the ONDCP-FCU had scheduled an examination with institution. The intention was to reduce the perceived disruptions to institutions which arose out of the review process but was not driven by considerations of ML/FT risks. The assessors were able to confirm that this directive could not or should not supersede the law and hence could not be applicable.

330. The assessors were also concerned that all credit union had outsourced their compliance function, this included the position of the Compliance Officer. The same agency was engage for all these entities. This practice was condoned by both the ONDCP and the FSRC as it was indicated to the assessors that this practice was sanctioned and orchestrated by the credit union league. This practice conflicted with the

requirement of the MLPR that stated that Compliance Officers must be appointed at a management level (as prescribed by the recommendations (Rec. 18.2)). There were no corrective actions taken to address this breach of the law and the recommendations.

331. Despite several AML/CFT deficiencies and concerns being raised by the NRA process across all sectors, the listing of breaches and remedial actions does not appear to represent the magnitude of deficiencies identified. The deficiencies of FIs and DNFBPs included:

- Inadequate procedures on source of wealth
- Lack of annual/periodic screening of employees for ML/TF risks
- Customer identity not completed in a timely manner
- Inadequate CDD/EDD especially in the DNFBP sector
- Inadequate training of staff
- Inadequate reporting of SARs
- Inadequate monitoring tools especially in the DNFBP sector

332. The assessors have concluded that while there are remedial measures and sanctions that can be employed by the jurisdiction these measures and sanctions are not being fully applied. Therefore, the effectiveness of actions implemented was limited, while the proportionality and dissuasiveness of sanctions could not be judged.

#### *Impact of supervisory actions on compliance*

333. ONDCP and FSRC appear to be well-respected, and the interviewed FIs appreciated the interaction they have with them. The ONDCP considers that the routine reviews carried out by the two regulators have led to improvements in overall compliance by the FIs and DNFBP it supervises.

334. The Director of the ONDCP reported that the area of reporting was one area which saw this improvement. This was demonstrated by increased number of TPRs and SARs.

**Table 9**  
**TPRs and SARs for the period 2012 – 2015**

Year	TPRs Reported	SARs Reported
2012	217	172
2013	276	213
2014	307	253
2015	334	309

Source of information: Data provided by ONDCP.

335. Further, the supervisor stated that actions taken have been aimed at ensuring changes to FIs behaviour. FIs and DNFBP have mixed results when it comes to compliance with the key components of measurement used by the supervisor (See table 10). While the banks, local and domestic were considered largely compliant (over 85%), Credit Unions, Money Lenders, MSBs and Insurance Companies were low/moderate compliance and the DNFBPs represented are low. The statistics also clearly represent that

CDD is a challenge across all sectors with compliance at the domestic banks and international banks being 58% and 75% respectively.

**Table 10**  
**Areas of Compliance**

Sectors	Risk Assessment	Policies and Procedures	Customer Due Diligence	Internal Controls	Internal/external Reporting	Record Keeping	Employee Hiring/Screening	AML/CFT training	Annual AML/CFT Review	Total Sector Compliance		
Local Commercial Banks			92%	100%	58%	96%	92%	88%	100%	67%	88%	
International Banks			80%	80%	75%	90%	80%	100%	80%	95%	100%	87%
Credit Institutions			25%	71%	67%	83%	83%	83%	71%	83%	25%	66%
Insurance Companies (Domestic & Offshore)			30%	40%	55%	50%	60%	70%	70%	70%	40%	54%
Money Transmission Services			0%	63%	75%	75%	50%	50%	50%	25%	49%	
Company Service Providers			50%	100%	50%	67%	83%	100%	67%	50%	67%	70%
Money Lending and Pawning			25%	38%	63%	19%	19%	63%	38%	50%	13%	36%
Real Property Business			5%	10%	25%	15%	10%	60%	20%	15%	0%	18%
Dealers in Precious Metals, Art and Jewelry			0%	8%	33%	33%	33%	50%	42%	17%	0%	24%
Car Dealers			0%	0%	50%	0%	0%	50%	38%	0%	0%	15%
<b>Total</b>			<b>24%</b>	<b>39%</b>	<b>42%</b>	<b>41%</b>	<b>39%</b>	<b>55%</b>	<b>44%</b>	<b>41%</b>	<b>26%</b>	<b>39%</b>

Source of information: Data provided by ONDCP.

336. We can therefore draw a conclusion that supervisory actions appear to have resulted in relatively strong compliance with regard to the banking sector; however, there is still much work to be done with regard to other FIs and the DNFBP sector to improve compliance. Further, CDD compliance across all sectors need to be improved.

### *Promoting a clear understanding of AML/CTF obligations and ML/TF risks*

337. The ONDCP provides material on its website about AML/CFT requirements, including AML/CFT Guidelines, and participates in sector meetings held by the FSRC to elaborate on findings of onsite examinations.

338. The FIU has executed a comprehensive training program to ensure financial institutions and DNFBPs are educated on the AML/CFT legal framework. The FIU has undertaken outreach to FIs and DNFBPs and has worked with industry organisations to provide guidance and to promote awareness and compliance with the laws. See the table below which represents this training. (See table 12).

339. The Assessors were concerned that since several laws, regulations and the guidelines were only updated as at June 2017, to align them to the FATF recommendations, the FIs and DNFBP would not have had the benefit of these changes at the time of the assessment. Further, while ONDCP and the FSRC have jointly committed to providing training to the sectors and coverage was quite widespread, there were some sectors that have not been covered or fully covered by this initiative. These include: Attorneys, Accountants and Notaries involved in the financial services, Travel Agents and the Real Estate sector.

**Table 11**  
**Training Provided by the ONDCP**

Financial Institutions	Training of Financial Institutions 2012 - 2016									
	2012		2013		2014		2015		2016	
	No. of institutions Trained	No. Persons	No. of institutions Trained	No. Persons	No. of institutions Trained	No. Persons	No. of institutions Trained	No. Persons	No. of institutions Trained	No. Persons
Commercial Banks	4	382	4	304	2	200	2	113	6	80
Development Banks	1	27	0	0	1	33	0	0	1	1
Credit unions	1	1	0	0	1	2	0	0	2	17
Offshore Banks	0	0	1	24			2	17	2	8
Money Transfer Services	0	0	1	10	3	26	1	30	3	3
Money Lending & Pawn	2	10	0	0	0	0	0	0	1	4
Corporate Management & Trust Service Providers	0	0	1	4	17	55	0	0	0	0
Internet Gambling	0	0	0	0	0	0	1	11	0	0
Real Estate Companies	1	1	0	0	24	34			1	1
Insurance Companies	4	51	4	107	2	35	1	16	14	88
Dealers in precious Metal/Art/Jeweler	1	19	0	0	10	85	0	0	0	0
Car Dealerships	0	0	0	0	7	25	0	0	0	0
Financial Services Regulatory Comm.	0	0	0	0	0	0	0	0	1	3
Govt. / Statutory Institutions(including CIP)	3	48	2	50	0	0	0	0	1	9
Compliance Associations	0	0	0	0	8	11	0	0	0	0
Casinos	0	0	0	0	0	0	3	27	0	0
ONDCP(FCU, FIU, FID)	0	0	0	0	0	0	0	0	1	7
Other	0	0	0	0	0	0	0	0	2	212
<b>Total</b>	<b>17</b>	<b>539</b>	<b>13</b>	<b>499</b>	<b>75</b>	<b>506</b>	<b>10</b>	<b>214</b>	<b>35</b>	<b>433</b>

Source of information: Data provided by ONDCP.

### *Overall Conclusion on Immediate Outcome 3*

340. Generally, there are adequate licensing and registration controls in place which prevent criminals and their associates from inter alia holding or being the beneficial owner or performing a management function in FIs.

341. At time of the onsite review, there was some element of sector-based risk-based supervision applied by the ONDCP-FCU, in determining which institutions to examine and frequency of examinations, this however came prior to the completion of the national risk assessment exercise and therefore could not reflect output of that process.

342. The AML/CFT examinations conducted by the ONDCP-FCU and FSRC were determined by the assessors to be rules-based rather than risk-based.

343. With the just concluded NRA the ONDCP better understands the ML/TF risks faced by the respective entities they supervise; however they now have to adopt a RBA to AML/CFT supervision that matches this new profile.

344. There is no licensing or registration process for: Pawning; Real Property Business; Dealers in Precious Metal, Art or Jewellery; Car Dealerships; and Travel Agents.

345. Sectors such as the Accountants, Attorneys and Public Notaries are subject to supervision when they conduct financial services. However actual supervision was limited since not all financial activities performed by the specific players were known to the Supervisor. CIP Agents were not subjected to supervision as they were only added as DNFBP by the end of the onsite visit, while used Car Dealerships were not subjected to supervision.

346. ONDCP has a range of remedial actions at its disposal, however application of these measures has been very minimal and have not demonstrated effective, proportionate and dissuasive actions.

347. Supervisory actions have resulted in relatively high compliance level with regard to the banking sector; however other FIs and the DNFBP sectors have demonstrated low to moderate compliance only. Further, CDD compliance across all sectors was also low to moderate.

348. The ONDCP and the FSRC are well respected by the FIs and DNFBP and have utilized postings on the ONDCP webs-sites, including updates the laws and guidelines, training and outreach programmes to sensitize staff and stakeholders to their regulatory obligations.

349. The ONDCP-FCU was under resourced which led to concerns with robustness of the onsite reviews and the follow-up and remediation process.

350. **The rating for Immediate Outcome 3 is a low level of effectiveness.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

- There is some level of identification, assessment and understanding of the vulnerabilities posed by the misuse of legal persons and arrangements in Antigua and Barbuda.
- Measures have been implemented to prevent the misuse of legal persons and legal arrangements.
- The Law (Miscellaneous Amendments) (No.2) Act, 2017, provides for entities to annually supply an attestation report on beneficial ownership and control to the FSRC and for the FSRC to have a registry function for International and Domestic Corporations. While the legislation is in effect and law, its effectiveness could not be assessed due to its recent enactment.
- Lawyers are not fully aware of their AML/CFT obligations and the risks posed when undertaking relevant functions as it relates to AML/CFT and do not believe that the MLPA is applicable to them or that they carry out financial transactions.

#### **Recommended Actions**

- Antigua and Barbuda should further assess the ML/TF risks associated with the misuse of legal persons and arrangements.
- Increased outreach should be provided to lawyers and CSPs so that they understand the ML/TF risks associated with legal arrangements and ways of mitigating said risks.
- Implementation of the provisions of the Law (Miscellaneous Amendments) (No 2) Act, 2017
- The supervision of CSPs should be strengthened to ensure consistent application of CDD measures to obtain information on the ultimate beneficial owner.

There should be the implementation of sanctions against those who fail to obtain BO information.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25. <sup>6</sup>

---

<sup>6</sup> The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA 115

## *Immediate Outcome 5 (Legal Persons and Arrangements)*

### *Overview of legal persons*

351. The types of legal persons which can be registered in Antigua and Barbuda include both domestic and international companies. Domestic companies – private and public companies with limited liability incorporated under the Companies Act. Such companies are formed for the purpose of carrying on a trade or business for gain and conduct their business in or from Antigua and Barbuda. Public companies are domestic companies where any part of shares or debentures are or were part of a distribution to the public. There are 12,035 domestic companies in Antigua and Barbuda as at 5 December 2016; Non-profit companies – private companies without share capital incorporated under the Companies Act and the Friendly Societies Act. These entities are restricted to carrying on businesses of a non-profit nature, such as charitable, educational, scientific, literary, artistic or sporting activities. The list of permitted activities is outlined in Section 328(2) of the Companies Act and Section 5 of the Friendly Societies Act. There are 143 NPOs in Antigua and Barbuda as at 5 December 2016. The Registrar for Intellectual Property and Commerce is the Registrar for Companies and is responsible for administering the Companies Act. One of its functions is to maintain a register of domestic and non-profit companies containing the names of every company that is incorporated, continued. A “continued” company under the Companies Act is one that was incorporated or registered under the previous Companies Act and subsequently recognised as a valid and existing company under the current Companies Act, (this is done by the company applying to the Companies Registrar for a certificate of continuance, or for companies that do not do so, through the deeming provisions of the current Companies Act.); or registered under the Act. It also keeps a record of all company documents it receives under the Act - pursuant to Section 494 of the Companies Act 1995.

352. International business companies (IBCs) – incorporated under the International Business Corporations Act (IBCA) are formed for the purpose of carrying out international trade or business from Antigua and Barbuda. IBCs include international insurance, international manufacturing or other international trading or commercial activities. IBCs enjoy a wide range of tax exemptions in respect of their international trade or business from the date of their incorporation; there were 5, 102 IBCs in Antigua and Barbuda as at 5 December 2016 of which 1,467 are inactive IBCs, hence only 3 635 are active IBCs. International banks – are incorporated under the International Banking Act 2016. There are 12 international banks in Antigua and Barbuda as at 5 December 2016; International limited liability companies (ILLCs), international trust (ITs) and international foundations (IFs) – are all entities which can be established. There are no ILLCs, ITs, or IFs formed in Antigua and Barbuda as at 5 December 2016. The Financial Services Regulatory Commission (FSRC) are responsible for administering the International Business Corporations Act, the International Banking Act, the International Limited Liability Companies Act, International Trust Act and International Foundations which includes the incorporation, registration and supervision. The exercises its mandate through the overarching legislation the Financial Services Regulatory Commission Act 2013. There is a Register of International Business Companies which is a public register.

353. All domestic and non-profit companies in Antigua and Barbuda must register and provide their Articles of Incorporation to the Registrar of Companies at the time of their incorporation. The Articles of Incorporation must include general information on the company such as name, classes and any maximum

number of shares the company is authorised to issue, number of directors, and restrictions on the business that the company may undertake – pursuant to Section 5 of the Companies Act 1995. Instances of companies owning companies were cited as being very rare. Any changes in share ownership of a company must be evidenced by lodging at the Registry a copy of the share transfer instrument bearing the signature of the transferor and naming the transferee. No transfer of stock or shares of a company is valid unless the instrument of transfer is presented to the Registrar of Companies and duly registered.

354. No IBC can be formed other than through a CSP which is a licensed activity; otherwise such formation is illegal and void. That said CSP must apply to the FSRC for a license. The FSRC then conducts its assessment of the said CSP and thereafter issues a licence only upon satisfaction of the legal requirements of the CMTSPA. The CMTSPA states that where a corporation applies for a licence under the Act, that corporation must also regularly retain an accountant or attorney licensed to practice in Antigua and Barbuda. That attorney or account may be retained on a regular internal by retainer contract or a contract for services or have a seat on the Corporate Board of Directors. The CEO of the FSRC serves as the Registrar.

### *Overview of legal arrangements*

355. In Antigua and Barbuda there is provision for the creation of domestic trusts and international trusts. Domestic trusts are recognised and created under the common law framework and have no governing statutes. Local trusts are governed by Trust Corporation (Probate and Administration) Act, Trustees and Mortgagees Act, and Trustees Relief Act, in some instances the trust forms part of a mortgage company (mortgage & trust) and in other instances they are created for a specific limited legal purpose. Ordinary trusts that operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for income tax purposes. No details of the trust beneficiaries or settlors need to be provided at the point of registration or in the annual tax returns. Trusts are taxed at the trustee level. International or foreign trust (defined as trusts which are governed by the law of a jurisdiction other than Antigua and Barbuda) are governed by statute to include the International Business Corporations Act, the International Banking Act (if a the trust is a component of a banking operations) (banking & trust) and International Trust Act (which wholly deals with foreign trusts). There is an obligation for international/foreign trusts to all be registered in Antigua and Barbuda pursuant to their legal obligation. The International Trust Act 2007 was amended by the Law (Miscellaneous Amendments) (No. 2) Act 2017 and now provides for annual attestation on beneficial ownership and control. The FSRCA 2013 was also amended by the same act to give the FSRC a registry function to be responsible to maintain a “Register of International Corporations” for which it has issued certificates of incorporation, licences and any other document pursuant to the International Trust Act. The register should include but is not limited to the name, address and other relevant information of beneficial owners.

### *Public availability of information on the creation and types of legal persons and arrangements*

356. Basic information on the creation and types of legal persons that may be registered in Antigua and Barbuda is publicly available including name of company, type of company, incorporation number, address,

status, registration date and is maintained by the Registrar of Intellectual Property. It is also available on the FSRC's website. All records held at the Antigua & Barbuda Intellectual Property and Commerce Office are public documents and are searchable and can be copied upon the payment of the prescribed fee.

**IBCs:** The FSRC has a public register which lists information on the creation of all IBCs incorporated in Antigua and Barbuda. Any member of the public is able to conduct a physical search of an IBC or a corporate report can be produced and electronically transmitted; both of which are subject to payment of the prescribed fee. The information that is publicly available includes current and former registered agent particulars, incorporation date, corporate name, number and purpose of the company, type of IBC, names of Directors (and if applicable former directors), the current legal status of the company, authorized capital and whether any inquiries have been filed. Information on trust companies registered at the FSRC is not available publicly but can be shared with other competent authorities such as the FIU and Inland Revenue.

**International Banks:** This information is readily available in physical form at the FSRC. With the advent of the electronic registry this information will also be available online.

**Online Gaming & Wagering Companies:** Licensed entities must first register as an IBC and only then can they apply for an Interactive Gaming or Wagering license. The information relating to the legal entity and the legal persons involved in the institution are kept private and confidential subject to legal requests under the FSRC Act.

**Insurance Companies:** When licensing companies to conduct insurance business, the company must first be registered under the Companies Act and provide the following as a part of the licensing process: proof of incorporation, legal form and status, the address of the registered office, and a list of directors. The documents submitted are available from the Intellectual Property Office. Information on the creation and type of legal arrangements is also publicly available. It takes 2 days for the information to be provided and where necessary the ONDCP can access the information directly as highlighted at para 373 of the report. Information required under 24.3 and 24.6 is available. Further, there are no responses by any jurisdictions highlighting the lack of timely responses in this area of international cooperation.

### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

357. In relation to identifying, assessing and demonstrating an understanding of the risks posed, during the NRA process, in accordance with the World Bank tool, the Authorities indicated that the following factors were utilised to assess availability and accessibility to beneficial ownership information in corporations, international trusts and similar structures registered in or administered from within the country. In addition, consultations were held with the Director of IBCs, the Registrar of Companies along with other legal entities who provided the relevant information on legal persons and arrangements. Information considered included whether regulated businesses or professions are required to form, register or administer a legal entity or legal arrangement; the mechanism chosen by the country to collect and maintain basic and beneficial ownership information of legal entities formed or registered in the country, and beneficial ownership information of legal arrangements formed or administered in or from the country; the relevant regulatory framework and the effectiveness of beneficial ownership information CDD

MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA 118

requirements (pertaining to natural persons and legal entities and legal arrangements); Statistics or information on crimes (including money laundering involving the use of shell companies or other opaque structures) and whether accurate, adequate and current beneficial ownership information can be accessed in a timely manner by competent authorities; Interviews/consultations with the reporting entities and their supervisory authorities – ONDCP, FSRC, Intellectual Property, Law Enforcement - RPFAB, Customs, Immigration Department, ONDCP Investigations Department, Inland Revenue Department (the tax authority); it was indicated that Interviews were conducted, and questionnaires were disseminated to the Trust and Company Service providers and law firms.

358. The Assessors were informed that there was no engagement of the Bar Association in the NRA by its representative at the onsite however the Authorities indicated that in consultations with the secretary of the Bar Association questionnaires were sent to the secretary for distribution to its members and that the relevant information was received from several members of the Bar Association to include attorneys who are also CSPs and realtors. The documents provided to the Assessors indicate however that at the date of submission to the assessors, no response was received from members of the Bar Association. Additionally, sensitization which was to have taken place prior to completing the questionnaire was not done. The lack of response by the Bar Association negatively impacts an effective assessment.

359. In sector vulnerabilities international banks and company service providers were both rated medium high. In the banking sector it was noted that complex ownership structures involving corporate entities were used to conceal the identity of offshore owners and for PEPs. It was determined that there should be continuous training and that regulators and supervisors should pay attention to high vulnerability products and services and criminal and administrative sanctions should be enforced. It was identified that CSPs were obtaining insufficient customer and BO information however these were in the minority of examinations. There is some understanding of the vulnerabilities posed and the Company Registry has recognized this risk. It was also noted that Lawyers provide escrow services for clients however these financial services are not supervised for AML/CFT oversight as there is no clear definition of Financial Services. In relation to NPOs- Noted noncompliance in filing Annual Returns and financials. A recommendation coming out of the NRA was for Arrangements of records within the Companies Registry to allow for the identification of all NPOs under the relevant acts, the types of activities and financial activity, to be immediately undertaken. Clear policies for NPO implementation and that there be a Legislative framework for escrow agents.

360. A diverse range of DNFBNPs operate in the jurisdiction these include Company Service Providers, Attorneys-at-Law and Internet Gambling & Sport Betting, Land. All of these entities are listed under the First Schedule of the MLPA and fall under AML/CFT supervision by the Supervisory Authority. Only Company Service Providers and Internet Gaming are licensed and regulated entities under the purview of the FSRC. The assessment of this DFNBP noted a general level of inconsistency in the AML/CFT systems adopted by these entities. Additionally, there exists inconsistent levels of AML/CFT compliance. These factors have contributed to the overall assessment of the sector as having a Medium-High ML vulnerability.

### *Mitigating measures to prevent the misuse of legal persons and arrangements*

361. The Authorities have implemented some measures to prevent the misuse of legal persons and arrangements. Attorneys serve as CSPs and realtors, however the Bar Association indicated that there has been no AML/CFT outreach in the last 4 years and no guidelines or typologies provided by the ONDCP in relation to red flags when acting as CSPs or realtors. The Bar Association indicated that not many lawyers practice as CSPs and realtors though no information was provided on the size of the sector. It is also noted that this information was also requested by the Authorities in addition to the response to the NRA questionnaires referred to above but was not received. The Bar Association was also unable to say whether it was difficult to obtain BO information. The Association was of the view that KYC would address any risks associated with trusts. It was highlighted that there is an issue among lawyers in relation to whether they should be under the MLPA as financial activity is not defined in the Act and they do not consider themselves as carrying out financial activities and therefore should not be subject to the legislation. On the issue of addressing risk and doing business it was indicated that they have used a common-sense approach as they are also mindful of the reputational risk. The authorities submit that lack of awareness of the bar association as a whole does not diminish the fact that those who conduct the relevant activities are aware of their obligations and that they are a separate subsidiary and are regulated and supervised under the AML/CFT regime. It was indicated that there are 200 members of the bar association and approximately 24 are CTMSPs who are trained and monitored. There was no training in 2015 and 2016, last training having occurred in 2013 & 2014 by the ONDCP (FAU) as highlighted at table 11, page 120 of the MER. The FSRC conducted training as well. In respect of CSPs the numbers trained is as follows: 2012-20, 2013-20, 2014-23, 2015-26, and in 2016-26. At paragraph 245 of the MER is also stated that the Supervisory Authority conducted training in 2016 and in respect of CSPs, 12 were trained. While there has been outreach in relation to the sector there still appears to be a need for additional focus given the inconsistencies in understanding and application among some of its members.

362. Where a customer is a legal person or a trust, measures are taken to determine who the persons are who ultimately own or control the legal person or trust. In relation to trusts, FIs obtain information on the settlor and/or beneficial owner or class of beneficiary of the funds, who provided the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust. Identity of principals, in particular those who are supplying and have control of the funds. Any application to open an account or undertake a transaction on behalf of another without the applicant identifying their trust or nominee capacity is viewed as suspicious and requires further inquiries.

363. Nominee shareholding is related only to the IBC sector. It is a service performed by CSPs pursuant to section 2 of the CMTSPA. It therefore is a licensed activity. The activity is licensed by the FSRC. Such license is issued upon satisfying the legal requirements so to do, together with the necessary due diligence assessment prior to the license being issued. Within the CMTSPA the CSPs are expressly referred to their obligation as it relates to the MLPA. The misuse is therefore limited in that should the nominee shareholder change that change must revert back to the FSRC for a license to be issued in the new name.

364. In relation to a Nominee shareholder as per the CA, a substantial shareholder if he holds 10% of voting rights hold by himself or his nominee, shall provide notice of name address or name of nominee to the company register within 14 days, the company then keeps the register of substantial shareholders. The Registrar may require the company to furnish the register which must be complied with within 14 days, if default occur every office in default is guilty of an offence.

365. For all non-licensed IBCs changes must be submitted to the FSRC within 15 days after changes occurs to include changes to the Directors of the corporation – pursuant to section 74 of the IBCA. In instances of none compliance the general offences section applies.

366. Domestic sector – within 15 days of the change of Directors the Registrar has to be notified

367. In respect of Trusts there are no standalone (international or domestic) within the jurisdiction. In the Domestic sector there is a single trust existing, which is primarily being subsumed as part of a bank and a mortgage trust company, such companies are already subject to the application to counter measure regarding ML/TF as well as mitigation. In the International sector - two (2) banks held a composite bank and trust license. The trust business for the two banks however was non-existent as at December 2016. Further, at December 2016, one of the banks which held a composite bank and trust license was in the process of voluntary liquidation – a consequence due primarily to the de-risking phenomenon.

368. As such there are mitigating measures in place with respect to the legal arrangements having regard to the number, risk and type of sector.

369. The authorities indicated that Department staff of the company registry have attended training sessions held by the ONDCP and report any abnormality which may give rise to suspicion when it arises. IBCs: Following the commencement of onsite examinations, the FSRC has begun undertaking a risk assessment of the CMTSPs which includes AML/CFT risks. The risk assessment includes an evaluation of KYC/CDD measures, record retention, the application of a risk management framework, the filing of reports to the FIU, AML/CFT staff training and an assessment of the internal compliance function. The FSRC does not permit the incorporation of an IBC without the company's stated corporate purpose and the registered agent is encouraged to advise the FSRC of the IBC's place of operation. The jurisdiction has enacted legislation which prohibits CMTSPs from registering IBCs without knowing who the beneficial owners are and provides a prescriptive list of particulars to be obtained. Additionally, the jurisdiction's guidelines require CMTSPs to risk score clients according to factors such as geographical location, type of business and whether the client is a PEP or otherwise. In cases of licensed IBCs, all directors and shareholders are subject to third party probity testing for fit and properness and Board approval, and any changes in directorship and shareholding is subject to prior approval from the Board. International Banks: Prior to the onboarding/ownership process of a licensed entity, owners albeit natural persons or corporate are subjected to a due diligence test. The ongoing assessment of this factor is normally done during the onsite process. Online Gaming & Wagering Companies: Prior to the licensing of an entity the beneficial owners, officers and key persons are subjected to strict probity and due diligence assessment conducted on each key person by an independent third-party service provider, to ensure that they are fit and proper individuals. The FSRC in its internal assessments also applies the suitability test which is where the probity (reference to person's morality and sense of decency) is assessed. The FSRC therefore applies to each person the provisions under Interactive Gaming and Interactive Wagering Regulations 2007 as amended (IGIWR). In particular, Regulation 15 of the IGIWR, Suitability of Applicants, which brings into question issues about the persons character, business experience, appropriate treatment of player winnings, safeguards surrounding underage and problem gambling, the person being untainted by illegality and that they will follow policies and take affirmative steps to prevent ML/TF. The application of the said regulation

is effective through the Schedules to the IGIWR which are submitted along with the application, for example, Schedule C Personal information, Schedule E Application for Key Person. In addition, there is the application of the relevant Guidelines which align to the requirements in Regulation 15 IGIWR.

370. The Registrar does have certain powers under the Companies Act of investigation through the Attorney General's Chambers and the ability to penalize those proffering false statements in accordance with section 518 of the Companies Act, Section 11 of the Business Names Act, Cap. 63 and Section 70 and 83 of the Friendly Societies Act, Cap. 184. There are criminal sanctions under the Companies Act. The filing of annual returns annually is to make sure as far as possible that information submitted is true to the best of the Company Officer's belief. Further, NPOs must submit annual audited financial reports. In addition, companies are required to notify the Registry of other changes. Failure to send in these changes and/or to file annual returns can result in a company being struck off. Failure to provide financials/audited accounts for NPOs can result in their being struck off. In case, of the Friendly society it can result in them being cancelled.

### *Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons*

371. The IPO Registrar has the power to request information. It is contained in documents filed on domestic companies. This information is available in a timely manner. Basic information is available at the FSRC and the BO information is retained by the CSPs

372. For domestic companies, there is a free online search which provides limited access and a fee of EC\$20 for access to all information held. The Intellectual Property Office is in the process of scanning all of the information in their possession and there will be a minimal fee (EC\$1) to see all documents that have been submitted. It was indicated that the online registry should be completed by July 2017, with some software issues having prevented an earlier completion date. All changes are registered with the Registrar within 28 days. The staff complement is very small; 2 officers enter the information and one validates to ensure that information is up to date and accurate. When Companies submit annual reports, the IPO certifies that the information is true and there is a fine and a criminal sanction if it is not. Information submitted by the companies is checked against other information on file to ensure that it is accurate. There are 2 compliance officers who cross reference what was filed before and if it is flagged as incorrect the company does not get a good standing certificate. If the company e-files, an electronic alert or email is sent to the company's law firm.

373. Requests for information from the IPO are received from the ONDCP and Police. The Registrar responds to the ONDCP within 2 days on average, if however, the information is required immediately, it can be provided at once. The Registrar can allow the ONDCP officers to come in and retrieve the information themselves if it is urgent. The ONDCP officers cannot alter information and 2 designated officers from that agency are allowed access. The Registrar has finalized an MOU with the FSRC and the ONDCP which supports sharing and access to information as competent authorities The Registry will provide them direct access to the information when the online registry is completed. The IPO is presently in the process of finalizing an MOU with the IRD. Other competent authorities would similarly have to

enter into a MOU to access the information. The public would be able to obtain information on name, company, business number, whether active, address, for free online, this is agreed with CARICOM throughout the Region. The police, ONDCP and FSRC would be free. Statutory bodies, governmental bodies, IRD, transportation board get information for free. FIs and DNFBPs write for BO information and pay.

374. The Registry receives 2-3 requests per day from the ONDCP and the police. They also receive requests from overseas for BO information and are able to respond to them in an accurate and timely manner. FIs indicated that they are able to obtain BO information.

375. At present the FSRC keeps basic information and will keep BO information as a result of the passage of amendment mentioned above. It should be noted that since 2008 by the enactment of the CMTSPA such BO is already kept by the CSP and the FSRC can request the BO information. At present the FSRC keeps basic information Nominee directors and shareholders have to provide names of directors, Usually the CSPs. Directors have to be a named corporation or Individual. In accordance with the IBCA section 61 as amended that “a corporation must have at least one director, and in the case of a corporation licensed under this Act, all director must be natural persons”.

#### *Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements*

376. At the time of the onsite, when requests are made for BO information the FSRC goes to the CSPs, and they get this information in a timely manner. Responses for BO information are usually provided within a period of one to seven days.

377. The FSRC which is responsible for regulation, supervision and monitoring of IBCs, has an oversight programme which includes both an onsite and offsite examination. These examinations are performed jointly by the FSRC and the ONDCP and ensure compliance of obligations under the CMTSPA 2010 and the MLPAs part of the examinations, the FSRC and ONDCP verify that ownership information, including beneficial ownership information, is accurate and up-to-date. Also, FSRC ensures that shareholder registers are properly kept by the IBCs and that beneficial ownership information is available. All service providers in Antigua and Barbuda are regulated under both the CMTSPA and the MLPA. All IBCs are required to engage a service provider licensed by the FSRC under the CMTSPA. Onsite examinations conducted by the FSRC are to ensure that service providers are complying with the obligations and requirements under the CMTSPA as well as the obligations under the International Business Corporation Act (IBCA) and the MLPA. In cases where a service provider's file is found to be incomplete or inaccurate, the service provider has three months to rectify the issue. If, after three months, the issue has not been rectified, the Supervisory Authority for AML/CFT is notified for follow-up action. There are also penalties provisions that may be imposed on an IBC for failing to comply with record-keeping obligations under the IBCA. Pursuant to the CMTSPA 2008, all service providers are required to retain ownership information (including beneficial ownership) of all IBCs under their management, including those IBCs which have been struck off the register, for a period of six years from the date of the discontinuance of their services to their clients. In addition, pursuant to the MLPA, service providers must maintain all records for a minimum period of six years.

378. There is registration with regard to legal arrangements with the domestic and international financial services sector. Statutory requirements to keep ownership and identity information apply to professional trustees that act by way of business. This applies to professional trustees of foreign, international and local trusts. The provision of such trustee services is regulated under the CMTSPA and the MLPA and such professional trustees are required to conduct customer due diligence on the trusts for which they act as trustees. This includes establishing the identities of the settlors and beneficiaries of the trusts for which they provide services.

379. In respect of trusts that are not professionally managed, the obligations on the trustee to maintain information on the trust beneficiaries and settlors arise only from the requirements of common law. This however does not ensure that there is timely access to information.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

380. As part of examinations, the FSRC and ONDCP verify that ownership information, including beneficial ownership information, is accurate and up-to-date. Also, FSRC ensures that shareholder registers are properly kept by the IBCs and that beneficial ownership information is available. During the review period, onsite examinations were conducted by the FSRC to ensure that CSPs are complying with the obligations and requirements under the MLPA, the CMTSPA and the IBCA. In instances where a CSP's file is found to be incomplete or inaccurate, a written report is provided to the service provider noting the deficiencies. The service provider has three (3) months to rectify the issues and provide a status update to the FSRC on how the issues are being rectified. The FSRC conducts a follow up off site review to ensure that records are maintained in the manner outlined. In addition, the information is forwarded to the ONDCP for follow up monitoring. During the onsite visits conducted in 2015 and 2016, only Two (2) of the Nineteen (19) CSPs were identified as having a number of deficiencies relating to the keeping of beneficial ownership information. The FSRC wrote to these two (2) CSPs to address the outstanding issues within a three (3) month time frame. The letter included the threat of further sanctions if the matters were not addressed. Thereafter status updates were provided to the FSRC, At the end of the stipulated time period the FSRC was satisfied that the service providers retained the records in the manner prescribed. The country indicated that as a result of the CSPs rectifying their records, the FSRC did not apply any greater sanction on the sanctions ladder. Consequently, the FSRC has implemented follow-up actions on its ladder of intervention as highlighted in table 6 and has not applied any monetary penalties.

381. Warning letter – this is to be sent where the remedial action called for has not been implemented or has been done inadequately. (This is a sanction.). Notice of Non-Compliance – this is a formal notification of breach to the financial institution with the clear implication that sanctions are attached or are likely to follow. (This is a sanction.). Imposition of administrative sanctions. Alternately or at the same time, if warranted, recommendation to the Investigations Department of the appropriateness of instituting criminal charges.

382. In 2015, following investigations which led to a legal person being found guilty of six criminal offences, the Commission took the decision to strike the legal person off of the register and the registered agent was informed of the action taken. The jurisdiction issued a fine of EC\$5,000 for each count levied.

383. In the domestic sector is the Power to strike off. When a company is struck, this information is placed in the gazette. Guilty of default. Approximately, 140 companies have been published as struck off for the review period 2012-2015.

384. IBC - In practice in instances of non-compliance, the FSRC takes steps such as requesting meetings with the licensee, issuing written warnings with timelines for remedial action, orders and withholding the renewal of licences. The Act does allow for more stringent action such as the suspension and revocation of a licence and the imposition of penalties and imprisonment terms however these have not been executed given the infancy stage of the sector's regulation and supervision. The Commission has the power to strike a company off of the register if found to be operating in contravention of its corporate purpose, is without the required one Director or is found guilty of unlawful practice. The impact of a company being struck off includes denial of a certificate of good standing which would at some level affect the company's ability to operate, attract investment or to enter into business transactions.

385. With regard to the International Banking Sector, the FSRC Act No 5 of 2013 and the International Banking Act 2016, No 6 of 2016 empower the FSRC to apply fines for non-compliance to directives, regulatory submissions etc. These two pieces of legislation ensure fines for breaches are commensurate with the severity of any breach. Based on the period 2012- 2016, for international banking have issued written warnings, fined institutions for non-compliance as well as made direct interventions.

386. Online Gaming & Wagering Companies: Instructions for steps to be taken by the institution that will return it to a situation of compliance are made by the ONDCP as they are the Supervisory Authority. Failure to comply could result in the loss of Internet Service or restriction of access to the internet or complete shutdown of services for failure to comply. If any company has been found to be partially compliant to any of the ML Regulations, then corrective action has been instructed with specific details as to the action required with a specific deadline. No further action has been necessary as any corrective action has been completed by the deadline.

387. Despite the stated sanctions it is still of note that not all persons are complying with the information requirements, which means that they not be sufficiently dissuasive or are not being applied.

### *Overall Conclusion on Immediate Outcome 5*

388. Antigua and Barbuda has conducted an assessment of the ML/TF risks associated with legal persons and legal arrangements. Attorneys were rated as High, Notaries are restricted to certifying documents and do not conduct any financial transactions and are therefore rated as low. CSPs were rated as Medium High. Based on the vulnerability assessment, a number of recommendations were made to remedy the identified weaknesses. Information submitted by legal persons is validated against information on record by the Company Registry. While there are a number of effective elements in the system there is concern that there may be a need for more targeted outreach to lawyers and CSPs. Paragraph 253 of the MER indicates that the CMTSPs and other DNFBPs interviewed asserted that they were aware of and understood the need to identify the BO of IBCs and other legal persons. However, the value of that assertion

is diminished by that fact that CMTSPs and other DNFBSs disclosed during the onsite mission that they do not consistently drill down and identify the natural person who is the ultimate beneficial owner in all cases. Consequently, risk management frameworks of FIs do not in all cases adequately address the required FATF standards for identification and verification of the natural persons who are beneficial owners of legal persons. It is noted that smaller DNFBSs are not applying CDD consistently but CSPs fall under this category and therefore can be targeted for misuse. CDD is not consistently applied for legacy customers, just for newer customers. CDD needs to be improved across all sectors and may require the application of the listed sanctions.

**389. The rating for Immediate Outcome 5 is a moderate level of effectiveness.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- The relevant competent authorities provide information when requested and assist with extradition once due process has taken place. They are able to identify, freeze, seize, confiscate, share and provide information.
- The level to which the competent authorities seek international cooperation which is aligned to transnational elements is low.
- Prioritizing of applications for MLA is an issue.
- Timely processing of applications is an issue.

#### ***Recommended Actions***

- The competent authorities should actively seek international cooperation in the investigation, prosecution and confiscation of ML activities and their proceeds.
- There is a need to employ adequate resources to facilitate the processing of requests in a constructive and timely manner which does not detract from other work of the ONDCP.
- Appropriate prioritizing of requests needs to be implemented
- The country to ensure there is no legal impediment which may obstruct international co-operation having regard to requirement for 'dual criminality' under MACMA.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

### ***Immediate Outcome 2 (International Cooperation)***

#### *Providing constructive and timely MLA and extradition*

390. With respect to providing MLA and processing extraditions time begins to run as soon as the AG is notified that there is a request and not necessarily when he receives the document and it is dispatched within 24 hours of receipt of the actual request to the relevant agency to be processed.

391. The AG indicated that more staff is needed as there are many requests. He however indicated that he should be getting 3 new attorneys, where one will specifically be assigned to these matters.

392. When MLAs are received by the Ministry of Foreign Affairs they are forwarded to the AG for action. They are dispatched within 24 hours and similarly sent back to the requesting jurisdiction within 24 hours of receipt upon completion by the relevant agency. A request has never been refused.

393. The Judiciary indicated that if there is a need for further particulars, the application for the production or restraint order has been sent back to the ONDCP on a few occasions and they respond promptly. He indicated that institutions respond to Production Orders, however, there are instances in which extensions have been granted on Productions for further time. It was further indicated that from the time of filing, MLAs are heard and granted within 2-3 weeks unless some clarification is sought. Clarification is provided within 1-2 weeks, longer if the information is coming from abroad.

394. The DPP indicated that his office does process some MLAs and that they are constrained by resources, namely limited staff, so it may take approximately 3 – 6 months. When DPP's office gets MLA responses, they are sent directly to the requesting country and it is also copied to the AG.

395. There have been instances where responses have been sent back to the relevant authority processing the MLA requests as all of the tasks requested were not completed. The timeliness of responses is impacted by requests for further particulars by the judiciary and requests for extensions by FIs. There have been no adverse findings as it relates to the quality. There have been delays in relation to one (1) extradition request due to court proceedings outside the control of the jurisdiction. This request was received in 2009 and was set for further court process in 2017 in relation to an appeal by the subject of the request. One (1) request was received within the relevant period. No requests have been refused.

396. The procedure for ensuring confidentiality after the request has been completed should be clarified as the AG indicated that the matter is received and stamped confidential and he is the only one authorized to break the seal. He examines the documents to ensure that all matters contained in the request were addressed and if anything is missing he asks the entity for the information. He indicated that he is the one who deals with this, not his secretary as there is a special secretary whose instructions are not to open them. However, the ONDCP indicated that a Cover letter is sent to the AG and draft cover letter to the requesting entity. If there are confidential documents they have developed the practice of describing in detail what is being sent and if the AG needs to see them he lets them know, if not they send back finalized to the AG in a sealed package. While both methods speak to confidentiality it is unclear whether there is a standard practise, or the action taken is dependent on the particular circumstances. They also indicated that the AG has never come back to them to do anything further on an MLAT request.

397. The ONDCP indicated that MLA requests which do not require a large volume of financial information take approximately 1 or 2 months to complete the MLA and return it to the requesting jurisdiction. Financial institutions request more time given the volume of information and the ONDCP informs the requesting jurisdiction of the reason for the delay. MLAs are prioritized especially those requiring freezing and if there is money involved and MLAs to give effect to confiscation orders. Asset sharing is done on a case by case basis; however, there is an agreement with the United States. The ONDCP indicated that the prioritization of the processing of MLA requests is one of the impediments to conducting other investigations is owing to the number of MLAs received and the number of requests which have to be made locally in fulfilment of the Requests. Of those jurisdictions which indicated that there had been

MLA requests between 2013 and 2016, one (1) requesting jurisdiction indicated that responses were received within 13 months and for another, outside of 14 months. Another jurisdiction indicated that there were four (4) requests pending, three (3) of which had been initiated outside the relevant period.

398. The ONDCP has reported to receiving and processing 28 requests between 2012 to 2016 (see table below). However, information on conclusions and the timelines have not been received. It was further noted by that office that differences in numbers of requests received and of requests processed arises from the fact that not all requests received in a year are completely disposed on in that year, and requests completed and responded to may relate to requests received in a previous year. Requests may also be responded to serially, such as when records are provided by rolling production.

399. With regard to the extraditions there is an extradition relationship between the USA and Antigua and Barbuda under the six-nation Extradition Treaty with the Organization of Eastern Caribbean States (1997). We have only one pending outgoing extradition case, for the former Administrator of the Financial Services Regulatory Commission (FSRC) in Antigua, Leroy King (King), who is charged in connection with the \$8.5 billion Stanford International Bank, Ltd., (St. John, Antigua) Ponzi scheme. He is the last defendant awaiting trial in the Southern District of Texas on counts of conspiracy to commit wire fraud, mail fraud, and securities fraud; obstruction of justice; and money laundering. King was provisionally arrested by Antigua on June 25, 2009 and was committed for extradition. Since then, he has taken multiple appeals and launched an aggressive defence. The Director of Public Prosecutions has vigorously represented the United States in the King case, and others, and continues to do so. In particular, the Director of Public Prosecutions has restrained assets and executed forfeiture judgments at the request of the United States five times in the past ten years.”

400. The assessors can conclude that there is a process for exchange of information, however there appears to be a level of inconsistency in the application across varying jurisdiction. There is concern that the process is not provided to all jurisdictions due to lack of appropriate mechanisms e.g. MOUs, lack of resourcing and issues with prioritizing. While some applications may be delayed do incomplete information or unavoidable legal procedures there is a concern that these requests are not done in a timely fashion. Due to lack of information on the quality of the assistance the assessors are unable to opine on this area.

401. The table below lists the number of requests sent and received by the jurisdiction.

**Table 1**  
**Antigua and Barbuda’s MLA statistics 2012 – 2016**

<b>Year</b>	<b>Requests Received</b>	<b>Suspected criminal activity</b>
<b>2012</b>	10	investment fraud, corruption, money laundering
<b>2013</b>	4	migrant smuggling, drug trafficking, fraud, money laundering
<b>2014</b>	4	drug trafficking, money laundering, fraud, corruption
<b>2015</b>	4	money laundering, drug trafficking, corruption
<b>2016</b>	6	corruption, money laundering

Source of information: Data provided by ONDCP.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

402. The ONDCP indicated that in two cases they initiated freezing of assets that led to forfeiture. MLAT requests were made for proof of conviction in a foreign state and copies of testimonies. In the first case, the monies were proceeds of corruption committed in another state and the laundering was committed in Antigua. In the other case, the defendant was co-ordinating the movement of drugs from South America to other countries. In another case (SA v S & B), requests were made in relation to obtaining information about movement from abroad of the suspected monies into Antigua. In this case, requests were sent to multiple jurisdictions for banking information and criminal records in support of an ML investigation. Some of the jurisdictions responded in a timely manner, in a matter of months, another much longer than that, and another declined to assist or would only do so on conditions deemed to be unreasonable. There is some evidence that the competent authorities are seeking legal assistance for international co-operation in keeping with their identified risks, however the timeliness in which these requests were made by Antigua and Barbuda was not demonstrated.

**Table 2**  
**MLAs sent from ONDCP to other jurisdictions**

	<b>Requests Made</b>	<b>No. of Requested Countries</b>	<b>Suspected Criminal Activity</b>	<b>Assistance sought</b>	<b>Value of Property Involved</b>
<b>2012</b>	12	7	money laundering, fraud, drug trafficking	obtaining telephone records, obtaining official records, obtaining criminal history, service of judicial documents	\$1,687,146 U.S.
<b>2013</b>	13	6	drug trafficking, money laundering	property restraint, obtaining criminal records, obtaining government records, conduct interview, service of judicial documents	\$11,000,000 EC \$45,860 EC
<b>2014</b>	5	2	money laundering, drug trafficking	obtaining financial records, service of judicial documents, evidence gathering	\$11,000,000 EC \$60,606 US
<b>2015</b>	5	3	money laundering	obtain financial records, obtain criminal records	\$12,200,000 EC \$58,903 US
<b>2016</b>	1	1	drug trafficking	service of judicial documents	\$2,000 EC

Source of information: Data provided by ONDCP.

*Seeking other forms of international cooperation for AML/CTF purposes*

403. The Authorities indicated that the Asset Recovery Inter Agency Network (ARIN-CARIB) since its establishment in November 2016 has been used. It aims to facilitate the exchange of information among law enforcement agencies throughout the English, French, Spanish and Dutch speaking Caribbean and the world. The Authorities also indicated that Heads of FIU throughout the Caribbean informally communicate through web chats. This facilitates alerts for interception, information sharing, changes in legislation, and immediate response action to crimes in progress.

### *Providing other forms international cooperation for AML/CTF purposes*

404. The ONDCP indicated that they use the Egmont Secure Web. One (1) jurisdiction however indicated that between 2013 and 2016 they had not received any responses via Egmont despite making requests via this means on three (3) occasions. The Immigration Department indicated that international cooperation is provided quickly if the information requested is on the system, however the problem arises if the information requested is prior to 4 years ago as they have to search for hard copies, in these instances it may take a few days. The Immigration Department further indicated that there is no record of how long it takes to provide responses as this is not documented. Further no information was provided in relation to the nature of these requests.

405. Customs indicated that they have a strong relationship with external partners such as CCLEC – a MOU based organization. They also joined the World Customs Organization on April 10th, 2017. They are working also working on a MOU with US Customs and Border Patrol, with whom have already been sharing information. This particular partnership is important in relation to trade based money laundering.

### *International exchange of basic and beneficial ownership information of legal persons and arrangements*

406. The Registry indicated that they received requests from overseas for BO information as follows: 2012 -5; 2013 – 8; 2014 – 38; 2015 – 5; and 2016 – 6

### *Overall Conclusion on Immediate Outcome 2*

407. Antigua and Barbuda has put mechanisms in place to facilitate MLA and extradition requests. However, the extent to which they are making requests of other jurisdictions is very low.

408. There appears to be a need for further resources to assist in the processing of MLA Requests as the volume of requests has impacted the ability to conduct investigations into other matters as these requests have to be prioritized. The rating for Immediate Outcome 2 is a moderate level of effectiveness.

409. **The rating for Immediate Outcome 2 is moderate level of effectiveness.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008. This report is available from [www.cfatf-gaifc.org](http://www.cfatf-gaifc.org)

### *Recommendation 1 - Assessing Risks and applying a Risk-Based Approach*

3. Recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation.
4. **Criterion 1.1** Antigua and Barbuda has completed its first National Risk Assessment (NRA) with the use of the World Bank Tool. The organizational process involved the creation of four (4) working groups and one oversight group to oversee the working group to ensure consistency and monitoring. These groups covered a wide cross section of stakeholders from both the private and public sectors. These working groups focused on the following modules: ML/TF threats; ML/TF vulnerabilities; banking, securities, insurance and DNFBPs. The conclusions of the NRA are reasonable. The authorities have advised the understanding of the ML/TF risks are based on the completed NRA as well as the analysis by the Supervisory Authority of the risk assessments submitted by FIs and DNFBPs and an assessment of the predicate criminal offences to ML & TF activities based on the data provided by the security forces namely the RPFAB and ONDCP. The conclusions of the NRA are reasonable in that Antigua and Barbuda has demonstrated an understanding of its ML/TF risks by identify and assessing the risk.
5. **Criterion 1.2** The Cabinet of Ministers, Government of Antigua and Barbuda has designated the ONDCP as the authority to co-ordinate the completion of the NRA of the country.
6. **Criterion 1.3** The NRA is the first national ML/TF risk assessment that was conducted by the jurisdiction. The authorities suggested that the NRA would be updated within 3-4 years period.
7. **Criterion 1.4** While competent authorities of Antigua and Barbuda stated that it is their intention to provide relevant information on the results of the NRA to the various stakeholders, so far, the authorities have sensitized some FIs on the result of the NRA with the remaining FIs and DNFBPs not sensitize or provided with information on the NRA. Furthermore, the mechanism(s) for the intended distribution has not been provided. There is no indication on the Authorities responsible to distribute the results and the time frame.

8. **Criterion 1.5** The authorities stated that based on the present understanding of the risks, resources are allocated based on the areas of highest, medium and lowest risks respectively. The NRA was completed in May 2017. The application of a risk- based approach in allocating resources and implementing measures to prevent or mitigate ML/TF has not been implemented since the completion of the NRA in 2<sup>nd</sup> quarter of 2017.

9. **Criterion 1.6** – The authorities have cited the MLFTG section 2.1.23-2.1.27 (9 Sept. 2002) which speaks to CDD measures for minors, students, the elderly and the disabled. The provisions speak to specific measures or treatments of these categories of persons but does not recognizing any level of risk associated to these groups. The authorities did not apply any exemptions from FATF Recommendations to any financial activities, FIs and DNFBPs that are captured in the FATF Recommendations.

10. **Criterion 1.7** –The Section 2 of the MLFTG amended in 2017, sets out the Risk-Based Approach to AML/CFT and incorporated the Supplemental Guidance which details that requirement of a risk-based approach and a risk assessment of the FIs and DNFBPs that fully address the requirements of this section. i.e. FIs and DNFBPs must take enhanced measures to manage and mitigate higher risks identified by Antigua and Barbuda and ensure that such information is incorporated into their risk assessments. The authorities have cited Section 2 – inserts para. 1.4, guidance on the Risk Based Approach in the Money Laundering & Financing of Terrorism Guidelines (12 June 2017). Also, MLPR No. 44 of 2017 amends Regulation 4(3) of the MLPR which require that the FIs and DNFBPs implement a risk-based approach to CDD procedures. Further, in relation to CDD procedures, the Supervisory Authority in examining financial institutions for compliance with those Regulations should do so using a risk-based approach. However, the requirement of the criteria is broader than the requirement for FI, DNFBPS and the Supervisory Authority, and it is wider than the risks associated with CDD procedures.

11. **Criterion 1.8** The requirements as laid out at 1.7 also apply to 1.8 and indicate that where the risks are lower simplified measures can be used.

12. **Criterion 1.9** The Supervisory Authority has been designated as responsible for ensuring compliance of all relevant FIs with AML/CFT obligations and has powers of on-site inspection, as indicated in the next criterion. Further, FIs and DNFBPs registered and operating in Antigua and Barbuda are mandated to implement all their obligations relating to risk as required under Rec. 1.

13. **Criterion 1.10** – The update to the MLFTG dated June 12, 2017 (Supplemental Guidance – Risk Based Approach) Section 1.4.1-5 requires that all FIs and DNFBPs undertake a risk assessment against ML/FT and PF. The assessment is to identify, assess and understand the risk. Entities are to document the assessment, consider all relevant risk factors, be updated at appropriate intervals and the assessments must be available to the supervisory authorities.

14. **Criterion 1.11-** (a) (b) (c) There are legislative provisions under the MLFTG Part 1 Section 1.4 and Part 2 Section 1.1.7 which address the requirement for policies, controls and procedures to be approved by senior management. The implementation of these measures is also addressed. Further the MLPR 2009 requires annual reviews and specifically audit reviews which allow for verification of implementation. The

update to the MLFTG dated June 12, 2017 (Supplemental Guidance – Risk Based Approach) requires institutions to employ enhanced measures to manage and mitigate the risk where higher risks are identified.

15. **Criterion 1.12** – The MLFTG amended in 2017, section 2 sets out the RBA to AML/CFT and incorporated the Supplemental Guidance which details that requirement of a risk-based approach and a risk assessment of the FIs and DNFBPs allowing simplified measures to manage and mitigate lower risks identified by Antigua and Barbuda, but not permitting once there is suspicion of ML/TF.

### *Weighting and Conclusion*

16. Antigua and Barbuda ought to be commended for conducting its NRA. The results of the NRA are needed to identify current risks and to determine the measures that are needed to be put in place to mitigate those risks. Whilst some FIs were sensitized about the finding of the NRA, the authorities stated that a workshop will be held to inform the competent authorities of the outcomes of the NRA. This would be followed by sector specific workshops to inform the private sector of how they are impacted by the results of the NRA, including mitigation actions they are expected to implement. **Recommendation 1 is rated largely compliant.**

### *Recommendation 2 - National Cooperation and Coordination*

17. This Recommendation (previously R.31), was rated ‘LC’. Deficiencies noted in the 3rd Round MER were the lack of effective mechanisms in place to allow policy makers, ONDCP, the FSRC and other competent authorities to cooperate and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

18. **Criterion 2.1.** Antigua and Barbuda has an AML/CFT policy document which is referred to as the Government of Antigua and Barbuda National AML/CFT Policy. The policy document states where Antigua and Barbuda identify higher risk whether while conducting the NRA exercise or based on intelligence received, the competent authorities will ensure that the specific area of the AML/CFT regime adequately addresses these risks. The AML/CFT policy contained an action plan based on the completion of the NRA. However, the requirement to review the policy is lacking.

19. **Criterion 2.2** Antigua and Barbuda has established a National AML/CFT Oversight Committee (NAMLOC) which is responsible for receiving and reviewing information from relevant authorities on AML/CFT risks and vulnerabilities and shaping AML/CFT policy. NAMLOC was formally established by the Cabinet of Ministers of Antigua and Barbuda in October 2016. One of the objectives of the committee is to coordinate the collective development, by relevant departments, competent authorities and agencies, of national policies to combat money laundering, terrorist financing and the financing of proliferation of weapon. NAMLOC comprises of key stakeholders in AML/CFT including: The Prime Minister, the Attorney General, Commissioner of Police, Comptroller of Customs, Director of ONDCP, Director of Public Prosecutions, Solicitor General, Financial Secretary, Chief of Defence Staff, CEO of the FSRC.

Meetings of the NAMLOC reviews reports received from the competent authorities and the ML/TF trends identify by the ONDCP. Based on information received from the various competent authorities, the NAMLOC has to formulate steps to respond to these trends and drafts policy that is then to be submitted to the Cabinet of Ministers for its consideration, adoption and direction for implementation. NAMLOC's terms of reference enables the body to advise the government to take the necessary actions for implementing FATF recommendations.

20. **Criterion 2.3.** At the policy level, the NAMLOC is the coordinating body. NAMLOC meetings are held monthly. However, due to the NRA, meetings were held regularly. The body held meeting four (4) times per month to discuss issues arising from the NRA process. The NAMLOC is used as a forum for the discussion of issues arising from investigations of predicate offences and ML/TF. Measures, policies and activities are discussed with the aim of meeting and implementing FATF recommendations. At the operational level, there is coordination between the ONDCP and the FSRC, this is established via MOU. There is a multilateral MOU that coordinates operational activity among the ONDCP, the RBPF, the Customs and Excise Department, and the Antigua and Barbuda Defence Force.

21. **Criterion 2.4.** NAMLOC is responsible for cooperate and coordinate domestically, specifically with regard to the financing or proliferation of weapons of mass destruction (WMD). Antigua and Barbuda needs formulate the legal framework and implement these coordination mechanisms in order to strengthen its cooperation regime.

### *Weighting and Conclusion*

22. NAMLOC is the designated coordination mechanism which is responsible for national AML/CFT policies. NAMLOC was established by the Cabinet of Ministers of Antigua and Barbuda and consist of several stakeholders who are engage in combating AML/CFT at the policy, supervisory and operational level. Meetings are held between members of NAMLOC to review reports received along with trend and typologies. At the policy level members of NAMLOC can share information relative to AML/CFT, whilst at the operational level information are share via MOUs signed between the relevant agencies engage in combatting AML/CFT. However, whilst there are mechanisms for competent authorities to cooperate and coordinate domestically, national policies had not been fully adjusted based on an assessment of risk, given that the NRA exercise had only been concluded just prior to the onsite mission. Furthermore, whilst at the policy level cooperation extends to the financing of WMD, there is no indication that there is mechanism for cooperation and coordination pertaining to the financing of WMD at the operational level. **Recommendation 2 is largely compliant.**

### *Recommendation 3 - Money laundering offence*

23. R. 3 (formerly R. 1 and 2) were previously rated 'PC' and 'LC' respectively, with the deficiencies including a limited list of predicate offences for ML in the POCA (no inclusion of the offences of Participation in an Organised Criminal Group, Trafficking in human beings and Migrant Smuggling), the list of precursor chemicals not being in line with those listed in the Vienna Convention, and inconsistencies

in key definitions related to terms provided for in the Palermo and Vienna Conventions and a remarkably low number of ML prosecutions. The amendment of the Schedule of offences in the POCA, amendments to the definition of ‘person’ and ‘property’ in the Money Laundering Prevention Act (MLPA) and the Proceeds of Crime Act, (POCA), enactment of the Precursor Chemicals Act, 2010, the Trafficking in Persons (Prevention) Act, 2010, the Maritime Piracy Act, 2013 as amended and the Migrant Smuggling (Prevention) Act, 2010 addressed the deficiencies.

24. **Criterion 3.1.** ML has been criminalized based on the Article 3(1)(b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. Section 2 of the MLPA defines ML and the offence of ML. The offence of ML is applicable to offences under section 61 of the POCA and sections 4-8 of the Misuse of Drugs Act, 1996. Sections 3-5 of the MLPA also prohibits ML and provides for offences by a body corporate or persons who attempt, aid, abet, counsel or procure the commission of or conspire to commit a ML offence. With regard to precursor chemicals noted at paragraph (c) of Article 3 of the Vienna Convention, this is covered by the Precursor Chemicals Act, 2010.

25. **Criterion 3.2.** The predicate offences for ML cover all serious offences pursuant to Schedule 1 of the POCA, which provides for drug trafficking offences under the Misuse of Drugs Act, 1973, organized fraud under the Larceny Act, ML under the POCA (Sections 61 and 62). Based on enactments to legislation since the 3rd round MEVAL, Antigua and Barbuda (noted above), and Antigua and Barbuda has a range of offences covering the designated category of offences.

26. **Criterion 3.3.** Antigua and Barbuda does not use a threshold approach. A list approach is used as appears in Schedule 1 of the POCA. Schedule I specifies drug, fraud and ML offences under various enactments and was amended in the POCA 2014 to specify an addition that covers ‘any indictable or triable either way offence in Antigua and Barbuda, from which a person has benefited, as defined in section 19 of this Act.’ Section 19 of the POCA defines a ‘benefit’ as the value of property obtained where a person obtains property as a result of or on connection with the commission of a scheduled offence. Additionally, section 2 of the MPLA as amended 2013 includes in the definition of ML offence offences under the legislation listed above as well as offences under the Forgery, Larceny, Firearms and Prevention of Terrorism Acts.

27. **Criterion 3.4** The ML offence includes property, which is defined at both section 2 of the MLPA and the POCA as amended 2009. In both definitions, property includes money and all other property real or personal; intangible or incorporeal. The definition of proceeds of crime was also amended in the MLPA to include ‘any property or asset generated directly or indirectly or derived howsoever from or as a result of unlawful activity...’ Legitimately acquired property is also included.

28. **Criterion 3.5** This sub-criterion requires that it should not be necessary that a person be convicted of a predicate offence when proving that property is the proceeds of crime as it relates to a money laundering offence. Reference is made by the authorities to confiscation and the property considered in making the order; however this is post-conviction and does not address the requirement as outlined above in relation to the money laundering offence itself.

29. **Criterion 3.6** Pursuant to Section 2 (1) (b) (ii) MLPA “money laundering offence” means any foreign law, whether or not it is specified by regulation under this Act which prescribes dealings in property which is the proceeds of crime, which, if it was committed in Antigua and Barbuda, would be an offence against this Act or any other law of Antigua and Barbuda.

30. **Criterion 3.7** The definition of ML as stated at section 2(1) of the MLPA provides for engaging directly or indirectly in a transaction involving money or other property with the knowledge or reasonable grounds to know that it is derived etc. from unlawful activity. This definition is broad enough to include the person who committed the predicate offence.

31. **Criterion 3.8** Section 2(3) of the MLPA provides for knowledge to be inferred from objective factual circumstances.

32. **Criterion 3.9** MLPA, s. 6 – penalties for ML: summary conviction – fine of \$200,000 or 3 years imprisonment or to both; on conviction on indictment – fine \$1,000,000 or 7 years imprisonment or to both. POCA, ss. 61(2) a fine of \$200,000 or imprisonment for a period of twenty years, or both on indictment and 62(1) a fine of \$100,000 or imprisonment for a period of 5 years or both on indictment. The penalty for facilitation under section 5A was amended by section 4 of the MLPA 2017 to increase the fine to \$1 million. Participation in a criminal organisation under section 5A was amended by section 5 of the MLPA 2017 as follows -on summary conviction to fine of \$200,000; imprisonment of 6 months. On conviction on indictment to fine of \$1 million; imprisonment of 7 years. The penalties imposed are dissuasive and proportionate.

33. **Criterion 3.10** Pursuant to section 2 of the MLPA, the definition of ‘person’ includes legal persons as referenced by the inclusion in the definition of ‘any entity natural or juridical, a corporation, partnership, etc. Further, section 28B(1) of the MLPA provides that proceedings under the MLPA are civil in nature and section 28B(2) states that the fact that ‘criminal proceedings may have been instituted or commenced is not a ground on which a court may stay proceedings under the’ MLPA. ML offences are applicable to persons pursuant to section 3 of the MLPA, while section 4 specifically makes individuals liable for ML offences committed by the body corporate. The sanctions for ML offences under summary conviction include a fine of EC\$200,000 or imprisonment for 3 years or both and on conviction on indictment to a fine of EC\$1M or imprisonment for 7 years or both. The penalty for facilitation under section 5A was amended by section 4 of the MLPA 2017 to increase the fine to \$1 million. Participation in a criminal organisation under section 5A was amended by section 5 of the MLPA 2017 as follows -on summary conviction to fine of \$200,000; imprisonment of 6 months. On conviction on indictment to fine of \$1 million; imprisonment of 7 years. The fines appear to be proportionate.

34. **Criterion 3.11** The ancillary offences to ML are contained as section 5 of the MLPA which provides that any person is guilty of an offence who attempts, or aids, abets, counsels or procures the commission of, or conspires to commit the offence of ML. Section 5A specifically addresses the facilitation of the offence of ML, while section 5B addresses participation in a criminal organisation and provides for aiding, abetting, counselling, procuring or facilitating to commit a serious offence under any Act, which will naturally include ML.

## *Weighting and Conclusion*

35. The criminalisation of ML has been substantially met. A Deficiency however remains with regard to the requirement that it should not be necessary that a person be convicted of a predicate offence when proving that property is the proceeds of crime as it relates to a money laundering offence. **Recommendation 3 is rated largely compliant.**

## *Recommendation 4 - Confiscation and provisional measures*

36. Antigua was rated 'LC' for Recommendation 4, formerly Recommendation 3 in the previous report. At that time the deficiencies related to Antigua's ability to effectively implement its freezing and forfeiture regime and the lack of an express provision in the PTA which allowed the interests of third parties to be excluded from seized property. Antigua made substantial amendments to the POCA in 2014 in order to address these deficiencies and strengthen its regime generally. Notably, a new paragraph 7 of the Schedule to the POCA was inserted. This strengthened Antigua and Barbuda's ability to obtain restraint and confiscation orders. In the November 2014 Update on Antigua and Barbuda's Follow-up Status Report, the country demonstrated significant increases in the number of production, freezing and confiscation orders between 2007 – 2014 which included those that resulted in cash forfeitures. The 2014 amendments to POCA also introduced a civil recovery regime. This assessment will determine the effectiveness of the measures now exists. R. 4 now requires countries to also have mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.

37. **Criterion 4.1** (a) Section 5 of the Proceeds of Crime Act, (POCA) provides measures for the forfeiture of property that is derived, obtained or realised directly or indirectly, by a person, from the commission of a scheduled offence. (b) At Section 5 (1) (b), the benefits derived by person as a result of his commission of a scheduled offence is captured. Section 5 (1) (a) provides measures for the forfeiture of 'tainted' property which is property used in or in connection with the commission of the offence. (c) Section 28 (1) of the PTA provides for the forfeiture, on conviction, of property used for or in connection with or received as payment or reward for commission of a terrorist offence. (d) Property of corresponding value is captured at Section 15 (a) of the POCA where, instead of ordering the property or part thereof or interest therein to be forfeited, the Court may order the convicted person, in respect of a scheduled offence, to pay an equal amount to the value of the property to be forfeited. The circumstances where this becomes applicable are detailed at sub-sections (a) to (e) of the said section 15. Property held by third parties is captured under the provisions of Section 31(1) of the POCA, which provides that "the Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant." Further, the property that can be restrained includes "tainted property" which is defined under Section 3 to include (a) property used in connection with an offence, and (b) property derived, obtained or realised, directly or indirectly, from the commission of an offence. Such property in the hands of a third party who is not a bona fide purchaser for value without notice would be caught by the restraint order and by a forfeiture or confiscation order. MLPA Section 19 2(d) provides for freezing of properties held by third parties. Additionally, under the MLPA Sections 20, 20C and 20 D makes provision for confiscation under the civil proceedings.

38. **Criterion 4.2(a)** Section 42 (1) of the POCA provides the measures whereby a police officer is permitted to apply to a Judge in Chambers for an order to against a person who has possession or control of any document relevant to identifying, locating or quantifying property of a person convicted of a scheduled offence. (b) The DPP can apply for restraint orders pursuant to Section 31 (1) of the POCA. A restraint order here is applicable where a person has either been charged or convicted of a scheduled offence and can be obtained against either realisable property, which is any property held by that person or any specified realisable property held by another person. Additionally, Section 9 of the POCA 2014 amends Section 32 of POCA to provide for the restraint of property where a person “is being investigated by a member of the Police Force or an officer of the ONDCP with regard to a scheduled offence” and Section 20E (1) of the MLPA makes it an offence to dispose of forfeited property. Where it states that, “A person shall not dispose of or otherwise deal with an interest in property that is forfeited pursuant to section 20 or the subject of a civil forfeiture order pursuant to Section 20B. “The penalty under subsection (2) provides a fine of \$100,000 or years imprisonment. (c) Regarding voiding actions, Section 12 of the POCA provides for the Court to set aside any conveyance or transfer of the property which occurred after the seizure of the property or the service of a restraining order. The measure here are only applicable to property in respect of which a restraint order was made. Additionally, the MLPA under Section 20E (4) dispositions are void. It states that “If an interest in property is disposed of or otherwise dealt with in contravention of this section and the disposition or dealing was either not for sufficient consideration or not in favour of a person at arms- length, acting in good faith, the disposition is void. (d) The RPFAB has broad investigative powers as per the general police powers. The ONDCP Act 9 of 2017 Section 6 amends Section 11 to empower the ONDCP to conduct undercover operations and controlled delivery.

39. **Criterion 4.3** The right of bona fide third parties are protected under section of the POCA and similarly under Section 21 of the MLPA in relation to the civil forfeiture regime. In the seventh follow up report, it is expressed that provision for a person with an interest in property seized by warrant or subject to a restraint order to apply to have the property excluded from restraint is provided under Section 7 of the Prevention of Terrorism Act 2008.

40. **Criterion 4.4.** Under the ONDCP Act 9 of 2017 Section 8 the insertion Part IVA to the parent act provide for the means of disposal of property frozen, seized or confiscated. The mechanisms for managing seized property are clearly stated and provided. The provisions for disposing or dealing with frozen, seized or confiscated assets are stipulated. The Director of the ONDCP is authorized to take possession, manage, sell, dispose through application at the Magistrates Court.

### *Weighting and Conclusion*

41. Antigua and Barbuda has mechanisms in place which enable the confiscation and forfeiture of property laundered, proceeds of or instrumentalities used or intended for use in money laundering or predicate offences. Legislative measures are in the POCA as well as the MLPA which empower the competent authority to identify and trace property subject to confiscation and also to apply provisional measures to restrain persons from dealing with property which may be subject to confiscation. There are clear mechanisms for managing and disposing of frozen, confiscated or seized property. Antigua and Barbuda has enacted laws for are appropriate investigative measures, however certain guidelines have not

been established. For example, there are no guidelines for the interception of communication or entering computer systems. **This Recommendation is rated largely compliant.**

### ***Recommendation 5 - Terrorist financing offence***

42. R. 5 (formerly SR II) was rated 'PC' in the 3rd MER. The main deficiency was that the deemed ML and TF offences under the PTA and their reference to limited sections of the MLPA introduced an element of uncertainty into the financing of terrorism framework with respect to the extent to which the elements of SR II were covered. It was also stated that sanctions should include fines.

43. **Criterion 5.1.** –PTA, Part III, sections 5 to 20 criminalizes TF on the basis Article 2 of the International Convention for the Suppression of Financing of Terrorism (“Terrorist Financing Convention”) in relation to the creation of an offence if any person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: An act which constitutes an offence; or Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

44. **Criterion 5.2.** - This sub criterion requires that TF offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); or (b) by a terrorist organisation or by an individual terrorist (even in the absence of a link to a specific terrorist act or acts).Section 6 of the PTA states that every person who provides or collects by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence.

45. Section 5 of the PTA 2017 Repeals and replaces section 6 of the principal Act and states: that (1) A person who for any purpose provides or collects, by any means, directly or indirectly, funds, intending, knowing or having reasonable grounds to believe that the funds so provided or collected for or on behalf of any terrorist group or terrorist individual, commits an offence and shall on conviction on indictment, be liable to a term of imprisonment not exceeding twenty-five years or to a fine not exceeding five hundred thousand dollars (\$500,000), or to both such fine and imprisonment. (2) A person who provides or collects by any means, directly or indirectly any funds, intending, knowing or having reasonable grounds to believe that the funds may be used in full or part to carry out a terrorist act commits an offence and shall, on indictment be liable to a term of imprisonment not exceeding twenty-five years or to a fine of five hundred thousand dollars, or to both such fine and imprisonment.”.

46. **Criterion 5.2 bis** - PTA 2017 amends the principal Act by inserting after section 19 the following new section as section 19A: which states that any citizen of or person within Antigua and Barbuda who knowingly provides or collects funds, by any means, directly or indirectly, with the intention that the funds

should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals to a State other than their States of citizenship or residence, for the purpose of perpetrating, planning or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training commits an offence.

47. **Criterion 5.3.** – The authorities indicate that Section 6 of the PTA refers to any funds and therefore there is no restriction or qualification as to whether they are legitimate or illegitimate. PTA 2008, defines funds as “to mean funds and other assets. It states: “funds” means assets of every kind, whether tangible or intangible, moveable or immovable however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.”

48. **Criterion 5.4.** - The PTA does not require that the funds are actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

49. **Criterion 5.5.** - PTA 2008. Section (2) states that knowledge, intent or purpose required as an element of any offence under the Act, as well as the relationship of any proceeds or instrumentalities to a terrorist activity may be inferred from objective or factual circumstances.

50. **Criterion 5.6.** – PTA 2005 provides terms of imprisonment for terrorism and financing of terrorism not exceeding 15 years and 25 years depending on the offence. PTA 2008, Section 8 (a) amends Section 5 of the PTA to provide for a fine of five hundred thousand dollars and Section 8(b) amends subsections. 6, 7, 8, 10(1), 11, 12, 13, 14, 15, 18(1), 19(1), 20 to provide for a fine of five hundred thousand dollars. These sanctions appear sufficiently proportionate and dissuasive but have yet to be tested.

51. **Criterion 5.7.** – The TF offences under the PTA are committed by a “person”, Section 2 of the PTA 2008 states that “person” means any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations. It was stated that the law does not preclude parallel proceedings. The authorities further indicated that TF offences under the PTA are defined as ML offences by Section 3 MLPA 2013. Further, Section 28 B (2) of the MLPA [inserted by Section 20 of the MLPA 2001] provides that “The fact that criminal proceedings may have been instituted or commenced is not a ground on which a court may stay proceedings under this Act.” Section 28 B (1) states that Proceedings on an Application under this Act are civil in nature, except as otherwise provided in this Act. Section 28 MLPA 1996 states that all prosecutions, actions, suits or other proceedings brought for any offence, or for the recovery of any fines, penalties or forfeitures, under this Act or the regulations made thereunder, shall be brought within six years next after the date of the offence committed or the cause of action accrued. These sanctions appear sufficiently proportionate and dissuasive but have not yet been tested.

52. **Criterion 5.8.** – In accordance with Section 20 of the PTA it is an offence to aid and abet, attempt, conspire, counsel or procure the commission of any offence under the Act.

53. **Criterion 5.9.-** MLPA 2013, Section .3(1) para. (c), amends Section 2(1), the Interpretation Section, by substituting for paragraphs (c) and (d) a new set of paragraphs, which lists as ML offences; at paragraph (e) “sections 5, 6, 7, 8, 9, 10 and 12 of The Prevention of Terrorism Act 2005, conspiracy to commit those offences contrary to section 17 of the Act, and participation in those offences contrary to section 20 of the Act.”.” PTA 2008, Section 3 amends Section 9 of the principal Act and makes offences under sections 9(1) and (2) ML offences.

54. **Criterion 5.10.** – Section 26(3) of the PTA 2005 states that an act or omission committed outside Antigua and Barbuda which if committed in Antigua and Barbuda would constitute an offence under the Act shall be deemed to have been committed in Antigua and Barbuda.

### *Weighting and Conclusion*

55. TF is criminalized according to the Convention, irrespective of whether or not the terrorist act was carried out or not. A full range of ancillary offences are provided under the TPA including attempt, conspire, aid, abet, procure or counsel including the requirement that terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. **Recommendation 5 is rated compliant.**

### *Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing*

56. In the 3<sup>rd</sup> round Antigua was rated ‘NC’ on SRIII. The deficiencies pertained to difficulty in ascertaining the extent of the application of freezing mechanisms under MLPA and PTA to deemed ML TF offences; there was no provision for access to funds for basic expenses and certain fees as required by UNSCR 1452; “funds” was undefined in the PTA; guidance to financial institutions was insufficient; the type of property which may constitute other assets was not explicit; delisting procedures were not publicly known; no specific provision for specified entities to have funds unfrozen; PTA did not include 3<sup>rd</sup> party protection consistent with Art. 8 of the TF Convention. Amendments to the PTA removed the reference to the MLPA and tied the offences to the ability to direct a financial institution to freeze property for up to 14 days in anticipation of a freeze order under section 9(4) of the PTA. Section 35A (4) (c) allowed funds to be excluded from the freeze or restraint order to cover expenses and fees. A definition of “funds” was inserted into the PTA which is consistent with the required standard in the Terrorist Financing Convention. There have also been amendments to expand the definition of “property.” The MLPTG has been amended to include a part specifically in relation to the “Financing of Terrorism”. The procedure for delisting persons and entities specified along with having property un-frozen in an order and subject to a freeze order required strengthening and public dissemination. The rights of third parties was also not considered or protected in the granting of restraint and seizure orders.

57. **Criterion 6.1.** (a) Competent authorities for proposing the designation of specified entities to the Attorney General are: The Director of ONDCP and the Commissioner of Police. However, while the

competent authorities can propose designation of specified entities they cannot propose person or entities to the 1267/1989 or 1988 UN committees. (b) Based on the information provided by Antigua and Barbuda, there are no measures in place for identifying targets for designation and the designation criteria for UNSCRs 1267/1989 and 1988 are not catered for in the PTA. (See. Designation criteria at INR6). The Antigua and Barbuda Authorities have noted that section 4 of the PTA provides for the Foreign Minister to give effect to designations of specified entities by the United Nations, however this measure pertains to having targets based on the designation criteria. (c) There are no measures for designation as contemplated by this criterion. Accordingly, the evidentiary standard of proof of ‘reasonable grounds’ or ‘reasonable basis’ does not come into consideration. (d) There are no measures in the PTA that address the use of the sanctions regime standard forms for listing as required for 1267/1989 and 1988. (e) There are no measures that allow for the proposed names, a statement of case etc. with regard to proposing names to the 1267/1989 Committee.

58. **Criterion 6.2** (a) Pursuant to section 3(2) of the PTA, the Attorney General can make an order designating a specified entity and directing any financial institution in Antigua and Barbuda to restrain or freeze any account or property held by the specified entity in the financial institution. It should be noted that pursuant to Section 2 of the PTA the definition of an entity includes a ‘person, group, trust, partnership, fund or an unincorporated association or organisation.’ The Order to freeze is immediately binding and effective on the financial institution even if it has not been published in the *Gazette*. No mechanisms for requests from other countries. (b) The mechanisms noted at section 4 of the PTA by Antigua and Barbuda deals with the implementation of measures as directed by the UN Security Council, it does not address having mechanisms for identifying targets for designation based on the designation criteria set out in UNSCR 1373. Antigua and Barbuda’s designation criteria are set out at section 3(1) of the PTA. (c) No mechanisms were found in the PTA with regard to receiving a request for designation. The Authorities have indicated that the Commissioner of Police and the Director, ONDCP would be the Authorities that the Attorney General would consult and that these Authorities would make inquiries or investigate as necessary. However, there is no indication that this is a formal mechanism for receiving requests for designations. Additionally, the PTA does not provide all the designation criteria as set out in UNSCR 1373. (d) The evidentiary standard for deciding whether or not to request an Order of designation of a specified entity from the Attorney General is ‘reasonable grounds to suspect’. It provides an evidentiary standard when Antigua and Barbuda is doing its own designations, which are not conditional on the existence of a criminal proceeding. (e) Antigua and Barbuda indicated that no opportunity has arisen to apply this measure, however, there are no measures cited with regard to requesting another country to take action or give effect under the freezing mechanism.

59. **Criterion 6.3** (a) Antigua and Barbuda has not cited any specific legislative measures but have noted that the Commissioner of Police and the Director of the ONDCP are empowered respectively under the Police Act and the ONDCP Act to conduct information gathering investigations. As noted above the PTA does not contain all the relevant designation criteria. (b) Based on Part II of the PTA, there is no reference to an *ex parte* process since the competent authorities make a recommendation to the Attorney General who then has the authority to make an order declaring the entity to be a specified entity and direct any financial institution on behalf to restrain or freeze any account or other property held by the financial institution on behalf of the specified entity.

60. **Criterion 6.4** Section 3(2)(b) of the PTA provides that the Attorney General can direct by order any financial institution to restrain or freeze any account or other property held by the financial institution on behalf of the specified entity and Section 3(2A) states that the order to restrain or freeze ‘shall be immediately binding and effective on the financial institution notwithstanding that the Order has not yet been published in the *Gazette*. There are no measures in the PTA with regard to designations requested by other countries.

61. **Criterion 6.5** (a) As noted above Sections 3(2)(b) and 3(2A) deal with the freezing of funds or other assets of designated persons and entities. However, the sections are only applicable to financial institutions, which are defined as section 2 of the PTA as ‘...*a commercial bank, or any other institution which makes loans advances or investments or accepts deposits of money from the public*’. The sections therefore do not cover natural persons. The requirement in sub-criterion 6.5 (a) is for all natural persons and legal persons within a country to freeze without delay etc., in which case, this will not be limited to FIs and DNFBPs only (b) There are no measures in the PTA that satisfy the freezing of certain types or categories of funds. (c) The PTA does not address the prohibition of making funds, assets, economic resources, or financial or other related services for the benefit of designated entities or with regard to persons acting on behalf of designated entities. The PTA deals with these issues as it pertains to terrorist or terrorist groups and not designated persons or entities. (d) Pursuant to Section 3(2)(B) of the PTA, Order to financial institutions to restrain or freeze ‘may be communicated by the Attorney General using such methods as may be appropriate in the circumstances or as may be prescribed by Regulations. An Order may also be communicated by the Attorney General through the Director of the ONDCP. (Section 3(2C) of the PTA). As discussed above in criterion 6.2, the order to freeze is immediately binding on financial institutions and it is published in the *Gazette* 14 days after it is made. The mechanism for communicating restraint and freezing does not extend to DNFBPs, but only to those covered by the limited definition of ‘financial institution’ as noted above. (e) The Authorities have indicated that the Order made by the Attorney General pursuant to Section 3(2A) of the PTA requires financial institutions and DNFBPs to report the action that they have taken in response. However, there is no indication of this requirement in the PTA. Additionally, Section 3(2A) refers to financial institutions (see definition above), which is limited based on the activities that are covered by the FATF definition of ‘financial institutions’ and does not include any reference to DNFBPs. (f) There are no measures with regard to the protection of rights of bona fide third parties as it relates to the obligations involving the designation of persons or entities. The Authorities cite the protection of persons who make a disclosure or report in good faith with regard to information on property of terrorist groups or property used for the commission of terrorist offences under the TPA, which is not relevant for this sub-criterion.

62. **Criterion 6.6** (a) The PTA does not provide any procedures for the submission of de-listing request to the relevant UN Sanctions Committee in accordance with the procedures adopted by the 1267/1989 or the 1988 Committees. (b) The procedures for applying for de-listing or unfreezing of funds based on a designation under UNSCR 1373 are contained at Sections 3(4) -(9) of the PTA. (c) Pursuant to Section 3(6), an applicant may apply to a Judge of the High Court to review a decision not to revoke the restraint or freezing order. (d) There are no measures in the PTA with regard to procedures to facilitate a review by the 1988 Committee of designations made pursuant to UNSCR 1988 (Al-Qaida). (e) There are also no procedures with regard to de-listing petitions through the office of the UN’s Ombudsman. (f) There are no mechanisms to unfreeze the funds or other assets of persons or entities with the same or similar name as

designated persons or entities, who were affected by a freezing mechanism by error. The Authorities have cited section 3(10) of the PTA, which pertains to the procedures for communicating the revocation of a restraint or freezing order against a designated entity by the Attorney General. This measure does not address the issue of de-listing ‘false positives’. (g) Pursuant to Section 3(10)(a)(ii) and (iii) of the PTA, the de-listing is communicated through publication of a notice of revocation in the Gazette; notification in writing to the applicant, every financial institution which received the direction to restrain or freeze and as applicable to the Commissioner of Police and the Director of the ONDCP. There is no reference to DNFBPs.

63. **Criterion 6.7** Pursuant to Section 35A(4)(c) of the PTA, a person who was in possession of the property at the time that the warrant was executed or the restraint or freezing Order was made or had an interest in the property and meets the requirements of Section 35A(4)(a) and (b) may be granted an Order that will allow access to funds for the purpose of meeting reasonable living expenses and also reasonable business or legal expenses. There are no established procedures to authorise access to funds that have been frozen in accordance with UNSCR 1452 or UNSCR 1373 and subsequent resolutions.

### *Weighting and Conclusion*

64. Antigua and Barbuda does have a framework for targeted financial sanctions that allows for the designation of specified entities based on reasonable grounds to suspect certain terrorist acts. However, the framework does not address the designation of persons or entities to the 1267/1989 Committee or the 1988 Committee of the UN based on the designation criteria set out in the relevant UNSCRs. In relation to UNSCR 1373 Antigua and Barbuda does not have any mechanisms for identifying targets for designation, nor are there any mechanisms for receiving a request for designation from other countries. There are also no measures cited with regard to requesting another country to take action or give effect under the freezing mechanism. The PTA does not have all the designation criteria required for UNSCR 1267 or 1373. The PTA does not address the prohibition of making funds, assets, economic resources, or financial or other related services for the benefit of designated entities or with regard to persons acting on behalf of designated entities. There are measures to allow for the immediate communication of the restraint or freezing to financial institutions, but DNFBPs are not included and there is no specified guidance to financial institutions or DNFBPs. There are not procedures to facilitate a review by the 1988 Committee of designations made by the 1988 Committee or measures to deal with ‘false positive’ situations. The measures to provide access to restrained or frozen funds for reasonable living expenses, business or legal expenses are limited. **Recommendation 6 is rated partially compliant.**

### *Recommendation 7 – Targeted financial sanctions related to proliferation*

65. This Recommendation is entirely new, so there is no previous rating or country information to include.

66. **Criterion 7.1** There are no provisions to give effect to this sub criterion. There are no mechanisms to implement targeted financial sanctions without delay in compliance with UNSCRs, adopted under Chapter VII of the Charter of the United Nations, relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

67. **Criterion 7.2** There are no provisions to give effect to this sub criterion. The necessary legal authority and competent authorities responsible for implementing and enforcing targeted financial sanctions have not been established and identified in accordance with the relevant standards and procedures. There are no provisions to give effect to sub-criteria (a) to (f).

68. **Criterion 7.3** The authorities indicated that there are no provisions to give effect to this criterion. Measures have not been adopted for monitoring and ensuring compliance by financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7. There should be civil, administrative, or criminal sanctions for failure to comply with such laws or enforceable means.

69. **Criterion 7.4** In relation to sub-criteria (a) to (d), there are no provisions to give effect to this criterion. Antigua and Barbuda should develop and implement publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities that, in the view of the country, do not or no longer meet the criteria for designation.

70. **Criterion 7.5** In relation to sub-criteria (a) to (b), there are no provisions to give effect to this sub criterion. There are no measures in place by Authorities in Antigua and Barbuda to permit the addition to the accounts frozen pursuant to UNSCRs 1718 or 1737 of interests or other earnings due on accounts or other payments due under contracts, agreements, or similar obligations.

### *Weighting and Conclusion*

71. It is noted that legislation was enacted in relation to Weapons of Mass Destruction; however it does not address the framework for enforcing targeted financial sanctions as required by Recommendation 7. **Recommendation 7 is rated non-compliant.**

### *Recommendation 8 – Non-profit organisations*

72. This Recommendation which was formerly SR. VIII and was rated ‘NC’ in the 3rd MER due to the following deficiencies: no review of the adequacy of domestic laws and regulations that relate to NPOs had been undertaken by the Authorities in Antigua and Barbuda ; there were no measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing ; no periodic reassessments of new information on the sector’s potential vulnerabilities to terrorist activities are conducted; there was no regulatory framework for friendly societies; it appeared that the sector was not adequately monitored ; no programmes had been implemented to raise the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse ; the sanctions and oversight measures did not serve as effective safeguards in the combating of terrorism; and the provisions for record keeping under the FSA were inadequate. While Antigua and Barbuda was removed from the follow-up process, following the 7th Follow-Up Report, it was noted that this recommendation was not at a substantial level of compliance and had only been partially met with some implementation issues still outstanding. Changes introduced to Recommendation 8 include a risk-based approach to

MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA 146

supervision of NPOs as well as outreach to the sector on TF issues. The framework for registering and monitoring NPOs includes charitable trusts or any other institution, incorporated or not, which pursue a charitable purpose.

73. **Criterion 8.1** (a) Antigua and Barbuda has no measures by which it has identified which subset of organizations fall within the FATF definition of NPO, further (b) the country has no measures by which it can identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. (c) Antigua and Barbuda has no measures by which it has or will review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing (d) Antigua and Barbuda has no measures by which it will periodically reassess the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

74. **Criterion 8.2** - (a) Antigua and Barbuda has no policies which promote accountability, integrity, and public confidence in the administration and management of NPOs (b) Antigua and Barbuda has no measures to encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks. (c) the country has no measures which speak to how they will work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse. (d) Antigua and Barbuda has no measures whereby they will encourage NPOs to conduct transactions via regulated financial channels, wherever feasible.

75. **Criterion 8.3**-While there is the requirement for NPOs registered under the Friendly Societies Act to report activities, size, financial information and other relevant features, the requirement under the Companies Act is limited to financial information. It is also not clear the avenue of public disclosure as indicated through the response by the jurisdiction. Antigua and Barbuda has no measures whereby it has taken the steps necessary to promote effective supervision or monitoring such that they can demonstrate that risk based measures apply to NPOs at risk of terrorist financing abuse.

76. **Criterion 8.4** (a) Antigua and Barbuda has no measures whereby it has/will monitor the compliance of NPOs with the requirements of this Recommendation, including the risk-based measures. (b) Antigua and Barbuda has no measures which speak to their authority to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs. Further the dissuasive measures are only applied in the case of NPOs under the Friendly Societies Act.

77. **Criterion 8.5** (a) The country has no specific instrument that allows for the investigation and gathering of information on NPO. Further, given the limited information required to be shared by NPOs registered under the Companies Act, this limits the information available through the Registrar for investigating those NPOs. There is inadequate legislation for the sector, particularly to identify those NPOs that are defined by the FATF standards, this compromises the ability to ensure that relevant information is available and can be shared.

78. **Criterion 8.6** - Section 29 of the PTA provides for informal sharing of information with points of contact being the Commissioner of Police or the Director of the ONDCP. The Competent Authority for the

receipt of all requests is the Attorney General, who receives all formal requests for assistance. However inadequate registration and regulation of the sector would make it quite difficult to facilitate any requests.

### *Weighting and Conclusion*

79. The country has not identified the NPOs as defined by the FATF standard. There is no comprehensive legal or regulatory framework for this sector with respect AML/CFT. The NRA process confirmed that the NPO sector was inadequately regulated, there was inconsistent treatment of NPOs captured under the FSA and the Companies Act and there was an inability to determine vulnerability to TF risks. **This Recommendation is rated non-compliant.**

### *Recommendation 9 – Financial institution secrecy laws*

80. This Recommendation, formerly R. 4 was rated ‘PC’ in the 3<sup>rd</sup> MER since (i) the ECCB and FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without a MOU and (ii) there were no legislative provisions allowing the Registrar of Cooperative Societies and the Registrar of Insurance to share information with other competent authorities. For the 4<sup>th</sup> Round, the main requirements of this recommendation remain the same. Through the follow-up process it was determined that the deficiencies had been addressed at least to a level comparable with an LC. It was stated in the 7<sup>th</sup> follow-up report that the Authorities had used the amendment to the IBCA to allow for the sharing of information by the FSRC in its own capacity and as the entity responsible for regulating businesses under the Insurance Act and the Cooperative Societies Act. The authorities advised that a MOU between the ECCB and FSRC is now in place and working.

81. **Criterion 9.1** Through the 3<sup>rd</sup> round follow up process, the authorities advised that a MOU between the ECCB and FSRC is now in place and working. The Registrar of Insurance and Registrar of Co-operative Societies now falls under the purview of the FSRC and pursuant to the powers of the Commission in the FSRCA can share information with other authorities (domestically and internationally). The power was previously captured under section 373 of the IBCA which has now been repealed by the FSRC 2013. Section 31 of the FSRCA provides gateways for the Commission to disclose confidential information which include assist foreign regulators, pursuant to the MLPA and to the Attorney General and Law Enforcement agencies. Pursuant to sections 19 and 20 of the FSRCA the Commission may provide assistance to overseas regulators, including requesting information or the production of documents from a wide array of persons. Section 32 allows the Commission to enter MOUs to better coordinate the assistance efforts. Additionally, in the IA section 196, the Superintendent is not prevented from sharing information with domestic or foreign authorities subject to an agreement on confidentiality and a MOU between the Superintendent and the authorities. Section 25 of the MLPA provides that subject only to the constitution the provisions in the MLPA overrides any other legal provisions relating to secrecy.

## *Weighting and Conclusion*

82. Along with the key legislation changes MOUs are used by the competent authorities to facilitate the sharing of information, however the MOUs were not provided by the country. **This Recommendation is rated compliant.**

## *Recommendation 10 – Customer due diligence*

83. In the 3<sup>rd</sup> round Antigua was rated ‘PC’ on this Recommendation (formerly R. 5). Six major deficiencies were identified in the MER. These mainly related to the fact that key requirements were not enforceable in law, regulations or other enforceable means. Requirements to apply CDD measures to all existing clients was only applied in the case of IBCs and was not enforceable. In the follow-up process substantial progress was made to correct the deficiencies including a number of amendments to the Money Laundering Regulations. Sweeping changes were also made to the MLFTG including an amendment to the MLPA to increase the penalties which made them more dissuasive. The main changes to this Recommendation have been clarification in the requirement to verify beneficial ownership and specific measures for beneficiaries of life insurance policies.

84. **Criterion 10.1** Anonymous accounts or accounts in fictitious names are prohibited by Section 11A of the MLPA and Regulation 4(2)(c)(ab) of the MLPR . A person who contravenes these provisions commits an offence and is subject to a fine up to \$500,000 and imprisonment (Section 11A (7) MLPA). A corresponding obligation exists under the Part II of the MLFTG for CFT purposes.

85. **Criterion 10.2** Regulation 4(2) (a) of the MLPR *inter alia* requires financial institutions to establish customer due diligence (CDD) procedures which applies when a person who carries on relevant business and a customer agree to form a business relationship. Further Regulation 4(3) (aa) of MLPA Regulations requires a person who carries on relevant business to maintain CDD procedures which *inter alia* require such procedures to be completed before or in the course of establishing a business relationship or conducting a one-off transaction.

**(b)** - Regulation 4(2)(b)(ii) of the MLPA Regulations requires the application of CDD procedures in respect of one-off transactions where two or more one off transactions are concerned including where they appear to be linked and involve in total payment of or equivalent to approx. US \$10,000 or more. This does include one-off transactions.

**(c)** - Regulation 4(2) (c) of the MLPA Regulations requires the application of CDD procedures for all wire transfers sent or received by a person who carries on relevant business. In the circumstances, it appears that this would include occasional transactions as well.

**(d)** – Regulation 4(2)(e) of the MLPA Regulations requires the application of CDD procedures in respect of any transaction, by a person who carries on relevant business knows or suspects the transaction to involve ML or TF, regardless of any thresholds or exemptions stated in the law.

(e) – Regulation 4(3) (k) of the MLPA Regulations requires the application of CDD procedures when doubts arise about the veracity or adequacy of previously obtained identification data that the identification process be repeated.

86. **Criterion 10.3** Identification and verification of identification is required for all persons during the course of a business relationship or an occasional transaction. Verification must be through the use of reliable and independent documents and information – Regulation 4 (3) of the MLPR. Part I, paragraphs 2.1.6A and 2.1.6B of the MLFTG outline the types of documents that may be used to verify the identity of a person, whilst paragraph 2.1.39 et. seq details requirements for legal persons and arrangements.

87. **Criterion 10.4** In Regulation 4 (3) of the MLPR due diligence is required for B – the customer to produce evidence of his identity and verification of his identity. Regulation 4(3) (e)-(g) covers situations where the customer acts as voluntary, fiduciary or legal representative for another person. Regulation 4(3) (h)-(i) covers the requirement where B is a legal person or arrangement. The provision does not expressly require the identification and verification where another person acts as a voluntary or legal representative for B (i.e. holds a power of attorney over B’s assets). Section I, paragraph 2.1.33 of the MLFTG does require the identification and verification of persons holding a power of attorney. Regulation 4(3) (b) does however require the relevant business to take into account the greater potential for money laundering which arises when the customer is not physically present when being identified. Additionally, under Part II, Section 2 paragraph 2.1.33 of the MLFTG requires that the identity of such person be obtained. Further, Part I, paragraph 2.1.7A of the MLFTG requires that financial institutions should be aware of certain information including; the person or entity that maintains the account; those on whose behalf the account is maintained (the beneficial owners); the beneficiaries of transactions conducted by professional intermediaries; any person or entity connected with the account or financial transaction who can pose a significant reputational risk or other risk to the bank; whether the customer is a PEP. In particular, Part I paragraph 2.1.42 of the MLFTG provides that any application to open an account or undertake a transaction on behalf of another without the applicant’s identifying their trust or nominee capacity should be regarded as suspicious and lead to further inquiries.

88. **Criterion 10.5** Financial Institutions are required to identify and verify the identity of beneficial owners of its customers that are legal persons. The requirement is to identify the natural persons who ultimately own or control the legal persons – regulation 4(3) (h). The requirements also extend to ensuring that reasonable measures are taken to understand the ownership structure of the customer. Section I, paragraph 2.1.39 et. seq of the MLFTG details requirements for legal persons and arrangements. All types of customers are covered by the requirement in r. 4(3)(a)(iii). That requirement applies whether B is an individual or business, partnership, trust or company. The guidelines provide for further coverage which seems adequate to obtain relevant information or data from a reliable source, such that the financial institution is satisfied that it knows who the beneficial owner is.

89. **Criterion 10.6** Regulation 4(3)(i) requires financial institutions which have a business as a customer to have CDD procedures which use reasonable measures that are sufficient to establish the purpose and intended nature of the business. Further, 4(3) (1)(a) requires measures must also be taken to obtain information on the purpose and intended nature of a business relationship. Part I, paragraph 2.1.4 of

the MLFTG also requires financial institutions to obtain information on the purpose and intended nature of the business.

90. **Criterion 10.7** The MLPR Regulation 4(3) (a-i) and (l) requires that reasonable measures be taken sufficient to establish the source of funds and the source of wealth of customer, and also that ongoing due diligence be conducted. Ongoing due diligence is defined as ongoing monitoring of transactions for consistency with their knowledge of the customer, the business and the risk profile, including where necessary the source of funds and source of wealth. Additional requirements to maintain ongoing due diligence are established under MLFTG Part 1, Section 2.1.10. In relation to 10.7 (b) Section 2(1) of the MLPR 2007 and Section 3(a)(ii) of the 2017 MLPR amends the definition of customer due diligence and includes keeping information obtained up to date and relevant especially for high risk customers and PEPs.

91. **Criterion 10.8** Regulation 4(3)(h) of the MLPA Regulations mandates that where the customer is a legal person or trust, measures must be taken to determine who are the natural persons that ultimately own or control the legal person or arrangement, and reasonable measures must be taken to understand its ownership and control structure. The issue of understanding the nature of the customer's business is addressed at Reg. 4(3) (ia).

92. **Criterion 10.9** Regarding the requirement for the identification and verification of the identity of a customer who is a legal person or legal arrangement, the MLPR requires at Reg.4 (3) (h) that where a customer is a legal person or trust, measures must be taken to determine who are the natural persons that ultimately own or control the legal person or trust, and reasonable measures must be taken to understand the ownership and control structure. The Authorities have cited Section 18 of the CMTSP which requires licensees to obtain from a client who instructs him (a) details of the client's principal place of business, business address, telephone and facsimile, telex numbers and electronic address of the principal or professionals concerned with the client;(b) details of the client's current home address, telephone and facsimile numbers and electronic address;(c) copies of passport or identity card, drivers licence and an original utility bill or bank statement; and (d) two sources of reference to provide adequate indication on the reputation and standing of the client. However, this does not include legal form and proof of existence and furthermore does not apply to all financial institutions. Additionally, paragraphs 2.1.6B and 2.1.39 of the Money Laundering and Financing of Terrorism Guidelines (MLFTG) mandates financial institutions to obtain for its corporate customers copies of certificate of incorporation, memorandum and articles of association, certificate showing the registered office of the corporation and company registration form showing particulars of current directors. The CMTSP has limited application since it does not apply to all financial institutions. While the sections cited in the MLFTG does satisfy sub-criteria (a) and (c), the MLFTG does not address relevant persons who have a senior management position in the legal person as required by sub-criteria (b).

93. **Criterion 10.10** The MLPR in regulation 4(3)(h) amendment June 2017 requires that for legal persons, the financial institution should be required to identify and take reasonable measures to verify the identity of beneficial owners through (a) determining the identity of the natural persons who ultimately has a controlling ownership interest in a legal person; and (b) to the extent that there is doubt under as to whether the persons with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural persons exercising control of the legal person

through other means; and (c) where no natural person is identified the identity of the relevant natural person who holds the position of senior managing official.

94. **Criterion 10.11** Paragraphs 2.1.43 and 2.6.3 of MLFTG (January 2004) further amended by Amendment 43 of 2017 require financial institutions to obtain the following information for trusts and other types of legal arrangements: Identity of the settler and/or beneficial owner or class of beneficiary of the funds, who provided the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust. Identity of the principals, in particular those who are supplying and have control of the funds. Also required are the full name of the trust, nature and purpose of the trust (e.g., discretionary, testamentary, bare), country of establishment, names of all trustees, and name and address of any protector or controller. The financial institution should verify the identities of the trustees (or equivalent) who have authority to operate an account or to give the financial institution instructions concerning the use or transfer of funds or assets.

95. **Criterion 10.12** Section 2.1.14A (3)(a) of the MLFTG Amended June 2017 requires for life insurance business and investment in relation to insurance policies, that identification and verification of the beneficiary under the policy should take place in all cases at or before the payout or the time when the beneficiary intends to exercise vested rights under the policy.

96. **Criterion 10.13** Section 2.1.14A (3)(a) of the MLFTG Amended June 2017 requires that financial institutions should be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

97. **Criterion 10.14** The MLPR regulation 4(3) (aa) requires that procedures for identification of the customer be completed prior to or in course of establishing a business relationship or one-off transaction. The ability to delay verification after establishing the business relationship provided that: it is essential not to interrupt the normal conduct of business; and ML/FT risk is effectively managed is captured at Part I, Section 2.1.14A of the MLFTG amended May 2010.

98. **Criterion 10.15** Part 1, Section 2.1.14A of the MLFTG, which indicate that financial institutions will need to establish clear and consistent policies to deal with situations where satisfactory evidence of identity cannot be obtained. The provision requires that the money laundering risks are effectively managed by the financial institution in accordance with established risk management principles and that decisions are documented which set out the conditions under which utilization of the business relationship may occur prior to verification.

99. **Criterion 10.16** Section 3 of the MLPR No. 43 of 2017 amends the definition of “customer due diligence” to require CDD measures be applied to existing customers on the basis of materiality and risk; also at such appropriate times taking into account whether and when these measures had previously been applied to the customer and the adequacy of the data collected.

100. **Criterion 10.17** The MLPA Regulations states that EDD refers to either (a) the extended customer due diligence procedures, where appropriate, that are part of a financial institution's customer acceptance process, or (b) the intensified monitoring of accounts that are appropriate where a customer is or becomes a high-risk person, or is or becomes a politically exposed person or is related to such person. Additionally, Regulation 4(3) (d) of the MLPA Regulations requires financial institutions to perform enhanced due diligence measures when the customer is or becomes a high risk or becomes a politically exposed person. This is further supported by 1.4.1 (Supplemental Guidance) of MLFTG Amendment No. 43 of 2017.

101. **Criterion 10.18** Paragraph 1.4.1 (Supplemental Guidance) of MLFTG amendment no. 43 of 2017 mandates that financial institutions must assess the risk that they could be used for ML/TF and FOP. A Risk based approach is to be used for threats and to take commensurate measures. Where the ML/TF risks are considered lower, AML/CFT measures may be reduced (simplified). Further simplified measures may not be used by an FI where there is suspicion of ML/TF. Section 5 of the MLPR No.2 of 2017 also addresses the use of simplified measures as detailed in the criteria.

102. **Criterion 10.19** Regulation 4(3)(c) of the MLPA Regulations require that where satisfactory evidence of identity is not obtained, (a) a person who carries on relevant business shall not open an account for the customer or perform the one-off transaction, or where the business relationship or the one-off transaction has commenced, the person who carries on relevant business must not proceed any further with the business relationship or the one-off transaction, or shall proceed only in accordance with any direction of the Supervisory Authority;(iii) an existing or established business relationship must be terminated or the person who carries on relevant business should consider making a suspicious activity report. The application of the provision to *inter alia* one-off transactions does not include all transactions as required by the criteria.

103. **Criterion 10.20** There is no provision permitting financial institutions to not pursue the CDD process where there is a risk tipping-off.

### ***Weighting and Conclusion***

104. Antigua and Barbuda has been able to address the majority of the criteria adequately. There are however some minor deficiencies identified, namely that there is no provision for requiring FIs not to pursue CDD where this is risk of tipping off. **This Recommendation is rated largely compliant.**

### ***Recommendation 11 – Record-keeping***

105. In the 3<sup>rd</sup> round Antigua was rated NC on R.11, formerly R. 10. The deficiencies related to the fact that legislative requirements to maintain transaction records in a manner that would sufficiently allow the reconstruction of transaction did not apply to all financial institutions. Business correspondence was not required to be maintained for at least the statutory minimum retention period following the termination of an account or business relationship. Certain transactions were exempted from applying the record keeping requirements. There was no mechanism to enforce compliance with requirements to ensure that records were available to all competent authorities in a timely manner. These deficiencies were addressed by

amendments to the MLPA and MLPR. The only change in this Recommendation is an additional requirement for records of any analysis undertaken of the account.

106. **Criterion 11.1** A minimum retention period is in place under Section 12 of the MLPA for a ‘customer generated financial transaction document’ and non-customer generated ‘financial transaction document’; where it is necessary to maintain a record of the financial transaction concerned. These terms are defined in Section 12B and includes records on transactions domestically and internationally; the financial activities of the customer and any correspondence that relates to that customer. The minimum retention period is six years after the day that the account is closed in relation to account opening document; for deposit boxes – six years after the day that the deposit box ceases to be used by the customer; or in any other case six years from the date the transaction place unless a longer period is directed by the Supervisory Authority or other competent authority. This is reinforced by regulation 5 of the MLPR and Part I, paragraph 3.1 of the MLFTG.

107. **Criterion 11.2** Sections 12 and 12A of the MLPA sets out the primary legal authority for the maintenance of records and includes the requirement to maintain customer generated financial transaction document which encompasses account files and correspondence relating to the customer. Regulation 5 of the MLPR provides additional requirements. Records must be maintained for at least 6 years after the date of closure of the account and be able to be produced in a timely manner when requested by supervisory and other competent and authorised domestic authorities – regulation 5(1). The records that must be maintained are set out in Regulation 5(2) and includes CDD information required in regulation 4, records of business correspondence and transaction records. Regulation 5(1c) which was inserted by the MLPR (Amendment) Regulations 2017 addresses the treatment of results of any analysis undertaken and requires that it be maintained for the minimum retention period.

108. **Criterion 11.3** The authorities have pointed to the record keeping provisions in sections 12 12A of the MLPA and Part 1, Paragraph 3.1 of the MLFTG. In addition, regulation 5 (1a) specifically requires the records maintained be sufficient to permit the reconstruction of individual transactions to be used as evidence when prosecuting criminal activity including the types of currency involved.

109. **Criterion 11.4** – The MLPA 15(ii) states “that a financial institution forthwith produce to the Supervisory Authority or other law enforcement agency required all information obtained by the financial institution about any business transaction conducted by or for the defendant with the financial institution during such period before or after the date of the order as the Judge directs.”. This does not address all scenarios of request for information including requests for CDD information and therefore does not fully address the criteria.

### *Weighting and Conclusion*

110. Save for the minor deficiency in criterion 11.4 Antigua have met all the requirements of this recommendation. **This Recommendation is rated largely compliant.**

## *Recommendation 12 – Politically exposed persons*

111. Antigua and Barbuda was rated ‘NC’ for R.12 (formerly R.6) in its 3rd MER. The deficiencies were: The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP is not enforceable. The requirement for banks to obtain senior management approval for establishing business relationships with a PEP is not enforceable; and no requirement that when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, that financial institutions are required to obtain senior management approval to continue the business relationship.

112. **Criterion 12.1** The law does not distinguish between domestic and foreign PEPs. The requirement in Regulation 4(i) (d) (1) of the MLPR is that risk management procedures be established to determine whether a customer, whether current or potential, or the beneficial owner is a PEP. Senior management approval is required to establish a relationship with a PEP – Regulation 4(3) (d) (ii) and MLFTG Part I, paragraph 2.1.5A (1) as well as to continue existing business relationships where the customer becomes a PEP – Regulation 4(3) (d) (iii) and MLFTG Part I, paragraph 2.1.5A (2). In Part I, paragraph 2.1.5B of the MLFTG sufficient information is required to be obtained in order to determine the source of funds or source of wealth of the PEP, companies and legal persons related to a PEP. However, the standards requires that both the source funds and source of wealth must be established. Ongoing and enhanced monitoring of the relationship is required by regulation 4(3) (d) (iv).

113. **Criterion 12.2** As previously noted for criterion 12.1, there is no distinction between a domestic PEP and a foreign PEP. The same requirements will apply to both.

114. **Criterion 12.3** The definition of a PEP in regulation 2 of the MLPR includes immediate family members and close associates.

115. **Criterion 12.4** There are no requirements for financial institutions to determine whether the beneficiary of a life insurance policy, or the beneficial owner of a beneficiary, is a PEP.

## *Weighting and Conclusion*

116. Antigua and Barbuda meets most of the requirements of this recommendation. There is an adequate framework requiring enhanced monitoring for PEPs in place in accordance with the standard. **This recommendation is rated largely compliant.**

## *Recommendation 13 – Correspondent banking*

117. The Recommendation, formerly R. 7 was rated NC in the 3<sup>rd</sup> MER since the requirements for understanding and documenting the nature of a respondent bank’s management and business and to ensure that respondent institutions had performed normal CDD measures set out in Rec. 5 for customers utilizing payable-through accounts were not enforceable. Additionally, there were no requirements to document the

respective AML/CFT responsibilities of each institution in a correspondent relationship or obtain approval from senior management before establishing new correspondent relationships. These deficiencies were dealt with by amendments to the MLPR. This Recommendation incorporates requirements on FIs in relation to shell banks (former R. 18).

118. **Criterion 13.1** Regulation 4(6) (1) (a)-(d) of the MLPR substantially follows the wording of the requirements in criterion 13.1 (a) – (d).

119. **Criterion 13.2** Regulation 4(6) (1) (e) states that in relation to “payable-through accounts” financial institutions must be satisfied that the respondent bank has verified the identity of and performed normal CDD in respect of those of the respondent’s customers having direct access to accounts of the correspondent and that when requested, the respondent bank is able to provide relevant customer identification data to the correspondent bank. This requirement is reiterated in Part I, paragraph 2.147.

120. **Criterion 13.3** This criterion has been fully implemented by Regulation 7A of the MLPR and Part I, paragraph 2.148 of the MLFTG.

### *Weighting and Conclusion*

121. **This Recommendation is rated compliant.**

### *Recommendation 14 – Money or value transfer services*

122. This Recommendation formerly SR. VI was rated NC in the 3<sup>rd</sup> MER. At that time Antigua did not meet the requirement for registration or licensing. As a result, the effectiveness of current the any monitoring and compliance system for MVT was not possible. Sanctions were not applicable to all of the criteria in the recommendation. There were also cross cutting deficiencies from other recommendation which also applied to special recommendation VI. The above deficiencies were addressed by the enactment of the Money Services Business Act No.7 of 2011 (MSBA). The new element in this Recommendation is the requirement to actively identify and sanction unlicensed or unregistered money value transfer services (MVTS) providers.

123. **Criterion 14.1** Section 4 of the MSBA requires the licencing of any person carrying on Money Services Business. The licensing authority is the FSRC.

124. **Criterion 14.2** The authorities in Antigua can take action against natural and legal persons that conduct MVTS without a licence or registration – see section 4 and 34 of the MSBA. In relation to the sanctions, the penalty is on summary conviction a fine of one hundred and fifty thousand dollars EC (approx. US \$56,000) or imprisonment for a term of two years or both such fine and imprisonment. This sanction is proportionate in comparison with those applicable for AML/CFT measures. Section 34 of the MSBA provides for enforcement measures to bring suspected unlicensed money services business operators

to court and Section 11 of the Money Services Business Act, 2011 requires the display of the licence, which allows for the verification of those who hold a licence.

125. **Criterion 14.3** The requirement stipulates that MVTS should be subject to monitoring for AML/CFT compliance. Section 4(c) of the MSBA specifically empowers the conduct of examinations in relation to the prevention of ML and TF. Section 17 A of the MLPA empowers the Supervisory Authority to conduct examinations to determine the adequacy and effectiveness of the MVTS' AML/CFT system to the.

126. **Criterion 14.4** Section 41(1) (a) of the MSBA requires the FSRC to maintain a register of the names and addresses of licensed money services, their locations and sub-licensees. Section 10 also required that sub-licensees of MVTS providers be authorized and approved by the Commission (FSRC).

127. **Criterion 14.5** There is no requirement for MVTS providers that use agents to include them in their AML/CFT programs and monitor them for compliance. However, according to Section 2 of the MSBA a "sub-licensee" acts on behalf of a licensee to conduct money services business. Further, MSBA section 23 requires examination of these entities by FSRC, amongst other things, to ensure compliance with the AML/CFT requirements.

### *Weighting and Conclusion*

128. There is no requirement for MVTS providers that use agents to include them in their AML/CFT programs and monitor them for compliance, however the FSRC is required to examine sub-licensee (agents) to ensure that there is compliance with AML/CFT. **Recommendation 14 is rated largely compliant.**

### *Recommendation 15 – New technologies*

129. This Recommendation, formerly R. 8 was rated NC in the 3rd MER. At the time of the assessment the MLFTG did not require financial institutions to have measures in place to prevent the misuse of technology in ML and FT schemes. Although there were requirements in the MLFTG for financial institutions to establish policies and procedures for the risk emanating from non-face to face customers, these were not enforceable. R.15 focuses on preventing risks associated with all new or developing technologies and new products and business practices and sets out a new obligation for countries to identify and assess the risks.

130. **Criterion 15.1** The requirements in relation to the ML risks from new technologies are established in Regulation 3(1) (b) of the MLPR. Financial institutions are required to evaluate any new or developing technologies to identify any risks that may arise from them. The regulation also requires that financial institutions establish and implement measures to prevent the use of new or developing technologies in or in connection with money laundering and the financing of terrorism. Section 4 (1)(b) of MLPR no 43 of 2017 dated 13 June, 2017 provides specific requirements in which requires that financial institutions assess the ML/TF risks from new delivery mechanism for both new and pre-existing products.

131. **Criterion 15.2** (a) Regulation 3(1) (b) of MLPR requires to evaluate any new or developing technologies to identify any risks that may arise from them, and Section 4 (1)(b) of MLPR no 43 of 2017 dated 13 June, 2017 requires that the financial institutions undertake risk assessments prior to the launch of products, practices and technologies. (b) Regulation 3 (1) (b) (iii) of MLPR requires the implementation of measures to prevent the use of new or developing technologies in or in connection with money laundering and the financing of terrorism. **This criterion is met.**

### *Weighting and Conclusion*

132. Antigua has some mechanisms in place to institute CDD requirements which establish procedure to evaluate ML.TF risks emanating from new or developing technologies. However, there are shortcomings in that certain specific actions are not required to be undertaken. **This Recommendation is rated Compliant.**

### *Recommendation 16 – Wire transfers*

133. This Recommendation which was formerly SR. VII and was rated ‘NC’ in the 3rd MER due to fact that the requirements for wire transfers in the ML/FTG were deemed not enforceable in accordance with the FATF Methodology. The MLFTG became enforceable with penalties under the International Business Corporations (Amendment) Act. The Recommendation includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.

134. **Criterion 16.1** Regulation 4(3) (m) requires that wire transfers be accompanied by accurate and meaningful originator information that must include the name and address of the originator. Where an account exists, the number of that account, or in the absence of an account, a unique reference number is also required. Part I, paragraph 3.3 of the MLFTG June 2017 Update stipulates a similar procedure as well as the requirements for the relevant beneficiary information.

135. **Criterion 16.2** Section 3.8 of Cross Border Transfers in the MLFTG as amended on July 31, 2006 exempts FIs from including full originator information in cases where individual transfers from a single originator are bundled in a batch file for transmission to beneficiaries provided the originator’s account number or unique reference number is included and the batch file contains full originator information that is fully traceable within the recipient country.

136. **Criterion 16.3** Antigua and Barbuda does not apply a de minimis threshold since all cross-border wire transfers must be accompanied by originator information as set out in regulation 4(3)(m) of the MLPR.

137. **Criterion 16.4** The de minimis threshold is not applicable in the country, however MLPR Regulations 4(2)b(iii) and 4(3)a(iii) require the verification of customer information for all customers who engage in wire transfer activities.

138. **Criterion 16.5** Part I, paragraphs 3.9 and 3.12 of the MLFTG requires the same information for domestic wire transfers as cross border transfers including originator information throughout the payment process and chain.

139. **Criterion 16.6** The requirement of this criterion is set out in Section 3.6.1 of the MLFTG (updated June 2017). Section 15(ii) of the MLPA and section 42 of the POCA allows for law enforcement authorities to be able to compel immediate production of required information.

140. **Criterion 16.7** Section 3.8.3 of the MLFTG (as updated on June, 2017) which requires ordering FIs maintain complete originator and beneficiary information are collected in accordance with the record keeping requirements.

141. **Criterion 16.8** The authorities have cited Section 3.11 of the MLFTG as amended on July 31, 2006 which requires ordering FIs to consider restricting or even terminating their business relationship with FIs that fail to meet the standards of the MLFTG rather than requiring the ordering FI not to execute a wire transfer that does not comply with criteria 16.1 – 16.7.

142. **Criterion 16.9** Section 3.9.1 of the MLFTG (as updated in June 2017) which address the requirements of intermediary FIs requires licensed FIs to take measures to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain. While Section 3.4.3 of the MLFTG addresses the requirement for intermediary FIs to include beneficiary information.

143. **Criterion 16.10** Section 3.9.2 of the MLFTG (updated in June 2017) requires intermediary FIs to keep a record for five years of all information received from the ordering FI or another intermediary FI in cases where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer.

144. **Criterion 16.11** Section 3.9.2 of the MLFTG (updated in June 2017) requires financial institutions which act as intermediaries to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

145. **Criterion 16.12** Section 3.9.4 of the MLFTG as (updated in June 2017) fully captures the requirement.

146. **Criterion 16.13** Section 3.10.2 of the MLFTG (as updated in June 2017) requires beneficiary FIs to take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator and beneficiary information.

147. **Criterion 16.14** Regulation 4(2)(c) of the MLPR requires FIs to carry out customer due diligence procedures when their customers send or receives wires. This provision would require beneficiary FIs to verify the identity of the beneficiary. While the MLPR Reg. 5 (Record-Keeping procedures) addresses the

requirement to maintain the information in accordance with Rec. 11.

148. **Criterion 16.15** Section 3.10.5 of the MLFTG as (updated in June 2017) requires beneficiary FIs to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator and beneficiary information and (b) the appropriate follow-up plan.

149. **Criterion 16.16** the MLPR and the MLFTG Parts I and II and other legislation also apply to MVTS. Therefore, the deficiency identified at 16.8 is also applicable.

150. **Criterion 16.17** The authorities have cited Section 13 of the MLPA which sets out requirements for FIs to report STRs. MVTS are bound by the same requirements of the FIs in the MLPR the requirements for monitoring and filing STRs are considered appropriately applicable. Further the MLFTG as updated June 2017 Sections 3.11.1 to 3.11.2 addresses this Criterion including the specific requirement to report the STR in any country affected.

151. **Criterion 16.18** Part II section 4.8 of the MLFTG does require freezing were persons or entities are designated.

### *Weighting and Conclusion*

152. With the amendment and update to principle Act and the Guidelines as at June 2017, the country has been able to improve its technical compliance with respect to wire transfer, however minor deficiencies remain. **Recommendation 16 is rated largely compliant.**

### *Recommendation 17 – Reliance on third parties*

153. This Recommendation (formerly R. 9) was rated ‘NC’ in the 3<sup>rd</sup> MER due to no obligations for FIs (i) when relying upon third parties to immediately obtain from the third party the necessary information concerning elements of the CDD process in criteria 5.3 to 5.6. (ii) to take adequate measures to ensure that copies of the identification data and other relevant CDD documentation from third parties will be made available upon request and without delay. (iii) to satisfy themselves that the third party is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in R.5 and R.10. Additionally, there was no requirement that Competent authorities should take into account information available on countries which adequately apply the FATF Recommendations in determining in which countries third parties can be based. The deficiencies were remedied by amendments to the MLPA Regulations and to the MLFTG. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.

154. **Criterion 17.1** Regulation 4(5)(a) to (d), (f) of the MLPA Regulations requires that institutions (a) immediately obtain from the third party the necessary information concerning the elements of the customer due diligence (b) satisfy itself that, upon request, copies of identification data and other relevant

documentation will be made available, without delay, from the third party,(c) satisfy itself that the third party is regulated and supervised to standards established in this jurisdiction or that of the foreign jurisdiction if higher, relating to customer identification, record keeping, regulation and supervision, (d) satisfy itself that the third party has measures in place to comply with the requirements of CDD; and (f) retain ultimate responsibility for ensuring compliance with customer due diligence requirements, particularly the identification and verification of customers.

155. **Criterion 17.2** Regulation 4(5)(e) of the MLPR requires that financial institutions relying on third parties should not rely on a third party based in a country which inadequately applies the FATF requirements. In addition, regulation 6(1) (a) requires financial institutions to pay special attention to business relationships and transactions with persons from countries which insufficiently apply international standards relating to ML and TF.

156. **Criterion 17.3** There are no specific requirements which relate to financial institutions relying on third parties which are a part of the same group. The measures 17.1 above are therefore applied generally to reliance on third parties or introducers. However, Regulation 3(3)(d) of the MLPR requires that foreign branches should to the extent permitted by the laws in the foreign jurisdiction, comply with the provisions of the MLPR or where the laws of the foreign jurisdiction differs from those in the MLPR, then the higher standard should be applied.

### *Weighting and Conclusion*

157. The requirements within the MLPR addresses the main obligations in relation to third party reliance. **Recommendation 17 is rated compliant.**

### *Recommendation 18 – Internal controls and foreign branches and subsidiaries*

158. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated ‘NC’ in the 3<sup>rd</sup> MER since there were no requirements for financial institutions to: (i) develop internal procedures and controls to prevent ML should include FT; (ii) appoint a compliance officer at management level should be enforceable in accordance with FATF standards; (iii) provide compliance officers with necessary access to systems and records should be enforceable in accordance with FATF standards; (iv) maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls; (v) put in place screening procedures to ensure high standards when hiring employees should be enforceable in accordance with FATF standards. Former Recommendation 22 was rated NC because requirements for financial institutions (i) to ensure that principles in guidelines are applied to their branches and subsidiaries were not enforceable in accordance with FATF standards (ii) to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF recommendations should be enforceable in accordance with FATF standards.(iii) to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines should be enforceable in accordance with FATF standards.(iv) Branches and subsidiaries in host countries should be

MUTUAL EVALUATION REPORT OF ANTIGUA AND BARBUDA 161

required to apply the higher of AML/CFT standards of host and home countries to the extent that local laws and regulations permit. The deficiencies in Recs 15 and 22 were remedied with amendments to the MLFTG and MLPA. No new requirements have been included in R. 18.

159. **Criterion 18.1 (a)** Regulation 6(1) of the MLPA Regulations requires a person who carries on relevant business to designate a person at management level as the ML Compliance officer. **(b)** Regulation 6A of the MLPA Regulations requires a person who carries on relevant business to put in place screening procedures to ensure high standards when hiring employees. **(c)** Regulation 3(1) (c) requires a person who carries on relevant business to take appropriate measures so that employees are (i) made aware of certain regulations and the definition of ML as well as the ML offence under the MLPA, (ii) be given training in how to recognize and deal with transactions or activities which may be related to ML or TF, and (iii) competent for the work they do, remain competent, appropriately supervised and have their competence regularly reviewed. **(d)** Regulation 15 (3) of the MLPA Regulations requires persons who carry in relevant business to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.

160. **Criterion 18.2** Regulation 3(3)(d) of the MLPR requires that foreign branches should to the extent permitted by the laws in the foreign jurisdiction, comply with the provisions of the MLPR or where the laws of the foreign jurisdiction differ from those in the MLPR, then the higher standard should be applied. This would include complying with the measures outlined in 18.1 of this criterion. Additionally, Part I, paragraph 1.3B of the MLFTG provides that parent financial institutions should communicate its policies and procedures to its branches and subsidiaries and test compliance in order to ensure that its programmes operate efficiently. Further paragraph 1.5 of the MLFTG requires that any inconsistencies between home and host country laws prohibiting the implementation of the MLFTG be reported to the Supervisory Authority.

161. **Criterion 18.3** Regulation 3 of the MLPR requires every person who carries on relevant business in the jurisdiction of Antigua and Barbuda shall ensure that: (i) domestic branches and majority owned subsidiaries observe the provisions of these regulations and the Act; (ii) foreign branches and majority owned subsidiaries observe the provisions of these regulations, the Act or foreign measures consistent with them to the extent permitted by the laws of the foreign jurisdiction; (iii) where the standards of a foreign jurisdiction differ to those set out in these regulations or the Act, then the higher standard should be applied, to the extent permitted by the laws of the foreign jurisdiction; and (iv) where the laws, regulations or other measures of a foreign jurisdiction do not permit the application of the measures set out in these regulations or the Act, the Supervisory Authority and the regulator are informed of that fact. The amendment to the MLPR of 2017 now requires financial groups to apply appropriate additional measures to manage ML/TF risks where host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements.

### *Weighting and Conclusion*

162. Antigua's legal framework in the MLPA and MLPR meets the core components of this recommendation. **This Recommendation is rated compliant.**

## *Recommendation 19 – Higher-risk countries*

163. This Recommendation (formerly R 21) was rated ‘NC’ in the 3rd round MEVAL as there were no measures that required competent authorities to ensure that financial institutions were notified about AML/CFT weaknesses in other countries; Financial institutions were not required to examine the background and purpose of transactions that had no apparent economic or lawful purpose from or in countries that did not or insufficiently applied the FATF Recommendations and make available the written findings to competent authorities or auditors; and there were no provisions that allowed competent authorities to apply counter measures to countries that did not or insufficiently applied the FATF Recommendations. R. 19 requires the application of enhanced due diligence (EDD) measures for transactions and business relationships from countries and to be able to apply countermeasures when this is called for by the FATF. Countries are required to inform financial institutions of possible AML/CFT weaknesses in other countries.

164. **Criterion 19.1** Regulation 6(1a) of the MLPR provides for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply international AML/CFT standards. If the Supervisory Authority notifies a financial institution that a country has weaknesses in its AML/CFT systems, then the financial institution must pay special attention to business relationships and transactions from or in that country. Where transactions have no apparent economic or visible lawful purpose, [the financial institution] should examine as far as possible the background and purpose of such transactions, and written findings should be kept as a financial transaction document. Under the MLFTG such persons may present a higher risk and may warrant enhanced scrutiny. Under the Part I, paragraph 2.15C requires financial institutions to develop key risk indicators to determine high risk customers which should include the country of origin. Regulation 4(3) (d) then requires that where the customer is or becomes a higher risk customer that EDD procedures must be undertaken. Additionally, Part II, paragraph 1.3.3 established requirements to be applied on a risk basis including EDD for high risk customers.

165. **Criterion 19.2** Section 11(xii) of the MLPA allows the supervisory authority to issue directives to ensure compliance with the MLPA, MPLR or MLFTG. This includes issues directives that require financial institutions to apply countermeasures whenever the supervisory authority or regulator advises them to do so – regulation 6(1a) of the MLPR. This is consistent with the requirement to pay attention to transactions and business relationships with persons from such countries. There is no specific provision to require Antigua to independently apply countermeasures. However, regulation 6 applies generally and Part 1, paragraph 4.2(6) of the MLFTG stipulates that financial institutions note carefully advisories issued by the FATF on a country’ AML.CFT weakness. In paragraph 4.2(7) it also requires that financial institutions adhere to any countermeasures that the Supervisory Authority or regulator stipulates.

166. **Criterion 19.3** In keeping with the requirement in the MLFTG (Part I, paragraph 4.2(6)) Antigua and Barbuda has implemented measures to advise financial institutions regarding concerns on weaknesses in the AML/CFT systems of other countries. The Supervisory Authority regularly advises Financial Institutions on countries which are subject to FATF and CFATF countermeasures. Measures are also in place relative to TF under Part II, paragraph 4.8 of the MLFTG.

### *Weighting and Conclusion*

167. Deficiencies exist with respect to this criterion in relation to independently prescribing counter measures. **This Recommendation is rated Compliant.**

### *Recommendation 20 – Reporting of suspicious transaction*

168. This Recommendation (formerly R.13 and SR. IV) was rated in the 3<sup>rd</sup>. MER as ‘PC’ and ‘NC’. At the time STRs were only required to be reported in instances where there were large, unusual, complex transactions and did not apply to all the predicate offences under recommendation 1. Furthermore, the STR reporting regime in relation to terrorism and the financing of terrorism did not require the reporting of suspicion of terrorist organisations or persons who financed terrorism, neither did the obligation apply to attempted transactions. In terms of the review of the Standard by the FATF, this Recommendation is unchanged.

169. **Criterion 20.1** The provisions in section 13(2) of the Money Laundering Prevention Act (MLPA) requires that all transactions should be reported where it involves the proceeds of criminal activity. This is reinforced in Part I, paragraph 4.2(4) of the MLFTG. Regarding terrorist financing, Section 6 of the PTA 2010 states that every financial institution shall report to the Director of the ONDCP, every transaction, attempted transaction or proposed transaction which occurs within the course of its activities, and in respect of which there are reasonable grounds to suspect that the transaction, attempted transaction or proposed transaction is a) related to terrorism or the commission of a terrorist act; b) conducted by or on behalf of a terrorist group or a member of a terrorist group (c) conducted by or on behalf of a person who finances terrorism or the commission of a terrorist act.. Section 34 (4) of the Prevention of Terrorism Act, 2005 (No. 12 of 2005) (PTA) requires the reporting of every transaction which occurs within the cause of its activities and in respect of which there are also reasonable grounds to suspect that the transaction related to the commission of a terrorist act. Section 34 (3) makes reference to the reporting obligation of the financial institution, every three months, to the Director of the ONDCP and any person authorized by law to supervise and regulate that Financial Institution, given these regulations. Part II, Chapter 4 of the MLFTG requires reporting “without delay”, thus addressing the requirement of financial institutions to act promptly where there is a suspicions of terrorist financing.

170. **Criterion 20.2** Section 13(1A) of the MLPA requires financial institutions to report all suspicious transactions “whether completed or not”. It also requires reporting even if it is an “insignificant but periodic” transaction. Section 34(4) of the PTA requires attempted transactions to be reported. MLPA and PTA do not set a limit on the amount to report transactions or proposed transactions.

### *Weighting and Conclusion*

171. The MPLA and PTA legislations as cited by Antigua and Barbuda makes provision for a financial institution who suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorism financing to filed this suspicion promptly to the FIU. Additionally, the

financial institution is required to report all suspicious transaction including attempted transaction regardless of the amount. Antigua meets 20.2 and meets 20.1 In relation to criterion 20.1 reporting of suspicion in relation to TF promptly is covered by part II of Chapter 4 of the MLFTG cites reporting of suspicion without delay to the supervisory authority. **This Recommendation is rated C.**

### ***Recommendation 21 – Tipping-off and confidentiality***

172. Antigua and Barbuda was rated ‘PC’ for R.21 (formerly R.14) in its 3<sup>rd</sup> MER with the lone deficiency being that directors, officers, and employees of financial institutions could only be held liable of an offence of tipping off in relation money laundering investigations rather than the submission of STRs or related information to the FIU. There are no significant changes to this Recommendation for the Fourth Round.

173. **Criterion 21.1** Section 13(4) of the MLPA protects “the financial institutions and their employees, staff, directors, owners or other representatives” from criminal, civil or administrative liability resulting from disclosures made pursuant to the MLPA in the circumstances specified in this criterion. The MLPA and the PTA are two (2) distinct legislations. The safe guards provided by the MPLA to the financial institutions and their employees, staff, directors, owners or other representatives” from criminal, civil or administrative liability resulting from disclosures is not mirrored in the PTA.

174. **Criterion 21.2** MLPA, s. 7(1) prohibits providing information against a person from divulging knowledge of the fact that an investigation into ML has been made, is being made or is about to be made, to prejudice that investigation. This prohibits any persons who knows, suspects that an investigation into money laundering has been, is being or is about to made to divulge the fact or other information to another. The measures set out in 7 (1) (2) and (3) provides the prohibition elements in regard to financial institutions and their directors, officers and employees. This does not appear to prohibit the disclosure of the fact that an STR or related information is being been filed. Contextually, not all STRs or related information result in ML investigations. However, Sec. 2 of the MLPA 2008 amends section 7 of the MLPA by repealing and substituting the following “If is an offence for a person who knows or suspects that a financial institution has submitted or is about to submit a suspicious transaction report pursuant to section 13(2), to divulge that fact or other related information to another person Additionally, the MLPA is focused on making provisions for the prevention of ML and consequently TF is not covered. Part II, Chapter 4 of the MLFTG captures tipping off and confidentiality as it relates to the prevention of terrorism and terrorist financing.

### ***Weighting and Conclusion***

175. The financial institution their employees, staff, directors, owners or other representatives as authorized by law are protected from both criminal and civil proceeding for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. The provisions in the PTA regarding the same protection as the MLPA should be stipulated. The tipping off provisions relates to the prohibition elements in regards to financial institutions and their directors, officers and employees. This does not appear to

prohibit the disclosure of the fact that an STR or related information is being been filed. **This Recommendation is rated largely compliant.**

### *Recommendation 22 – DNFBPs: Customer due diligence*

176. Recommendation 22 (formerly R. 12) was rated ‘NC’ in the 3<sup>rd</sup> MER since lawyers, notaries and other independent legal professionals, accountants and company service providers were not considered FIs under the MLPA and were therefore not under the ambit of the AML/CFT regime. Additionally, the Assessors indicated that the deficiencies identified for all FIs as noted for R. 5, 6, 8-11, in the relevant sections of the MER were all applicable to listed DNFBPs. Antigua and Barbuda addressed these deficiencies through the Money Laundering Prevention (Amendment) Regulations, 2009 (MLP(A)R). (See. 7<sup>th</sup> FUR). Antigua and Barbuda classifies DNFBPs as FIs pursuant to Schedule 1 of the MLPA.

177. **Criterion 22.1 (R.10)** – The MLPA, MLPR and the MLPG all apply to the DNFBPs therefore the requirements outlined in Recommendation 10 all apply to this sector. The deficiencies identified at 10.20 also apply. Additionally, coverage of lawyers, notaries and accountants is limited to only when they conduct financial activity as a business.

178. **Criterion 22.2 (R.11)** – The requirements outlined in Recommendation 11 all apply to this sector. The deficiency identified at 11.4 also apply. Additionally, the deficiencies in 22.1 are also noted.

179. **Criterion 22.3 (R.12)** – The requirements outlined in Recommendation 12 all apply to this sector. The deficiencies identified at 12.4 and 22.1 also apply.

180. **Criterion 22.4 (R.15)** – The requirements outlined in Recommendation 15 all apply to this sector. However, account must be taken of the deficiency noted in 22.1.

181. **Criterion 22.5 (R.17)** – The requirements outlined in Recommendation 17 all apply to this sector. Except for the limitations noted in 22.1 there were no deficiencies identified.

### *Weighting and conclusion*

182. Antigua and Barbuda does have a framework for CDD which includes DNFBPs (Schedule 1 of the MLPA) that requires identification and verification of the customer and other parties where relevant. There are also measures to perform the required CDD on trust and company service providers there is a requirement to conduct the necessary due diligence to establish the identity and business background of the client and measures for dealing with third parties. However, there were some deficiencies as similarly identified for the FI, which related to CDD, PEPs and Record Keeping. Additionally, coverage of lawyers, notaries and accountants is limited to only when they conduct financial activity as a business. **Recommendation 22 is rated partially compliant.**

### ***Recommendation 23 – DNFBPs: Other measures***

183. Recommendation 23 (formerly R. 16) was rated ‘NC’ in the 3rd MER. The deficiencies that were noted for financial institutions for R. 13, 14, 15 and 21 were also applicable to DNFBPs. See. Criterion 22.1 above for the current AML/CFT framework for the entities that would be considered DNFBPs but are classified as relevant business or in Schedule 1 of the MLPA as financial institutions. The essential requirements for DNFBPs remained unchanged in the revised Standards.

184. **Criterion 23.1(R.20)** – The requirements identified at Rec. 20 also apply to the sector and the jurisdiction has fully met the requirements of that criterion.

185. **Criterion 23.2 (R.18)** – The requirements identified at Rec. 18 also apply to the sector and the jurisdiction has fully met the requirements of that criterion.

186. **Criterion 23.3 (R.19)** – The requirements identified at Rec. 19 also apply to the sector and the jurisdiction has fully met the requirements of that criterion.

187. **Criterion 23.4 (R.21)** – *Criterion 21.1* – The requirements identified at Rec. 21 also apply to the sector. The jurisdiction had some minor deficiencies in 21.1 and 21.2 which would also be applicable to this sector.

### ***Weighting and Conclusion***

188. Antigua and Barbuda does have measures for dealing with DNFBPs as it pertains to R. 18-22. There are however some shortfalls with regard to the tipping-off provision deals with investigations and not STRs. **Recommendation 23 is rated Largely compliant.**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

189. Recommendation 24 (formerly R. 33) was rated ‘NC’ in the 3<sup>rd</sup> MER. The assessors recommended that appropriate measures should be taken to ensure that bearer shares are not misused for ML and the principles set out in criteria 33.1 and 33.2 apply equally to legal persons that use bearer shares and recommended that there be a statutory obligation to provide information as to the ownership and management of partnerships should be put in place. Under the Third Round of Mutual Evaluations, the Seventh FUR indicated that while the IBCA was drafted to address the deficiency regarding bearer shares, the statutory obligation for partnerships are yet to be established.

190. **Criterion 24.1** Within the jurisdiction legal persons can be created under two different legal mechanisms. Within the domestic sector such entities can be created pursuant to the Companies Act 1995 and for the international sector such entities can be created pursuant to the International Business Corporations Act Cap. 222 (a) Laws provide for the incorporation of: (1) domestic companies – private and

public companies with limited liability incorporated under the Companies Act. (2) NPOs– private companies without share capital incorporated under the Companies Act and the Friendly Societies Act. (3) IBCs – incorporated under the International Business Corporations Act (IBCA) and formed for the purpose of carrying out international trade or business from Antigua and Barbuda. IBCs include international insurance, international manufacturing or other international trading or commercial activities. (4) International banks – incorporated under the International Banking Act, 2016. (5) International limited liability companies (ILLCs), formed under the International Limited Liabilities Companies Act, and international foundations (IFs) registered under the International Foundations Act. (6) Unincorporated Business incorporated under the Unincorporated Business Act, 2016. There are mechanisms to identify and describe the different types, forms and basic features of legal persons in the jurisdiction through the following legislation: Companies Act, International Business Corporations Act, International Banking Act, International Limited Liabilities Companies Act, International Foundations Act and the Unincorporated Business Act.

191. (b) Section 5 of the Companies Act requires that all domestic companies and NPOs must register and provide their Articles of Incorporation to the Registrar of Companies at the time of incorporation. The Articles of Incorporation must include general information on the company such as name, classes and any maximum number of shares the company is authorised to issue, number of directors, and restrictions on the business that the company may undertake. When filing, the company must also provide to the Registrar the address of its registered office and the names of all the directors. Any changes in the above information must be advised to the Registrar within 15 days of the change happening – pursuant to sections 6, 77 and 176 of the Companies Act.

192. In the case of an IBC, section 6 of the Act requires that the Articles of Incorporation must set out, in respect of the proposed Corporation (a) the proposed name of the corporation;(b) the classes and any maximum number of shares that the corporation is authorised to issue; and (i)if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series; (c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions; (d) the number of directors or the minimum and maximum number of directors of the corporation;(e) that no securities of the corporation will be distributed to the public, in contravention of section 365, in Antigua and Barbuda; and (f) that the corporation is restricted to carrying on international trades or businesses and any restriction on the kinds of international trades or businesses that the corporation can carry on.

193. In the case of an unincorporated business, such person must apply to the Commissioner for registration under the Unincorporated Business Act. As it relates to beneficial ownership information in the international financial services sector the Corporate Management and Trust Services Providers Companies Act section 18(3) mandates that the name and addresses of the beneficial owners of entities for which it provides corporate management and trust services be obtained and retained. The Law (Miscellaneous Amendments) (No.2) Act, 2017, provides for entities to annually supply an attestation report on beneficial ownership and control and amends the relevant laws.

194. At the point of incorporation pursuant to Section 177 (2) of the CA, a company shall prepare and maintain a register of members showing (a) the name and the latest known address of each person who is a member; (b) a statement of the shares held by each member; (c) the date on which each person was entered on the register as a member, and the date on which any person ceased to be a member. In addition, Section 184(3) – provides a company should to keep register of substantial shareholder (that is to say any one owning shares entitled to exercise 10% of the voting rights). Section 184(2) – provides that the register may require company to furnish register (of substantial shareholders) within 14 days of the request. Section 185(3) – provides if default of section 18(4) request, every officer is in default and is guilty of an offence.

195. Criterion **24.2**. The Authorities completed the NRA which included an assessment of all legal persons as it relates to ML/TF risks. The Authorities presented the methodology employed in doing the assessment, the sectors assessed the threats and vulnerabilities, the findings and conclusions and recommendations.

196. **Criterion 24.3**. The information required to be recorded in 24.3, namely company name, proof of incorporation, legal form and status, address, basic regulating powers as contained in the Articles of Incorporation, and list of Directors id provided for in the Companies Act, IBCA, the ILLCA, International Foundations Act, and the Friendly Societies Act. The Acts also require that the registers are public.

197. **Criterion 24.4**. S128 of the IBCA requires that a corporation must at all times have a registered office in Antigua and Barbuda; s130 indicates that it must prepare and maintain the information required in 24.3. Section 111 of the IBCA requires that changes of shareholdings be recorded and records of shareholders and the number of shares, at said office.

198. Pursuant to the Companies Act, 1995 section 175 prescribes that a company shall at all times have a registered office in Antigua and Barbuda. Section 177 addresses Company Registers and Records and sets out the information which is required to be maintained and indicates that a company may appoint an agent to prepare and maintain the registers required by the section and that the registers may be kept at the registered office of the company or at some other place in Antigua and Barbuda designated by the directors of the company. Companies Act 1995 Section 123.) requires companies to prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

199. ILLCA section 8. states that a limited liability company shall keep at the office of its registered agent, or at another place to which the registered agent has access to a current list of the full name and last known business, residence or mailing address of each member and manager; a copy of the initial articles of organisation and all amendments; a historical and a current copy of its operating agreement and all amendments; a copy of any agreements relating to capital contributions; a copy of membership certificates issued; an impression of any limited liability company seal; and any other documents required by regulations to be kept by the registered agent. Pursuant to section 23 ILLCA, the LLC shall at all times have a registered agent in Antigua and Barbuda. Shareholder information is therefore maintained in country.

200. International Foundations Act – Section 7 states that an International Foundation shall have a registered office in Antigua and Barbuda. Section 53 indicates that the internal register should include its

members and protectors, name and address of each foundation member and protector and the other information as required by the terms of the foundation charter.

201. **Criterion 24.5.** Section 194 of the Companies Act, 1995 prescribes for the filing of annual returns to the Registrar no later than April 1st in each year after its incorporation or continuance under the Act containing the prescribed information made up to the preceding. Section 21 prescribes for Amendment of Articles of Organisation and states that any such changes must be notified to the commission within 30 days of the change. Pursuant to section 161 of the IBCA, all fundamental amendments to the Articles of Incorporation must be by Special Resolution, and such resolution must be filed with the Commission. Fundamental changes include the matters as required by criteria 24.3 and 24.4. For the IBC sector - the CMTSPA at section 18 provides that all license holders must establish the identity and business background of the client and to keep records (s.18(3)(b) the names and addresses of the beneficial owners of entities for which it provides services. Section 19 of the CMTSPA mandates the keeping of records of clients pursuant to the MLPA. Thereafter section 14(1)(b) provides that the Commission shall conduct onsite and offsite examinations to ensure compliance with the CMTSPA and the MLPA et al. section 14(2) provides that all reasonable times licensee are examined to ensure maintenance of requirements in section 18 and 19 of the CMTSPA. The Companies Act Regulations Statutory Instrument 1997, No. 5. contains forms for, inter alia, change of registered office (Form 4), change of share ownership (Form 5) change of director (Form 9) and so on, these are changes outside of the annual filings. In addition, also contained above, any changes to incorporation information where such changes occur during the course of the year must be notified to the Commission in the instance of international companies. The International Business Act Regulations Statutory Instrument 1985, No.43 includes various change forms to change of registered office (Form 2), change of articles (Form 3) change of director (Form 5) and so on, that must be filed commensurate with any change, this is verified against the initial incorporation information. Further, the conduct of examinations once year or sooner as deemed necessary by the Commission is another mechanism where accuracy of information can be verified against incorporation information.

202. **Criterion 24.6.** The Laws Miscellaneous Provisions Act (No. 2) of 2017 amends the Companies Act, 1995, International Business Corporations Act Cap. 222 the International Foundations Act, 2007, the Corporate Management and Trust Service Providers Act, 2008 and the International Limited Liability Companies Act 2007 and mandates the filing of an annual attestation form capturing information on beneficial ownership and control and provides an administrative penalty where a company wilfully fails to file an attestation report on beneficial ownership. This therefore allows the registry being both the Companies Registry and the FSRC to hold information that is up to date on BO. The IBC Regulations, Statutory Instrument 1998, No. 41, Regulation 10 states “No licensed institution shall make a change to its directors or the direct or indirect, legal or beneficial owner of five percent or more of a class of shares in the institution, without prior approval for the Authority”. Section 18 of the CMTSPA (obligation of licensees to obtain and maintain BO information). It is the obligation of the company to hold BO information under the MLTFG and the MLPR.

203. **Criterion 24.7.** The Law Miscellaneous Provision Act (No.2), 2017 also amends the relevant legislation as cited above and requires the filing of an annual attestation on beneficial ownership and control. Companies must therefore keep this information. Regulation 5(1)(b) of the MLPR requires FIs, including CSPs, to ensure that data or information collected under the CDD process is kept up-to-date and

relevant by undertaking reviews of existing records. In the domestic sphere, all legal persons are incorporated pursuant to the Companies Act, thereafter they are licensed as or operate as relevant FIs or DNFBPs. Section 18 of the CMTSPA contains provisions in relation to the maintenance of corporate management service providers register. Section 18 (3)(b) of the CMTSPA as amended by the Law (Miscellaneous Amendments) Act, 2016 requires that the licensee must keep records of the name and address of the beneficial owner of entities for which it provides corporate and trust services which must be accurate and updated on a timely basis.

204. The CMTSPA and MLPR together includes provisions to ensure BO information is accurate and up to date, Section 8 of the ILLA speaks to Records and Members' Inspection Rights requiring inter alia that a current list of the full name and last known business, residence or mailing address of each member and manager be kept.

205. **Criterion 24.8.** The Companies Act at section 177(7) provides that a company may appoint an agent to prepare and maintain the company registers and records. Section 18 of the CMTSPA indicates that a licensee shall keep records of the names and addresses of the beneficial owners of entities for which it provides corporate management and trust services. Section 19 goes on to state that a licensee shall, in respect of each client, maintain adequate information on a file to enable him to comply with his obligation under the CMTSPA, the Money Laundering Prevention Act, the Prevention of Terrorism Act, the International Limited Liability Company Act or any other law in force in Antigua and Barbuda requiring a licensee to comply with these laws. Section 14 of the CMTSPA states at 14 states that In the performance of its functions under the Act the Commission may at all reasonable times require a licensee to **produce** for examination such of its books, records and other documents that the licensee is required to maintain pursuant to sections 18 and 19; require a licensee to **supply such information** or explanation, as the Commission may reasonably require for the purpose of enabling it to perform its functions under the Act. The Laws Miscellaneous Provisions Act (No. 2) of 2017 amends the Companies Act, 1995, International Business Corporations Act Cap. 222 and the International Limited Liability Companies Act 2007 and mandates the filing of an annual attestation form capturing information on beneficial ownership and control and provides an administrative penalty where a company wilfully fails to file an attestation report on beneficial ownership.

206. **Criterion 24.9.** Section 16 of the IBCA prescribes the transaction records which must be kept. Additionally, section 19 of the CMTSP requires that a licensee shall, in respect of each client, maintain adequate information on a file to enable him to comply with his obligation under the Act, the MLPA, and PTA, the International Limited Liability Company Act or any other law in force in Antigua and Barbuda. FIs and DNFBPs listed under the First Schedule of the MLPA are required to keep records for six (6) years after day on which the account is closed or after the day on which the transaction takes place pursuant to section 12B of the MLPA. Section 18 (4) of the CMTSPA states that where the service provider to a client is for any reason discontinued, the record kept for that client shall continue to be maintained for a period of six (6) years from the date of the discontinuation of such services. The Tax Information (Miscellaneous Amendment Act) 2011 which amended a number of laws to include an express retention period of five years for transaction or accounting records. Further that the Law Miscellaneous Provisions Act 2014

amended the IBCA to include an express retention period of five years for transaction or accounting records, the laws include: Section 130A (5) IBCA.

207. **Criterion 24.10** Information held at the Registry is publicly available. Section 19(1) of the FSRC Act – provides that the – Commission may request information - “at all reasonable times, by notice in writing” to a person regulated under the regulatory laws, to a connected person, or to a person reasonably believed to have information relevant to an inquiry by the commission to require him to provide specified information or information of a specified description or to produce specified documents or documents of a specified description. Section 14 of the CMTSP inter alia allows the FSRC to conduct from time-to-time on and off-site examination to ensure compliance with the MLPA. The Supervisory Authority pursuant to Section 11 the MLPR may instruct any financial institution or seek the assistance of any government department, statutory body, or other public body to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under this section. Section 12(5) of the MLPR states that a financial institution shall permit any person authorised by the Supervisory Authority upon request to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to this section and to make any notes or take any copies of the whole or any part of any such record and shall answer any questions of the Supervisory Authority or a person authorised by the Supervisory Authority pursuant to this subsection. These provisions allow for access without recourse to judicial proceedings which enables information to be obtained in a more expeditious manner than if court proceedings were required. Further, the FSRC by virtue of being the regulator of CSPs has access to BO information, in turn the FSRC has several MOUs between itself and ONDCP, the IRD and IPO which facilities access and sharing of information which includes basic and BO information. All LEAs can access information held by both the FSRC and the Company Registry. BO information can also be accessed directly by the ONDCP. The information can be received within 2 days. Further the IPO and FSRC have MOUs with competent authorities as it relates to obtaining information.

208. **Criterion 24.11.** The Authorities indicate that bearer shares do not exist under the Companies Act. Section 139 of the IBCA addresses mechanisms to prevent the misuse of bearer shares and prohibits a person from transferring a bearer share otherwise than in accordance with this Act, or, where a custodian’s license or approval is surrender or revoked, in accordance with the CMTSP Act. A bearer share transferred otherwise than in accordance with the subsection disabled after the transition date, a bearer share held by anyone other than a custodian is disabled.

209. **Criterion 24.12** (a) and (b) in respect of domestic companies, section 181 of the Companies Act requires every person who has a substantial shareholding in a company (defined as having at least 10 % of the unrestricted voting right), whether directly or through nominees, to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder. In the case of the provision of providing nominee shareholders for international corporations, this is regulated under sections 2 and 5 of the CMTSPA. The CMTSP Act and MLPA require such nominee shareholders (providing such services for IBCs and ILLCs) to conduct CDD on their clients; this will include obtaining, verifying and recording information on the identities and addresses of clients and their beneficial owners. For the domestic sector criterion 24.12(a) is the applicable consideration. It should also be stated that for the domestic sector nominee directors are not permitted, therefore no requirement for nominee director is applicable.

210. For the international sector criterion 24.12 (b) is applicable. section 18 creates the obligation to hold information and section 14 gives the power to Commission to require a licensee to produce for examination such of its books, records and other documents that the licensee is required to maintain pursuant to sections 18 and 19; require a licensee to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling it to perform its functions under this Act. Section 2 of the CMTSPA provides for both director and shareholder nominee services; and section 18 mandates all license holder to keep certain information on their clients which includes nominees; Section 19 goes further and specifies the information pursuant to the MLPA to be kept by the licensee. Therefore, taking into consideration the entire regime, there is no deficit regarding nominee shareholder and directors as their status is recorded as being a licensee pursuant to the CMTSPA and there is a statutory obligation to maintain nominator information and such information is available on request by competent authorities. CMTSPA - Section 8. Maintenance of corporate management service providers register requires the Commission to maintain a register in which include the class of license issued (that is to say the reference to the provision of nominee shareholders). (2) The register shall be open to inspection by the public upon the payment of a prescribed fee.

211. **Criterion 24.13** The Authorities indicated that the Attorney General can investigate any company and there are also offences and penalties for failure to comply with requirements under the Companies Act. Section 524. Of the CA states that if the Registrar is satisfied that, for the purposes of Division F of Part I or Division E of Part 11, there is reason to enquire into the ownership or control of a share *or* debenture of a company or any of its affiliates, the Registrar may require any person that he reasonably believes has *or* has had interest in the share *or* debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints, (a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested. A person has an interest in a share or debenture, if (a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein; (b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or (c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions. The Authorities also refer to the CMTSPA section 27, (Offences and penalties) states that Any person who with intent to deceive, for any purpose of this Act, makes any representation that he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding six months; a person who, with intent to deceive by any act or omission contravenes any provision of this Act is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding six months. Where a corporation is convicted of an offence under this Act, every director and every officer concerned with the management of the corporation is also liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent or that he took all reasonable steps to prevent the commission of the offence. Section 194 of the CA states that the company must file annual returns which reveal beneficial ownership. Failure to file the annual return may result in the Company being struck off as in accordance with section 511. Company offences carry with them summary conviction and a fine of \$10,000.00. There are also general catch all sanctions in the act at Section 553 and there is section 535 an order to comply. There are further penalties under section 194A (inserted by section 2 of the

Law (Miscellaneous) Amendments (No. 2) Act 2017, which states: A company shall submit annually an attestation report to the Commission on the beneficial ownership and control of the company and Any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default. The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Company Registry. The penalties are neither dissuasive nor proportionate.

212. **Criterion 24.14** Section 31(3)(a) of the FSRCA states that where the Commission is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Commission *may* disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by *the overseas regulatory* authority. The Authorities also indicate that Antigua and Barbuda is a member of the Global Forum on tax transparency. As such through the implementation of the common reporting standard, the jurisdiction gives effect to tax information exchange which invariably involves beneficial ownership information through the Antigua and Barbuda Tax Exchange Information Act, 2002 and the Automatic Exchange of Financial Account Information Act, 2016 and Automatic Exchange of Financial Account Information Regulations, 2017. As for the information related to IPO, the Antigua and Barbuda Tax Exchange Information Act, 2002 and the Automatic Exchange of Financial Account Information Act, 2016 and Automatic Exchange of Financial Account Information Regulations, 2017 recognize the Commissioner of Inland Revenue (IRD) as the competent authority for tax related matters. Therefore, the Commissioner has wide powers to access information from the IPO office. The FIU and the LEA can directly access BO information the average timeline for response of ONDCP by IPO is 2 days. Further the ONDCP in instance of urgency can themselves visit the IPO and retrieve the information themselves without impediment. Finally, there is no barrier to foreign authorities accessing such information as it publicly available and can be accessed by contacting the relevant registry and the information transmitted upon payment of the requisite fee. The established procedure for a foreign authority to obtain information is either through the FIU via Egmont or other informal means, or through an MLA request to the central authority which provides for a domestic agency to access the information. The Supervisory Authority in consultation with the Attorney General, who is the Central Authority, can take appropriate measures to provide assistance in matters concerning money laundering and predicate offences.

213. **Criterion 24.15** The Competent Authority for tax transparency which includes the disclosure of beneficial ownership information for tax purposes has an Exchange of Information (EOI) Manual used to implement international cooperation. The Authorities however have not otherwise demonstrated how the quality of assistance in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad is monitored except in the case of requests for cooperation under international tax arrangements.

### ***Weighting and Conclusion***

214. There are mechanisms in place to ensure that companies or company registries to obtain and hold up to date and accurate information. The Authorities however have not otherwise demonstrated how the

quality of assistance in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad is monitored except in the case of requests for cooperation under international tax arrangements. The penalties for failure to comply with the requirements are neither dissuasive nor proportionate. **Recommendation 24 is rated largely compliant.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

215. This Recommendation (formerly R. 34) was rated ‘PC’ in the 3rd MER since the main deficiency was that there were no measures for the registration or effective monitoring of local trusts and assessors recommended that the Authorities should consider including adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trusts.

216. **Criterion 25.1** The rules governing the obligations to maintain identity information of the settlors, trustees and beneficiaries of trusts (i.e., trusts that are not managed by trustees that are regulated under the CMTSPA and MLPA) is largely based on the English common law as a result of the Common Law (Declaration of Application) Act of 1705. This means that for a discretionary trust to be valid, it needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. Consequently, a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (Knight v Knight (1849) 3 Beav 148). In addition, the trustee has several obligations which all suggest that he/she is required to know who the beneficiaries of the trust are in order to be able to comply with these obligations. Examples are the obligation to avoid conflicts of interests between the trustee’s fiduciary duties and their own self-interest (Bray v Ford [1896]) and the obligation to familiarize themselves with all information regarding the trust including the trust documents and assets (Hallows v Lloyd (1888) 39 Ch D 686, 691). Finally, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (Pearse v Green (1819) 37 E.R. 327 at 329).

217. Even where a trustee would not be required under CMTSPA or the MLPA to identify the beneficiaries of the trust, he/she is still required to have this information available based on the common law obligations. The common law obligations ensure that trustees are complying with their ongoing beneficiary requirements.

218. Laws provide for the creation of ordinary trusts and international trusts. Ordinary trusts are recognised and created under the common law framework and have no governing statutes. There is no obligation for ordinary trusts or foreign trusts (defined as trusts which are governed by the law of a jurisdiction other than Antigua and Barbuda) to be registered in Antigua and Barbuda. However, ordinary trusts that operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for income tax purposes. ITA Section 20 states that the deed of settlement shall specify the purpose of the trust, appoint a trustee, specify the beneficiary or class of beneficiaries of the trust, and set forth the respective rights, duties, responsibilities and beneficial interests of the trustee and beneficiary. The deed of settlement may also

appoint a protector and set forth the protector's rights, duties and responsibilities. The deed of settlement shall be executed by a settlor and by a trustee, and if applicable, by a protector, either before two witnesses or before a notary public or officer of a court. Trusts are taxed at the trustee level. It is unclear whether in relation to professional trustees there is a requirement to maintain information as per sub-criterion 25.1 (a) and (b) for 5 years after trust ceases.

219. **Criterion 25.2** Section 17 of the International Trust Act (ITA) requires a trustee to deposit any amendment to the trust deed of settlement with the FSRC within 10 days of the execution of the amendment. This applies to professional trustees of foreign, international and ordinary trusts. The provision of such trustee services is regulated under the CMTSPA and the MLPA and are required to conduct CDD on the trusts for which they act as trustees. This includes establishing the identities of the settlors and beneficiaries of the trusts for which they provide services to. In respect of trusts that are not professionally managed (including foreign trusts), the obligations on the trustee to maintain information on the trust beneficiaries and settlors arise only from the requirements of common law. The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued.

220. **Criterion 25.3.** Regulation 4(3)(h) of the MLPR 2009 which addresses identification procedures states that where an applicant for business is a legal person or trust, measures must be taken by a person who carries on a relevant business to determine who are the natural persons that ultimately own or control the applicant, and reasonable measures must be taken to understand the ownership and control structure.

221. **Criterion 25.4** Section 19 of the ITA prevents a person from inspecting the Register of International Trusts or the records of the FSRC except for the settlor, protector, trustee or beneficiary of a trust, and then only with respect to the entry of that trust on the Register, except that the trustee may, in writing, authorise a person to inspect the entry of that trust on the Register. Further, section 19 permits the Register, files and records of the FSRC to be open for inspection by any officer of the Government of Antigua and Barbuda or any of its agencies, authorities or courts in the course of carrying out his or her mandate. Section 88(d) of the ITA addresses permissible disclosure of confidential information and states that nothing in the Act and no trust deed of settlement shall prohibit a trustee, protector or any of the trustee's or protector's directors, officers or employees from disclosing confidential information upon an order of the Court, based upon written request of the Government of Antigua and Barbuda, for information regarding the identification of the trustee, protector, settlor, beneficiary, property or transactions of a trust for the purpose of complying with the Antigua and Barbuda's MLPA or the PTAPTA.

222. **Criterion 25.5** Section 19 of the ITA permits Competent Authorities including law enforcement authorities to have access to information held by trustees once so authorised and FIs and DNFPBs with written permission. Additionally while Competent Authorities including law enforcement authorities would have access to the Register, files and records of the FSRC since they would likely meet the criteria of any officer of the Government of Antigua and Barbuda or any of its agencies, authorities or courts in the course of carrying out his or her mandate, the types of information would be limited to the name of the trust, the name and address of the Antigua and Barbuda trustee and the date of the registration of the trust and not

the types of information listed in the essential criteria. Section 88(d) of the ITA addresses permissible disclosure of confidential information and states that nothing in the Act and no trust deed of settlement shall prohibit a trustee, protector or any of the trustee's or protector's directors, officers or employees from disclosing confidential information upon an order of the Court, based upon written request of the Government of Antigua and Barbuda, for information regarding the identification of the trustee, protector, settlor, beneficiary, property or transactions of a trust for the purpose of complying with Antigua and Barbuda's MLPA or the Antigua and Barbuda PTA. There are no provisions for ensuring the timeliness of this access. This is further impeded by the need for FIs and DNFPBs to have written permission.

223. **Criterion 25.6.** Section 31(3) of the FSRC Act states that where the Commission is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Commission **may** disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority. Provision for the disclosure of information is also made in the CMTSP Act and further states that where in the opinion of the Commission it appears necessary in relation to any request for assistance received from a foreign regulatory authority to invoke the jurisdiction of a court of competent jurisdiction in obtaining information requested by a foreign regulatory authority, the Commission shall immediately notify the Attorney General with particulars of the request and shall send him copies of all documents relating to the request, and the Attorney General is entitled in a manner analogous to *amicus curiae*, to appear and take part in any proceedings in Antigua and Barbuda, or in any appeal from such proceedings, arising directly or indirectly from any such request.

224. **Criterion 25.7** Trustees at common law can be sued by the beneficiaries of the trust and for International Trusts, pursuant to the (ITA). Further, by virtue of trust activities falling within the First Schedule of the MLPA and by virtue of a trust company, as defined in section 2 of the ITA, being an entity licensed or regulated by the CMTSPA and with the understanding that such CTSPs are bound by the obligations under the MLPA, the requisite sanctions relative to financial institutions are equally applicable to international trusts and in so doing such sanctions are proportionate and dissuasive.

225. **Criterion 25.8.** CMTSP Act section 14 states that the functions of the Commission include to conduct, from time to time or whenever it considers it necessary on-site and off-site examinations of the businesses of the licensee for the purpose of ensuring that the provisions of the Act, the ILLA, the International Foundations Act, the Companies Act, the IBCA, the MLPA and the TPA and any other Act that confers jurisdiction on the Commission are being complied with and in the performance of its functions under the Act the Commission may at all reasonable times require a licensee to produce for examination such of its books, records and other documents that the licensee is required to maintain pursuant to sections 18 and 19; and require a licensee to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling it to perform its functions under this Act. Section 27(3) states that a person who, with intent to deceive by any act or omission contravenes any provision of this Act is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six months. Section 27(6) Where a corporation is convicted of an offence under this Act, every director and every officer concerned with the management of the corporation is also liable to be convicted for that offence, unless he satisfies the court that the offence was committed without his knowledge or consent or that he took all reasonable steps to prevent the commission of the offence. The Act does not state a penalty

in respect of corporations. In accordance with the Laws Miscellaneous Act No. 14 of 2017, Trustees and CSPs are required to submit annually beneficial ownership information to the Commission. Failure to submit the information, results in the Commission applying administrative penalties of \$5,000 for each day the information is outstanding. The obligation to maintain records is covered under section 12 of the MLPA. All legal arrangements under law are subject to this sanction, as for the common law the resolution would be through judicial proceedings.

### *Weighting and Conclusion*

226. The ability of FIs or DNFBPs to obtain information on beneficial ownership and assets of the trust to be held or managed under the terms of the business relationship needs to be addressed. The issue of international cooperation also needs to be addressed. **Recommendation 25 is rated largely compliant.**

### *Recommendation 26 – Regulation and supervision of financial institutions*

227. This Recommendation, formerly R. 23 was rated NC in the 3<sup>rd</sup> MER on the basis of the following; insufficient of AML/CFT supervisory oversight of all FIs; lack of or inadequate provisions for management approvals and consistent application of fit and proper standards on all FIs; and all FIs were not subject to effective AML/CFT oversight. The amendments to the Banking, Insurance and Cooperative Societies Acts, enactment of the MSBA along with the appointment of the Supervisory Authority addressed the above deficiencies. There has been no substantive change in the Recommendation except for the inclusion of the prohibition of shell banks.

228. **Criterion 26.1** The Director of the ONDCP was appointed as the Supervisory Authority on November 1, 2007 for the purposes of AML/CFT monitoring and compliance by all FIs and DNFBPs. The Supervisory Authority is empowered to issue guidelines pursuant to section 11(1) (f) of the MLPA (as amended) and has issued the Money Laundering and the Financing of Terrorism Guidelines (MLFTG). The FSRC is the prudential regulator and supervisor of financial services business. The FSRC, in performing the regulatory function can also cooperate with domestic and international authorities with a view to reducing the risk of the financial services business being used for money laundering or other crime. In this vein, the Supervisory Authority and the FSRC has entered into a MOU to cooperate and assist each other in respect of AML/CFT matters which has been in place since 2010.

229. **Criterion 26.2** The Core Principles FIs in Antigua and Barbuda are Banks, Securities and Insurance Companies. Section 3 of the Banking Act (BA) requires anyone desirous of carrying on domestic banking business in Antigua and Barbuda to apply for a licence from the Eastern Caribbean Central Bank (ECCB). The authorities also cite Part II, section 4 of the International Banking Act No. 6 of 2016 which requires a licence from the FSRC in order to provide international banking services in Antigua and Barbuda. The application must be made to the FSRC and details of the application process is set out in section 8 of the International Banking Act. Section 7 of the Securities Act provides for the licensing of securities exchanges and section 46 requires the licensing of market participants. Section 9 of the Insurance Act (IA) requires persons carrying on insurance business in Antigua and Barbuda to be registered. This term is used

interchangeably in the legislation with licensing and leads to ambiguity. Applications for registration are made to the Superintendent of Insurance (SOI) within the FSRC.

#### Composition of Register of Securities as at 30 November 2016

TYPE OF LICENCES	ECCU TERRITORIES	OTHER CARICOM TERRITORIES	TOTAL
Principals	9	3	12
Representatives	12	6	18
Broker-Dealer	6	4	10
Investment Adviser	-	-	-
Custodian	1	0	1
Collective Investment Scheme Custodian	-	1	1
Collective Investment Scheme Management Company	2	0	2
Collective Investment Scheme	2	0	2
Securities Exchange	1	0	1
Clearing Agency	1	0	1
Securities Registry	1	0	1
<b>TOTAL</b>	<b>35</b>	<b>14</b>	<b>49</b>

Source of information: Data provided by ECCB

230. With regard to other FIs, under section 4 of the Co-operative Societies Act (CSA), co-operative societies including credit unions are required to be registered by the Supervisor of Co-operative Societies who is appointed by the FSRC. MVTs providers are required to be licensed under section 4 of the MSBA. The licensing authority is the FSRC. The licensing requirements under the BA ensure that shell banks are not established. Corresponding provisions also exist in the International Banking Act which ensures that shell banks are not established.

231. **Criterion 26.3** Section 14 of the IA requires for registration that the SOI be satisfied that the proposed directors and persons who constitute the management of an applicant are fit and proper in accordance with the criteria set out in section 198 of the IA. Significant shareholders are also required to be considered suitable. The fit and proper criteria outlined in section 198 are extensive and sufficient. No basis for assessing the suitability of significant shareholders is detailed. So while directors and management are adequately vetted, the same cannot be said for significant shareholders on registration. Section 17 of the IA requires the approval of the SOI for any change in directors, management or shareholders of a registered insurance company. Approval of any of these changes is based on the same criteria applied during registration. Therefore, the observation regarding registration is also applicable to any subsequent change in directors, management and shareholding of a registered insurance company. Sections 9 and 21 of the International Banking Act, in relation to approval of directors and officers, and persons holding controlling interests respectively, requires that the applicant be vetted against the fit and proper criteria in section 88. Section 2 defines controlling interests as referring to a person who can inter alia exercise voting rights over 20% of the shares of the licensed FI. The criteria in section 88 takes into account any criminal history of the applicant. The authorities advised that similar provisions can be found in relevant statutes governing MVTs providers in section 6(5) of the MSBA and section 53 of the CSA for credit unions. However, the

provisions in section 6(5) of the MSBA does not satisfy the requirements of this criteria. The provision requires that the FSRC when considering fitness and probity to have regard to the “reputation, character, financial integrity and reliability” of the applicant but does not explicitly require the criminal history to be taken into account. Section 53(6) of the CSA as amended prevents persons who have been convicted of certain offences from being a part of the management of the cooperative union until his disability has been removed.

232. **Criterion 26.4** The FSRC generally supervises international banks in line with the Basel Committee on Banking Supervision (BCBS) Core Principles.

233. Despite this, minor deficiencies exist as risk assessments do not consider the risk of international banks commensurate with their systemic importance. Another small deficiency exists as the MOUs and ISAs do not address partnership in relation to orderly Bank Resolutions.

234. Insurance companies are also supervised in line with the Principles set by the IAIS. In particular, the IBA and the FSRCA provide the framework for consolidated supervision. The framework for cross border consolidated supervision is also in place.

235. Domestic banks are also supervised in line with the BCBS by the ECCB. This is addressed by the BA.

236. In relation to other financial institutions i.e. credit unions and MVTS providers, the Supervisory Authority as the overall AML/CFT supervisory authority is responsible for AML/CFT regulation and supervision.

237. **Criterion 26.5** The FSRC effective December 2015 adopted a risk-based supervisory framework. Among the key principles of the framework are supervision on a consolidated basis including an assessment of all material national and international entities and the level and frequency of supervisory scrutiny and the degree of intervention is dependent on the risk profile of the institution as a result of the risk assessments conducted.

238. With regard to the Supervisory Authority, the Financial Compliance Unit (FCU) of the ONDCP was established to perform the AML/CFT supervisory functions of The Supervisory Authority. The FCU utilizing risk management procedures selected FIs for its first round of inspections which allowed it to establish AML/CFT risk profiles for the examined institutions. Since examining several entities in the financial sector and as a result of risk assessments which has been conducted, the FCU has establish a reasonable understanding of AML/CFT risk profiles of specific sectors. On-site and offsite supervision is determined on the basis of the ML/FT risks and the internal controls and procedures of the institution or the group as identified by the supervisory authority. However, having only recently formally identified the national ML/TF risks, the ML/TF risks of the country and the characteristics of the FIs or groups were not considered by the FCU.

239. **Criterion 26.6** The authorities have advised that review of the assessment of the ML/TF risk profile of FIs and groups was conducted as a part of the national AML/CFT risk assessment. Reviews are

conducted periodically, at least annually or when major events or developments in the management and operations of FIs or groups occur. In addition, Section 17 (a)(2) states that Examination shall be from time to time or whenever in the determination of the Supervisory Authority such examination is necessary or expedient in order to make a determination as to whether a financial institution has an adequate AML/CFT system and that the system is being properly and effectively implemented as required by the Act, Regulations, Guidelines and Directives. However, the regulation does not explicitly express the requirement to review the risk assessments of FI and groups periodically and when there are major events or developments in the management and operations of the financial institution or group.

### *Weighting and Conclusion*

240. Antigua and Barbuda has a legal framework in place for most of the requirements of recommendation 26. Regulation of FIs is undertaken by the FSRC and in some cases the ECCB. In addition, onsite and offsite supervision is now determined on the basis of the ML/FT risks and the internal controls and procedures of the institution or the group as identified by the supervisory authority. Minor deficiencies at the technical level include: a) the ambiguity of the term “licensing” which is used interchangeably in the legislation b) there are no explicit provision to review criminal history when assessing fitness and probity in the MSB sector, c) there is no basis for assessing the suitability of significant shareholders for insurance companies, d) There is no clear requirement to review the risk assessments of FI and groups periodically and when there are major events or developments in the management and operations of the FI or group. **Recommendation 26 is rated largely compliant.**

### *Recommendation 27 – Powers of supervisors*

241. This Recommendation, formerly R.29 was rated PC in the 3<sup>rd</sup> MER since neither the Registrar of Insurance nor the Registrar of Co-operative Societies had adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements. Enforcement powers and sanctions with respect to AML/CFT requirements are prescribed in the MLPA and the PTA and rest with the Director of the ONDCP as the Supervisory Authority and can be applied to insurance companies and cooperatives. Section 3 of the MLPA 2010 also amended Section 11 of the principle Act to give the Supervisory Authority powers to apply administrative sanctions for breach of the Act, Regulations, Guidelines and or Directives. There is no revision to the Recommendation other than that supervisors should have powers to supervise and monitor compliance.

242. **Criterion 27.1** The Director of the ONDCP as the Supervisory Authority has overall responsibility for ensuring compliance by all FIs with local AML/CFT laws, regulations, guidelines and directives and was so designated in November 2007. The Supervisory Authority has extensive powers including powers to monitor compliance (onsite and Offsite surveillance) including requiring the production of documents or provision of information, including the issuing of guidelines, taking action against FIs and DNFBPs for non-compliance with the MLPA or MLPR.

243. **Criterion 27.2** Section 11(1)(c) of the MLPA empowers the Supervisory Authority to inspect business transactions records. Further, section 17A of the MLPA provides for the Supervisory Authority to have the authority to examine any financial institution to assess compliance with AML/CFT legal and regulatory requirements.

244. **Criterion 27.3** Section 11(1)(c) of the MLPA empowers the Supervisory Authority to inspect business transactions records, while Section 17B of the MLPA requires FIs to provide to an examiner of the Supervisory Authority all records, documents and information relevant to their AML/CFT systems necessary for an examination.

245. **Criterion 27.4** Section 17 (C) of the MLPA empowers the Supervisory Authority to impose sanctions for breaches of the MLPA discovered during an onsite examination. These sanctions include written warnings, written agreement or memorandum of understanding, directions to cease and desist conduct, directions regarding any employee of the institution or board member and administrative financial penalties in accordance with the MLPR. Administrative penalties as set out in Regulation 3 (8) of the MLPR cannot exceed EC\$100,000 (US\$37,000) for failure to comply with the requirements of the regulations directives or guidelines issued by the Supervisory Authority. Section 17E also provides sanctions for a FI or director, manager or employee of a FI who breaches any provision of Part III of the MLPA. These sanctions include on summary conviction a fine not exceeding EC\$500,000 (US\$185,000) or a term of imprisonment not exceeding 6 months and on conviction on indictment a fine not exceeding EC\$1,000,000 (US\$370,000.). However, the Supervisor does not have direct powers of withdrawal, restriction or suspension of the FIs licence. To achieve this it would need to make the request to the FSRC or ECCB as there are the issuers of the licences.

### *Weighting and Conclusion*

246. Supervisor does not have direct powers of withdrawal, restriction or suspension of the FIs licence. To achieve this, it would need to make the request to the FSRC or ECCB as there are the issuers of the licences. **Recommendation 27 is rated largely compliant.**

### *Recommendation 28 – Regulation and supervision of DNFBS*

247. Recommendation 28 (formerly R.24) was rated ‘PC’ in the 3<sup>rd</sup> MER. Deficiencies relating to casinos and certain other financial institutions which were not covered under the AML/CFT regime has been corrected as casinos are now under the regulatory regime of the FSRC and subject to AML/CFT oversight. The new FATF Standard specifically indicates that the systems for monitoring and ensuring compliance with AML/CFT requirements should be performed by a supervisor or SRB. It is also required that the supervisor or SRB take necessary measures to prevent criminals or their associates from being professionally accredited and to have effective, proportionate and dissuasive sanctions.

248. **Criterion 28.1** Casinos fall under the definition of financial institutions in the MLPA and is so listed in the First Schedule to that Act as a financial institution which is subject to AML/CFT supervision.

(a) Regulation 3 of the Interactive Gaming and Interactive Wagering Regulations 2007 (IGIWR) prohibits gaming and wagering activities, including casinos unless the person holds a licence. It further prohibits any person from benefiting from monies wagered in interactive gaming or wagering activity unless that person holds a licence. It also restricts the grant of licences to entities incorporated under the IBCA for the purpose of interactive gaming or interactive wagering and entities in possession of a certificate of incorporation and certificate of good standing and which have otherwise complied with the Act.

(b) Pursuant to regulation 15 of the IGIWR, the FSRC must be satisfied that the applicant has met a number of criteria including at 15(l) that the applicant is in the Commission's view untainted with illegality. However, the specific requirement set out in criterion 28.1 (c) is not present so far as preventing criminals from being the beneficial owner of an applicant or holding specific positions within the applicant. Section 17 of the MLPA also restricts persons who have been sentenced to a term of imprisonment for twelve months or more whether in Antigua and Barbuda or elsewhere from being eligible or licensed to carry on the business of a financial institution which includes the business of a casino under the definition of FI within the MLPA.

(c) Casinos are subject to AML/CFT supervisory oversight by the Supervisory Authority by virtue of being listed in the First Schedule of the MLPA as a financial institution. The provisions of the MLPR applies to casinos and in particular, regulation 4 – Identification procedures; regulation 5 – record keeping procedures; and regulation 6 – internal reporting procedures. The Supervisory Authority has power to examine casinos, including both onshore and offshore institutions in Antigua and Barbuda, to assess its AML/CFT compliance pursuant to section 17A (1) of the MLPA.

249. **Criterion 28.2** Section 10 of the MLPA establishes the Supervisory Authority which inter alia ensures compliances with the MLPA and MLPR as well as guidance and directives issued by the supervisory authority. DNFBPs such as real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries and accountants and Trust and Corporate Services Providers are specified in the First Schedule of the MLPA as a financial institution which is subject to AML/CFT supervision. As such DNFBPs are subject to AML/CFT supervisory oversight by the Supervisory Authority. As noted the Supervisory Authority may conduct examination to assess compliance by virtue of Section 17A (1) of the MLPA, 1996.

250. **Criterion 28.3** The financial activities carried out by DNFBPs fall under the First Schedule of the MLPA and are therefore subject to the systems for monitoring compliance with AML/CFT requirements. The power under section 17A (1) to conduct examinations applies to all DNFBPs. From the list of activities of financial institutions indicated in “First Schedule” (section 2), although lawyers, notaries, and accountants are included, these are restricted only to those who conduct financial activity as a business. This limitation is not a feature of the FATF requirement.

251. **Criterion 28.4** (a) Section 17 B (1) of the MLPA gives the Supervisory Authority the powers and authority to perform its functions, including powers to monitor compliance including requiring the production of documents or provision of information. (b) Section 17 of the MLPA restricts persons who have be sentenced to a term of imprisonment for twelve months or more whether in Antigua and Barbuda

or elsewhere from being eligible or licensed to carry on the business of a financial institution. This would apply to all other categories of DNFBP's. However, this provision applies only as a bar to entry at the licensing stage and does not apply to subsequent governance changes. (c) As noted in relation to criterion 27.4 above, the Supervisory Authority pursuant to Section 17C of the MLPA has power to apply sanctions broadly in line with recommendation 35.

252. **Criterion 28.5** As noted in relation to criterion 26.5, the Supervisory Authority has power to examine a financial institution to determine its level of compliance with AML/CFT legal and regulatory requirements. The basis on which the Supervisory Authority determines when to conduct such examination is not established in law. The authorities have used an AML/CFT Systems survey was conducted in 2010 and 2011 to establish an initial risk assessment of financial institutions. This allowed the Supervisory Authority to prioritize the firms for its first round of AML/CFT examinations. The first round of assessments allowed for the individual risk profiles of the examined DNFBPs to be determined. Once the risk profiles of several entities had been determined it was possible to establish a reasonable understanding of the AML/CFT risk profiles of the specific sectors. There is no clarity whether the aspects of FT are covered. The gaps noted in criterion 26.5 also apply here.

### *Weighting and Conclusion*

253. There appears to be no express provisions for the Supervisory Authority to take necessary legal or regulatory measures to prevent criminals from holding or having a management function in a financial institution. Sanctions for AML/CFT breaches are in place. It does not appear that the Supervisory Authority applies a risk basis to determine level of supervision and basis and frequency of examinations. **This Recommendation is rated partially compliant.**

### *Recommendation 29 - Financial Intelligence Unit*

254. Antigua and Barbuda was rated 'PC' for R.29 (formerly R.26) in its 3<sup>rd</sup> MER. There were six deficiencies noted as follows: The Supervisory Authority has not been appointed; SARs are being copied to the FSRC by the entities they regulate; a number of reporting bodies have not received training with regard to the manner of reporting SARs; there was no systematic review of the efficiency of ML and FT systems; The ONDCP's operational independence and autonomy could be unduly influenced by its inability to hire appropriate staff without the approval of Cabinet; The ONDCP did not prepare and publish periodic reports of its operations, ML trends and typologies for public scrutiny.

255. Changes to the FATF Standards now require several additional measures to be in place. Issues that arise, based on the new measures, are whether the FIU: (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information; (iii) has the ability to disseminate information spontaneously; (iv) information is protected by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU's facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions if it is located within the existing structure of another authority; (d) is

able to individually and routinely deploy its resources as it freely determines; and (vi) has applied for Egmont membership.

256. **Criterion 29.1** The ONDCP (amendment) Act No.9 of 2017 Section 5 Subsection (1a) and (1b) makes provision for national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing; and for the dissemination of the results of that analysis. Additionally, under subsection (1B) the ONDCP must be referred to as the FIU of Antigua and Barbuda. Under the MLPA Act section 11 (1) a shall receive the reports issued by the financial institutions pursuant to the provisions of section 13(2); Section 13(2) states Upon reasonable suspicion that a transaction or activity could involve the proceeds of crime, a financial institution shall promptly report the suspicious transaction or activity to the Supervisory Authority (ONDCP).

257. **Criterion 29.2.** (a) The TCQ articulated section 13 of the MLPA as requiring FI to submit reports of suspicious activity to the SA. The recommendation mentions a central agency for the receipt of disclosures filed by the reporting entity. The Supervisory Authority is the Director of the ONDCP who according to Section 3 (2) of the ONDCP ACT is a corporation sole in whom are vested the legal personality and capacity of the ONDCP. The Director of the ONDCP according to Sections 8 and 15 of the ONDCP ACT gives the Director powers to appoint persons he may consider appropriate for the performance of the functions of the ONDCP. In this regard, the measures and related citations which speak to the establishment of the FCU as the central agency for the receipt of disclosures filed by reporting entities, including (a) suspicious transactions reports filed by the reporting entities as required by Recommendation 20 and 23 and (b). Notwithstanding, it appears that section 10 (1) (c) of the ONDCP Act endows the ONDCP with receipt functions for suspicious transactions reports. This is a general obligation and subsumes the receipt functions of both Recommendations 20 and 23. **(met)** (b) As for other information required to be reported pursuant to national legislation, Sect 13(7) of the MLPA (Amendment) 2017 obligates FIs to report transactions of EC \$30,000 or more to the Supervisory Authority and Section 18(9) and 18 (10) of the MLPA mandates for the provision of reports pertaining to the transfer of US \$ 10,000.00 or more into or out of the country. Additionally, Section 148 (D) of the IGIWR mandates Internet Gambling Companies to report pay outs of US \$25,000.00 to the Supervisory Authority.

258. **Criterion 29.3** (a) Under section 11 of the MLPA, the ONDCP has the ability to obtain and use additional information from reporting entities by taking various investigative and analytical steps (mostly met) (b) Under section 11 (1)(b) and (1) (c) the ONDCP can submit a report referring the matter to the Commissioner of Police or the Comptroller of Customs or any other Government Department for investigation. Additionally, the person authorised by the Supervisory Authority may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to section 12(1) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record. Under the Section 11(1)(o) of the MLPA (Amendment) No 6 of 2017 gives the ONDCP in support of an investigation of money laundering or the financing of terrorism by directive require a financial institution to disclose in a timely manner whether a person holds or controls accounts or does business with the institution, and to identify those accounts and assets represented by those accounts or involved in business activity. The ONDCP has access to databases of the Transport Board, Medical Benefit Department, Social Security Department, Inland

Revenue, Intellectual Properties, and Immigration. There is also access to information held by Customs and the RPFAB both formal and informal.

259. **Criterion 29.4** (a) and (b) Sect 10(1) of the ONDCP (Amendment) Act no 9 of 2017 mandates the analysis function of the ONDCP (FIU). The FAU unit within the ONDCP is task with this responsibility. There are two analysts who conduct operational analysis on targets that have been identified in suspicious activity reports. Analysts access various sources of information including drug and financial intelligence, tax and income information, criminal records, company and vehicle registration databases in order to identify links between individuals and criminal activity. (b) There are limited measures provided for the conduct of strategic analysis. Antigua and Barbuda have provided that ONDCP AML/CFT Supervision, Data Analysis and Law Enforcement Policy document on page 8 outlines the requirements for the type of analysis to be conducted by the Financial Analysis Unit in regard to the strategic analysis. The strategic analysis relates only to ML trends and typology. The TF trends and typologies are not mentioned and forms an important part of this criterion.

260. **Criterion 29.5** Under Section 10(1) (d) (e) the ONDCP Act empowers the ONDCP to disseminate information concerning suspicious transactions or other activities suspected of being criminal in nature with the Commissioner of Police, the Comptroller of Customs; the Financial Sector Regulatory Commission or the heads of other government departments or agencies. There are no expressed limitations to the condition under which the information can be disseminated. In Antigua and Barbuda the person to whom information is disseminated must be security vetted and must be so designated by the Heads of the respective agency or Competent Authority. A formal channel has been established in which the FIU will only disseminate to the designated individuals who are also required to sign for the documents received. There is a formal establishment for dissemination between the ONDCP and the RPFAB.

261. **Criterion 29.6.** The Security policy outline by the ONDCP gives guidelines as to the security protocols on the Unit. These policies are geared to the protection and confidentiality of information stored at the unit. On the on-site visit, the security protocols were identified and reviewed both in terms of the physical structure, access to the facility and protection and confidentiality of the information analysed and stored at the ONDCP. The handling and dissemination protocols were also identified when information is shared with other law enforcement authority namely the Customs and Policy. There are established protocols where there are two individuals from the Royal Antigua Police Force and the Customs Department who can access information and intelligence from the ONDCP. These persons are designated by their respected heads and are vetting by the ONDCP. The IT department provides overall protection for databases and access. The access to any department by staff is at the discretions of the Director of the ONDCP.

262. **Criterion 29.7** The ONDCP was established through section 3 (1) of the ONDCP Act of 2003 and endowed with FIU specific functions which include the receipt and analysis of suspicious transactions reports and reports of suspicious activity. According to section 3 (3) of the ONDCP Act, the Antigua and Barbuda House of Representatives, (House) through a Standing Committee appointed by the said House, appoints the ONDCP Director who is corporation sole of the ONDCP and in whom are vested the legal personality and capacity of the ONDCP.

263. (a) The measures which empower the ONDCP to carry out its functions are found at section 10 of the ONDCP Act. These functions include analytical functions found at section 10 (1) (c); and information dissemination functions found at 10 (1) (e). There are no measures which speak to the ONDCP's authority to freely and autonomously carry out these functions.

264. (b) Section 12 (3) of the ONDCP Act empowers the ONDCP to liaise with entities or individual in or outside Antigua and Barbuda. The powers here do not amount to the ability to make arrangements or engage independently with domestic or foreign counterparts on the exchange of information. In cases where arrangement or engagement are made with domestic and foreign counterparts, this arrangement /engagement has to be approved by the Cabinet, thereafter the exchange of information inter alia is made independently without the need for consultation with the executive.

265. (c) *Antigua* and Barbuda has articulated in the TCQ that the FIU "resides within the ONDCP" The organizational chart of the ONDCP shows that there is a unit call Financial Analysis Unit as well as Financial Compliance Unit, the Supervisor Authority is vested in the Director. There is an Investigation Department. These units together provide for the specific functions of a Financial Intelligence Unit. Additionally, Section 5 of the ONDCP Act has established the ONDCP as the FIU of Antigua and Barbuda.

266. (d) Under the ONDCP Act Section 4(2) The Director shall be responsible for the day to day management and administration of the ONDCP and for the performance of its functions under this Act and of the functions conferred upon him under any other written law. Additionally, Section 3(2) the Director shall be a corporation sole in whom are vested the legal personality and capacity of the ONDCP under this Act. The ONDCP is stated to be a hybrid FIU.

267. **Criterion 29.8.** The ONDCP is a member of the Egmont Group.

### *Weighting conclusion*

268. Antigua and Barbuda's FIU is referred to as the ONDCP and the power for administering the functions of the FIU is per The ONDCP (amendment) Act No.9 of 2017 Section 5 Subsection (1a) and (1b) makes provision for national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing; and for the dissemination of the results of that analysis. Additionally, under subsection (1B) the ONDCP must be referred to as the FIU of Antigua And Barbuda. The ONDCP also acts as the Supervisory Authority is the central repository for disclosures of cross border movements of cash into and out of the State. It also receives disclosures of significant payments made by online gaming companies to players, ie. payments over US\$25,000. The supervisory authority can request and obtain any and all information from a financial institution relative to a suspicious activity report that the institution has filed. It can also seek the assistance of any government department, statutory body, or other public body to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report filed by a financial institution. The dedicated, secure and protected channels for dissemination of information are identified however the ability to conduct both operational and strategic analysis are not fully implemented and

utilized. Antigua and Barbuda cited Section 4 which exempts the ONDCP from provisions of the Statutory Corporations (General Provisions) Act 2016 and hence the operational autonomy and independence as it relates obtaining and deploying the resources needed to carry out its function on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence is covered **Recommendation 29 is rated largely compliant.**

### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

269. Antigua and Barbuda was rated ‘LC’ for R. 30 (formerly R. 27). Recommendation 30 requires that there should be a designated Law Enforcement Authority (LEA) responsible for ML/TF investigations in a national context. Countries should designate a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation.

270. **Criterion 30.1** The ONDCP, as Supervisory and Investigative Authority, has designated investigative powers, limited to the tracing of property, that are the proceeds of offences against the laws of Antigua and Barbuda. These powers are found at Section 11 (XI) of the MLPA. Sec 23(1) of the PTA provides the authority for the investigations into terrorist financing by the RPFAB and the Royal Antigua and Barbuda Police Force has reportedly been designated responsibility for investigating ML, associated predicated offences and TF pursuant to the Police Act the related citations nor measures have been provided. Antigua and Barbuda has provided the ONDCP as a LEA with investigative powers pursuant to ONDCP Act for tracing property that are the proceeds of offences. The ONDCP is designated responsibility for investigating ML, associated predicated offences and terrorist financing. The Royal Police Force of Antigua and Barbuda. (RABPF) also has the responsibility for investigating ML and the associated predicate offences. These investigative powers are pursuant to The Police Act Cap 330 Section 23(1). As a result of these powers, the police are able to conduct investigations into money laundering, terrorist financing and associated predicate offences.

271. **Criterion 30.2.** The measures through which the Royal Antigua and Barbuda Police Force are authorised to conduct financial investigations parallel to the criminal investigations of ML/TF has been established through a written policy document. The Police Act CAP 330 Section 23(1) gives the Royal Antigua and Barbuda Police Force general powers to conduct financial investigations alongside criminal investigations into money laundering, terrorist financing or predicate offences. The ONDCP under its standard operating procedure has a requirement that a financial investigation to be conducted along all investigations of predicate offences.

272. **Criterion 30.3.** The MPLA Section 15 makes provision for the identifying, locating or quantifying property where a defendant is committing, has committed or is about to commit a money laundering offence or has engaged or is about to engage in money laundering activity. Section.19 provides for the freezing of property where a person has been convicted of a money laundering offence has been or is about to be charged with a money laundering offence; or is suspected of having engaged in money laundering activity. POCA also makes provision for the DPP to apply where a person is convicted of a scheduled offence committed after the coming into force of this Act, the Director of Public Prosecutions may apply under

Section 5. (1) Where a person is convicted of a scheduled offence committed after the coming into force of this Act, the Director of Public Prosecutions may apply to the Court for one or both of the following orders - (a) a forfeiture order against property that is tainted property in respect of the scheduled offence; (b) a confiscation order against the person in respect of benefits derived by the person from the commission of the scheduled offence. A police officer under Part III – Provision for facilitating Police investigations and preserving property liable to Forfeiture and Confiscation Order may perform searches, freezing seizures and confiscation against property that is or may become subject of confiscation.

273. **Criterion 30.4** In Antigua and Barbuda there are no other competent authorities outside the public authorities which have responsibility for pursuing financial investigations into predicate offences.

274. **Criterion 30.5** The Investigation Department of the ONDCP have been designated to investigate ML/TF offences. Section 10(1)(b) of the ONDCP Act makes it a function of the ONDCP to investigate specified offences, which are defined under Section 2(1) of the Act to include money laundering and terrorism financing offences under the PTA. Additionally, the Anti-Corruption Unit established pursuant to the Prevention of Corruption Act, according to Antigua and Barbuda the Anti-Corruption Unit passes matters under their purview to The RPFAB for investigations. With the enactment of Sect 3 of the MLPA (Amendment) Act no 6 of 2017 provides for the ONDCP to conduct investigations into offences of Corruption. Both the ONDCP and RPFAB uses the provisions of section 28 and 32 for the seizure and restraint of tainted property. The Anti-Corruption Unit does not investigate ML/TF from corruption. All matters are sent to the RPFAB. The Anti-Corruption Unit has no power to freeze or confiscate.

### *Weighting and conclusion*

275. There is a designated law enforcement authority that have the responsibility for ensuring that ML and the associated predicate offences and terrorist financing offences are properly investigated as per the Office of National Drug and Money Laundering Control Policy established under the ONDCP Act 2005 and The Royal Antigua and Barbuda Police Force mandate, which also has a Proceeds of Crime Unit as well as the provisions in the MLPA and PTA. The Anti-Corruption Unit established pursuant to the Prevention of Corruption is not responsible for investigating matters of corruption. However, matters are referred to the RPFAB for investigations. The ONDCP are not contacted or forms part of the investigations as it relates to the investigations of corruption initiated by the Anti-Corruption Unit. The measures which gives the authority to expeditiously identify, trace and initiating freezing and seizing of tainted assets from corruption has been established. **Recommendation 30 is rated largely compliant.**

### *Recommendation 31 - Powers of law enforcement and investigative authorities*

276. Antigua and Barbuda was rated 'C' for R. 31 (formerly R. 28). R. 31 expands the powers of LEAs and Investigative Authorities (IAs). Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and can require information from FIU when conducting relevant investigations.

277. **Criterion 31.1** (a) A Judge of the High Court may, upon application by a law enforcement agency or the Supervisory Authority make an order that any document relevant to identifying, locating or quantifying any property; or identifying or locating any document necessary for the transfer of any property, be delivered forthwith to that law enforcement agency or Supervisory Authority. Such an order can be made against a FI or any person in whose possession or control such property or document may be. These measures are provided at Section 15 of the MLPA. Also, a police officer may apply to a Judge in Chambers, pursuant to Section 42 of the POCA, for a production order against any person suspected of having possession or control of documents relevant to identifying, locating or quantifying property of a person who has been convicted for committing a scheduled offence. Based on the information provided in the TCQ the list of scheduled offences under the POCA are limited and do not include the associated predicate offences to ML. Section 2 of the Proceeds of Crime (Amendment of Schedule) Order 2009 amends the POCA Schedule to make include at item 8 - ML contrary to s. 61, and at item 9 - possessing property derived from unlawful activity contrary to s.62 of the POCA. Item 11 include "An indictable offence or an offence for which the maximum penalty is more than one-year imprisonment, which would include TF offences. Pursuant to Section 69 of the POCA the Attorney General can make regulations. As a result, POCA, 2010, Statutory Instrument was established to include a Schedule listed 1-11. The Schedule expressly includes MLPA which is a reference to ML crimes. No. 11 expressly includes, any indicatable offence as a predicate offence with a term of imprisonment over one year. The schedule to the POCA was further amended by section 14 of the POCA which provides the competent authorities the ability to obtain access to all documents or information related to any indictable or triable either way offences in Antigua and Barbuda from which a person has benefitted as defined in section 19 of this Act The PTA is not expressly included in the Schedule however, by virtue of terrorism being an indictable offence, such crime impliedly included in the list of the Schedule of offences.

278. (b) Section MLPA Section 14 provides for the Supervisory Authority to obtain warrants to search financial institutions that have failed to keep records, report suspicious transactions, or is committing a money laundering offence. ONDCPA, Section 28 provides for ONDCP officers to obtain search warrants and seize evidence. The ability to search persons (legal and natural) and premises are stipulated in MPLA s.14 and ONDCPA Section 28. At Section 28 (1) of the ONDCP Act, any magistrate, on oath by an ONDCP officer or a Police Officer, may issue a warrant to search any building for evidence relating to the commission of a specified offence. At Section 25 (1) of the POCA, a magistrate may issue a warrant, upon the oath of a police officer, to search for tainted property or anything which that police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence. Search warrants in both instance of the ONDCP Act is in relation to evidence whilst search warrants in the instance of the POCA are related to property or evidence. These provisions are broader than the ability to obtain access to all necessary documents and information as required by the sub-criterion.

279. (c) There are no provisions in law that gives law enforcement officials the power to record witness statement from citizens who have not consented or refused to give a statement. ONDCP, Section 20 provides for questioning of persons detained in custody; General powers of the Police are under the Police Act, Cap. 330 gives the police the authority to record statements once the citizen has consented.

280. (d) The compulsory measures allowing for the seizure of evidence is found at Section 25 of the POCA whereby a magistrate may issue a warrant, upon the oath of a police officer, to search for tainted

property. At Section 25 (1) (c) of the POCA property found during the search which a police officer believes is tainted property can be seized. The ONDCP Act at Section 28 (1) provides for a search warrant to be issued, by a magistrate, for the search of evidence. ONDCPA, Section 17 provides for search and seizure without warrant; General powers of the Police are under the Police Act, Cap. 330.

281. **Criterion 31.2 (a) - (d)** Antigua and Barbuda enacted the Evidence (Special Provisions) Act, 2009, which applies to civil and criminal proceedings in every Court except the Industrial Court. Section 55 of this law is concerned with ‘authorisation’ whereby a judge of the high court may issue a warrant authorising an officer of the RPFAB to use any device or investigative technique or procedure, which the warrant describes, that which, if not authorised, would constitute an unreasonable search or seizure in respect of a person or a person’s property. At Section 55 (2) of the said Act, evidence collected under provisions of authorisation is admissible in evidence in a criminal proceeding in Antigua and Barbuda. Whilst these provisions appear broad enough to cover the interception of communications and accessing computer systems, they do not appear to cover undercover operations and controlled delivery. With regards the ONDCP, Section 6 of the ONDCP amendment 9 of 2017 authorizes the officers of the ONDCP to conduct undercover operation. Powers of controlled delivery are provided to the ONDCP under section 11(3) to (7) of the ONDCP Act [amended by section 6 of the ONDCP Act 2017]. The Director of ONDCP has issued standard operating procedures for controlled delivery Evidence (Special Provisions) Act, s.60 provides for intercepting communications; Section 57 provides for production of documents from electronic data.

282. **Criterion 31.3 (a)** Section 52 of the POCA is concerned with communication of information to law enforcement authorities and provides for a FI, which has information about an account it holds, to provide that information: if it is relevant to an investigation of or the prosecution of a person for an offence; or if such information would otherwise be of assistance in the enforcement of the POCA, to provide that information to a police officer or the DPP.

283. **Criterion 31.3 (b)** Money Laundering (Prevention) (Amendment) Act 2017 Section 6 restates the powers of the Supervisory Authority under Section 11 and at Section 11(o) grants the power to request information to identify assets without prior notification to the owner.

284. **Criterion 31.4** The Law Enforcement Agencies in Antigua and Barbuda conducting money laundering investigation, terrorist financing investigations and or associated predicate offences can submit requests to the ONDCP. Under the ONDCPA, Section 10(1) (e) provides for the ONDCP to disseminate information to the heads of other government departments and agencies; Section 12 provides for the ONDCP to cooperate and liaise with other authorities both in and outside Antigua and Barbuda.

### *Weighting and conclusion*

285. Antigua and Barbuda’s investigative authorities have the power to obtain relevant information to pursue the investigation or prosecution of ML. Many of these provisions is extended to TF which is also an indictable offence. The investigation and prosecutions of offences are scheduled under the POCA and the MPLA. The ability to record witness statement is hinder where persons do not consent or refused to give a statement. The range of investigative techniques is limited to undercover operations and control delivery are specifically covered in legislation to deal with money laundering, associated predicate offences and

terrorist financing. However, the interception of communication and the accessing of computer systems in conducting investigations have not be utilized. The authorities under Money Laundering (Prevention) (Amendment) Act 6 of 2017 Section 6(O)(i) have the power to request information to identify assets without prior notification to the owner whether natural or legal. **Recommendation 31 is rated is largely compliant.**

### **Recommendation 32 – Cash Couriers**

286. Antigua and Barbuda was rated ‘PC’ for R. 32 (formerly SR. IX) in their 3<sup>rd</sup> MER. The two deficiencies were fact: Cases of cross border transportation of cash or other bearer negotiable instruments are not thoroughly investigated; and Customs, Immigration, ONDCP and other competent authorities do not co-ordinate domestically on issues related to the implementation of Special Recommendation IX.

287. The new requirements for the 4<sup>th</sup> Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards which ensure the proper use of information collected through the declaration/disclosure system.

288. **Criterion 32.1** Antigua and Barbuda has implemented a declaration system for persons both entering and leaving the jurisdiction according to Section 2 (1) Customer (Currency and Goods Declaration) Regulations 1999. MLPA, s. 18(1) provides for a declaration of the personal transfer of currency valued at US\$10,000 or more on entering or leaving the country; MLPA, s. 18(2) covers transfer by mail or cargo. A standard declaration form is provided by MLPR, ss. 9, 10 and Schedule I. MLPA, s. 18C defined “currency” to means cash or bearer negotiable financial instruments.

289. **Criterion 32.2** *is Pursuant* to the declaration system, the reporting of currency and bearer negotiable instruments (BNI) more than US\$10,000 or its equivalent in Eastern Caribbean dollars or in any other currency, in cash or bearer negotiable instruments of an amount of US\$10,000 or more must be made in writing on a prescribed form and must be signed and submitted to the proper officer on duty at the port of embarkation or disembarkation. Antigua and Barbuda has also implemented the oral declaration system. The Customs Control and Management Act #3 of 2013; #17 subsection 1a and b, states: (l) The master, commander, driver, owner, agent of the master, commander, driver or owner, the operator and any member of the crew of, and any passenger on, a conveyance to which this sub-section applies shall — (a) answer any question asked by the proper officer relating to the conveyance and any persons or goods that are or have been carried by the conveyance; and (b) at the request of the proper officer, produce any documents within that person's possession or control relating to any of those matters.

290. **Criterion 32.3** is not applicable in the context of Antigua and Barbuda which has implemented a declaration system.

291. **Criterion 32.4.** While there is a reference in the Customs Control and Management Act #3 of 2013; #135 subsection 1, there is no clarity on whether the *comptroller may request further information regarding the origin of such currency or BNI, in the context of a false declaration. The aforementioned Act states the*

*following:* (1) The Comptroller may, at any time within 7 years of the importation, exportation or carriage coastwise of any goods, require any person — (a) concerned in that importation, exportation or carriage coastwise; or (b) concerned in the carriage, unloading, landing or loading of the goods, to furnish to him in such form and manner as the Comptroller may require, any information relating to the goods, and to produce and permit a proper officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods in that person's control or possession. and #35 subsection 7, which states (7) The Comptroller may, notwithstanding that no entry has been made under sub-section (1), permit the delivery of any bullion, currency, notes or coins imported into Antigua and Barbuda to the importer, but where the importer fails, within 48 hours after the bullion, currency, notes or coins has been delivered, to submit to the proper officer a full and true account, including weight and value of any such bullion, currency, notes or coins, the importer commits an offence and is liable on conviction to a fine of \$25,000. of s.12 of the MLPR 2007 which provides for a Customs officer, Police officer and ONDCP officers to ask further questions in respect of inaccurate reports (false declarations). Also, under the Customs Control and Management Act "goods" are defined as "includes any tangible property, including personal property, livestock, conveyances, stores, baggage, documents (including electronic form) currency and mail and packets imported by post and includes prohibited or restricted goods and s.135(2) of the Customs Act 2013, provides that the Comptroller may require evidence to be produced to his satisfaction in support of any information provided in respect of goods exported or carried elsewhere or in respect to any drawback allowance, rebate, remission, or repayment of duty is claimed. s. 135(3) a person who fails to comply with the section commits an offence and is liable on conviction to a fine of \$10,000.00 dollars.

292. **Criterion 32.5.** The Customs Control and Management Act #3 of 2013; #172 which speaks to False Declaration, subsection 1a and b, which states: (1) A person who knowingly — (a) makes or signs, or causes to be made or signed, or submits or causes to be submitted to the Comptroller or a proper officer, any declaration, notice, certificate or other document; or (b) makes any statement in answer to any question put to him by a proper officer that he is required under any written law to answer, that is false in a material particular, commits an offence and is liable on conviction to a fine of \$25,000 or five times the value of the goods, whichever is greater and, on conviction, to imprisonment for 5 years, and the goods in relation to which the document or statement was made are liable to forfeiture. Section 135(3) of the Customs Act 2013, a person who fails to comply with the section commits an offence and is liable on conviction to a fine of 10,000.00 dollars. Section 172 (1) (b) provides provisions where a person who knowingly makes a false statement in answer to any question put to him by a proper officer commits an offence and liable on conviction to a fine of 50,000. The Customs (Baggage) Regulations, 2015 section 4(1) A person who leaves or enters Antigua and Barbuda with US\$10,000 or more or its equivalent in Eastern Caribbean Dollars or in any other currency in cash or negotiable bearer instruments shall make a declaration in the Customs Declaration Form prescribed in Schedule 1 and also complete and submit the form prescribed in Schedule 2 to the proper officer. 4(2) Any person who fails to comply with the provisions of regulation 4(1) commits an offence and is liable on summary conviction to a fine not exceeding EC\$50,000 or to imprisonment for not more than two years and in addition, the currency may be forfeited to the crown.

293. **Criterion 32.6.** The Customs Control and Management Act makes no provisions for information obtained through the declaration system to be reported to the ONDCP. Notwithstanding, the authorities have reported that there is a MOU between the Customs and Excise Division, the RPF of Antigua and

Barbuda and ONDCP, to give required information. Section 18 of the MLPA is concerned with the reporting of currency being transferred into or out of Antigua and Barbuda. Here the person to whom the report is made is required to submit it to the SA within 48 hours.

294. Antigua and Barbuda has provided information pursuant to the Customs (Baggage) Regulations, 2015, *Section 4(1)* requires the reporting of currency in excess of USD \$10,000.00 on the Customs Declaration Form in Schedule I and the Form in Schedule II, which is the form prescribed in the MLPR 2007, Schedule 1. It is the Schedule II Form which mandated to be submitted to the FIU within 48 hours. MLPR 18(9) the person to whom the declaration is given it must be submitted to the Supervisory Authority in 48 hours. There is also between the Customs and Excise Division, the RPF of Antigua and Barbuda and ONDCP, to give required information regarding declaration.

295. **Criterion 32.7** While the Authorities indicated Customs, Police, Immigration, Antigua and Barbuda Defence Force, National Joint Coordination Centre, and ONDCP are parties to an MOU for the exchange of information and coordination of action. The cited clauses in the MOU among local law enforcement agencies in Antigua and Barbuda provides for adequate coordination.

296. **Criterion 32.8.** (a) Under Section 18(A) (1) of the MLPA a Customs, Police, ONDCP officer and ABDF members to seize for 7 days cash suspected of being proceeds of instrumentalities. Under s.18A (3) application can be made to extend the detention of the cash for up to 6 months at a time up to a maximum of 2 years.

297. (b) Under Section 146 of the Customs Control and Management Act A customs officer may, seize or detain goods if the goods are in Antigua and Barbuda and he is satisfied that they either -i. are being, or are intended to be, exported from Antigua and Barbuda; or ii. are being, or have been, imported into Antigua and Barbuda; b. The goods came to his attention, or into his possession, during a search, inspection, audit, or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and c. He has reasonable grounds to believe that the goods were obtained in contravention of any law. The seizure and detention of goods has an investigative period of six (6) months.

298. **Criterion 32.9.** (a)(b) and (c) According to the Authorities, information can be relayed internationally, through bilateral agreements through the memorandum of understanding with the police force and ONDCP. Antigua and Barbuda has provided information as to the memorandum of understandings among the competent authorities in Antigua and Barbuda. Additionally, ONDCPA, Section 12 provides for liaison with both international and domestic counterparts. Information obtained from declarations are stored by the ONDCP. The declaration records are maintained and stored by the ONDCP at a secured location and the information are uploaded into the computer system.

299. **Criterion 32.10** There is no information regarding the measures that have been put in place in Antigua and Barbuda to ensure the proper use of information collected through the declaration system. There is no evidence that the declaration system doesn't restrict trade payments between countries for goods and services or the freedom of capital movements. There are no guidelines as to strict safe guards that are in place to ensure proper use of information collected through the declaration system.

300. **Criterion 32.11** (a) Reference the Customs Control and Management Act #3 of 2013; Section 35 subsection 7, which states: (7) The Comptroller may, notwithstanding that no entry has been made under sub-section (1), permit the delivery of any bullion, currency, notes or coins imported into Antigua and Barbuda to the importer, but where the importer fails, within 48 hours after the bullion, currency, notes or coins has been delivered, to submit to the proper officer a full and true account, including weight and value of any such bullion, currency, notes or coins, the importer commits an offence and is liable on conviction to a fine of \$25,000. In addition, MLPA, s. 18A (3) provides fines of \$50,000 or imprisonment of 2 years; (b) s. 18B provides for forfeiture of seized currency that is proceeds or instrumentalities. MLPR 2007 – Form I under Schedule I deals with the declaration forms. The provisions under s. 18 deals with currency reporting. Under Section 146 - Detention of Goods Suspected to Be Illegally Obtained: No. 1 of the Customs Control and Management Act states: A customs officer may, seize or detain goods if a. The goods are in Antigua and Barbuda and he is satisfied that they either i. are being, or are intended to be, exported from Antigua and Barbuda; or ii. are being, or have been, imported into Antigua and Barbuda.

301. The goods came to his attention, or into his possession, during a search, inspection, audit, or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and He has reasonable grounds to believe that the goods were obtained in contravention of any law. Schedule 1 Customs (Baggage) Regulations, 2015, one of the declarations to be made is that the person is not carrying currency or monetary instruments over (US\$10,000) or equivalent. And in the event of a failure of “make a full declaration is an offence and can result in the seizure of goods, fines and/or imprisonment.

### *Weighting and conclusion*

302. Antigua and Barbuda has a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNIs). The threshold for reporting US \$10,000 or its equivalent in other currency or bearer negotiable instruments to make a declaration on the prescribed form. The competent authorities in Antigua and Barbuda are able to stop or restrained currency and BNI using legislative provisions under the MLPR 2007 and Customs Control and Management Act the section referenced in the Customs Control and Management Act does not specifically address stop or restraint. When a false declaration is made the fines impose are dissuasive and reaches to five times the value of the goods. Provision is made in the law and MOUs to share information collected by the competent authority with the ONDCP. The cash declaration records are maintained by the ONDCP. There is an interagency MOU among the law enforcement agencies in Antigua and Barbuda. There are no guidelines as to strict safe guards that are in place to ensure proper use of information collected through the declaration system. The civil or administrative sanctions are not being used by the Comptroller of Customs when cash which is not declared, is intercepted. The matters are sent to the ONDCP for investigations leading to the use of cash forfeiture provisions the on-site relevant information provided on civil and administrative sanctions were provided. **Recommendation 32 is rated largely compliant.**

### *Recommendation 33 – Statistics*

303. This Recommendation (formerly R. 32) was rated 'PC' in the 3rd MER. The Assessors noted deficiencies with regard to the inadequate review of statistics based on the low number of convictions which result from investigations; the lack of investigations or prosecutions whereby the effectiveness of the terrorist financing investigations and prosecutions could be measured; inability to determine the effectiveness of the FT mechanisms; no statistics provided to show whether the restraint and confiscation measures under the POCA were effective; no measures instituted to review the effectiveness of the AML/CFT systems and no available statistics with regard to MVTs. During the follow-up period, Antigua and Barbuda continued to maintain statistics related to the effectiveness of their systems to combat ML and FT. The statistics are kept by the ONDCP and are presented in the ONDCP's Annual Report. Data is obtained from a number of sources including AML/CFT reports generated internally by compliance units and externally by auditors, from quarterly terrorist property reports; from sector and individual filings of SARs and form responses to directives of the Supervisory Authority. The information that is collected is put before and studied by the Anti-Money Laundering Oversight Committee. These reviews are used to strengthen the legal framework for ML/FT.

304. **Criterion 33.1** Pursuant to section 10(1) (a) to (d) of the ONDCP Act, the functions of the ONDCP (in relevant part) authorizes the unit to collect, receive, collate, analyse and act upon suspicious transaction reports and reports of suspicious activities and to disseminate information concerning suspicious transactions or other activities suspected of being criminal in nature with the Commissioner of Police, Comptroller of Customs, the FSRC or the heads of other government agencies. Accordingly, the ONDCP publishes the statistics noted in its annual report.

305. The RPFAB and ONDCP maintain statistics on ML prosecution and conviction. However, there is no conviction for TF in the jurisdiction, hence no statistical data is maintained. There is statistical information kept by both the Magistrates Courts and the High Courts with regards to criminal or civil matters filed, convictions and criminal or civil orders.

306. The ONDCP maintains statistics on properties frozen, seized and confiscated by agencies within the ONDCP. The RPFAB maintains statistics only on cash seized and forfeited. The Customs and Excise Department also maintain statistics on properties seized and forfeited.

307. Measures were provided with regards to the keeping of MLAs information as it pertains to all requests made and received by Antigua and Barbuda. MLAs sent to the ONDCP by the Central Authority or as well as international requests sent or received are captured in the statistics of the ONDCP.

### *Weighting and Conclusion*

308. The Court system and competent authorities in Antigua and Barbuda maintains statistics on the items noted in (a) to (d) There are several legislative provisions in Antigua and Barbuda which provides for the statistics or information to be maintained by the various competent authorities. This includes Section 86 Custom Act No.3 of 2013, Sections 3,6,7 49 of the Criminal Procedure Act Cap117. Section 13(2)(c) Misuse of Drug Act Cap 283 and Section 22, Criminal Records (Rehabilitation of Offenders) Act 2013. **Recommendation 33 is rated largely compliant.**

## ***Recommendation 34 – Guidance and feedback***

309. This Recommendation, formerly R.25 was rated PC in the 3<sup>rd</sup> MER. Shortcomings were associated with the fact that the Supervisory Authority provided little or inadequate feedback to financial institutions and DNFBPs. Guidelines and directives had not been issued to all financial institutions across the various sectors. The essential requirements of the revised Recommendation remain unchanged.

310. **Criterion 34.1** Antigua and Barbuda has a number of laws which permit the supervisory authorities to issue guidelines. Section 11(1) (g) of the MLPA empowers the Supervisory Authority –Director of the ONDCP, to issue guidelines to FIs who has in fact issue guidelines in the form of the MLFTG. In addition, Section 11(1) (m) allows the Supervisory Authority to issue directives to FIs to ensure adequate compliance with the MLPA, the MLPR and guidelines. Furthermore, a notice of non-compliance may be issued should provisions of the MLPA, the MLPR, guidelines or directives, not been complied with. Section 12(5) (c) reinforces the financial institution’s positive obligation to comply with the guidelines and in section 12(6) criminal sanctions are created for contraventions. The Supervisory Authority also has the ability to monitor and test compliance with the MLPA, MPLR, and guidance such as the MLFTG through the conduct of examinations. The Director of the ONDCP is also empowered under section 43 of the PTA to issue guidance to FIs. Guidelines and guidance issued or provided by the Supervisory Authority also play an important role in the MLPR. Regulation 3(1) (vi) requires persons carrying on relevant business to comply with Directives and guidelines issued by the Supervisory Authority. Moreover, in accordance with Regulation 3(3); in deciding whether a person has committed an offence under that regulation, the court shall consider where the person followed any relevant guidance was issued by the ONDCP or the FSRC. The FSRC also has power, pursuant to Section 18 (1) of the FSRCA, to issue guidelines. A breach of these guidance is not a criminal offence, but administrative penalties can be applied against the financial institutions for breaches of the guidelines. This power of the FSRC is repeated in the IBA at Section 64(3), IA section 200, MSBA section 47, and IBCA section 351.

311. As was stated previously, guidelines pursuant to the MLPA and PTA have been made in the form of the MLFTG. These guidelines have wide application and are enforceable as stated above. The authorities indicated that guidelines were issued by the FSRC and reference has been made to CDD Guidelines, Guidelines for CMTSPs and the IGIW Guidelines. Pursuant to obligations in regulation (6)(1c) of the MLPR financial institutions also receive advisories on countries /entities which countermeasures are required. Information on emerging scams and cybercrime trends is also disseminated through various channels including email, print and broadcast media and through the ONDCP website. The FIU – ONDCP provides guidance and feedback to FIs through regular training sessions which the authorities indicated include topics such as suspicious activity reporting and recognizing suspicious transactions and suspicious activity indicators/red flags. Presentations are also delivered on typologies of financial crimes observed in the unit. The Annual Reports of the ONDCP and FSRC are prepared and FIs are able to assess other relevant information, statistics and obtain feedback. Feedback is also provided on examination and generally is through remedial actions which makes recommendation to correct deficiencies within a specific time frame.

## ***Weighting and Conclusion***

312. Both the ONDCP and FSRC has issued relevant guidelines that would assist FIs with the FIU-ONDCP providing feedback through the use of training sessions that covers wide range of topics including the detecting and reporting of STRs. **This Recommendation is rated is compliant.**

### ***Recommendation 35 – Sanctions***

313. This Recommendation, formerly R.17 was rated PC in the 3<sup>rd</sup> MER. The main deficiencies related to the fact that sanctions for breaches of the guidelines issued pursuant to the MLPA were not dissuasive. Only the ML offences under the MLPA and PTA applied to the legal person as well as directors and management of the legal person. The range of sanctions in relevant legislation was not broad and sufficiently proportionate as required by the FATF standards. The 2<sup>nd</sup> FUR noted that a number of legislative amendments were made to correct these deficiencies. Extensive changes were made to the MLPR and MLPA to put in place more proportionate and dissuasive criminal and administrative sanctions and ensuring that sanctions could be applied not only to a legal person but also the directors and senior management of the legal person. The last action was also the basis of change in the PTA. There are no changes in the current Standard.

314. **Criterion 35.1** Criminal penalties in the MLPA cover a variety of ML offences that may be committed by natural and legal persons including aiding, abetting, counselling, or procuring the commission or conspiring to commit a ML offence (section 5) facilitating a ML offence (section 5A) participation in a criminal organisation (section 5B) tipping off (section 7(3)), opening an account in a false name (section 11(7)), failure to retain records (section 12(6)), minimum retention period (Section 12A(3)) and failure to file an SAR (Section 13(6)). The penalties for these offences range from EC\$100,000 (US\$37,000) to EC\$500,000 (US\$185,000) to EC\$1,000,000 (US\$370,000).

315. In addition to the above, breaches of the MLPR under Regulation 3(2) are subject on summary conviction to a fine of EC\$300,000 (US\$111,000) and on conviction on indictment, to a fine of EC\$500,000 (US\$185,000) or to imprisonment for a term not greater than 2 years or both. This provision covers identification, record keeping and internal reporting procedures in Regulations 4 – 6 of the MLPR.

316. Overall while the penalties under the MLPA and the MLPR may be dissuasive for natural persons they cannot be considered so for legal persons and in particular for FIs belonging to international financial groups which has larger financial assets and resources particularly as none of the penalties exceed US\$400,000.

317. The penalties under the MLPR do not provide a range of proportionate options and may not be adequately dissuasive in regard to legal persons. With regard to FT section 6 makes it an offence to collect funds for the commission of a terrorist act, section 7 addresses the provision or making available of financial or other services for the commission or facilitating the commission of terrorist act, section 8 makes it an offence to use property for the purpose of committing or facilitating a terrorist act, section 9 addresses arrangements and facilitation, section 10 addresses soliciting support for the commission of a terrorist group or terrorist act, section 11 harbouring or concealing a terrorist act or terrorist group, provision of a weapon to a terrorist group or member of a terrorist group under section 12 and a sanction under section 34(6) of the PTA which imposes a sanction for failure to submit a STR regarding FT consisting of imprisonment

for a term not exceeding 5 years. However, these are all criminal offences. These provisions do not address the range of proportionate or dissuasive sanctions.

318. **Criterion 35.2** The authorities have cited Section 17E of the MLPA which provides for a FI, or a director, manager or employee of a FI who fails to comply with the provisions of Part III of the MLPA to be liable to on summary conviction a fine not exceeding EC\$500,000 (US\$185,000) or a term of imprisonment not exceeding 6 months and on conviction on indictment a fine not exceeding EC\$1,000,000 (US\$370,000.) The above measure only covers Part III of the MLPA which deals with anti-money laundering supervision and does not include all ML offences. Section 9 of the MLPA No. 6 of 2017 allows for financial institutions and senior management to be liable for failing to comply with any requirement on financial institutions under the MLPA.

319. With regard to the MLPR, Regulation 3(7) stipulates that an offence under regulation 3, which includes breaches of Regulations 4 – 6 of the MLPR, which is committed by a corporate body can also be applicable to directors and managers of the corporate body. However, this is only applicable to Regulations 4 – 6 and not to all breaches of the MLPR.

320. In relation to the PTA Section 41B stipulates that where a corporate body commits an offence under the PTA every director or other officer concerned in the management of the corporate body commits an offence unless he proves that the offence was committed without his consent or connivance or he exercised reasonable diligence to prevent the offence. The above provisions dealing with the MLPA and MLPR are limited to specific sections of the respective statutes.

### *Weighting and Conclusion*

321. Antigua and Barbuda is empowered to impose a wide range of criminal and administrative sanctions for breaches of non-compliance with the MLPA, MLPR and the MLFTG. These are generally proportionate and dissuasive and can be applied the legal person as well as its directors, managers and offers. The main deficiencies relate to the sanctions relative to Recommendation 6 and 8, which also tie into the country's inability to meet some of the underlying requirements in relation to those Recommendations. Sanctions made pursuant to the regulatory acts tend to be weaker, although not in all cases, and the sanctions do not all relate to enforcing compliance with the AML/CFT regime. The penalties under the MLPR provide an adequate range of proportionate options. With regard to FT citation for only one offence has been provided by the authorities. Provisions for extending liability to directors and managers of FIs under the MLPA and MLPR do not cover all predicate offences of the respective statutes. **This Recommendation is rated partially compliant.**

## *Recommendation 36 – International instruments*

322. Recommendation 36 (formerly R. 35 and SR. I) was rated ‘LC’ and ‘PC’ respectively in the 3rd MER. The deficiencies highlighted were shortcomings in relation to the implementation of provisions in the Vienna, Palermo and Terrorist Financing Conventions. For SR. I the deficiencies were that the definition of ‘person’ and ‘entity’ were not consistent and may affect whether terrorist groups are captured for some offences and that there was no provision under terrorism legislation for access to frozen funds as required by UNSCRs 1373 and 1452.

323. **Criterion 36.1.** Antigua and Barbuda has ratified the international instruments as follows: The Vienna Convention ratified S.I. No. 14 of 1993; The Palermo convention was ratified S.I. No. 54 of 2002; International Convention for the Suppression of the Financing of Terrorism ratified S.I. No. 32 of 2002; and the United Nations Convention Against Corruption acceded to on 21 June 2006.

324. **Criterion 36.2.** The authorities indicated that the Government has ratified the Inter-American Convention Against Corruption, as a result of which it enacted a trilogy of Acts that are very much in compliance with the UN Convention Against Corruption. They are (1) the Prevention of Corruption Act 2004, (2) The Integrity in Public Office Act, and (3) the Freedom of Information Act. <sup>7</sup>The jurisdiction has also implemented to some extent the Merida and Terrorist Financing Conventions.

## *Weighting and Conclusion*

325. Antigua and Barbuda has ratified most of the relevant Conventions with the exception of Merida and Terrorist Financing Conventions. **Recommendation 36 is rated Largely Compliant**

## *Recommendation 37 - Mutual legal assistance*

326. Recommendation 37 (formerly R. 36 and SR V) was rated ‘C’ and ‘LC’ respectively in the 3rd MER. The main deficiency was that the provisions of Rec 38 were not met in relation to the establishment of a Forfeiture Fund and the sharing of confiscated assets. The revised R. 36, now 37, requires that countries should have an adequate legal basis to provide cooperation and have in place all the needed mechanisms to enhance cooperation. Countries are now required to provide non-coercive assistance regardless of dual criminality provisions. The FATF Standard clarifies that the requesting country should make best efforts to provide complete factual and legal information, including any request for urgency.

327. **Criterion 37.1** MLPA section 23 states that the court or the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any MLAT may receive a request from the court

---

<sup>7</sup> There is presently a draft bill that will repeal the Prevention of Corruption Act and capture more offences under the UN Convention. An official working group has been set up to ratify the UN Convention.

or other competent authority of another State to identify, trace, freeze, seize or forfeit the property proceeds, or instrumentalities connected to money laundering offences, and may take appropriate actions. Assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of FIs and government agencies. The Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any MLAT shall cooperate with the CA of another State in obtaining testimony or facilitating the voluntary presence or availability in the requesting State of persons, including those in custody, to give testimony locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items, and provisional measures. The authorities indicated that The Mutual Assistance in Criminal Matters Act 1993 provides for the making and receiving of formal mutual legal assistance requests. This is supplemented by the treaties and international conventions to which the country is signatory. The ONDCP has authority under ONDCPA, s. 10 and 12 to provide informal mutual legal assistance as well. Section 2(1) of the MLPA makes TF a ML offence, and therefore Section 23 of the MLPA provides the necessary authority to provide MLA when there is a ML offence involved.

328. **Criterion 37.2** Section 4 of the MACMA says that the Minister may, by order published in the Gazette designate any person or authority as the Central Authority for Antigua and Barbuda. the Minister subsequently gazetted the Attorney General to be the Central Authority. The Supervisory Authority in consultation with the Attorney General may execute MLA requests under s.23 of the MLPA. The ONDCP has a case management system and clear processes for the timely prioritization and execution of requests. Evidence of the procedures for the execution of requests was provided by the Offices of the DPP, which also processes MLA requests, and the Attorney General, however there was no case management system evidenced.

329. **Criterion 37.3** Section 19(2) of the MACMA sets out the grounds on which a request shall be refused. Section 19(3) sets out the grounds on which a request may be refused. These grounds for refusal are not overly restrictive. Though the section makes reference to Commonwealth countries, section 30 of the MACMA makes provision for a non-Commonwealth country to be treated under the Act as if it were a Commonwealth country. Further, where requests are accepted pursuant to a treaty, it is possible that it is provided for refusal of a request in accordance with the relevant articles of the treaty. Mutual legal assistance is not prohibited or made subject to unreasonable or unduly restrictive conditions.

330. **Criterion 37.4.** (a) The authorities indicated that MLAT requests that have been executed under existing law include cases involving fiscal matters such as criminal tax evasion. *Sect 23 (5) of the MLPA* 1996 provides for assistance involving fiscal matters and the grounds for refusal outlined in MACMA above, do not include fiscal matters. (b) Confidentiality requirements are overridden by Section 25 of the MLPA 1996 which states that subject to the provisions of the Constitution, the provisions of the Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

331. **Criterion 37.5.** Section 18(3) of the MACMA states that ‘where a Commonwealth country making a request for assistance under the Act wishes the request or any part of it, to be kept confidential it shall so state, giving reasons, in the request, or in a document accompanying, but not forming part of the request’.

This will also apply to non-Commonwealth countries to which assistance can be provided under section 30 of the MACMA.

332. **Criterion 37.6.** Section 19(2) (d) of MACMA states that assistance “shall” be refused if in the opinion of the Central Authority the request relates to prosecution or punishment of a person for conduct which if it had occurred in Antigua and Barbuda would not have constituted an offence under the criminal law of Antigua and Barbuda. The requirement that countries should not make dual criminality a condition for rendering assistance in cases where requests do not involve coercive actions is not addressed.

333. **Criterion 37.7** The definition of ML offence in MLPA, s. 2, para. (ii) is very broad. It states, “In deciding whether an offence against any foreign law is a money laundering offence within the meaning of this definition, due regard should be given to differences in the form and usages of foreign laws and the meaning of any language used in such law should be construed broadly and not strictly.” Pursuant to Section 19(2)(d) of MACMA dual criminality is a requirement for rendering assistance.

334. **Criterion 37.8** The ONDCP can execute warrants and obtain confidential information by production order under s. 15 of the MLPA. The Police have access to the special techniques in the Evidence (Special Provisions) Act, ss. 55 – 62. MLPA Section 23 states that the court or the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property proceeds, or instrumentalities connected to money laundering offences, and may take appropriate actions. Assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies. The Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any mutual legal assistance treaty shall cooperate with the competent authority of another State in obtaining testimony or facilitating the voluntary presence or availability in the requesting State of persons, including those in custody, to give testimony locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items, and provisional measures. Section 6 (2) ONDCP (Amendment) Act No. 9 of 2017 authorizes officers of the ONDCP to conduct undercover operations. Subsections 3 and 4 authorize the Director and officers of the ONDCP to employ the investigative technique of controlled delivery.

335. The broad powers of the Police to investigate matters encompasses undercover operations-controlled delivery, seizing and obtaining evidence, the interception of communications and accessing computer systems. Section 6 of the ONDCP (Amendment) Act No. 9 of 2017 amends the principal Act and provides the necessary investigative authority for ONDCP officers.

### *Weighting and Conclusion*

336. There are some procedures with regard to a case management system and clear processes for the timely prioritization and execution of requests. The requirements of criterion 37.6 that countries should not make dual criminality a condition for rendering assistance in cases where

requests do not involve coercive actions is not addressed. **Recommendation 37 is rated partially compliant.**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

337. Antigua and Barbuda was rated ‘LC’ for R.38 in its 3<sup>rd</sup> MER. The deficiencies were: No provisions were made for confiscated proceeds of terrorism or terrorism assets seized to be deposited into a Forfeiture Fund; for the sharing of assets confiscated because of coordinated law enforcement actions; for assets from terrorist activity to be deposited into a Forfeiture Fund. The new FATF requirements are at 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are (i) whether measures exist for aiding requests for non-conviction-based confiscation; (ii) whether measures exist for managing and disposing of property frozen, seized and confiscated; and (iii) whether measures exist for managing and sharing confiscated proceeds with other countries.

338. **Criterion 38.1** Section 27 of the MACMA, as cited in the TCQ, provides for assistance to a Commonwealth country in relation to the registration of orders for confiscating property obtained from the commission of a specified offence, imposing a pecuniary penalty on a person calculated by referencing the value of property or restraining dealings with property. At Section 23 (2) of the MLPA, the court or the Supervisory Authority, in consultation with the Central Authority for Antigua and Barbuda, under any MLA treaty may receive a request from the court or other Central Authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences. TF offences under the PTA are defined as ML offences by Section 3 MLPA 2013 therefore the instrumentalities of TF offences would be captured under the provisions to trace, freeze, seize or forfeited under the MLPA.

339. **Criterion 38.2** Section 23 (4) of the MLPA provides for the court or the Supervisory Authority in consultation with the central authority for Antigua and Barbuda under any MLA treaty to take appropriate measures with respect to a request from a court or other Central Authority from another State, for assistance related to a civil, criminal, or administrative investigation, prosecution or proceedings, involving money laundering offences. Sect 2(B) of the MLPA provides for the declaration of a conviction on abscondence for purposes of forfeiture. Sect 20(B) 11 of the MLPA provides for the civil process assessment order to be used if an Order is made against a dead person. It has effect before the final distribution of the estate, as if the person died the day after the making of the order. Sect 30(A) (2) of the ONDCP Amendment ACT No. 9 of 2017, provides that where the owner of a property cannot be ascertained, a Magistrate may make an order as is appropriate having regard to the nature of the property. TF offences under the PTA are defined as ML offences by s.3 MLPA 2013 therefore the instrumentalities of TF offences would be captured under MLPA which has cited the sections 5, 6, 7, 8, 9, 10 and 12 of the Prevention of Terrorism Act 2005 as being money laundering offences.

340. **Criterion 38.3** Apart from noting that “MLAT treaties is used to coordinate confiscation action. The Treaty with the U.S. on Mutual Legal Assistance, with the U.S. on Confiscation and the Palermo

Convention are the most frequently used” the applicable measure addressing arrangements for coordinating seizures and confiscation actions with other countries were provided through the signing of bi lateral MOUs. Section 20 G of the MLPA established the Forfeiture Fund for confiscation matters. There are no clear guidelines/mechanisms as it relates to arrangements with other countries regarding coordinating seizures and confiscation matters. The ONDCP Act 9 of 2017 Section 8 the insertion Part IVA to the parent act provide for the means of disposal of property frozen, seized or confiscated.

341. **Criterion 38.4** The Authorities indicated that arrangements are made on a case by case basis for sharing and that where there are established agreements with countries for asset sharing, the MOUs or Agreements are used. Where there are none, after the case is completed then negotiations are conducted to come up with a sharing arrangement. Evidence of established agreements and asset sharing conducted in specific cases was also provided.

### *Weighting and Conclusion*

342. The MACMA when combined with the MPLA endows Antigua and Barbuda with the ability to provide a wide range of assistance. The instrumentalities for TF are captured and there are legal and provisions for coordinating actions in regard to seizure and confiscations actions with other countries. The assistance to countries regarding requests on the basis of non-conviction-based confiscations is not covered under the legislation. The mechanisms for managing assets are not clearly established. **Recommendation 38 is rated is largely compliant.**

### *Recommendation 39 – Extradition*

343. This Recommendation was rated ‘C’ in the 3<sup>rd</sup> MER. It was noted that there appeared to be a high level of cooperation between Antigua and Barbuda and foreign States with regard to extradition matters. However, the Authorities should seek ways to limit the delay in extradition procedures. The latter comment did not affect the rating of this Recommendation.

344. **Criterion 39.1.** MLPA makes ML an offence for purposes of extradition or rendition of fugitives. MLPA. Section 2(1) defines money laundering offence to include the financing of terrorism offences. PTA, Section 30 provides for conventions to be applied in relation to extradition requests related to terrorism. The procedure for extradition is set out in Part IV of the EA. In terms of prioritization, requests are treated with urgency. There is no case management system however the Authorities indicate that extradition requests are infrequent and are dealt with as they are received.

345. **Criterion 39.2.** Section 3 of the Extradition Act 1993 (EA) sets out “liability to extradition” and makes provision for any person who is at the time of the extradition request in Antigua and Barbuda to be extradited. Section 4 sets out what is an extraditable offence and the conditions which must be met and

Section 8 sets out the restrictions on return. None of these sections prohibit the extradition of nationals of Antigua and Barbuda. Further, the authorities indicate that Antigua and Barbuda extradites its own citizens.

346. **Criterion 39.3.** Section 4(1)(a) of the EA states that, "extradition crime" means conduct in the territory of a foreign or designated Commonwealth country which, if it occurred in Antigua and Barbuda would constitute an offence punishable with imprisonment for a term of twelve months, or any greater punishment, and which, however described in the law of the foreign state or Commonwealth country, is so punishable under that law. Section 9(5) further states that "An authority to proceed shall specify the offence or offences under the law of Antigua and Barbuda which it appears to the Minister would be constituted by equivalent conduct in Antigua and Barbuda". There is therefore no requirement that the offences be placed within the same category of offence or denominate the offence by the same terminology as it is based on "equivalent conduct".

347. **Criterion 39.4.** Section 16 of the EA provides for simplified extradition mechanisms where a person gives notice that he waives his rights under Section 13 (applications for habeas corpus) of the EA.

### *Weighting and Conclusion*

348. ML and TF are extraditable offences; however, there is no case management system for the execution of extradition requests without undue delay. **Recommendation 39 is rated largely compliant.**

### *Recommendation 40 – Other forms of international cooperation*

349. This Recommendation was rated 'LC' in the 3rd MER. The main deficiency was that the FSRC was not authorized to exchange information with foreign counterparts and the level of cooperation between the ECCB and the FSRC was unclear.

350. **Criterion 40.1** The authorities have identified the mechanisms which would enable them to rapidly provide the widest range of international cooperation in relation to ML, associated predicate offences and TF. For example, The Police use Interpol and their contacts with other Commissioners of Police to gather and share intelligence. The use of the Egmont secure web which provides for spontaneous communication with law enforcement authorities., telephone discussions email and other rapid means of communication. Likewise, the Comptroller of Customs can share information with his counterpart, and the ECCB and the FSRC with counterparts. In respect of formal MLATs, section 10 of the ONDCP Act provides for the providing of spontaneous information to authorities. Informal requests for mutual legal assistance are not dependent on the AG nor restricted to the Supervisory Authority Antigua and Barbuda has also cited the Attorney General as competent authority under section 4 of the MACMA for providing international assistance in criminal matters. The Attorney General also consults with the ONDCP in exchanges of information. Under Section 23 of the MLPA.

351. **Criterion 40.2** (a) The Attorney General as competent authority acts in accordance with the Mutual Assistance in Criminal Matters Act (MAMCA). In support of that are numerous treaties, including the Harare Scheme, the UNTOC, UNCAC, UN Convention Against Financing of Terrorism, Inter-American Convention of Mutual Legal Assistance, Inter-American Convention on Corruption; Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Antigua and Barbuda Concerning the Investigation, Restraint and Confiscation of the Proceeds and Instrumentalities of Crime. The Director of the ONDCP in his capacity as Supervisory Authority under the MLPA is authorised in consultation with the central authority, under s. 23 of the MLPA, to cooperate with the court or other competent authority of another State. The Supervisory Authority under any mutual legal assistance treaty may receive a request to identify, trace, freeze, seize or forfeit property, proceeds or instrumentalities and may take appropriate action the freeze and forfeit. The assistance may relate to civil, criminal or administrative investigation, prosecution or proceedings involving money laundering offences.

352. (b) The Supervisory Authority has available all the legal means provided by the MLPA to assist another State, including, obtaining confidential information under s. 15, freezing under s. 19 and forfeiture and confiscation under sections 20 – 20B. **The most efficient means of cooperation** depends on the nature of the information requested, which will dictate how best to cooperate. There are no measures which prevents the competent authorities from using the most efficient means of cooperation. For example, informal information may be shared by a telephone conversation, while the restraint of property can only be effected through an application to the court for a court order.

353. (c) The authorities only speak of the Egmont Secure web as a clear and secure gateway. Telephone, emails and fax were identified as channels used to facilitate and allow for the transmission and execution of request.

354. (d) The ONDCP assesses the urgency of the matter and assign it a priority rating of High, Medium or Low and assign the case to a case officer. Based on the perceived urgency of the matter no information was provided as to the processes for prioritization and timely execution of requests by other competent authorities.

355. (e) MLATs are usually executed by the ONDCP or the DPP. MLAT information is stored in the Legal Department and the Investigations Department of the ONDCP. All persons employed at the ONDCP are subject to the confidentiality requirements of s. 32 of the ONDCPA and other policy documents of the organization to which they are subject however no clear processes were highlighted. no information was provided as to the processes for prioritization and timely execution of requests by other competent authorities

356. **Criterion 40.3.** The Competent Authorities of Antigua and Barbuda do have formal and informal multilateral and bilateral arrangements to cooperate with a large range of regional and international counterparts. At the on-site, it was recognized that the ONDCP is a member of the Egmont group of FIUs. Antigua and Barbuda also has agreement with the US and the UK for the Exchange of Information on Tax matters, MLA on criminal matters and asset sharing agreements in force with the US, UK and Canada.

357. **Criterion 40.4** The authorities indicate that the ONDCP is able to provide timely feedback through informal channels, including telephone and email communications, and the Egmont secured network. The feedbacks provided by other competent authorities have not been addressed. The position of requesting countries was not addressed.

358. **Criterion 40.5** (a) Sec. 23 (5) of the MLPA is establishes that the subject of the request has to be the subject of a criminal investigation for a ML offence. The authorities indicated that fiscal crimes such as criminal tax evasion are a basis for legal assistance, however the provision of tax information is not addressed. (b) s.25 of the MLPA overrides secrecy or confidentiality requirements; (c) the authorities indicated that mutual investigations of the same offence have been conducted and there is no law prohibiting it, however nothing was provided to substantiate this; (d) There are no legislative measures, however, the ONDCP indicated that all relevant actions are consider when dealing with foreign requests and certain directives are given especially regards to requests through mutual legal assistance request. On the On-site a case was cited where assistance was provided which did not necessarily meet all the legal standards of Antigua and Barbuda. The positions of other competent authorities have not been addressed.

359. **Criterion 40.6** The ONDCP indicated that MLAT responses contain a standard warning on the limits to which use of the information provided can be made, namely, for the purpose for which it was requested, however nothing was provided in relation to established controls and safeguards or the stated wording and warnings. No legal basis was provided by the country.

360. **Criterion 40.7** Antigua and Barbuda has cited confidentiality of ONDCP information under Section 32 of the ONDCP Act, which makes it an offence for a member of the ONDCP to disclose the information that has come into his possession as a result of his employment in the ONDCP, other than in the proper exercise of his duties. In the exchange of information by the ONDCP with other competent authorities, there are confidentiality provisions attached to the exchanges of these information. However, for the other competent authorities in Antigua and Barbuda there is no reference to how the authorities maintain appropriate confidentiality for any request for cooperation and information exchange, or how confidentiality is preserved in this regard or mechanisms for refusal to provide information if the requesting competent authority cannot protect the information effectively.

361. **Criterion 40.8** – The authorities indicated that in executing an MLAT Request or informal request, the ONDCP can and does conduct interviews on behalf of a foreign counterpart. Section 20 of the MACMA provides for assistance in obtaining evidence, including the taking of evidence from a person in Antigua and Barbuda. Under Section 20 of the MACMA, the assistance in obtaining evidence and to make inquiries on behalf of foreign counterparts relates to only Commonwealth Countries. Section 30 of the MACMA provides conditions for assistance to be given to non- Commonwealth countries. The other competent authorities are able to conduct inquiries on behalf of foreign counterparts and exchange all information if such inquiries were carried out domestically through the use of MOUs, multi- states agencies and bi-lateral and multi-lateral agreements.

362. **Criterion 40.9** The Director of the ONDCP who is the head of the FIU is empowered under Section 10(1)(d) of the ONDCP Act 2003 to co-operate with external law enforcement agencies and FIUs

concerning specified offences to include ML/TF and all the predicate offences. The Director is also authorized by Section 12(2) of the ONDCP Act 2003 to enter into MOUs for co-operation and information sharing with other FIU's. The ONDCP is also a member of the Egmont Group of FIU's which facilitates information sharing with other units.

363. **Criterion 40.10** – The authorities indicated that the ONDCP interacts with and responds to its foreign counterparts on a regular basis and develops effective relationships which involves dynamic feedback. The feedback provided by the ONDCP relates to deficiencies in the letter of request that need to be remedied in order to provide an effective response. The feedbacks also entail the usefulness of the information provided as well as the outcome of the analysis. The feedback is sent by convenient mode for example, emails or telephone calls to the appropriate authority.

364. **Criterion 40.11** Section 10(1)(d) of the ONDCP Act makes a function of the ONDCP to liaise with law enforcement agencies and other FIUs outside Antigua and Barbuda concerning drug trafficking, ML and specified offences. Section 12(3) of the ONDCP Act states that the Director may in the performance of his functions in any case liaise with any entity inside or outside Antigua and Barbuda. These provisions are broad enough to cover information required to be accessible or obtained directly or indirectly by the FIU, in particular under Recommendation 29 as well as other information which they have the power to obtain or access, directly or indirectly at the domestic level subject to the principle of reciprocity.

365. **Criterion 40.12** Sections 5, 19, 20, 31 and 32 of The FSRC Act and Section 94 of the Antigua and Barbuda Banking Act allow for cooperation with foreign counterparts. Section 5 of the FSRC Act inter alia allows the FSRC to co-operate with domestic and international government agencies and statutory organizations in relation to ML/TF.

366. Section 19 of the act supports the cooperative ability of the FSRC and allows the Commission to request information which can assist a foreign counterpart. The assistance and cooperation that may be provided by the FSRC includes initiating civil and administrative proceedings (section 31(3)).

367. Further Section 32 of the FSRCA permits the Commission in the exercise of its collaborative functions enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting consolidated supervision with such activities. MOU in effect are with the ONDCP (August 2010), ECCB (April 2010), IRD (November 2016) and Alderney (May) 2010 as examples. Section 94 of the Antigua and Barbuda Banking Act 2015 empowers the ECCB to enter into an agreement or arrangement for coordination, cooperation, and the exchange of information with a foreign supervisory authority with responsibility to supervise financial institutions, financial holding companies, or other similar institutions, and with a foreign resolution authority or other government agency with direct responsibility for matters relating to the resolution of failing or failed financial institutions, if different from the supervisory authority, where the Central Bank is satisfied that the foreign authority has the obligation to protect the confidentiality of the information imparted. The ECCB is currently considering entering into MOUs with the AML/CFT authorities for the sharing and exchange of information.

368. **Criterion 40.13** section 31(3)(a) of the FSRC Act which states that where the Commission is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Commission may disclose information necessary to enable the overseas regulatory authority to exercise

regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority. Section 20 of the FSRC Act allows the FSRC to (a) authorize a competent person to exercise any of its collaborative functions; and (b) seek the assistance of the Commissioner of police and or the office of the Director of the Office of National money laundering Control Policy (ONDCP) in the exercise of those functions. It was not indicated whether this would also include information held by financial institutions.

369. **Criterion 40.14** – Section 31 of the FSRC Act permits the sharing of information that has been acquired during the course of duties at the Commission with overseas regulatory authorities. This will include regulatory information, prudential information and AML/CFT information. Section 32 also allows the Commission to enter into MOUs including for the purpose of exercising the powers under 31 relating to the sharing of information with overseas regulatory authorities.

370. **Criterion 40.15** Section 31(8) of the FSRC Act allows for access, that is to say the ability to conduct inquiries in the country or vicariously through the Commission. The legislative provisions are supported by a number of MOUs which the Commission has entered into with various overseas regulators such as those with the Eastern Caribbean Currency Union (ECCU) and the Caribbean Group of Banking Supervisors (CGBS).

371. **Criterion 40.16** Section 31(8)(b) of the FSRC Act provides that the Commission shall not give an overseas regulatory authority any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless the commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission. This however does not address the requirement to obtain prior authorization from the requested financial supervisor in similar circumstances. No reference is made to situations where the requesting financial supervisor is under a legal obligation to disclose or report the information and in such cases, at a minimum the requesting financial supervisor should promptly inform the requested authority of this obligation.

372. **Criterion 40.17** ONDCPA, s. 10(1)(d) and s. 12 provide for exchange of information with foreign counterparts for intelligence or investigation purposes. The authorities also indicated that The Police use Interpol, the International Commissioners Association, Caribe Commissioners Association, RSS, IMPACS Fusion Centre; Customs use CCLEC; and Immigration uses CARICOM Implementation Agency for Crime and Security (CARICOM IMPACS).

373. **Criterion 40.18** The law enforcement authorities are able to use powers to include investigative techniques to conduct inquiries and obtain information on behalf of foreign counterpart though agencies such as Interpol and CARICOM IMPACS and CCLEC. There are restriction and guidelines governing such cooperation, which are done through accordance or subject to domestic law.

374. **Criterion 40.19** There is a Multilateral Multiagency MOU between the Police, ONDCP, Customs, Immigration, ABDF and the National Joint Coordination Centre which sets out the role of each organisation in relation to any investigation or law enforcement operation in relation to the illegal importation and exportation of drugs, terrorist activities, activities in relation to proceeds, profits and instrumentalities of crime and ML. The exchanges of information through this multi agencies are shared with foreign

counterparts. According to the authorities, this level of cooperation has enable the authorities to conduct cooperative investigations with international partners leading to convictions and asset confiscations.

375. **Criterion 40.20** - ONDCPA, s. 12 provides for the Director of ONDCP to liaise with any entity or individual outside Antigua and Barbuda in a matter under investigation. There are no other provisions as to how other competent authorities are able to exchange information with non- counterparts.

### *Weighting and Conclusion*

376. There are a number of international cooperation agreements and MOUs, as well as some forms of informal cooperation such as the ARIN-CARIB for the exchange of information. There are various regional and international organizations such Interpol, the International Commissioners Association, Caribbean Commissioners Association, RSS, Impacts, Regional Fusion Centre; CCLEC and CARICOM IMPACS, for cooperation. There is no indication as to whether other forms of international cooperation could be affected (or not) by ongoing investigations, inquiries or proceedings. With regard to controls and safeguards on the information exchanged, no measures to ensure its use for the intended purpose were provided. There is no indication as to how Antigua and Barbuda would address the provision of exchange of information or assistance related to fiscal matters. The level of international cooperation as stated by Antigua and Barbuda appears to mostly relate to the international cooperation involving the Central Authority and the ONDCP. The exchange of information to foreign counterparts by the other Competent Authorities appears to be very limited. The ability of exchange supervisory information is hampered by the inability of financial supervisor who can conduct inquiries on behalf of foreign counterpart but are unable to provide group supervision in having their foreign counterparts conduct inquiries in Antigua and Barbuda. **Recommendation 40 is rated partially compliant.**

## Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>The NRA has been completed relatively recently and the AML/CFT regime has not yet been tailored entirely to fit the risks identified.</li> <li>The AML/CFT policy based on the findings of NRA has not be completed.</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>The development of a national AML/CFT policy based on the NRA Antigua and Barbuda do not have a coordinating mechanism to combat the financing of proliferation of weapons of mass destruction.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>A person has to be convicted of a predicate offence when proving that the property is proceeds of crime, as it relates to an AML offence.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>The guideline for appropriate investigative measures are not clearly established i.e interception of communication, entering computer systems.</li> </ul>
5. Terrorist financing offence	C	
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> <li>The framework does not address the designation of persons or entities to the 1267/1989 Committee or the 1988 Committee of the UN based on the designation criteria set out in the relevant UNSCRs. In relation to UNSCR 1373 Antigua and Barbuda does not have any mechanisms for identifying targets for designation, nor are there any mechanisms for receiving a request for designation from other countries. There are also no measures cited with regard to requesting another country to take action or give effect under the freezing mechanism. The PTA does not have all the designation criteria required for UNSCR 1267 or 1373. The PTA does not address the prohibition of making funds, assets, economic resources, or financial or other related services for the benefit of designated entities or with regard to persons acting on behalf of designated entities. There are</li> </ul>

		measures to allow for the immediate communication of the restraint or freezing to financial institutions, but DNFBPs are not included and there is no specified guidance to financial institutions or DNFBPs. There are not procedures to facilitate a review by the 1988 Committee of designations made by the 1988 Committee or measures to deal with ‘false positive’ situations. The measures to provide access to restrained or frozen funds for reasonable living expenses, business or legal expenses are limited
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>There is no legislation addressing targeted financial sanctions related to proliferation.</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>The country has not identified the NPOs as defined by the FATF standard.</li> <li>There is no comprehensive legal or regulatory framework for this sector with respect AML/CFT.</li> </ul>
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>The responsibility for ongoing due diligence is placed on the FIs employee rather than the FI</li> <li>The ongoing monitoring required on existing customer does not explicitly require the application of CDD requirements to existing customers.</li> <li>There no provision for requiring FIs not to pursue CDD where this is risk of tipping off.</li> </ul>
11. Record keeping	LC	
12. Politically exposed persons	LC	
13. Correspondent banking	C	
14. Money or value transfer services	LC	<ul style="list-style-type: none"> <li>There is no explicit requirement for MVTS providers that use agents (sub-licensees) to include them in their AML/CFT programs and monitor them for compliance.</li> </ul>
15. New technologies	C	

16. Wire transfers	<b>LC</b>	<ul style="list-style-type: none"> <li>• No requirements for law enforcement to be able to compel immediate production of required information from FI and MVTs.</li> <li>• No requirement for FIs and MVTs to take measures for ensuring accurate and meaningful beneficiary information on wire transfers and related messages; No requirement for the reporting of STRs in countries affected in relation to MVTs.</li> <li>• No requirement for financial institutions to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism.</li> </ul>
17. Reliance on third parties	<b>C</b>	
18. Internal controls and foreign branches and subsidiaries	<b>C</b>	
19. Higher-risk countries	<b>C</b>	
20. Reporting of suspicious transaction	<b>C</b>	
21. Tipping-off and confidentiality	<b>LC</b>	<ul style="list-style-type: none"> <li>• The provisions in the PTA regarding the same protection as the MLPA should be stipulated.</li> <li>• The tipping off provisions relates to the submission of the STR or related information about the STR. Antigua meets criterion 21.1. However, for 21.2 it has not satisfied the core component of this criterion.</li> <li>• The MLPA does not prohibit the disclosure that the fact that an STR or related information is being filed.</li> </ul>
22. DNFBPs: Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• DNFBPs cannot pursue the CDD process where there is a risk tipping-off.</li> <li>• The application of CDD requirements to lawyers, notaries and accountants is limited to only when they conduct financial activity as a business.</li> <li>• Legislative requirements do not address all scenarios where information may be requested including requests for CDD information</li> </ul>

		<ul style="list-style-type: none"> <li>• DNFBPS are not required to undertake EDD in all situations.</li> </ul>
23. DNFBPs: Other measures	<b>LC</b>	
24. Transparency and beneficial ownership of legal persons	<b>LC</b>	<ul style="list-style-type: none"> <li>• Antigua and Barbuda has no mechanisms to monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	<b>LC</b>	
26. Regulation and supervision of financial institutions	<b>LC</b>	<ul style="list-style-type: none"> <li>• The term registration is used interchangeably in the legislation with licensing and leads to ambiguity.</li> <li>• There is no provision in the MSBA which explicitly requires the FSRC to take into account the criminal history when assessing fitness and probity.</li> <li>• There is basis for assessing the suitability of significant shareholders of FI except for Insurance Companies.</li> <li>• The MLPR does not explicitly express the requirement to review the risk assessments of FI and groups periodically and when there are major events or developments in the management and operations of the FI or group.</li> </ul>
27. Powers of supervisors	<b>LC</b>	
28. Regulation and supervision of DNFBPs	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no express provision to prevent criminals from holding or having a management function in these sectors.</li> <li>• It is not clear that the Supervisory Authority is required to apply a risk basis to determine the level of supervision and basis and frequency of examinations.</li> </ul>
29. Financial intelligence units	<b>LC</b>	<ul style="list-style-type: none"> <li>• The ability to conduct both operational and strategic analysis although done to a limited extent are not fully implemented and utilized.</li> <li>• Antigua and Barbuda cited Section 4 which exempts the ONDCP from provisions of the Statutory</li> </ul>

		Corporations (General Provisions) Act 2016. This does not cover financial independence.
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>The measures which gives the authority to the ONDCP expeditiously identify, trace and initiating freezing and seizing of assets is stated. However, no mention was made of other competent authority i.e Customs/IRD and their investigative powers either to trace, identify, seized or freeze criminal assets or property.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>The ability to record witness statement is hinder where persons do not consent or refused to give a statement.</li> <li>The accessing of computer systems in conducting investigations of ML, TF or associated predicated offences are not explicitly stated.</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>There are no guidelines as to strict safe guards that are in place to ensure proper use of information collected through the declaration system. T</li> <li>The civil or administrative sanctions are not being used by the Comptroller of Customs</li> </ul>
33. Statistics	LC	<ul style="list-style-type: none"> <li>The competent authority required by law to keep statistics based on each agency's mandate. There are no specific measures to keep information on mutual legal assistance or requests for cooperation however, this information is kept.</li> </ul>
34. Guidance and feedback	C	
35. Sanctions	PC	<ul style="list-style-type: none"> <li>Inability to meet sanctions relative to Recommendation 6 and 8.</li> <li>Sanctions do not all relate to enforcing compliance with the AML/CFT regime.</li> <li>Provisions for extending liability to directors and managers of FIs under the MLPA and MLPR do not cover all predicate offences.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>Antigua and Barbuda has ratified most of the relevant Conventions with the exception of Merida and Terrorist Financing Conventions.</li> </ul>
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> <li>There are no procedures with regard to a case management system nor clear processes for the timely prioritization and execution of requests. The requirements</li> </ul>

		of criterion 37.6 that countries should not make dual criminality a condition for rendering assistance in cases where requests do not involve coercive actions is not addressed.
38. Mutual legal assistance: freezing and confiscation	<b>LC</b>	<ul style="list-style-type: none"> <li>• The instrumentalities for TF are not captured and there are no legal or administrative provisions for coordinating actions in regard to seizure and confiscations actions with other countries</li> <li>• The assistance to countries regarding requests on the basis of non-conviction-based confiscations is not covered under the legislation.</li> </ul>
39. Extradition	<b>LC</b>	<ul style="list-style-type: none"> <li>• ML and TF are extraditable offences; however, there is no case management system in place.</li> </ul>
40. Other forms of international cooperation	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no indication as to how Antigua and Barbuda would address the provision of exchange of information or assistance related to fiscal matters.</li> <li>• The level of international cooperation as stated by Antigua and Barbuda appears to mostly relate to the international cooperation involving the Central Authority and the ONDCP.</li> <li>• The exchange of information to foreign counterparts by the other competent authorities appears to be very limited e.g. The ability of the FSRC to exchange supervisory information.</li> </ul>

## TABLE OF ACRONYMS

ABDF	Antigua and Barbuda Defence Force
ACU	Anti-Corruption Unit
AG	Attorney-General Antigua and Barbuda
AML	Anti-Money Laundering
BO	Beneficial Ownership
CDD	Customer Due Diligence
CED	Customs and Excise Department
CIP	Citizenship by Investment Programme
CIU	Citizenship by Investment Unit
CMTSP	Corporate Management and Trust Service Provider
CSP	Company Service Provider
CT	Counter Terrorism
CFT	Combating the Financing of Terrorism
DIU	Drug Intelligence Unit
DNFBP	Designated Non-Financial Business or Profession
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
ECD	Eastern Caribbean Dollar. Used interchangeably with EC
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FAU	Financial Analytical Division
FCU	Financial Compliance Unit
FI	Financial Institution
ID	Investigations Department
FIU	Financial Intelligence Unit
FSA	Friendly Societies Act
FSRC	Financial Services Regulatory Commission
FUR	Follow-Up Report
JIG	Joint Intelligence Group
JRRC	Joint Regional Communications Centre
IBC	International Business Companies
IBCA	International Business Corporations Act
IFs	International foundations IFs
ILLCs	International limited liability companies
IPO	Antigua and Barbuda Intellectual Property Office
IO	Immediate Outcome
ITs	International Trusts
LEA	Law Enforcement Authority or Law Enforcement Agency
ML	Money Laundering
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty. Used interchangeably with MLA
MLFTG	Money Laundering and Financing of Terrorism Guidelines
MLPA	Money Laundering Prevention Act
MLPR	Money Laundering Prevention Regulations

MOU	Memorandum of Understanding
MSB	Money Service Business
MVTS	Money Value Transfer Services
I.T	Information Technology
NAMLOC	National Anti-Money Laundering Oversight Committee
NJCC	National Joint Coordination Centre
NRA	National Risk Assessment
NSC	National Security Council
NPO	Non-Profit Organisation
ONDCP	Office of National Drug and Money Laundering Control Policy
PCU	Proceeds of Crime Unit
PEP	Politically Exposed Person
POCA	Proceeds of Crime Act
PTA	Prevention of Terrorism Act
PWMD	Proliferation of Weapons of Mass Destruction
RIFC	Regional Intelligence Fusion Centre
RPFAB	Royal Antigua and Barbuda Police Force
RSS	Regional Security System
SAR	Suspicious Activity Report
SCU	Serious Crime Unit
SIFI	Systematically Important Financial Institution
STR	Suspicious Transaction Report
TF	Terrorism Financing
TFS	Targeted Financial Sanctions
TCSP	Trust and Company Service Provider
TPR	Terrorist Property Report
UNSCR	United Nations Security Council Resolution



© CFATF 2018

[www.cfatf-gafic.org](http://www.cfatf-gafic.org)

July 2018

## Anti-money laundering and counter-terrorist financing measures – Antigua and Barbuda *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Antigua and Barbuda as at the date of the on-site visit June 5-16, 2017. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Antigua and Barbuda's AML/CTF system, and provides recommendations on how the system could be strengthened.