



CARIBBEAN FINANCIAL
ACTION TASK FORCE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Montserrat

July 22nd, 2011

Montserrat is a member of the CFATF. This evaluation was conducted by the CFATF and was adopted as a 3rd mutual evaluation by its Council of Ministers on July 22nd 2011.

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**PREFACE - information and methodology used
for the evaluation of Montserrat**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Montserrat was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004¹. The evaluation was based on the laws, regulations and other materials supplied by Montserrat, and information obtained by the evaluation team during its on-site visit to Montserrat from 15th to 26th February, 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Montserrat government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the Mutual Evaluation Report.
2. Montserrat had its first CFATF Mutual Evaluation in January 2000 and the second round Mutual Evaluation in October – November 2002. This Report is the result of the third Round Mutual Evaluation of Montserrat as conducted in the period stated herein above. The examination Team consisted of Ms. Karen HUGHES, Legal Expert, (St. Kitts and Nevis), Mr. Nigel STODDARD, Law Enforcement Expert (Trinidad and Tobago), Mr. Artherton NESTY, Financial Expert, (The Commonwealth of Dominica) and Mr Denis FELIX, Financial Expert (Grenada). The mission was led by Mr. Jefferson CLARKE, Law Enforcement Advisor, CFATF. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.
3. This report provides a summary of the AML/CFT measures in place in Montserrat as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Montserrat levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

1. ¹ As updated in February 2008

Executive Summary

1. Background Information

1. The Mutual Evaluation Report (MER) of Montserrat summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in Montserrat at the time of the on-site (February 15th to 26th 2010). The Report also sets out Montserrat's level of compliance with the FATF 40 + 9 Recommendations, which are contained in Table 1 of the Report.
2. Montserrat is one of the five (5) Overseas Territories of the United Kingdom, located in the Leeward Islands in the Eastern Caribbean. Montserrat has an active volcano which devastated the island's capital, Plymouth in the 1990s. During the ensuing period the population was reduced from 12,000 to the current figure of approximately 4,800. This population is concentrated in the north of the island. The country has suffered economic decline affecting the tourism sector which was the major economic contributor prior to the commencement of volcanic activities.
3. There are few offences committed in Montserrat that generate substantial profits from crime. The low level of transactions generated in the financial sector suggests that criminal monies are not entering the mainstream economy through the financial institutions. Although there have not been any convictions in Montserrat for money laundering, there were a very small number of convictions for fraud in the years 2006, 2007 and 2008. There were no convictions for fraud in 2009. The level of offences in respect of dangerous drugs peaked to thirty-nine (39) in 2007; however, this number was significantly reduced by more than 50% to seventeen (17) in 2008 and ten (10) in 2009. The majority of convictions for each of the years 2006, 2007, 2008 and 2009 were for minor offences and road accidents. The offences most likely to result in profits from crime, namely drug offences, fraud and serious offences against property represent a very small proportion of the convictions in each year.
4. The types of financial institutions licensed or registered to carry out business in Montserrat are (i) banks; (ii) international banking and trust companies; (iii) insurance companies; (iv) building societies; (v) credit unions; (vi) mutual fund functionaries (vii) company managers and (viii) money service providers. There are two (2) domestic banks, one of which is an indigenous bank whilst the other is a branch of a Canadian international banking group; seven (7) international banks, four (4) of which are licensed to carry out trust business; seven (7) insurance companies; one (1) building society; one (1) credit union and two (2) money service providers. Several types² of legal persons and legal arrangements which can be established or created under Montserrat's laws. All of the financial activities listed in the FATF glossary are covered by the definition of "Service Provider" detailed at Schedule 1 of the Anti-Money and Terrorist Financing Regulations, 2010 (AML/TFR).
5. Montserrat recognises the importance of the global fight against drug trafficking, money laundering and terrorist financing and has committed to playing a responsible role in this global fight by developing and implementing strong and robust AML, and more recently, CFT, strategies and priorities. These strategies have centred on: the maintenance of an effective AML/CFT legal and regulatory framework; requiring Montserrat IBCs, LLCs and LPs, that are

2. ² Local companies; International business companies; Limited Liability companies; General and limited partnerships and trusts

typically used for international business, to have a locally licensed company manager as registered agent, or in the case of trusts, a locally licensed trust company, with responsibility for undertaking KYC and monitoring the AML compliance of financial institutions through on-site inspections. Montserrat's institutional framework for AML/CFT is comprised of the Governor, the Financial Services Commission (FSC), the Ministry of Finance, the Reporting Authority (RA), the Financial Crime and Analysis Unit (FCAU), the Royal Montserrat Police Force (RMPF), the Customs and Excise Department, and the Attorney General's Department. In implementing the FATF recommended risk-based approach with respect to financial institutions, a higher level of monitoring of compliance with AML/CFT requirements is concentrated on licensed banks and money remitters. Since the last mutual evaluation, Montserrat has progressed by introducing changes to the laws relating to money laundering. These included amendments to the Proceeds of Crime Act, the Drug Trafficking Offences Act and the Criminal Justice (International Co-operation) Act in 2004. Furthermore, new regulations were introduced to enhance preventative measures to combat money laundering and, in 2010, the revised Code of Practice for Prevention of Money Laundering and the financing of terrorism was published to give guidance to service providers.

2. Legal System and Related Institutional Measures

6. Montserrat has recently upgraded its legal framework in order to bring it into compliance with current international standards for AML/CFT. The upgrade is effected primarily through the Proceeds of Crime Act 2010 which criminalises money laundering to cover the elements of the *1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)* and the *2000 UN Convention against Transnational Organised Crime (the Palermo Convention)*. Section 118 criminalises acts of concealing, disguising, converting transferring criminal property and removing criminal property from Montserrat. Section 116 identifies property as "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly and the alleged offender knows or suspects that it constitutes or represents such a benefit.
7. Montserrat addresses the issue of "property" from a perspective of "criminal property". Property" is generally defined in section 2 of the 2010 POCA as meaning property of every kind, whether situated in Montserrat or elsewhere and includes money; all forms of real or personal property; as well as things in action and other intangible or incorporeal property. The same section defines "proceeds of criminal conduct" as including a reference to any property real or personal, heritable or movable including things in action and other intangible or incorporeal property which in whole or in part, directly or indirectly represents in his hands his proceeds of criminal conduct. Criminal conduct is also defined at section 2 as being "*conduct which constitutes an offence or would constitute an offence if it had occurred in Montserrat*". This definition therefore captures conduct which occurred in another country. The POCA has defined "offences" to include all indictable offences and offences triable summarily that carry a criminal penalty of imprisonment for one year or more. Predicate offences include a range of offences in each of the designated categories of offences with the exception of environmental crime. The ML offence applies to natural persons and to legal persons that knowingly engage in ML activity. Natural persons are subject to sanctions which are strong enough to be dissuasive and proportional and are comparable with those applicable to other serious offences within the jurisdiction. There is however not sufficient evidence to indicate that the general penalties applied to natural persons were necessarily intended to apply specifically to legal persons as there is no distinction made in terms of the fines applied to bodies corporate within the POCA.

8. Montserrat has criminalised FT. The particulars of the offences are consistent with the definition set out in the Convention for the Suppression of the Financing of Terrorism. Through UK Orders, which have been extended to Montserrat, several FT offences have been created.
9. There is no distinction under Montserrat law between an individual terrorist, a terrorist group or a terrorist organization. Consequently there is a failure to specify the culpability of a terrorist organisation. This is inconsistent with FATF Methodology which sets out an appropriate definition for a terrorist organisation. One of the participants in committing a terrorist offence has been omitted i.e. the person who organises or directs others to commit a terrorist offence or an attempt to do so.
10. The 2001 Terrorism Order and the Anti-terrorism Order both speak in terms of providing or collecting funds “for the purposes of terrorism”. “Terrorism” is broadly defined in the Order to cover the usual acts of intimidation, threats and violence.
11. When combined with the language of the provisions criminalising funding for the “purposes of terrorism” and the definition of person in the Interpretation Act definition of “person” a regime is created that is sufficiently broad to encompass providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act. However the provisions do not go far enough to adequately cover for the purposes of the Recommendations, the activities of a terrorist organisation.
12. Legal persons are subject to criminal liability for FT. With regards to applicable sanctions however, the penalties are low in comparison to other serious offences within the jurisdiction as well as from a Regional perspective.
13. The 2010 POCA contains provisions for the confiscation, freezing and seizure of the proceeds of crime, including provisions allowing for civil forfeiture. These provisions are to be found in Parts 2 and 3 of the POCA. Part 2 enables the Court to make a confiscation order following a conviction for any predicate offence. Proceedings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. Part 2 enables restraint orders to be made to freeze property that may be or represent the proceeds of crime and the appointment of management and enforcement receivers.
14. Confiscation is part of the sentencing of a defendant. The POCA provides for the confiscation of property that has been laundered or which constitutes proceeds of crime and property of corresponding value. Montserrat’s Court is empowered to make confiscation orders, in relation to money laundering offences and predicate offences, where the Court determines that the defendant has benefited from his criminal conduct.
15. In determining the value of property obtained by a person as a result of or in connection with his criminal conduct, the Court looks at the value of the property at the time when the person obtained it, adjusting such value to take account of later changes in the value of money. Montserrat has specifically particularised tainted property to mean property which has been used in or in connection with unlawful conduct or intended to be used in, or in connection with unlawful conduct. Such tainted property is recoverable in respect of civil forfeiture proceedings.
16. Montserrat has a variety of laws and procedures designed to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qa’ida and Taliban Sanctions Committee. The TUNMOTO provides for the Governor to freeze terrorist funds of listed

persons. The Governor has unfettered discretion to make the notice to freeze funds and to have that notice continue in effect for a limited or an unlimited period.

17. Pursuant to the Anti-terrorism Order, a prosecutor may apply to the Supreme Court to make a restraint order to prohibit a person from dealing with the property that is the subject of the Order. The Anti-terrorism Order Schedule 3, sections 2 and 3 allow for cash to be immediately seized and detained by an authorised officer if that officer has reasonable grounds for suspecting that the cash is terrorist cash. The POCA at section 56 authorises Montserrat's Attorney General to forward a request for assistance to the government of another country, asking that country to freeze the assets of a person under investigation for suspicion of terrorist financing, ML or any other predicate offence.
18. The RA is the legislated FIU in Montserrat. It was first established in 2002 and then, pursuant to the 2010 POCA, revised so as to widen its composition. It is responsible for the receipt, analysis and dissemination of disclosures of STRs. The POCA, at section 127 (4) however makes provision for the appointment of a Director to carry out all the day-to-day functions of the RA including the functions of receiving analysing and disclosing STRs. This Director was appointed, leading to the creation of the FCAU which is made up of the Director and other police officers who are all members of the RMPF. With the advent of the FCAU there is a blurring of the lines of responsibilities leading to some duplication of functions and overlapping of powers. The FCAU is solely responsible for dealing with matters of ML and TF.
19. Both the RA and the FCAU have access to the information they require to perform their functions. This includes access government and law enforcement databases. The Examiners were of the conclusion that the current structure and positioning of the RA and FCAU within Montserrat's AML/CFT infrastructure has resulted in the jurisdiction having more than one authority authorised to receive disclosures of STRs from reporting entities.
20. Montserrat's AML/CFT infrastructure for investigation prosecution and confiscation and is set out in the POCA, the AML/TFR, AML/TFC, the Criminal Procedure Code and the Drug Prevention Act. The FCAU is responsible for investigating ML, TF and all other financial crimes. They are supported by the wide policing powers available through the Police Act and the specific power to compel the production of financial information, search persons or premises and to seize and obtain information and property which is available through the POCA. In Montserrat HM Customs is the competent authority for the purpose of cross-border disclosures and declarations. Customs officers are empowered to make enquiries of persons disembarking into Montserrat. However, there is no disclosure/declaration system in place with the required threshold.

3. Preventive Measures – Financial Institutions

21. Just prior to the onsite, Montserrat undertook a major overhaul of its legislative AML/CFT framework. This overhaul culminated with the enactment of new and amended legislation and guidelines, all designed to fulfil the jurisdiction's international obligation with respect to the FATF 40 + 9 Recommendations. The POCA, AML/TFR and the AML/TFC were all brought into force, after the onsite, on 16th April, 2010, but within time allowed for due consideration to be taken by the Examiners. Notwithstanding, the Examiners ability to assess the effectiveness of the preventive measures was hampered to the recentness of the passage of these legislation. Montserrat's AML/CFT regime has assumed a risk-based approach to the prevention and detection of ML and TF. The premier agency charged with the AML/CFT regulatory responsibilities of all financial institutions is the FSC. The ECCB however is responsible for

regulating the two (2) domestic banks for prudential purposes. The CDD measures that are required, the timing of such measures and the circumstances under which they are to be applied by all service providers are found in the AML/TFR and the AML/TFC. Additionally, the requirements for STR reporting by all service providers are contained in the POCA. The Examiners however concluded that there was no clear requirement that enhanced CDD be applied to private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form.

22. PEP is appropriately defined by Montserrat. Regulation 12 of the AML/TFR stipulates and imposes the obligations on service providers to establish, maintain and implement appropriate risk-sensitive measures to detect and prevent ML and TF by PEPs. All Montserrat's service providers were quite aware of who would be classified as a PEP but not all of them had the systems in place to adequately identify such persons.
23. Rule 42 of the AML/TFC details the comprehensive measures which service providers must employ in relation to correspondent banking. These measures are in line with the FATF structure for correspondence banking. Whilst the requirements are referred to as 'Restrictions on correspondence banking', they do in fact set out measures which include the need for all licensed banks to apply CDD measures on their respondent banks on a risk-based approach taken into account a number of criteria.
24. Montserrat has ensured that its service providers are legislatively bound to take such other measures as they consider appropriate to guard against the use of technological developments in money laundering or terrorist financing. These measures are found at Rule 6 of the AML/TFC. The Examiners did find evidence that such policies were in fact in place by many of the service providers interviewed. There was however evidence that two (2) service providers had not, at the time of the onsite, fully implemented the necessary requirements. Montserrat has however insisted that those service providers represented a low risk because of the nature of their business and niche customer base through which their products are available.
25. As for third parties and introduced business, Regulation 8 of the AML/TFR permits a service provider to rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner if such introducer or intermediary is a regulated person or a foreign regulated person; and the introducer or intermediary consents to being relied on.
26. Montserrat has ensured that there are several avenues through which information can be shared, even if such information is the subject of secrecy laws. The Examiners have noted that there are no restrictions on the sharing of information between financial institutions in respect of correspondent banking and third party/correspondence relationships. This fact is supported by the existence of MOUs between Montserrat and several other countries, which facilitates collaboration on AML/CFT.
27. The AML/TFR mandates the record keeping requirement and the type of records which must be maintained by service providers. Records relating to copies of evidence of identity obtained pursuant to the application of CDD measures are required to be kept for a period of five (5) years beginning on the date the occasional transaction was completed or the business relationship ended. It was noted that service providers were aware of the legal requirement to retain identification and transaction records including customer files and business correspondence and all entities reported that they kept such records in excess of five (5) years.

28. Part 9 of the AML/TFC addressed the wire transfer of funds in any currency which is sent or received by a payment service provider that is established in Montserrat and also sets out the requirements for full originator information, with some exemptions. These exemptions are applicable where there is a transfer of funds using a credit card or debit card where there is an agreement with the payment service provider permitting payment for the provisions of goods and services or where a unique identifier allowing the transaction to be traced back to the payer, accompanies the transfer of funds.
29. Regulation 12 of the AML/TFR places a requirement on service providers to establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to complex or unusually large transactions, unusual patterns of transactions which have no apparent economic or visible lawful purpose and any other activity which the service provider regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing. The background and purpose of all such transactions must be scrutinised and records kept in such a manner so as to be available for the FSC, external auditors and other competent authorities. Regulation 7 of the AML/TFR requires that a service provider shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring where the customer has not been physically present for identification purposes or where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF Recommendations. There was evidence that one of the latest advisory issued to financial services providers was in respect of the Security Council consolidated list update December 3, 2009. It was noted however that there were financial institutions which demonstrated limited understanding of the need to ensure compliance with the requirement to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.
30. In Montserrat, suspicious transaction reporting is a mandatory burden placed on a person when that person comes into contact with information or other matter which gives rise to knowledge or suspicion that another person is engaged in money laundering. Money laundering is any act which constitutes a money laundering offence. Money laundering offences are particularised under section 118, 119 and 120 of the POCA. The Examiners however concluded that there was no requirement relating to the reporting of suspicious transactions involving tax matters.
31. Section 125 of the POCA details the circumstances in which a disclosure will be protected but it is silent on who is protected. There is however no explicit protection for financial institutions, directors, officers and employees from criminal or civil liability from breach of contract etc for reporting STRs. Montserrat has attempted to provide some protection against tipping-off at section 123 of the POCA. This provision fails to address the circumstances where an STR is in the process of being reported. Additionally, there is no indication that financial institutions, their directors, officers and employees are directly burdened by this provision. Neither the RA nor the FCAU has provided consistent feedback on suspicious transaction reports filed by financial institutions nor have there been any advisories or reports relating to STRs, statistics, current trends or typologies published or issued to service providers.
32. Regulation 12 of the AML/TFR has mandated that a service provider shall establish maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect

ML and TF. The AML/TFR also makes it a requirement that a service provider, other than a sole trader shall appoint an individual, at an appropriate level of seniority and approved by the FSC, as its money laundering compliance officer (MLRO). The AML/TFC stipulates that the Board of Directors of a service provider is responsible for ensuring that adequate resources are devoted to AML/CFT efforts. There was however no requirement that appropriate staff other than the money laundering compliance officer have timely access to CDD and other relevant information.

33. Montserrat does not grant licences to banks that do not have a physical presence in the jurisdiction and the AML/TFR bars Montserrat banks from entering into or continuing correspondent banking relationships with a shell banks.
34. Montserrat has ensured that its service providers are subject to AML/CFT regulation and supervision through the powers of the FSC obtained from the FSCA. The FSCA also provides for the FSC to check regulated persons' compliance with the requirements in the FSCA, and under sections 33 to 36 of the FSCA to take enforcement and other measures against service providers for breaches of relevant requirements in the FSCA, all regulatory enactments and the POCA. It was noted earlier that the ECCB has prudential jurisdiction over Montserrat's two (2) domestic banks. It was quite unclear how the ECCB was exerting those powers because they had not performed any onsite inspections during the assessable period. The FSC as well had not carried out onsite inspection on all its constituent financial institutions even in the face of the smallness of the jurisdiction.

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

35. The range of DNFBPs in Montserrat cannot be described as being sophisticated. The AML/TFR and AML/TFC do not distinguish between financial institutions and DNFBPs, except in a few specialised areas such as wire transfers and correspondent banking. Therefore, DNFBPs are subject to exactly the same regulatory and supervisory regime as financial institutions. Casinos are prohibited from operating in Montserrat. The Examiners have noted however that the resources of the FSC are inadequate to enable it to effectively supervise the DNFBP sector.

5. Legal Persons and Arrangements & Non-Profit Organisations

36. There are two (2) registration systems in Montserrat one by the Registrar of the High court in respect of local, external and non-profit companies and another by the FSC in respect of IBCs. The Examiners concluded that there were no clear provisions requiring the maintenance of beneficial ownership and control information of local companies and consequently this affected the availability and access to such information. Trusts are licensed entities, pursuant to the IBTC. Consequently, the FSC requires services providers to obtain details of trust, including trustees, beneficiaries, settlors where appropriate. The FSC maintains a register of all international banks with trust licences and prior written approval is required by the FSC before change in ownership occurs. International Trusts must be registered with the Registrar of Companies.
37. In August of 2009 the low level of NPO activity in the jurisdiction prompted the RA to advise that there was no need for the FSC to monitor their activities or ongoing business. Consequently, at the time of the onsite, the NPO sector was neither regulated nor monitored in

anyway for ML or TF compliance. Subsequent to the onsite visit the POCA was enacted and it created provisions for the sector to be supervised by FSC. The effectiveness of such supervision could be not be ascertained.

6. National and International Cooperation

38. The composition of the RA suggests that it can be used to facilitate co-operation between Montserrat's policy makers. Coordination at the operational level however seemed to be on an ad hoc basis and there were no formal MOUs in place to facilitate such coordination and cooperation. As a British Overseas Territory, Montserrat cannot sign or ratify any transnational convention on its own behalf. Montserrat must instead, through the Governor, request the extension of the agreements from the UK. Montserrat can however enact domestic legislation to implement the provisions of relevant trans-national conventions prior to requesting that they be extended. The 1988 Vienna Convention has been extended to Montserrat; however the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism have not been so extended. The Vienna Convention is implemented in Montserrat by the CJICA and the POCA. Provision in respect of the freezing of terrorist funds is found in section 5 of the TUNMOTO. The Extradition (Overseas Territories) Order 2002 permits extradition of nationals and the definition of "extradition crimes" includes terrorism offences, pursuant to Schedule 2 of that Order.

7. Resources and Statistics

39. The Examiners concluded that the FSC was not adequately structured and staffed so as to effectively carry out its functions. There were also insufficient human resources at the RA. The staff of the FCAU, which is the premier agency for financial crime and ML and TF investigations, was not exclusively dedicated to this task and also performed other policing functions. There was also a need for additional training in AML/CFT issues by HM Customs.

40. The Examiners found that comprehensive statistics were not maintained by all the competent authorities.

8. Examiners' View

41. The recent re-alignment of Montserrat's AML/CFT legislative infrastructure represents a strong attempt by the jurisdiction to comply with FATF Recommendations. Montserrat had the benefit of the mutual evaluations of all the other Overseas Territories of the UK and in many instances has factored the shortcomings discerned from those evaluations in its re-alignment. The recentness of the enactment however severely hampered the jurisdiction's ability to demonstrate the effectiveness of the new measures and consequently the examiners' ability to assess it in this regard.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Montserrat

1. Montserrat is one of the five Overseas Territories of the United Kingdom in the Caribbean. The executive authority of Montserrat is vested in Her Majesty the Queen. The Governor appointed by Her Majesty, exercise powers under the Constitution in accordance with the directions of the Executive Council, which he chairs. Except when acting on instructions from Her Majesty the Queen through a Secretary of State, where provided in the Constitution the Governor may act in his discretion, or where he has direct responsibility as stipulated in the Constitution. Montserrat is a member of the Organisation of Eastern Caribbean States (OECS) and, CARICOM and a member of the Eastern Caribbean Central Bank (ECCB) and Eastern Caribbean Securities Regulatory Commission (ECSRC)
2. The Constitution provides for an Executive Council which is responsible for the general direction and control of the Government of Montserrat and is collectively responsible to the Legislative Council. The Executive Council comprises the Governor, the Chief Minister, and three other ministers, together with the Attorney General and Financial Secretary, as ex officio members
3. The Legislative Council is made up nine (9) members, including the Chief Minister and three (3) other ministers all of whom are elected for a maximum of five (5) years by the electorate. The Legislative Council exercises its power and its members hold tenure of office are provided for under the Constitution.
4. Montserrat is situated in the Eastern Caribbean and shares coastal waters with Antigua, Nevis and the French Department of Guadeloupe. Montserrat's capital, Plymouth, was devastated by volcanic activities in the 1990's and the Soufriere Hills Volcano is still in an erupting stage. As a consequence of the devastation, the southern side of the island was evacuated. During the ensuing period the population reduced from 12,000 in 1995 to the current figure of approximately 4,800 and the population now occupies about fifteen (15) of the thirty-nine (39) square miles of the island.
5. The country has suffered economic decline, affecting the tourism sector which was the major economic contributor prior to the commencement of volcanic activities. Today the main industry is mining of volcanic material. Infrastructure for a new town has begun in the northern side of the island, the Little Bay Development, which is at negligible risk from the volcano. It is expected that the infrastructure will be completed by early 2010 and beginning of construction of government offices and the commercial centre by the end of 2010.

Economic Activity

6. At the end of 2008 Montserrat recorded positive growth for the second consecutive year, mainly driven by the construction sector. Other contributors to growth are tourism, mining and quarrying, wholesale and retail trades, and transportation and agriculture.

7. Economic activity in Montserrat increased at an average annual rate of 1.73 % over a five-year period 2004 – 2008, with growth accelerating to 5.41 % in 2008, from 2.92 % in 2007. Growth was largely driven by three (3) main sectors; banks and insurance, government and construction which together are estimated to have increased by 4.5 % during 2008, reflecting the acceleration in economic activity and increases in international commodity prices.
8. Real growth is projected to remain positive in the medium term, at 7.65 % in 2009, 2.28 % in 2010 and 2.14 % in 2011. Growth is expected to emanate from the construction sector, led by public investment in roads, housing and the development of the town at Little Bay. Government concessions are also expected to spur private construction of villas and residential homes.
9. The fiscal performance of central Government is projected to deteriorate over the near to medium term. The deficit is projected to rise by 7.2 % of GDP in 2009 before falling to 22.4 % and 16.3 % in 2010 and 2011 respectively. The main contributory factor is a decline in official grant flows largely on account of unfavourable exchange rate movements.
10. The basic economic indicators for Montserrat are as follows:

Table 1: Economic Indicators

	2004	2005	2006	2007	2008
Mid-year Population Estimates as at June 30th	4,681	4,785	4,655	4,819	4,875
GDP (Current Prices) EC\$M	94.57	98.69	104.83	109.81	117.28
Per Capita Income (Current Prices)EC\$	20,203	20,625	22,803	22,708	24,057
Value of Imports (CIF) EC\$M	77.57	80.36	81.54	80.03	102.73
Total Value of Exports (fob) EC\$M	11.44	3.89	3.54	7.29	10.96
Domestic Exports EC\$M	0.00	0.35	2.06	5.28	5.54
Re-Exports EC\$M	11.44	3.54	1.48	2.02	5.43
GDP (Constant Prices) EC\$M	60.79	60.58	58.16	59.86	63.10
Per Capita Income (Constant Prices)EC\$	12,987	12,660	12,494	12,421	12,943

1.2 General Situation of Money Laundering and Financing of Terrorism

11. There are few offences committed in Montserrat that generate substantial profits from crime. The low level of transactions generated in the financial sector suggests that criminal monies are not entering the mainstream economy through the financial institutions.
12. Although there have not been any convictions in Montserrat for money laundering, there were a very small number of convictions for fraud in the years 2006, 2007 and 2008. There were no convictions for fraud in 2009. The level of offences in respect of dangerous drugs peaked to thirty-nine (39) in 2007; however, this number was significantly reduced by more than 50% to seventeen (17) in 2008 and ten (10) in 2009. The RMPF has been far more proactive in drug investigations in the last two years. In 2010 cannabis with a street value of in excess of \$EC2.4 million has been seized. Prior to that the total seizure value for the preceding 3 years was estimated at \$EC90,000.

Table 2: Convictions 2006 - 2009

Types of Crime	2006	2007	2008	2009
Homicide	1	1	0	0
Wounding	9	11	12	28
Assaults	122	136	110	87
Rape / Sexual Offences	6	2	11	3
Burglary	46	70	69	68
Attempted Burglary	5	9	8	2
Theft	19	27	19	22
Fraud	6	2	1	0
Domestic Violence	205	160	103	25
Criminal Damage	24	17	21	35
Arson	0	1	1	0
Robbery	0	0	1	0
Minor Offences	626	673	659	280
Road Accidents	109	111	135	124
Dangerous Drugs	23	39	17	10
Fatal Accidents	0	1	0	0

13. As table 3 shows, the majority of convictions for each of the years 2006, 2007, 2008 and 2009 were for minor offences and road accidents. The offences most likely to result in profits from crime, namely drug offences, fraud and serious offences against property represent a very small proportion of the convictions in each year. Until this year, few or no offences warranted money laundering investigations. The majority of burglaries have been detected and were domestic burglaries committed by juveniles with low cost losses and minimal damage at the point of entry.
14. The jurisdiction maintains statistics on the reporting of disclosures under the POCA in respect of the number of reports and reporting entities. Analysis of the figures revealed that the disclosure of suspicious transactions in 2008 and 2009 were mainly submitted by banks and money services businesses.

Table 3: STRs submitted 2004 – 2009

	2004	2005	2006	2007	2008	2009
No. of STRS disclosed	2	2	4	2	3	15
No. of cases investigated	1	1	2	2	3	15
No. of cases opened	1	1	2	1	3	15
No. of STRS from each type of reporting entities						
Banks	2	1	3	2	3	7
Money Services Businesses	0	0	1	2	0	8
Building Society	0	0	0	0	0	0
Credit Unions	0	0	0	0	0	0
Insurance Companies	0	0	0	0	0	0
Mutual Funds	0	0	0	0	0	0

15. Despite the fact that public awareness programmes were carried out in 2007, 2008 and 2009, mainly through conducting seminars for service providers, radio programmes and visits, the level of disclosures reported did not increase until 2009. However, an analysis of disclosures reported in 2009 shows that the increase in the number of the disclosures from money services business was centred around one individual.
16. To date, no terrorist financing operations have been discerned in, or from, Montserrat. Whilst the economic activity remains is low, it is anticipated that any terrorist financing activity would be noticeable to the financial institutions and the authorities.

1.3 Overview of Financial Sector and DNFBPs

17. Different types of financial institutions are licensed or registered to carry out business in Montserrat. These include the following:
 - Domestic banks licensed by the Minister of Finance and supervised by the Eastern Caribbean Central Bank under the Banking Act, Cap. 11.03;
 - International banking and trust companies licensed and supervised by the Financial Services Commission under the International Bank and Trust Companies Act, 2006;
 - Insurance companies registered, licensed and supervised by the Financial Services Commission under the Insurance Act, 2001;
 - Building society registered under the Building Societies Act, Cap. 11.22;
 - Money service providers licensed and supervised by the Financial Services Commission under the Money Services Businesses Act, 2008;
 - A credit union registered and supervised by the Registrar of Co-operatives (i.e., the Commissioner of the Financial Services) under the Co-operative Societies Act, 2003;
 - Mutual Fund functionaries licensed and supervised by the Financial Services Commission under the Mutual Funds Act, 2008;
 - Company managers licensed under the Company Management Act, Cap. 11.26.
18. There are two domestic banks licensed under the Banking Act (BA) to carry on banking business in Montserrat. One is an indigenous bank and the other is a branch of a Canadian international banking group. These institutions are the major financial institutions in the jurisdiction that conduct domestic and international banking with residents and non-residents.
19. For the financial year 2008 the audited financial statements of the two domestic banks show the total assets and customers' deposits in the institutions were:

Total Assets	US\$	Deposit liabilities	US
EC\$345,197,172	\$124,147,101	EC\$210,150,430	\$77,833,491

20. The Government of Montserrat reported that although liquidity in the commercial banking system contracted during 2008, the banking system continues to be very liquid. The ratio of liquid assets to total deposits plus liquid liabilities fell by 4.8 percentage points to 102.7%. The loans to deposits ratio rose by 3.1 percentage points to 23.6%, due primarily to a faster rate of growth in loans and advances than in deposits.
21. The Commission reported that as at the end of December 2008 2009 there were nine institutions licensed to conduct international banking and trust companies business under the International Banking and Trust Companies Act. The level of assets and customers' deposits liabilities in these institutions were as follows:

Total Assets	Total Deposits Liabilities
US\$619,987,790	US\$488,785,671

22. Of the seven (7) international banks, four (4) banks were licensed to carry out trust business.
23. Since 2008 two (2) international banks have surrendered their licences due to mergers and acquisitions of their parent companies.
24. There is one (1) building society registered under the Building Societies Act and one (1) credit union registered under the Co-operative Societies Act, 2003. These are small financial institutions providing mortgage and personal loan facilities. The level of assets in the building society and the credit union as at 31 December 2008 was:

Table 4: Building Society and Credit Unions Assets

Type of Institutions	Total Assets		Total Liabilities	
	EC\$	US\$	EC\$	US\$
Building Society	29,000,000	10,740,740	17,000,000	6,296,296
Credit Union	51,024,029	18,897,788	40,513,125	15,004,861

25. As stated, the economic activity in the jurisdiction is low and the aggregate average monthly transactions for the four (4) deposit taking institutions are under EC\$20,000.
26. There are three (3) life insurance companies registered to do insurance business under the Insurance Act, 2001. All three (3) are regional insurance companies, two (2) of which are owned by CL Financial Group, a company which is now deemed to be insolvent. As a consequence, of the insolvency of insurance companies' parent company, the position of policyholders in the jurisdiction is not known.
27. There are no licences granted under the Mutual Fund Act, (MFA) 2008.

1.4: Overview of commercial laws and mechanisms governing legal persons and arrangements.

28. The following legal persons and legal arrangements can be established or created under the laws of Montserrat:

- Companies
- International business companies
- Limited liability companies
- General and limited partnerships
- Trusts.

29. Section 17 of the Companies Act provides that:

- i) A company has the capacity, and, subject to the Act, the rights, powers and privileges of an individual;
- ii) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Montserrat to the extent that the laws of Montserrat and of that jurisdiction permit.
- iii) It is not necessary for a by-law to be passed to confer any particular power on a company or its directors.

- 30. Section 58 of the Act provides that, subject to any unanimous shareholder agreement, the directors of a company shall exercise the powers of the company directly or indirectly through the employees and agents of the company and direct the management of the business and affairs of the company.
- 31. Section 123 of the Companies Act provides that a company shall 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 and section 124 stipulates that a shareholder of a company may examine the list of its shareholders during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained and at the meeting of shareholders for which the list was prepared.
- 32. The International Business Companies Act, (IBCA) Cap. 11.13 provides for an international business company to be incorporated under the Act by the Registrar of International Business Companies. Subject to the requirements of the Act, any person may singly or jointly with others, by subscribing to a Memorandum and to Articles of Association, incorporate a company under this Act.
- 33. The Act stipulates an International Business Company is a company that does not carry on business with persons resident in Montserrat; own an interest in real property situated in Montserrat, other than a lease; accept banking deposits from persons who are resident in Montserrat; or accept contracts of insurance from persons resident in Montserrat.
- 34. The (IBCA) requires under :
 - (a) Section 38 that a company shall at all times have a registered office in Montserrat and the registered office of a company must be provided by a person who holds a qualifying licence.

- (b) Section 39 that a company shall at all times have a registered agent in Montserrat and the registered agent of a company must be a person who holds a qualifying licence, i.e., a company management licence.
 - (c) Section 42 provides that the business and affairs of a company shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.
 - (d) Section 66 of the Act requires that–
 - a company must keep accounting records that are sufficient to record and explain the transactions of the company and which will at any time enable the financial position of the company to be determined with reasonable accuracy.
 - If the accounting records of a company are kept outside Montserrat, the company must ensure that it keeps at its registered office or at some other place in Montserrat designated by the directors a written record of the place or places outside Montserrat where its accounting records are kept.
35. The Limited Liability Company Act, Cap. 11.14 (LLC) provides that one person or more may form a Limited Liability Company (LLC) by executing an instrument of formation to the Registrar together with the prescribed fee and filing it with the Registrar.
36. Section 7 of the LLC Act requires that the instrument of formation must set out, in respect of the proposed LLC the following information:
- a) The proposed name of the LLC;
 - b) The purpose for which the LLC is formed;
 - c) The duration of the LLC;
 - d) The registered office of the LLC in Montserrat and the name and address of its agent in Montserrat;
 - e) The names and addresses of the members;
 - f) The name and address of each member who signed the articles of organisation;
37. Section 28 of the LLC Act provides that, unless otherwise provided in a LLC agreement, the management of a LLC shall vest in its members in proportion to their then current percentage in the profits of the LLC owned by all members. Members owning more than 50% of that percentage or other interest in the profits have a controlling interest.
38. Section 24 of the Act provides that the LLC must maintain the following:
- True and full information regarding the status of the business and financial condition of the LLC;
 - A current list of the name and last known business, residence or mailing address of each member, holder of an economic interest and manager;

- A copy of any written LLC agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the agreement and any certificate and all amendments thereto have been executed;
 - True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and member and which each member has agreed to contribute in the future, and the date on which each became a member; and
 - Such other information regarding the affairs of the LLC as is just and reasonable.
39. The Limited Partnership Act, Cap. 11.10 (LPA) provides that a limited partnership may be formed for any lawful purposes to be carried on and undertaken either in or from within Montserrat. The Act provides that:
- a) A limited partnership shall consist of one or more persons called general partners who shall, in the event that the assets of the firm are inadequate, be liable for all its debts and obligations, and one or more persons called limited partners who shall at the time of entering into such partnership contribute a sum or sums as capital or property valued at a stated amount and who shall not be liable for the debts or obligations of the firm;
 - b) any one or more of the limited partners of a firm may be resident, domiciled, established, incorporated or registered within or outside Montserrat, except that a least one general partner shall at all times –
 - if an individual, be resident in Montserrat;
 - if a company be incorporated or registered under the Companies Act;
 - if a partnership, have a least one of its partners so resident, incorporated or registered.
 - c) Every limited partnership shall have a firm name which shall include the word “Limited Partnership” or the letters “LP”.
 - d) Every firm shall have a registered office situate in Montserrat.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

40. Montserrat recognises the importance of the global fight against drug trafficking, money laundering and terrorist financing and has, since the enactment of the Drugs (Prevention of Misuse) Act 1989 (DPMA), demonstrated a clear commitment to playing a responsible role in the global fight by developing and implementing strong and robust AML, and more recently, CFT, strategies and priorities. These strategies have centred on 1) the maintenance of an effective AML/CFT legal and regulatory framework, 2) requiring Montserrat IBCs, LLCs and LPs, that are typically used for international business, to have a locally licensed company manager as registered agent, or in the case of trusts, a locally licensed trust company, with responsibility for undertaking KYC, 3) monitoring the AML compliance of financial

institutions thorough on-site inspections, and 4) ensuring that Montserrat law enforcement and regulatory authorities have the power to cooperate with foreign law enforcement and regulatory authorities on AML/CFT matters.

41. The Government's commitment to the maintenance of an effective AML/CFT legal framework is demonstrated by the legislative history. The DPMA established an Advisory Council to keep the misuse of drugs under review and to give advice on measures which should be taken for preventing the misuse of drugs. The DPMA also defined controlled drugs and their classifications and established drug trafficking as an offence. The following year, the Drug Trafficking Offences Act, 1990 (DTOA) was enacted and brought in force. The DTOA provided, inter alia, for the recovery of the proceeds of drug trafficking and widened the drug trafficking offences that had been created under the DPMA.
42. In 1991, Montserrat enacted the Criminal Justice (International Co-operation) Act, which enabled Authorities to co-operate with authorities, in other countries, in criminal proceeds and investigations; to join with other countries in implementing the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash.
43. In 2000, despite being ravaged by volcanic activities, the Proceeds of Crime Act 1999 (POCA99) was enacted and brought into force. POCA99 introduced a wide range of money laundering offences that applied to the proceeds of all indictable offences, other than drug offences which continued to be covered by the DTOA and established the Money Laundering Reporting Authority. In 2004, POCA99 was amended to require the disclosure of the knowledge or suspicion of money laundering by persons working in the financial sector and to create an offence for a failure to disclose. In 2005 the jurisdiction revised the 2000 Anti-Money Laundering Regulations to make DNFBPs subject to the obligations in Anti-Money Money Laundering Regulations 2005 and the Anti-Money Laundering Code of Practice for the Prevention of Money Laundering and Financing for Terrorism was published in the Official Gazette.
44. The criminalisation of the financing of terrorism is achieved through three UK statutory instruments that have been extended to Montserrat. These are the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, the Anti-Terrorism (Financial and other Measures) (Overseas Territories) Order 2002 and the Al-Qa'ida and Taliban (United Nations Measures) Order 2002. The Al-Qa'ida Order also prohibits the supply of funds to Osama Bin Laden and his associates and provides for the freezing of assets of the Taliban or any undertaking owned or controlled by it.
45. In 2009, the entire framework was subjected to a thorough review and benchmarked against international standards. As a result, the Government decided to replace the existing AML framework with a completely new legal and regulatory framework. This framework, which consisted of the Proceeds of Crime Act 2010 (POCA), the Anti-money Laundering and Terrorist Financing Regulations, 2010, the Anti-money Laundering and Terrorist Financing Code 2010, amendments to key legislation such as the Financial Services Commission Act together with regulations covering the registration of DNFBPs and NPOs was brought into force in stages during the early part of 2010. All the constituent parts of the new legal and regulatory framework were effective in time to be considered for this assessment. Although the FT framework established by the UK Statutory Instruments remain in force, the Regulations and Code supplemented these by imposing CFT obligations on financial institutions.

Montserrat has therefore been at the forefront of countries in the region which has taken steps to implement international standards in the fight against money laundering.

46. With the introduction of the 2010 POCA there is now provision for the establishment of a financial intelligence unit, the Reporting Authority, which could be capable of adopting the Egmont Group's Statement of Purpose. POCA provides the Reporting Authority with power to designate a qualified person to be responsible for the day to day management of the operations of the Reporting Authority. For this purpose the Financial Crime and Analysis Unit, ("FCAU") a unit based in the Royal Montserrat Police Force, has been established and a person has been designated to head the Unit to carry out the functions of the Reporting Authority. In this matter, the jurisdiction has already made application for membership of the Egmont Group.
47. Montserrat will continue the training of staff in the FCAU and build capacity to conduct due diligence checks and research into the background of individuals and legal entities. The Commission will also carry out training of staff to be adequately equipped to monitor service providers who are subject to the provisions of the AML/CFT legislation.

b. The institutional framework for combating money laundering and terrorist financing

The Governor

48. The Constitution of Montserrat gives provides that the Governor, acting in his discretion responsibility for a number of matters including defence, external affairs, international financial services or any directly related aspect of finance internal security including the police force, and the appointments of persons to public office. The Governor is responsible for appointing those members of the Reporting Authority who are not ex-officio members, as well as the directors of the Financial Services Commission and all public officers who are key to Montserrat's AML/CFT strategy.

Ministries

The Ministry of Finance

49. The Ministry of Finance has responsibility for the regulation of the domestic financial services industry as provided for in the Financial Services Commission Act, 2008 (FSCA), the Insurance Act, (IA) 2001 and the Co-operative Societies Act, 2003 (CSA). Montserrat is a member of the Monetary Council of the Eastern Caribbean Currency Union and as a consequence the Ministry has relationship with the Eastern Caribbean Central Bank (ECCB) and the Eastern Caribbean Securities Commission (ECSC). The Ministry interacts in financial matters with U.K. Government Departments such as the Department for International Affairs, the Foreign and Commonwealth Office and international and regional agencies such as CARICOM and the OECS and the Caribbean Development Bank.

Customs and Excise Department

50. Customs & Excise service is a department in the Ministry of Finance and as consequence, the Comptroller of Customs reports to the Minister of Finance. Customs and Excise is the department responsible for the control of goods entering and leaving Montserrat and, in particular, the detection of cross border transshipment of cash that may represent the proceeds of crime or be intended to be used for terrorist financing. One of the members of the Reporting

Authority must be a senior customs officer, giving Customs and Excise a key role in the development of AML/CFT strategies and policies

The Judiciary

51. Montserrat is a member of the Eastern Caribbean Supreme Court. The Judicial System in Montserrat comprises the Magistrate's Court, the High Court, and Eastern Caribbean Supreme Court of Appeal and, in respect of final appeal, the Judicial Committee of the Privy Council in the United Kingdom. Since the evacuation of the capital, Plymouth, the Courts are housed in temporary accommodation. However, with the development of the new town under way the Courts and Parliament buildings will eventually be re-located in more suitable accommodation.
52. The appellate jurisdiction is vested in the first instance in the Court of Appeal which hears appeals from the Magistrate's Court and the High Court with a right of appeal to the Judicial Committee of the Privy Council.

Attorney General's Legal Department

53.
 - i) The Constitution confers on the Attorney General the power:
 - (a) to institute and undertake criminal proceedings against any person before any Court in respect of any offence against any law in force in Montserrat;
 - (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
 - ii) The Constitution declares that in the exercise of these powers the Attorney General is not subject to the direction or control of any other person or authority.
 - iii) Under the POCA, the Attorney General is the Civil Forfeiture Authority. As such the Attorney General is the authority responsible for obtaining, in civil proceedings before the Court, forfeiture to the Crown, of property or cash which is, or represents, property obtained through unlawful conduct or property that is related to unlawful conduct.
 - iv) Also under POCA, the Attorney General is the authority responsible for instituting proceedings in Court to give effect to orders made by a Court outside of Montserrat relating to the recovery or the freezing of that is connected to criminal conduct. The Attorney General also has other duties under various laws relating to mutual legal assistance.
 - v) Further under the POCA, the Attorney General is a member of the Reporting Authority.
 - vi) The Attorney General is responsible for preparing or vetting legislation that is laid before the Legislature.

- vii) In the exercise of these duties, the Attorney General has officers subordinate to him acting under and in accordance with his general or specific instructions. These officers are organised into three (3) Departments, the Civil/Commercial Department, the Criminal department and the Legislative Drafting Department.

Criminal justice and operation

Financial Intelligence Unit

54. The Reporting Authority established under the Proceeds of Crime Act is the financial intelligence unit for Montserrat. The Reporting Authority's functions under the Act includes receiving, analysing and disseminating disclosures made under the provisions of POCA.
55. The Reporting Authority comprises the following:
- The Attorney General
 - A senior Police Officer appointed by the Governor after consulting with the Commissioner of Police
 - The Commissioner of the Financial Services Commission
 - A senior Customs Officer appointed by the Governor after consulting with the Comptroller of Customs
 - A senior Immigration Officer appointed by the Governor after consulting with the Chief Immigration Office

Law Enforcement and Prosecution Authorities

56. The Royal Montserrat Police Force (RMPF) is the principal law enforcement agency in Montserrat. The RMPF is governed by the Police Act Cap. 10.01 which set out the general duties of police officers. - The RMPF has a complement of eighty-one (81) officers. There are several departments within the organisation to carry out its functions. These functions include, Beat & Patrol, Traffic, Criminal Investigations Department, Marine Unit, Immigration, Salem Station, Interpol, Court & Process, Community Beat, Stores and Administration and the newly established FCAU.
57. The Court & Process Department of the RMPF prosecutes most offences, which are being tried summarily, in the name of the Commissioner of Police while the Attorney General Chambers has responsibility for prosecuting all matters that are being proceeded with on indictment. This has forged a close working relationship with both departments as legal advice can readily be sort from the AG's Chambers on legal matters.
58. The RMPF keeps daily statistics on matters dealt with and preserves these records both manually and through a computerised system.

Financial Sector bodies

59. Montserrat's financial sector comprises international and domestic financial institutions including, domestic banks, international banks and trust companies, insurance companies,

company service providers, a co-operative society and a building society. The jurisdiction also has friendly societies and DNFBPs.

60. The Financial Services Commission, (FSC) created as an independent body in 2001, regulates the financial sector. The Commission carries out its functions under the Financial Services Commission Act, 2008. These include licensing and supervising regulated entities under provisions in the regulatory enactments and monitoring and enforcement of the compliance of regulated persons with the requirements in the AML/CFT Regulations and such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as are prescribed. The Commission is also responsible for the registration of NPOs.
61. The Eastern Caribbean Central Bank regulates the domestic banks in Montserrat whilst the Commission monitors the banks' compliance with the requirements in the AML/CFT legislation.

Table 5: Regulated entities supervised and/or monitored by the Financial Services Commission.

Types of institution	No. of institutions
Domestic banks	2
International banks	7
Insurance companies	7
Company managers	4
Co-operative societies	1
International business companies	6
Building societies	1
Mutual funds	0
Money service businesses	3-2

DNFBP and other matters

62. The POCA provides that no person, other than a regulated person, can carry on any kind of relevant business unless registered by the relevant supervisory authority under the AML/CFT Regulations. This means, in effect, that no DNFBP can carry on business in Montserrat unless registered by the Financial Services Commission. The range of DNFBPs is wide and includes:

a person who, by way of business, provides any of the following services to third parties, when providing such services—

 - i. acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
 - ii. providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - iii. acting as, or arranging for another person to act as, a nominee shareholder for another person;

- iv. arranging for another person to act as a nominee shareholder for another person;
- b. a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
 - i. lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
 - ii. financial leasing;
 - iii. issuing and managing means of payment, including credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and electronic money;
 - iv. financial guarantees or commitments;
 - v. participation in securities issues and the provision of financial services related to such issues;
 - vi. providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
 - vii. safekeeping and administration of cash;
 - viii. investing administering or managing funds or money;
 - ix. money broking;
- c. a person who, as a business, trades for his own account or for the account of customers in—
 - i. money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - ii. foreign exchange;
 - iii. exchange, interest rate and index instruments;
 - iv. financial futures and options;
 - v. commodities futures; or
 - vi. shares and other transferable securities;
- d. a person who, by way of business—
 - i. provides accountancy or audit services;
 - ii. acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;
- e. an independent legal professional;
- f. a high value dealer.

Table: 6 Service providers that are monitored:

Types of businesses and Professions	No.
Real Estate agents	7
Law firms	5

Accountants	1
High value dealers	8

There are no casinos in Montserrat as these are prohibited by law.

c. Approach concerning risk

63. Montserrat has a population of approximately 5,000 and low economic activity. Therefore, the financial and non-financial designated professions and business sectors in the jurisdiction are very small. As a consequence, the implementation of a risk-based approach as recommended by the Basel Committee and the FATF is limited.
64. In implementing the FATF recommended risk-based approach with respect to financial institutions, the Board of the Commission has decided that a higher level of monitoring of compliance with AML/CFT requirements should be concentrated on licensed banks and money remitters. With regard to non-profit organisation, the Reporting Authority decided that guidance will be provided to those entities that fall within this category and the monitoring of activities would only be carried out in one entity in this category because of the low level of activity of non-profit organisations.

d. Progress since the last mutual evaluation or assessment

65. Montserrat was evaluated by the CFATF in 2003 and the Mutual Evaluation Report published in October 2004. As a result of the recommendations made in the report, the jurisdiction introduced changes to the laws relating to money laundering. These included amendments to the Proceeds of Crime Act, the Drug Trafficking Offences Act and the Criminal Justice (International Co-operation) Act in 2004. Furthermore, new regulations, the Anti-Money Laundering Regulations 2005 were introduced to enhance preventative measures to combat money laundering and, in 2008 the revised Code of Practice for Prevention of Money Laundering and the financing of terrorist was published to give guidance to service providers.
66. With the introduction of the Proceeds of Crime Act 2010, the AML/CFT Regulations and AML/CFT Code, Montserrat will be concentrating its efforts in ensuring that service providers, as defined in the Regulations, comply with the requirements in the Regulations. The Commission's objective will enhance its monitoring of the relevant service providers and where applicable impose sanctions for non-compliance with the provisions in the Act, Regulations or the Code.
67. With the establishment of FCAU, Montserrat will progress its application for Egmont Group membership. On the ground, the jurisdiction will introduce programmes to heighten public awareness of the incidence of money laundering and the laws in place to prohibit money laundering and the financing of terrorism. The plan is to attract public attention through the media, radio and television, to reach a wider cross section of the population.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis

68. Montserrat has recently upgraded its legal framework in order to bring it into compliance with current international standards for AML/CFT. The upgrade is effected primarily through the Proceeds of Crime Act 2010, the Anti-Money Laundering and Terrorist Financing Regulations and the Anti-Money Laundering and Terrorist Financing Code, each being made under POCA 2010. POCA 2010 was passed in February 2010 and came into force on April 12th, 2010
69. The POCA 2010 seeks to establish a comprehensive AML/CFT system and eschews the former approach, which established separate regimes for drug money laundering and for the laundering of the proceeds of non-drug offences similar to the pre-2002 UK position. The new Act therefore repealed and replaced the AML/CFT legislation that was previously in force specifically, the Drug Trafficking Offences Act ('DTOA') (Cap 4.08), the Proceeds of Crime Act ('POCA')(Cap 4.04) and certain parts of the Criminal Justice (International Co-operation) Act ('CJICO')(Cap 4.06).
70. The 2010 POCA criminalises money laundering. The money laundering offences in the 2010 POCA are each broader than the equivalent offences in the repealed POCA and the repealed DTOA. The definition of "offence" is also wider than the repealed POCA, including not just all indictable offences but also all offences that are triable summarily and for which the maximum penalty is a term of imprisonment of one year or more."
71. The new Anti-Money Laundering and Terrorist Financing Regulations and Code establish a risk-based framework for the prevention and detection of money laundering and terrorist financing. Both financial institutions and non-financial businesses and professions are subject to requirements relating to customer due diligence, anti-money laundering and terrorist financing policies, systems and controls, record keeping, training, compliance and disclosures. The POCA 2010 imposes a mandatory duty on service providers and their employees to disclose knowledge or suspicion of money laundering.
72. This duty extends to having reasonable grounds for knowing or suspecting that a person is engaged in money laundering.

Recommendation 1

73. Montserrat, as a British Overseas Territory, requires an entrustment from the United Kingdom ('UK') before it may negotiate or conclude any internationally binding commitment. Montserrat is party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and has partly implemented the relevant provisions of that Convention through its legislation. Money Laundering is criminalised in Montserrat by the provisions of the POCA. Some elements of criminalisation of relevant offences pursuant to the Vienna Convention do not appear to have been captured or fully captured since most psychotropic substances have not been in the legislation.
74. In Article 3(1) of the Vienna Convention, subparagraphs (b) & (c) are essentially tied to subparagraph (a) of the Article which sets out the specific offences. Montserrat has not adequately dealt with the offences relating to psychotropic substances and this has a trickle down effect to subparagraphs (b) and (c) of the Article.
75. The POCA addresses the issue of "property" from a perspective of "criminal property". Property" is generally defined in section 2 of the POCA 2010 as meaning property of every kind, whether situated in Montserrat or elsewhere and includes money; all forms of real or

personal property; as well as things in action and other intangible or incorporeal property. The same section defines “proceeds of criminal conduct” as including a reference to any property real or personal, heritable or movable including things in action and other intangible or incorporeal property which in whole or in part, directly or indirectly represents in his hands his proceeds of criminal conduct.

76. In Montserrat, in order to prove that property is the proceeds of crime it is not a prerequisite for a person to be convicted of a predicate offence. While the POCA does not state this specifically, it can be gleaned from an interpretation of the provisions. Section 116 identifies property as “criminal property” if it (a) constitutes a person’s benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly; and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit. Subsection (2) of that section provides additionally that it is immaterial who carried out the conduct or who benefited from it. The emphasis in the section is on the benefit obtained from the conduct and not the conviction pursuant to that conduct. It is not necessary that a person be convicted of a predicate offence to prove that property is the proceeds of crime. The POCA at section 116 provides that property is criminal property regardless of who carried out the criminal conduct, who benefited from the conduct or when the conduct was committed. Additionally, the determination of whether property is the proceeds of crime is based on the civil standard of proof, i.e. on the balance of probabilities. In certain circumstances, the Court is empowered to assume that the defendant's assets, and his income and expenditure during the period of 6 years before proceedings were brought, have been derived from criminal conduct and to calculate a confiscation order accordingly.
77. For the purposes of ML predicate offences, POCA section 2 defines “offences” to include all indictable offences and offences triable summarily that carry a criminal penalty of imprisonment for one year or more. The authorities are satisfied that this definition captures all serious offences. Predicate offences include a range of offences in each of the designated categories of offences.

Table 7: Designated Categories of Offences

FATF 20 DESIGNATED CATEGORIES OF OFFENCES	Montserrat Equivalent Legislation
Participation in an organized criminal group and racketeering	Penal Code , Cap.4.02, s.21A (created by Penal Code (Amendment) Bill, s.3)
Terrorism including Terrorist Financing	<p>Terrorist Asset-Freezing (Temporary Provisions) Act, 2010 – 2010 c.2 (UK) (<i>validates 2001No.3366</i>)</p> <p>Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Orders 2002 – 2002No.112 (UK) amended by 2002 No.266 (UK) (<i>gives effect to UN Security Council Resolution 1390</i>)</p> <p>Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 - 2002 No. 1822 (UK) (<i>extends provisions dealing with terrorist financing and related matters found in UK Acts Terrorism Act 2000 and Anti-Terrorism, Crime and Security Act 2001 to Montserrat</i>)</p> <p>Terrorism (United Nations Measures) (Overseas Territories) Order 2001 - 2001 No. 3366 (UK) (<i>gives effect to UN Security Council Resolution 1373</i>)</p> <p>Chemical Weapons (Overseas Territories) Order 2005 - 2005 No. 854 (<i>extends provisions of the Chemical Weapons Act 1996 and the Anti-terrorism, Crime and Security Act 2001, with exceptions, adaptations and modifications, to Montserrat</i>)</p> <p>Penal Code, Cap.4.02, Part XIV-B (Terrorism) (created by Penal Code (Amendment) Bill, s.3)</p>
Trafficking in human beings and migrant smuggling.	Penal Code , Cap.4.02, s.202A-202E
Sexual exploitation including sexual exploitation of children	Penal Code , Cap.4.02, s.116-138, 138A-D
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	<ul style="list-style-type: none"> • Criminal Justice International Cooperation Act, Cap. 4.06, s. 17 • Proceeds of Crime Act, 2010 (several provisions) • Drugs (Prevention of Misuse) Act, Cap. 4.07 (several provisions)
Illicit Arms Trafficking	<ul style="list-style-type: none"> • Firearms Act, Cap. 10.02 (<i>several provisions</i>) • Exportation of Arms and Warlike Stores Act, Cap. 10.14, s.4
Illicit trafficking in stolen and other goods	Penal Code , Cap 4.02, ss. 227 and 228
Corruption and Bribery	<ul style="list-style-type: none"> • Penal Code, Cap 4.02, s. 78 (<i>official corruption</i>)

	<ul style="list-style-type: none"> • Cooperatives Act, Cap.11.21, s. 218 (<i>Corrupt Practice and Bribery</i>) • Public Finance and Management Regulations, 2009 (<i>Corrupt Practice</i>) • Elections Act, Cap 1.04, ss.62,66 and 68 (<i>Bribery</i>) • Elections Act, Cap 1.04, s.66 (<i>Corruption</i>) • Coroners Act, Cap 2.05, s. 4 (<i>Corruption</i>) • Integrity in Public Office Act, 2010 (<i>several provisions</i>)
Fraud	• Penal Code , Cap 4.02, ss. 109, 236, 237
Counterfeiting currency	• Penal Code , Cap 4.02, ss. 248 - 261
Counterfeiting and Piracy of products	<ul style="list-style-type: none"> • Penal Code, Cap 4.02, ss. 44 & 45 (<i>Piracy jure gentium and other piracy</i>) • Penal Code, Cap 4.02, ss. 236 to 243 (Other than the provisions dealing with counterfeiting currency, the forgery provisions would apply to other types of counterfeiting)
Environmental crime	• Endangered Animals and Plants Act, Cap 12.01 (<i>several provisions</i>)
Murder, Grievous bodily injury	• Penal Code , Cap 4.02, ss. 149-189
Kidnapping, illegal restraint and hostage taking	<ul style="list-style-type: none"> • Penal Code, Cap 4.02, s. 195-202, (<i>Kidnapping</i>) • Penal Code, Cap 4.02, s.202F (<i>Hostage taking</i>)
Robbery or theft	• Penal Code , Cap 4.02, ss., 203 – 233
Smuggling	• Penal Code , Cap 4.02, s. 77
Extortion	• Penal Code , Cap 4.02, s. 79
Forgery	• Penal Code , Cap 4.02, ss. 234 to 247
Piracy	• Penal Code , Cap 4.02 s. 44
Insider trading, market manipulation	<ul style="list-style-type: none"> • Securities (Conduct of Business), 2002, 23 of the Reg. S.R.O. 24/2002 in force 28 February 2002 (S.R.O. 44/2003) • Securities Act, Cap. 11.01, s.118 (Market manipulation)

78. Montserrat law does not define “serious offence”. The jurisdiction has a threshold approach that depends in part on mode of trial, and in terms of offences triable summarily, is based on the extent of a maximum prison sentence. POCA section 2 defines “offences” to include all indictable offences and offences triable summarily that, in respect of an individual, carry a penalty of imprisonment for one year or more. In respect of offences that are triable on indictment, all offences are captured, regardless of the maximum sentence.
79. Montserrat has a threshold that depends in part on mode of trial, and in terms of offences triable summarily, is based on maximum prison sentence. In respect of offences that are triable on indictment, all offences are captured, regardless of maximum sentence.

80. The twenty designated categories of offences as predicate offences for money laundering have been largely satisfied. While terrorist financing is a predicate offence for money laundering, environmental crime does not qualify as a predicate offence.
81. Money laundering is defined in the POCA as meaning an act which constitutes a money laundering offence; or would constitute a money laundering offence if done in Montserrat. The wording of the section categorises the offence on the basis of whether it would be an offence in Montserrat. "Criminal conduct" is defined in section 2 of the POCA as being "conduct which constitutes an offence or would constitute an offence if it had occurred *in Montserrat*". The definition of criminal conduct therefore captures conduct that is committed in another country.
82. Montserrat provides in the POCA for the offence of money laundering to be applicable to persons who commit the predicate offence. POCA section 116 (2) provides that it is immaterial who carried out the criminal conduct and other portions of the Act criminalise a wide category of offences that are predicate to the money laundering but which would nevertheless be considered to be money laundering for the purposes of the Act.
83. Section 2 of the Penal Code (Code) defines "offence" as including an attempt to commit that offence. Additionally section 19 of the Code provides that persons who aid or abet, counsel or procure the commission of an offence may be also charged with the same offence as the principal who commits the offence. Section 2 of the POCA 2010 defines "money laundering offence" to specifically include attempt, conspiracy or incitement, aiding, abetting, counselling or procuring the commission of any of the ML offences created under sections 118, 119 or 120.

Recommendation 2

84. The offence of ML does apply to natural persons and to legal persons that knowingly engage in ML activity. In the Interpretation Act (Cap 1.02), the definition of "person" includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.
85. There are further offences that relate to ML, which have the capacity to criminalise specific activities of bodies corporate. These have been captured in the Anti-Money Laundering Regulations which are made pursuant to section 166 of the POCA.
86. The mental element required for offences under the POCA is that the person must have 'known, suspected or had reasonable grounds to suspect' that either a person was engaged in drug trafficking or money laundering, or that the property represented the proceeds of crime, as applicable to the section.
87. The offences created by the Anti-Money Laundering Regulations (AMLR) are of strict liability, in that no mental element on the part of the regulated person needs to be proven for the offence to be committed. However, a defence is provided in regulation 11(2) that "it shall be a defence for the person to prove that he took all reasonable steps to comply with the requirements of the regulation that he is alleged to have contravened."
88. Additionally, English common law, which is applicable in Montserrat, provides that intent can be inferred from objective factual circumstances.
89. Where an offence under the (AMLR) is committed by a body corporate or by a partnership or unincorporated association, further liability is extended to the specified senior officers of that

business if it is proved that the offence was committed with “the consent or connivance of, or to be attributable to any neglect on the part of” such individual.

90. There is not sufficient evidence to indicate that the general penalties applied to natural persons were necessarily intended to apply specifically to legal persons as there is no distinction made in terms of the fines applied to bodies corporate within the POCA. However, there is a range of sanctions that are available to the Reporting Authority pursuant to the revised AMLR which were approved in April of 2010.
91. By virtue of the POCA, more than one form of liability is provided for in Montserrat. Section 60(2) of the POCA specifically states: “powers conferred by this Part (civil forfeiture) are exercisable in relation to any property, including cash, whether or not any proceedings have been brought for an offence in connection with the property.” This will allow parallel proceedings, save for the proviso that property may not be ‘recoverable property’ if it is being considered as part of criminal proceedings.
92. The penalties for committing offences under the POCA are as set out below. The POCA allows for other legal entities to be subject to criminal liability and upon conviction subjected to fines and confiscation. Sections 118(4), 119(3) and 120(4) provide that:

A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding five (5) years or to a fine not exceeding \$200,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.
93. The penalties are strong enough to be dissuasive and proportional and are comparable with other serious offences within the jurisdiction such as burglary and rape, as well as to other penalties within the Region. It would be well nigh impossible to assess effectiveness however, since the legislation has not been tested in a Court of law.
94. Under Part 2 of the POCA the Court can confiscate the financial benefit the defendant has obtained from his criminal conduct.
95. Under Part 3 of the POCA property or cash obtained through or in connection with unlawful conduct may be forfeited to the Crown in civil proceedings.
96. Legal persons are subject to a range of administrative sanctions under sections 36 to 38 of the FSCA. These sanctions include revocation or suspension of the legal person’s licence.

Statistics (Recommendation 32)

97. There were no ML investigations which were taken before the Court nor do there appear to be any cases where charges have been brought or are expected to be brought. All STRs were analysed and where necessary investigations were initiated.
98. Whilst there is not a great level of financial activity within the jurisdiction, it is not clear whether all cases have been properly or vigorously pursued from an ML investigatory perspective. There was at least one serious case of fraud that was identified within the interview

process during the assessment period that had the potential to generate charges for money laundering but that avenue does not appear to have been pursued.

99. The Statistical information does not appear to have been used as a basis for periodic monitoring and review of the efficiency of the money laundering and related systems and Montserrat authorities have had little opportunity to gather statistics for FT investigations and prosecutions.

2.1.2 Recommendations and Comments

100. The penalties for environmental crime need to be revisited to qualify this type of offence as a predicate offence for ML.
101. The jurisdiction needs to revisit its legislation dealing with psychotropic substances to ensure that there is comprehensive provision for all elements pursuant to the Vienna Convention since all psychotropic substances do not seem to have been captured under the legislation.
102. Statistics need to be utilised as a means of assessing and reviewing existing systems.
103. The new legislative measures need to be fully implemented.

2.1.3 Compliance with Recommendations 1, 2

	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none"> • As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained. • Environmental crime is not a predicate offence for ML. • Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs
R.2	LC	<ul style="list-style-type: none"> • As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

104. Terrorist financing has been criminalised as a serious offence. The particulars of the offences are consistent with the definition set out in the Convention for the Suppression of the Financing of Terrorism - Articles 3 and 4, 6 and 11 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (2001 – No. 3366) (the “Terrorism Order”) and Articles 6, 7 and 8 of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (2002 – No.1822) (the “Anti-Terrorism Order”).

105. There are also specific Orders that the UK has extended to Montserrat that relate to organisations that are primarily criminal in nature, including The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002).
106. Further, the UK has provided other Orders, extended to Montserrat, that deal with quasi-terrorist situations and give effect to UN Security Council Resolutions, for example The Sudan (United Nations Measures) (Overseas Territories) Order 2005 (SI 1258/2005).
107. The 2001 Terrorism Order at section 3 makes it an offence to collect funds by any means, directly or indirectly, with the intention or the knowledge that they are used for purposes of terrorism. Section 4 of the Terrorism Order makes it an offence to make funds available. Section 6 makes it an offence to facilitate or enable an offence under either of those sections.
108. Sections 3 through 9 of the Al-Qa'ida Order create offences in respect of supplying goods, technical assistance or training, making funds available, contravention of a freeze order and facilitation of making funds available or contravention of freeze order.
109. Sections 6 through 9 of the Anti- Terrorism Order create a variety of offences in respect of TF. Section 6 criminalises “fundraising”, i.e. inviting another to provide, receiving or providing money intending or having reasonable cause to suspect that it may be used for the purposes of terrorism. Section 7 creates an offence if any person uses money or other property for the purposes of terrorism or possesses money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism. Section 8 makes it an offence to enter into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another if a person knows or has reasonable cause to suspect that it is or may be used for the purposes of terrorism. Section 9 criminalises money laundering in respect of terrorist property.

Definitions of terrorist, terrorism, terrorist Organisation

110. There is no distinction under Montserrat law between an individual terrorist, a terrorist group or a terrorist organization
111. The failure to specify the culpability of a terrorist organisation is inconsistent with the essential requirements. The Glossary to the FATF Methodology sets out an appropriate definition for a terrorist organisation.
112. One of the participants in committing a terrorist offence has been omitted - the person who organises or directs others to commit a terrorist offence or an attempt to do so.
113. The 2001 Terrorism Order and the Anti-terrorism Order both speak in terms of providing or collecting funds “for the purposes of terrorism”. “Terrorism” is broadly defined in the Order to cover the usual acts of intimidation, threats and violence. This definition, combined with the language of the provisions criminalising funding for the “purposes of terrorism” and the Interpretation Act definition of “person” create a regime that is sufficiently broad to encompass providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act but do not go far enough to adequately cover for the purposes of the Recommendations, the activities of a terrorist organisation.

114. The definition of “terrorism” fails to capture all of the acts referred to in the Suppression of the Financing of Terrorism Convention that are set out in the Nine Conventions specified under that instrument.
115. Section 2 of the 2001 Terrorism Order defines “funds” as “financial assets, economic benefits and economic resources of any kind.” Section 2 of the Al-Qa’ida Order defines “funds” as “financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing.” Additionally, the legislation needs to be amended to capture terrorist activity that is an 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 an international organization to do or to abstain from doing an act.
116. In section 1 of the Anti- Terrorism Order, property is defined to include property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property. In section 5 it defines “terrorist property” as—
- money or other property which is likely to be used for the purposes of terrorism,
 - proceeds of the commission of acts of terrorism, and
 - proceeds of acts carried out for the purposes of terrorism.
117. In the Anti-Terrorism Order, “Proceeds of an act” is defined to include a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
118. Under the laws of Montserrat, a person may be charged with ‘attempting’ to commit an offence and a jury may find an accused guilty of attempting to commit a particular offence as an alternative to the substantive offence (see section 56(3) Criminal Procedure Code). It is possible to charge those who aid, abet, counsel or procure the commission of an offence, as the principal offender (see section 19 of the Penal Code).
119. Terrorist financing under all three (3) of the UK Orders can be prosecuted on indictment before the High Court. As such, terrorist financing is a predicate offence for ML.
120. Section 18 of the Anti-Terrorism Order provides that if a person does anything outside Montserrat, and his action would have constituted the commission of an offence under any of sections 6 to 9 if it had been done in Montserrat, he shall be guilty of the offence.
121. In section 4(4) of the Anti-Terrorism Order and paragraph (d) of the definition of “terrorism” in section 2 of the 2001 Terrorism Order, the terrorism is extended to include action, persons or

property wherever situated, the public of a country outside of Montserrat and a government other than the Government of Montserrat.

122. The mens rea for FT can be inferred from objective factual circumstances. The Terrorism (United Nations Measures (Overseas Territories Order) 2001 (TUNMOTO) provides that a person who provides, invites another to provide or receives funds, knowing that they may be used for the purposes of terrorism commits an offence. It is an established principle within the legal system of Montserrat that knowledge is to be assessed on the basis of objective factual circumstances.
123. Notwithstanding the provisions of the Interpretation Act, and the pronouncement of applicability to legal persons there is no evidence within the TUNMOTO for applying sanctions specifically to the acts of a legal person. Further, the penalties are low in comparison to other serious offences within the jurisdiction as well as from a Regional perspective. The TUNMOTO is couched in very similar language to the Al Q'aida and Taliban (U.N. Measures Order) et al which provide for a maximum term of imprisonment of only seven (7) years for FT offences on indictment and an open-ended fine and six (6) months imprisonment or £5,000. The fines may eventually prove to be dissuasive, however in the absence of them being tested it remains debatable. The penalties on a whole in these orders do not appear to be proportionate but generic in nature. Further, the effectiveness of such sanctions cannot be assessed since there have been no convictions in respect of these offences.
124. Making legal persons subject to criminal liability for FT does not preclude the possibility of parallel criminal, civil or administrative proceedings. The Criminal Procedure Code, Penal Code, POCA and the FSA do not distinguish between ML and FT offences.
125. Natural and legal persons are not necessarily subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for FT. For reasons cited above, although the sanctions may have a dissuasive effect on would-be natural persons who are perpetrators, it seems dubious that the sanctions would be effective or dissuasive for legal persons.

Statistics (Recommendation 32)

126. There were no ML or FT cases taken before the Court Montserrat has had no opportunity to maintain statistics in this regard.

2.2.2 Recommendations and Comments

127. Montserrat needs to review the definition of "terrorism" in order to properly address the activities of a terrorist organisation. The definition of "terrorism" needs to be reviewed to capture all of the acts referred to in the Suppression of the Financing of Terrorism Convention that are set out in the Nine Conventions specified under that instrument.
128. Similarly, the legislation needs to be amended to capture terrorist activity that is an 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 an international organization to do or to abstain from doing any act.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • The legislation does not cover terrorist activity taken to compel an international organisation to do or to abstain from doing an act in keeping with Article 2(1) (b) of the Terrorist Financing Convention. • The definition of terrorist does not include a ‘terrorist organisation’. • Effectiveness of the legal framework cannot be properly assessed in the absence of investigations and convictions for TF.

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

2.3.1 Description and analysis

Recommendation 3

129. The 2010 POCA contains provisions for the confiscation, freezing and seizure of the proceeds of crime, including provisions allowing for civil forfeiture. These provisions are to be found in Parts 2 and 3 of the POCA. Part 2 enables the Court to make a confiscation order following a conviction for any predicate offence. Proceedings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. In certain circumstances the Court is empowered to assume that the defendant's assets, and his income and expenditure during the period of six (6) years before proceedings were brought, have been derived from criminal conduct and to calculate the amount to be confiscated order accordingly. Part 2 enables restraint orders to be made to freeze property that may be or represent the proceeds of crime and the appointment of management and enforcement receivers. Confiscation is part of the sentencing of a defendant.
130. Montserrat has a civil forfeiture regime in place. Part 3 enables the Civil Forfeiture Authority (“the Authority”) to bring civil proceedings in the High Court to forfeit property that is or represents property obtained through unlawful conduct or property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct.
131. The civil forfeiture scheme enables cash which is or represents property obtained through unlawful conduct, or is intended to be used in such conduct, to be forfeited in civil proceedings before the Magistrate’s Court. No conviction, or even criminal proceedings, are necessary for the Authority to institute civil forfeiture proceedings.
132. POCA 2010 makes provision for the confiscation of property that has been laundered or which constitutes proceeds from crime and property of corresponding value.
133. Section 7 of the POCA empowers the Court to make a confiscation order where it is determined that the defendant has benefited from his criminal conduct. Criminal conduct is defined in s. 2 as conduct, which constitutes an offence or would constitute an offence if it had occurred in Montserrat. (“Offence” is defined in section 2, as discussed in criterion 1.3) A confiscation order is made in relation to money laundering offences and other predicate offences (section 16(1) and (2).
134. The Court determines the value of property obtained by a person as a result of or in connection with his criminal conduct. In making such determination the Court looks at the value of the

property at the time when the person obtained it, adjusting such value to take account of later changes in the value of money.

135. In the context of Civil Forfeiture, the Court may make a freezing order (section 79) and a forfeiture order (section 65) in relation to recoverable property. Section 79(4) gives the Court the power to make a property freezing order if certain conditions are met, namely:
 - There is a good arguable case that the property to which the application for the order relates includes recoverable property and if any of the property is not recoverable property, it is associated property; and
 - If the property to which the application for the order relates includes property alleged to be associated property, and the Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.
136. Whilst section 61 (1) of the POCA defines tainted property as, property which has been used in or in connection with unlawful conduct or intended to be used in, or in connection with unlawful conduct, tainted property is restricted in its application to Civil Forfeiture and would not be applicable for confiscation.
137. Where the Court seeks to impose a confiscation order, the amount that is recoverable is an amount equal to the defendant's benefit from the conduct concerned (POCA section 13). This would include profits or other income derived from the proceeds of crime. This is in keeping with the other provisions in the POCA.
138. Profits can also be recovered under Civil forfeiture, which is found in the POCA Part 3. The Court when determining the value of the benefit derived from criminal conduct and assessing the recoverable amount, takes into consideration tainted gifts (section 11). The value of the tainted gifts made at the time of the confiscation order is included when determining how much is to be recovered or confiscated.
139. The POCA 2010 contains several provisions aimed at securing property that is subject to confiscation.
140. Section 42 of the POCA provides that the Court may on application by the prosecutor prohibit a specified person from dealing with any realisable property held by him i.e. impose a restraint order over property.
141. Section 42(6) of the POCA allows a police officer to seize property which is subject to the restraint order for the purpose of preventing the removal of the property from Montserrat.
142. Section 86 of the POCA provides that the Civil Forfeiture Authority may apply to the Court for an interim receiving order, whether before or after instituting the proceedings. This is an order for the detention, custody or preservation of property; and the appointment of an interim receiver. This may be made without notice, if the circumstances are such that notice of the application would prejudice any right of the Civil Forfeiture Authority to obtain a civil forfeiture order in respect of any property.
143. Section 43 allows for a restraint order to be made on an ex parte application to a Judge in Chambers. It also allows for the restraint order to provide for notice to be given to persons

affected by the order. There is however a distinct possibility that a restraint order may not be obtained expeditiously since Montserrat does not have a resident High Court Judge.

144. Section 79(3) and 86 (3) of POCA provides for the making of freezing orders and interim orders respectively without notice if the circumstances are such that notice of the application would prejudice any right of the Civil Forfeiture Authority to obtain a forfeiture order in respect of any property.
145. Part 7 of the POCA provides additional tools to law enforcement agencies, the Financial Intelligence Unit or other competent authorities. These include the power to apply for production orders, search and seizure warrants), customer information orders and account monitoring orders. Application for any of these orders can be made ex parte to a Judge in Chambers.

Third Parties

146. Article 15(7) of the Anti-Terrorism Order specifically provides that third parties have the right to be heard by the Court prior to entry of a forfeiture order. Article 9 of Schedule 2 of the Order provides that a person with an interest in property subject to restraint or forfeiture may apply for compensation in certain circumstances (for instance where proceedings are not instituted, or there is a discharge of a restraint order, or delisting of an organization). For freezing of funds that occur under Article 5 of the Terrorism Order, persons whose funds have been frozen have the right to apply to the Court for the order to be set aside (Article 5(7)).
147. Rights of bona fide third parties are sufficiently protected under the POCA in a variety of ways. With respect to civil forfeiture, section 62(3) (a) is important in protecting third party rights. It provides, in effect, that recoverable property does not include property that is transferred to a bona fide purchaser.
148. Section 71 of the POCA clearly protects bona fide third parties as the Court must not make a forfeiture order where certain conditions exist and it would not be just and equitable for a forfeiture order to be made while section 73 of the POCA enables a person who claims that any property alleged to be recoverable property, or any part, belongs to him to apply for a declaration. If the declaration is made, the property is not recoverable property. Compensation is allowed for in section 109 to a third party who has been unfairly prejudiced.
149. The POCA contains a number of provisions aimed at preventing actions of others from prejudicing confiscation.
150. Section 119 (1) of the POCA makes it an offence for a person to enter an arrangement, having knowledge or suspicion that this arrangement facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person. Where there is such suspicion or knowledge, the person must disclose this to an authorised person and gain appropriate consent to avoid criminal liability under section 119.
151. Section 120 (acquiring, using or possessing criminal property) and section 126 of the POCA , (concealing, disguising, converting, transferring criminal property or removing criminal property from Montserrat) similarly impose such a duty to make an authorised disclosure and gaining the requisite consent before engaging in a specific/prohibited act.

152. Section 117(8) of the POCA makes it an offence for a Money Laundering Reporting Officer to give consent to the doing of a prohibited act where the Money Laundering Reporting Authority has not consented to the doing of the act and the said Officer knows or suspects that the act is a prohibited act.
153. On the question of preventing actions, Section 45 of the POCA enables the prosecutor to lodge a caution with the Registrar of Lands if he has applied for a restraint order. This has the effect of prohibiting any dealings with the land without the consent of the Court and until the issue in question is addressed. In section 132 of the Registered Land Act Cap. 8.01, provision is made empowering the Registrar to make an order restricting or prohibiting dealings with land where there is a question of fraud or improper dealing or for any sufficient cause.
154. Sections 127 to 131 of the Registered Land Act (Cap. 8.01) apply with respect to a caution lodged by the prosecutor. Also, section 94 of the POCA provides similar provisions for the Civil Forfeiture Authority.

Additional Elements

155. There is no specific provision for confiscation of the property of organisations that is found to be primarily criminal in nature.
156. The POCA at section 61(1) provides that civil proceedings can be brought for civil forfeiture of property obtained through unlawful conduct or used or intended to be used in or in connection with unlawful conduct. Further, section 61(2) provides that proceedings for civil forfeiture can be initiated whether or not any criminal proceedings have been brought for an offence in connection with the property.
157. The POCA at section 7 provides that the Court examines the extent to which the defendant has benefited from his criminal conduct and determines the amount to be recovered from him and makes a confiscation order requiring him to pay that amount. Section 38 of the POCA allows a defendant against whom a confiscation order has been made, to make an application to vary the confiscation order where he believes and the Court finds that the amount to be confiscated in the original order is too large. The application to vary the confiscation order might be based on evidence to show that the original calculation includes money that was lawfully obtained.
158. Section 12 of the POCA provides that where the Court determines that a defendant has a 'criminal lifestyle' it must make certain assumptions in order to determine whether the defendant has benefited from his general criminal conduct; and to determine his benefit from the conduct.

Statistics Recommendation 32

Table 8: STR action taken.

STRS Action taken	2004	2005	2006	2007	2008	2009
No. of STRS received	2	2	4	2	3	15
No. of Preliminary cases referred	2	2	4	2	3	15

to RA							
No. of cases disseminated to FIU	2	2	4	2	3	15	
No. of cases investigated							
Amounts Frozen (ML)	0	0	0	0	0	0	
Amounts Seized (FT)	0	0	0	0	0	0	
Amounts confiscated (CP)	0	0	0	0	0	\$10461.36	

2.3.2 Recommendations and Comments

159. Consider criminalising the activities of organisations that are criminal in nature.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> • The effectiveness of the legislation could not be determined owing to its recent passage. • The absence of a resident judge on the island is likely to affect ability of the jurisdiction to obtain a restraint order in an expeditious manner.

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

2.4.1 Description and Analysis

160. Montserrat has a variety of laws and procedures to freeze terrorist funds or other assets, most of which are established by UK Orders in Council. In 2001, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001) (2001 Terrorism Order) came into effect. It criminalised collecting, receiving or providing funds for the purposes of terrorism and making funds or financial services available directly or indirectly to a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or a person controlled or owned directly or indirectly by such a person or a person acting on behalf, or at the direction, of such a person. The Order provided for freezing of funds. In 2002, the UK made two (2) Orders in Council applicable to Montserrat: the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) (Al-Qa'ida Order) and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) (2002 Anti-terrorism Order). Both of these SIs criminalised terrorist financing and provided for freezing of funds and seizure of terrorist property. SI 1822/2002 also provided for the seizure and forfeiture of terrorist property, which is defined as—
- money or other property which is likely to be used for the purposes of terrorism
 - proceeds of the commission of acts of terrorism and
 - proceeds of acts carried out for the purposes of terrorism.

161. It further provides that a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
162. Since 2001, there have not been any cases in Montserrat of any action pursuant to or under U.N. resolutions in relation to freezing of property concerning terrorist financing.
163. These Orders in Council are supplemented by the POCA, under which any act of terrorism would constitute a predicate offence and allow for funds to be frozen, seized and confiscated. The POCA, along with its Anti-ML and Terrorist Financing Regulations (AML/TFR) and Anti-ML and Terrorist Financing Code (AML/TFC) provides for a number of regulatory safeguards and reporting requirements in respect of assets that might be used for terrorist financing.

Special Recommendation III

Freezing and, where appropriate, seizing under the relevant U.N. Resolutions:

164. Montserrat has laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qa'ida and Taliban Sanctions Committee. The Al-Qa'ida Order applies to "listed persons", a term defined in section 2 as—
 - Osama bin Laden
 - any person designated by the Sanctions Committee in the list maintained by that Committee in accordance with resolution 1390 adopted by the Security Council on 16th January 2002 as—
 - a member of the Al-Qa'ida organisation
 - a member of the Taliban
 - an individual group, undertaking or entity associated with such persons.
165. Section 2 of the Al-Qa'ida Order defines "funds" as financial assets, economic benefits and economic resources of any kind.
166. Freezing terrorist funds of listed persons may be carried out by the Governor who may issue a notice upon receipt of information that provides reasonable grounds for suspicion. The Governor has unfettered discretion to make the notice to freeze funds and to have that notice continue in effect for a limited or an unlimited period. A notice to freeze funds or other assets is given without prior notice to the designated persons involved. There is however no indication of time or urgency in the execution of the power that is given to the Governor. However the persons or entities that the notice is given to should carry out the terms of the notice without delay.
167. In addition to freezing funds, section 7 of the Al-Qa'ida Order criminalises the act of making funds or other assets available to, or for the benefit of, a listed person.
168. Under section 5 of the 2001 Terrorism Order, the Governor, acting in his discretion pursuant to section 16(1)(b) of the Montserrat Constitution Order, may issue a notice to freeze funds where he has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be—

- a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism
 - a person controlled or owned directly or indirectly by such a person or
 - a person acting on behalf of, or at the direction of, such a person.
169. Section 1(6) of the Al-Qa'ida Order amended the definition of "funds" for the purposes of the 2001 Terrorism Order to include financial assets, economic benefits and economic resources of any kind.
170. As noted above, the Governor is not required to consult Executive Council before issuing a notice to freeze funds.
171. Under section 5(5) of the TUNMOTO notice is first given to the person holding the funds, who is guilty of an offence if he fails to comply with the notice without delay. Upon receipt of a notice directing that funds be frozen, the person holding the funds must send a copy of the notice to the owner (or person on whose behalf the funds are held). However, this requirement does not delay the process of freezing the funds. Under section 5(6), the recipient is treated as complying with the requirement to send notice to the owner if, without delay, the recipient sends a copy of the notice to the owner's last known address, or if arrangements are made for a copy of the notice to be supplied to the owner at the first available opportunity. It is possible under the law for funds to be frozen, without prior notice to the owner, or other person responsible for the funds
172. Under Part 1 Schedule 2 of the 2002 Anti-terrorism Order, section 5 provides that a prosecutor may apply to the Supreme Court to make a restraint order to prohibit a person from dealing with the property that is the subject of the order. Such an application can be made whether proceedings have been instituted or a criminal investigation has been started in respect of any offence related to terrorist financing. Section 5(4) of the Anti-Terrorism Order provides that such an application may be made ex parte to a Judge in Chambers.
173. Under Part 2 of Schedule 2 of the 2002 Anti-terrorism Order, the Governor, acting in his discretion pursuant to section 16(1) (b) of the Montserrat Constitution Order, may make an order for the enforcement within Montserrat of an external order made by another jurisdiction. Such an external order may provide for the forfeiture of terrorist property or it may prohibit dealing with the property that is the subject of the order.
174. The 2002 Anti-terrorism Order, Schedule 3, sections 2 and 3 allow for cash to be immediately seized and detained by an authorised officer if that officer has reasonable grounds for suspecting that the cash is terrorist cash. Such cash may be detained for forty-eight (48) hours in the first instance. That period may be extended to as much as three (3) months by an order of the Magistrate's Court and, on subsequent order, for up to two (2) years from the date of the first order.
175. Under the POCA, assets may be frozen by means of a restraint order, which may be made both against the defendant or a person under investigation, and any other person holding realisable property. The point at which a restraint order may be made is brought forward to any time after an investigation has been started. It was noted earlier that there may be a difficulty in obtaining a restraint order within adequate time since there is no resident High Court judge on Montserrat.

176. In the context of civil forfeiture, POCA section 79 provides that the Attorney General may apply to the Court for a property freezing order, whether before or after proceedings have been instituted and that such an application can be made without notice if notice would prejudice the right to make a forfeiture order in respect of that property. Under section 101, a police officer (which is defined to include a customs agent) may seize cash if he has reasonable grounds for suspecting that it is “recoverable cash”, i.e. cash obtained through criminal conduct or tainted cash. Section 102 of the POCA provides that such cash may be detained for seventy-two (72) hours, which period may be extended by order of the Magistrate.
177. The POCA at section 56 authorises Montserrat’s Attorney General to forward a request for assistance to the government of another country, asking that country to freeze the assets of a person under investigation for suspicion of terrorist financing, ML or any other predicate offence.
178. Assistance to a foreign jurisdiction may also be rendered under section 9 of the Criminal Justice (International Cooperation) Act (CJICA), where provision is made for the Governor to provide for the enforcement of an order which is made by a Court in a jurisdiction other than Montserrat, that is for the forfeiture and destruction, or for the forfeiture and other disposal of anything in respect of a relevant offence.
179. Under the POCA, Part 4 Schedule 3 establishes a regime under which the Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external restraint order or an external confiscation order in Montserrat.
180. Pursuant to the UK Orders in Council the freezing actions referred to above in Criteria III.1 – III.3 do extend to funds which, for the purpose of all three (3) Orders in Council, are defined to include financial assets and economic benefits of any kind. Under section 5(1) of the 2002 Anti-terrorism Order, “terrorist property” is defined as—
- money or other property which is likely to be used for the purposes of terrorism,
 - proceeds of the commission of acts of terrorism, and
 - proceeds of acts carried out for the purposes of terrorism.
181. Pursuant to section 5(2) of that Order, a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
182. Under the POCA, section 3 states that property is held by a person if he holds an interest in it. Section 42 of the POCA provides that, in the context of a criminal proceeding or investigation, a restraint order may apply to all “realisable property” held by a person or transferred to a person after the order is made. Section 14 of the POCA defines “realisable property” as any property held by the defendant and any property held by the recipient of a tainted gift. In the context of civil forfeiture, sections 61 (definition of removable property), 62 and 64 of the POCA provide that property may be forfeited regardless of whether it is mixed with other property, consists of profits generated by or accruing in the recoverable property, or has been disposed of (so long as it is traceable).
183. Montserrat has had no opportunity to utilise the freezing mechanisms referred to in the legislation described above but nevertheless the authorities in Montserrat believe that there is an effective system for communicating such actions should they occur.

184. Specific written guidance is provided by financial institutions concerning their obligations to freeze funds of designated terrorist and terrorist organisations or check their accounts against UN or national terrorist lists. Changes in the UN list are sent by the UK Foreign and Commonwealth Office to the Governor's Office. These changes are notified in the Official Gazette and forwarded to the FSC, which in turn is responsible for notifying the Compliance Staff of the two banks on the island.
185. Whilst the system has not had cause to be tested, the legislation does not speak to the immediacy of the advice that should be communicated to the financial sector nor is there satisfactory communication that the requisite degree of urgency is applied in these matters. The several steps identified by the jurisdiction for the notification of changes in the U.N. list all add up to a great likelihood of delay before persons on the ground could actually be made aware of the relevant information.
186. The procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism are sought to be addressed in the relevant legislation. Under section 5(3) of the 2001 Terrorism Order and section 8(3) of the Al-Qa'ida Order, the Governor may, at any time, revoke any notice directing that funds be frozen, thereby unfreezing any funds that were restrained. However the ability by the Governor to exercise his power to revoke at any time does not necessarily place an obligation on him to do so pursuant to the S/RES/1267.
187. For Montserrat, the public notification of "de-listed" persons would take place after an updated list of persons designated by the UN Sanctions Committee is received by the Foreign and Commonwealth Office and forwarded to the Governor for dissemination and publication in the Official Gazette
188. There is no apparent adequate procedure in place that would constitute effective and publicly known procedures for de-listing in keeping with this requirement under SRIII. Publication in the Official Gazette is not necessarily done in a timely fashion nor is it an effective means of creating public awareness as it has a very limited distribution.
189. There is no specific provision for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures.
190. Where funds are frozen pursuant to a notice from the Governor under the 2001 Terrorism Order or the Al-Qa'ida Order, the effect of such notice is that the funds are not to be made available to any person, "except under the authority of a licence granted by the Governor." (2001 Terrorism Order section 5(1) and the Al-Qa'ida Order section 8(1)).
191. The provisions set out in the legislation are not sufficiently detailed to amount to procedures.
192. Montserrat has appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a Court. Under both section 5(7) of the 2001 Terrorism Order, and section 8(7) of the Al-Qa'ida Order, any person by, for or on behalf of whom those funds are held may apply to the Supreme Court for the direction to freeze assets to be set aside; and on such application the Court may set aside the direction.

193. Under Schedule 2, section 6(2) of the 2002 Anti-terrorism Order, any person affected by a restraint order may apply to the Supreme Court for the restraint order to be discharged or varied. Schedule 3, section 5 of the 2002 Anti-terrorism Order provides that a person whose cash was seized may make an application to the magistrate's Court for the cash to be released and section 9 of the 2002 Anti-terrorism Order provides that any person who claims the cash belongs to him but that he was deprived of it through criminal conduct may apply to the magistrate's Court for release of the cash.
194. Under the POCA, provisions for appeal of a restraint order in the context of criminal proceedings is found at section 44 of the POCA, which provides that any person affected by a restraint order may apply to the Court to discharge or vary the order. In the context of civil forfeiture, section 80 of the POCA gives the Court the authority to vary or set aside a property freezing order. Under section 104 of the POCA, a person whose cash is seized under section 101 may make an application to the magistrate to have the cash released.

Freezing, Seizing and Confiscation in other circumstances

195. In Montserrat, Criteria 3.1 – 3.4 and Criterion 3.6 (in R.3) apply in relation to the freezing, seizing and confiscation of terrorist-related funds or other assets in contexts other than those described in Criteria III.1 – III.10. Because terrorist financing is criminalised, as previously discussed, all of the freezing, seizing and confiscation provisions apply to terrorist-related property.
196. Schedule 3, section 2 of the 2002 Anti-Terrorism Order provides for the seizure of cash by an authorised officer on reasonable grounds of suspecting that it is intended to be used for the purposes of terrorism, is or represents property obtained through terrorism
197. Section 15 of the 2002 Anti-Terrorism Order also makes provision for the post forfeiture of any money or other property in possession or under control of the defendant that he intended to use or had reasonable suspicion might be used for the purpose of terrorism.

General Provisions

Third parties

198. Laws and other measures do provide protection for the rights of bona fide third parties. Schedule 2, section 6(2) of the 2002 Anti-Terrorism Order allows a person affected by a restraint order to apply that the order be discharged or varied. Schedule 3, section 16 of the 2002 Anti-Terrorism Order also makes several exceptions to the freezing of property earmarked as terrorist property for the protection of bona fide third parties.
199. Rights of bona fide third parties are protected under the POCA in a variety of ways. With respect to civil forfeiture, section 62(3)(a) is important in protecting third party rights. It provides, in effect, that recoverable property does not include property that is transferred to a bona fide purchaser.
200. Law enforcement authorities are responsible for enforcing compliance with the requirements of the three (3) Orders in Council discussed in this section. Financial institutions are required under section 10(1) of the Al-Qa'ida Order to disclose to the Governor knowledge or suspicion as to whether any customer or person dealt with during the course of business is either a listed person or has made funds available to a listed person. The FSC, as part of its regulatory

oversight, is responsible for ensuring that licensed financial institutions have procedures in place to continuously monitor and take action against designated entities.

201. Where there is a breach of a freezing order issued by the Governor under the 2001 Terrorism Order or the Al-Qa'ida Order the offender is liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine, or to both and, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or both.
202. Some measures outlined in the Best Practises paper in relation to Montserrat have been implemented in particular to attempt to create an effective regime and competent authority or Court for freezing etc of terrorist funds, facilitating communication and co-operation (via Governor's Office to UK) with foreign governments, ensuring adequate compliance controls and reporting in the private sector and ensuring thorough follow up and co-ordination with law enforcement.
203. There remain several gaps in the system. The "without delay" requirements have not been appropriately dealt with by the jurisdiction. There appears to have been some discussion about the setting up of a government website for appropriate e-notifications on the issues surrounding this requirement however at the time of the onsite this did not appear to have been done.
204. There was no indication that there was in place a timely procedure for the review of persons who had been designated pursuant to the UNSCR 1267 and its successor resolutions.
205. Otherwise frozen funds may be released under a licence issued by the Governor under the 2001 Terrorism Order section 13.
206. In POCA, section 42 provides that a restraint order may make such provision as the Court thinks fit for reasonable living expenses and certain reasonable legal expenses; or enabling any person to carry on any trade, business, profession or occupation. It is questionable whether POCA goes far enough with the provision to amount to actual procedures. The legislation makes reference only to a judicial discretion when making a restraint order. There is also no provision for extraordinary expenses.
207. No provision has been made for the procedure for forwarding requests for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2003)

Recommendation 32

208. The Financial Crime and Analysis Unit (FCAU) is responsible for investigating matters of Money Laundering and terrorist financing and maintain related statistics. To date there have been no cases where persons have been charged or convicted of terrorist financing, therefore no statistics are available for the freezing of assets or funds pursuant to UN resolutions pertaining to terrorist financing. No suspicious transaction report relative to terrorist financing has been filed.

2.4.2 Recommendations and Comments

209. The jurisdiction needs to establish concrete systems to provide immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 – III.3 to the financial sector immediately upon taking such action.
210. Montserrat may need to consider recommending to the UK that the 2001 Anti-Terrorism Order amended to specifically address the issue of ‘freezing without delay’ the funds of identified terrorists.
211. The jurisdiction needs to consider making specific provisions for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures.
212. There needs to be adequate provision for extraordinary expenses once funds have been seized or frozen.
213. Provision should be made in law for the procedure for forwarding requests for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002).

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> • The systems in place do not adequately cover immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 – III.3 to the financial sector upon taking such action. • There is no specific provision for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures. • Immediate freezing of terrorist funds is not explicitly provided for. • There is no adequate provision for extraordinary expenses once funds have been seized or frozen.

Authorities

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

2.5.1 Description and Analysis

Recommendation 26

214. The Reporting Authority (RA) was first established in 2002 pursuant to the provisions of section 30 (2) of the POCA. At that time the body comprised of the Commissioner of the FSC, who was the Chairperson, the Attorney General and the Commissioner of Police.

215. Section 126 (1) of the revised POCA 2010 establishes a body to be known as the Reporting Authority (RA) which would comprise of five (5) persons, the Attorney General; a senior police officer appointed by the Governor after consultation with the Commissioner of Police; the Commissioner of the Financial Services Commission; a senior customs officer appointed by the Governor after consultation with the Comptroller of Customs and a senior immigration officer appointed by the Governor after consultation with the Chief Immigration Officer. The RA was made the national centre for receiving (requesting if permitted), analysing and disseminating of disclosures. However, the 2010 POCA, through the Governor also gives the designated person (in practical terms the Head of the FCAU) the authority to receive (request if permitted) and analyse disclosures. This created an avenue where both the RA and FCAU can received disclosures from the reporting entities and not to one national central for the receipt of STRs
216. The Examiners were informed that the Immigration officers are members of the RMPF and that the Comptroller of Customs attends meetings of the RA prior to the enactment of the 2010 POCA. However, no information could be provided as to when the Comptroller of Customs began attending the meetings.
217. The Assessment Team was informed that the Chairperson of the RA is appointed by the Governor in consultation with the Commissioner of the Financial Services Commission (FSC). The current Chairperson of the RA is the Commissioner of the FSC.

Functions of the Reporting Authority (RA)

218. Section 127(1) of the POCA 2010 designated the RA as the Financial Intelligence Unit (FIU) for Montserrat and as such, it is responsible for receiving, (and, where permitted by this or any other Act requesting), analysing and disseminating of all suspicious disclosures under the POCA for money laundering and for receiving information submitted by a constable under section 11 of the Anti-Terrorist (Financial Measures)(Overseas Territories) Order 2002.
219. The reporting of suspicious transaction relating to money laundering or terrorist financing is covered under the AML and TF Code 26 of 2010 Part 5 sections 29(1) (e)(f) also provides for the MLRO and deputy to report suspicion of money laundering or terrorist financing.
220. With the coming into force on April 12, 2010 of POCA 2010, sections 121(1) and 122(1) of the POCA and for the financing of terrorism section 10 of Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, the disclosures and other information are to be reported "*as soon as is practicable*," on a form specified by the RA. There is no specific time frame identified and there is no definition or meaning for the term given. Based on the interviews of ten (10) reporting entities, only four (4) had actually ever reported an STR and they averaged that the estimated timeframe within which they had filed the STRs was somewhere between two (2) to four (4) weeks. One (1) reporting entity indicated to the Examiners, during the onsite interview, that they actually had an STR waiting to be filed and that they had had it for more than two (2) weeks. The Montserrat authorities acknowledged that there were long delays in some instances for the submission of STRs and the reason for this was the absence of a specific timeframe within which an STR must be filed.
221. Under section 127(4) of the POCA the Governor in Council must, after consultation with the Commissioner of Police appoint a Director who is subject to the direction and control of the RA to be responsible for: (a) the day to day management and operation of the Reporting Authority;

(b) carrying out the functions of the Reporting Authority with respect to (i) the receiving, (and where permitted by this or any other act, requesting) and analysing of disclosures made to the Reporting Authority: and (ii) the keeping of written records (c) carrying out such other functions of the RA as the members may direct.)

222. As a consequence, the day to day management and operation of the RA is carried out by the Head of the FCAU. The FCAU is staffed by four (4) police officers. The FCAU officers fall under the authority of the Police Act Cap 4.02, the Criminal Procedure Code Cap 4.01, and the Drug Prevention of Misuse Act Cap. 4.01.
223. The FCAU was created at the end of 2008 to specifically deal with matters of ML and TF. It operates under the control of the designated person noted in paragraph 219 but has not been formally established either by legislation or formal agreement. The Unit is also expected to assist other intelligence units locally, regionally and internationally, to facilitate the sharing of information. While there are a small number of reported STRs (SARs), it is anticipated that this will increase with continued public awareness. Further, with the pending application for Egmont membership, this too will undoubtedly lead to an increase in the number of requests for assistance from other jurisdictions.
224. The Examiners were informed of the procedure that is followed by regulated persons when filing STRs. The STRs, are hand delivered to the Chairperson of the RA (who is also the Commissioner of the FSC). The Chairperson of the RA operates out of the office of the FSC. The receipt of the STRs is electronically logged into a computer. The Chairperson of the RA reviews the STRs and request additional information from the service providers for clarification, if the need arises.
225. Copies of the STRs are then made and are kept in a filing cabinet at the office of the Chairperson of the RA/ Commissioner of the FSC. A report is prepared and sent with the original STR by hand to the FCAU for analysis and investigation.
226. The FCAU sign for the receipt of the report from the RA and a letter of acknowledgement is sent. The STR is reviewed and given a reference number and the reason for the STR is entered on a computer database and a file is opened at the FCAU for analysis and investigation. The original STRs are housed at the office of the FCAU. An officer of the FCAU is assigned to conduct an investigation into the STR and information and intelligence is sought from the RMPF and other government agencies as necessary. The Examiners were informed that the analysis of STRs on average takes between seven (7) to fourteen (14) days. If there is a foreign component it may take longer depending on the response from the foreign authority. On completion of an investigation feedback is provided to the RA as to the outcome of the investigation.
227. The FCAU has a good relationship with all government agencies. Information sharing takes place at the RA monthly meetings. The director of the FCAU is also part of a monthly operational meeting of the RA.

Guidance and reporting of STRs

228. At the time of the onsite, the form specified for the reporting of STRs was found in Part 5 (5.04, annexed as C4) of the previous Code of Practice on the Prevention of Money Laundering and Terrorist Financing issued in 2007 approved by Governor in Council and gazetted in January

2008. The 2008 code of practice is no longer in effect and as a result the STR form in use is not prescribed.

- 229. The Examiners were informed by the RA that seminars were conducted for the relevant businesses which are subject to AML/CFT legislation, mostly in June 2007 and November 2009. The RA did indicate to the Examiners that with the recent passage of the AML/CFT legislation that ongoing awareness seminars would be held in 2010 for all the service providers to make them aware of their reporting requirements under the newly enacted legislation.
- 230. The Examiners were informed by the Clerk of Councils that attempts are being made to have the general public aware of the newly enacted legislation being passed. Presently, new laws are gazetted and placed in the public library. The Clerk of Councils indicated that a radio programme is going to be used to inform the public and also a website that is presently under construction would also assist with public education.

Reporting Entities Breakdown

- 231. Section 127(2) (f) of the POCA requires the RA to provide feedback to reporting entities. The RA has been giving specific feedback to these entities by providing a written letters of acknowledgement and case specific feedback on STRs submitted to the RA. Additionally, the RA has been exercising its powers to request further information from reporting entities where an STR is of poor quality, or is incomplete.
- 232. The RA which is the designated FIU has the authority to request information from any person to fulfil its functions under section 127(2) of the POCA 2010. There is a penalty for a person failing without reasonable excuse, to provide such information as is required. As per the provisions of the POCA such a person is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand (\$10,000) EC dollars or on conviction on indictment, to imprisonment for a term not exceeding two (2) years or a fine not exceeding fifty thousand (\$50,000) EC dollars or to both.
- 233. The RA has access, both directly and indirectly on a timely basis to financial, administrative and law enforcement information that is required to properly carry out its functions, including the analysis of STRs. The RA also has access to the database of the FCAU, which is delegated to perform some of the function of the RA. The agencies which the RA has access to are the Royal Montserrat Police Force (RMPF) database; Customs; Registrar (Court, lands and companies); Immigration; Financial Services Commission (FSC) in addition to other sources of information.
- 234. It was reported to the Examiners that on occasions the RA had to request clarification and additional information from a service provider on an STR submitted and the information was provided without delay to the RA. Under section 127(2)(d) of the POCA the RA can enter into written agreement, arrangements or MOUs with foreign FIUs as it considers necessary in the performance of its functions.
- 235. Financial information is protected by the Confidential Information Act, except for information provided pursuant to the provisions under section 125 of the POCA.
- 236. In respect of this criterion the provisions in section 127(2) (b) of the POCA provides that the Reporting Authority may by written notice, require any person to provide information, other than information that is privileged for the purpose of clarifying or amplifying information

disclosed to the Reporting Authority. The RA did indicate to the Examiners that in order to clarify information on an STR submitted the Chairperson of the RA did call the service provider verbally and requested the additional information which was provided immediately. The RA subsequently sent a written request as well for the information

237. Section 128 of the 2010 POCA provides the gateway for onward disclosure by the RA to law enforcement agencies in Montserrat and foreign FIUs.
238. Section 127(1) of the POCA 2010, gives the Reporting Authority the responsibility of disseminating disclosures made under the POCA and such other disclosures of financial information that may be required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism.
239. Pursuant to section 127(4) of the POCA, the Governor in Council after consultation with the Commissioner of Police appointed a Superintendent of Police as the Director of the FCAU subject to the direction and control of the members of the RA. The FCAU is the investigation arm of the RA and is also tasked with the receiving (requesting) and analysing disclosures made to the RA in determining when there are grounds to suspect ML or FT.
240. The Examiners observed that both the RA and the FCAU have the authority to receive, request additional information from service providers and analyse STRs. However, the RA has the power to disseminate disclosures to the FCAU. According to table 3, during the period 2004 to 2009 the RA disseminated 28 disclosures to the FCAU.
241. Neither the RA nor the FCAU have signed Memorandum of Understanding (MOU) with any agency but recognizes the need for mutual cooperation and information exchange between the local agencies in the carrying out of their respective functions and duties.
242. One of the service providers expressed concern to the Examiners about STRs being submitted to the FCAU by the RA. Although there was no evidence of previous breaches of information at the FCAU, the service provider indicated that they would be more comfortable communicating with the RA and not FCAU. The Examiners were informed that in the past they had received a request for financial information from the Police but refused to provide the information based on advice from their attorney that the Police did not have that authority under the previous POCA (Cap. 04.04). However, under the new POCA the Director of the FCAU can receive, (request if permitted) and analyse disclosures from service providers.
243. The present structure of the RA allows for autonomy and sufficient operational independence. The RA was first established in 2002 pursuant to the provisions of section 30(2) of the now repealed POCA Act (Cap.04.4).
244. As previously stated the RA functions out of the office of the FSC and has one (1) secretary assisting the Chairperson of the RA. The individual performing the functions as the secretary to the RA is an employee of the FSC and functions as an Insurance Regulator at the FSC. The Secretary's salary is paid out of the budget of the FSC. The resources of the FSC are being utilised by the RA for all its administrative expenditure which would also include the hosting and conducting of workshops and seminars.
245. Section 126(4) of the POCA allows for members of the RA to appoint persons to assist the RA in the performance of its functions.

246. There is no budget allocated to the RA in the performance of its functions. All monetary allocations are met out of the various budgets of the members of the RA with the majority of funding being provided by the FSC. The Chairperson of the RA informed the Examiners that the reason for this arrangement is that they did not want an additional auditor.
247. Although the RA has shown independence and autonomy in its main function (receiving, analysing and disseminating disclosures from reporting bodies) it is heavily dependent on the resources of the FSC in budgeting, technical and human resources which can have an undue influence or interference in the RA's performance.
248. The FCAU as stated above receive disclosures from the Reporting Authority (RA) directly by hand. The disclosures are not forwarded to the Commissioner of Police but are received by the members of the FCAU. However, in the absence of the Director of the FCAU the responsibility of the Unit is performed by the Deputy Commissioner of Police who is not a member of the FCAU but can receive the disclosure from the RA as he is a member of the RA in accordance with the POCA.
249. The personnel of the FCAU are police officers who are assigned to the Unit to conduct investigations in ML and TF related matters exclusively. The officers assigned to the FCAU are not on secondment to the FCAU and are members of the RMPF and as such they currently perform other policing duties from time to time.
250. The Director of the FCAU currently performs duties as the Superintendent of Operations in the RMPF and as such has the responsibility, in addition to the FCAU, to supervise the Inspector of Crime; the inspector Internal Development; Inspector of Operations and the Inspector who has responsibility for border security.
251. Although the Examiners were informed during interviews that the FCAU is setup as a separate and independent Unit. The Examiners observed that the members are "*full-fledged police officers*" and therefore are subject to the directives of the Royal Montserrat Police Force. The structure does not accord sufficient operational independence and autonomy which enables the FCAU to carry out its mandate.
252. A separate budget is proposed for the functioning of the FCAU. The budget is allocated to the RMPF in a separate vote specifically for the FCAU. The Examiners was informed that this arrangement was for accountability purpose and would negate the need for another auditor. The Director of the FCAU does not have control of this budget as the disbursement of funds is under the authority of the Commissioner of Police. The approved estimated budget for the FCAU for 2010 to 2011 was \$112,300 EC Dollars, however owing to budgetary constraints on the island, \$54,500 EC was allocated.
253. The Reporting Authority (RA) office is located on the ground floor of a building which houses the Financial Services Commission (FSC). Access to the office is restricted by a normal door lock and dead bolt door lock on entrance to the building which is accessed with keys by all members of staff. The office where the STRs are stored belongs to the Chairperson of the RA/ Commissioner of the FSC and can be accessed through two (2) separate doors which are secured with a normal door lock with keys. There is a metal filing cabinet which stores copies of STRs together with other FSC documents. Both the Chairperson of the RA and the secretary has keys to the filing cabinet. The filing cabinet is not fireproof.

254. There are no security monitors, motion detectors or an alarm system at the premises. The exterior door to the entrance of the building and all the exterior windows of the building are not reinforced with burglar proofing. Generally, the FSC building where the RA is located is not adequately secured and certain security measures urgently need to be put in place.
255. The service providers submit their STRs to the RA by hand delivered mail in hard copy. At present electronic filing of STRs is not received. Only the log of the receipt of all STRs received and not the information contained in the STRs are entered and stored in a database on the network of the FSC. Access to the computer is only available to the Chairperson of the RA and the secretary on a system that is password protected and can only be accessed by individual passwords. The database is on the network which is protected by a firewall. A back up is located onsite and stored on the network at the FSC.
256. The systems as they currently exist, in the Examiners view, do not provide an appropriate level of protection against any threat from natural disaster, unlawful entry, etc. that they may face.
257. All members of the RA were administered an oath of office relative to secrecy under their respective agency legislations.
258. The FCAU office is located in an office of the RMPF Police Headquarters building. There is a 24/7 presence of physical police security of the building by police officers who also monitor the exterior of the building via video cameras with monitors. To gain access to the FCAU office there are two (2) doors with digital keypad entry and lock and keys to both doors. Because other offices of the police force are housed in the same area, police officers have the combination to the first door. However only the FCAU have access to the digital keypad combination on the second door (with reinforced steel) leading to the FCAU office. There is one window in the office and that window is secured with burglar proofing.
259. Under section 127(4)(a), (b) and (c) of POCA 2010, authority was given to the FCAU to manage the day to day operation of the RA. The FCAU receives a report together with an original STR from the RA, which is hand delivered and a receipt for same is logged. The original STR is analysed and the information contained in the STR is entered in a database on a standalone computer located in the FCAU office. There are two computers in the FCAU office and both computers are standalone and not connected to each other or to the Police network. The FCAU uses Microsoft Excel (spreadsheet) software for the storing and analysing of STRs.
260. There is an active firewall in place for the protection of the system from computer viruses. The computers are protected by passwords which each officer of the FCAU has an individual password to gain entry on the computer. However, the database containing the STR information is not password protected. The STR database is backed-up onsite on the same computer that the database is on. There is no external back-up off-site of the STR database. In the unlikely event of a computer hard drive crash, all electronic information stored would be lost. Any repairs or servicing to the computers of the FCAU is performed by a police officer from the IT department of the RMPF as there is no IT personnel assigned to the Unit.
261. The original hard copy of the STR is stored in a fireproof safe in the office of the FCAU. The safe is locked via a combination and key with only an officer of the FCAU having access to the combination and key to the safe. There is also a book that is used to log the movement of the key to the safe.

262. Generally, the office of the FCAU is adequately secured being and is housed in the Police Headquarters. Urgent measures are required to be immediately put in place with regards to additional password protection on the database, a back-up policy on the time of back-ups, off-site back-up of the FCAU database together with a separate back-up system onsite. There is also need for more operational space to be allocated to the FCAU to adequately accommodate all officers.
263. Pursuant to section 128(1) and (2) of the POCA 2010, would authorised the RA to share financial and other information disclosed to it to both local Law Enforcement Agencies (LEAs) and foreign FIUs. There is a penalty for disclosing confidential information if not permitted, by members, alternate members, employee or agent of the RA and a person appointed to assist the RA under section 127(4) of POCA 2010. While section 130(1) allows for the dissemination of information the offence and penalty for breach of the section can be found under section 130(3) of POCA 2010.
264. To date neither the RA nor the FCAU have publicly published reports on statistics, typologies or trends relative to the functioning of the RA and the FCAU since their inception. The Examiners were informed by the RA that a process of preparing the first published reports could be expected in the next six (6) weeks following the evaluation. The RA indicated that not enough STR reports have been filed with the RA to produce typologies and trends to be published in a report. However, since 2004 to the end of 2009 twenty-eight (28) STRs have been filed with the RA and the reports should be available from this.
265. Egmont group membership is presently being pursued with assistance from Montserrat's sponsors the Virgin Islands and The Bahamas. It is anticipated that this will be completed in early 2010. However at the time at the writing of the report, this was not done. The Examiners were informed by the RA that the procedures are in place for the sponsors to visit RA. No specific or approximate date was given for this visit due to recent administrative changes at the Bahamas FIU.
266. Although the RA is not yet a member of the Egmont Group they are adopting the Egmont Group's Statement of Purpose and its Principles for Information Exchange between Financial Intelligence Units.

Recommendation 30

267. The Governor under section 126(2)(f) has the authority to appoint a suitable qualified person as a member of the RA for a period specified by him and the RA members under section 126(4) may agree to appoint persons to assist the RA in the performance of its functions. This body represents the technical advisory arm of the FIU.
268. The Reporting Authority has a structure which consists of a Chairperson of the body and its members. The current Chairperson of the RA is the Commissioner of the FSC who was appointed by the Governor in consultation with the Commissioner of the FSC. The RA does not fall under any ministry of government but advises the Governor on matters of AML/CTF.
269. There is no budget allocated to the RA to perform its functions. Funds from the various members of the RA are used for the functioning of the RA. The Examiners were informed that the FSC has been providing funding to the RA in the performance of its functions. The rationale as previously noted, for this budgeting arrangement was that they did not want an additional auditor.

270. The Examiners were informed that there was no staff employed by the RA, technical or otherwise. There currently exists an arrangement, which allows for the Insurance Regulator of the FSC to also function as the Secretary of the RA. There is no written job description for the Secretary. The Secretary is made aware of her duties relating to the RA via word of mouth. The Secretary to the RA is required to log the receipt of disclosures received both in a book and on a computer database. The Secretary then files a copy of the STR in a filing cabinet before the original STR and a report is sent to the FCAU.
271. The salaries of the members of the RA are paid out of the budgets of their respective departments (the FSC, Police, Customs and the Attorney General's office).
272. Since the Chairperson of the RA and the Commissioner of the FSC is the same person operating out of the office of the FSC, resources are shared with the RA to carrying out its functions. The FSC is adequately equipped with computers, telephones, fax machine, photocopier and other office equipment. The office space should be increased to accommodate for future staffing expansion requirements.
273. As previously noted, the Reporting Authority (RA) has been operating independently since its inception in October 2002. The Examiners were informed that there has been no interference from government officials in the operations of the Unit. As a general rule, all disclosures are sent to the FCAU to be investigated. However, the autonomy of the RA is being hampered by lack of a dedicated secretary and its heavy dependence on the resources of the FSC.

Table 9: Annual Budget Estimates for FIU

Salary for two officers 40%	35222.4
Salary Management for two officers 20%	12000
Facilities	6500
Training	11000
Witness	45000
Egmont	
Conferences for two officers	7000
Licenses/software	1500
Pro rata Administration	3000
Forensics	24000
Communications	2000
Total	14872204

274. The RA staff is subject to high ethical standards and swear an oath of secrecy on commencement of appointment. Additionally, section 130(1) of the POCA makes it an offence if anyone any member of the RA disclosures information they acquire at the RA without authorisation. There have been no breaches of confidentiality or formal complaint made of on the RA.
275. Members of the RA are all professionals carrying out various functions. The RA is comprised of experienced, knowledgeable and educated persons and their professions compliment their ability to perform effectively at the RA.

276. The Examiners were informed that members of the RA have attended seminars, workshops and training in AML/CTF. However, only the Chairperson of the RA provided a list of training. On that list for the period 2005 to 2009 the Chairperson attended one conference in 2008 on Improving International Efforts to Combat Fraud. No other training list was provided for the other members of the RA for the period 2005 to 2009. More resources need to be provided to the RA to have its members attend workshops and seminars relative to AML and CFT. This is highly important as the members of the RA also inform and guide the government of Montserrat on AML/CFT policies.

Statistics (Recommendation 32)

277. The Examiners were informed that Montserrat had conducted reviews of their system in place for combating ML and TF. In 2004 the main review of the system was done. The FSC in late 2008 and early 2009 conducted a further review of the POCA on a risk based approach to AML/CFT. Extract of an FSC board meeting provided confirmed that it was done by a consultant who identified certain sectors as having a higher risk than others. The FSC was also advised by the Consultant that institutions need to know their obligations.
278. With regards to STRs submitted during the period under review it is worth noting that the cases were analysed and passed to the FCAU to be investigated. There were no cases taken before the Court on charges of money laundering, terrorist financing or confiscation.
279. While all cases were analysed, difficulties were experienced in receiving information from some jurisdictions because of the lack of Egmont Membership. This is expected to be addressed as Montserrat has applied for membership, as noted above.
280. There have been no MLAT requests received from other jurisdictions or sent from Montserrat to foreign jurisdictions.
281. There have been formal requests made and received from foreign jurisdictions relating to STRs investigations for the period under review. All the requests made to the FCAU have been granted and responded to. These matters are now closed. The FCAU is still awaiting outstanding information from three (3*) of the jurisdictions.

Table 10: Requests for information

Country Requesting Information	2004	2005	2006	2007	2008	2009
Antigua	1	0	0	1	0	0
Bahamas	0	1	0	0	0	0
Cuba	0	0	0	0	0	0
USA	0	0	0	0	0	0
Country Information Requested From	2004	2005	2006	2007	2008	2009
Canada	0	0	0	1*	0	0
Dominica	1	0	0	1	0	0
England	0	1*	0	0	0	0
Panama	0	0	0	0	0	1
USA	0	1*	0	0	0	0

Source the FCAU (2010)

282. No STRs resulted in prosecution or convictions for ML and TF, therefore statistics have not been kept. There are measures in place to capture such data in the event that there are ML or FT prosecutions or convictions.
283. Statistics are also maintained on the number of requests for assistance and on, countries making requests. For the period 2004 to 2009 there were three requests for information from foreign authorities. All requests were granted and are now closed.

2.5.2 Recommendations and Comments

284. The FCAU should be formally established as the central authority for receiving STRs in Montserrat
285. Montserrat should amend section 122(1)(b) of the POCA and Part 5, section 32(1)(a) of the AML/CFT Code which requires the MLRO to submit STRs to the RA “*as soon as practical.*” Consideration should be given to including a specific time-frame for the submission of STRs together with the ability for the MLROs to submit STRs within the time-frame if suspicious activities warrant such.
286. Montserrat should develop and publish a STR reporting form for the particularisation of information required to be submitted by reporting entities when filing STRs.
287. The RA should consider developing a strategic plan focusing specifically on the DNFBPs and NPOs on a risk assessment approach to awareness training in AML/CFT to make them fully aware of their obligations and the requirements in combating ML and TF.
288. The RA should consider the employment of a competent and suitably qualified person to the position of Secretary to the RA responsible for all the administrative functions and to perform duties as the RA may determine.

289. The RA since its establishment in 2002 have has not published any statistics, trends or typologies from STRs received from reporting entities publicly. The published reports would assist those reporting entities to strengthen their existing AML/CFT programs. Trends and typologies can also be obtained from regional FIUs as well as CFATF to assist the reporting sectors.
290. The independence of the FCAU from the police force seemed highly questionable. It would be advisable for the FCAU to be housed in a separate building from the Police Headquarters so that there might be less temptation to confuse the functions of the two bodies.
291. The RA should implement additional security of the (FSC) building where the RA operates until such time as the FCAU has been formally established.
292. A data back-up policy should be implemented at the RA. Which would include scheduled days for backing-up, an off-site (secured) location for the storage of backed-up data and the scanning of STRs to be stored electronically.
293. Montserrat should consider amending section 11(1) and (2) of the Anti-Terrorism (Financial and Other Measures) Overseas Territories) Order 2002 to have disclosures be made to the RA and not reported to a Constable. The GN at Part 5(ix) of the AML/CFT Code also asks that service providers make disclosures to the RA.

2.5.3 Compliance with Recommendations 26,

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • The RA is not the central body in Montserrat authorised to receive disclosures. • Autonomy of RA uncertain because of existing structure. • The FCAU has not been formally established. • No specific time-frame for reporting STRs. • The STR form in use is not prescribed. . • DNFBPs are unaware of the reporting STR and requirements due to RA not providing awareness training. • TF disclosures can be made to the RA through a constable. • Lack of clarity as to which entity is authorised to receive STRs. • The building that houses the RA is not sufficiently secured. • No published reports on STR statistics, trends and typologies by the RA. • There is no off-site back-up of information.

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

2.6.1 Description and Analysis

Recommendation 27

294. The RMPF is the authority on Montserrat with responsibility for security and investigations of offences against the law pursuant to the Police Act Cap 10. The policing duties include traffic management, Court and process, training, beat & patrol, border security (marine and immigration), drugs interdiction, crimes against persons and property, money laundering and terrorist financing crimes, as well as other proceeds of crime matters.
295. The RMPF is also guided by the POCA the Criminal Procedure Code Cap 4.01, and the Drug Prevention of Misuse Act cap. 4.01.
296. The total complement of the RMPF personnel is currently eighty-one (81) sworn police officers in addition to the civilian administrative support staff.
297. The FCAU was established at the end of 2008 in the RMPF. The Unit presently consists of four (4) police officers housed within the RMPF headquarters. The FCAU has the remit for criminal investigations of all offences related to financial crimes, including money laundering and the financing of terrorism. During the onsite visit the Examiners were informed that officers assigned to the FCAU are still required to perform other general policing duties which entail investigations into other matters not related to financial crimes and prosecutorial duties at the Magistrate Court.
298. These additional duties do not allow the staff of the FCAU to properly investigate STRs received from the RA. For the period 2008 to 2009 the FCAU received eighteen (18) STRs of which only one (1) was closed and seventeen (17) STRs investigations still remained open.
299. The Examiners were informed that Police officers in the RMPF are rotated (re-assigned) from time to time for development purposes and career advancement within the RMPF. There is a distinct possibility that this can happen to the officers presently assigned to the FCAU.
300. The Police Act Cap 10.01 and the Montserrat Penal Code no 12 of 1983 make provisions for the arrest of persons involved in criminal activities, this after investigations are carried out to obtain sufficient evidence to effect such arrest. Further to these pieces of legislations are the Judges Rules which are persuasive measures to guide officers in conducting investigations.
301. There is no explicit legislative authority under the laws of Montserrat, which states that law enforcement authorities have the ability to either postpone or waive the arrest of suspected persons, or to delay the seizure of money in furtherance of an investigation. However, Examiners were informed that police officers do possess a general discretionary enforcement power of arrest, which allows them to postpone/waive arrest and/or the seizure of monies if the circumstances of the investigation dictate that it is appropriate to do so, especially where conspiracy is being investigated. Additionally, section 13 of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 allows a person to participate in fund raising, use and possession of property or money, funding arrangements and money laundering for the purposes of terrorism with the express consent of a constable. No information was available as to whether the police had used such discretionary powers previously. The RMPF did acknowledge the value of having that power in legislation.

Additional Elements

302. There are no measures in place, whether legislative or otherwise that provides for the special investigative techniques such as: controlled deliveries; under-cover operations or electronic monitoring of telephone calls when investigating the proceeds of ML and TF.
303. Special investigative techniques as those mentioned above are not permitted in Montserrat when conducting investigations of ML and TF, and underlying predicate offences.
304. Some measures of co-operative investigations exist with appropriate competent authorities in other countries especially where the interaction is on intelligence and investigations. The method used for co-operation is through FIUs, INTERPOL, Caribbean Customs Law Enforcement Council (CCLEC) and Overseas Territory Regional Intelligence System (OTRIS).
305. There is a monthly meeting with the members of the RA and the FCAU. The following agencies are present; FSC, Customs, Immigration and the RMPF where ML and TF related matters are discussed. However, both the RA and the FCAU have not published any report relating to STRs, trends and typologies for review.

Recommendation 28

306. Under the POCA Police officers and Customs officers conducting investigations into ML, TF and underlying predicate offences have the power under the following sections to compel the production of financial information, search persons or premises and to seize and obtain information and property:
 - Section 42(1) of the POCA – Restraint Order can be obtained on application by the prosecutor an order prohibiting any such person specified in the order from dealing with any realisable property held by him.
 - Section 64(1) of the POCA – Civil Forfeiture Order can be obtained on application by the AG to any such person specified in the order that he believes holds recoverable property the value of which exceeds the minimum threshold of \$3,000 EC dollars.
 - Section 101 of the POCA – Seizure of Cash by a police officer with reasonable grounds for suspecting that it is recoverable cash and part of the cash is recoverable cash in that it is not practicable to seize that part only.
 - Section 134(1) of the POCA – Production Order can be obtained on application of a police officer for an investigation into criminal recovery, ML or civil forfeiture investigations.
 - Section 138(1) of POCA – Search and Seize Warrant can be obtained on application of a police officer for an investigation into criminal recovery, ML or civil forfeiture investigations.
 - Section 24(1) of the CPC (Cap. 04.01) – Search Warrants may be issued when a Court or Magistrate or Justice of the Peace is satisfied by evidence on oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any offence has been committed is in any place or places.

- Section 2, Part 2 Schedule 3 of Anti-terrorism (Financial and Other Measures)(Overseas Territory) 2002 an authorised officer can seize cash if there is reasonable grounds for suspecting that it is terrorist cash or have reasonable grounds for suspecting that part of the cash is terrorist cash and it is not practicable to seize only part.
 - Section 141(1) of the POCA – Customer Information Order can be obtained on application of a police officer for an investigation into criminal recovery, ML or civil forfeiture investigations.
 - Section 145(1) of the POCA – Account Monitoring Order can be obtained on application of a police officer for an investigation into criminal recovery, ML or civil forfeiture investigations.
307. The Examiners were informed of an investigation in 2007 where a person was arrested and charged with (a predicate offence) twenty-six (26) counts ranging from theft, forgery and other related charges for stealing over two hundred and ninety (thousand \$290,000.00) EC dollars from their work place over a nine months period. The person was subsequently convicted and sentenced to three (3) years imprisonment. However, none of the investigative tools mentioned under the POCA were used to pursue ML or Confiscation investigations.
308. The Examiners were informed by police authorities that they have the ability to take witness statements for use in an investigation into any criminal proceedings, as part of normal police powers. The Judges Rules that give guidelines to police officers in the recording of written statements from both witnesses and defendants is adhered to. However, the section(s) and the relevant Act could not be cited that give officers the authority to record witness statements. The Police Authorities stated that the Evidence Act is being amended and this would be addressed in the amended act.

Recommendation 30 (Law Enforcement and prosecution authorities only)

RMPF

309. The RMPF has a complement of eighty-one (81) officers and is headed by the Commissioner of Police; one (1) Deputy of Commissioner of Police; one (1) Superintendent of Police; four (4) Inspectors of Police; thirteen (13) Sergeants of Police and sixty-one (61) Constables. There are eight departments in the RMPF namely; Administration, CID, Beat & Patrol, Immigration, Marine, Community Beat, Traffic, Stores and Salem (Out Station).
310. The CID is the department responsible for investigating all serious crimes and within CID there is now an established a Drugs and Firearm Unit comprising of three (3) officers from CID who assist the FCAU in conducting investigations. The Immigration department is a part of the RMPF. There are thirty (30) police officers appointed as Immigration officers of which eight (8) are assigned to the Immigration Department. An Inspector is in charge of the department with a Sergeant second in charge. The Marine section consists of appointed officers as well and together they are primarily responsible for border control.
311. Officers in the RMPF receive training in several areas of investigations on a continuous basis. In addition to the four (4) officers of the FCAU the RMPF has two (2) other officers who have undergone training in financial investigations relating to ML and TF investigation. The Commissioner of Police stated that the RMPF have a general conference at least once per

month with all officers, where information is shared on all aspects of policing and officers are sensitised to ML & TF matters.

312. Resources are provided for with an annual budget provided by the Government of Montserrat. The RMPF budget for 2009 was \$6.8 million EC dollars and the estimated budget for 2010/2011 is \$7.9 million EC dollars. In January 2010, the Commissioner of Police submitted a business case to the Director of Human Resource Department for the FCAU for an increase in officers, so that the Unit would have full-time officers assigned to the Unit doing only financial investigations. There were no indications as to whether the business case would be approved or not.
313. The Examiners were informed that gazetted officers (Inspector and above) are also under the directive of the Public Service Commission (section 4(2) and Part 3 section 24(2)) and this arrangement can have an impact on the management of the RMPF. Two officers, of whom one was a trained FIU officer of the RMPF was seconded to head other departments in the public service.

The FCAU

314. The FCAU is the Unit designated to investigate ML, TF and financial crimes. The Unit is located in an office of the Police Headquarters of the RMPF. There are four (4) police officers assigned to the FCAU. The structure of the FCAU is one (1) Director, who is the Superintendent operations of the RMPF; one (1) Sergeant and two (2) Constables who perform the investigations and analysis of STRs and ML and TF proceeds of crime offences.

Recommendation 30 (Law Enforcement and prosecution authorities only)

315. There is no Deputy Director in the current structure and as a result, in the absence of the Director, the operations and management of the FCAU is carried out by the Deputy Commissioner of Police who is not assigned to the Unit.
316. The Examiners were informed that the FCAU estimated budget of \$148,722.40 EC dollars comes out of a separate vote assigned to the RMPF and is under the control of the Commissioner of Police.
317. Emphasis was being placed on the budget being only for operation of the FCAU and separate from the RMPF budget. The Commissioner of Police, for accounting purposes has supervision of the funds. This type of budgeting arrangement does not allow for independence and autonomy to ensure freedom from undue influence and interference on the management and disbursements by the Director of the FCAU.
318. The budget (see table 10 above) does not cater for transportation for the FCAU. The Examiners were informed that the FCAU does not have its own vehicle or one assigned to it. Vehicles belonging to the RMPF are made available to the FCAU for the conduct of their investigations. However, a request for the use of a vehicle and other resource requests are made by the Director of the FCAU to the Deputy Commissioner of Police. Although, a request for vehicle use has never been refused, there are no safeguards in place, in the event of a conflict in the availability of resources that the FCAU would be free from undue influence and interference in the performance of its functions.

319. The Examiners were informed that the FCAU has recently acquired both iBase and i2 Analyst Notebook software that would assist the Unit in having a more secure database with the ability to do comprehensive analysis of STRs. There is the need for an additional computer and a networking of all the computers in the FCAU. As was previously stated the FCAU is in need of more operational space.

The Attorney General's Chambers

320. The Attorney General's powers are vested under section 21 of the Constitution of Montserrat (Cap. 01.01). The AG department has four (4) divisions, which comprise of Administration, Criminal Division, Civil and Commercial Division and Parliamentary Counsel. The Criminal division structure is as follows: Principal Crown Counsel (presently vacant); Senior Crown Counsel and Crown Counsel. Currently the two (2) Senior Counsel and a Crown Counsel are qualified and experienced prosecutors. The AG is currently actively seeking to fill the post of Principal Crown Counsel.
321. The Criminal division is augmented by the RMPF which has police officers prosecuting matters in the Magistrate Court.
322. The Department falls under the responsibility of the Attorney General who operates independently from the Executive Council (Ex Co). The AG has complete financial and managerial control of the department except in the hiring of staff, which is done by the Department of Administration headed by the Deputy Governor. In the opinion of the Assessment Team the legal department operates in an independent environment which is free from any undue influence or interference.
323. One of the prosecutors in the Criminal Division has received training in combating money laundering and terrorist financing. The Examiners were informed that the Attorney General has had experience in the prosecution of person for ML offences. The law library at the AG's Chambers is adequate and additional resource can be sought in Anguilla and online.
324. All police officers in accordance with section 17(1) of the Police Act (Cap.10.01) on first appointment to the RMPF must take an oath of office that would be administered by a Magistrate or Justice of the Peace. Regulation 6 of the Police Regulations deals with disciplinary matters of all police officers.
325. Officers are to also pay attention to section 123(1) of the POCA with regards to the offence of tipping-off relating to criminal recovery, civil forfeiture and ML investigations.
326. The Examiners were informed that police officers are lectured to about confidentiality, integrity and ethics on a regular basis at in-house lectures. There is no formal procedure established for ongoing vetting of police officers.
327. Attorneys on appointment to the Legal Department would have undergone background checks and taken the oath on appointment to office. Officers are expected to maintain a high level of confidentiality which is required by the profession.
328. Staffs at all levels of the RMPF are provided with adequate training locally, regionally and internationally. While training is continuous there are some limitations primarily due to the lack of funding.

329. Information concerning the training received by the RMPF was requested to be made available to the Examiners.
330. The police officers at the FCAU within the last four (4) years have undergone significant training in financial investigations courses; Financial Manipulation Analysis; Advance Interview Techniques; Intelligence Gathering & Analysis Course and have also attended several seminars related to AML/CFT. In February 2009 two (2) officers of the FCAU were on a two (2) weeks attachment to the Cayman Islands Financial Reporting Authority & FIU for mentoring on STRs analysis, ML and TF investigations. Software training in the use of iBase and i2 Analyst Notebook was completed by one (1) of the officers of the FCAU.
331. The Examiners were informed that there is no Judge on the island of Montserrat but a Judge from the Eastern Caribbean is brought on the island to conduct indictable trials in the High Court. There is one magistrate on the island assigned to hear summary and indictable preliminary enquiries.
332. The Examiners was informed by the Magistrate that she had not received any special training concerning ML and TF matters. There was no information provided that the visiting Judge had received any special training concerning ML and TF matters.

2.6.2 Recommendations and Comments

Recommendation 27

333. No clear indications that ML or TF matters are being properly investigate.

Recommendation 28

334. The RMPF, the Attorney General and the FCAU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more active approach in conducting investigations, prosecutions and possible convictions by ensuring that the investigative tools are provided for in the POCA are utilised.
335. Montserrat should ensure that there are legislative provisions that would empower investigators to record witness statements for use in investigations and prosecutions of MT, TF and predicate offences.

Recommendation 30

336. The authorities should consider providing the Police Force more training particularly in the area of ML investigation and other relevant areas. This Training should include the seizing, freezing, forfeiture and confiscation of assets.
337. The FCAU should be utilised in conducting in-house training for the RMPF with specific emphasis on the CID officer and the recruits in training, in the first instant, to be made aware of ML and TF investigations.
338. Authorities should consider increasing the budgetary resources of the Police Force to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its functions

339. Authorities should consider reviewing the measures in place for ensuring that persons of high integrity and good moral character are recruited into the RMPF and that there is a system in place for ongoing monitoring of officers to maintain the high level of professionalism and integrity needed.
340. There is a need for additional lawyers in the Legal Department.
341. The Legal Department should hold workshops with the FCAU on the operation of the various pieces of legislation relating to ML and TF (investigative tools and confiscation procedures) investigations.

2.6.3 Compliance with Recommendation 27 and 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> • No clear indications that ML or TF matters are being properly investigated.
R.28	LC	<ul style="list-style-type: none"> • No clear authority to record witness statements.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

342. HM Customs has the responsibility for border control at both the air and sea ports of Montserrat. This responsibility is derived under the Customs (Control and Management) Act (CCMA) 1994 (Cap17.04). The Customs Service falls under the Ministry of Finance and is responsible for the collection of revenue at the ports. The Comptroller of Customs is responsible for the management of administration under the Act.
343. The CCMA was amended through the Customs (Control and Management) (Amendment) Act No. 3 of 2010 (CCMA 2010). This amendment was brought into force on April 15th, 2010, makes provisions for the necessary declaration of monetary instruments over a prescribed threshold and provide penalties for non-observance of these provisions. Further, the POCA 2010 gives additional powers to customs officers and police officer in relation to the seizing and detention of cash. Section 26 of the CCMA was amended and a new section, 26A, was inserted. This new section provides for a declaration system where persons entering Montserrat with currency or monetary instruments over US\$10,000 or the equivalent, would be required to declare that fact on a prescribed form. A specimen of the declaration form is particularised at the fifth schedule of the CCMA 2010.
344. The Customs control at the border does confrontational interviews, random checks and risk profiling. There was one incident where a person was detained with cash and handed over to the police and was subsequently released.

345. HM Customs is a competent authority for the purpose of SR.IX. Customs are empowered to make enquiries of persons disembarking into Montserrat. This is done on both a targeted basis, based on intelligence or suspicion and on a random basis.
346. Section 13 of the Al-Qa'ida and Taliban (United Nations Measures) OTs Order 2002 was amended by a subsequent Order which gives the customs officer the authority to search persons leaving Montserrat and enquire if they are in possession of restricted goods which is destined for a listed person. A listed person under this Act relates to Usama bin Laden, any person designated by the UN Security Council Resolution 1390 dated January 16, 2002 and any group or person associated with the previously mentioned.
347. The Examiners on entry into Montserrat observed that only an immigration card was required by the Authorities. There was no customs declaration form to be completed and interviews were conducted on a random as well as profiling basis.
348. Section 86(2) of the CCMA provides that "Any person entering or leaving Montserrat shall answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him, and shall, if required by the proper officer produce that baggage and any such thing for examination at such place as the Comptroller may direct".
349. Section 102 of the CCMA provides the power to require information and the production of evidence within five years of the importation, exportation or carriage coastwise of any goods.
350. The 2010 POCA, at section 99 to 101 deals with cash seizures. Under this Act Customs is empowered in relation to Currency or Bearer negotiable instruments.
351. A Police Officer (Customs Officer included) may seize cash which is suspected of being recoverable cash or part of the cash is recoverable cash (recoverable cash is defined under section 99 of the 2010 POCA cash which is recoverable property or intended for use in the commission of an unlawful conduct.
352. An Officer who has seized cash under section 101(1) of, the POCA and continues to have reasonable grounds for his or her suspicion may detain the said cash pursuant to section 102 initially for a period of 72 hours. This period may be extended by an order made by the Magistrate Court for no more than three (3) months and no more than two (2) years if any other order under section 102(2)(a) & (b), of the POCA applies.
353. Pursuant to section 86 & 113 (2) of the CCMA 2010 and regulations thereto, if a false declaration has been made, the currency or other negotiable instruments may be seized and forfeited.
354. The examiners were informed that presently no records of cash seizures and personal details of the carrier are being stored or transmitted to competent authorities. However, if a matter arises the person would be handed over to the RMPF for investigation. The POCA provides for the bearer of cash/negotiable instruments, along with travel documents and any other material evidence to be detained for further action as necessary including but not limited to liaising with other Competent Authorities. Section 4(2) of the CCMA 2010 provides for Customs to submit details of declaration of US\$10,000 and above in cash or bearer negotiable instruments to the FSC.

355. The Examiners were informed that the members of the RA hold monthly meetings to which the Comptroller of Customs is invited and attends. Discussions are held on ML and TF related matters in furtherance of better cooperation and collaboration between the units at the operational level. Discussions on specific cases where a multi-agency approach is desirable as well as other matters are dealt with.
356. The Examiners were informed that if there is a seizure as it relates to cross border cash and bearer negotiable instrument, the matter would be handed over to the RMPF for investigation. Customs stated that there was one such incident of cash seized and the person handed over to the RMPF but the person was subsequently released and the money returned. No statistical information was provided.
357. HM Customs Montserrat has a wide variety of ways and means by which Customs information can be shared or exchanged with other Customs Authorities or with foreign Competent Authorities. The Customs department is an active member of the following organisations: Caribbean Customs Law Enforcement Council and the Regional Clearance System of which there are signed MOUs in existence. Additionally, there is a MOU between members of the World Customs Organisation/CCLEC which allows for the sharing information with their international counterparts. Information is shared on the movement of persons convicted of drug transportation and the movement of vessels through CCLEC.
358. Section 113(1) of the CCMA states, if any person (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer, being a document or statement produced or made for any purpose of any assigned matter, which is untrue in a material particular, he shall be guilty of an offence and liable to a fine of \$5,000, and any goods in relation to which the document or statement was made shall be liable to forfeiture.
359. Under section 113(2) of the CCMA, if any person knowingly or recklessly (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer, being a document or statement produced or made for any purpose of an assigned matter, which is untrue in a material particular, he shall be guilty of an offence and liable to a fine of \$10,000, or to imprisonment for two years, or to both, and may be arrested, and any goods in relation to which the document or statement was made shall be liable to forfeiture.
360. The sanctions listed in sections 113 (1) and 113(2) of the CCMA apply to a person who makes an untrue declaration. The CCMA 2010 enables the application of sanctions to persons carrying out physical cross-border transportation of currency or bearer negotiable instruments in the above circumstances.
361. Criteria 17.1 to 17.4 (in R.17) will apply to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX just as they apply to any other offence related to terrorist financing or money laundering.

362. Sections 118 to 120 of the POCA provides that any person convicted of a ML offence is liable on summary conviction to a fine of \$200,000 or to imprisonment for a term of five (5) years or to both imprisonment and a fine. On conviction on indictment, either a person is liable to a fine without limit or to imprisonment for a term not exceeding 14 years or to both imprisonment and a fine. Civil forfeiture procedures have been introduced in the POCA.
363. The UK Orders in Council that criminalise TF provide for imprisonment for maximum terms that vary from 7 years (2001 Terrorism Order, section 11; Al-Qa'ida Order, section 19) to 14 years (2002 Anti-Terrorism Order, section 14) and unlimited fines (all three(3) Orders).
364. Generally, the provisions regarding confiscation, freezing and seizing of proceeds of crime or funds for terrorist activities would also be applicable to the cross-border transportation of currency and negotiable instruments. There are freezing and confiscation provisions relating to the proceeds of crime under POCA (Cap. 4.04). POCA 2010 under Part 2 (confiscation), Part 3 (civil forfeiture and cash seizure) and Part 6 (money laundering) competent authorities (police and customs) would be able to implement the provisions of the Act in accordance with this recommendation. Additionally, similar provisions under the Anti-Terrorism (Financial And Other Measures)(Overseas Territories) Order 2002, relating to terrorist financing in section 2.4 are relevant.
365. There are legislation or measure that allows for the initial application to freeze or seize cross border currency and bearer negotiable instruments, the Anti-Terrorism (Financial And Other Measures)(Overseas Territories) Order 2002, Schedule Part 2 and Part 3, Section 2, 3 and 6 gives the authority to an authorized (Police, Customs and Immigration) officer to seize any cash if he has reasonable grounds for suspecting that the cash is terrorist cash. The authorized officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part and also to detain the cash for a specified period to continue investigation and to forfeit in accordance with the provisions of the Order.
366. Cross border transportation of currency or bearer negotiable instruments relating to terrorist financing is an offence under Section 7 of the Anti-Terrorism (Financial And Other Measures)(Overseas Territories) Order 2002 which creates the offence of use or possession of money or other property for terrorism and/or Section 10 of the Order (money laundering in any way). Both would be predicate offences for the purposes of POCA, under any such powers under specific terrorist legislation.
367. Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 provides laws and such as procedures for immediate freezing and without prior notice of funds or assets in accordance with S/RES/1267(1999) and S/RES/1373(2001).
368. HM Customs Montserrat can liaise with its foreign counterparts through CCLEC so as to determine the identity of the sender; where the goods were destined to or originated and the nature and purpose of the transaction. In addition section 127(2) (c) and (d) of the POCA gives the Reporting Authority (RA), authority to communicate with other foreign competent authorities. According to the Montserrat Authorities, as a matter of policy, the discovery of an unusual cross-border movement of gold or precious metals or precious stones would result in HM Customs taking any of the following actions:

- notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated;
 - notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items to which they are destined;
 - co-operate with a view toward establishing the source, destination, and purpose of the movement of such items;
369. Customs however acknowledges that there is lack in the necessary skills and expertise to identify precious stones and metals and other valuable items and as such acknowledges the potential of such items may be transported through the border. Customs requires training in this area.
370. The Examiners were informed that there were no reports of unusual cross-border movement of gold, precious metals or precious stones discovered by the Customs department, thus no information of shared data could be provided.
371. Notification will be made to other countries that are signatories to the CCLEC which there is an established MOU. Countries that have membership in the World Customs Organization will receive similar notification.
372. HM Custom Montserrat is also a part of the Caribbean Customs Joint Intelligence Unit which operates out of St. Lucia.

Additional elements

373. Montserrat has X- Ray machines for inbound and outbound traffic at the airport. The Examiners were informed that Customs Officers are trained in behaviour analysis. However, statistical information on training provided by Customs does not indicate any training in this area. Montserrat has considered implementing the measures set out in the Best Practices Paper for SR.IX as evidenced by the minutes of the meeting of the Reporting Authority (RA) which was held on October 10, 2007.
374. The Examiners were informed that presently Customs would notify the RMPF of any incident of cross border transportation of currency if some suspicion is detected but does not have a system of capturing/recording all cross border transportation of currency. Thus, no information is available to competent authorities for AML/CFT purposes.
375. Customs has access to the secure and computerised Overseas Territory Regional Crime Intelligence System (OTRCIS) which deals with the movement of persons and access to this system is given to the RA.

Recommendation 30 (Resources)

376. The Customs Department falls under the Ministry of Finance. The Comptroller is, subject to the general control of the Minister, being charged with the duty of collecting and accounting for and otherwise managing, the revenue of customs. The Comptroller is responsible for the administration of the Customs (Management and Control) Act and for any other enactment relating to any assigned matter.

377. The Customs Department is composed of:
- Comptroller (1)
 - Deputy Comptrollers (1)
 - Senior Officers (4) (Res. for Enforcement, Transit Shed and Long-room)
 - Customs Officers (14)
 - Customs Guard (1)
 - Administrative Staff (Secretary, Clericals and Office Attendant)
378. The Customs Department has responsibility for two ports of entry (one airport, one passenger and cargo sea port) and two sections (Entry processing, Post Office).
379. The Customs Department has a good working relationship with other law enforcement authorities such as the RA and the Police (Immigration) and works jointly with the latter on investigations. On a monthly basis members of the RA meet to discuss ML, TF and operational matters of the members in carrying out joint operations.
380. Customs has a preventative unit working actively to detect people, drugs and goods smuggling. The Unit is driven by intelligence and information from local and foreign competent agencies. Customs is a member of CCLEC and also has access to the OTRCIS information system.
381. Funding for the Customs Department is provided by the Government of Montserrat in the annual budget. As the result of recent economic difficulties and budgetary restraints, there are sometimes limitations in acquiring the technical and other resources at times. No specific allocation was made for training officers in AML/CFT. However, general budgetary allocations for training are made in the annual budget for Customs.
382. The operational independence and autonomy to ensure freedom from undue influence and interference can be found throughout the Customs Act, which provides the Comptroller with broad discretionary powers. All Customs Officers are subject to the General Orders.
383. Under Part 10 of the CCMA, all officers are subject to sanctions if they have committed any of the offences listed in section 104 and 105 (1). These sections provides that when any customs officer has been found taking a bribe and or collusion and is found guilty that that officer will be liable to a fine of \$10,000 ECD or to imprisonment for a term of two (2) years, or to both and may be arrested.
384. All customs officers have to abide by the secrecy obligation as it pertains to their duty. Under section 6 of the CCMA all officers who are appointed and employed in carrying out any of the requirement of, or any duty imposed or any power granted by, any customs enactment and where such an officer discloses to an unauthorised person any information, document or confidential instruction which he gained possession of during the normal course of his duty or where he permits anyone to have access to any records in his possession or custody is guilty of an offence and is liable to a fine of \$5,000 ECD or to imprisonment for a term of twelve (12) months, or to both and may be arrested.
385. Also all public officers are subject to the sanctions set out by the Penal Code dealing with Offences against the administration of lawful authority:

- Section 78 deals with Official corruption
- Section 79 deals with extortion by Public officers
- Section 80 deals with Public Officers receiving property to show favour
- Section 81 deals with Officers charged with special duties
- Section 82 deals with False claims by officials
- Section 83 deals with Abuse of Office

386. Therefore all public servants (including HM Custom Officers) are required to maintain a high level of professionalism, integrity and are expected to exercise a high level of confidentiality at all times.
387. The new Public Service Code of Ethics will place even greater responsibility on public officials in relation to standards and integrity.
388. Within the last four years only one training course was attended by officers of Customs. In order for Customs to play the critical role in Montserrat combating of ML and TF crimes officers of Customs must be properly trained and on an ongoing basis.
389. HM Customs require that its officers are acquainted with emerging trends and typologies in Money Laundering, Financing of Terrorism, Drug Trafficking and customs related offences. The Examiners were informed that on every Wednesday in-house training is provided to officers. However, no further information could be ascertained to support this.

Statistics (Recommendation 32)

390. No information on cash seized, the total number of cross-border disclosures or the amount of currency involved was made available to the Examiners.

2.7.2 Recommendations and Comments

391. Customs should implement the declaration system to be used in conjunction with the disclosure system for incoming and outgoing passengers. The threshold should not be higher than EUR/US15000.00.
392. Customs officials should be trained in behaviour analysis for use in passenger screening and smuggling techniques of potential currency carriers.
393. Authorities should consider the making of false disclosures/declarations to Customs authorities a strict liability offence.
394. Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of declaration/disclosures and seizures. These statistics should be readily available for use by Customs, LEAs and other government departments.
395. The Authorities should consider providing training in counterfeit currency identification to all Customs, especially those working at the ports. The identification of previous metals and stones as such should also be conducted as a part of such training.

396. There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing.
397. Consideration should be given to reporting all currency interdictions where untrue disclosures/declarations are made to the RA, whether or not administrative or criminal proceedings are being considered.
398. Customs should consider reporting all declaration/disclosures to the RA that is equal to and above the declared sum of US\$15,000.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"> • There is no disclosure/declaration system in place with the required threshold. • Domestic cooperation between Customs and other agencies is not adequately structured. • Customs officers not sufficiently trained in AML/CFT and other related customs techniques. • Customs' participation in AML/CFT is not sufficient. • Unable to assess effective of disclosure system due to insufficient statistics.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

399. At the time of completing the onsite the AML/CFT framework for regulating the financial sectors in Montserrat were set out in the Proceeds of Crime Act Cap. 4.04, the Anti-Money Laundering Regulations 2005, the Code of Practice for the Prevention of Money Laundering and Combating Financing of Terrorism – 2008, subject to monitoring and enforcement actions under the provisions in the Financial Services Commission Act, 2008. Steps were taken to revise and upgrade the above mentioned pieces of legislation and in April 2010 Proceeds of Crime Act (“POCA”) 2010, Anti-Money Laundering and Terrorist Financing Regulations (“AML/CFT Regulations”) and Anti-Money Laundering and Terrorist Financing Code, 2010 were brought into force.
400. Montserrat has sought to fulfil its international obligations to meet the FATF 40 Recommendations and 9 Special recommendations by introducing the Proceeds of Crime Act 2010 (“POCA”). This Act consolidates several pieces of primary legislation including the Proceeds of Crime Act, Cap. 4.04, the Drug Trafficking Offences Act (Cap. 4.08) and certain provisions in the Criminal Justice (International Co-operation) Act (Cap. 4.06) relating to criminal conduct so that the law on laundering of the proceeds of drug crimes and the laundering of the proceeds of other crimes are contained in one piece of legislation.
401. The POCA is supported by the Anti-Money Laundering and Terrorist Financing Regulations, 2010 (“the AML/CFT Regulations”) and the Anti-Money Laundering and Terrorist Financing Code (“the Code”) The Proceeds of Crime Act, 2010 is designed to:
- Criminalise money laundering;
 - Provide for the confiscation of the proceeds of criminal conduct;
 - Enable the civil forfeiture of property which represents, or is obtained through unlawful conduct;
 - Provide the Reporting Authority as Montserrat’s Financial Intelligence Unit;
 - Require persons in the financial sector to report knowledge or suspicions concerning money laundering to the Reporting Authority; Confiscation Orders in relation to persons who benefit from criminal conduct, restraint orders to prohibit dealing with property, money laundering or person’s benefit from criminal conduct and co-operation with overseas authorities;
 - Introduce new provisions allowing for the forfeiture of property which is, or represents, property obtained through unlawful conduct; and
 - Establish a framework for the prevention and detection of money laundering and terrorist financing by providing for the issuance of the AML/CFT Regulations and Code.
402. Section 175 of the Act makes provision for the Governor to make regulations with respect to:
- the prevention of the use of the financial system for money laundering and terrorist financing;

- prescribing a person as the supervisory authority, which is the Financial Services Commission for non-financial service providers;
 - providing for the registration of service providers; and inter alia other matters relating to service providers as the Act may require, including provisions respecting administrative penalties on service providers who contravene the Act, regulations or any applicable Code.
 - the designation of a person or body as the supervisory body for non-profit organisations (the NPO Supervisor), the functions, duties and powers of the NPO Supervisor including with respect to supervision, the gathering of information and the disclosure of information to the Reporting Authority and law enforcement authorities in Montserrat.
403. It should be noted that some non-profit organisations are required to be registered under the Friendly Societies Act and are therefore registered under this Act by the Registrar of the High Court.

The Code as Other Enforceable Means:

404. Guidelines have been provided by the FATF to guide examiners in the determination of *Other Enforceable Means (OEMs)*. Such guidance sets out three basic criteria that must be ascertained; guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or SRO. In both cases, the sanctions for non compliance should be effective, proportionate and dissuasive. In addition, the circumstances surrounding the implementation of the sanctions and whether there is evidence of the application of effective and dissuasive sanctions should be considered.
405. The AML/CFT Regulations 2010 includes provisions for the reporting of information concerning terrorist financing and set out more succinctly the obligations of those service providers subject to requirements in the POCA and the Regulations.
406. The primary purpose of the 2010 Code is to set out detailed requirements that must be met by service providers and assist service providers to design and implement appropriate systems and controls for the prevention of money laundering and terrorist financing.
407. The Code has been issued by the Commission under section 176 (1) of the POCA. The Code has effect as law and therefore has the same legal force as the provisions of the Regulations and is enforceable by the Financial Services Commission (FSC). Guidelines are also issued by the FSC in accordance with section 176 (8) of the POCA and although provided with the Code are not part of the Code and therefore not mandatory and enforceable.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

408. The Anti-Money Laundering and Terrorist Financing Regulations 2010 and the accompanying Anti-Money Laundering and Terrorist Financing Code, 2010 provides for the adoption by financial institutions of a risk-sensitive approach to prevent and detect money laundering and terrorist financing. In addition, recognizing the benefits of a risk-sensitive approach to the

prevention and detection of money laundering and terrorist financing, Montserrat's AML/CFT regime therefore takes a risk-sensitive approach.

409. Section 12 (2) of the AML/CFT Regulations 2010 provides that a service provider shall establish, maintain and implement appropriate risk-sensitive policies and controls to prevent and detect money laundering and terrorist financing.
410. It was noted, that the competent authority in Montserrat (Financial Services Commission) reportedly conducted a risk assessment of the financial system in Montserrat in relation to ML and FT. Additionally, there was evidence that some of the financial institutions had systems in place to carry out risk assessment of the business relationships with their customers in order to seek to prevent and detect money laundering and terrorist financing. On an overall basis, the level of application of a risk-sensitive approach to assess the financial system as recommended by the Basel Committee was limited.
411. The AML/CFT Regulations 2010 established the preventive measures that all financial institutions must implement inclusive of customer due diligence measures, reporting of disclosures, record-keeping procedures, internal controls, screening of employees and risk assessment and management. The AML/CFT Code 2010 also expands on the provisions of the Regulations.
412. The service providers which are subjected to Montserrat's AML/CFT provisions are:
1. a person who, by way of business, provides any of the following services to third parties, when providing such services:
 - regulated entities
 - acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;
 - providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as, or arranging for another person to act as, a nominee shareholder for another person;
 - arranging for another person to act as a nominee shareholder for another person;
 2. a person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
 - lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;
 - financial leasing;
 - issuing and managing means of payment, including credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and electronic money;

- financial guarantees or commitments; *Anti-money Laundering and Terrorist Financing Regulations 2010*
 - participation in securities issues and the provision of financial services related to such issues;
 - providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings; (vii) safekeeping and administration of cash;
 - investing administering or managing funds or money;
 - money broking;
3. a person who, as a business, trades for his own account or for the account of customers in—
- money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - foreign exchange;
 - exchange, interest rate and index instruments;
 - financial futures and options;
 - commodities futures; or
 - shares and other transferable securities;
4. a person who, by way of business—
- provides accountancy or audit services;
 - acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;
5. an independent legal professional;
6. a high value dealer.
7. The following are service providers, when acting in the course of a business, whether carried on in, from within or outside Montserrat—
- a mutual fund registered or recognised, or required to be registered or recognised, under the Mutual Funds Act (Cap. 11.17) when marketing or otherwise offering its shares;
 - a person who, although not licensed under the Mutual Funds Act (Cap. 11.17), acts as the administrator or manager of a public fund registered, or required to be registered, or a private or professional fund recognised, or required to be recognised, under the Mutual Funds Act.
8. A company that carries on insurance business is a service provider only where it carries on—
- (a) long-term insurance business; or

- (b) any form of life insurance business or investment related insurance business that may be classified as general insurance business.

9. A person who carries on business as an insurance intermediary (other than as an insurance adjuster) is a service provider only where the person acts with respect to any type of business referred to in subparagraph 8 above.

413. In ensuring that the relevant businesses outlined above implement the provisions in the POCA 2010 the AML/CFT Regulations 2010 imposes obligations on service providers with respect to measures to be taken by them to prevent money laundering and terrorist financing.
414. In general, breaches of the obligations in the AML/CFT Regulations 2010 constitute an offence for which there is a penalty. The Regulations are supplemented by the AML/CFT Code 2010 which provides detailed procedures for the prevention of money laundering and terrorist financing which must be instituted and also guidance in respect to how the requirements should be implemented.
415. Since the new legislation (AML/CFT regulations and Code 2010) were enacted subsequent to the completion of the on-site evaluation, the Examiners were unable to determine the level of implementation or its effectiveness.

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

3.2.1 Description and Analysis

Recommendation 5

Legal Framework

416. Regulations 11 (1) of the AML/FT Regulations, 2010 prohibits a service provider from setting up or maintaining an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.
417. In addition, Regulation 5 (1) (a) stipulates that a service provider shall apply customer due diligence measures before the service provider establishes a business relationship or carries out an occasional transaction. This provision ensures that whenever an account is opened or a significant one-off transaction is undertaken the prospective customer is identified.
418. The Examination Team noted that all financial institutions reported that they did not maintain anonymous accounts or accounts in fictitious names. In addition, there was evidence that in some cases financial institutions such as banks had policies in place to prevent the establishment of anonymous or fictitious accounts while there was no record of such accounts being found in onsite examination reports from the FSC.

When CDD is required

419. Regulation 5 (1) of AML/CFT Regulations 2010 requires service providers to ensure that their customers are subject to a range of customer due diligence (CDD) measures including specifically, before the service provider establishes a business relationship or carries out an occasional transaction.

420. An occasional transaction is defined as a transaction carried out otherwise than part of a business relationship, that is carried out as a single transaction, or two or more linked transactions, in any amount, or in the case of linked transactions a total amount, exceeding EC 2,500 (US equivalent of \$1,000) for money service businesses and \$37,500 (US\$ Equivalent of \$14,000) for all other transactions.
421. Further, Regulation 5 (1) also mandates that CDD must be applied where the service provider suspects money laundering or terrorist financing or doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring. CDD must also be applied at other appropriate times to existing customers as determined on a risk-sensitive basis.
422. The Examination Team noted that not all financial institutions had systems in place to undertake customer due diligence checks covering all of the circumstances stated above. However, all financial institutions reported undertaking customer due diligence checks in the instances stated above either directly or indirectly.

Required CDD measures

423. According to the dictionary of the AML/TFR, Customer Due Diligence measures in Montserrat are measures for customer identification; the determination of whether a customer is acting for a third party and if so for the identification of that third party; the verification of identity of the customer and any third party on whose behalf that customer is acting; the taking of reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party to the satisfaction of the service provider, in that such provider knows who is the beneficial owner including in the case of legal persons, partnership, trust or similar arrangements; taking reasonable measures to understand the ownership and control structure of the legal person, partnership, trust or similar arrangement.
424. Montserrat's required CDD measures are also measures for obtaining information on the purpose and intended nature of the business relationship or occasional transaction.
425. CDD measures also include, where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person.
426. Where the service provider carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the service provider and verifying the identity of each beneficiary are also included in Montserrat's CDD measures.
427. Where a service provider determines that an individual whose identity it is required to verify presents a low risk, the service provider must, using evidence from at least one independent source, verify the individual's full legal name, any former names and any other names used by that individual and the principal residential address.
428. Where a service provider determines that an individual whose identity it is required to verify presents a higher level of risk, the service provider must do so using evidence from at least two independent sources.

429. Section 14 of the AML/TFC provides
- (a) The full name of, any former names of and any other names used by the individual
 - (b) The gender of the individual
 - (c) The principal residential address of the individual and
 - (d) The date of birth of the individual
430. The additional identification information required to be obtained with respect to a higher risk individual must include at least two of the following:
- (a) The individual's place of birth
 - (b) The individual's nationality and
 - (c) An official government issued identity number or other government identifier.
431. The Commission considers a bank statement or a utility bill, correspondence from a central or local government department or agency, a letter of introduction confirming residential address from a regulated person or a foreign regulated person or a personal visit to the individual's residential address acceptable methods of verifying an individual's residential address.
432. Where the general methods of verifying the identity of an individual are not practical and the individual concerns presents a low risk, the individual's identity may be verified using a driver's licence, a birth certificate in conjunction with a bank statement or utility bill, documentation issued by a government source or a letter of introduction from a regulated person.
433. All financial institutions reported implementation of compliance measures with this requirement.
434. Section 17 of the Code 2010 requires that a service provider must verify the identity of a legal entity where required by the AML/TFR and take reasonable measures to verify the identity of the beneficial owners of the legal entity.
435. Where a service provider determines that a legal entity presents a low risk, the service provider must, using evidence from at least one independent source verify the name of the legal entity, the official identifying number, the date and country of its incorporation, registration or formation. In the above circumstances service providers are also required to verify the address of the registered office, or head office, of the legal entity, as applicable; and the address of the principal place of business of the legal entity, if different from its registered office or head office.
436. Section 16 of the AML/CFT Code provides the following methods for verifying the identity of a legal entity:
- (a) The full name of the legal entity and any trading names that it has
 - (b) The date of incorporation, registration or formation of the legal entity
 - (c) Any official identifying number
 - (d) The registered office or, if it does not have a registered office, the address of the head office of the legal entity
 - (e) The mailing address of the legal entity
 - (f) The name and address of the registered agent of the legal entity, if any
 - (g) The principal place of business of the entity
 - (h) The names of the directors of the legal entity

- (i) The identification information on those directors who have authority to give instructions to the service provider concerning the business relationship or occasional transaction
 - (j) The identification information on individuals who are the ultimate holders of 20% or more of the legal entity.
437. In addition Sections 18 of the Code provides for the verification of directors and beneficial owners of a legal entity while section 19 provides for the verification of information relative to trusts and trustees.
438. The AML/TFR provides that:
- i. In deciding who the customer is when it is not an individual, the objective of a service provider must be to know who has control over the funds which form or otherwise relate to the relationship, and/or form the controlling mind and/or management of any legal entity involved in the funds. The subsequent judgment as to whose identity to verify will be made following a risk-based approach, and will take account of the number of individuals, the nature and distribution of their interests in the entity and the nature and extent of any business, contractual or family relationship between them.
 - ii. Certain information about the legal entity comprising the non-individual customer should be obtained as a standard requirement. Thereafter, on the basis of the money laundering/terrorist financing risk assessed through the customer risk assessment, a service provider should decide the extent to which the identity of the entity and of specific individuals should be verified, using reliable, independent source documents, data or information. The service provider should also decide what additional information in respect of the legal entity and, potentially, some of the individuals behind it should be obtained.
 - iii. Whilst information on an entity's website may be useful, service providers will understand that this information should be treated with caution as it has not been independently verified before being made publicly available on the Internet.
 - iv. (Where the person seeking to establish a business relationship or carry out an occasional transaction is a legal entity, service provider should ensure that it fully understands the legal form, structure and ownership of the legal entity and should obtain sufficient additional information on the nature of the entity's business, and the reasons for seeking the product or service.
439. Section 19 (1) of the Code specifies that where a service provider is required by the AML/CFT Regulations or the Code to identify a trust, it shall
- a) obtain the following identification information:
 - i. the name of the trust;
 - ii. the date of the establishment of the trust;
 - iii. any official identifying number;
 - iv. identification information on each trustee of the trust;
 - v. the mailing address of the trustees;
 - vi. identification information on each settlor of the trust; and

- vii. identification information on each protector or enforcer of the trust; and
 - b) obtain confirmation from the trustees that that they have provided all the information.
- 440. In carrying out customer due diligence measures the of the AML/CFT Regulations 2010 require that the information that a service provider is required to obtain include the purpose and intended nature of the business relationship or occasional transaction.
- 441. To meet this criterion section 11 (2) of the AML/CFT Code 2010 requires that a service provider must –
 - (a) obtain customer due diligence information on every customer, third party and beneficial owner comprising—
 - i. identification information in accordance with section 14, 16, 19 or 21 of this Code, as the case may be; and
 - ii. relationship information in accordance with section 12 of this Code;
- 442. In addition, section 12 of the Code states that relationship information that a service provider must obtain includes information concerning –
 - (a) the purpose and intended nature of the business relationship;
 - (b) the type, volume and value of the expected activity;
 - (c) the source of funds and, where the customer risk assessment indicates that the customer, business relationship or occasional transaction presents a high risk, the source of wealth of the customer, third party or beneficial owner;
- 443. Regulation 5 (3) of the AML/TFR requires that a service provider shall conduct ongoing monitoring of a business relationship.
- 444. Section 8 of the Dictionary in Schedule (1) of the AMLR defines “ongoing due diligence” as including, scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service providers knowledge of the customer and his business and risk profile.
- 445. Section 8 (b) of Schedule 1 of the AML/CFT Regulations 2010 requires that the service provider keep the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date and relevant by undertaking reviews of existing records.

Risk

- 446. Relative to the conducting of enhanced due diligence for higher risk categories of customers Regulation 7 of the AML/TFR requires that a service provider shall on a risk-sensitive basis carry out enhanced customer due diligence and ongoing monitoring and these shall apply: –
 - (a) where the customer has not been physically present for identification purposes;
 - (b) where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations;

- (c) where the service provider is a bank which holds a banking licence granted under the Banking Act (Cap. 11.03) that has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Montserrat;
 - (d) where the service provider has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
 - (e) where any of the following is a politically exposed person—
 - (i) a beneficial owner of the customer;
 - (ii) a third party for whom a customer is acting;
 - (iii) a beneficial owner of a third party described in subparagraph (ii);
 - (iv) a person acting, or purporting to act, on behalf of the customer.
 - (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.
447. It was noted that the policies of the larger financial institutions made provisions for enhanced due diligence of customers business relationships. However, for the smaller financial institutions it was difficult to ascertain the extent of their compliance especially in cases where the policies were limited in content or were in draft form.
448. It is noted that the Commission expects service providers to apply enhanced CDD and undertake ongoing monitoring where the customer transaction or business relationship involve private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholder or shares in bearer form. The language used suggests that this is a discretionary measure.
449. Regulation 9 of the AML/TFR makes an exception to the rules of due diligence requirement and a service provider is not required to apply customer due diligence measures before establishing a business relationship or carrying out an occasional transaction where he has reasonable grounds for believing that the customer is:
- a regulated person
 - a foreign regulated person;
 - a public authority in Montserrat; or
 - a body corporate, the securities of which are listed on a recognised exchange; or
 - in the case of a life insurance business, the product is a life insurance contract where the annual premium is no more than \$2,000 or where a single premium of no more than \$5,000 is paid;
- unless any person handling the transaction on behalf of the regulated person knows or suspects that the transaction involves money laundering.
450. The AML/TFR provides for financial institutions to permit simplified or reduced measures to customers resident in another country only in cases where the customer is a foreign regulated entity and based in selected countries listed by Montserrat in appendix B of the Code of Practice 2008.

451. Therefore financial institutions can only rely on foreign regulated persons as an introducer or intermediary if the foreign regulated person meets the criterion as defined in the Regulations set out above.
452. Regulation 9 (3) (a) of the AML/TFR prohibits the use of simplified due diligence measures by financial institutions where there is knowledge or suspicion of money laundering or terrorist financing.
453. Regulations 5 (1) (c) of the AML/TFR provides that financial institutions shall apply customer due diligence measures at appropriate times to existing customers as determined on a risk sensitive basis.

Timing of verification

454. Regulation 5 (1) (a) of the AML/TFR stipulates that a service provider shall apply customer due diligence measures before the service provider establishes a business relationship or carries out an occasional transaction.
455. Regulation (5) of the AML/TFR makes provision for a service provider to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relation if –
- it is necessary not to interrupt the normal conduct of business;
 - there is little risk of money laundering or terrorist financing occurring as a result; and
 - verification of identity is completed as soon as practicable after the contact with the customer is first established.

456. Regulation 5 (6) of the AML/TFR permits a bank to verify the identity of a bank account holder after the opening of the bank account provided that there are adequate safeguards in place to ensure that, before verification has been completed that the account is not closed and transactions are not carried out by or on behalf of the account holder, including any payment from the account to the account holder.
457. These are the only exceptions. The AML/TFR requires that in all other cases, customer due diligence measures must be applied before the establishment of a business relationship or the carrying out of an occasional transaction.

Failure to satisfactorily complete CDD

458. Regulation 6(1) of the AML/TFR requires that if a service provider is unable to apply customer due diligence measures before the establishment of a business relationship or before the carrying out of an occasional transaction, the service provider shall not establish the business relationship or carry out the occasional transaction.
459. Regulation 6 (4) of the AML/TFR stipulates that where the service provider is unable to carry out CDD, the service provider shall consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure.

460. Regulation 6(1) (2) of the of the AML/TFR provides that where a service provider is unable to complete the verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship, the service provider shall terminate the business relationship with the customer.

Existing customers

461. As was noted earlier in this section the CDD measures available in Montserrat speak to the application of CDD to existing customers at other appropriate times as determined on a risk-sensitive basis.
462. Section 5 (1) of The AML/TFR provides that a service provider shall apply customer due diligence measures before the service provider establishes a business relationship or carries out an occasional transaction. Service providers are also required to apply CDD at other appropriate times to existing customers as determined on a risk sensitive basis.
463. In addition, Section 7 of the Regulations requires that a service provider shall, on a risk sensitive basis apply enhanced due diligence measures and undertake enhanced ongoing monitoring where a customer has not been physically present for identification purposes, where the service provider has a business relationship with a person connected with a country that does not apply FATF recommendations and where the service provider is a bank which holds a banking licence granted under the Banking Act that has a banking relationship with an institution whose address is outside Montserrat.
464. The Commission's Guidance also provides that events such as the opening of a new account, the purchase of a further product, or meeting with a customer is an opportunity to update customer due diligence information.
465. It should also be noted that Regulation 6 (3) of the AML/TFR provides that if a service provider is unable to undertake ongoing monitoring with respect to a business relationship, the service provider shall terminate the business relationship.

Recommendation 6

466. The AML/CFT dictionary appropriately defines a politically exposed person (PEP). Regulation 12 (2)(a) of the AML/TFR stipulates that a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies and systems and controls relating to customer due diligence measures and ongoing monitoring. At Regulation 12 (3) (c) (i) these policies, systems and controls of regulated entities must provide for determining whether a customer, any third party for whom the customer is acting and any beneficial owner of the customer or third party, is a politically exposed person. It was not clear during the onsite how these measures were actually implemented by the service providers.
467. Rule 13 (2) of the AML/TFC provides that a service provider shall ensure that no business relationship is established with a politically exposed person or where the third party or beneficial owner is a politically exposed person, unless the prior approval of the board or senior management has been obtained.
468. In addition, rule 13 (3) of the AML/TFC requires that where a service provider has established a business relationship with a customer and the customer, a third party or beneficial owner is

subsequently identified as a politically exposed person, the business relationship must not be continued unless the approval of the board or senior management has been obtained.

- 469. According to rule 13 (4) of the AML/TFC provisions of the section 13 (3) applies whether the customer, third party or beneficial owner was a politically exposed person at the time that the business relationship was established, but was only subsequently identified as a politically exposed person or becomes a politically exposed after the establishment of the business relationship. At rule 13 (1) of the AML/TFC however, service providers are required to establish, maintain and implement the appropriate risk management systems relating to PEPs and such systems must take in account that fact that a person may become a PEP subsequent to the establishment of the business relationship with the service provider.
- 470. Rule 13 (5) of the AML/TFC requires a service provider to take reasonable measures to establish the source of wealth and the source of funds of customers, third parties and beneficial owners identified as politically exposed persons.
- 471. Regulation 7 (1) (d) of the AML/TFR specifies that a service provider shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced monitoring where the service provider has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person.
- 472. It was noted that while all service providers were aware of the definition of PEPs, it was evident that only some of these entities had adequate systems in place to identify such persons for the application of the requisite enhanced due diligence.

Additional elements

- 473. The requirements for this recommendation are not extended to domestic PEPs. In the Dictionary to Schedule (1) of the AML/TFR a politically exposed person has been defined under paragraph 9 as an individual person entrusted with a prominent public function by a country other than Montserrat.
- 474. Montserrat has not ratified the U.N. Convention against Corruption as its constitution does not provide for it to be a party to any treaty, although the above provisions under section 78 of the Penal Codes provide for the offence of corruption by public officials. In this matter Montserrat has made a request to the United Kingdom that it extends the Convention to Montserrat.

Recommendation 7

- 475. The measures that Montserrat has employed to ensure that its financial institutions (service providers) comply with the requirements of Recommendation 7 are detailed at rule 42 of the AML/TFC. These requirements are comprehensive and fall in line with the FATF structure for correspondence banking.
- 476. Whilst the requirements are referred to as 'Restrictions on correspondence banking', they do in fact set out measures which include the need for all licensed banks to apply CDD measures on their respondent banks on a risk-based approach taken into account in particular the respondent bank's customer base, including its geographic location, its business, including the nature of services provided by the respondent bank to its customers, whether or not relationships are conducted by the respondent on a non-face to face basis and the extent to which the respondent bank relies on third parties to identify and hold evidence of identity on, or to conduct other due

diligence on, its customers and to determine from publicly available sources the reputation of the respondent bank and the quality of its supervision.

- 477. Rule 42 (c) (v) of the AML/TFC mandates that licensed banks must assess the respondent bank's anti-money laundering and terrorist financing systems and controls to ensure that they are consistent with the requirements of the FATF Recommendations.
- 478. The requirement that senior management approval be obtained before establishing new correspondent banking relationships is found at Rule 42 (c) (vi) of the AML/TFC. Section 42 (c) (vii) stipulates the burden which ensures that the respective anti-money laundering and counter terrorist financing responsibilities of each party to the correspondent relationship are understood and properly documented.
- 479. It should be noted however that the above requirements on correspondence banking apply only to licensed banks and do not include similar banking arrangements, as envisaged by the FATF structure. The Examiners were informed that licensed banks in Montserrat do not generally offer payable through account facilities neither are there currently any correspondent relationship. This would suggest that the ML/TF risks associated with cross-border correspondence relationships is minimal.
- 480. The Examination Team found that although most financial institutions in Montserrat demonstrated little knowledge of the requirements of this Recommendation, at least one financial institution (bank) contained relevant information to ensure compliance. This policy required special attention to be given to correspondent banking relationship and enhanced due diligence to be carried out on any application to open an account.

Recommendation 8

- 481. Rule 6 (2) of the AML/TFC stipulates that a service provider shall establish, maintain and implement systems and controls and take such other measures as it considers appropriate to guard against the use of technological developments in money laundering or terrorist financing.
- 482. There was evidence of established policies and procedures effect in some financial institutions (commercial banks) to prevent the misuse of technological developments in money laundering and financing of terrorist schemes. It was also noted that these financial institutions had policies to address the handling of non-face to face business relations while all of the other institutions reported that there were no instances of established non-face to face business relations.
- 483. Rule 24 of the AML/TFC provides that where a service provider applies customer due diligence measures to, or carries out ongoing monitoring with respect to an individual who is not physically present, the service provider, in addition to complying with the AML/CFT Regulations AML/TFR and the AML/TFC with respect to customer due diligence measures, shall perform at least one additional check designed to mitigate the risk of identity fraud and apply such additional enhanced customer due diligence measures or undertake enhanced ongoing monitoring as the service provider considers appropriate.
- 484. Guidance notes in the AML/TFC states that the additional checks that can be taken should include:
 - (a) verification of identity using a further method of verification;

- (b) obtaining copies of identification documents certified by a suitable certifier;
- (c) requiring the first payment for the financial services product or service to be drawn on an account in the customer's name at a bank that is a regulated person or a foreign regulated person;
- (d) verifying additional aspects of identity or other customer due diligence information from independent sources;
- (e) telephone contact with the customer on a home or business number which has been verified prior to establishing a relationship, or telephone contact before transactions are permitted, using the call to verify additional aspects of identification information that have previously been provided;
- (f) internet sign-on following verification procedures where the customer uses security codes, tokens, and/or other passwords which have been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address; and
- (g) specific card or account activation procedures.

485. Rule 25 of the AML/TFC provides that a service provider may rely on a document that is certified in the following circumstances:

- (a) the document is certified by an individual who is subject to professional rules of conduct which provide the service provider with a reasonable level of comfort as to the integrity of the certifier;
- (b) the individual certifying the document certifies that—
 - (i) he or she has seen original documentation verifying the person's identity or residential address;
 - (ii) the copy of the document (which he certifies) is a complete and accurate copy of that original; and
 - (iii) where the documentation is to be used to verify identity of an individual and contains a photograph, the photograph contained in the document certified bears a true likeness to the individual requesting certification;
- (c) the certifier has signed and dated the copy document, and provided adequate information so that he may be contacted in the event of a query; and
- (d) in circumstances where the certifier is located in a higher risk jurisdiction, or where the service provider has some doubts as to the veracity of the information or documentation provided by the applicant, the service provider has taken steps to check that the certifier is real.

3.2.2 Recommendations and Comments

Recommendation 5:

486. Effectiveness of legislative provisions cannot be ascertained owing to the recentness of enactment.

487. The competent authority should ensure that all financial institutions develop and implement adequate policies and procedures designed to prevent money laundering and terrorist financing.
488. Regulation and Code should include private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form as situations where enhanced CDD should be applied.

Recommendation 7:

489. All financial institutions should be required to have policies in place to address correspondent banking issues.

Recommendation 8:

490. All financial institutions should be required to develop policies to address the misuse of technological developments in ML/FT

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> • No clear requirement that enhanced CDD be applied to private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. • Effectiveness of legislative provisions cannot be ascertained owing to the recentness of enactment.
R.6	LC	<ul style="list-style-type: none"> • Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.
R.7	LC	<ul style="list-style-type: none"> • Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.
R.8	PC	<ul style="list-style-type: none"> • Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code. • Not all financial institutions were found to have adequate policies in place to address misuse in technological developments in ML/FT

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

491. In Montserrat Regulation 8 (1) of the AML/TFR permits a service provider to rely on an introducer or an intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner if such introducer or intermediary is a regulated person or a foreign regulated person; and the introducer or intermediary consents to being relied on. Additionally, service providers are allowed to apply customer due diligence measures by

means of an outsourcing service provider or agent provided that the service provider remains liable for any failure to apply such measures. Ultimately however, service providers remain liable for any failures, on the part of their introducers or intermediaries, to apply those measures where such a service provider relies on an introducer or intermediary.

492. According to regulation 8 (2) of the AML/TFR, before relying on an introducer or intermediary to apply due diligence measures with respect to a customer or third party or beneficial owner a service provider must obtain adequate assurance in writing that the intermediary or introducer will, without delay provide the information in the record of evidence of identification, to the service provider at the service provider's request.
493. Rule 27 of the AML/TFC establishes the requirements that a service provider must satisfy before relying on third parties and introducers to apply CDD measures. At rule 27 (1) the service provider must satisfy itself that the introducer or intermediary is a regulated person and has procedures in place to undertake CDD measures in accordance with or equivalent to Montserrat's AML/TFR and AML/TFC. The combined effect of the measures stipulated at Regulation 8 of the AML/TFR and Rule 27 (1) of the AML/TFC is that Montserrat has covered the intended obligations pertaining to third parties and introduced business.
494. Additionally, Montserrat's AML/CFT infrastructure does not in any way debar service providers from entering into business relationships with a customer of an introducer who in turn relies on another third party for the completion of the CDD process. The guidance of the FSC has raised the issue of the extent to which the intermediary or introducer itself relies on third parties to identify its customers and to hold evidence of identity or to conduct other due diligence procedures and has advised that service providers take this factor into account when carrying out a risk assessment on reliance on an intermediary or introducer. It was previously noted that the FSC's Guidance was not OEM.
495. There is therefore a higher level of risk presented by this introducer chain which has the effect of weakening the effectiveness of the provisions of Regulation 8 of the AML/TFR and Rule 27 of the of the AML/TFC.

3.3.2 Recommendation and Comments

496. Competent authorities should consider the issuance of a list of jurisdictions that adequately apply the FATF Recommendations for third parties that may operate in foreign countries.
497. Montserrat should consider amending the Regulations or Code AML/TFR of the AML/TFC to include the requirement that service providers should only accept introduced business from introducers or intermediaries who themselves have face to face contact when conducting the CDD measures upon which the service provider relies.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	LC	<ul style="list-style-type: none">• Effectiveness of the Regulations and Code cannot be assessed due to their recent passage.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

498. Section 24 of the FSCA provides that where reasonably required by the FSC for the discharge of its functions under this Act or any other Act, the Commission may, by notice in writing given to a regulated person require him to provide specified information or specified documents. Section 25 of the said Act allows a person who receives such a notice issued by the Commission to apply to the Court to have the notice set aside. On the hearing of the matter, the Court may confirm, set aside or modify the notice issued by the Commission and make any interim or other order that it thinks fit.
499. Section 26 of the FSCA provides that where the person who has received the notice mentioned above gives written notice to the Commission that he intends to apply to the Court to have the notice set aside, the Commission shall not disclose to any other person any other information provided, unless required to do so by the Court. Notwithstanding this, the Commission may disclose the specified information or documentation if it has reasonable grounds to believe that the immediate disclosure of the information is necessary to protect and preserve assets that are in jeopardy or to assist in the prevention of the commission of an offence whether in or out of Montserrat.
500. Section 32 of the Banking Act Cap 11.03 prohibits the disclosure of information, by any person, who has acquired such information in his capacity of as a director, manager, secretary, officer, employee or agent of any financial institution or as its auditor or receiver or official liquidator or as director, officer, employee or agent of the ECCB. The exceptions to this prohibition is where written authorization of the depositor or customer or of his heirs or legal personal representatives is obtained or where information is required for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this the Banking Act or when lawfully required to make disclosure by any Court of competent jurisdiction within Montserrat or under the provisions of any law of Montserrat or agreement among the participating Governments.
501. In addition, section 27 of the FSCA provides that a Magistrate may issue a search warrant if he is satisfied that on information on oath or affirmation on behalf of the Commission that there are reasonable grounds for believing that, among other stated reasons, the person has failed to comply fully with a notice of the Commission within the time period specified in the notice
502. Section 29 of the FSCA requires the Commission to take steps to cooperate with foreign regulatory authorities and other competent authorities in or outside of Montserrat who have functions in relation to the prevention or detection of financial crime. Section 32 of the FSA states that a person commits an offence if without reasonable excuse he fails to comply with a notice issued by the Commission under section 25 of the FSCA as stated above, in purporting to compliance provides information which he knows to be false or misleading in a material effect or recklessly provides information which is false or misleading.
503. The Evaluation Team also noted the following activities which supported the sharing of information between competent authorities locally and internationally:
- Some meetings held between competent authorities locally

- Signed MOUs between Montserrat and several other countries in Central America to facilitate collaboration on AML/CFT measures

504. There are no restrictions on the sharing of information between financial institutions as required by R7 (correspondent banking) and R9 (third parties) while reportedly there was compliance with SR VII.

3.4.2 Recommendations and Comments

505. Where necessary Montserrat should ensure that MOUs are signed with individual countries especially where financial business relationships are conducted to allow for the smooth exchange of information relative to combating ML and FT.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	

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

3.5.1 Description and Analysis

Recommendation 10

506. Regulation 14 (1) of the AML/TFR stipulates that service providers must keep records and such additional records specified in the AML/TFC for a period of five (5) years. The records specified are detailed at Regulation 13 (2) of the AML/TFR and includes evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring; the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring; a record containing details relating to each transaction carried out by the service provider in the course of any business relationship or occasional transaction including sufficient information to enable the reconstruction of individual transactions; all account files; and all business correspondence relating to a business relationship or an occasional transaction.
507. Records relating to copies of evidence of identity obtained pursuant the application of CDD measures are required to be kept for a period of five (5) years beginning on the date the occasional transaction was completed or the business relationship ended. In the case of supporting documents data or information obtained in respect of a business relationship or occasional transaction which is the subject of CDD measures or ongoing monitoring, where such records relate a particular transaction the record must be kept for five (5) years. In the case of all other records, the period of retention is five (5) years.
508. At Regulation 14 (2) of the AML/TFR the FSC or the Reporting Authority may, by written notice, specify a period longer than 5 years for which the above records have to be maintained. Regulation 14 (1) of the AML/TFR stipulates the burden to service providers where the account or business relationship is ongoing or has been terminated.

509. Where a service provider is relied on by another person in accordance with the AML/TFR such service provider is required to keep a copy of the evidence of identity obtained pursuant to the application of CDD measures or ongoing monitoring for a period of five (5) years beginning on the date on which he is relied on in relation to any business relationship or occasional transaction.
510. Relative to transaction records, Regulation 13 (3) of the AML/TFR mandates that such records must include sufficient information to enable the reconstruction of individual transactions, whilst Regulation 13 (1) stipulates that the records kept by service providers shall be kept in a form that enables such records to be made available on a timely basis, when lawfully required, to the FSC or law enforcement authorities in Montserrat.
511. It was noted that service providers were aware of the legal requirement to retain identification and transaction records including customer files and business correspondence and all entities reported that they kept such records in excess of five (5) years.

Special Recommendation VII

512. Montserrat has addressed wire transfers at Part 9 of the AML/TFC which applies to the transfer of funds in any currency which is sent or received by a payment service provider that is established in Montserrat. At rule 41 (1) of the Code, full originator information is defined in line with the FATF requirements to include the name and account number of the payer, together with the payer's address and either the payer's date and place of birth or the customer identification number or national identity number of the payer or, where the payer does not have an account, a unique identifier that allows the transaction to be traced back to that payer.
513. Rule 46 (1) provides exemptions where there is a transfer of funds using a credit card or debit card where there is an agreement with the payment service provider permitting payment for the provisions of goods and services or where a unique identifier allowing the transaction to be traced back to the payer, accompanies the transfer of funds. Rule 47 (1) of the Code provides that the payment service provider of a payer must ensure that every transfer of funds is accompanied by the full originator payer information. This however does not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside Montserrat and once the batch file contains the complete information on the payer and the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.
514. The payment service provider of the payer shall, before transferring any funds, verify the full originator information on the basis of documents, data or information obtained from a reliable and independent source.
515. In the case of a transfer from an account, the payment service provider may deem verification of the full originator information to have taken place if it has complied with the provisions of the AML/CFT Regulations and Code relating to the verification of the identity of the payer in connection with the opening of that account.
516. In instances where the transfer of funds are not made from an account, the full originator information on the payer shall be deemed to have been verified by a payment service provider of the payer if the transfer consists of a transaction of an amount not exceeding \$2,500, the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount exceeding \$2,500 and the payment service provider of the

payer does not suspect that the payer is engaged in money laundering, terrorist financing or other financial crime.

517. Rule 47 (7) of the Code 2010 provides that where the payment service provider of the payer and the payee are situated in Montserrat, a transfer of funds need only be accompanied by the account number of the payee or a unique identifier that allows the transaction to be traced back to the payer, where the payer does not have an account number.
518. The following cases are exempt from the originator information requirements at Section 47 of the AML/TFC: the payer withdraws cash from the payer's own account or there is a debit transfer authorization between two parties permitting payments between them through accounts, provided a unique identifier accompanies the transfer of funds to enable the transaction to be traced back, it is made using truncated cheques, it is a transfer to the Government of, or a public body in, Montserrat for taxes, duties, fines or charges of any kind and if both the payer and the payee are payment service providers acting on their own behalf.
519. According to section 49 (2) of the AML/CFT Code an intermediary and beneficiary financial institution in the payment chain must ensure that any information it receives on the payer that accompanies a transfer of funds must be kept with that transfer.
520. Rule 49 (6) of the Code provides that where an intermediary payment service provider that uses a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds the payment service provider shall keep records of all the information on the payer that it has received for a period of at least five (5) years.
521. According to rule 48(5) of the Code, missing or an incomplete information shall be a factor in the risk-based assessment of a payment service provider of the payee as to whether a transfer of funds or any related transaction is to be reported to the Reporting Authority as a suspicious transaction or activity with respect to money laundering or terrorist financing. At rule 48(2) of the Code, the payment service provider of the payee must put in place effective procedures for the detection of any missing or incomplete full originator information on the payer and where it is discovered that full originator information is missing or incomplete the service provider must either reject the transfer, request for the full originator information on the payer, or take such course of action as the FSC directs.
522. The Examination Team noted, however, that financial institutions in Montserrat reported conducting a low level of business in wire transfers and in cases where that facility existed, there were policies and procedures to deal with the threat of money laundering.
523. The FSCA at section 4 (1) (c) make it a function of the Financial Services Commission to monitor compliance by regulated persons with the Anti-Money Laundering Regulations and such other Acts, regulations, Codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed. Financial institutions are therefore monitored by the Financial Services Commission through on-site visits and in carrying out training in the financial institutions.
524. Section 173 of the POCA makes it an offence if a service provider fails to comply with a directive from the FSC. In such circumstances that service provider is liable to a criminal fine of up to EC\$50,000.

525. Section 35 (1) of the FSCA also endows the FSC with a wide range of enforcement powers applicable for breaches of the relevant legislation.
526. The Commission under the provisions in the FSCA monitors the activities of all service providers through on-site visits. With effect from quarter ending 31 December 2009 all services providers licensed under the Money Services Business Act were required to provide reports on their activities.
527. The requirements in the sections 44 – 48 are applicable to all relevant service providers.
528. Under section 35 (1) of the FSC Act, the Commission may take enforcement action against a financial institution if—
- a) in the opinion of the Commission, the financial institution—
 - i. has contravened or is in contravention of this Act, a regulatory enactment or a Regulatory Code,
 - ii. has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Acts, a provision of an Anti-money Laundering and Terrorist Financing Code or a provision of any other Act, regulations or code relating to money laundering or the financing of terrorism prescribed for the purposes of section 4(1)(c)”,
 - iii. is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or to the interest of any of its customers or creditors,
 - iv. is or is likely to become insolvent,
 - v. has failed to comply with a directive given to it by the Commission,
 - vi. is in breach of any term or condition of its licence,
 - vii. is not a fit and proper person to hold a licence, or
 - viii. has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;
 - b) the financial institution is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
 - c) a receiver has been appointed in respect of the financial services business carried on by the financial institution or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
 - d) in the opinion of the Commission—
 - i. a person having a share or interest in the financial institution, whether equitable or legal, or any director, officer or key employee of the financial institution is not a fit and proper person to have an interest in or be concerned with the management of a financial institution, as the case may be, or
 - ii. the financial institution, or its subsidiary or holding company, has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission .
 - e) the Commission is entitled to take enforcement action under a provision in a regulatory enactment.

529. Under section 35 (2) of the FSCA where the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers—
- (a) revoke or suspend the financial institution’s licence;
 - (b) apply for a protection order;
 - (d) appoint an examiner to conduct an investigation;
 - (e) appoint a qualified person under section 40 of the FSC Act by notice in writing given to a person to whom this section applies, require him to provide the Commission with a report by a person with relevant professional skills on, or on any aspect of, the person’s business and affairs.
 - (f) in the case of a financial institution that is a company incorporated under the Companies Act, apply to the Court for the winding up of the licensee under section 379 of that Act;
 - (g) in the case of a financial institution that is a company incorporated under the International Business Companies Act, apply to the Court for the liquidation and dissolution of the company under section 110 of that Act.
530. The Examiners were not in a position to determine the effectiveness of sanctions given that legislation was only recently enacted.

3.5.2 Recommendations and Comments

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.
SR.VII	LC	<ul style="list-style-type: none"> Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

531. According to Regulation 12 of the AML/TFR a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to complex or unusually large transactions, unusual patterns of transactions which have no apparent economic or visible lawful purpose and any other activity which the service provider regards as particularly likely by its nature to be related to the risk of money laundering or terrorist financing.
532. Regulation 12 (3) mandates that policies, systems and controls referred to above must include policies, systems and controls which provide for, among other things, the identification and

scrutiny of all transactions of the types particularised by this FATF Recommendation. It should be noted that at Regulation 12 (1), scrutiny includes scrutinising the background and purpose of transactions and activities.

533. Rule 37 (1) of the Code requires that a service provider shall keep for a period of five (5) years from the date a business relationship ends, or for five (5) years from the date an occasional transaction was completed, records which include under Rule 37 (1) (d) records concerning reviews of complex transactions, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose. Rule 35 (1) of the AML/TFC, which addresses the manner in which records are to be kept, mandates that a service provider must ensure that records are kept in such a manner that enables the FSC, external auditors and other competent authorities, to assess the effectiveness of the systems and controls which are in place to prevent and detect ML and TF.
534. The Examination Team found that the financial institutions in Montserrat had policy control measures to deal with the handling of complex and unusually large cash transactions. In order to ensure control in the handling of such cash transactions some institutions required customers to complete “Declaration of Source of Funds” and in some cases a “Large Cash Transaction Report” is also completed. If the customer refuses to provide the required information the funds are not accepted. In addition, when staff at these financial institutions detect or identify unusual transactions the details of the transaction must be reported internally to the Money Laundering Reporting Officer who will consider the matter and determine whether a suspicious transaction report should be filed to the Competent Authority.

Recommendation 21

535. Regulation 7 (1) of the AML/TFR requires that a service provider shall, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring where the customer has not been physically present for identification purposes or where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF Recommendations.
536. Regulation 12 (3) (c) of the AML/TFR requires service providers to implement policies, systems and controls service providers which provide for determining whether a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations or a business relationship or transaction, or proposed business relationship or transaction, is with a person connected with a country or territory that is subject to measures for purposes connected with the prevention and detection of money laundering or terrorist financing, imposed by one or more countries or sanctioned by the European Union or the United Nations. However in circumstances where such transactions had no apparent economic or visible lawful purpose, neither the AML/TFR nor the AML/TFC addressed the actions that service providers were to undertake.
537. It was noted that the Commission has a system in place to advise service providers as and when required, of guidance or directives of measures that are required to be implemented in respect of FATF measures that are required to be adopted

538. It was also noted that where the FATF has issued advisories, the Commission has issued guidance to service providers to apprise them of the advisories and the appropriate action that should be applied.
539. There was evidence that one of the latest advisory issued to financial services providers was in respect of the Security Council consolidated list update December 3, 2009.
540. The ongoing monitoring policies, systems and controls established by a service provider in accordance with regulation 12 of the AML/TFC shall—
- (a) provide for a more thorough scrutiny of higher risk customers;
 - (b) be designed to identify unusual and higher risk activity or transactions and require that special attention is paid to higher risk activity and transactions;
 - (c) require that any unusual or higher risk activity or transaction is examined by an appropriate person to determine the background and purpose of the activity or transaction;
 - (d) require the collection of appropriate additional information;
 - (e) be designed to establish whether there is a rational explanation, an apparent economic or visible lawful purpose, for unusual or higher risk activity or transactions identified, and require a written record to be kept of the service provider's conclusions.
541. Section 166 of the POCA provides that the Commission may give a direction of a type specified in section 167 to service providers of a specified description or all prescribed service providers, in relation to transactions or business relationships with the government of, or any person or persons carrying on business in, or resident incorporated, constituted or formed in a country in relation to which one or more of the following conditions apply.
542. In respect to this criterion, the conditions referred to are that:
- i) the FATF has advised that measures should be taken in relation to the country because of the risk that terrorist financing or money laundering is being carried on in the country by the government of the country or by persons resident in the country.
 - ii) the Commission reasonably believes that there is a risk that terrorist financing or money laundering is being carried on in the country by the government of the country or by persons resident in the country and that this poses a significant risk to the interests of Montserrat; and
 - iii) The Commission reasonably believes that the development or production of nuclear, radiological, biological or chemical weapons or their systems of delivery in the country, or the doing in the country of anything that facilitates the development or production of such weapons or their systems delivery poses a significant risk to the interests of Montserrat.
543. The type of directions that the Commission may give under section 167 of the POCA are:
- i) to undertake enhanced customer due diligence measures before entering into a transaction or business relationship with a designated persons and during a business relationship with such a person;

- ii) to undertake enhanced ongoing monitoring of any business relationship with a designated person;
- iii) to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons; or
- iv) not to enter into or continue to participate in a specified transaction or business relationship with a designated person or any transaction or business relationship with a designated person.

544. Regulation 12 (2) of the AML/TFR provides that a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing.

545. It was noted that the Commission advises service providers as and when required of guidance or directives of measures that are required to be implemented in respect of UN Terrorist Financing Measures or FATF measures that are required to be adopted.

3.6.2 Recommendation and Comments

Recommendation 21

546. The FSC should ensure that all financial institutions have the required policies in place to ensure that special attention is paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none"> Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and Code.
R.21	PC	<ul style="list-style-type: none"> Some financial institutions demonstrated limited understanding of the need to ensure compliance with the requirement to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Neither were there specific policy requirements in place in such instances to address this requirement. No effective implementation of AML/CFT regime as a result of recent enactment of AML/CFT regulations, Code and Guidance 2010.

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

3.7.1 Description and Analysis

Recommendation 13 & Special Recommendation IV

547. The POCA 2010 makes provision for persons to make a disclosure to the Reporting Authority (the financial intelligence unit created under section 127 of the Act) which is responsible for receiving, analysing and disseminating disclosures made under the POCA concerning the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime suspected money laundering suspected terrorism or the suspected financing of terrorism and which are relevant to its responsibilities as a financial intelligence unit.
548. Suspicious transaction reporting is a mandatory burden placed on a person when that person comes into contact with information or other matter which gives rise to knowledge or suspicion that another person is engaged in money laundering and where that information came to such a person in the course of a relevant business.
549. Relevant business is defined to mean a business that, if carried out by a person, would result in that person being a service provider. A service provider is defined to include any person who carries out a regulated business. A regulated business is a business for which a regulatory licence is required. Licences issued under the Banking Act, the International Banking and Trust Company Act, the Company Management Act, are considered to be regulatory licences.
550. The registration of a company or an association of underwriters under the Insurance Act, the registration of an insurance intermediary, other than an insurance adjuster, under the Insurance Act, a licence to act as the manager or administrator of a mutual fund issued under the Mutual Funds Act, licence issued under Part 4 or Part 9 of the Securities Act and the registration of a cooperative under the Cooperative Societies Act, Cap. 11.21, where the cooperative is a credit union within the meaning of that Act are also considered to be regulatory licences.
551. It should be noted that DNFBPs are properly subsumed within the definition of ‘service providers’, resulting in all financial institutions and DNFBPs being captured under the STR reporting obligations of Montserrat.
552. Montserrat has linked suspicious transaction reporting to money laundering by mandating that the duty to report a suspicious transaction is invoked when there is a suspicion or a reasonable ground to suspect that money laundering is occurring.
553. Section 120 of the POCA deals with acquisition, possession or use of proceeds of criminal conduct, where a person commits an offence if, knowing, suspecting or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he acquires or uses that property or has possession of it.
554. The reporting of attempted transactions is covered by virtue of rule 29 (1) (f) of the AML/TFC which requires the MLRO to report to the Reporting Authority attempted transactions and business that has been refused (regardless of the amount of the attempted transaction or the value of the refused business) where the attempted transaction (or refused business) gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion of money laundering.
555. The MLRO is guilty of an offence for failing to disclose information or other matter under Section 122 of the POCA and is liable on summary conviction to imprisonment for a term not exceeding two (2) years or to a fine not exceeding \$75,000 or to both. On conviction on indictment to imprisonment for a term not exceeding ten (10) years or to a fine not exceeding \$250,000 or both.

556. The Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, The Terrorism (UN Measures) (OT) 2001, and the Al-Qa'ida Taliban (UN Measures (OT) Order 2002 makes it an obligation to disclose the suspicion of terrorism and the financing of terrorism and the information on which it is based and a person commits an offence, if in the course of a his trade, profession business or employment, information comes to him which causes him to know or suspect, or gives him reasonable grounds for knowing or suspecting and he fails to make a disclosure to a constable as soon as is reasonably practicable.
557. The POCA supported by provisions in the AML/TFC at Section 29 (1) (e) make it a mandatory requirement that financial institutions report all transactions, including attempted transactions that give rise to a suspicion that money laundering may be taking place. All suspicious transactions are required to be reported as the law provides for no minimum amount.
558. There is no provision in the AML/CFT Regulations or the Code that exempts disclosure of suspicious transactions whether or not a transaction involves tax matters.
559. From a review of the information gathered from financial institutions in Montserrat relative to monitoring of customer business relationships and reporting of suspicious transactions, it can be concluded that financial institutions were quite familiar with the requirements for determining incidences of money laundering and reporting of same to the relevant competent authority.
560. The terrorist financing Orders provide for mandatory reporting. The Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, The Terrorism (UN Measures) (OT) 2001, and the Al-Qa'ida Taliban (UN Measures (OT) Order 2002 makes it an obligation to disclose the suspicion of terrorism and terrorist financing.
561. The Anti-Terrorist (Financing and Other Measures) Order 2002 provides that a person commits offences under articles 6-9 of the Order if he raises funds, uses and possesses money or property for the purposes of terrorism, if he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he knows or has reasonable cause to suspect that it will or may be used for the proposes of terrorism.
562. Article 10 of the Anti-Terrorist (Financing and Other Measures) Order 2002 makes it a duty that where a person has committed an offence under any of the articles 6 to 9 and bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment to disclose to a constable as soon as soon as is reasonably practicable his belief or suspicion and the information on which it is based has a duty to disclose.
563. Section 127 of the POCA (3) stipulates that where a constable receives a terrorist disclosure he must forthwith pass the disclosure to the Reporting Authority.
564. The legislation does not provide exemption in respect of tax matters or a minimum amount for reporting. Therefore all matters prohibited under Articles 6-9 must comply with the mandatory requirement in Article 10 which make it mandatory for persons to disclose belief or suspicion to a constable.

Recommendation 14

565. Section 125 (1) of the POCA provides that a disclosure is a protected disclosure if the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment or the information or other matter disclosed causes the person making disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting that another person is engaged in money laundering and the disclosure is made in accordance with the procedures established by his employer for the purpose.
566. Section 125 (2) of the POCA provides that a protected disclosure, which for these purposes includes an authorised disclosure shall not be treated as a breach of any enactment, rule or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
567. Section 125 of the POCA details the circumstances in which a disclosure will be protected but it is silent on who is protected. By directly asserting that a disclosure is protected by the person reporting if he follows his employers established procedures for reporting, it indirectly confers protection onto employees only.
568. Under the POCA, Section 123 provides that a person shall be guilty of an offence if he knows or suspects that the Reporting Authority, a police officer, other authorised person is acting, or is proposing to act in connection with an investigation and he makes a disclosure that is likely to prejudice any investigation which might be conducted following that disclosure. This Section of the POCA fails to address the circumstances where an STR is in the process of being reported.
569. There is no indication that financial institutions, their directors, officers and employees are directly burdened by this provision. Additionally it very unclear who is the person this stipulation is intending to address and what relation that person has to Montserrat's AML/CFT infrastructure and financial system. Interestingly as well, by linking tipping off to the prejudicing of investigations only, Montserrat has ensured that in circumstances where a disclosure has not resulted in an investigation or where there is tipping off relative to related STR information only, then there is no prohibition.

Additional elements

570. With regard the requirement in criterion 14.3, section 130 (1) stipulates that no person, including a member, alternate member, employee or agent of the Reporting Authority and a person appointed to assist the Reporting Authority must disclose any information or matter that he acquires as a result of his connection with the Reporting Authority except as required by the POCA or any other enactment, or by an Order of the Court. Accordingly, the names and personal details of staff of financial institutions will be kept confidential.

Recommendation 25 (only feedback and guidance related to STRs)

571. Section 127 (2) (f) of the POCA 2010 provides that the RA may provide such feedback to persons who have disclosed information to the RA, as it considers appropriate. As a matter of course the Reporting Authority acknowledges all STRS and provides feedback where appropriate.
572. The FSC indicated that they have conducted training when requested and where there appears to be a need in respect of the reporting of suspicious transactions. The Commission has implemented most of the FATF's Best practice Guidelines. The Commission reportedly held a

recent meeting with all relevant service providers to discuss issues surrounding the proposed new legislation and the responsibilities placed on financial institutions.

573. Section 127 (2) (g) of the POCA 2010 provides that the Reporting Authority shall collect, compile and publish annually in such manner and form as the Reporting Authority determines, statistical information relating to disclosures made to the Reporting Authority and any dissemination of such disclosures by the Reporting Authority.
574. The RA after it receives an STR provides specific feedback to the reporting entities in the form of a written letter of acknowledgement. The STRs are subsequently submitted to the FCAU for analysis and investigations. The FCAU after conducting analysis and investigations relative to the STRs provide feedback to the RA as to the outcome of their analysis and investigations. However, there was no formal procedure in place for this and presently this feedback is being provided in an ad-hoc style.
575. The RA has not published any annual report on statistics on disclosures made to or disseminated by the RA since 2006 to present and could not provide information on whether any reports were published previously as the current Chairperson was appointed in 2006. There was no evidence of the establishment of a mechanism for the annual publication and dissemination of statistical information relative to disclosures on suspicious transactions reports.
576. However, the RA stated that they are in the process of preparing to publish their first annual report and have indicated that it may be published within the next six (6) weeks following the onsite visit.
577. Under section 127(2)(g) of the POCA the Reporting Authority “must collect, compile and publish annually in such manner and form as the Reporting Authority determines, statistical information relating to disclosures made to the Reporting Authority and any dissemination of such disclosures by the Reporting Authority.”
578. The examiners were informed by the Reporting Authority that they together with the FCS had held meetings with the service providers in 2007 and 2009. However, no information was received by the examiners as to the details of such meetings.
579. The Examiners was informed by one of the banks that the RA provided feedback to the institution on STRs submitted. The feedback was given verbally first and then a written correspondence was received from the RA. However, the RA has only been providing specific feedback to reporting entities. No general feedback has been provided to the reporting entities to date.
580. The Examiners were informed that the FSC had held meetings with the relevant businesses in June 2007, November 2009 and February 2010 relative to AML/CFT legislation and regulations amendments. These meetings however, were for the sole purpose of updating the financial sector about the new and upcoming legislation and regulations on AML/CFT.

Recommendation 19

581. Montserrat has not considered the feasibility of implementing a system where financial institutions report all transactions above a fixed threshold to a national central agency. It was reported the volume of transactions conducted at each service provider within the jurisdiction

does not pose a systemic risk and all financial institutions carrying on business in Montserrat review large transactions activity reports daily as part of the money laundering prevention policy. The average monthly transactions aggregated for the 4 deposit taking institutions in Montserrat is approximately 20,000. These large transaction reports are available to the Commission for inspection.

582. It was reported by authorities in Montserrat that assessment of the risk does not warrant this measure as large transaction activity reports are generated by each relevant financial institution and are readily available to the authorities.

Statistics (Recommendation 32)

583. The Financial Crime and Analysis Unit keep statistics on the number of SARs disclosure reports received.

3.7.2 Recommendations and Comments

Recommendation 13

584. There should be a requirement to report suspicious transactions whether or not they are thought among other things to involve tax matters.

Recommendation 14

585. Amend the POCA to explicitly detail who are protected from making disclosures to the Reporting Authority.
586. Amend the POCA to prohibit financial institutions, directors, officers and employees from tipping off the fact that a disclosure or related information is in the process of being reported to the Reporting Authority.
587. Amend the POCA to specifically prohibit all illegal disclosures.

Recommendation 19

588. Competent authorities should consider the feasibility and utility of implementing a system where financial institutions report transactions in currency above a threshold to a centralised national authority.

Recommendation 25

589. The RA/FCAU should provide consistent feedback on suspicious transaction reports filed to financial institutions.
590. The RA has been supplying specific feedback to the service providers. However, the RA should consider providing general feedback to financial institutions and DNFBPs on disclosures and sanitised cases.
591. The RA should provide the reporting entities with advisories relating to AML/CFT.

SR IV

592. The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters.

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

	Rating	Summary of factors underlying rating
R.13	LC	<ul style="list-style-type: none"> • No requirements relating to the reporting of suspicious transactions involving tax matters.
R.14	PC	<ul style="list-style-type: none"> • No explicit protection for financial institutions, directors, officers and employees from criminal or civil liability from breach of contract etc for reporting STRs. • Tipping off not applicable to STRs that are in the process of being reported to the Reporting Authority. • Tipping off only applicable where an investigation is prejudiced.
R.19	NC	<ul style="list-style-type: none"> • The Authorities have not considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency.
R.25	PC	<ul style="list-style-type: none"> • The RA/FCAU has not provided consistent feedback on suspicious transaction reports filed by financial institutions • No advisories or reports relating to STRs, statistics, current trends or typologies have been published or issued to service providers.
SR.IV	LC	<ul style="list-style-type: none"> • No requirements relating to the reporting of suspicious transactions involving tax matters.

Internal controls and other measures

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

3.8.1 Description and Analysis

Recommendation 15

593. Regulation 12(2) of the AML/TFR has mandated that a service provider shall establish maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls. These controls relate to customer due diligence measures and ongoing monitoring, the reporting of disclosures, record-keeping, the screening of employees, internal controls, risk assessment and management, the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing.

594. Regulations 16 of the AML/TFR makes it a requirement that a service provider, other than a sole trader shall appoint an individual, at an appropriate level of seniority and approved by the FSC, as its money laundering compliance officer (MLRO). A sole trader is the money laundering compliance officer for the purpose of this requirement. Regulation 16 (3) (b) and 17 (2) (b) of the AML/TFC makes it a requirement that the compliance officer/reporting officer has timely access to all records that are necessary or expedient for the purpose of performing his or her functions as money laundering compliance (reporting) officer. This timely access to information does not extend to other appropriate staff.
595. Section rule 5 of the AML/TFC stipulates that the Board of Directors of a service provider is responsible for ensuring that adequate resources are devoted to AML/CFT efforts, ensuring that the service provider complies with its obligations under the POCA, the AML/CFT Regulations and the Code.
596. Section 6 (3) of the Code requires a service provider to establish and maintain an adequately resourced and independent audit function to test compliance with the established policies, systems and controls.
597. Regulation 15 of the AML/TFR prescribes that a service provider shall take appropriate measures for the purposes of making employees whose duties relate to the provision of relevant business aware of the anti-money laundering and counter-terrorist financing policies, procedures, systems and controls maintained by the service provider in accordance with the AML/TFR or AML/TFC. In this regard service providers are required to ensure that its employees are trained in the recognition and handling of transactions carried out by or on behalf of any person who is or who appears to be engaged in money laundering or terrorist financing; and other conduct that indicates that a person is or appears to be engaged in money laundering or terrorist financing.
598. Rule 30 (2) of the AML/TFC mandates that a service provider must establish and maintain arrangements for disciplining any employee who fails, without reasonable excuse, to make an internal suspicious activity report where he or she has knowledge or reasonable grounds for suspicion of money laundering or terrorist financing.
599. Regulation 12 (2) (d) of AML/TFR provides that a service provider shall, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies and systems and controls relating to the screening of employees.
600. From information gathered during the on-site interviews, most institutions reported having procedures in place to carry out background checks and screening of new employees before employment. It was also noted that some institutions appeared to have applied the process informally as it was not contained in their policies. This was manifested by the popular statement, "This is a small country and everyone knows everyone." Service providers interviewed all reported that designated money laundering compliance officers were appointed in their respective entities and in some cases this position was contained in the various organisational structures. In addition, all service providers reported that relevant employees were provided with ongoing training in AML/CFT procedures. They also advised that they had benefited from industry training provided by the FSC and other relevant agencies.

Recommendation 22

601. Under Regulation 3 (2) of the AML/TFR a relevant service provider that has a branch located in, or a subsidiary incorporated in, a country outside Montserrat shall, to the extent that the laws of that country permit comply with these Regulations and the Code in respect of any business carried on through the branch ensure that these Regulations and the Code are complied with by the subsidiary with respect to any business that it carries on. Also, service providers are required to ensure that where they have branches or subsidiaries located in countries, which do not or insufficiently apply the FATF recommendations that the said measures are applied.
602. There are two (2) banks operating in Montserrat, one of which is a national entity while the other is a subsidiary whose parent organisation is based in Canada.
603. Regulation 3 (4) of the AML/TFR provides that if a country in which a branch or subsidiary of a service provider is situated has more stringent standards with respect to the prevention of money laundering and terrorist financing than are provided for in these Regulations and the Code, the relevant service provider shall ensure that the more stringent requirements are complied with by its branch or subsidiary.
604. Regulation 3 (5) of the AML/TFR provides for where the laws of a country outside Montserrat do not permit a branch or subsidiary of a service provider to comply with sub-regulation 3 (1), the relevant service provider shall notify the FSC in writing the extent that the laws of the foreign country permit and apply alternative measures to ensure compliance with the FATF's Recommendations.

3.8.2 Recommendations and Comments

Recommendation 15

605. Amend the AML/TFR so that all appropriate staff (including the money laundering compliance officer) have timely access CDD and other relevant information.

Recommendation 22

606. Financial institutions should be required to ensure that their AML/CFT policies contain measures which require compliance with Recommendation 22.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none"> No requirement that appropriate staff other than the money laundering compliance officer have timely access CDD and other relevant information
R.22	LC	<ul style="list-style-type: none"> Given the recent issuance of these requirements sufficient time has not elapsed to allow or test for effective implementation

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

607. Regulation 10 of the AML/TFR and rule 42 of the AML/TFC prohibit a licensed bank from establishing a relationship with a shell bank.

Recommendation 18

608. Montserrat does not grant licences to banks that do not have a physical presence in the jurisdiction. Section 24 of the IBTCA, 2006 provides that a bank that is not a branch or subsidiary shall not be licensed unless it has physical presence in Montserrat with staff and resources appropriate for the nature and scale of business.
609. The FSC is responsible for the licensing and supervision of all financial institutions in Montserrat. Financial institutions are subjected to the legislative requirements which provide established policies and procedures for licensing which in part require evidence of physical presence in Montserrat. This physical presence requires that sufficient mind and management resides in Montserrat.
610. Based on the definition given in the methodology for shell banks, it is reasonable to conclude that shell banks do not exist in Montserrat and therefore, financial institutions do not conduct business relationships with shell banks.
611. Regulation 10 (1) (a) of the AML/TFR requires that a bank that carries on banking business in or from within Montserrat shall not enter into or continue a correspondent banking relationship with a shell bank.
612. Regulation 10 (1) (b) of the AML/TFR requires that a bank shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with shell bank; and
613. Rule 42 of the AMLTFC prohibits a licensed bank that is, or that proposes to be a correspondent bank from entering into or maintaining relationships with any respondent that is a shell bank.
614. Section 42 of the AMLTFC prohibits a licensed bank that is, or proposes to be, a correspondent bank from maintaining relationships with any respondent bank that itself provides correspondent banking services to shell banks.

3.9.2 Recommendations and Comments

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	C	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Authorities/SROs roles and duties & structure and resources R.23, 30

Recommendation 23

615. The Reporting Authority established under the Proceeds of Crime Act, AML/CFT Regulations and the Code provide the regulatory framework and stipulate the measures financial institutions are required to meet in respect of having adequate laws to combat money laundering and the financing of terrorism.
616. The FSCA provides for supervision and monitoring of the entities subject to the requirements by the FSC. The functions of the FSC as set out in the FSCA are as follows:
- (a) to supervise financial institutions in accordance with this Act, the regulatory enactments and the Regulatory Codes and to administer the registry enactments;
 - (b) to consider and determine applications for licences;
 - (c) to monitor compliance by financial institutions with the Anti-Money Laundering and Terrorist Financing Codes Regulations and such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed;
 - (d) to monitor financial services business carried on in or from within Montserrat and to take action against persons carrying on unauthorised financial services business;
 - (e) to monitor the effectiveness of the regulatory enactments in providing for the supervision and regulation of financial services business carried on in or from within Montserrat to internationally accepted standards;
 - (f) to advise the Governor and Executive Council on matters relating to financial services business;
 - (g) to make such recommendations to the Governor and Executive Council as it considers appropriate concerning—
 - (i) the amendment or revision of the financial services enactments or any other Act relating to financial services business, companies or partnerships;
 - (ii) the enactment of new legislation relating to financial services business, companies or partnerships; and
 - (iii) proposals made otherwise than by the Commission in respect of matters specified in subparagraphs (i) and (ii).
 - (h) to maintain contact and develop relations with persons engaged in financial services business in or from within Montserrat with a view to—
 - (i) encouraging the development of high professional standards within the financial services industry; and
 - (ii) promoting industry codes of conduct;
 - (i) to maintain contact and develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions and to provide regulatory assistance to foreign regulatory authorities in accordance with this or any other Act;

- (j) to provide such information and advice to financial institutions and the public, or any section of the public, concerning financial services business as it considers appropriate;
 - (k) to discharge such other functions as may be assigned to it under this or any other Act.
617. In addition, each regulatory enactment sets out the requirements for granting licences and provide for the FSC to require applicants for licences to provide sufficient information in order that the FSC may satisfy itself that the applicants for licences are fit and proper persons.
618. The FSCA also provides for the FSC to check regulated persons' compliance with the requirements in the FSCA, and under sections 33 to 36 of the FSCA to take enforcement and other measures against service providers for breaches of relevant requirements in the FSCA, all regulatory enactments and the POCA.
619. In addition, section 155 the POCA gives the Governor in Council authority to prescribe that the FSC be the supervisory authority for all non-financial service providers and be responsible for:
- a) monitoring compliance by those service providers for which the supervisory authority is responsible with the POCA, the AML/CFT Regulations and the Code; and
 - b) take appropriate enforcement action against service providers for which it is responsible for breaches of the POCA and AML/CFT Regulations and the Code.
620. The Section 4 (1) (c) of the FSCA makes it a function of the FSC to monitor compliance by financial institutions the Anti-Money Laundering Regulations and such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed.
621. The POCA provides for the FSC to be the designated competent authority for regulated persons and with respect to non-regulated entities. Section 155 (1) of the POCA provides that the AML/TFR shall designate the relevant supervisory authority for service providers who are not financial institutions.

Recommendation 30

622. The POCA makes provision for the Reporting Authority to be established which also provides for Regulations to set out the AML/CFT requirements for financial institutions and for the FSC under the FSCA to monitor compliance with the requirements.

E.C. 30.1 (Supervisors only)

623. The supervisory authority, the FSC was established by statute under the Financial Services Commission Act in 2001 to regulate and supervise the financing services industry. In 2008 the Act was replaced with the new act to provide for enhanced supervisory, compliance and enforcement, and disciplinary provisions.
624. The FSC is an independent body with its own Board of Directors. However, Section 5 of the FSCA provides for the members of the Board to be appointed by the Governor after consultation with the Financial Secretary and the FSC Commissioner who is also the Chief Executive Officer of the FSC and is subject to the Board. Section 8 of the said Act also provides that the Governor may after consultation with the Financial Secretary and the FSC Commissioner remove a director from office. Given the many roles given to the office of the

FSC Commissioner under the FSCA, questions can be raised as to whether the Organisation is designed to ensure freedom from undue influence or interference.

- 625. In addition, the FSC is staffed by four technical persons including the FSC Commissioner, Deputy Commissioner, Assistant Commissioner and Finance/Insurance officer. It was noted that the Organisational Structure did not include Line Managers and designated Examiners. As a result, it was not immediately clear which member of staff has the responsibility for management of the on-site examination work programme.
- 626. It was also reported that on-site examinations conducted by staff of the FSC frequently included the FSC Commissioner who also has overall responsibility for the day to day management of the FSC. While the general small size of the financial services industry in Montserrat may have been one of the major reasons for such extended responsibilities, the dual roles may also present an argument for conflict of interest and lack of efficiency and effectiveness of the Commission.
- 627. Additionally, in keeping with section 16 of the FSCA, the primary source of funds of the FSC comprise all fees, and charges payable under the FSCA, sums of monies as allocated by the Executive Council as well as other means of raising funds as outlined in the FSCA. It was concluded that at present the FSC received sufficient funds to meet its commitments. However, it is not clear whether the funding for future needs of the FSC will continue to prove sufficient.
- 628. In light of the above, it is extremely doubtful whether the FSC is adequately structured, funded, staffed and provided with sufficient technical and other resources to fully and effectively perform its functions.

E.C. 30.2 (Supervisors only)

- 629. The staff employed by the FSC are required to meet high professional standards, and are deemed to have high ethical standards.
- 630. The FSC is staffed with two (2) professionals and (2) two other staff members. The FSC Commissioner a trained banker with several years banking experience, a diploma in Business Studies and a member of Institute of Finance. She is also a barrister and a member of the Honourable Society of Grays Inn and the Montserrat Bar. The FSC Commissioner has over fifteen (15) years regulatory experience.
- 631. The Deputy Commissioner worked with the Government of Montserrat for several years as a senior auditor. She was appointed in September 2008 and possesses a BSc. Degree in Accounting from the University of the West Indies (UWI). The Deputy is responsible for the supervision of international banks and money service providers.
- 632. The other staff members are currently pursuing professional qualifications in business studies. The senior staff is the appointed Finance Officer and has been trained to regulate licensed insurance companies.
- 633. Both the Deputy and the Finance Officer have undergone training in supervision of banking and insurance sectors. All staff is expected to undergo training to carry out their functions within the regulatory enactments.

634. The staff of the FSC are required to swear an oath of secrecy at commencement of their employment
635. Due diligence is carried out into the background of employees. Employees are appointed on the basis of their professional skills and are provided with additional training to make them competent as regulators.

E.C. 30.3

636. Competent authorities provide for staff to have relevant training to carry out their functions in monitoring financial institutions and in carrying out analysis and investigation of STRs
637. Staff are required to attend courses and undergo relevant training to attain and remain competent to supervise service providers subject to AML/CFT obligations. It was noted that staff of the FSC were provided with various forms of training, which may at the present time be considered adequate and relevant for combating money laundering and terrorist financing. However, should there be an increase in the staffing of the FSC in the future, there would be increased need for appropriate and relevant training in AML/CFT measures.

Recommendation 29

638. The section 4 (1) (c) of the FSCA makes it a function of the FSC to monitor compliance by financial institutions with the Anti-Money Laundering and Terrorist Financing Regulations codes and such other Acts, regulations, Codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed.
639. Section 4 of the FSCA provides powers to the FSC to monitor compliance by financial institutions with requirements to combat money laundering and the terrorist financing.
640. Section 34 (3) of The FSCA provides for the FSC, as supervisor to:
- inspect the premises and the business whether in or outside Montserrat, including the procedures, systems and controls of a regulated person
 - Inspect the assets, including cash belonging to or in the possession or control of a regulated person
 - Examine and make copies of documents belonging to or in the possession or control of a regulated person that, in the opinion of the Commission, relate to the carrying on of financial services business by that person.
641. In the case of a person specified in paragraphs (a), (b) or (c) above the FSC may undertake compliance visits for the following purposes—
- (i) the supervision of financial services business carried on in or from within Montserrat; and
 - (ii) monitoring and assessing the person's compliance with his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed.

642. Under section 39 (1) of the FSCA the FSC may appoint one or more competent persons as examiners to conduct an investigation on its behalf with respect to a financial institution, or a person carrying on unauthorised financial services business where—
- (a) in the case of a financial institution—
 - (i) the Commission is entitled to take enforcement action against the financial institution under section 35, or
 - (ii) it has suspended or revoked the licence of the financial institution;
643. The matters required to be investigated by an examiner appointed under section 39 (1) of the Act may include one or more of the following in respect of the person being investigated—
- a. the nature, conduct or financial condition of his business;
 - b. a particular aspect of that person's business; and
 - c. the ownership of that person
644. The FSC has written procedures for carrying out AML/CFT examination of financial institutions. Examinations of an institution includes reviews of the internal procedures, all books and records of the institution and random sample testing of transactions processed and examinations of evidence of customer identification and due diligence carried out.
645. It was noted, however, that not all financial institutions had finalised documented policies in place outlining procedures for combating money laundering and the financing of terrorism even in instances where such recommendations were made by the FSC for financial institutions to follow.
646. Under section 24 (1) of the FSCA where reasonably required by the FSC for the discharge of its functions under this or any other Act, the Commission may, by notice in writing given to a person specified in subsection (2), require him—
- (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
647. There is no requirement under the FSCA for the supervisor to obtain a Court order for production of information. Instead section 24 (1) of the Act provides that where reasonably required by the FSC for the discharge of its functions under this or any other Act, the FSC may, by notice in writing given to a person specified in subsection (2), require him—
- (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- Subsection (2) provides that a notice may be issued to—
- i) a financial institution,
 - ii) a person who at any time has been a financial institution, but that has ceased to be a financial institution;
 - (iii) a person who the Commission reasonably believes to be carrying on, or to have at any time carried on, unauthorised financial services business,
 - (iv) a person connected with a person specified in subparagraph (i), (ii) or (iii), or

- (v) in the case of a notice requiring the production of documents, any person who the Commission reasonably believes is in possession of the documents; and
648. Under section 35 (1) of the FSCA, the FSC may take enforcement action against a financial institution if in the opinion of the FSC, the financial institution has contravened or is in contravention of this Act, a regulatory enactment or a Regulatory Code or has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed.
649. There was evidence that following completion of examinations of financial institutions the FSC has used its powers in the FSCA to direct institutions to implement procedures in order to be in compliance with the requirements in the FATF Recommendations. Despite this action by the FSC, there were two financial institutions, the credit union and the building society without well developed systems and procedures in place for combating ML and FT.

Recommendation 17

650. Section 34 of the FSCA makes provision that the FSC during a compliance visit may, for a purpose or purposes specified in subsection (3) detailed below:
- (a) inspect the premises and the business, whether in or outside Montserrat, including the procedures, systems and controls, of a person to whom this section applies;
 - (b) inspect the assets, including cash, belonging to or in the possession or control of a person specified in subsection (1)(a), (b) or (c);
 - (c) examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies that, in the opinion of the Commission, relate to the carrying on of financial services business by that person; and
 - (d) seek information and explanations from the officers, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.
651. Under the powers provided in the FSCA at section 34 (3) (b) a compliance visit may be undertaken for the purposes of the supervision of financial services business carried on in or from within Montserrat and monitoring and assessing the person's compliance with his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism.
652. Under section 35 (1) of the FSCA the FSC may take enforcement action against a financial institution if in the opinion of the FSC, the financial institution has contravened or is in contravention of the FSC Act, a regulatory enactment or a Regulatory Code, or has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism.
653. Under section 36 35 (2) of the FSCA the FSC is entitled to exercise one or more of the following powers—
- (a) revoke or suspend the financial institution's licence; under section;
 - (b) apply to the Court for a protection order;
 - (c) issue a directive

- (d) appoint an examiner to conduct an investigation ;
 - (e) appoint a qualified person with relevant professional skills on, or on any aspect of, the person's business and affairs him to provide the Commission with a report;
 - (f) in the case of a financial institution that is a company incorporated under the Companies Act, apply to the Court for the winding up of the licensee under section 379 of that Act;
 - (g) in the case of a financial institution that is a company incorporated under the International Business Companies Act, apply to the Court for the liquidation and dissolution of the company under section 110 of that Act;
654. The POCA also provided for supervisory authority to take enforcement action. In this regard section 159 of the POCA provides for the supervisory authority for non-financial service providers is entered entitled to take enforcement action against a non-financial service provider if, in the opinion of the supervisory authority –
- a) the service provider –
 - i) has contravened or is in contravention of the provisions in the POCA, the AML/TFR or the AML/TFC;
 - ii) has failed to comply with a directive given to it by the supervisory authority;
 - iii) is in breach of any term or condition of its registration under section 157 of the POCA;
 - iv) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration; or
 - v) the service provider has refused or failed to co-operate with the supervisory authority on a compliance visit.
655. Section 160 of the POCA provides that where the supervisory authority for non-financial service providers is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the service provider as it considers appropriate. The provisions in the section includes powers for the supervisory authority to impose a prohibition, restriction or limitation on the business or activities of the service provider, including a prohibition that the license must cease to engage in any type of business or that it must not into any new contracts for any class or type of business.
656. Section 162 of the FSCA also provides for the AML/CFT Regulations to provide for the imposition by the non-financial supervisory authority of administrative penalties on non-financial service providers who contravene a provision of the AML/TFR or the AML/TFC.
657. In spite of the above provisions for sanctions, there were limited instances of their application which makes it difficult for the examiners to assess the extent to which the various sanctions were deemed to be effective, proportionate and dissuasive.
658. The FSCA empowers the FSC to apply sanctions and take enforcement actions against regulated persons and Section 38 of the FSCA provides that where the FSC is entitled to take enforcement action against a financial institution, the FSC may issue a directive —
- (a) imposing a prohibition, restriction or limitation on the financial services business that may be undertaken by the financial institution, including—

- (i) that the financial institution shall cease to engage in any class or type of business, or
 - (ii) that the financial institution shall not enter into any new contracts for any class or type of business;
 - (b) requiring that any director, key employee or person having functions in relation to a financial institution be removed and replaced by another person acceptable to the Commission;
 - (c) requiring the financial institution to take such other action as the Commission considers may be necessary to protect the property of, or in the custody, possession or control of, the financial institution or to protect customers or creditors or potential customers or creditors of the financial institution.
659. Under Regulation 18 of the AML/TFR the supervisory authority for non-financial service providers is the FSC and in respect of non-financial service providers, the supervisory authority under section 159 of the POCA is entitled to take enforcement action and issue directives under section 160 of the Act as outlined above.
660. All financial institutions are regulated entities and are subject to the requirements under section 38 (b) of the FSCA. In this matter the FSCA provides that where the FSC is entitled to take enforcement action against a financial institution, the FSC may issue a directive requiring that any director, key employee or person having functions in relation to a financial institution be removed and replaced by another person acceptable to the FSC.
661. Also under 35(1) of the FSCA the FSC may take enforcement action against a financial institution if in the opinion of the FSC, the financial institution—
- (i) has contravened or is in contravention of this Act, a regulatory enactment or a Regulatory Code,
 - (ii) has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section that the functions of the Commission are:(1)(c).
662. Section 160 of the POCA provides that where the supervisory authority for non-financial service providers is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the service provider as it considers appropriate. The Act provides that a directive issued under this section may –
- a) Require the service provider to take, or not to take, such action or measures as the supervisory authority considers appropriate;
 - b) Impose a prohibition, restriction or limitation on the business or activities of the service provider, including a prohibition that the licensee must cease to engage in any type of business or that it must not enter into any new contracts for any class or type of business;
 - c) Require that any director, key employee or person having functions in relation to the service provider may be removed and replaced by another person acceptable to the supervisory authority; or

- d) Require that any individual not perform a specified function or functions, or engage in specified employment, or hold specified position in the business of the service provider.
663. The Companies Act also provides under section 67 (1) when, on the application of the Registrar, it is made to appear to the Court that an individual is unfit to be concerned in the management of a company, the Court may order that, without the prior leave of the Court, he may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period—
- (a) beginning—
 - (i) with the date of the order; or
 - (ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and
 - (b) not exceeding five years, as may be specified in the order.
664. Section 42 of the FSCA makes provision for “disciplinary violation” which it has particularised to include, among other things, contravention of any provision of the AML/CFT Regulations and Codes and the FSC Act itself.
665. In this matter the FSC routinely impose penalties, especially in the late submission of returns and the payment of the appropriate licence fees.
666. The FSC has withdrawn the licence of an international bank when it failed to pay its licence fee in a timely manner.
667. In addition to enforcement measures and the issue of directives that can be taken under the POCA as outlined in criteria 17.2 and 17.3, under section 161 of the FSCA the FSC as the supervisory authority for non-financial service providers may, by written notice, cancel the registration of a service provider where it is entitled to take enforcement action.

Market entry

Recommendation 23 Market Entry

668. The regulatory enactments in force in Montserrat make it a requirement that only fit and proper persons should be granted licences to conduct regulated activities. For example, the IBTCR set out the fit and proper criteria that are required to be conducted in the respect of applicants for international banking licence. Regulation 3 of IBTCR provides as follows:

Fit and Proper criteria

669. In conducting a test as to whether a person is a fit and proper person, the FSC shall have regard to the following minimum criteria—
- (a) the skills and experience in the relevant financial activity being applied for;
 - (b) that person’s probity, competence and soundness of judgement for fulfilling the responsibilities of that position;

- (c) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position;
 - (d) whether the interests of depositors, or potential depositors of the licensee or settlors and beneficiaries and potential settlors and beneficiaries are, or likely to be, in any way threatened by that person holding that position;
 - (e) the previous conduct and activities in business or financial matters of that person;
 - (f) whether there is evidence that that person has committed an offence involving fraud or other dishonesty or violence;
 - (g) whether there is evidence that that person has contravened any provision under any enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice or from financial loss due to the conduct of a discharged or undischarged bankrupt;
 - (h) whether there is evidence that that person has been engaged in any business appearing to be deceitful or improper (whether lawful or not) or which otherwise reflects on that person's method of conducting business;
 - (i) whether there is evidence of an employment record, which leads to the belief that that person carried out an improper act in the handling of his employer's or client's business ;
 - (j) whether there is evidence that that person has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.
670. The above criteria is the standard used by the FSC for regulated entities and similar requirements are in other regulatory enactments. For this purpose the FSC requires all beneficial owners, directors, controllers and compliance officers in financial institutions to complete a personal questionnaire, referred to as the "biographical affidavit". The information required to be provided in the question provides the FSC with sufficient information to carry out due diligence checks into the background of each individual.
671. The background checks are carried using World-Check, written references and enquiries made to relevant competent authorities where the applicant is incorporated and/or domiciled.
672. The FSC also carry out searches using internet search engines such as Google. All due diligence checks are carried out before a licence is granted and where an institution seeks to appoint an individual that is subject to due diligence checks, the regulatory enactments require that the financial institution must seek prior approval before making the appointment.
673. To ensure that this is maintained section 35 (1) of the FSCA provides for the FSC to take enforcement action against an institution where it considers that the regulated persons is not a fit and proper person to hold a licence.
674. Section 35 of the FSCA provides for enforcement measures where, in the opinion of the Commission a person having a share or interest in the financial institution, whether equitable or legal, or any director, officer or key employee of the financial institution is not a fit and proper person to have an interest in or be concerned with the management of a financial institution, as the case may be.
675. The regulatory licences issued in the jurisdiction which are subject to Basle Core principles are:

- A Banking Licence issued under the Banking Act Cap. 11.03
 - An International Banking Licence issued under IBTCA (Cap. 11.04)
676. In respect to a licence issued under the Banking Act, section 26 provides that every person who is, or is likely to be a director, controlling shareholder, or manager of the licensed financial institution must be a fit and proper person to hold the particular position which he holds or is likely to hold.
677. In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to:
- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
 - (b) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position; and
 - (c) whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by that person holding that position.
678. In respect to a licence granted under the International Banking and Trust Companies Act, Regulation 3 of the International Banking and Trust Companies Regulations 2006 provides for fit and proper test to be carried out –
679. The Fit and Proper criteria requires that in conducting a test as to whether a person is a fit and proper person, the FSC shall have regard to the following minimum criteria—
- (a) the skills and experience in the relevant financial activity being applied for;
 - (b) that person's probity, competence and soundness of judgement for fulfilling the responsibilities of that position;
 - (c) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position;
 - (d) whether the interests of depositors, or potential depositors of the licensee or settlors and beneficiaries and potential settlors and beneficiaries are, or likely to be, in any way threatened by that person holding that position;
 - (e) the previous conduct and activities in business or financial matters of that person;
 - (f) whether there is evidence that that person has committed an offence involving fraud or other dishonesty or violence;
 - (g) whether there is evidence that that person has contravened any provision under any enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice or from financial loss due to the conduct of a discharged or undischarged bankrupt;
 - (h) whether there is evidence that that person has been engaged in any business appearing to be deceitful or improper (whether lawful or not) or which otherwise reflects on that person's method of conducting business;
 - (i) whether there is evidence of an employment record, which leads to the belief that that person carried out an improper act in the handling of his employer's or client's business;

- (j) whether there is evidence that that person has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.
680. In respect of entities not covered by Basle Core Principles Section 14 of the Insurance Act provides for the managing director or chief executive officer of the company is a fit and proper person to be the manager or controller thereof.
681. Section 50 of the Co-operative Societies Act 2003 under which Credit Unions are registered provides fit and proper criteria for the appointment of directors.
682. Section 6 (4) of the Money Services Business Act 2008, provides that the FSC must be satisfied that the applicant is a fit and proper person to be licensed to conduct money services business.
683. Regulations 3 of the Mutual Fund Regulations 2008 require that the FSC shall have regard to the following minimum criteria—
- (a) the skills and experience in the relevant financial activity being applied for;
 - (b) that person's probity, competence and soundness of judgement for fulfilling the responsibilities of that position;
 - (c) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position;
 - (d) whether the interests of depositors, or potential depositors of the licensee or settlors and beneficiaries and potential settlors and beneficiaries are, or likely to be, in any way threatened by that person holding that position;
 - (e) the previous conduct and activities in business or financial matters of that person;
 - (f) whether there is evidence that that person has committed an offence involving fraud or other dishonesty or violence;
 - (g) whether there is evidence that that person has contravened any provision under any enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice or from financial loss due to the conduct of a discharged or undischarged bankrupt;
 - (h) whether there is evidence that that person has been engaged in any business appearing to be deceitful or improper (whether lawful or not) or which otherwise reflects on that person's method of conducting business;
 - (i) whether there is evidence of an employment record, which leads to the belief that that person carried out an improper act in the handling of his employer's or client's business;
 - (j) whether there is evidence that that person has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.
684. The Money Services Business Act 2008 which came into force in September 2009 requires persons who provide money or value transfer service, or a money or currency changing service to be licensed.

685. Other financial institutions that are licensed or registered and are subject to the AML/TFR are:
- Trust Companies licensed under the International Banking and Trust Companies Act (Cap. 11.04)
 - Company Managers licensed under the Company Management Act (Cap.11.26)
 - Companies and other entities licensed under the Insurance Act (Cap. 11.02)
 - Functionaries licensed under the Mutual Funds Act (Cap. 11.17)
 - Service provider licensed under the Securities Act (Cap. 11.01) (by the ECCB)
 - Credit Unions registered under the Co-operative Societies Act 2003
 - Money Services providers licensed under the Money Services Business Act 2008
686. These institutions are required to be supervised under their respective legislation and off-site supervision is conducted through the submission of periodic returns. On site inspection is also carried out especially with respect to verifying their compliance with the AML/CFT requirements.

Ongoing supervision and monitoring R.23 & 32

687. The institutions that are subject to supervisory measures are also required to comply with the requirements in the AML/TFR. In this regard the FSCA provides for the FSC to monitor these institutions to ensure their compliance with the requirements AML/CFT provisions and during on-site visits prudential examinations are carried out as well verification of compliance with AML/CFT requirements.
688. The FSCA provides for the FSC to monitor all financial institutions for AML/CFT compliance. On site review of financial institutions also include the review of the risks and vulnerabilities of the institution to money laundering and the financing of terrorism. As a consequence onsite review involves a holistic approach to examination of the institution and the examination reports that ensue from the review will contain an assessment of the AML/CFT function.
689. Section 18 (3) Money Services Business Act which came into force in September 2009 requires that a licensee shall institute procedures to ensure that its accounting records and systems of business control comply with the requirements of the Anti-Money Laundering Regulations and the Schedule/Dictionary of AML/TFR, paragraph 12 (c) (iii) provides that Money Services providers are subject to the obligations in the AML/TFR. As regulated entities money services providers are also subjected to the requirements in the FSC Act including compliance and enforcement measures.
690. Under section 4 of the FSCA all financial institutions, that are required to be licensed or registered are subject to supervision and monitoring for AML/CFT purposes.

Statistics (Recommendation 32)

691. The FSC conducted a total of 12 onsite examinations during the period 2004-2010 broken down as follows:

- International Banks 7

- Domestic Banks 2
- Credit Unions 1
- Money Service Businesses 2

692. A total of 15 breaches were found to have taken place and all the institutions were required to take remedial action to fix the said breaches. Some of the FSC specific instructions for fixing the breaches included the following:

- Required Banks to amend AML Policies & Procedures Manual.
- Required Bank to have in its records the identification details of its customers' source of funds and to develop a system to perform ongoing internal compliance checks to ensure identification information is present in all customers' files.
- Required Bank to have in its records information obtained from customers on their PEP status and also from high risk customers.
- Required Bank to review database to identify PEPs and high risk customers.
- Require Bank to appoint external auditor to review loan portfolio and reporting systems.
- Required bank to amend and submit copy of accounts opening forms for each type of customers
- Required banks to enhance their physical presence in the jurisdiction
- Required Bank to maintain current information on their ownership structure
- Required Bank to comply with all the requirements in the AML/CFT Regulations
Required institution to update its Anti-Money Laundering Compliance Manual.
- Required institution to strengthen its internal control systems and its corporate governance
- Require institution to appointed a suitably qualified person as Managing Director
- Required staff to undergo training in AML.
- Required bank to revise its reporting structure.

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

Recommendation 25

693. The POCA provides for guidelines to be prepared to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT requirements.
694. The Code provides guidelines to assist financial institutions and DNFBP to implement and comply with the requirements and obligations in the AML/TFR.
695. The guidelines in the Code cover all aspects of the scope of the FATF 40 Recommendations and Special Recommendations and expand on the level of compliance that is required of service providers.

696. The Guidance has been issued by the FSC under section 160(9) of the POCA and, although provided with the Code, is not part of the Code. Although the Guidance does not have the status of “law”, section 158(5) of the POCA requires the Court to consider whether a person has followed any guidance issued by the FSC in deciding whether a person has committed an offence under the AML/TFR. The FSC will also consider whether the Guidance has been followed in deciding whether a service provider has failed to comply with the Code.

Recommendations and Comments

3.10.2 Recommendations and Comments

Recommendation 17

697. The authorities should monitor the effectiveness of the application of sanctions to determine whether they are consistent, proportionate and dissuasive and make amendments to the legislation as deemed necessary.

Recommendation 23

698. The ECCB should take steps to ensure that its licensees are in compliance with AML/CFT obligations.
699. The FSC should ensure that all financial institutions are subjected to on-site inspections to assess compliance with ML and FT measures. Also a follow up programme should be instituted to monitor the level of progress attained by financial institutions in response to the weaknesses identified in on-site inspection reports.

Recommendation 29

700. The competent authority should ensure that all financial institutions develop and implement policies outlining the procedures for combating money laundering and terrorist financing.

3.10.3 Compliance with Recommendations 23, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	LC	<ul style="list-style-type: none"> Limited use of the sanctions did not allow for a proper assessment of whether the sanctions were effective, proportionate and dissuasive.
R. 23	LC	<ul style="list-style-type: none"> The FSC has not conducted on-site inspections of all the financial institutions.
R.25	PC	<ul style="list-style-type: none"> Unable to assess the effectiveness the guidelines because of their recent implementation.
R.29	LC	<ul style="list-style-type: none"> Some financial institutions did not have established and sufficiently comprehensive policies in place for combating ML and FT.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

701. The FSCA and the Money Services Business Act 2008, which came into force in September 2009, provide for the FSC to licence natural and legal persons to carry out money services business. It is mandatory that these businesses should be registered and incorporated at the company registry of the country Registrar's office before being licensed under the FSCA.
702. The FSC is responsible for compliance of regulated entities as empowered by section 40 of the MSB Act 2008.
703. The effective implementation of the MSB Act has not been fully realized since the legislation has only recently been enacted and the regulated entities are only now gaining familiarity with the new legislation,
704. The examiner does not consider the FSC sufficiently equipped and resourced to effectively take up the responsibility licensing, regulating, and supervising the Money transfer businesses in the DNFBPs sector.
705. The FSC should develop a plan to evaluate the level of compliance by regulated entities in the DNFBPs sector of the financial industry.
706. The FSC should instruct and provide training to Money service providers as to their reporting responsibility under the legislation.
707. Section 38 of the MSB Act empowers the Commission to take measures against a licensee who is in contravention of the provisions in the Act and impose enforcement measures, from imposing conditions upon the licence to revoking the licence.
708. Section 6 of the MSB Act provides that in order to obtain a licence as money services business, a person shall apply in writing to the FSC specifying information required to satisfy a fit and proper criteria, training of staff in relation to AML/CFT, source of initial capital, detailed business plan and audited accounts.
709. Regulated persons are subject to the requirements in the Regulations and AML Regulations include persons who issue and manage means of payment service providers for the purposes of the Regulations.
710. One of the two (2) MSBs in Montserrat was interviewed. This MSB is a super agent of an international Money service provider corporation and as a result the MSB is bound by the AML/CFT policies of the international MSB provider who does have an AML/CFT framework in place.
711. Although it has been argued that the jurisdictional activities are relatively small, the Examination Team does not consider the FSC to be adequately staffed to take up the responsibility of licensing, regulating and supervising the industry.
712. MSBs are subject to supervision by the FSC. According to the interview conducted, the FSC has not done an on-site visit pursuant to the MSB Act.

713. The MSB Act provides a legal and regulatory framework for MVTs and the FSCA provides the FSC with the power to monitor regulated persons to ensure that they comply with the requirements in the AML/TFR. The AML/TFR defines supervisory authority as (a) The governor, (b) The financial secretary, (c) The commissioner of the financial services commission (d) The accountant general, and the director of development.
714. FSC has developed a programme of visits to MVTs to ensure that they have AML/CFT policies and procedures for complying with the FATF Recommendations and have introduced internal reporting procedures in compliance with the requirements in the AML/CFT Regulations.
715. Section 10 (2) of the MSB Act requires that no licensee shall open a new place of business or change the location of an existing place of business in Montserrat without the prior approval of the Commission and no licensee shall close an existing place of business in Montserrat without having given thirty days prior written notification.
716. In 2010 the FSC issued a “Cease and Desist” letter to an MSB instructing that they cease carrying out any operations defined in the MSB Act.

3.11.2 Recommendation and Comments

717. The FSC should provide for training to guide Money service providers as to the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework.
718. Bearing in mind the above, the FSC should assess the current level of compliance with AML/CFT legislation of the MSB providers with a view to improve the compliance level with the recently enacted legislations.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	<ul style="list-style-type: none"> • The effectiveness of Sanctions cannot be evaluated due to lack of information • Effectiveness of implementation cannot be ascertained due to the recent enactment of legislation

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

719. The range of DNFBPs in Montserrat cannot be described as being sophisticated. The FSC is the supervisory authority directly responsible for regulating service providers. These service providers are subject to obligations under the POCA, the AML/TFR and the Code.
720. The legislative authority for the regulation of DNFBPs is found in the AML/TFR, whilst the POCA at Part 9 provides for the supervision and enforcement of DNFBPs ‘Service providers’.
721. There are two types of service providers in Montserrat. These are (a) regulated persons, that is, persons regulated by the FSC, the Eastern Caribbean Central Bank or the Eastern Caribbean Securities Commission; and (b) certain non-financial businesses and professions whose

businesses are considered to pose a money laundering or terrorist financing risk to Montserrat. The non-financial businesses and professions include real estate agents, lawyers and accountants, high value dealers (dealers in precious metal and precious stones) and trust and company service providers.

722. The following is a listing of the DNFBPs, which were active on the island at the time of the onsite visit:

Table 12: Active DNFBPs (At the time of the onsite)

TYPE OF DNFBP	NO AS JANUARY 2010	REGUL ATOR	COMMENTS
Casinos	0	NA	Casinos are not permitted to operate in Montserrat (Penal Code Section 310)
Real Estate Agents	8	FSC	
Dealers in Precious Metals & Precious Stones	1	FSC	
Accountants	1	FSC	
Lawyers (firms and sole practitioners)	5	FSC	
Trust and Company Service providers	4	FSC	

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

723. The AML/TFR and AML/TFC do not distinguish between financial institutions and DNFBPs, except in a few specialised areas such as wire transfers and correspondent banking. Therefore, DNFBPs are subject to exactly the same regime as financial institutions.
724. As a means of prudent financial practice by the DNFBPs the interviews revealed that the DNFBPs undertake extensive customer due diligence measures when establishing business relationships, transactions above the designated threshold, and wire transfers.

Recommendation 5

725. Customer Due Diligence is undertaken by the DNFBPs on the Island of Montserrat in compliance with the AML/TFR and Code as a matter of course:
- i. In the establishment of business relationships
 - ii. In carrying out occasional transactions above the applicable threshold,
 - iii. For single transactions or in several operations that appear to be linked.
726. It must be noted that some of the DNFBPs interviewed stated that they were unaware that STRs should be filed when transactions are refused on the basis that they are unable to comply with the CDD requirements.

4.1.1 Description and Analysis

Recommendation 12

- 727. The POCA provides for the monitoring of compliance and enforcement against DNFBPs. The AML/TFR provides that DNFBPs have measures in place to detect and prevent money laundering and terrorist financing.
- 728. There are no casinos in Montserrat, Real Estate agents facilitate real estate transactions and do not generally receive or transfer money from one party to another.
- 729. All DNFBPs are required to meet the criteria in 5.1 – 5.18 and analysed at Section 3.2 of this Report.
- 730. Real estate agents are service providers under the AML-Regulations and are subject to the requirements in the AML/TFR.
- 731. Dealers in precious metals and dealers in precious stones are relevant service providers under the AML/TFR and are subject to the requirements in the AML/TFR.
- 732. Lawyers, attorneys, notaries are relevant service providers under the AML/TFR and are subject to the same burdens. There is only one jeweller on the island and his transactions fall below EC\$30,000.
- 733. Generally all DNFBPs are aware that records must be stored for a period of five (5) years. Two of the DNFBPs interviewed reported that records are maintained for seven years.

Recommendation 6

- 734. As service providers DNFBPs are subject to AML/CFT requirements of Recommendations 6, 8 and 11. However DNFBPs should enhance their risk management to arrive at the determination of PEPS.
- 735. DNFBPs do not strictly adhere to the requirement that systems be put in place where senior management approves the relationship with existing PEPS as well as customers or beneficial owners who eventually becomes PEPS. DNFBPs are prohibited from holding anonymous accounts and accounts in fictitious names.

Recommendation 8

- 736. The statutory obligations to prevent the misuse of technological developments and to address the risks associated with non face-to-face business are detailed in Section 3 of this Report.

Recommendation 9

- 737. Regulation 8 (2) of the AML/TFR impose legal obligations applicable to DNFBPs for introduced business. Section 3 of this Report provides a full discussion.

Recommendation 10

738. Part 7 of the 2010 AML/CFT code impose legal obligations on DNFBPs relative to record keeping. A full discussion can be found at Section 3 of this Report.

Recommendation 11

739. Regulation 12 of the AML/TFR imposes legal obligations for DNFBPs on complex unusual and large transactions. Further discussions can be found at Section 3 of this Report.

4.1.2 Recommendations and Comments

740. Deficiencies identified for all regulated businesses as noted for Recommendations 5, 6, 8-11 in the relevant sections of this Report are also applicable to DNFBPs.
741. Service providers as defined by the proposed Anti Money laundering Regulation 2010 are subject to the Montserrat AML/CFT regulatory regime. Since the legislation has been recently enacted it is not clear as to the effectiveness to ensure compliance with Recommendations 5, 6, 8-11 and 17 of the FATF Recommendations.
742. It is suggested that the Authorities prepare an administration plan for the effective administration of the newly enacted legislations.
743. Adequate training and familiarization should be provided for the players in order to ascertain that clarity in relation to the reporting requirements and sanctions associated with the non-compliance is clearly understood.
744. DNFBPs should enhance their risk management to arrive at the determination of PEPS.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none">• Due to the recent enactment of the POCA (proceeds of crime Act), the AML/CFT regulations, the AML/CFT code, effective assessment of the AML/CFT measures cannot be evaluated.• Deficiency factors noted in Recommendations 5, 6, 8-11 are also applicable to DNFBPs.

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

745. Suspicious Transaction reporting obligations have been described at Section 3 of this Report. Service providers have been submitting STRs to the RA. The FSC needs to continue consultation with, Lawyers, accountants, real estate businesses, car dealers and high value dealers (dealers in previous metals and precious stones) in order that they understand and comply with these obligations. Casinos are not permitted to operate in Montserrat.
746. The indemnity to financial institutions and their staff also extends to DNFBPs and is described at Section 3 of this Report. It is also important to note the inherent weakness discerned in the tipping-off provisions.

Recommendation 16

747. With regard application of the requirements in FATF Recommendation 15, section 12 (2) of the AML/TFR requires that a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to—
- (a) customer due diligence measures and ongoing monitoring;
 - (b) the reporting of disclosures;
 - (c) record-keeping;
 - (d) the screening of employees;
 - (e) internal controls;
 - (f) risk assessment and management;
 - (g) the monitoring and management of compliance with, and the internal communication of, its policies, systems and controls to prevent and detect money laundering and terrorist financing, including those specified in paragraphs (a) to (f).
748. The legal requirements for DNFBPs as they relate to Recommendation 21 are detailed in Section 3.6 of this Report.

4.2.2 Recommendation and Comments

749. The existing legislation does not adequately ensure the compliance of the jurisdiction in relation to suspicious transaction reporting. (POCA Cap (4:04) and AML regulation 2010).
750. The requirements for DNFBPs are the same for all other financial institutions, therefore the deficiencies identified with regard to Rec. 13, 15, and 21 will also include DNFBPs.
751. The relevant supervisory authority should develop and issue guidelines and instructions on the maintenance of the framework for compliance with AML/CFT rules.
752. Montserrat must ensure that the existing legislative requirements pertaining to DNFBPs are enforced.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none">• Due to the recent enactment of the POCA 2010 effective implementation of the AML/CFT measures cannot be effectively evaluated• Deficiencies identified for other financial institutions with respect to Rec. 13, 15, and 21 would also apply to DNFBPs.

4.3 Regulation, supervision and monitoring (24-25)

4.3.1 Description and analysis

Recommendation 24

753. Casinos are not permitted to operate in Montserrat. Additionally, the act of gambling is a criminal offence punishable on conviction by a fine or a term of imprisonment. Consequently, there is no necessity that the existing regulatory and supervisory regime be extended to provide for the implementation AML/CFT measures towards casinos and for the instituting of measures to prevent criminal or their associates from holding or being the beneficial owner of a significant controlling interest in or being an operator of a casino.
754. With regard the supervision of service providers that are DNFBPs, section 155 of the POCA provides that the AML/TFR shall designate the relevant authority for service providers who are not financial institutions and in this matter Regulation 18 of the AML/TFR designate the FSC as the sole supervisory authority for service providers who are not regulated persons.
755. All service providers are subject to the AML/TFR. Service providers include DNFBPs. Regulation 12 of the Regulations stipulate that a service provider shall establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing, including policies, systems and controls relating to, customer due diligence measures and ongoing monitoring; the reporting of disclosures; record-keeping; the screening of employees; internal controls; risk assessment and management.

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

756. Section 176 of the POCA provides that the FSC may issue guidance concerning the requirements of the Act, the AML/TFR and the Codes, however the legislation, was not in force at the time of the onsite. The POCA was subsequently brought into force on April 16th 2010. Notwithstanding, the regulations and codes applicable to the previous legislation were in force during the onsite.

4.3.2 Recommendations and Comments

757. At the time of the onsite the guidance and codes had not been in effect due to delay in the enactment of the appropriate legislation. Notwithstanding, the regulations and codes applicable to the previous legislation were in force.
758. The examiners noted that guidance and directives were in practice not issued to all companies and persons in the financial sector of Montserrat. The appropriate authorities should ensure that the guidance and codes are disseminated to the industry.

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

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	PC	<ul style="list-style-type: none">• Unable to access implementation of the AML/CFT Regulations and Code due to its recent enactment.• The resources of the FSC are inadequate to enable it to effectively supervise the DNFBP sector.

R.25	PC	<ul style="list-style-type: none"> • Unable to assess implementation of the AML/CFT Regulations due to its recent enactment • The deficiencies noted for Rec. 25 at Section 3.7 and 3.10 of this Report also apply to DNFBPs.
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4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

759. Montserrat has identified high value dealers as posing a possible money laundering or terrorist financing threat. High value dealers include persons trading in goods in respect of which such a person receives payment in cash of at least \$30,000 EC or the equivalent in any other currency. High value dealers are included in the definition of service providers and consequently regulated by the FSC are obligated to comply with the requirements of the AML/TFR and Code. The Montserrat economy however does not support the level of activity that includes the purchase of high value goods, except perhaps motor vehicles and for this reason car dealers are reportedly being included by the FSC in sensitization exercises whenever these are conducted.
760. Although it is claimed that car dealers are being included by the commission in sensitization carried on for DNFBPs, the examiners did not have an opportunity to interview any of them during the onsite.
761. The use of ATMs is common, but only for cash withdrawals. There is low risk of investments in securities as there is only one public limited company registered in the jurisdiction.
762. The jurisdiction is not averse to promoting or recommending the use of modern and secure techniques for conducting financial transactions; however, the economy is not at present robust enough to create the risks which would support the measures in this criteria.

4.4.2 Recommendations and Comments

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

5.1.1 Description and Analysis

Recommendation 33

763. In Montserrat the Registrar of the High Court incorporates local, external and non-profit companies under the Companies Act Cap. 11.12 and international business companies are incorporated and registered under the International Business Companies Act, Cap.11.13 by the Financial Services Commission.
764. In respect of companies, apart from the Articles of Association and accompanying particulars submitted upon registration, information on shareholders, the Board of Directors and the management of the company is subject to the monitoring, inspection and sanctioning if necessary by the Registrar.
765. Section 177 (2) of the Companies Act requires persons registered under the Act to keep a register of members. Components of this register include:
- names and addresses of members of a company and the shares held by them;
 - names and addresses of directors, particulars on other directorships held by them and the nature of the holdings of the directors;
 - names and details of debenture holders, amounts held among other things
 - names and addresses of secretaries for a company.
766. Section 178 of the Companies Act provides for material changes in directorship, secretaries, and other relevant information. It is an offence for the Registrar to not be informed of relevant changes concerning the information provided or if the information is not provided within the time specified.
767. Section 28 (1) of the International Business Companies Act requires that a company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing—
- (a) the names and addresses of the persons who hold registered shares in the company;
 - (b) the number of each class and series of registered shares held by each person;
 - (c) the date on which the name of each person was entered in the share register.
768. The Limited Liability Company Act (LLCA) requires records to be kept for access by members however it does not provide for the names of members to be kept at the registered office of the agent. Limited Liability Companies are required to have a registered agent.
769. The Limited Partnership Act requires that every limited partnership shall have a registered agent at all times in Montserrat, a firm name and every firm shall have a registered office situate in Montserrat. Section 10 of the Act requires that general partners shall maintain at the registered office of the firm a register and such register shall contain the name and address, amount and date of contribution or contributions of each partner.
770. Under the POCA registered agents, who are required to have a licence under the Company Management Act, are under the FSC Act 2008 regulated persons. Regulated persons registered are service providers subject to the provisions in the AML/TFR. They therefore have obligations to obtain, verify and retain records of the beneficial ownership and control of legal persons including Limited Liability Companies. These records include:

- identification records;
 - transaction records; and
 - registers in writing of all reports made by the regulated person to the Reporting Authority, and all enquiries relating to money laundering made to it by the Reporting Authority;
 - training records of all employees; and
 - other records required to be kept by the Code of Practice.
771. The records required to be kept above must be kept in such manner as will enable them to be retrieved or reproduced in legible and useable form within a reasonable period of time to the Commission or law enforcement authorities pursuant to the FSC Act or other applicable legislation. The AML/TFR require that sufficient information be kept so that where there's a suspicion of money laundering or terrorist financing an investigation can be conducted.
772. The Registrar is authorised under section 494 of the Companies Act (Cap. 11.12) to maintain a register of companies in which to keep the names of every body corporate under the Act. This registry is a central registry where the records and information of all companies incorporated under the Act are kept.
773. According to section 495 of the Companies Act, any member of the public upon payment of a prescribe fee of \$20.EC dollars if the Registrar office is conducting the search or \$10 EC dollars if the search is being conducted by a member of the public during normal business hours, to examine, make copies of or extracts from, any document that is required to be sent to the Registrar. The documents filed with the registrar under the Act are the incorporated documents such as: request for Name Search and Reservation; the Articles of Incorporation; Notice of Directors, containing full names, addresses and occupations; Registered address of office and By-Laws. Information on beneficial owners is not required to be filed upon incorporation.
774. Under section 77 of the Companies Act changes made in the directorship of a company are required to be sent to the Registrar on the prescribed form within fifteen (15) days of making the change. The examiners were informed that once documents are filed with the registry for any changes to a company's details those company records were updated almost immediately, thus the files of the companies Registry is updated. The Registrar reportedly does not have the authority to conduct vetting of company directors, shareholders and company.
775. In accordance with section 194 of the Companies Act all companies are required to file an Annual Return not later than the 1st day of April each year after its incorporation and would include details of directors, shareholders, value and type of shares as at the date of filing. The Registrar stated that apart from the annual return being filed there is no other way the Registrar can know if a company is still active. Whilst there is provision in law in respect of the beneficial ownership and control of IBCs, limited partnerships and limited liability companies, there is no clear provision in law that requiring the details of ownership and controls for companies registered under the companies act
776. The examiners were informed that the staffing of the Registry of Companies was inadequate in light of the different sub-registries and functions such as: intellectual property, trademarks, copyrights, name and search requests and certification of documents together with incorporations and renewals. Neither the Registrar nor the staff of the registry had received any

training on the role to be played by the Companies' Registrar as part of an effective system of monitoring and control.

777. The Financial Services Commission is designated as the competent authority for regulated persons Company Services providers who are required under the AML/TFR to carry out due diligence checks. Pursuant to the Company Management Act, in the performance of its duties under this Act, the FSC may at all reasonable times:
- (a) require a licensee to produce for examination such books, records and other documents that the licensee is required to maintain pursuant to section 17; and
 - (b) require a licensee to supply such information or explanation, as the Commission may reasonably require for the purposes of enabling it to perform its functions under this Act.
778. As previously mentioned, the records of the Registrar of Companies are available to the public and therefore to all competent authorities. The average time taken to produce the requested records by competent authorities is within a one hour time-frame.
779. All searches are conducted manually and require a physical search for a specific company record(s) which have been requested as there is not an automated system functioning presently.
780. While the capacity exists to discover the information relating to beneficial ownership and control of some legal persons, using the various pieces of legislation, the essential criteria could be more satisfactorily dealt with by a direct obligation within the relevant legislation.
781. The Registrar of Companies seemed to perform more of an administrative role of managing staff but without sufficient knowledge or opportunity to examine relevant information pertaining to companies. Information on beneficial ownership was not kept in relation to companies registered. According to the Registrar, there is no residency requirement for Directors of companies. There was no policy at the Companies Registry for piercing the corporate veil or back-checking the accuracy of information submitted. However there are some powers granted through the Registrar to require that information under the Companies Act.
782. With respect to the legal persons themselves that were interviewed, several of the companies had not had onsite inspections done by the Regulator so it is unclear to what extent there has been verification or checks and balances in relation to relevant information provided for by the various statutes.
783. Under International Companies Act ("IBC Act") companies may issue bearer shares. But these are required to be immobilized by the requirement that a registered agent or a named custodian, who is regulated, holds a list of owners of bearer shares.
784. Under section 29(2) of the Companies Act (Cap. 11.12) no company may issue bearer shares or bearer share certificates.
785. Bearer shares are required to be immobilised by the requirement that a named custodian controls the shares. The custodian of the shares is a regulated person pursuant to the AML Regulations (Reg. 3(1) (d) and as such would be subject to the requirements of CDD measures, record keeping and identification of risks (Regs 4, 7 and 8. The custodian holds a list of owners of bearer shares.

786. However, under the International Business Companies Act (Cap. 11.13) “bearer share” means a share in the capital of any company incorporated in Montserrat which—
- (a) is represented by a certificate that does not record the owner’s name; and*
(b) is transferable by delivery of the certificate.
787. Under section 9(1)(a) a company under the IBC Act has the power to issue registered bearer shares.
788. In accordance with section 28 of the IBC Act, companies incorporated under this Act are required to keep share registers and in the case of bearer shares section 28(1)(e) the total number of each class and series of bearer shares; and 28(1)(f) with respect to each certificate for bearer shares—
- the identifying number of the certificate;
 - the number of each class or series of bearer shares specified therein;
 - the date of issue of the certificate; and
 - the name of the custodian of the bearer shares,
 - but the company may delete from the register information relating to persons who are no longer members of information relating to bearer shares that have been cancelled. This information does not appear to be available for public inspection
789. The IBC Act, at section 37A, provides that a company shall not issue bearer shares to any person other than a custodian. A custodian is defined as “*a person licensed under the Company Management Act or the Banking Act who, in either case, is authorised by the Commission to act as a custodian of bearer shares*”.
790. Where bearer shares are held by a custodian, the IBC Act mandates at section 37A (4) that a person holding the beneficial interest in those bearer shares shall not agree to transfer or otherwise dispose of or deal in the interest in those shares without the approval of the custodian. Where that person transfers the beneficial interest in those bearer shares without such approval that transfer shall be ineffective until the custodian has granted its approval. There are no measures to ensure that the custodian will comply with this requirement. It should be noted as well that custodians are lawyers who presently are not being regulated nor are they subjected to AML/CFT obligations.
791. There is no evidence that bearer shares are widely used in Montserrat so there does not appear to be a major risk in this area. However as stated above, an explicit provision on the need to maintain details on beneficial ownership and control would be a preferable alternative to the way it is currently dealt with in the legislation.

Additional elements

792. As stated previously, the records on companies registered with the Registrar of Companies are publicly available and can be accessed by anyone paying a nominal fee to examine the records of any company. The examiners were informed by the Registrar that no checks or vetting is conducted by her department to ensure company information supplied is accurate. In addition, there is no obligation on a legal person to file information as to the beneficial owner and information tendered at incorporation merely reflects what is in the files.

5.1.2 Recommendations and comments

793. Clear provisions needs to be made in the Companies Act to require the keeping of information on beneficial ownership and control of local companies.
794. Clear provisions must be made for the obtaining of and access to information, in a timely manner on beneficial ownership and control of local companies under the Companies Act .

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none">• Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation.• No clear provision requiring the maintenance of beneficial ownership and control information of local companies.• No clear provision allowing for access to and obtaining information on beneficial ownership and control of local companies.

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

5.2.1 Description and Analysis

Recommendation 34

795. Trust companies are licensed under section 13 of the International Banking and Trust Companies Act 2006 “IBTC Act) and are subject as a regulated person under the FSCA to the obligations under the AML/TFR and are supervised under the provisions of section 4 (1) (c) of the said Financial Services Commission Act.
796. As a licensed entity under the International Banking and Trust Companies Act, trust companies are subject to the “fit and proper” requirements and therefore the regulatory authority, the Commission, would require the service provider to obtain details of trust, including trustees, beneficiaries, settlors and where appropriate a copy of the trust deed.
797. The FSC indicated that a register of international banks with trust licences is held by the FSC. Prior written approval is required by the FSC before change in ownership occurs and that due diligence is carried out on proposed beneficial owners, directors and transferees.
798. International Trust must be registered with the Registrar of Companies and are required to file annual returns. However, details of the settler, beneficiaries etc. does not appear to be given to the Registrar, only information on the directors, registered office of the trust.
799. Trust service providers are subject to the provisions of the IBTC Act and as such are regulated persons subject to the enforcement provisions under section 24 of the FSC Act which provides

that where reasonably required by the FSC for the discharge of its functions under this or any other Act, the FSC may, by notice in writing given to a financial institution or persons connected to a financial institution require the provision of specified information to assist the Commission in carrying out its obligations.

800. The information provided to the examiners was centred on international banking trusts pursuant to the International Banking and Trust Companies Act (IBTC), however there was little information provided on how trusts are regulated from a purely domestic point of view. Under the AMLR, the regulated business trust business is one that is regulated pursuant to the IBTC.
801. Under section 30 of the FSCA, the FSC may, on the written request of a foreign regulatory authority—
- (a) request information under section 24 as outlined above.
 - (b) appoint one or more competent persons as examiners to investigate any matter; or
 - (c) disclose information, or provide documentation, in its possession or obtained under paragraphs (a) or (b) to the foreign regulatory authority.
802. The International Banking and Trust Companies Act 2006 gives the FSC (and by extension the other competent authorities), powers to obtain information held by IBTCs. Section 24 of the FSC Act addresses the power to require information and the production of documents; Section 28 of the FSC Act addresses the right of entry to obtain information and documents. Under the IBTC Act 2006 section 36(3) addresses power to have access to information; to call upon the authorised agent to provide documents and to request such information in the performance of its function.
803. Section 46 of the IBTC Act, deal with Confidentiality of Information. Section 46(2) makes it an offence to disclose non-public information related to the business or other affairs of any person when the information is received under or for the purposes of the Act “without the consent of the person to whom it relates” This confidentiality requirement does not restrict the FSC or other authorities if they disclose confidential information in the discharge of their duties and neither would it restrict the sharing of information by the FSC with other authorities, including overseas authorities.
804. The restriction on disclosure of information in the IBTC Act does not appear to cause transparency issues for Financial Institutions Financial institutions and other designated professionals which are required to undertake mandatory CDD on a trust request information on beneficiaries or settlors from the trustee. Either the trustee obtains consent and provides the information or the transaction must be declined by the service provider. The situation is less clear in the case of DNFBPs and NPOs which have not yet fully implemented their obligation and requirements in the regulation.
805. The Commission has a legal mandatory requirement to cooperate with foreign regulatory authorities and other persons who are required to prevent and detect financial crime, both within and outside Montserrat. Under section 30 of the FSC Act, the Commission may, on the written request of any foreign regulatory authority request specified information and specified documentation. This action is predicated on the legal provisions outlined at section 24 of the FSC Act.

Additional elements

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

5.2.2 Recommendations and Comments

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	LC	<ul style="list-style-type: none"> • Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

807. The examiners were informed that the Reporting Authority took the decision at its meeting of 28 August 2009 that in view of the low level of activity in the jurisdiction and although non-profit organisations will be required to be registered as provided for in the POCA, the supervisory authority will not be required to monitor their activities or ongoing business.
808. There was no evidence at the time of the visit that the non-profit sector was being regulated or monitored in any way for ML or TF compliance.
809. The 2010 POCA was subsequently brought into force whereby provision was made bringing the sector under the overall umbrella of that Act and providing for designation of an NPO Supervisor. This power of supervision was vested in the Financial Services Commission. Provisions have also been made in the regulations for registration of NPOs and for adequate record keeping for at least five years.
810. Under Part III of the Companies Act (Cap. 11.12), section 326, every company without a share capital in this Act is described as a “*non-profit company*.” Prior approval must be obtained from the Governor before any articles are accepted for filing of any non-profit company. Section 328(2) of the companies act mentions that in order to qualify for approval, a non-profit organization must restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like. However, at the time of the Examiners onsite visit it was not mandatory that NPOs be required to register as a company under the Companies Act.
811. NPO Regulation 2010, was gazetted on April 16, 2010 requiring the registration of all NPOs under section 6(1) to be registered except NPOs under regulation 6(2). An NPO that contravenes regulation 6(1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000. The supervisory authority for the supervision and compliance of the NPO sector is the Financial Services Commission (FSC) in accordance with regulation 164(1) of the POCA and regulation 3 of the NPO Regulation 2010.
812. According to section 6(d) of the Income and Corporation Tax Act (Cap. 17.01) NPOs will be tax exempted the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade carried on by such institution.

Special Recommendation VIII

Reviews of the domestic non-profit sector:

- 813. The Reporting Authority took the decision at meeting of 28 August 2009 that in view of the low level of activity in the jurisdiction that although non-profit organisations will be required to be registered as provided for in section 6(1) of the NPO Regulation 2010, the supervisory authority will be required to monitor their activities or ongoing business.
- 814. The Examiners were informed by the FSC that at present there is no regulatory or compliance being done on NPOs in Montserrat relative to the financing of terrorism. However, when the provisions come into force an assessment will be made of the activities of all registered NPOs to evaluate the risks.
- 815. Under section 4(1)(d) of the NPO Regulation 2010, the FSC has the responsibility “*to undertake periodic reviews of the non-profit organisation sector in Montserrat for the purpose of identifying the features and types of non-profit organisation that are at risk of being used for terrorist financing.*”
- 816. The Montserrat authorities gave no specific time period, after the NPO legislation comes into force, when the review of the NPO sector would take place.

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

- 817. The Examiners were informed during the interview of a NPO that there have been no seminars, workshops or visits by competent authorities to raise the awareness of the NPO sector on risks of terrorist abuse nor guidelines or advisories made available to protect the NPO sector against any such abuse.
- 818. The Examiners were advised of the intention of the Commission to provide guidance to registered societies to raise awareness about the risks of terrorist abuse and apprise them of the available measures to protect against such abuse and provide information on making reports to the Reporting Authority in such matters. However, no formal information on the implementation of this initiative was provided.
- 819. The FSC on February 8, 2010 held a workshop and invited the financial sector, DNFBPs and the NPOs to workshop to participate in the consultative discussions on the provisions in the new legislation.
- 820. Section 4(1) of the NPO Regulation 2010 describes the function of the FSC as it relates to the NPOs and in particular section 4(1)(e) of the regulations mandates the FSC to undertake outreach to non-profit organisations with the objective of protecting the non-profit organisation sector in Montserrat from being used for terrorist financing.
- 821. There appear to be no or little supervision of the NPOs in Montserrat and the supervision where applicable is concentrated on audited reports not on AML/CFT issues. All NPOs that are registered as companies under the Companies Act, register with the Inland Revenue to be exempted from paying income tax. The Registrar of Companies who is also the High Court Registrar indicated that NPOs may register and is required file a copy of the license granted by the Governor, together with articles of association, memorandum and names and addresses of directors. Also any change of information companies are required to update this information by filing the change with the Registrar of Companies, although required this is not always done.

822. The Examiners were informed by the FSC that the Montserrat branch of the Red Cross is the largest NPO on the island and as such the Commission is recommending that NPOs that have assets totalling less than \$20,000 EC dollars or income less than \$10,000 EC dollars would be exempted.
823. The new NPO Regulation 2010, under regulation 2 describes ***“exempted non-profit organisation”*** as a non-profit organisation— (a) the gross annual income of which does not exceed \$27,000; and (b) the assets of which do not exceed \$55,000 in value.
824. The Red Cross branch of Montserrat indicated that they have been in existence for approximately forty (40) years and is a member of the British Red Cross Society who require audited accounts before disbursement of funds. The Examiners were told at this time the Red Cross holds no license, as it was not renewed but an application is currently being processed and in addition shortly they would be registering under the Friendly Society Act.
825. NPOs registered with the Registrar of Companies are required to file a copy of their license, memorandum and articles of incorporation, their stated purpose, the directors and registered place of business. The records at the Registrar of Companies are available to the competent authorities and to the general public for a nominal fee. There was no review completed that would indicate if the NPOs kept records or documentation on members and or beneficial owners.
826. With the coming into force on April 16, 2010 of the NPO Regulations, NPOs are now required to register with the FSC stating their purpose and objectives of their activities; the identify of person(s) who own, control, or direct their activities, including senior members, board members and trustees; financial records and sources of income. The NPOs are now required to keep such records for a period of at least five (5) years and any breach of this regulation on summary conviction a fine not exceeding \$20,000 would be imposed. The Examiners were informed that audited accounts are submitted to the Financial Secretary for the purposes of accounting for grants given by the government.
827. The FSC under section 9 and 10 of the NPO regulations respectively has the authority to deny an application to become an NPO and to de-register an NPO. A director, senior officer or trustee who contravenes the regulations is liable to on summary conviction to a fine not exceeding \$50,000.
828. As stated above societies with more than seven members are required to be registered under section 6 of the companies Act. The information concerning registration is available to competent authorities from the Registrar of Companies of those NPO who are registered under the Company Act.
829. However, the Act does not provide for the accounts to be maintained for at least 5 years. It is intended that when regulations are introduced provision will be included in respect of minimum period for which records must be kept.

Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation:

830. Currently, there exist a mechanism for the sharing of information domestically amongst the competent authorities, which is at the RA level and an ad-hoc arrangement exists at the

operational level with the authorities with regards to regulated persons and DNFBPs. Where there is a suspicion or reasonable grounds to suspect that a person or entity may be or is involved in ML or TF mechanisms for investigation and gathering of information takes place, however, there have not been an investigation into an NPO for such related offences.

- 831. With the coming into force of the NPO Regulations 2010 provisions are made as mentioned previously concerning registration, record keeping and the authority of the FSC under the regulations to obtain information from the NPOs unfettered. This information can then be shared with the other competent authorities for investigations.
- 832. Montserrat has not developed or implemented mechanisms for prompt sharing of information between competent authorities and organisations which hold relevant information on NPOs in order to take preventative or investigative action.
- 833. No training or awareness in AML/CFT was given to organisations associated with the registering or licensing of NPOs that would assist in preventing or avoiding of the NPO being used to facilitate terrorist financing. Competent authorities do not have the expertise with regards to examining NPOs suspected of either being exploited by or actively supporting terrorist activity.

Responding to international requests for information about an NPO of concern:

- 834. The Attorney General and the Governor in practice would be the body to receive international requests from other Central Authorities regarding information for a particular NPO. According to the NPO regulations 2010, the FSC is now the supervisory body for NPOs and the point of contact.

5.3.2 Recommendation and Comments

- 835. The authorities should undertake outreach to the NPO sector in order to protect the sector from terrorist activities. The authorities should monitor activities of NPOs to prevent or reduce the likelihood that funds and other assets transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations NPOs should be required to report unusual donations to the Reporting Authority.
- 836. The authorities should ensure that the regulated entities (NPOs) are vigilant in their response to the risk for abuse by those who finance terrorism.
- 837. NPOs should be made aware of the reporting procedures for irregular transactions relating to terrorist activities.
- 838. A program for the monitoring of compliance by the NPOs should be developed by the regulatory authority.
- 839. Authorities should consider establishing systems and procedures to allow information on NPOs to be publicly available.
- 840. The authorities should consider monitoring the NPOs and their international activities.
- 841. Consideration should be given to developing investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • Given the recent enactment of the NPO Regulations, the Commission has only recently commenced its outreach program • No systems or procedures in place to publicly access information on NPOs. • No requirement to report unusual donations by NPOs. • No monitoring of the NPOs international activities. • No investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

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

6.1.1 Description and Analysis

Recommendation 31

842. The Montserrat Constitution Order 1989 (article 10(1)) establishes an Executive Council (ExCo) consisting of the Governor, two ex-officio members (Attorney General and Financial Secretary), the Chief Minister and not more than three other of his ministers. ExCo, as it is called, is the overarching executive policy making and co-ordination body for the island.
843. On April 12, 2010 the current Reporting Authority was established as Montserrat's Financial Intelligence Unit. Section 126(1) of the POCA and section 126(2) outlines the composition of the RA, the Commissioner of the FSC, who is also the Chairperson of the RA, the Attorney General; A senior police officer appointed by the Governor after consulting with the Commissioner of Police; a senior customs officer appointed by the Governor after consulting with the Comptroller of Customs; a senior immigration officer appointed by the Governor after consulting with the Chief Immigration Officer and such other person, having appropriate qualifications or experience, as the Governor may appoint, for such term as the Governor specifies. The Examiners were informed that the RA provides guidance to the government with respect to its policy regarding the AML/CTF framework.
844. Relevant and competent authorities in Montserrat maintain close working relationships. This includes the FSC, Royal Montserrat Police Force, the Financial Intelligence Unit, the Immigration Department, the Customs Department and the Attorney General's Chambers.
845. The Examiners were informed that the original RA usually met once monthly to discuss and make arrangements in connection with ML and FT issues on deficiencies and recommendation to improve the AML/CFT structure. The Comptroller of Customs was also invited to attend the meeting before POCA 2010 was enacted. No information was provided as to when the Comptroller of Customs began attending those meetings.

846. The Financial Services Commission Act (FSC Act) 2008 also gives the FSC the authority to provide information to other competent authorities. As stated above the Commissioner is the Chairperson of the Reporting Authority.
847. The composition of the RA facilitates co-operation between the key competent authorities (RMPF, AG Department and the FSC) at that level. However, information sharing and co-operation at the lower (operational) level seems to be on an *ad-hoc* basis as there are no established MOUs between the competent authorities.
848. There appears to be some uncertainty on the part of the police as to what charges should be preferred under the Proceeds of Crime Act and the Anti-Terrorism Act. This left with the distinct impression that despite the excellent relationship between the Attorney General office and the Police Force there needs to be more guidance given to the police by the Crown prosecutors relative to AML/CFT matters.

Additional Elements

849. The Commission is responsible for monitoring the financial sector including DNFBPs that are subject to AML/CFT measures and as a member of Reporting Authority has a legal obligation to meet and consult on matters relating to the ML/FT issues legal department, law enforcement and customs.

Statistics (Recommendation 32)

850. As set out above, the Reporting Authority meets about every month to review the effectiveness of their systems for combating money laundering and terrorist financing. This forum also allows for the discussion of operational issues and co-ordination of interdepartmental co-operation.
851. Statistics are maintained in relation to STRs received and disseminated. Were there to be ML/TF investigations or prosecutions, or a need for international co-operation, or assistance requests by the Governor's Office, these would also be discussed.
852. The laws and monitoring procedures are regularly updated. The money laundering laws were revised in 2004 and 2005 and in 2008 the Commission issued a Code of Practice for the Prevention of Money Laundering and Combating Terrorist Financing.

Recommendation 30

853. The Reporting Authority is well structured and attended, but there are financial constraints in realising some of the projects that are supported or initiated. For example, the FIU would benefit from additional funding. Given that Montserrat is in receipt of budgetary aid from the UK, additional resources are not always readily available.
854. There are also other constraints. This is not a dynamic economy. With a population of approximately 5,000 people and scarce resources, policy makers are forced to undertake risk assessment and allocate these resources accordingly.
855. The RA meetings are convened by the Chairperson who is also the Commissioner of the Financial Services Commission (FSC) at least once per month at such time and place as the Chairperson may determine. At every meeting of the Reporting Authority the Chairperson and

any one member of the Authority shall constitute the quorum and shall make its decisions by a majority vote of the members present and where there is an equality of votes the Chairperson shall have a casting vote. In the conduct of its meetings, the Reporting Authority shall adopt such rules of procedure as it considers necessary.

856. The Examiners were informed that the RA has no budget allocated to it. The budgetary needs of the RA are funded by the FSC mainly as the RA resides in the FSC building and from the departments of the other members. The RA in accordance with the Act is required to have a secretary to the RA to perform such duties as maybe directed. However, due to inadequate staffing and resources this function is currently being performed by one of the regulators in addition to her functions at the FSC. Despite not having a budget the RA have been functioning adequately and excising its autonomy and independence.
857. The Customs Department falls under the Ministry of Finance. The Comptroller is (subject to the general control of the Minister), charged with the duty of collecting and accounting for, and otherwise managing, the revenue of customs and is responsible for the administration of the Customs (Control and Management) Act and for any other enactment relating to any assigned matter (Section 4 of the Customs (Control and Management) Act). The Customs management team consists of the Comptroller, [2 Deputy Comptrollers and 2 Assistant Comptrollers].
858. Funding for the Customs Department is provided by the Government of Montserrat in the annual budget. As the result of recent economic difficulties and budgetary restraints, there are sometimes limitations in acquiring the technical and other resources at times. No information was provided to the Examiners with regards to the allocation given to the Customs for the past four years. The operational independence and autonomy to ensure freedom from undue influence and interference can be found throughout the Customs (Control and Management) Act, which provides the Comptroller with broad discretionary powers
859. Policies in respect of prosecutions are set by the Attorney General, who is independent from any other branch of Government. Section 21 of the Montserrat Constitution Order 1989 gives the Attorney General independent power in relation to criminal proceedings. As such, the Attorney General is insulated from undue influence. The structure of the AG Department consist of the Attorney General; A criminal prosecution arm for three prosecutors, currently the position of principle Crown Counsel is vacant and recruitment is actively being pursued; A civil and commercial arm for three attorneys, currently the position of Crown Counsel is vacant; A parliamentary counsel arm and an administration arm with one vacant position.
860. The AG is the accounting officer for the department and is responsible for managing the budget with regards to administration, technical and training resources in conjunction with the Legal Assistant. The Examiners were informed that more resources were needed by the department, in particular, with regards to training needs and prosecutions.
861. Overall, the GOM General Orders requires established officers of the public service, as well as others that may be designated from time to time, to sign the Official Secrets Act. This shows that public servants are aware that they should not divulge information gained as a result of their employment. There is also a Code of Ethics for GOM employees and soon to come into force the Integrity in Public Life Act. Montserrat is in a position to ask the UK to seek the extension of the UN Convention Against Corruption (UNCAC) to it.
862. The examiners were informed that all the members of the RA are required to take oaths of office in their various departments. The Chairperson of the RA as Commissioner of the FSC

under the FSC Act (Cap. 11.02); the Attorney General under the Constitution (Cap. 1.01) and the Commissioner of Police under the Police Act (Cap. 16.01). Under section 130 of the POCA, members of the RA are subject to imprisonment and fines for unauthorised disclosure of information. The Examiners were told that there have not been any breach of information from the RA, AG Department, FCAU or the FSC relating to AML/CFT matters.

863. Staffs of the various members of the RA are vetted before being employed by way of references and certificate of good character in most cases. However, the Examiners were informed that there were no mechanisms in place for ongoing monitoring of staff in general.

6.1.2 Recommendations and Comments

864. The authorities should ensure that an effective mechanism is put in place to bring together the various competent authorities on a regular basis to develop and implement policies and strategies to combat money laundering and terrorist financing.
865. The authorities should consider the setting up a secretariat to monitor the implementation of the country's AML/CFT regime.
866. There appear to be an excellent working relationship between the competent authorities at a strategic level due to the composition of the RA. However at the operational level the relationship among competent authorities appear to be ad-hoc.
867. The authorities should consider formalising the arrangement with MOUs among the local authorities.
868. The AG department should consider playing a more pro-active role in giving guidance to the FCAU in relation to AML/CFT investigations.
869. The competent authorities should consider formulating a strategic plan on a risk-based approach both in the short-term and long-term targeting the DNFBPs and NPOs with awareness training seminars to help them become fully compliant with their obligations and requirements under the legislation.
870. Montserrat has demonstrated a high level of national cooperation amongst the policy makers. There were two main issues that were identified during the onsite visit. Firstly, there was far too much duplication on the part of the various bodies. The Chairman of the RA was also the Registrar of IBCs and Director/Commissioner of the Financial Services Commission. It is apparent that the Commissioner also functioned in other regulatory roles. Apart from the possibility of conflicts of interest arising, the ability to work effectively when saddled with such enormous responsibilities was highly questionable. This was borne out because during the onsite visit it was clear that not all DNFBPs and all financial institutions, to a lesser extent had received comprehensive monitoring, supervision and training in keeping with the mandate of the FSC legislation. Clearly more resources need to be allocated to these areas to increase the complement of the FSC staff.
871. Montserrat also needs to consider putting measures in place to ensure a more definitive separation of roles and functions and to ensure the greatest transparency.

6.1.3 Compliance with Recommendations 31

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> • There are no established mechanisms in place to allow policy makers to cooperate with each other • No formalised mechanism is in place for co-operation between the competent authorities at the operational level.

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

6.2.1 Description and Analysis

Recommendation 35

872. As a British Overseas Territory, Montserrat cannot sign or ratify any trans-national convention on its own behalf. Instead, it must request, through the Governor, that such agreements be extended to it by the UK. However, Montserrat can enact legislation domestically to implement the provisions of relevant trans-national conventions prior to requesting that they be extended.
873. The 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was ratified by the UK Government and extended to Montserrat on 8th February 1995. The Vienna Convention is implemented in Montserrat by the CJICA and the POCA.
874. Although it has not yet been extended to Montserrat, the provisions of the UN Convention against Trans-national Organised Crimes (The Palermo Convention) have been partially implemented in Montserrat.
875. Article 16 is implemented by the Extradition (Overseas Territories) Order 2002 (UK SI 2002 No. 1823) and the Extradition Act 1989 (UK) Act of 1989 c.33. The UK SI extends Act of 1989 c.33 to Montserrat.
876. Obstruction of justice is criminalised under section 92 of the Penal Code, which makes it an offence punishable by 5 years imprisonment to conspire to obstruct the due course of justice, dissuade, hinder or prevent any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or obstruct or in any way interfere with or knowingly prevent the execution of any civil or criminal legal process. As of this date, there is no law in Montserrat that directly implements Articles 24 and 25. Section 113 of the Criminal Procedure Code provides that the laws of England and the practice of England's Superior Courts of criminal law shall apply when matters of procedure are not expressly provided for. As such, Montserrat is compliant with Articles 24 and 25 under the extension of UK law. In spite of the availability of UK statutes and precedent, Montserrat is in the process of drafting legislation that makes provision for witness protection, including video link and recorded testimony, to implement Articles 24 and 25 under domestic statutes.
877. Despite the references to the applicability of the UK provisions in terms of victim assistance and witness protection, there was no evidence on the ground that such a system was in place. Some discussion on the topic appears to have taken place but there was no indication that any concrete guidelines or specific policy had been articulated or put in place.

878. The legislation that implements the Convention includes an additional offence within Montserrat's Penal Code, together with the POCA 2010, as well as other enactments, as discussed below. In accordance with Article 5, section 89A of the Criminal Code criminalises participation in an organised group. Specifically, this section makes it an offence to participate, whether as a member or an associate or prospective member, in an organised criminal group, knowing that it is an organised criminal group while—
- knowing that his or her participation contributes to the occurrence of criminal activity; or
 - reckless as to whether his or her participation may contribute to the occurrence of criminal activity.
879. Because participation in the group is criminalised, the general provisions of the Criminal Code in respect of organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime apply. See Penal Code section 19. It should be noted that Montserrat does not define “serious crime” generally. However, for the purposes of the offence set out in section 89A, “serious violent offence” is defined to mean any offence—
- (a) that is punishable by a period of imprisonment for a term of 5 years or more; and
 - (b) where the conduct constituting the offence involves—
 - (i) loss of a person's life or serious risk of loss of a person's life,
 - (ii) serious injury to a person or serious risk of serious injury to a person,
 - (iii) serious damage to property in circumstances endangering the physical safety of any person, or
 - (iv) perverting the course of justice, where the purpose of the conduct is to prevent, seriously hinder, or seriously obstruct the detection, investigation, or prosecution of any offence—
 - (A) that is punishable by a period of imprisonment for a term of 7 years or more, and
 - (B) that involved, involves, or would involve conduct of the kind referred to in any of subparagraphs (i) to (iii).
880. The provisions of POCA that relate to money laundering (ML), as discussed fully in section 2.1 above, including the definition of “offence” that serves to identify predicate offences, implement Article 6.
881. The POCA creates mechanisms that enable full compliance with Articles 12, 13 and 14. The jurisdictional issues addressed in Article 15 are addressed by a variety of provisions, including sections 4, 5, 6 and 89A of the Criminal Code.
882. The International Convention for the Suppression of the Financing of Terrorism, Articles 2 and 3 are implemented by, primarily, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002).
883. Terrorist activities are criminalized pursuant to the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 and the Al Qa’ida and Taliban (United Nations Measures)(Overseas Territories) Order 2002, thus implementing Article 4.

884. As discussed previously, the definition of “person” includes both natural and legal persons under Montserrat law. Therefore, legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.
885. Several UK Orders in Council that are extended to Montserrat implement Article 6. “Terrorism” is defined in the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 to include the use or threat of action where made for the purpose of advancing a political, religious or ideological cause. A similar provision is made under section 4 of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002. With respect to extradition matters, section 24 of the Extradition (Overseas Territories) Order 2002 provides that offences to which section 1 of the Suppression of Terrorism Act 1978 applies shall be regarded as an offence of a political character and no proceedings in respect thereof shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.
886. Part IV of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002 addresses the issue of jurisdiction and implements Article 7. Under section 18, jurisdiction extends where a person does anything outside Montserrat and where the action of that person would have constituted the commission of an offence under articles 6 to 9 of the Order if it had been done in Montserrat.
887. Provision in respect of the freezing of terrorist funds is found in section 5 of the Terrorism (United Nations Measures)(Overseas Territories) Order 2001. Forfeiture orders and accounting monitoring orders are available under the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002.
888. Article 9 is addressed under the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002, section 9 of the CJICA. In cases of discovery of fugitives, arrests and detentions are carried out in close collaboration between the relevant authorities. The Royal Montserrat Police Force informs, as a matter of routine, the relevant foreign representative of the suspect that is the subject of arrest in Montserrat. Legislative support for this is found in Code 3.3 of the English Police and Criminal Evidence Act (PACE) by virtue of section 47 of the Criminal Procedure Act. Montserrat will soon make similar provisions in its domestic law under the Police Powers and Duties Act, which is in draft form and is soon to be under review by the Police Force.
889. The Extradition (Overseas Territories) Order 2002 implements Articles 10 and 11. That Order permits extradition of nationals and the definition of “extradition crimes” includes terrorism offences, pursuant to Schedule 2 of that Order. See discussion at section 6.4.
890. Assistance is rendered to other states primarily pursuant to POCA, the CJICA and the Mutual Legal Assistance (United States of America) Act, in accordance with Articles 12 through 15. Terrorism matters fall within the mutual legal assistance regime. If there are substantial grounds for believing that the request for mutual legal assistance is made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person’s position, the request would be denied.
891. In addition to the relevant provisions of the Extradition (Overseas Territories) Order 2002, the Repatriation of Prisoners Act 1984 c. 47 (UK) as applied to Montserrat by the Repatriation of Prisoners (Overseas Territories) Order 1986, S.I. 1986/1226 authorises the transfer of prisoners

into or out of Montserrat. The Colonial Prisoners Removal Act, 1884 also permits the transfer of prisoners between Montserrat and the UK, Commonwealth countries and other Overseas Territories in accordance³ with Article 16.

892. The fair treatment of persons in custody as contemplated under Article 17 is guaranteed under the Constitution. The treatment of these persons must be in accordance with established international standards.

Table 13: Treaties and Conventions Table

TREATY	ARTICLES	MONTSERRAT'S LEGISLATIVE AND OTHER MEASURES IMPLEMENTING THE TREATY
<p>United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention)</p>	<p>Article 3 (Offences and Sanctions)</p> <p>3.1.a)</p>	<p>The Drug (Prevention of Misuse) Act , Cap.4.07 (“DPMA”) makes an offence the production (s.6), manufacture (s.6), extraction (s.6), preparation (s.6), offering for sale (s.6), distribution (s.6), sale (s.6), delivery(s.6), brokerage (s.16), dispatch (s.16), transport (s.16), importation (s.5) or exportation (s.5) of a drug or psychotropic substance.</p> <p>The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs falls within paragraphs (e) and (g) of the definition of a drug trafficking offence (set out below) and the commission of such an offence is sanctioned under the Act (s.16).</p> <p>The possession or purchase of any narcotic drug or for the purpose of any of the activities enumerated in the first paragraph above falls within paragraphs (a) and (g) of the definition of a drug trafficking offence (set out below) and the commission of such an offence is sanctioned under the Act (s.16).</p> <p>The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or falls within paragraphs (e) and (g) of the definition of a drug trafficking offence (set out below) and the commission of such an offence is sanctioned under the Act (s.16). (The manufacture, transport or distribution of substances listed in Table I and Table II including the amendments made by the Commission on Narcotic Drugs to date is also made an offence by section 11 of the Criminal Justice (International Co-operation) Act, Cap.406 (“CJICA”)as amended by Order of the Governor in Council 60 of 2009.)</p> <p>Section 21A of the Penal Code, Cap.4.02, as amended by the Penal Code (Amendment) Act, 2010, (“PC”)</p> <p>Criminal Procedure Code, 2010 (“CPC”)</p> <p>POCA -</p> <p>Integrity in Public Office Act, 2010 (“IPO”)</p>

		CPC - Section 183
	Article 4 (Jurisdiction) 4.1.a)	<p>Magistrate's Court Act, Cap.2.02, sections 22 and 23. Supreme Court Act, Cap.2.01, sections 6 and 7; CPC, s.9.</p> <p>Common law and international law principles; CJICA; s. 16, 19.</p> <p>Supreme Court Act, Cap. 2.01; s.7.</p> <p>Penal Code, Cap.4.02, s.4.</p> <p>Magistrate's Court Act, Cap.2.02, sections 22 and 23. Supreme Court Act, Cap.2.01, sections 6 and 7; CPC, Magistrate's Court Act, Cap.2.02, sections 22 and 23. Supreme Court Act, Cap.2.01, sections 6 and 7; Criminal Procedure Code, 2010, s.9.</p>
	Article 5 (Confiscation)	<p>Proceeds of Crime Act, 2010, Drug (Prevention of Misuse) Act , Cap.4.07Criminal Justice (International Co-operation) Act, Cap.406; s. 9 and Enforcement of Overseas Forfeiture, S.R.O.s 40/1992 and 85/1995 made under the CJICA.</p> <p><i>Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs</i></p>
	Article 6 (Extradition) 6.2 & 6.3	<p>In respect of countries other than the UK, Ireland, Commonwealth Countries and other British Overseas Territories, extradition in Montserrat is conditional on a treaty with the particular country. This is the result of the Extradition Act 1870 of the United Kingdom which has been extended to Montserrat by the Extradition (Montserrat) Order (UK) 1976, No.54, s.17. When such a treaty is concluded with country, a UK Order in council has to be made under section 2 of the Extradition Act 1870 extending that Act to extradition with that country.</p> <p>The applicable law is contained in the Extradition (Overseas Territories) Order 2002 (UK SI 2002 No. 1823) and the Extradition Act 1989 (UK) Act of 1989 c.33. The UK SI extends parts of the UK Extradition Act of 1989 c.33 to</p>

	<p>6.4</p> <p>6.5</p> <p>6.8</p>	<p>Montserrat. The provisions that are extended to Montserrat are contained in Schedule 2 to the UK SI (“the UK 1989 Act”).</p> <p>The definition of “extradition crime” in section 2 of the UK 1989 Act sufficiently broad to ensure compliance with the Vienna and Palermo Conventions</p> <p>Criminal Justice (International Co-operation) Act, Cap.406, s.20.</p> <p>Criminal Justice (International Co-operation) Act, Cap.406, s.20.</p>
	Article 7 (Mutual Legal Assistance)	<p>Criminal Justice (International Co-operation) Act, Cap.406, s.2-8,</p> <p>There is limited application of mutual legal assistance where fiscal offences are concerned. This restriction is set out in section 5 of the CJICA.</p> <p>Criminal Justice (International Co-operation) Act, Cap. 4.06, s. 6&7</p> <p>Upon request, Montserrat can facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.</p>
	Article 10 (International Co-operation and Assistance for Transit States)	<p>The Criminal Justice (International Co-operation) Act, Cap. 4.06</p> <p>This Act enables Montserrat to co-operate with any country that applies/ makes a request for assistance in accordance with the requirements under the Act. Therefore, to the extent that the requesting country is a transit State, Montserrat co-operates and provides assistance to transit states.</p> <p>However, given the size and economic reality of this territory, it is not feasible for Montserrat to undertake to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control of illicit traffic.</p>
	Article 11 (Controlled Delivery)	<p>Proceeds of Crime Act, 2010</p> <p>The main purpose of the defences in section 118(2)(c), 119(2)(c) and 120(2)(d) is to allow for the appropriate use of controlled delivery at the international level, on the basis of</p>

		agreements or arrangements mutually consented to, with a view to identifying persons involved in offences, including offences established in accordance with article 3(1), and to taking legal action against them.
	Article 15 (Commercial carriers)	<p>Customs (Control and Management) Act, Cap. 17.04 Under this Act, customs officers and police officers have wide powers to search and examine vessels and aircrafts entering its ports and territorial waters. These powers are used to ensure that these carriers are not being used for unlawful activities including the commission of offences established in accordance with Article 3.1.</p> <p>Port Authority Act, Cap. 7.09, s.53</p>
	Article 17 (Illicit Traffic at sea)	Criminal Justice (International Co-operation) Act, Cap. 4.06 , ss. 16 to 18A prescribe offences relating to illicit drug trafficking on ships and at sea as well as the jurisdiction and enforcement powers exercisable in relation to these offences within Montserrat's territorial sea.
	Article 18 (Free Trade Zones)	The laws of Montserrat do not contain a framework for areas to be designated as free trade zones and free ports. As such, the relevant authorities are authorised to apply the measures employed to suppress illicit drug trafficking to the same extent to all ports in Montserrat.
	Article 19 (Use of mail)	<p>In conformity with its obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of its legal system, Montserrat has adopted measures to suppress the use of the mails for illicit traffic.</p> <p>Post Office Act, Cap. 18.11 - Section 17(1)(c) prohibits the mailing of such articles: <i>"Articles prohibited to be posted"</i> <i>17. (1) No person shall post or cause to be posted or sent or cause to be sent or tendered or delivered in order to be sent by post, any postal packet—</i> ... <i>(c) containing opium, morphine, cocaine, heroin or other narcotics; ...</i></p> <p><i>(2) The Governor in Council may make such regulations as he may think fit for preventing the sending or delivery by post of the aforesaid things."</i></p> <p><i>Psychotropic substances have not been adequately addressed in the legislation.</i></p>

		Customs (Control and Management) Act, Cap.17.04
United Nations Convention against Transnational Organized Crime, 2000 (Palermo Convention)	Article 5 (Criminalization of participation in an organized criminal group) 5.1.a) 5.1.b) 5.2	<p>In the Penal Code, Cap.4.02, as amended by the Penal Code (Amendment) Act, 2010 and under the common law Montserrat has established as criminal offences, when committed intentionally (distinct from the attempt or completion of the criminal activity agreed or engaged in by the organised criminal group):</p> <p>(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement (conspiracy under the Penal Code ss.92, 157 and the common law crime of conspiracy) or involving an organized criminal group (s.21A);</p> <p>(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:</p> <p>a. Criminal activities of the organized criminal group;</p> <p>b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim; (s.21A)</p> <p>All of the elements of the offences concerning an organised criminal group have not been specifically provided for. There is no precise provision that covers “facilitating” the commission of the offence of an organised criminal group.</p>
	Article 6 (Criminalization of laundering of the Proceeds of Crime)	Proceeds of Crime Act, 2010 (POCA) Penal Code , Cap 4.02, s. 78 (Official Corruption) Cooperatives Act , Cap.11.21, s. 218 (Corrupt Practice and Bribery) Public Finance and Management Regulations , 2009 (Corrupt Practice) Elections Act , Cap 1.04, ss.62,66 and 68 (Bribery) Elections Act , Cap 1.04, s.66 (Corruption) Coroners Act , Cap 2.05, s. 4 (Corruption)

		<p>Integrity in Public Office Act, 2010 (several provisions)</p> <ul style="list-style-type: none"> Obstruction of justice (article 23) <p>Penal Code, Cap 4.02, Part VI (Offences relating to the Administration of Justice)</p>
	<p>Article 7 (Measures to combat money laundering)</p>	<p>Montserrat has instituted, under the following legislation, a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering. The regime emphasizes requirements for customer identification, record-keeping and the reporting of suspicious transactions:</p> <p>Proceeds of Crime Act, 2010 (POCA), Anti-Money-Laundering and Terrorist Financing Regulations, 2010, Limited Liability Company Act, Cap 11.14 Company Management Act, Cap. 11.26, Financial Services Commission Act, 2008, Securities Act, Cap.11.01, Banking Act, Cap.11.03; International Banking and Trust Companies Act, Cap. 11.04</p> <p>Financial Services Commission Act, Section 26A of Customs (Control and Management) Act, Cap. 17.04 requires persons entering the territory to declare currency or monetary instruments over the value of US\$10,000. Customs officers are required to record identification and other information about the currency and instruments and report it to the Financial Services Commission.</p> <ul style="list-style-type: none"> Part 9 of the Anti-Money Laundering and Terrorism Financing Code, 2010 requires service providers (including banks and other financial institutions) to obtain and record information about the payer and payee of wire transfers. Also, if wire transfers and other transactions are suspicious, service providers are required to record and report these transactions under Part 7 and Part 5 of the Code, respectively. <p><i>Montserrat has provided legislatively for the requirements of this essential criteria. However the very recent passage of the legislation means that enforceability and effectiveness of this regime is highly questionable. There were areas of vulnerability to ML which were identified in at least two or three areas with money remittance businesses, non-profit organisations and other DNFBPS which were largely unregulated until very recently.</i></p>
	<p>Article 8 (Criminalization of Corruption)</p>	<p>Various acts of corruption are criminal offences in Montserrat, including corrupt conduct involving public officials, in the following Acts:</p>

		<p>Penal Code, Cap 4.02, s. 78 (Official Corruption);</p> <p>Cooperatives Act, Cap.11.21, s. 218 (Corrupt Practice and Bribery);</p> <p>Public Finance and Management Regulations, 2009 (Corrupt Practice);</p> <p>Elections Act, Cap 1.04, ss.62,66 and 68 (Bribery) ;</p> <p>Elections Act, Cap 1.04, s.66 (Corruption);</p> <p>Coroners Act, Cap 2.05, s. 4 (Corruption); and</p> <p>Integrity in Public Office Act, 2010 (several provisions).</p>
	Article 10 (Liability of Legal persons)	There are no specific penalties applied to legal persons as being different from those applied to natural persons. This seriously calls into question whether the penalties therefore can be effective proportionate or dissuasive for legal persons.
	Article 11 (Prosecution Adjudication and sanction)	<p>By virtue of the classification of offences set out in Part 9 of the Criminal Procedure Code, 2010, the offences established in accordance with articles 5, 6, 8 and 23 of the Convention are indictable offences or offences triable either way. These offences generally carry more severe penalties than other offences.</p> <p>Also, the offences established under the anti-money laundering and proceeds of crime legislation are subject to sanctions, including fines and terms of imprisonment, that are relatively high for the commission of an offence in Montserrat.</p> <p>The laws of Montserrat provide for securing the attendance of an accused for trial.</p>
	Article 12 (Confiscation and Seizure)	Proceeds of Crime Act, 2010 (POCA)
	Article 13 (International Co-operation for the purposes of confiscation)	Montserrat has a mutual legal assistance treaty with the USA (Mutual Legal Assistance Criminal Matters (USA) Act).
	Article 14 (Disposal of confiscated proceeds of crime or property)	<p>Part 5 of POCA.</p> <p>POCA, Section 112(3)</p>

	Article 15 (Jurisdiction)	<p>Magistrate’s Court Act, Cap.2.02, sections 22 and 23. Supreme Court Act, Cap.2.01, sections 6 and 7; Criminal Procedure Code, 2010, s.9. Criminal Justice (International Co-operation) Act, Cap.406; s. 16, 19-</p> <p>Common law and international law principles</p> <p>Supreme Court Act, Cap. 2.01; s.7</p>
	Article 16 (Extradition)	<p>Montserrat’s extradition regime is primarily governed by –</p> <ul style="list-style-type: none"> a) the Extradition Act, Cap. 4.09; b) the Extradition Act 1870 of the United Kingdom which has been extended to Montserrat by the Extradition (Montserrat) Order (UK) 1976, No. 54; c) the Extradition (Overseas Territories) Order 2002, S.I. 2002 No. 1823 (UK) which extends to Montserrat, with certain exceptions, adaptations and modifications, the provisions of the Extradition Act, 1989 (U.K.); and d) the Criminal Justice (International Co-operation) Act, Cap. 4.06.
	Article 18 (Mutual Legal Assistance)	<p>Sections 2 to 9 of the Criminal Justice (International Co-operation) Act, POCA 2010, Mutual Legal Assistance Criminal Matters Act (USA) Cap. 4.12 provides for mutual legal assistance to be afforded to another territory if requested for any of the following purposes:</p> <ul style="list-style-type: none"> a) Effecting service of summons and other judicial documents; b) Assistance in obtaining evidence in connection with criminal proceedings; c) Transfer of a prisoner to give evidence or assist investigation; d) Executing entry, search and seizure for material relevant to overseas investigation e) Enforcement of overseas forfeiture orders <p>Part 4 and Schedule 3 of the Proceeds of Crime Act, 2010 provides for cooperation where a request is made by an overseas authority to prohibit dealing with specified property (restraint order) or where an external order is made by a Court for recovery of property that is believed to have been obtained as a result of or in connection with criminal conduct</p> <p>The Mutual Legal Assistance Criminal Matters (USA) Act, Cap. 4.12 incorporates a Treaty for mutual legal assistance between Montserrat and the United States of America and provides for the following:</p> <ul style="list-style-type: none"> a) Service of documents or orders, s.5; b) Search and seizure, s.5; c) Compelling a witness to testify or produce evidence, s. 6;

		<p>d) Authentication of an official document, s.7; and</p> <p>e) Transfer of persons in custody, s.11.</p>
	<p>Article 34 (Implementation of the Convention)</p> <p>34.2</p>	<p>The offences of laundering proceeds of crime, corruption and obstruction of justice have been established in the laws of Montserrat as required in articles 5, 6, 8 and 23, respectively. These offences are independent of the offence of participation in an organized criminal described in article 3 of this Convention.</p> <p>The relevant laws of Montserrat under which these offences are established are as follows:</p> <ul style="list-style-type: none"> • Money laundering (article 6) - POCA 118-120 • Corruption (article 8) : <p>Penal Code, Cap 4.02, s. 78 (Official Corruption)</p> <p>Cooperatives Act, Cap.11.21, s. 218 (Corrupt Practice and Bribery)</p> <p>Public Finance and Management Regulations, 2009 (Corrupt Practice)</p> <p>Elections Act, Cap 1.04, ss.62,66 and 68 (Bribery)</p> <p>Elections Act, Cap 1.04, s.66 (Corruption)</p> <p>Coroners Act, Cap 2.05, s. 4 (Corruption)</p> <p>Integrity in Public Office Act, 2010 (several provisions)</p> <ul style="list-style-type: none"> • Obstruction of justice (article 23) <p>Penal Code, Cap 4.02, Part VI (Offences relating to the Administration of Justice)</p>
<p>International Convention for the Suppression of the Financing of Terrorism 1999</p>	<p>Article 2 (Offences)</p>	<p>In Montserrat, a person commits an offence within the meaning of this Convention [article 2.1(b)] by virtue of the following:</p> <ul style="list-style-type: none"> • Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002 – This UK Statutory Instrument (No. 1822 of • 2002) was extended to Montserrat and provides for the following offences in Part II, articles 6 to 8: • Inviting another to provide money or other property for the purpose of terrorism • Receiving money or other property for the purpose of terrorism • Providing money or other property for terrorism • Using money or other property for terrorism • Possessing money or other property for the purposes of terrorism

		<ul style="list-style-type: none"> • Entering into or becoming concerned in an arrangement as a result of which money or property is made available or is to be made available to another for terrorism <p>Commission of the above offences require a person to intend or have reasonable cause to suspect that the money or other property to be for the purposes of terrorism.</p> <p>This Order defines terrorism as: <i>“4.(1) In this Order “terrorism” means the use or threat of action where—</i> <i>(a) the action falls within paragraph-(2),</i> <i>(b) the use or threat is designed to influence the government or intimidate the public or a section of the public, and</i> <i>(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.</i></p> <p><i>(2) Action falls within this paragraph if it —</i> <i>(a) involves serious violence against a person,</i> <i>(b) involves serious damage to property,</i> <i>(c) endangers a person’s life, other than that of the person committing the action,</i> <i>(d) creates a serious risk to the health or safety of the public or a section of the public, or</i> <i>(e) is designed seriously to interfere with or seriously to disrupt an electronic system.”</i></p> <p>• Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 –</p> <p>• Terrorism (United Nations Measures)(Overseas Territories) Order, 2001 – Under articles 3, 4 and 6 of this Order, the collection of funds, making funds available and engaging in activities to facilitate the collection of funds or make funds available are offences;</p> <p>• Terrorism (United Nations Measures) Order, 2006 By virtue of section 37 of the Interpretation Act, Cap. 1.02, a person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article. Section 37 provides: <i>“Attempt to commit an offence to be deemed an offence</i> 37. A provision which constitutes an offence shall, unless the contrary intention appears, be deemed to provide also that an attempt to commit such offence shall be an offence against such provision, punishable as if the offence itself had been committed.”</p> <p>Under sections 19 to 21 of the Penal Code, Cap. 4.02 and the common law a person also commits an offence if that person: (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;</p>
	2.3	

		<p>(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;</p> <p>(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:</p> <p>(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or</p> <p>(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.</p> <p>Sections 19 to 21 of the Penal Code s.19 state that-</p> <p><i>“Principal offenders</i></p> <p><i>19. (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—</i></p> <p><i>(a) every person who actually does the act or makes the omission which constitutes the offence;</i></p> <p><i>(b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence;</i></p> <p><i>(c) every person who aids or abets another person in committing the offence; and</i></p> <p><i>(d) any person who counsels or procures any person to commit the offence.</i></p> <p><i>(2) In a case arising out of paragraph (d) of subsection (1), the accused may be charged with himself committing the offence or with counselling or procuring its commission.</i></p> <p><i>(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.</i></p> <p><i>(4) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he himself had done the act or made the omission, and he may be charged with himself doing the act or making the omission.</i></p> <p><i>Offences committed by joint offenders in prosecution of common purpose</i></p> <p><i>20. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable</i></p>
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		<p><i>consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.</i></p> <p><i>Counselling another to commit an offence</i> <i>21. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of the carrying out of the counsel. In either case the person who gave the counsel is deemed to have counseled the other person to commit the offence actually committed by him."</i></p>
	<p>Article 4 (Criminalization)</p>	<p>The offences set out in Article 2 are criminal offences in Montserrat under the UK Statutory Instrument identified above. These (Overseas Territory) Orders are a component of the domestic law of the territory.</p> <p>The penalty for the commission of one of the offences under articles 6 to 8 of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002 is imprisonment for a term not exceeding 14 years, a fine or both on conviction on indictment. If the offence is tried summarily, the penalty is a term of imprisonment not exceeding six months, a fine not exceeding the statutory maximum or both (article 14 of the Order).</p> <p>Article 19(1) of the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, provides that the penalty for the commission of the offences under articles 7, 8(9) and 9 of that Order is imprisonment for a term not exceeding seven years, an unspecified fine or both for conviction on indictment.. If a person is convicted on summary conviction for one of these offences the penalty is a term of imprisonment not exceeding six months, a fine not exceeding £5000 or both.</p>
	<p>Article 5 (Liability of legal persons)</p>	<p>Section 2 of the Interpretation Act, Cap. 1.02 defines person as follows: <i>““person” includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons;”</i></p> <p>Since definitions in the Interpretation Act apply to all laws of Montserrat, unless there is something in the subject or context inconsistent with such construction or unless it is expressly defined otherwise, legal persons may be liable for offences established in accordance with this Convention. Liability for</p>

		<p>these offences is criminal.</p> <p>Additionally, the effect of article 1 of the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, the Terrorism (United Nations Measures) Order, 2006 and the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 is that a body incorporated in Montserrat may commit the offences established in accordance with Article 2 of this Convention.</p> <p>The sanctions for the offences set out in article 2 are either or both fines and terms of imprisonment. The terms of imprisonment range from six months to fourteen years and may be tried summarily or on indictment.</p>
	Article 6 (Justification for commission of offence)	<p>The Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002 defines terrorism as follows:</p> <p><i>“4.(1) In this Order “terrorism” means the use or threat of action where—</i></p> <p><i>(a) the action falls within paragraph (2),</i></p> <p><i>(b) the use or threat is designed to influence the government or intimidate the public or a section of the public, and</i></p> <p><i>(c) the use or threat is made for the purpose of advancing a political, religious or-ideological cause.</i></p> <p><i>... ”</i></p> <p>A similar definition of terrorism is used in the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 and the Terrorism (United Nations Measures) Order, 2006.</p> <p>It therefore follows that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, religious or other similar nature.</p>
	Article 7 (Jurisdiction)	<p>In Montserrat, the general principle is that jurisdiction in criminal law is territorial. Therefore Montserrat has jurisdiction over the offences created in accordance with article 2 of this Convention when the offence is committed in its territory.</p> <p>The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, the Terrorism (United Nations Measures) Overseas Territories) Order 2001 expressly states that the Order applies to any person within the territory</p> <p>Article 18 of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002 establishes Montserrat's jurisdiction over the offences prescribed in article</p>

		<p>6,7 and 8 of that Order when the offence is committed outside the territory.</p> <p>Article 1.4 of the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002; article 1(3) of the Terrorism (United Nations Measures) Order, 2006 and article 1(5) of the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 provide that the articles in the Order which establish the offences in accordance with Article 2 of this Convention ,apply to British Overseas citizens. Montserrat therefore has jurisdiction when the offence is committed by a national of that territory.</p> <p>Some of the above mentioned provisions also give Montserrat sufficiently broad jurisdiction to cover situations where the offence is committed by a person who is ordinarily resident and on board a ship or aircraft.</p>
	<p>Article 8 (Measures for identification, detection, freezing and seizure of funds)</p>	<p>Measures for identifying, detecting, freezing and seizing terrorist funds are provided for in the following Orders–</p> <ul style="list-style-type: none"> • Terrorism (United Nations Measures) Order, 2006 : <ul style="list-style-type: none"> ▪ Article 7 (freezing funds and economic resources of designated persons) ▪ Article 12 and Schedule 1(evidence and Information) • Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002: <ul style="list-style-type: none"> ▪ Article 8 (freezing of funds) ▪ Article 10 (failure to disclose knowledge or suspicion) ▪ Article 18 and Schedule 3(obtaining evidence and information) • Terrorism (United Nations Measures)(Overseas Territories) Order 2001: <ul style="list-style-type: none"> ▪ Article 5 (freezing of funds) ▪ Article 8 (failure to disclose knowledge or suspicion of offences) ▪ Article 9 (obtaining of information) • Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order, 2002: <ul style="list-style-type: none"> ▪ Article 10 (disclosure of information: duty) ▪ Article 15 (forfeitures) ▪ Article 16 (forfeiture of terrorist cash) ▪ Article 17 and Schedule 4 (account monitoring orders).
	<p>Article 9 (Investigations & the rights of the accused).</p>	<p>It is within the duties of a police officer outlined in section 23 of the Police Act, Cap. 10.01 to take the measures to investigate the facts contained in any information that a person who has committed or who is alleged to have committed an offence set out in article 2 may be present in Montserrat</p> <p>Various powers and procedure are provided for in the</p>

		<p>Criminal Procedure Code, 2010 to secure the attendance of an accused person for prosecution.</p> <p>Every person who is charged with a criminal offence in Montserrat is entitled to the fundamental rights and freedoms outlined in Part IV of the Constitution, Cap. 1.01, including protection from arbitrary arrest and detention (section 56) and protection of the law (section 57).</p>
	Article 10 (Extradition of nationals)	<p>The procedure, conditions and exceptions that are apply in respect of the extradition of Montserrat nationals are outlined in the Extradition Act, 1989 (as extended, modified and adapted by the Extradition (Overseas Territories) Order 2002).</p>
	Article 11 (Offences which are extraditable)	<p>The offences set forth in article 2 come within the definition of a “extradition crime” in section 2 of the Extradition Act, 1989 which was extended to Montserrat (with certain exceptions, adaptations and modifications) by the Extradition (Overseas Territories) Order 2002. Extradition crimes are defined as follows:</p> <p>“2. - (1) In this Act "extradition crime" means - (a) conduct in the territory of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which, if it occurred in the relevant listed territory, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the United Kingdom, Ireland, Commonwealth country or—British overseas territory, is so punishable under that law; (b) an extra-territorial offence against the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies - (i) the condition specified in subsection (2) below; or (ii) all the conditions specified in subsection (3) below.</p> <p>(2) The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the relevant listed territory punishable with imprisonment for a term of 12 months, or any greater punishment.</p> <p>(3) The conditions mentioned in subsection (1)(b)(ii) above are - (a) that the United Kingdom, Ireland, designated Commonwealth country or British overseas territory bases its jurisdiction on the nationality of the offender; (b) that the conduct constituting the offence occurred outside</p>

		<p><i>the relevant listed territory; and (c) that, if it occurred in that listed territory it would constitute an offence under the law of that territory punishable with imprisonment for a term of 12—months, or any greater punishment.</i></p> <p><i>(4) For the purposes of subsections (1) to (3) above -</i> <i>(a) the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory includes the law of any part of it;</i> <i>(b) conduct in a dependency of a designated Commonwealth country, or a vessel, aircraft or hovercraft of such a country, shall be treated as if it were conduct in the territory of that country; and</i> <i>(c) conduct in a vessel, aircraft or hovercraft of the United Kingdom, or of a British overseas territory, or of Ireland shall be treated as if it were conduct in the United Kingdom or in that British overseas territory or in Ireland; but</i> <i>(d) reference shall be made to the law of a dependency of a designated Commonwealth country, and not (where different) to the law of the Commonwealth country, to determine the level of punishment applicable to conduct in that dependency.”</i></p>
	<p>Article12 (Assistance to other states)</p>	<p>Criminal Justice (International Co-operation) Act, Cap.406, s.2-8, This Act provides for mutual legal assistance to be afforded if requested for any of the following purposes: a) Taking evidence or statements from persons; (sections 4,5,6 & 7) b) Effecting service of judicial documents; (sections 2 & 3) c) Executing searches and seizures; (sections 8 & 9) d) Providing information and evidentiary items; (sections 4 & 5) e) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records; (sections 4 & 5); Part 4 of the Financial Services Commission Act, 2008 f) to facilitate the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings (sections 6 & 7)</p> <p>Mutual Legal Assistance Criminal Matters (USA) Act, Cap. 4.12 This Act incorporates a Treaty for mutual legal assistance between Montserrat and the United States of America and provides for the following: a) Service of documents or orders, section 5; b) Search and seizure, section 5; c) Compelling a witness to testify or produce evidence, section 6;</p>

		<p>d) Authentication of an official document, section 7; and</p> <p>e) Transfer of persons in custody, section 11.</p>
	<p>Article 13 (Refusal to assist in the case of a fiscal offence)</p>	<p>The Governor is restricted from providing assistance in obtaining evidence in Montserrat in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in another country or territory where the offence is fiscal. However this restriction is not absolute.</p> <p>Section 5(3) of the Criminal Justice (International Co-operation) Act, Cap. 4.06 provides that – <i>“ Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) above unless—</i> <i>(a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or</i> <i>(b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.”</i></p>
	<p>Article 16 (Transfer of prisoners)</p>	<p>Sections 6 and 7 of the Criminal Justice (International Co-operation) Act, Cap. 4.06 provide for the transfer of prisoners from and to Montserrat for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 in accordance with this article of the Convention.</p>
	<p>Article 17 (Guarantee of fair treatment of persons in custody)</p>	<p>Every person who is charged and or detained in respect of an matter under this Convention or any other criminal offence in Montserrat is guaranteed all the fundamental rights and freedoms outlined in Part IV of the Constitution, Cap. 1.01, including protection from arbitrary arrest and detention (section 56) and protection of the law (section 57).</p>
	<p>Article 18 (Measures to prohibit persons from encouraging, organising the commission of article 2 offences)</p>	<p>Montserrat has taken, legislative and other measures to prevent and counter preparations for the commission of those set out in article 2 within or outside the territory, including:</p> <p>(a) prohibiting the illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences; (<i>see page 28, Article 2 for details</i>)</p> <p>(b) Part 6 of the Proceeds of Crime Act, 2010, the Anti-</p>

		<p>Money-Laundering and Terrorist Financing Regulations, 2010, the Limited Liability Company Act, Cap 11.14, the Company Management Act, Cap. 11.26, the Financial Services Commission Act, 2008, the Securities Act, Cap.11.01, Banking Act, Cap.11.03; the Customs (Control and Management) Act, Cap.17.04 and the International Banking and Trust Companies Act, Cap. 11.04 –</p> <p>a) administrative and other measures require financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity;</p> <p>b) provide for the supervision, including, for example, the licensing, of all money-transmission agencies</p> <p>c) provide for monitoring the physical cross-border transportation of cash and bearer negotiable instruments; and</p> <p>d) provide for the exchanging accurate and verified information in accordance with their domestic law and coordinating</p>
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893. With respect to the table above the penalties under the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 for legal persons are relatively low bearing in mind the gravity of the offence.
894. There is no distinction made in the liability incurred by a natural person and a legal person. This means that the penalties for legal persons cannot be assumed to be effective, proportionate and dissuasive in the absence of provisions or evidence to the contrary.

Special Recommendation I

895. As noted above, Montserrat cannot sign or ratify any trans-national convention on its own behalf; As discussed above, the Terrorist Financing Convention has been fully implemented. See discussion immediately above and in criteria II.1 through II.4, III.1 through III.15 and V.1 through V.3.
896. Montserrat is in the process of fully implementing the United Nations Security Council Resolutions relating to the prevention and suppression of FT, including S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).
897. The UK S.I.'s, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001), Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) and Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) fully implement the United Nations Security Council Resolutions relating to the prevention and suppression of FT. These Orders in Council are supplemented by POCA along with its Anti-ML and Terrorist Financing Regulations and Anti-ML and Terrorist Financing Code.
898. Montserrat has a variety of laws and procedures to freeze terrorist funds or other assets, most of which are established by UK Orders in Council. In 2001, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001) (2001 Terrorism Order) came into effect. It criminalised collecting, receiving or providing funds for the purposes of terrorism and making funds or financial services available directly or indirectly to a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or a person controlled or owned directly or indirectly by such a person or a person acting on behalf, or at the direction, of such a person. It also provided for freezing of funds. In 2002, the UK made 2 Orders in Council applicable to Montserrat: the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) (Al-Qa'ida Order) and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) (2002 Anti-terrorism Order). Both of these SIs criminalised terrorist financing and provided for freezing of funds and seizure of terrorist property. SI 1822/2002 also provided for the seizure and forfeiture of terrorist property, which is defined as—
- money or other property which is likely to be used for the purposes of terrorism
 - proceeds of the commission of acts of terrorism and
 - proceeds of acts carried out for the purposes of terrorism.
899. It further provides that a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).

900. Since 2001, there have not been any cases in Montserrat of any action pursuant to or under U.N. resolutions in relation to freezing of property concerning terrorist financing.
901. These Orders in Council are supplemented by POCA, under which any act of terrorism would constitute a predicate offence and allow for funds to be frozen, seized and confiscated. POCA, along with its Anti-ML and Terrorist Financing Regulations and Anti-ML and Terrorist Financing Code also provide for a number of regulatory safeguards and reporting requirements in respect of assets that might be used for terrorist financing.

Additional elements

902. Although they have not been formally extended to Montserrat, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism is fully implemented by POCA and its regulations and code.

Additional material

903. As outlined above, with POCA and its regulations and Codes, Montserrat is fully compliant with the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. As such, Montserrat 's Executive Council is actively considering making a request (through the Governor) to the Foreign and Commonwealth Office that these Conventions be extended to Montserrat.
904. Written enquiry was submitted to the U.K. Authorities to ascertain why procedure Montserrat should carry out to have the Conventions extended. In this matter the jurisdiction's compliance with the FATF Recommendations would be helpful.

6.2.2 Recommendation and Comments

905. There is not sufficient evidence that psychotropic substances have been adequately covered.
906. The authorities should ensure full compliance with the provisions of all the requisite conventions.
907. Montserrat should request that the Palermo Convention and the 1999 Terrorist Financing Convention be extended to the jurisdiction.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs. • The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Montserrat.
SR.I	LC	<ul style="list-style-type: none"> • Montserrat is not party to the Palermo Convention and the 1999 Terrorist Financing Convention.

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

908. The Criminal Justice (International Co-operation) Act (“CJICA”) and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) (“2002 Anti-terrorism Order”) are the primary pieces of legislation that govern Montserrat’s participation in MLA with countries who may request it. The POCA Part 6 and Schedule 3, also makes provision for MLA. It contains provisions allowing for Montserrat’s Attorney General to apply to other jurisdictions for enforcement of confiscation orders outside of Montserrat and for the domestic enforcement of external confiscation orders. It also makes provisions empowering the Governor to make regulations in respect of MLA. However, under this Act, MLA is limited to enforcement of confiscation orders and related matters. The Act also enables Montserrat to assist other jurisdictions in AML/CFT investigations.

General Provisions for providing Assistance

909. The CJICA, provides for assistance to be given in respect of foreign investigations originating outside Montserrat as follows:
- upon request made, police on a warrant have powers of search, entry and seizure to obtain evidence (section 8) Additionally, the 2002 Anti-Terrorism Order provides for freezing, seizure and confiscation of assets related to terrorist financing, including compliance with requests for mutual legal assistance.
 - the taking of evidence or statements – by a Magistrate (section 5)
 - documentary evidence may also be provided.
 - Effecting service of judicial documents (section 2)
 - Facilitating voluntary appearance of witnesses – Schedule 1, section 5(6). There is a drawback – the witness may not withdraw consent after it has been initially given.
 - The 2002 Anti-Terrorism Order provides for freezing, seizure, and confiscation of assets related to terrorist financing, including compliance with requests for mutual legal assistance.
910. Under POCA 2010, Part 6 and Schedule 3 are applicable in respect of external requests and the enforcement of external orders and the identification, freezing, seizure or confiscation of “relevant property”. Section 110(d) provides that property is “relevant property” if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

Providing Assistance in a Timely, Constructive, Effective Manner

911. It is not clear from the legislation that Montserrat would be able to provide the assistance in a timely, constructive and effective manner. In the absence of statistics or opportunities to truly test the system, then reliance has to be made on the legislative provisions. The Al Qa’ida U.N. Measures Order, of 2002, for instance, gives the Governor, the power to “direct by notice that

funds are not to be made available to a listed person”. There is no mention of time limits within the text of the order as it relates to freezing or confiscation nor is there a qualification of the word “time” such as “immediately” or “without delay”.

912. Part 7 of POCA and clauses 2 and 10 of Schedule 3 allows the Attorney General to make an application for production orders, customer information orders or account monitoring orders and other external orders.

Assistance not to be Prohibited or Made subject to unreasonable unduly restrictive conditions

913. Section 5 of the CJICA sets out the procedure for Montserrat evidence to be used overseas. More specifically, this section gives the Governor power to provide mutual legal assistance when the Governor is satisfied that—
- an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
 - proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence has been carried on there.
914. Section 111 and schedule 3 of the POCA governs external requests and orders. Clause 2 of Schedule 3 provides that the Court may make a restraint order in response to an external request if proceedings have been initiated, but not concluded. Clause 11 of schedule 3 provides the conditions that must be met for the Court to give effect to external orders. A Court in Montserrat needs to be satisfied that—
- the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction
 - the external order is in force and no appeal is outstanding in respect of it
 - in the case of an external order which authorises the confiscation of property other than money that is specified in the order, the specified property shall not be subject to a charge.
915. Because an external order is, in effect, a confiscation order, these restrictions are necessary to meet the demands of natural justice.

POCA

916. There is a restriction to the provision of assistance in POCA in terms of giving effect to external Orders. Clause 11 of schedule 3 provides the conditions that must be met for the Court to give effect to external orders. A Court in Montserrat needs to be satisfied that—
- the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction
 - the external order is in force and no appeal is outstanding in respect of it
 - for confiscation of property other than money specified in the order, the specified property shall not be subject to a charge
917. Part 2 of the CJICA explains the procedure when a request is made for mutual legal assistance in Montserrat. More specifically, that section explains that the request should be made through

the Governor, who, once satisfied that certain conditions are met, instructs the magistrate's Court.

Clear and Efficient Processes for Timely Provision of Assistance:

918. Under POCA Schedule 3, all requests for MLA for enforcement of external orders are made directly to the Attorney General, who is empowered under that Schedule to make ex parte application to the Judge in Chambers for domestic orders that implement external orders.
919. Apart from the legislative provisions there is no real way of testing the effectiveness of the implementation of those requests since there do not appear to have been any MLA requests. Montserrat has had occasion to respond to at least one spontaneous request where it was able to provide some assistance.
920. Schedule 3 of the Al Qa'ida and Taliban U.N. Measures Order provides that the Governor may request any person in or resident in the territory to furnish him with information that is in that person's possession or control or to produce to him any document that is in his possession. Similarly, the CJICA provides for MLA requests involving taking of evidence to be submitted to the Governor, and POCA 2010 also provides for external requests to be submitted to the Attorney General.

Fiscal Matters

921. Under the CJICA, section 5(3)(a) and (b) places some restriction on mutual legal assistance requested in respect of fiscal matters, but the provisions do not serve as an absolute bar to such requests except for non-Commonwealth States with whom Montserrat does not have an appropriate Treaty. Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted, the request shall be refused unless
 - the request is made pursuant to a treaty which is in force in relation to Montserrat; or
 - the Governor is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.
922. In addition, the Mutual Legal Assistance (United States of America) Act of 1991 (Cap 4.12) gives effect to the terms of the Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of Montserrat, for the exchange of information relating to tax matters and it extends to any similar agreements the Government of Montserrat may enter into. This Act recognises the principle of transparency and the effective exchange of information in tax matters.

Confidentiality or secrecy

923. The Confidential Information Act protects financial and business information unless information is to be sought, divulged or obtained by or given to a police officer of the rank of inspector or above investigating an offence committed or alleged to have been committed within Montserrat.

924. This provision has limitations as it cannot allow information to be divulged if the offence was committed elsewhere but information is sought from the authorities in Montserrat to assist in an ongoing investigation in respect of a crime committed outside of Montserrat.
925. However POCA 2010 refers to a protected disclosure as being exempt from being treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information.
926. Section 2 of the CJICA - which deals with the service of process overseas - is the only Part of the legislation that refers to the rank of the Police Officer. All other references are to a 'Police Officer'. It is therefore uncertain as to whether the 'Police Officer' being referred to would be sufficiently senior to satisfy the requirements of the Confidentiality Act.
927. Section 125 of POCA deals with protection of disclosures. Section 125(2) explains that a protected disclosure, which includes authorised disclosure, is not to be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
928. Montserrat allows the powers of competent authorities to be available for use in response to requests for mutual legal assistance.
929. The jurisdiction has stated that determination of the best venue for prosecution of defendants rests in the hands of the Attorney General, however this is purely a hypothetical projection since the system has not as yet been tested. There is no real evidence that a consideration of appropriate mechanisms with respect to determining the best venue has been made.

Additional elements

930. The powers of the competent authorities required under R.28 are available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts.

Recommendation 37 (Dual criminality relating to mutual legal assistance)

931. The Criminal Justice (International Co-operation) Act applies in respect of dual criminality relating to mutual legal assistance. Additional provisions are provided by POCA.
932. Mutual may be granted partially in the absence of dual criminality. Under the CJICA, section 2 provides that the Governor may cause overseas process to be served in Montserrat.
933. Sections 4 and 5 make mutual provisions for obtaining evidence either overseas or in Montserrat for use in proceedings either in Montserrat or overseas, as the case may be.
934. To obtain evidence in Montserrat for use in foreign proceedings, the Governor need only be satisfied that there are reasonable grounds for suspecting that an offence has been committed under the laws of the other territory and that an investigation is being carried on in that territory (see section 5(2)).
935. Sections 6 and 7 provide for transfer of prisoners to give evidence or to assist with proceedings or investigations, including for the purposes of being identified in such proceedings or investigations (see section 6(1)(b)).

936. Section 8 provides that the magistrate may issue a warrant for search of any premises in Montserrat and seizure of evidence that is related to a foreign criminal investigation for which a person has been arrested.
937. The relevant law with regard to extradition is contained in the Extradition (Overseas Territories) Order, 2002 (E(OT)O) and the Extradition Act, 1989 (EA). The E(OT)O extends the EA to Montserrat. ML is an extraditable offence and the definition of ‘extradition crime’ is wide enough to capture the range of ML offences established under the POCA. Montserrat extradites its own nationals. The Governor and the Attorney General comprise the central authority for sending/receiving extradition requests. To date, there have been no extradition requests to or from Montserrat. Section 110 of the POCA provides for cooperation with foreign jurisdictions. There have been no MLA requests with respect to CFT.

Recommendation 38 and SRV

938. The CJICA refers in section 8(1) to the applicability of an offence in a foreign country to be treated in like manner in Montserrat if it qualified as a ‘serious arrestable offence’ under Montserrat law. There is no definition of “serious arrestable offence” in the CJICA, the Criminal Procedure Code or the Penal Code. The section then goes on to refer to applicability of “arrestable offences” in terms of conducting a search for material relevant to an overseas investigation. This creates an ambiguity as to what is the correct standard that is intended to be applied.
939. The legislative provisions extend sufficiently to cover property of corresponding value subject to the limitations expressed in relation to Recommendation 38.1.
940. Arrangements are in place for co-ordinating seizure and confiscation actions with other countries. There are some potential challenges as relates to the complexity of the process for providing assistance in relation to requests made under the CJICA.
941. Provision is made under the POCA for the establishment and administration of the National Forfeiture Fund. Under those sections, provision is made for an asset forfeiture fund into which all or a portion of confiscated property is deposited and which may be used for law enforcement, health, education or other appropriate purposes.
942. Section 112(3)(c) of POCA gives a discretion to the Governor in Council on the advice of the National Forfeiture Fund be used to satisfy an obligation to share assets confiscated or forfeited in Montserrat.

SR.V

943. The competent authorities in Montserrat are able to provide a range of international co-operation measures in connection with criminal, civil, enforcement and administrative investigations in respect of financing terrorism, terrorist acts and terrorist organisations. The provisions discussed in respect of criteria 36.1 – 36.6 apply to terrorism related offences as they do to ML and other predicate offences. Section 9 of the FSCA applies to administrative investigations regarding financing terrorism and terrorist organisations as they do to ML and other predicate offences.

944. The Act goes on to provide that in some situations, the Commission may require the foreign overseas regulatory authority making the request to give a written undertaking, in such form as the Commission may require, to provide corresponding assistance to the Commission before Assistance would be provided.
945. The Extradition (Overseas Territories) Order 2002 (No. 1823) categorises extradition as an offence punishable by twelve months or more in the requesting country as well as in the requested country. However under the Terrorism (United Nations Measures) Overseas Territories Order 2001, the acts of collecting funds for the purposes of terrorism, making funds available for the purpose of terrorism, committing or attempting to commit a terrorist act, facilitates or participates in the commission of a terrorist offence are all punishable on indictment with a maximum of seven years but on summary conviction the penalty is six months imprisonment. This calls into question whether these TF offences wholly satisfy the definition of an extraditable crime.
- SR V
946. The provisions of Recommendation 36 and 37 are of equal applicability to this Recommendation.
947. The definition of terrorism in the ATFOMOTO is not applicable to actions done to compel an international organisation pursuant to Article 2, 1(b) of the International Convention for the Suppression of Terrorism.

Resources (Central authority for sending/receiving mutual legal assistance/extradition requests)

948. The Governor and the Attorney General comprise the central authority for sending/receiving mutual legal assistance/extradition requests. The Governor's Office is adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. However, due in part to the difficulties commonly encountered with living in Montserrat, the Attorney General's Chambers experiences difficulties with taking on and retaining staff. In particular, there are great difficulties in securing staff to work within the drafting department.
949. The part of the UK Governor's Office involved in international co-operation on AML/CFT issues is funded and staffed by the UK Government out of monies voted to the Foreign and Commonwealth Office by the UK parliament. The structure is the responsibility of the Governor in consultation with the Overseas Territories Directorate of the FCO. Current staffing levels are sufficient to meet Montserrat's needs in respect of mutual legal assistance and extradition requests.
950. The Attorney General is independent from any other branch of Government. Section 21 of the Montserrat Constitution Order 1989 gives the Attorney General independent power in relation to criminal proceedings. As such, the Attorney General is insulated from undue influence. The Attorney General's Chambers is adequately structured and funded, but there are staffing difficulties, as set out above. Although no one member of the Attorney General's Chambers is dedicated to MLA/extradition requests, no such allocation of resources is necessary in Montserrat. The volume of requests for such assistance is quite low does not warrant specifically dedicated personnel.

951. Montserrat experiences a rapid professional staff turn-over in the Attorney General's Office. With a high turn over there has been a lack of institutional memory which has resulted in some uncertainties in the areas of AML and CFT. In terms of predicate offences, it was felt that an increase in lawyers – especially from the Prosecution side enable the system to work in a much more efficient manner.
952. The learned Chief Magistrate is the sole Magistrate. The services of a private legal practitioner are obtained whenever the Chief Magistrate is away but this may not be the ideal situation in terms of possible conflicts of interest and maintaining the appropriate confidence in the judiciary. There is a small backlog of cases which could be improved upon with the provision of additional lawyers. The Chief Magistrate had not received any training on ML or TF issues.
953. Members of the Governor's Office working on financial services issues are all members of HM Diplomatic Service. As such, they are subject to the provisions of the UK Official Secrets Act.
954. Members of the Governor's Office staff are subjected to and have passed the UK's security vetting procedures required of all HM Diplomatic Service personnel.
955. The Government of Montserrat General Orders, section 801 provides that public officers, including members of the Attorney General's staff, are expressly forbidden to give any unauthorised persons information relating to the business of the public service. Should they do so, they may become liable to disciplinary action. The Government of Montserrat is introducing a Code of Ethics for its employees.
956. The UK government has provided training for Governors and other Governor's Office personnel working on financial services issues. This was conducted by the UK Overseas Territories Financial Services Adviser (OTFSA) and conducted in London and Miami. The Governor's Office and OTFSA have access to funds from the UK's Overseas Territories Programme Fund (OTPF) which can be used for projects, including training. This was used for the attachment of the prosecutor to the UK CPS.
957. Two Members of the AG's Chambers have received training in the area of combating ML and FT.
958. While the size of the jurisdiction would not necessitate a large staff for creating an efficient Legal Department, there are some aspects of managing its resources that need to be addressed. The Attorney General admitted that there were definite problems in the legislative drafting part of the Department which would likely have increased productivity with the addition of one other professional draftsman. While the staff may be adequate for the most part in terms of numbers, the rapid turnover of professional staff in the Legal Department has meant that effectiveness and consistency of delivery of services is significantly hampered. Training or exposure of most members of the professional legal complement should be considered to ensure a smoother transitioning when there is attrition of staff. Additionally, there needs to be more exposure of the Magistracy to consistent training in the areas of ML and TF. Consideration to be given to the provision of at least one additional Magistrate to increase the efficiency within the system.

Statistics (Recommendation 32.2)

959. There was indication that all of the matters that are relevant were not necessarily reflected in the Statistics.

6.3.2 Recommendations and Comments

960. Montserrat needs to consider ways to maximise retention of professional staff and more attention should be paid to training across the board for as many of the lawyers in Chambers. At least one additional Magistrate should be hired.
961. Montserrat should consider reviewing the current procedures for executing MLAT requests to provide for greater efficiency.
962. The jurisdiction should create mechanisms to establish specific timelines for complying with requests for assistance.
963. Montserrat should consider expanding mutual legal assistance provisions to include fiscal offences.
964. Clear allowance should be made to facilitate compliance with requests for assistance in terms of foreign non-criminal confiscation orders.
965. Montserrat should articulate a clear definition of a serious arrestable offence or a standard for the application of the term.

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	<ul style="list-style-type: none">• No specific procedures for establishing timelines for complying with requests for assistance• Difficult to judge effectiveness of implementation.
R.37	LC	<ul style="list-style-type: none">• Only partial mutual assistance may be granted in the absence of dual criminality.
R.38	LC	<ul style="list-style-type: none">• Unclear definition and applicable standard of what is a serious arrestable offence.
SR.V	PC	<ul style="list-style-type: none">• The definition of terrorism in the ATFOMOTO does not adequately meet the requirements of the convention for the Suppression of the Financing of Terrorism.
R.32	PC	<ul style="list-style-type: none">• Statistics do not appear to have been faithfully maintained therefore all situations were not necessarily captured.

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

Recommendation 39

966. The applicable law is contained in the Extradition (Overseas Territories) Order 2002 (UK SI 2002 No. 1823) and the Extradition Act 1989 (UK) Act of 1989 c.33. The UK SI extends parts of the UK Extradition Act of 1989 c.33 to Montserrat. The provisions that are extended to Montserrat are contained in Schedule 2 to the UK SI and is referred to throughout this section as “the UK 1989 Act”. The law that is applicable depends on the parties to the extradition request.
967. Extradition between OTs and other OTs, UK, Republic of Ireland and Commonwealth countries is governed by the Extradition (Overseas Territories) Order 2002, made under the UK 1989 Act.
968. Extradition between OTs and foreign countries where the European Convention on Extradition (ECE) does not apply between an OT and a foreign country and where the relevant Order was made under the 1870 Act is governed by Schedule 1 to the UK 1989 Act by virtue of section 37(3) of the UK 1989 Act and the Extradition Act 2003 (Commencement and Savings) Amendment Order 2003 and section 1(3) of the 1989 Act, and subject to any limitations etc in the Order. That Schedule (subject to limitations etc) would provide the extradition procedure to be followed regarding the US.
969. OTs and ECE countries to which the ECE applies in relation to the OTs (as set out in S.I.1996/2875) – UK 1989 Act procedure applies to extradition with the modifications in section 30. ECE countries are treated as other foreign countries where the ECE does not apply between them and the OT (as in the paragraph above). There are extradition arrangements which apply to the OTs in addition to the US and certain ECE countries.
970. The UK Extradition Act 2003 has not yet been extended to the OTs; however, extension of that Act to Montserrat is currently under consideration by the Foreign and Commonwealth Office.
971. Money laundering is an extraditable offence. The definition of “extradition crime” in the UK 1989 Act is wide enough to capture the range of ML offences established under the POCA. The UK 1989 Act definition of “extradition crime” is found in section 2 and reads as follows—

2. (1) In this Act “extradition crime” means—

- (a) conduct in the territory of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which, if it occurred in the relevant listed territory, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the United Kingdom, Ireland, Commonwealth country or British overseas territory, is so punishable under that law;
- (b) an extra-territorial offence against the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies—
 - (i) the condition specified in subsection (2) below; or
 - (ii) all the conditions specified in subsection (3) below.
- (2) The condition mentioned in subsection (1)(b)(i) above is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of the relevant listed territory punishable with imprisonment for a term of 12 months, or any greater punishment.

- (3) The conditions mentioned in subsection (1)(b)(ii) above are—
 - (a) that the United Kingdom, Ireland, designated Commonwealth country or British overseas territory bases its jurisdiction on the nationality of the offender;
 - (b) that the conduct constituting the offence occurred outside the relevant listed territory; and
 - (c) that, if it occurred in that listed territory it would constitute an offence under the law of that territory punishable with imprisonment for a term of 12 months, or any greater punishment.
 - (4) For the purposes of subsections (1) to (3) above—
 - (a) the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory includes the law of any part of it;
 - (b) conduct in a dependency of a designated Commonwealth country, or a vessel, aircraft or hovercraft of such a country, shall be treated as if it were conduct in the territory of that country; and
 - (c) conduct in a vessel, aircraft or hovercraft of the United Kingdom, or of a British overseas territory, or of Ireland shall be treated as if it were conduct in the United Kingdom or in that British overseas territory or in Ireland; but
 - (d) reference shall be made to the law of a dependency of a designated Commonwealth country, and not (where different) to the law of the Commonwealth country, to determine the level of punishment applicable to conduct in that dependency.
972. The applicable law permits extradition of Montserratian nationals. The procedures for extradition are set out in Part III to Act 1989 c.33 sections 7 through 17 of the UK 1989 Act.
973. Principles of domestic law provide that all extraditions must be compliant with the UK 1989 Act, which allows extradition requests and proceedings to be handled without undue delay. Under section 7 of that Act, upon receipt of an extradition request, the Governor may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act. Under section 8, a magistrate may issue a warrant upon receipt of authority to proceed. In the absence of authority to proceed, a magistrate may issue a “provisional warrant” if he is supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime. In any event, section 9 provides specifically that any person arrested pursuant to a magistrate’s warrant must be brought *as soon as practicable* before a Court of committal (a magistrate’s Court).

Additional elements

974. The Governor and the Attorney General comprise the central authority for sending/receiving extradition requests. The Governor and the Attorney General communicate directly.
975. Based on section 7(2) of the UK 1989 Act, provides for the way in which a person may be extradited. Under that section, an extradition request must be accompanied by in the case of a person accused of an offence, a warrant for his arrest issued in the requesting country or territory or, in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence. Likewise, under section 8(3), a person empowered to issue warrants of arrest (including provisional warrants) may issue such a warrant if he is

supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime.

976. Under section 14 of the UK 1989 Act, a person may waive formal extradition proceedings. In such a case, the magistrate may order the committal for return of the person with the person's consent at any time after his arrest.

Recommendation 37 (Dual criminality relating to extradition)

977. The Criminal Justice (International Co-operation) Act applies in respect of dual criminality relating to mutual legal assistance. This includes mutual legal assistance relating to extradition. Part 2 of the CJICA, enables partial mutual legal assistance to be rendered in the absence of dual criminality. Under the CJICA, mutual legal assistance may be rendered when there are reasonable grounds for suspecting that an offence under the law of the country or territory in question has been committed. There is no requirement that the conduct constitute an offence under Montserrat law.
978. Under the CJICA, section 2 provides that the Governor may cause overseas process to be served in Montserrat and section 3 allows the Governor to make arrangements to have Montserrat process served overseas. Sections 4 and 5 make mutual provisions for obtaining evidence either overseas or in Montserrat for use in proceedings either in Montserrat or overseas, as the case may be. To obtain evidence in Montserrat for use in foreign proceedings, the Governor needs to be satisfied that there are reasonable grounds for suspecting that an offence has been committed under the laws of the other territory and that an investigation is being carried on in that territory (see section 5(2)). Sections 6 and 7 provide for transfer of prisoners to give evidence or to assist with proceedings or investigations, including for the purposes of being identified in such proceedings or investigations (see section 6(1)(b)). Section 8 provides that the magistrate may issue a warrant for search of any premises in Montserrat and seizure of evidence that is related to a foreign criminal investigation for which a person has been arrested.
979. The term "extradition crime" is defined on a threshold basis – where if the offence is punishable by a threshold of 12 months imprisonment or more then the offence would be captured.
980. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. Section 2 of the UK 1989 Act specifically states that it applies to offences "however described". The categorization or denomination of offences does not lead to technical differences between the law of requesting and requested states to the provision of mutual legal assistance.
981. The term "extradition crime" is extensively defined. A low penalty threshold of 12 months imprisonment is prescribed (See s.2 UK SI 2002 No. 1823/1989 Act). Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. Section 2 of the UK 1989 Act specifically states that it applies to offences "however described". The categorization or denomination of offences does not lead to technical differences between the law of requesting and requested states to the provision of mutual legal assistance.

Special recommendation V

982. The Terrorism (United Nation Measures) Order 2001 [UK SI 2001 No. 3368] makes criteria 39.1-35.4 applicable to extradition proceedings related to terrorist acts and FT.
983. Any additional element 39.5 (in R.39) applies in extradition proceedings related to terrorist acts or FT.

Additional material

984. The UK Extradition Act 2003 has not yet been extended to the OTs; however, extension of that Act to Montserrat is currently under consideration by the Foreign and Commonwealth Office.

6.4.2 Recommendations and Comments

985. Owing to a lack of statistics in this area, it was not possible to assess the effectiveness of implementation.
986. In the absence of dual criminality other means should be explored to provide complete mutual legal assistance.

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

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	<ul style="list-style-type: none">• Effectiveness of Implementation could not be assessed.
R.37	LC	<ul style="list-style-type: none">• Only partial mutual assistance may be granted in the absence of dual criminality.
SR.V	LC	<ul style="list-style-type: none">• Terrorist financing may not be an extraditable offence.

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

6.5.1 Description and Analysis

Recommendation 40

987. Montserrat's competent authorities are authorised to co-operate with their international counterparts. The relevant laws in place to facilitate the sharing of information are: POCA 2010; Mutual Legal Assistance in Criminal Matters (USA) Act (Cap. 04.12); Criminal Justice (International Cooperation) Act (CJICA) (Cap. 04.06); Anti-terrorism (Financial and Other Measure)(Overseas Territories) Order 2002 (ATO), Part 2 (External Orders) and the Financial Services Commission Act 2008 (FSCA) Part 4 , section 29.
988. The Governor is authorised and empowered to receive all external requests relating to international co-operation made to Montserrat under the relevant Acts. The Examiners were informed that the Governor can and has delegated some of his functions with respect to international requests. Under the MLA (Cap. 04.12) the Attorney General is the Central

Authority for requests from the USA and with the coming into force of the POCA 2010, schedule 3 (1) will direct all requests under the POCA 2010 must be made to the Attorney General.

- 989. These three pieces of legislation are at variance with the authority to receive international requests for co-operation as it is the common practice that countries designate the AG department as the competent authority in respect to processing foreign requests for assistance.
- 990. The RA is empowered to cooperate with foreign jurisdictions under sections 127 and 128 of the POCA.
- 991. The FSC is likewise empowered to co-operate with foreign counterparts by gathering information and making disclosures. This is mainly governed by the FSC Act. Part 4 of the Act deals with international co-operation.
- 992. Section 30 authorises the FSC to gather information on the written request of a Foreign Regulatory Authority (FRA). The FSC needs to notify in writing the persons listed in section 24(2) to provide the information in any form the FSC deems appropriate. Section 30(7) says that the FSC need not exercise its power to meet these requests unless it is satisfied that: information will not be used in criminal proceedings against the person furnishing it other than offence under section 25 (essentially failure to comply with Section 19 requests) or in the case of perjury or “any like offence”; FRA undertakes to make a contribution to the cost of acquiring the information; the FRA is subject to adequate disclosure conditions and won’t without written permission, disclose the information to anyone other than members of the FRA or employee engaged in prudential supervision; or take action on any information or documents provided to it.
- 993. Section 30 deals with provision of assistance to FRAs. Again, requests must be in writing. But the FSC should not proceed to a section 24 request or disclose existing information or documents in its possession unless it is satisfied that: the information/documentation requested is “reasonably required by the FRA for the purposes of its regulatory functions. The Act lays out benchmarks which should be considered when considering the request: whether the FRA would provide similar assistance to the FSC; whether the request relates to breaches of laws which have no parallel in Montserrat or are from a jurisdiction not recognised by Montserrat; the seriousness of the case and its importance to persons in Montserrat; whether the information or documentation is relevant to the enquiries in the request; whether it is in the public interest to provide the assistance sought.
- 994. Section 4 of CJICA deals with overseas evidence for use in Montserrat. Essentially, if the Magistrate or Judge, on application by the AG, are satisfied that an offence has, or there are reasonable grounds to believe that an offence may have been, committed in Montserrat they can issue a “Letter of Request” seeking assistance to obtain evidence outside of Montserrat for use in the proceedings or investigation. The AG can issue a Letter of Request directly if he too is satisfied that an offence has or may have been committed, or the offence in question is being investigated or he has begun proceedings in respect of it. The Letter of Request is sent to the Governor. He is then tasked with transmitting the request to the appropriate Court, tribunal or Central Authority in the relevant jurisdiction.
- 995. Section 5 deals with requests for assistance from jurisdictions outside Montserrat. The Governor could receive a similar sort of request to that which he might send out under section 4. If so he needs to satisfy himself that: under the laws of the requesting country, an offence has

been committed; or there are reasonable grounds to suspect that an offence has been committed; or that proceedings in respect of that offence have begun; or that an investigation into that offence is being conducted. If he is then so satisfied, he may send the request to the Magistrate to receive the evidence. In practice the Governor might seek the advice of the Attorney General to ensure that sufficient grounds are provided.

996. Under Section 5(3), if the offence is a fiscal offence for which no proceedings have yet begun, the Governor should not exercise the powers in 5(2) unless there's a treaty in force in relation to Montserrat or he is satisfied that the conduct constituting the offence would be the same or a similar offence in Montserrat.
997. The competent authorities in Montserrat are able to provide a range of international cooperation to their foreign counterparts.
998. CJICA, section 8 - Where criminal investigations are being carried out or criminal proceedings have been instituted against a person in a country outside Montserrat a police officer can apply to the Magistrate for a warrant authorising the police officer to enter and search premises occupied by that person to seize any evidence found there.
999. As discussed above, section 5 of the CJICA also makes provision for a country/territory outside Montserrat to make a request to the Governor for assistance in obtaining evidence in Montserrat in connection with criminal proceedings/investigation in that country. The Governor if he thinks fit may refer the request to the Magistrate's Court to receive the evidence to which the request relates.
1000. Under section 30 of the FSCA, the FSC may disclose information, or provide documentation, in its possession to the foreign regulatory authority. Section 24 authorises the FSC to require a person to produce information and documents, whether for its own purposes or in response to a request for a foreign regulatory body.
1001. The POCA makes provision for another country to request assistance from Montserrat in respect of restraint orders, enforcement of external confiscation orders
1002. Specifically, with the coming into force on April 12, 2010 of the POCA 2010 provisions for another country to request assistance from Montserrat in respect of the following—
 - Restraint orders (POCA, Schedule 3, clause 2)- An application for a restraint order is made by the Attorney General on behalf of the requesting party (being a foreign jurisdiction). Where there is a restraint order made on behalf of a foreign jurisdiction over property in Montserrat, both the police and customs are empowered to seize property to prevent its removal from Montserrat (Schedule 3, clause 6). The Court may also appoint receivers who have a range of powers to deal with property under the restraint order (Schedule 3, clause 8).
 - Enforcement of external confiscation orders- The application is made by the Attorney General on behalf of the requesting party (POCA, Schedule 3, clause 10). The Court may also appoint receivers who have a range of powers to deal with the confiscation order (Schedule 3, clause 16).

1003. Montserrat is able to provide assistance in a rapid and effective manner, although the opportunity to reveal this efficiency has not yet been provided.
1004. The Examiners were informed of the process and procedure when and if a MLA is received. The request is received by the Governor who contacts the Attorney General for his advice as to accept or refuse the request. The request is sent to the AG who then assigns the investigation to the RMPF (FCAU) for the request to be satisfied. The Examiners were unable to test the effectiveness of this system as Montserrat has not received any MLA request from another jurisdiction. Neither has the FCAU applied for any enforcement (production or monitoring) orders.
1005. The Examiners were informed that all requests received by the Police are prioritised depending on the nature of the request and each are dealt with in a timely manner. Also there is now in place a government policy to acknowledge all request received and send interim responses.
1006. There are issues that may arise in terms of the efficiency of the process. As indicated above, pursuant to section the CJICA there are several steps that may come into play before assistance can be granted to a requesting country. The procedure is set out in section 5 and as a result of the several preliminary steps, may prove to be less efficient than is the ideal in circumstances where time is of the essence.
1007. There are clear and effective gateways that allow for prompt exchange of information directly between counterparts.
1008. The FSC can provide assistance to its counterparts under the Financial Services Commission Act 2008 (FSCA) Part 4, section 29 in the prevention of financial crimes by providing documents and information from written requests received. In addition the FSC have signed MOUs with ECCB, Costa Rica; Panama; Guatemala and Ecuador.
1009. The Reporting Authority (RA) can provide assistance to its counterparts in accordance with section 127 of the POCA. This information can be supplied with or without an MOU, as is the case presently. The RA is not a member of Egmont but adopt the exchange of information best practices principles of Egmont. The database of the RA and FCAU can be searched, in providing assistance, together other public/government databases.
1010. The Reporting Authority has not entered into any MOUs with any other agency either local or foreign. The RMPF have been providing assistance to their counterparts with the use of the INTERPOL system, which is effective. The Customs authorities, being a member CCLEC and with whom they have an MOU, communicate to their counterparts in the sharing of information.
1011. With the coming into force of POCA 2010 on April 12, 2010, section 127(2)(d) provides that the Financial Intelligence Unit has authority to enter into agreements and MOUs with foreign FIUs for the reciprocal exchange of information. Section 128 empowers the Financial Intelligence Unit to disclose information to foreign intelligence units and section 129 provides civil immunity to the Financial Intelligence Unit for anything done or omitted to be done under POCA. This power to disclose, coupled with immunity from damages, removes any potential impediment to the prompt and constructive exchanges of information directly between counterparts.

1012. Exchange of information is reportedly available both spontaneously and on request in relation to both money laundering and the underlying predicate offences, although the structural framework for this process is improved. However, the Examiners was not provided with statistics on the amount of spontaneous request made or received as records of these are not kept or being maintained currently.
1013. With the coming into force of POCA 2010, on April 12, 2010, section 127(2)(d) provides that the Financial Intelligence Unit has authority to enter into agreements and memoranda of understanding with foreign FIUs for the reciprocal exchange of information. Such agreements or MOUs may provide for exchange of information both spontaneously and upon request and in relation to both money laundering and the underlying predicate offences. There was no evidence that any such agreements or MOUs actually exist nor that they had ever been used.
1014. Section 128 empowers the Financial Intelligence Unit to disclose information to foreign FIUs. Such disclosure is not limited to those made in response to a request for information. Accordingly, the Financial Intelligence Unit may spontaneously disclose information for the purposes of—
- reporting the possible commission of an offence (“offence”, as defined under POCA section 2, means a predicate offence)
 - initiate a criminal investigation respecting the matter disclosed
 - assist with any investigation or criminal proceedings respecting the matter disclosed
1015. The Financial Intelligence Unit may conduct inquiries on behalf of foreign counterparts in accordance with section 30(7) of the POCA 2002, which gives the RA the authority to conduct enquiries and share information.
1016. With the coming into force on April 12, 2010 of POCA 2010, section 128(2) provides that the Financial Intelligence Unit, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may disclosure to a foreign Financial Intelligence Unit, information disclosed to it, in order to initiate a criminal investigation respecting the matter disclosed or to assist with any investigation or criminal proceedings respecting the matter disclosed.
1017. The FCAU (RMPF) can conduct enquiries on behalf of their counterparts using orders to make information available, account monitoring orders, search warrants and restraint orders under the sections 134, 145, 138 and 42 of the POCA 2010. In addition the FCAU, RMPF and Customs can use the provisions in the Criminal Justice (International co-operation) Act (Cap. 04.06) to assist their foreign counterparts in conducting enquiries.
1018. Notwithstanding the level of access which the RA enjoys to the databases which are available in Montserrat, the existing legislation is silent as to whether such access can be extended to inquiries being conducted on behalf of foreign counterparts.
1019. CJICA, section 8 provides that where criminal investigations are being carried out or criminal proceedings have been instituted against a person in a country outside Montserrat a police officer can apply to the Magistrate for a warrant authorising the police officer to enter and search premises occupied by that person to seize any evidence found there.
1020. Section 5 of the CJICA also makes provision for a country/territory outside Montserrat to make a request to the Governor for assistance in obtaining evidence in Montserrat in connection with

criminal proceedings/investigation in that country. The Governor if he thinks fit may refer the request to the Magistrate's Court to receive the evidence to which the request relates.

1021. As discussed above, sections 24 and 30 of the FSCA specifically authorise the FSC to conduct inquiries on behalf of foreign counterparts.
1022. Schedule II, Part 2, section 11 of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002 gives competent authorities in Montserrat the authority to enforce external orders.
1023. There are no restrictive conditions that would prevent the FIU from sharing information with its foreign counterparts; however the country requesting the information is required to state the purpose for the information and who would eventually have access to the information. Information can also be shared with non Egmont members, once the country's FIU follows the Egmont best practices for the exchange of information.
1024. A request for information may be declined on the sole ground that the request is considered to involve a fiscal offence. Section 5(3) of the Criminal Justice (International Co-operation) Act (Cap. 04.06) states: *Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) above unless—*
 - (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or*
 - (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.*
1025. Fiscal matters are one of the conditions noted for the refusal of international requests for assistance as outlined above.
1026. CJICA, section 5(3)(a)(b) provides one restriction on requests received from another country for assistance in obtaining evidence in Montserrat for a fiscal offence. If a request is made in relation to proceedings which have not yet been instituted for a fiscal offence, the Governor shall not refer the request to the Magistrate's Court to receive evidence to which the request relates, unless the request is made pursuant to a treaty which is in force in relation to Montserrat or the Governor is satisfied that the conduct constituting the offence would constitute an offence of the same or similar nature if it had occurred in Montserrat. This provision narrows the basis on which information may be provided.
1027. Under POCA 2002, and with the coming into force on April 12, 2010 of POCA 2010, there is no requirement that requests for co-operation be refused on the ground that the request involves fiscal matters.
1028. Requests for cooperation are not refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP. Montserrat's legislation includes the Confidential Information Act, which imposes confidentiality requirements in respect of financial and business information. However, section 3(2)(c) of that Act states that the "Act shall not apply to the seeking, divulging or obtaining of confidential information – by or to a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within Montserrat."

1029. With the coming into effect on April 12, 2010 of the POCA 2010 section 125 provides that a protected disclosure, which for the purposes of that section includes an authorised disclosure, shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
1030. There are limited safeguards in place to ensure that information received is used only in an authorised manner. All request received by the RA and FCAU are respectively securely held in filing cabinets and a fire proof safe. Access to this information is limited to the members of the FCAU.
1031. In addition, section 130 of the POCA criminalises wrongful disclosure, stating that no person of the Financial Intelligence Unit shall disclose any information or matter that he acquires as a result of his connection with the Financial Intelligence Unit except as required or permitted by POCA or an Order of the Court. Maximum punishments are to imprisonment for a term of 12 months or to a fine of \$20,000 or to both on summary conviction and imprisonment for a term of 5 years or to a fine of \$100,000 or to both on conviction on indictment.
1032. Whilst there was a healthy level of confidence that was expressed for the work and confidentiality of matters submitted to the RA, some concerns were expressed over the confidentiality of matters going to the Financial Intelligence Unit.

Additional elements

1033. There are unspecified but potential gateways to permit the exchange of information either directly or indirectly. Although, there is nothing in place which would prevent the exchange of information with non-counterparts it is the preferred method that these exchanges are done between the other competent authorities and their counterpart. There have been insufficient numbers of requests (none) for a response to be provided.
1034. The Reporting Authority under section 30 of the POCA 2002 can disclose information it receives to any law enforcement agency in any country or territory outside Montserrat, any information disclosed to it under this Act, the Drug Trafficking Offences Act, or any other enactment.
1035. The Financial Intelligence Unit, pursuant to POCA 2010 section 127(2)(a), access information that is requested by a foreign counterpart FIU from any other competent authorities or other persons.

Special Recommendation V

1036. The criteria in 40.1 - 40.9 also apply to the obligations under Special Recommendation V (International Cooperation). There are 3 pieces of legislation which deal specifically with terrorist financing and make provision for the mutual legal assistance and information exchange—
 - Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002)
 - Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001)

- Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002)

Additional elements

1037. The observations noted with regard to the additional elements under Recommendation 40 are also applicable to the obligations under Special Recommendation .V.

Statistics (Recommendation 32)

STRs Disseminated to the FCAU

STRs Action taken	2004	2005	2006	2007	2008	2009
No. of STRS received	2	2	4	2	3	15
No. of Preliminary cases referred to RA	2	2	4	2	3	15
No. of cases disseminated to FCAU	2	2	4	2	3	15
No. of cases investigated	1	1	2	2	3	15
No of cases open	1	1	2	1	3	14
No of cases closed	1	1	2	1	0	1

Reporting Entities Breakdown

Type of Reporting entity	2004	2005	2006	2007	2008	2009
Banks	2	1	3	2	2	7
Money Services Businesses	0	0	1	0	0	8
Building Society	0	0	0	0	0	0
Credit Unions	0	0	0	0	0	0
Securities firms	0	0	0	0	0	0
Total	2	1	4	2	2	15

Requests for Information

Country Requesting Information	2004	2005	2006	2007	2008	2009
Antigua	1	0	0	1	0	0
Cuba	0	0	0	0	0	0
USA	0	0	0	0	0	0
Bahamas	0	1	0	0	0	0
Country Information Requested From						
Dominica	1	0	0	1	0	0
USA	0	1*	0	0	0	0
Panama	0	0	0	0	0	1

UK	0	1*	0	0	0	0
Canada	0	0	0	1*	0	0

Source: FCAU

1038. Information provided by the FCAU to the Examiners in the above table indicated that all the requests received from foreign jurisdictions were satisfied and closed. However, information requested from foreign jurisdictions was still awaiting information (* indicate pending).
1039. There are no records being kept on cross-border transportation of currency and bearer negotiable instruments by Customs or any other competent agency.
1040. The Examiners were informed that there have not been any prosecution or convictions relating to ML, TF and criminal proceeds. No statistical data could be provided as to whether there have been any ML investigations.
1041. There were no production orders, monitoring orders and restraint orders obtained by competent authorities, so as to show the effectiveness of the of the AML/CFT framework. Thus, no complete statistics was kept by the FIU.
1042. The Examiners were informed by the authorities that there have been no MLA requests made to or received from another country. Also there were no information (records) provided as to spontaneous requests made to foreign authorities.

6.5.2 Recommendations and Comments

1043. The authorities should consider making amendments to the Criminal Justice (International Co-operation) Act (Cap. 04.06) to state specifically, that requests should not be refused on the sole ground on a request pertaining to fiscal matters.
1044. The Montserrat authorities should consider having all international request relating to AML/CFT be directed through the Attorney General office and designate the AG as the Central Authority for Montserrat. This provision once introduced would remove any administrative delays of foreign requests being action upon by the AG in the performance of his functions in a timely manner.
1045. HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, however there is an amendment bill to the Customs (Control and Management) Act that would incorporate a mandatory declaration system when implemented.
1046. HM Customs should consider keeping and maintaining comprehensive statistics on cross-border seizures, formal and spontaneous requests. In addition, all competent authorities should consider the procedure adopted in Recommendation 32 of FATF 40+9 for the recording and maintaining of statistics.
1047. The current legislative provisions governing the provision of assistance should be reassessed in an attempt to streamline the process to make it more efficient and reduce the likelihood of delays.
1048. There was no evidence that Montserrat had actually entered into any agreements or signed MOUs with other countries to facilitate exchange of information.

1049. The RA should set guidelines on confidentiality and ensure that the Financial Intelligence Unit fully observes those guidelines.

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	LC	<ul style="list-style-type: none"> • The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal matters.
SR.V	PC	<ul style="list-style-type: none"> • The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal matters.
R.32	PC	<ul style="list-style-type: none"> • There is no comprehensive and independent statistics maintained by the Reporting Authority (RA) in relation to international wire transfers. • No information about spontaneous referrals made by the Reporting Authority (RA) or FCAU to foreign authorities. • No statistics maintained by HM Customs on matters that were referred to other Agencies such as the RA for investigations. • HM Customs does not keep any comprehensive statistics on cross border seizures. • HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments.

7. OTHER ISSUES

7.1 Other relevant AML/CFT measures or issues

1050. Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

	Rating	Summary of factors relevant to Recommendation 30 and 32 and underlying overall rating
R.30	PC	<ul style="list-style-type: none"> • Insufficient human resources at the RA. • No budget allocation to the RA for carrying out the functions that will be required under POCA 2010. • The FCAU is not specifically dedicated to the investigation to ML and TF matters. They are still required to perform other policing duties when requested. • Competent Authorities do limited ongoing vetting of officers to ensure that the highest level of integrity is maintained. • The FSC is not adequately structured and staffed currently for its effective functioning. There are no positions for line managers and Examiners. • HM Customs is inadequately trained in ML and TF due to inadequate financial resources. • Consultation with the Commissioner of the FSC on the appointment and dismissal of a director could compromise the matter of independence of the FSC
R.32	PC	<ul style="list-style-type: none"> • There is no comprehensive statistics maintained by all competent authorities. • No information maintained about spontaneous referrals made by the RA or FCAU to foreign authorities. • No statistics is maintained by the RA on international wire transfers.

7.2 General framework for AML/CFT system (see also section 1.1)

1051. Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

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

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

Table 1. Ratings of Compliance with FATF Recommendations

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

Forty Recommendations	Rating	Summary of factors underlying rating ³
Legal systems		
1.ML offence	LC	<ul style="list-style-type: none"> As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained. Environmental crime is not a predicate offence for ML. Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained.
3.Confiscation and provisional measures	LC	<ul style="list-style-type: none"> The effectiveness of the legislation could not be determined owing to its recent passage. The absence of a resident judge on the island is likely to affect ability of the jurisdiction to obtain a restraint order in an expeditious manner.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	PC	<ul style="list-style-type: none"> No clear requirement that enhanced CDD be applied to private banking, legal persons or arrangements (including trusts) that are personal

3. ³ These factors are only required to be set out when the rating is less than Compliant.

		<p>assets holding vehicles and companies that have nominee shareholders or shares in bearer form.</p> <ul style="list-style-type: none"> Effectiveness of legislative provisions cannot be ascertained owing to the recentness of enactment.
6. Politically exposed persons	LC	<ul style="list-style-type: none"> Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.
7. Correspondent banking	LC	<ul style="list-style-type: none"> Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code. Not all financial institutions were found to have policies in place to address misuse in technological developments in ML/FT.
9. Third parties and introducers	LC	<ul style="list-style-type: none"> Effectiveness of the Regulations and Code cannot be assessed due to their recent passage.
10. Record keeping	LC	<ul style="list-style-type: none"> Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.
11. Unusual transactions	LC	<ul style="list-style-type: none"> Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and Code.
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> Due to the recent enactment of the POCA (proceeds of crime Act), the AML/CFT regulations, the AML/CFT code, effective assessment of the AML/CFT measures cannot be evaluated. Deficiency factors noted in Recommendations 5, 6, 8-11 are also applicable to DNFBPs.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> No requirements relating to the reporting of suspicious transactions involving tax matters.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> No explicit protection for financial institutions, directors, officers and employees from criminal or civil liability from breach of contract etc for reporting STRs. Tipping off not applicable to STRs that are in the process of being reported to the Reporting Authority. Tipping off only applicable where an investigation is prejudiced.
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> No requirement that appropriate staff other than the money laundering compliance officer have timely access CDD and other relevant information

16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> • Due to the recent enactment of the POCA 2010 effective implementation of the AML/CFT measures cannot be effectively evaluated • Deficiencies identified for other financial institutions with respect to Rec. 13, 15, and 21 would also apply to DNFBPs.
17. Sanctions	LC	<ul style="list-style-type: none"> • Limited use of the sanctions did not allow for a proper assessment of whether the sanctions were effective, proportionate and dissuasive.
18. Shell banks	C	
19. Other forms of reporting	NC	<ul style="list-style-type: none"> • The authorities have not considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> •
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Some financial institutions demonstrated limited understanding of the need to ensure compliance with the requirement to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Neither were there specific policy requirements in place in such instances to address this requirement. • No effective implementation of AML/CFT regime as a result of recent enactment of AML/CFT regulations, Code and Guidance 2010.
22. Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> • Given the recent issuance of these requirements sufficient time has not elapsed to allow or test for effective implementation
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> • The FSC has not conducted on-site inspections of all the financial institutions.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Unable to access implementation of the AML/CFT Regulations and Code due to its recent enactment. • The resources of the FSC is inadequate to enable it to effectively supervise the DNFBP sector.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • The RA/FCAU has not provided consistent feedback on suspicious transaction reports filed by financial institutions. • No advisories or reports relating to STRs, statistics, current trends or typologies have been published or

		<p>issued to service providers.</p> <ul style="list-style-type: none"> • Unable to assess effectiveness guidelines because of their recent implementation. • The deficiencies noted for Rec. 25 at Section 3.7 and 3.10 of this Report also apply to DNFBPs.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> • The RA is not the central body in Montserrat authorised to receive disclosures. • Autonomy of RA uncertain because of existing structure. • The FCAU has not been formally established. • No specific time-frame for reporting STRs. • The STR form in use is not prescribed. • DNFBPs are unaware of the reporting STR and requirements due to RA not providing awareness training. • TF disclosures can be made to the RA through a constable. • Lack of clarity as to which entity is authorised to receive STRs. • The building that houses the RA is not sufficiently secured. • No published reports on STR statistics, trends and typologies by the RA. • There is no off-site back-up of information.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • No clear indications that ML or TF matters are being properly investigated.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • No clear authority to record witness statements.
29. Supervisors	LC	<ul style="list-style-type: none"> • Some financial institutions did not have established and sufficiently comprehensive policies in place for combating ML and FT.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • Insufficient human resources at the RA. • No budget allocation to the RA for carrying out the functions that will be required under POCA 2010. • The FCAU is not specifically dedicated to the investigation to ML and TF matters. They are still required to perform other policing duties when requested. • Competent Authorities do limited ongoing vetting of officers to ensure that the highest level of integrity is maintained. • The FSC is not adequately structured and staffed

		<p>currently for its effective functioning. There are no positions for line managers and Examiners.</p> <ul style="list-style-type: none"> • HM Customs is inadequately trained in ML and TF due to inadequate financial resources. • Consultation with the Commissioner of the FSC on the appointment and dismissal of a director could compromise the matter of independence of the FSC
31. National co-operation	PC	<ul style="list-style-type: none"> • There are no established mechanisms in place to allow policy makers to cooperate with each other • No formalised mechanism is in place for co-operation between the competent authorities at the operational level.
32. Statistics	PC	<ul style="list-style-type: none"> • Statistics do not appear to have been faithfully maintained therefore all situations were not necessarily captured. • There is no comprehensive and independent statistics maintained by the Reporting Authority (RA) in relation to international wire transfers. • No information about spontaneous referrals made by the Reporting Authority (RA) or FCAU to foreign authorities. • No statistics maintained by HM Customs on matters that were referred to other Agencies such as the RA for investigations. • HM Customs does not keep any comprehensive statistics on cross border seizures. • HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments. • There is no comprehensive statistics maintained by all competent authorities. • No information maintained about spontaneous referrals made by the RA or FCAU to foreign authorities. • No statistics is maintained by the RA on international wire transfers.
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation. • No clear provision requiring the maintenance of beneficial ownership and control information of local companies.

		<ul style="list-style-type: none"> No clear provision allowing for access to and obtaining information on beneficial ownership and control of local companies.
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation
International Co-operation		
35. Conventions	PC	<ul style="list-style-type: none"> Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs. The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Montserrat.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> No specific procedures for establishing timelines for complying with requests for assistance Difficult to judge effectiveness of implementation.
37. Dual criminality	LC	<ul style="list-style-type: none"> Only partial mutual assistance may be granted in the absence of dual criminality.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> Unclear definition and applicable standard of what is a serious arrestable offence.
39. Extradition	LC	<ul style="list-style-type: none"> Effectiveness of Implementation could not be assessed.
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal matters.
Nine Special Recommendations		
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> Montserrat is not party to the Palermo Convention and the 1999 Terrorist Financing Convention.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> The legislation does not cover terrorist activity taken to compel an international organisation to do or to abstain from doing an act in keeping with Article 2(1) (b) of the Terrorist Financing Convention. The definition of terrorist does not include a ‘terrorist organisation’. Effectiveness of the legal framework cannot be properly assessed in the absence of investigations and convictions for TF.

SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • The systems in place do not adequately cover immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 – III.3 to the financial sector upon taking such action. • There is no specific provision for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures. • Immediate freezing of terrorist funds is not explicitly provided for. • There is no adequate provision for extraordinary expenses once funds have been seized or frozen.
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • No requirements relating to the reporting of suspicious transactions involving tax matters.
SR.V International co-operation	PC	<ul style="list-style-type: none"> • The definition of terrorism in the ATFOMOTO does not adequately meet the requirements of the convention for the Suppression of the Financing of Terrorism. • Terrorist financing may not be an extraditable offence. • The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal matters.
SR.VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • The effectiveness of Sanctions cannot be evaluated due to lack of information • Effectiveness of implementation cannot be ascertained due to the recent enactment of legislation
SR.VII Wire transfer rules	LC	<ul style="list-style-type: none"> • Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • Given the recent enactment of the NPO Regulations, the Commission has only recently commenced its outreach program • No systems or procedures in place to publicly access information on NPOs. • No requirement to report unusual donations by NPOs. • No monitoring of the NPOs international activities. • No investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.

SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • There is no disclosure/declaration system in place with the required threshold. • Domestic cooperation between Customs and other agencies is not adequately structured. • Customs officers not sufficiently trained in AML/CFT and other related customs techniques. • Customs' participation in AML/CFT is not sufficient. • Unable to assess effectiveness of disclosure system due to insufficient statistics.
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Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1, & 2)	<ul style="list-style-type: none"> • The penalties for environmental crime need to be revisited to qualify this type of offence as a predicate offence for ML. • The jurisdiction needs to revisit its legislation dealing with psychotropic substances to ensure that there is comprehensive provision for all elements pursuant to the Vienna Convention since all psychotropic substances do not seem to have been captured under the legislation. • Statistics need to be utilised as a means of assessing and reviewing existing systems. • The new legislative measures need to be fully implemented.
2.2 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Montserrat needs to review the definition of “terrorism” in order to properly address the activities of a terrorist organisation. The definition of “terrorism” needs to be reviewed to capture all of the acts referred to in the Suppression of the Financing of Terrorism Convention that are set out in the Nine Conventions specified under that instrument. • Similarly, the legislation needs to be amended to capture terrorist activity that is an 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 an international organization to do or to abstain from doing any act.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3,)	
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • The jurisdiction needs to establish concrete systems to provide immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 –III.3 to the financial sector immediately upon taking such action.

	<ul style="list-style-type: none"> • Montserrat may need to consider recommending to the UK that the 2001 Anti-Terrorism Order amended to specifically address the issue of ‘freezing without delay’ the funds of identified terrorists. • The jurisdiction needs to consider making specific provisions for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures. • There needs to be adequate provision for extraordinary expenses once funds have been seized or frozen. • Provision should be made in law for the procedure for forwarding requests for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002).
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • The FCAU should be formally established as the central authority for receiving STRs in Montserrat • Montserrat should amend section 122(1)(b) of the POCA and Part 5, section 32(1)(a) of the AML/CFT Code which requires the MLRO to submit STRs to the RA “<i>as soon as practical.</i>” Consideration should be given to including a specific time-frame for the submission of STRs together with the ability for the MLROs to submit STRs within the time-frame if suspicious activities warrant such. • Montserrat should develop and publish a STR reporting form for the particularisation of information required to be submitted by reporting entities when filing STRs. • The RA should consider developing a strategic plan focusing specifically on the DNFBPs and NPOs on a risk assessment approach to awareness training in AML/CFT to make them fully aware of their obligations and the requirements in combating ML and TF. • The RA should consider the employment of a competent and suitably qualified person to the position of Secretary to the RA responsible for all the administrative functions and to perform duties as the RA may determine.

	<ul style="list-style-type: none"> • The RA since its establishment in 2002 have has not published any statistics, trends or typologies from STRs received from reporting entities publicly. The published reports would assist those reporting entities to strengthen their existing AML/CFT programs. Trends and typologies can also be obtained from regional FIUs as well as CFATF to assist the reporting sectors. • The independence of the FCAU from the police force seemed highly questionable. It would be advisable for the FCAU to be housed in a separate building from the Police Headquarters so that there might be less temptation to confuse the functions of the two bodies. • The RA should implement additional security of the (FSC) building where the RA operates until such time as the FCAU has been formally established. • A data back-up policy should be implemented at the RA. Which would include scheduled days for backing-up, an off-site (secured) location for the storage of backed-up data and the scanning of STRs to be stored electronically. • Montserrat should consider amending section 11(1) and (2) of the Anti-Terrorism (Financial and Other Measures) Overseas Territories) Order 2002 to have disclosures be made to the RA and not reported to a Constable. The GN at Part 5(ix) of the AML/CFT Code also asks that service providers make disclosures to the RA.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<p>Recommendation 27</p> <ul style="list-style-type: none"> • No clear indications that ML or TF matters are being properly investigate <p>Recommendation 28</p> <ul style="list-style-type: none"> • The RMPF, the Attorney General and the FCAU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more active approach in conducting investigations, prosecutions and possible convictions by ensuring that the investigative tools are provided for in the POCA are utilised. • Montserrat should ensure that there are legislative provisions that would empower investigators to

	record witness statements for use in investigations and prosecutions of MT, TF and predicate offences.
2.7 Cross border Declaration & Disclosure	<ul style="list-style-type: none"> • Customs should implement the declaration system to be used in conjunction with the disclosure system for incoming and outgoing passengers. The threshold should not be higher than EUR/US15000.00. • Customs officials should be trained in behaviour analysis for use in passenger screening and smuggling techniques of potential currency carriers. • Authorities should consider the making of false disclosures/declarations to Customs authorities a strict liability offence. • Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of declaration/disclosures and seizures. These statistics should be readily available for use by Customs, LEAs and other government departments. • The Authorities should consider providing training in counterfeit currency identification to all Customs, especially those working at the ports. The identification of previous metals and stones as such should also be conducted as a part of such training. • There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing. • Consideration should be given to reporting all currency interdictions where untrue disclosures/declarations are made to the RA, whether or not administrative or criminal proceedings are being considered. • Customs should consider reporting all declaration/disclosures to the RA that is equal to and above the declared sum of US\$15,000.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>Recommendation 5:</p> <ul style="list-style-type: none"> • The competent authority should ensure that all financial institutions develop and implement adequate policies and procedures designed to prevent money laundering and terrorist financing.

	<ul style="list-style-type: none"> • Regulation and Code should include private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form as situations where enhanced CDD should be applied. <p>Recommendation 7</p> <ul style="list-style-type: none"> • All financial institutions should be required to have policies in place to address correspondent banking issues. <p>Recommendation 8:</p> <ul style="list-style-type: none"> • All financial institutions should be required to develop policies to address the misuse of technological developments in ML/FT.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • Competent authorities should consider the issuance of a list of jurisdictions that adequately apply the FATF Recommendations for third parties that may operate in foreign countries. • Montserrat should consider amending the AML/CFT Regulations or Code to include the requirement that service providers should only accept introduced business from an introducers or intermediaries who themselves have face to face contact when conducting the CDD measures upon which the service provider relies.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Where necessary Montserrat should ensure that MOUs are signed with individual countries especially where financial business relationships are conducted to allow for smooth exchange of information relative to combating ML and FT.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • The Code should be amended to address the requirement whereby each party in a payment chain of intermediaries and beneficiary financial institutions should be required to ensure that full originator information accompanies a wire transfer transmitted.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<p>Recommendation 21</p> <ul style="list-style-type: none"> • The FSC should ensure that all financial institutions have the required policies in place to ensure that special attention is paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-	Recommendation 13

<p>14, 19, 25 & SR.IV)</p>	<ul style="list-style-type: none"> • There should be an explicit requirement to report suspicious transactions whether or not they are thought among other things to involve tax matters. <p>Recommendation 14</p> <ul style="list-style-type: none"> • Amend the POCA to explicitly detail who are protected from making disclosures to the Reporting Authority. • Amend the POCA to prohibit financial institutions, directors, officers and employees from tipping off the fact that a disclosure or related information is in the process of being reported to the Reporting Authority. • Amend the POCA to specifically prohibit all illegal disclosures. <p>Recommendation 19</p> <ul style="list-style-type: none"> • Competent authorities should consider the feasibility and utility of implementing a system where financial institutions report transactions in currency above a threshold to a centralised national authority. <p>Recommendation 25</p> <ul style="list-style-type: none"> • The RA/FCAU should provide consistent feedback on suspicious transaction reports filed to financial institutions. • The RA has been supplying specific feedback to the service providers. However, the RA should consider providing general feedback to financial institutions and DNFBPs on disclosures and sanitised cases. • The RA should provide the reporting entities with advisories relating to AML/CFT. <p>SR IV</p> <ul style="list-style-type: none"> • The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters.
<p>3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p>Recommendation 15</p> <ul style="list-style-type: none"> • Amend the AML/TFR so that all appropriate staff (including the money laundering compliance officer) have timely access CDD and other relevant information.

	<p>Recommendation 22</p> <ul style="list-style-type: none"> Financial institutions should be required to ensure that their AML/CFT policies contain measures which require compliance with Recommendation 22.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17, & 25)	<p><u>Recommendation 17</u></p> <ul style="list-style-type: none"> The authorities should monitor the effectiveness of the application of sanctions to determine whether they are consistent, proportionate and dissuasive and make amendments to the legislation as deemed necessary <p><u>Recommendation 23</u></p> <ul style="list-style-type: none"> The ECCB should take steps to ensure that its licensees are in compliance with AML/CFT obligations The FSC should develop and implement a work plan to ensure that all financial institutions are subjected to on-site inspections to assess compliance with ML and FT measures. Also a follow up programme should be instituted to monitor the level of progress attained by financial institutions in response to the weaknesses identified in on-site inspection reports. <p><u>Recommendation 29</u></p> <ul style="list-style-type: none"> The competent authority should ensure that all financial institutions develop and implement policies outlining the procedures for combating money laundering and terrorist financing
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> The FSC should provide for training to guide Money service providers as to the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework. Bearing in mind the above, the FSC should assess the current level of compliance with AML/CFT legislation of the MSB providers with a view to improve the compliance level with the recently enacted legislations.
4. Preventive Measures –Non-Financial Businesses and Professions	
4.1 Customer due diligence and	<ul style="list-style-type: none"> Deficiencies identified for all regulated businesses as

record-keeping (R.12)	<p>noted for Recommendations 5, 6, 8-11 in the relevant sections of this Report are also applicable to DNFBPs.</p> <ul style="list-style-type: none"> • It is suggested that the Authorities prepare an administration plan for the effective administration of the newly proposed legislations. • Adequate training and familiarization should be provided for the players in order to ascertain that clarity in relation to the reporting requirements and sanctions associated with the non-compliance is clearly understood. • DNFBPs should enhance their risk management to arrive at the determination of PEPS.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The existing legislation does not adequately ensure the compliance of the jurisdiction in relation to suspicious transaction reporting. (POCA Cap (4:04) and AML regulation 2010) • The requirements for DNFBPs are the same for all other financial institutions, therefore the deficiencies identified with regard to Rec. 13, 15, and 21 will also include DNFBPs. • The relevant supervisory authority should develop and issue guidelines and instructions on the maintenance of the framework for compliance with AML/CFT rules. • Montserrat must ensure that the existing legislative requirements pertaining to DNFBPs are enforced.
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> • The examiners noted that guidance and directives were in practice not issued to all companies and persons in the financial sector of Montserrat. The appropriate authorities should ensure that the guidance and codes are disseminated to the industry.
4.4 Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Clear provisions needs to be made in the Companies Act to require the keeping of information on beneficial ownership and control of local companies.

	<ul style="list-style-type: none"> • Clear provisions must be made for the obtaining of and access to information, in a timely manner on beneficial ownership and control of local companies under the Companies Act
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • The authorities should undertake outreach to the NPO sector in order to protect the sector from terrorist activities. The authorities should monitor activities of NPOs to prevent or reduce the likelihood that funds and other assets transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations NPOs should be required to report unusual donations to the Reporting Authority. • The authorities should ensure that the regulated entities (NPOs) are vigilant in their response to the risk for abuse by those who finance terrorism. • NPOs should be made aware of the reporting procedures for irregular transactions relating to terrorist activities. • A program for the monitoring of compliance by the NPOs should be developed by the regulatory authority. • Authorities should consider establishing systems and procedures to allow information on NPOs to be publicly available. • The authorities should consider monitoring the NPOs and their international activities. • Consideration should be given to developing investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • The authorities should ensure that an effective mechanism is put in place to bring together the various competent authorities on a regular basis to develop and implement policies and strategies to combat money laundering and terrorist financing. • The authorities should consider the setting up a secretariat to monitor the implementation of the

	<p>country's AML/CFT regime</p> <ul style="list-style-type: none"> • There appear to be an excellent working relationship between the competent authorities at a strategic level due to the composition of the RA. However at the operational level the relationship among competent authorities appear to be ad-hoc. • The authorities should consider formalising the arrangement with MOUs among the local authorities. • The AG department should consider playing a more pro-active role in giving guidance to the FCAU in relation to AML/CFT investigations. • The competent authorities should consider formulating a strategic plan on a risk-based approach both in the short-term and long-term targeting the DNFBPs and NPOs with awareness training seminars to help them become fully compliant with their obligations and requirements under the legislation. • Montserrat has demonstrated a high level of national cooperation amongst the policy makers. There were two main issues that were identified during the onsite visit. Firstly, there was far too much duplication on the part of the various bodies. The Chairman of the RA was also the Regulator of IBCs and Director/Commissioner of the Financial Services Commission. It is apparent that the Commissioner also functioned in other regulatory roles. Apart from the possibility of conflicts of interest arising, the ability to work effectively when saddled with such enormous responsibilities was highly questionable. This was borne out because during the onsite visit it was clear that not all DNFBPs and all financial institutions, to a lesser extent had received comprehensive monitoring, supervision and training in keeping with the mandate of the FSC legislation. Clearly more resources need to be allocated to these areas to increase the complement of the FSC staff. • Montserrat also needs to consider putting measures in place to ensure a more definitive separation of roles and functions and to ensure the greatest transparency.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • There is not sufficient evidence that psychotropic substances have been adequately covered. • The authorities should ensure full compliance with the provisions of all the requisite conventions. • Montserrat should request that the Palermo

	Convention and the 1999 Terrorist Financing Convention be extended to the jurisdiction.
6.3 Mutual Legal Assistance (R.36-38, & SR.V,)	<ul style="list-style-type: none"> • Montserrat needs to consider ways to maximise retention of professional staff and more attention should be paid to training across the board for as many of the lawyers in Chambers. At least one additional Magistrate should be hired. • Montserrat should consider reviewing the current procedures for executing MLAT requests to provide for greater efficiency. • The jurisdiction should create mechanisms to establish specific timelines for complying with requests for assistance. • Montserrat should consider expanding mutual legal assistance provisions to include fiscal offences. • Clear allowance should be made to facilitate compliance with requests for assistance in terms of foreign non-criminal confiscation orders. • Clear provisions should be made to ensure that civil forfeiture extends to foreign non-criminal orders. • Montserrat should articulate a clear definition of a serious arrestable offence or a standard for the application of the term
6.4 Extradition (R.39, 37, SR.V &)	<ul style="list-style-type: none"> • There is no specific obligation requiring the Governor to act expeditiously having received a request for extradition. Montserrat needs to consider introducing a specific time requirement or even “without delay” provisions. • In the absence of dual criminality other means should be explored to provide complete mutual legal assistance.
6.5 Other Forms of Co-operation (R.40 & SR.V)	<ul style="list-style-type: none"> • The authorities should consider making amendments to the Criminal Justice (International Co-operation) Act (Cap. 04.06) to state specifically, that requests should not be refused on the sole ground on a request pertaining to fiscal matters. • The Montserrat authorities should consider having all international request relating to AML/CFT be directed through the Attorney General office and designate the AG as the Central Authority for Montserrat. This provision once introduced would remove any administrative delays of foreign requests

	<p>being action upon by the AG in the performance of his functions in a timely manner.</p> <ul style="list-style-type: none"> • HM Customs should consider keeping and maintaining comprehensive statistics on cross-border seizures, formal and spontaneous requests. In addition, all competent authorities should consider the procedure adopted in Recommendation 32 of CFATF 40+9 for the recording and maintaining of statistics. • The current legislative provisions governing the provision of assistance should be reassessed in an attempt to streamline the process to make it more efficient and reduce the likelihood of delays. • There was no evidence that Montserrat had actually entered into any agreements or signed MOUs with other countries to facilitate exchange of information. • The RA should set guidelines on confidentiality and ensure that the Financial Intelligence Unit fully observes those guidelines.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<p>Recommendation 30</p> <ul style="list-style-type: none"> • The authorities should consider providing the Police Force more training particularly in the area of ML investigation and other relevant areas. This Training should include the seizing, freezing, forfeiture and confiscation of assets. • The FCAU should be utilised in conducting in-house training for the RMPF with specific emphasis on the CID officer and the recruits in training, in the first instant, to be made aware of ML and TF investigations. • Authorities should consider increasing the budgetary resources of the Police Force to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its functions • Authorities should consider reviewing the measures in place for ensuring that persons of high integrity and good moral character are recruited into the RMPF and that there is a system in place for ongoing monitoring of officers to maintain the high level of professionalism and integrity needed.

	<ul style="list-style-type: none"> • There is a need for additional lawyers in the Legal Department. • The Legal Department should hold workshops with the FCAU on the operation of the various pieces of legislation relating to ML and TF (investigative tools and confiscation procedures) investigations. • The authorities should consider reorganizing the organisational structure of the FSC for increased effectiveness of its performance. This should include consideration for adequate staff, equipment, funding and other forms of resources. • The provision in Sections 5 and 8 of the FCSA which require the Governor to consult with the Director of the FSC on the matter of appointment and dismissal of a director should be removed. • The Authorities should consider providing training in counterfeit currency identification to all Customs, especially those working at the ports. The identification of previous metals and stones as such should also be conducted as a part of such training. • The RA should set guidelines on confidentiality and ensure that the Financial Intelligence Unit fully observes those guidelines. <p>Recommendation 32</p> <ul style="list-style-type: none"> • The FIU should establish a system for that would ensure that the collection and analysis of information relative to wire transfers are carried out. • Statistics need to be utilised as a means of assessing and reviewing existing systems. • HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, however there is an amendment bill to the Customs (Control and Management) Act that would incorporate a mandatory declaration system when implemented. • HM Customs should consider keeping and maintaining comprehensive statistics on cross-border seizures, formal and spontaneous requests. In addition, all competent authorities should consider the procedure adopted in Recommendation 32 of FATF 40+9 for the recording and maintaining of statistics.
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	<ul style="list-style-type: none"> • Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of declaration/disclosures and seizures. These statistics should be readily available for use by Customs, LEAs and other government departments.
General framework – structural issues	

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

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations

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

Annex 3: Copies of key laws, regulations and other measures

Annex 4: List of all laws, regulations and other material received

Annex 1

List of abbreviations

AG	Attorney General
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AMLR	Anti-Money Laundering Regulations
BA	Banking Act
BSA	Building Societies Act
CARICOM	Caribbean Community
CJICA	Criminal Justice (International Co-operation) Act
CJICA	Criminal Justice International Co-operation Act
CCMA	Customs (Control and Management) Act 1994 (Cap17.04)
CCMA 2010	Customs (Control and Management) (Amendment) Act No. 3 of 2010
CSA	Co-operatives Society Act, 2003
DNFBP	Designated Non-Financial Business or Profession
DPMA	Drug (Prevention of Misuse) Act
DTOA	Drug Trafficking Offences Act
ECCB	Eastern Caribbean Central Bank
ECE	European Convention on Extradition
ECSRC	Eastern Caribbean Securities Regulatory Commission
FATF	Financial Action Task Force
FCAU	Financial Crime Analysis Unit
FSCA	Financial Services Commission Act
FSC	Financial Services Commission
FT	Financing of Terrorism
IA	Insurance Act
IBC	International Business Company
IBCA	International Business Companies Act
IBTC	International Banking and Trust Companies Act
LLC	Limited Liability Company
LLCA	Limited Liabilities Companies Act
LPA	Limited Partnership Act
MFA	Mutual Funds Act
ML	Money Laundering Reporting Officer
MLRO	Money Laundering Reporting Officer
OECS	Organisation of Eastern Caribbean States
POCA	Proceeds of Crime Act, 2000
RA	Reporting Authority
RMPF	Royal Montserrat Police Force
SUNMOTO	The Sudan (United Nations Measures) (Overseas Territories) Order 2005
TUNMOTO	Terrorism (United Nations Measures) (Overseas Territories Order)
UK	United Kingdom

ANNEX 2
All Bodies Met During the On-site Visit

1. Government

Governor's Office

- Governor
- Deputy Governor
- Head of Governor's House

Chief Ministers Office

Chief Minister and Minister of Finance

Reporting Authority

- Chairperson of Reporting Authority
- Members of Reporting Authority

Attorney General's Chambers

- Attorney General
- Attorney General's Counsel

Ministry of Finance

Financial Secretary

Economic and Development Unit

Permanent Secretary Development Unit

Customs and Excise Department

Comptroller of Customs

Public Service Commission

Chairperson Public Service Commission

Financial Service Commission

- Commissioner
- Deputy Commissioner
- Regulator

Registrar of Companies

Registrar

2. Operational Agencies

- Head of FCAU
- Members of FCAU

Royal Montserrat Police Force

- Commissioner of Police
- Deputy Commissioner of Police

- Superintendent of Police

Customs Department

Magistracy

Magistrate

Immigration Department

Chief Immigration officer

3. Financial Sector - Government

Financial Services Commission (FSC)

- Commissioner, FSC
- Deputy Commissioner, FSC
- Regulator

Easter Caribbean Central Bank

4. Financial Sector – Associations and Private Sector Entities

- Bank of Montserrat Ltd
- St. Georges Bank and Trust Company Limited
- St Patrick's Co-operative Credit Union
- Montserrat Enterprises Limited
- CLICO Holdings
- SAGICOR
- Representative Company Managers
- Royal Bank of Canada - Montserrat Branch
- Montserrat Building Society
- Grace Kennedy Money Services (Montserrat) Ltd
- Montserrat Branch British Red Cross

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