FINAL

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

21 November 2008

St. Lucia

St Lucia is a member of the Caribbean Financial Action Task Force (CFATF), which conducted this evaluation.
The report was adopted by the CFATF Council of Ministers on November 21st 2008

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PREFACE - information and methodology used for the evaluation of St. Lucia

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of St. Lucia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by St. Lucia, and information obtained by the evaluation team during its on-site visit to St. Lucia from February 4th to February 15th 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of relevant St. Lucian government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

This Report is the result of the third Round Mutual Evaluation of St. Lucia as conducted in the period stated herein above. The Examination Team which consisted of Mrs. Gail JOHNSON-GORING, Legal Expert, (Cayman Islands) Mrs. Joanne HAMID, Financial Expert) Trinidad and Tobago, Mr. Jean Legros THERMIDOR, (Financial Expert), Haiti and Mr. Morrison THOMAS, Law Enforcement Expert (Antigua and Barbuda). The team was led by Mr. Jefferson CLARKE, Law Enforcement Advisor, CFATF Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in St. Lucia as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out St. Lucia's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

1. [1] As updated in February 2008.

Executive Summary

1. Background Information

1. The Mutual Evaluation Report of St. Lucia summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in St. Lucia at the time of the on-site visit (4-15 February, 2008). The Report evaluates the level of compliance with the FATF 40 + 9 Recommendations (see attached table of Ratings of Compliance with the FATF Recommendations) and provides recommendations for enhancing the AML/CFT regime.

2. St. Lucia is a small island in the Eastern Caribbean located between Martinique to the North and St. Vincent to the South. It has a population of approximately 172,884 people and a land area of 616 sq. km. The banana industry in St. Lucia has been on the decline and therefore unemployment rates have risen. Tourism is the main source of foreign exchange.

3. Though recent trends show a significant decrease in the number of homicides, offences such as fraud, robbery and drug trafficking are on the increase.

4. The financial sector supervisors are the Eastern Caribbean Central Bank, ECCB, the Financial Sector Supervision Unit, FSSU, which is an entity within the Ministry of Finance and the Registrar of Cooperatives. There are no operational casinos in St. Lucia.

5. St. Lucia's AML/CFT framework is comprised of the Ministry of Finance which has oversight of prudential supervisory authorities, the ECCB, the Office of the Attorney General & Minister of Justice, which is responsible for law enforcement and judiciary bodies, and the Director of Public Prosecutions.

6. The national authorities have not performed any detailed AML/CFT risk assessment. Consequently, the application of AML/CFT measures to the financial system is not risk-based.

2. Legal System and Related Institutional Measures

7. The requirements for the criminalisation of money laundering as an offence on the basis of the Vienna Convention and Palermo Convention have, to a large extent, been incorporated into the primary legislation of St. Lucia, namely the Money Laundering Prevention Act (MLPA) and the Proceeds of Crime Act (POCA).

8. The definition of money laundering incorporates the physical and material elements of the articles of the Conventions by use of the terms of reference of "directly or indirectly engaging in a transaction which involves property that is the proceeds of crime" and "receiving, possessing, concealing, disposing of, or bringing into St. Lucia property that is proceeds of a prescribed offence knowing or having reasonable grounds to believe the property to be the proceeds of a prescribed offence.

9. Prescribed offences are scheduled within the POCA and are an attempt at making predicate crimes serious offences. However, all the designated categories of offences have not been covered including, smuggling, migrant smuggling, hostage taking, sexual exploitation of children, piracy, insider trading and market manipulation, counterfeiting and

piracy, illicit trafficking in stolen or other goods, participation in organised criminal group, environmental crimes, murder/ grievous bodily harm.

10. The offence of ML extends to any type of property, irrespective of the value. ML by definition does not make direct reference to its application to a person who commits the predicate offence. Yet, it is a criterion that money laundering should apply to persons who commit the predicate offence when establishing that money laundering has occurred or that the proceeds are derived from a predicate offence. Self laundering is not covered by legislation.

11. Whilst St. Lucia has achieved over 300 convictions for cases involving predicate offences and a plethora of seizures of assets, the absence of confiscation applications demonstrate the ineffective use of its ML provisions.

12. The offences of Terrorism and Financing of terrorism have been included in the list of "prescribed offences" in the First Schedule of the MLPA (Amendment 2004). However, at the time of the on-site visit there was no provision in effect in any law which criminalizes "terrorism or terrorist financing". Additionally, no laws have been enacted to provide the requirements to freeze terrorists' funds or other assets of persons designated by the UN Al Qaida & Taliban Sanctions Committee. Consequently, however, initiative has been shown by the recent enactment of the Anti-Terrorism Act (albeit more than 2 months after the on-site visit).

13. In St Lucia the Financial Intelligence Authority is the FIU, it was established pursuant to the Money laundering Prevention Act (MLPA) 2003. The Authority is comprised of a board of five (5) persons appointed by the Minister of Justice. The Director of the Authority is the Chief Executive Officer whose appointment is done by the Board, with the approval of the Minister. The requirement that the Minister gives approval for the appointment of the Director and appropriate consultants could lend itself susceptible to undue political influence.

14. The FIA is the national agency responsible for receiving, analysing and disseminating disclosures of STR's and other relevant information concerning ML and TF. The FIA is also mandated to advise the Minister in relation to the detection and prevention of money laundering and financing of terrorism. The FIA has access to the financial, administrative and law enforcement information that it requires to perform is functions and is empowered by the MLPA to enter any financial institution for the purpose of inspecting business transaction records.

15. With regard to the filing of STRs, financial institutions have been complying with the anti money laundering provisions, by submitting STR's to the FIA. During the period of 2004 to 2007 the financial sector filed a total of 175 STRs. The FIA has a practice of not providing feedback to reporting entities. It however has prepared basic reports of its operations. These reports however, do not address the issue of ML trends and typologies and are not available for public scrutiny.

3. Preventive Measures – Financial institutions.

16. The MLPA prescribes rudimentary customer due diligence for the financial sector and designated non financial businesses and professionals. AML guidelines, which are not enforceable, have recently been issued by the FIA. While financial institutions are required to

comply with the provisions of the MLPA, the FATF recommendations are not effectively applied because of deficiencies in the law and the lack of procedures to treat with effective implementation. There are no prohibitions which prevent the supervisory authorities from applying measures available for prudential purposes similarly for AML.

17. The customer due diligence measures include customer identification, and beneficial ownership requirements. There is however the absence of an obligation to conduct ongoing CDD; enhanced CDD for high risk categories of customer/customer business relationship and also to obtain information on the purpose and intended nature of the business relationship. Various pieces of legislation permit disclosure of information. The MLPA overarches the disclosure of information notwithstanding any obligation as to secrecy or other restriction in any law or contract.

18. Financial institutions are not prevented from sharing information among themselves for AML/CFT purposes. This is not however effectively practiced when required for purposes of correspondent banking. Generally, introduced business is subject to CDD so that no reliance is placed on the introducer except in the case of the insurance industry where a high level of reliance is placed on the brokers. The insurance companies have not implemented measures to satisfy themselves that copies of identification data and other relevant documentation relating to CDD will be made available from the broker upon request without delay.

19. To a limited extent, the POCA as well as the MLPA, address record keeping requirements for financial institutions. However, the obligation does not require the financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities. The shortcomings include: not maintaining records and business correspondence of domestic and international transactions for at least five years whether or not the relationship has been terminated; not making available customer and transaction records on a timely basis; and not keeping transaction records which must be sufficient to permit reconstruction of individual transactions to provide if necessary, evidence to facilitate criminal prosecutions.

20. Financial institutions do not examine and document the background and purpose of all complex, unusual or large transactions or unusual patterns of transactions whether completed or not and that have no apparent or visible economic or lawful purpose. Financial institutions are required to file STRs but the obligation does not extend to attempted transactions and all designated categories of predicate offences are not covered. In practice, suspicious transaction reports are not generated when they should because there is a lack of awareness as to what constitutes a suspicious transaction.

21. Notwithstanding that there is the legal requirement to do so, many of the financial institutions did not have documented policies and procedures or controls to combat ML. In instances where financial institutions do have policies and procedures they are inadequate.

22. There is no expressed law in St. Lucia which prohibits the establishment or continued operation of shell banks. However, licensing requirements in the Banking Act and the International Banking Act are designed to ensure that shell banks are not permitted to operate. There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

23. The powers available to the supervisory authorities include measures such as restriction, suspension and revocation of a license and a supervisory enforcement ladder which includes MOUs, written warnings, cease and desist orders and instituting legal proceeding.

24. Both the FSSU and ECCB have the power to conduct on-site examinations and access records, documents and information relevant to monitoring compliance. The ECCB has incorporated AML/CFT as part of its overall risk-based on-site examination process. Additionally, in instances where remedial action is required, ECCB increases its monitoring of such institutions.

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

25. The MLPA requires that similar measures applied to financial institutions are also applied to DNFBP. Statutory Instrument, 2004, No. 59 has expanded the scope of institutions to include the activities of DNFBPs. While money or value transfer services are included in this expanded scope, they are not licensed or registered. Consequently, they are not supervised or subject to a system of monitoring for ML.

5. Legal Persons and Arrangements & Non –Profit Organisations

26. Information required as to beneficial ownership and control is kept by the Registered Agent or by the Administrator for legal persons. Current information can be obtained by accessing the registered office or agent. There is no obligation to file this information and this negatively affects the timely access to beneficial ownership information and has relevance to the effectiveness of the measures in place. St. Lucia however, has laws that provide mechanisms that ensure that competent authorities are able to obtain or have access to the beneficial ownership and control information. Additionally, there is a system of central registration such that relevant information is publicly available or available to competent authorities or law enforcement.

27. There is no legislation, regulations or guidance notes dealing with non- profit organizations. Special Licensing rules and approval by the Attorney General are required before registration by the Registrar of Companies. Without the Attorney General's approval the Registrar of Companies will not register an NPO. The Companies Registry does not monitor NPOs after they are registered. There is no formal enforcement regime for NPOs licensed under section 80 of the Companies Law. No competent authorities engage in any formal monitoring of NPOs after the licensing stage.

6. National and International Co-operation

28. National cooperation and coordination is facilitated by the provisions of the MLPA. Consequently the FIA is designated as a central authority by virtue of its functions under this Act. The co-operation and coordination domestically by the FIA has been mostly informal because other than a MOU with the Department of Customs, there are no written protocols or internal policies in place that dictate the format for national coordination.

29. In order to permit prompt and constructive exchange of information especially to their non-counterparts St. Lucian authorities are able to offer a wide range of mutual legal

assistance. However, in the absence of dual criminality, competent authorities cannot render to the greatest extent possible all the measures provided for in their legislation noted as the Mutual Assistance in Criminal Matters Act (MACMA). In particular, it is noted that ML and TF having not been criminalized, are not extraditable offences and thus, the pre-condition of dual criminality creates a restriction on all mutual legal assistance including those involving non-coercive measures.

7. Resources and Statistics

30. St. Lucian authorities have made efforts to provide resources to their competent authorities. Notwithstanding, there are constraints which continue to hamper the effectiveness of the competent authorities in carrying out their functions. These constraints are most glaring in the area of staffing and information technology. Comprehensive statistics are not maintained.

1. GENERAL

1.1 General information on St. Lucia

1. St. Lucia is a small island in the Eastern Caribbean located between Martinique to the North and St. Vincent to the South. It has a population of approximately 172,884 people and a land area of 616 sq. km. The island's topography consists of steep mountains intersected by valleys and short rivers. There are two major airports, a regional airport in the north and an international airport in the south.

2. As a small country, St. Lucia's growth and its limited ability to train sufficient prosecutors to identify and prosecute money laundering and other related offences are impeded by critical economic characteristics. St. Lucia has a small domestic market with relatively low levels of economic activity. Because of its small size the country faces structural disadvantages relative to larger economics since it is unable to benefit from economies of scale, which would be essential if it is to be internationally competitive in the production of goods and services. In addition, the absence of a natural resource base further compounds the economic difficulties, as economic diversification efforts are stymied and the country is forced to continue to rely on a few economic sectors. St. Lucia has been able to attract foreign business and investment, especially in its offshore banking and tourism industries, with a surge in foreign direct investment in 2006, attributed to the construction of several tourism projects. Tourism is the main source of foreign exchange, with almost 900,000 arrivals in 2007. The banana industry in St. Lucia has been on the decline and therefore unemployment rates have risen.

3. St. Lucia is vulnerable to a variety of external shocks including declines in European Union banana preferences, volatile tourism receipts, natural disasters, and dependence on foreign oil.

4. St. Lucia has a parliamentary democracy system of governance modelled on the Westminster System of England. The legal system is predominately that of the English Common law. St. Lucia has a written Constitution, which guarantees every individual certain fundamental rights. Such rights include the right not to be deprived of property except where the taking or deprivation of property is by way of penalty for breach of a law or forfeiture in consequence of breach of a law. These constitutional provisions mandate the requirement for a conviction of a predicate offence in the AML/CFT regime.

5. Ethical and professional behaviour on the part of professionals such as accountants and auditors, and lawyers could be ensured through the provisions of section 62 of the Criminal Code. In particular section 62 creates the offence of "aiding and abetting a crime" wherever a person (a) directly or indirectly instigates, commands, counsels, procures or solicits; (b) in any manner intentionally aids, facilitates, encourages or promotes; or (c) does any act for the purpose of aiding, facilitating, encouraging or promoting. In addition the Legal Profession Act contains provisions for the regulation of the legal profession and discipline of its members and for other related matters.

1.2 General Situation of Money Laundering and Financing of Terrorism

6. As part of its efforts to develop effective strategies for combating money laundering and the financing of terrorism, St. Lucia has implemented the necessary institutional and legislative framework for dealing with these activities. The enactment of the MLPA, POCA and the Anti Terrorism Act coupled with the establishment of an FIU reflects St. Lucia's commitment to fulfilling its AML/CFT obligations both domestically and internationally.

7. As a developing country with limited resources and a less than moderate crime rate the efficiency and effectiveness of the country's AML/CFT systems are in some cases hampered by a dearth of resources and training particularly with respect to the investigation and prosecution of money laundering offences.

8. Though recent trends show a significant decrease in the number of homicides, offences such as fraud, robbery and drug trafficking are on the increase. National statistics reveal that drug trafficking both locally and internationally and fraud are the most common predicate offences linked to the generation of illegal proceeds. Note that there have been no reported cases of terrorism or financing of terrorism in St. Lucia.

9. Statistics show that for the period 2005 STRs filed showed a total reported value of EC $86,681,470.00 and for 2006 a marked reduction to EC $4,464,169.00 considering the fact that there were 15 less reports filed in 2006 than in 2005.

10. Attempts to launder proceeds through real estate transactions and through large cash generating retail businesses are some of the methods and trends which have been identified in St. Lucia.

11. The introduction of gaming legislation and the inevitable establishment of casinos on the island is likely to present an additional challenge for the AML/CFT authorities.

12. St. Lucia's geographic location within the island chain makes it an ideal transhipment point for drugs and psychotropic substances to Europe and North America. The need to legitimize the illicit proceeds of this lucrative trade through the Country's business and financial sector places a significant burden on the resource challenged law enforcement and AML/CFT authorities.

1.3 Overview of the Financial Sector and DNFBP

Financial institutions

Banks and Deposit-taking Institutions

13. Saint Lucia being an offshore sector has a combination of both international banks (i.e. licensed under the International Banks Act Chapter 12.17 and Regulations) and domestic banks (i.e. licensed under the Banking Act, No. 34 of 2006).

14. As of December 2007 there were a total of 6 offshore banks consisting of 1 class B licence and 5 Class A licences. With such limited numbers, Saint Lucia is not a significant offshore banking centre. The total assets as of December 2007 stood at USD 447,122,986.00. Off Balance sheet assets under administration stood at USD 0.00.

15. For domestic banks licensed under the Banking Act, the total number of banks stood at 6. Further there are a total of 7 deposit-taking companies. The total assets of the domestic banks as of December 2007 stood at ECD 5,247,247,000 with a total of ECD 3,102,744,000 in deposits. The 6 banks have 18 branches. Off-balance sheet assets under administration stood at ECD 609.1 million

16. The members of the domestic banks belong to an association called Saint Lucia Bankers' Association. It is quite an active association.

17. All domestic banks are licensed pursuant to the Banking Act and are supervised by the Eastern Caribbean Central Bank (ECCB). The offshore banks are licensed pursuant to the International Banking Act and are supervised by the Financial Sector Supervision Unit (FSSU), Ministry of Finance. In 2002, Saint Lucia decided to adopt an integrated approach to supervision by establishing a Single Regulatory Unit. This proposed structure would extend the supervision responsibilities of the FSSU to include credit unions. The domestic banks would still be supervised by the ECCB but a functional relationship with the FSSU would be established. Once fully implemented the FSSU would be responsible for supervising the entire financial sector International Banks, International Mutual Funds, International Mutual Funds Administrators, International Mutual Funds Managers, Registered Agents and Trustees, International Insurance Companies, Domestic Insurance Companies.

18. Money Services business remains unregulated/supervised.

Credit Unions

19. Credit unions are supervised by the Registrar of Co-operatives whose office is within the Ministry of Finance. As at December 31, 2007 there were sixteen (16) credit unions registered under the Saint Lucia Co-operative Societies Act, Chapter 12. 07. The total assets as of 2007 stood at ECD 286,343,193. The total number of members as of December 2007 stood at 62,486.

DESCRIPTION	TOTAL AS AT DECEMBER 2007 IN ECD
Net Income	14,141,854
Operating Expenses	9,774,600
Gross Income	22,755,137
Delinquent Loans	17,432,944

Insurance Sector

20. Saint Lucia being an offshore sector has a combination of both international insurance companies (i.e. licensed under the International Insurance Act Chapter 12.15 and Regulations) and domestic insurance companies (i.e. licensed under the Insurance Act, Chapter 12.08 and Regulations).

21. As of December 2007 there were a total of 24 international insurance companies which are all captives. However, only 7 international insurance companies are pure captives.

22. The domestic insurance activity in St. Lucia is administered by the Office of the Registrar of Insurance.

23. For the income year 2007 there were twenty seven (27) licensed insurance companies. These insurers comprised:

3 One (1) Association of Underwriters;
4 Six (6) locally incorporated insurers;
5 Sixteen (16) incorporated within the CARICOM region;
6 Four (4) insurers incorporated outside the CARICOM region;

24. There are twelve (12) brokers and seventeen (17) agents registered to transact insurance business on the island.

25. During this period, two hundred and six (206) Certificates of Registration for Salesmen were issued.

26. The Act also prohibits any person from operating as an insurance agent, an insurance broker or an insurance salesman unless that person is duly registered under the Act.

Premium Income (2007 figures are not yet complied)

Class	2005	2006	Change	% Change
Motor	$35,004,900	$41,807,028	$6,802,128	19%
Property	$40,363,927	$54,679,520	$14,315,592	35%
Other Classes	$20,769,770	$24,488,234	$3,718,465	18%
Total General Premium	**$96,138,597**	**$120,974,782**	**$24,836,185**	**26%**
Long Term Premium	$77,790,151	$79,312,133	$1,521,982	2%
Total Premium	**$173,928,748**	**$200,286,915**	**$26,358,167**	**15%**

OPERATING RESULTS BY CLASS 2005-2006								
CLASS	NET EARNED PREMIUMS		NET CLAIMS INCURRED		OPERATING EXPENSES		PROFIT/LOSS %	
	2005	2006	2005	2006	2005	2006	2005	2006
Liability	2,342,076	3,024,898	1,451,013	990,147	1,037,586	1,292,509	-6.26%	24.54%
Motor Vehicle	27,898,675	33,051,508	7,539,311	15,362,105	16,765,373	12,811,482	12.88%	14.76%
Marine	907,246	1,129,360	7,588	18,782	334,866	360,029	62.25%	66.46%
Pecuniary Loss	184,499	222,861	(36,475)	(217,868)	(97,985)	13,361	172.88%	191.76%
Aviation	918	921	-	-	2,346	1,900	-155.56%	-106.30%
Personal Accident	13,473,148	14,593,905	8,852,260	4,095,205	4,711,291	2,324,836	-0.67%	56.01%
Transport	353,605	376,740	4,718	9,238	94,603	96,232	71.91%	72.00%
Property	7,223,328	5,884,669	(2,574,062)	1,811,589	5,532,397	4,168,349	59.04%	-1.62%
TOTAL	**52,383,495**	**58,284,862**	**15,244,353**	**22,069,198**	**28,380,477**	**21,068,698**	**16.72%**	**25.99%**
Dollar amount							**8,758,665**	**15,146,966**
Change ($)								6,388,301
Change (%)								72.94%

Reinsurance

Class of Insurance	Gross Premium M$ 2005	Gross Premium M$ 2006	Reinsurance M$ 2005	Reinsurance M$ 2006
General Insurance	$96	$121	$44	$63
Long Term Insurance	$78	$79	$4.8	$4.4
Total	**$174**	**$200**	**$49**	**$67**

Mutual Funds

27. As of December 2007 there were about 10 registered/licensed international mutual funds in St. Lucia comprising of 8 international private funds and 2 international public funds, representing net asset values totalling USD7, 978,539.

28. A total of 3 International fund administrators as of December 2007 existed on our books. With such limited numbers, Saint Lucia is not a significant offshore mutual fund centre.

Securities Exchange Market

29. The Eastern Caribbean Securities Exchange (ECSE) is the first regional securities market in the Western Hemisphere, established by the Eastern Caribbean Central Bank to serve the eight (8) member states of Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat; St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines. It is

headquartered on the island of St. Kitts. It has been in operation since 1971, and the ECSE currently lists securities for about 14 companies with a market capitalization of about ECD 1,671,269,092.40 of which St. Lucia comprises about ECD 639,483,835.00.

30. In St. Lucia there is a total of 2 broker-dealers who have been licensed/registered to trade on the market.

Overview of the DNFBP Sector

Characteristics of St. Lucia's DNFBPs			
Sector	**Size and Scope of Sector**	**Licensed or Registered**	**Distinctive Financial Practices or Transactions**
Lawyers	There are just under two hundred (200) Attorney on the Roll of Saint Lucian Practitioners	154	All legal work expected from an Attorney and Notary Public as required, approved and authorized by the Legal Practitioners Act, the Civil and Criminal Code, The Land Registration Act and any other enactment for the time being in force in Saint Lucia.
Notaries	Under the Legal Practitioners Act attorneys at law perform the functions of Notaries Royal, and therefore the information contained above would be similarly applicable.	See above	See above
Accountants			All firms and persons generally provide accounting, audit, transaction services including mergers and acquisitions public offerings, valuations, liquidations, forensic audits Taxation

Non-Profit Organisations

31. There are an average of 10 applications submitted for the incorporation of Not for Profit Companies. These applications are submitted to the Attorney General pursuant to the Companies Act 13.02 who is tasked with approving the Articles of the entity.

32. The legislation is limited and does not specifically address due diligence investigations on the parties to the request. Not all applications are granted and applications where a sufficient religious, sporting, educational philanthropic objective is shown are rejected.

33. The Act is however not delimiting and consequently The Attorney General Chambers has now established an intergovernmental committee with the specific purpose of information sharing and providing oversight on the incorporation and activities of not for profit entities, to ensure strict compliance with the Act and to ensure strict adherence to the objectives of a Not for Profit Entity. Stricter legislation has been proposed to regulate these entities

Casinos

34. Gaming and gaming activities in Saint Lucia, is regulated by the Gaming Control Act, in force from the 14th May 2001. Gaming in Saint Lucia is regulated by the Gaming Authority. The Authority is a body corporate to which, subject to this Act, section 19 of the Interpretation Act applies.

35. The Authority is administered by a Board who are citizens of Saint Lucia including—

i) a chairperson who has at least 10 years experience in public or business administration;

ii) one member who is a certified accountant with at least 8 years experience;

iii) one member who has experience in law enforcement, criminal investigation, law or gaming.

36. Cabinet shall, in appointing a person to the Board, have regard to the person's character and antecedents, habits, associations and public reputation.

37. The powers and duties of the Authority to be exercised in accordance with this Act are as follows—

335. to consider an application for a licence;

336. to make recommendations to the Minister on the grant of a licence to an applicant;

337. to verify or cause to be verified the background character and reputation of an applicant;

338. to keep under review the extent, character and location of gaming activities licensed under this Act;

339. to inspect or cause to be inspected a gaming device or associated equipment proposed to be used in Saint Lucia;

340. to issue a list of persons to be excluded from a gaming establishment or from participating in gaming;

38. Gaming activities under the act are regulated by licence, and can only by carried on by licence. A person shall not—

i) conduct gaming;

ii) manufacture, fabricate, assemble, programme or modify a gaming device or associated equipment;

iii) sell, supply or distribute a gaming device or associated equipment;

iv) lease gaming machines to a gaming operator in exchange for remuneration based on earnings in profit from a gaming operation;

unless the person has been issued an appropriate licence under this Act.

39. A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine not exceeding $150,000 or to a term of imprisonment not exceeding 3 years or both.

40. A person convicted of an offence under subsection (1) shall not be granted any licence under this Act.

Trust Service Providers

41. Trust service providers for international trusts are regulated under the Registered Agent and Trustee Licensing Act, Cap.12.12. The office having oversight of the operations of Registered Trustees is the Director of Financial Services. Trusts registered under the International Trusts Act, 2002 are registered in the Registry of International Trusts.

42. Under domestic law, the Trust Corporation (Probate and Administration) Act, Cap 4.14 authorises the grant of probate or administration to trust corporations and for connected purposes. Section 3 of the Act states as follows:

3. CONSTITUTION OF TRUST CORPORATIONS

43. *Despite the provisions of article 325 of the Civil Code, or any other Law, the Governor General on the application of any corporation carrying on business in Saint Lucia, if he or she is satisfied that under the instrument whereby the powers of such corporation are defined such corporation is authorised to act as an executor of the will of any deceased person or as an administrator of the estate of any deceased person or as a trustee of any settlement whether constituted by any testamentary instrument or otherwise, may in his or her absolute discretion by order declare such corporation to be a trust corporation for the purposes of this Act.*

Company Service Providers

44. Company service providers for international business companies are regulated under the Registered Agent and Trustee Licensing Act, Cap.12.12. The office having oversight of the operations of company service providers which are termed Registered Agents under the Act, is the Director of Financial Services. International business companies are regulated under the International Business Companies Act, Cap. 12.14 are registered in the Registry of International Business Companies. Licensed (banks, insurances and mutual funds) international business companies are regulated by the Director of Financial Services.

AUTHORITIES

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

45. Under the Companies Act, legal persons and legal arrangements may be established as either (a) Companies with Share Capital or (b) Companies without Share Capital or *(c) External Companies. In addition, legal entities may also be created by Acts of Parliament in the form of Statutory Corporations.

46. Companies with share capital and External Companies are owned by shareholders and controlled by directors. Companies without share capital are owned by members and controlled by Directors. Statutory Corporations are owned by the Government and are usually controlled by Directors who are appointed in accordance with the relevant statutory provisions under which they were formed.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

47. In demonstrating its commitment to the combating of money laundering and the financing of terrorism the Government of St. Lucia has undertaken a number of key initiatives which provide for the development of AML/CFT programs.

48. The enactment of the MLPA 2003 and the recent amendments of POCA in addition to the passing of the Anti-Terrorism Act bear testimony to the Government's commitment.

49. As part of its policy to assist in the global flight against ML/FT both locally and internationally, in an effort to ensure security and economic stability within the business and financial sectors, Saint. Lucia has placed great emphasis on training in ML/FT prevention

50. The provision of AML/CFT awareness training seminars, the recent issuance of AML Guidance notes coupled with the legislation brings into sharp focus the Government's concern in ensuring that all the relevant parties including law enforcement and the financial and business sectors become well versed and knowledgeable of their statutory obligations.

51. The unprecedented receipt of STRs from institutions such as credit unions, car dealers, mortgage and insurance companies is reflective of the success that this training initiative has produced.

52. The Government has also identified the need for the more aggressive and effective investigation and prosecution of money laundering offences. Government has made this one of its main priorities and is currently seeking international assistance for the training of relevant personnel in the investigation and prosecution of white collar offences and in particular money laundering.

b. The Institutional Framework for combating money laundering and terrorist financing

The Financial Intelligence Authority

53. Established in October 2003 under the MLPA 2003; is a statutory body and is the main agency responsible for receiving, analyzing, obtaining and disseminating information which relates to money laundering. The Authority's main function is to collect, receive and analyze reports submitted to it by financial institutions and other businesses. The Authority is administered by a Board and is served by a secretariat comprising a Director, Administrative Assistant and three Financial Investigators, the latter having been seconded from the Royal St. Lucia Police Force, Customs and Excise Department and Inland Revenue Department. Two of the investigators have received accreditation with regard to their training. The FIA has also been mandated under the Anti-Terrorism Act as the agency responsible for receiving STRs from the various financial institutions on suspected terrorism financing.

The Royal St. Lucia Police Force

54. Under the MLP: the Police have been mandated to assist the FIA with the investigation of money laundering offences. The Major Crimes Unit of the Police Force is charged with the responsibility for investigating financial crimes including money laundering.

A number of officers from this unit have received training in AML/CFT matters; four officers have received accreditation through the FIA.

55. Under the Anti Terrorism Act the Police have the responsibility for investigating TF offences

Customs

56. The agency plays a significant role in the fight against drug trafficking and smuggling of currency. A few officers have received basic training in AML/CFT matters.

Ministry of Finance (Financial Services Unit)

c. Approach concerning risk

d. Progress since the last mutual evaluation

57. All the amendments identified to POCA MLPA and the enactment of the Anti terrorism legislation, and the implementation of the guidance notes. All of these chances have been as a result of the recommendations received.

58. The last mutual evaluation of St. Lucia raised issues relating (but not limited) to proceed of crimes, financing of terrorism, banking and insurance operations. Since this evaluation St. Lucia has addressed the key findings and/or recommendations that were made as follows:-

59. The Proceeds of Crimes Act was amended to expand the schedule of offences further than just drug trafficking offences. This Act has provision for the confiscation of property of corresponding value, which would apply to the laundering of the proceeds of a wider range of predicate offences, including terrorism if this was in fact provided for. The amendments to the POCA also provides for elements of civil forfeiture in the circumstances where a person absconds in connection with a scheduled offence and provided for the inclusion of money laundering and financing of terrorism as predicate offences.

60. A specific reference was made in the Money Laundering (Prevention) Act 2003 to the applicability of dual criminality to the offence of ML. Penalties were included in the MLPA for failure of financial institutions to file STRs. The establishment of the FIA removed duplication of functions with the former MLP Authority. The MLPA amendments also addressed the issue of identifying the beneficiaries of co-mingled accounts and clearly outlined the circumstances in which verification of identity must occur, as well as identify the parties who are responsible for verification. Guidelines should be issued to specifically address the establishment by banks, of a systematic procedure for identifying customers. Banks must not establish a banking relationship until the identity of a customer has been satisfactorily verified and banks are required to keep customer identification information up-to-date and relevant by undertaking regular reviews of existing records and to pay special attention to non-resident customers. They are also required to conduct due diligence in cases where it has reason to believe that a customer is being refused banking facilities by another bank and to close an account if problems of verification arise in the banking relationship which cannot be resolved

61. Penalties were provided for in the Anti-Terrorist Act for financial institutions or corporate entities that engage in or facilitate FT. The ATA was amended to make it clear that contracts entered into with third parties to avoid property or proceeds of crime being forfeited or confiscated, can be voided if this is found to be the reason for the contract being entered into.

62. The Freedom of Information and Privacy Bill is under review for enactment. It will facilitate and create clear gateways for access to information and cooperation with other countries.

63. Financing of terrorism legislation was introduced in the MLPA.

64. St. Lucia has established a threshold amount which soughs to flag the need to conduct increased due diligence.

65. The Banking Act 2006 requires banks to have in place graduated customer acceptance policies and procedures. The BA also addresses customer identification and verification requirements in the case of accounts opened by professional intermediaries. The BA also requires banks to (a) obtain identification information about trustees, settlors/grantors and beneficiaries. In the case of corporate vehicles, financial institutions are required to understand and document the structure of the company, determine the source of funds and identify the beneficial owners and those who have control over the funds to prevent the corporate vehicle being used to operate anonymous accounts; and to obtain incorporation documentation when an account is being opened on behalf of a company.

66. The proposed Insurance Bill being looked at on OECS ECCB level will prohibit insurance companies from entering business relationships or carrying out significant one-off transactions unless they have verified the identities of their customers.

67. The Interception of Communications Legislation enacted in 2005 and the Freedom of Information Bill and Privacy Bill (to be enacted) empowers the FIA to share information with foreign counterparts.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

2.1.1 Description and Analysis[2]

Recommendation 1

68. The Money Laundering (Prevention) Act (No. 27 of 2003) **[MLPA]** is noted as the legislation which is applicable to the analysis of the criminalisation of Money Laundering in St. Lucia. The POCA also has applicability in this area.

Consistency with United Nations Conventions

69. Despite the fact that the government of St. Lucia has not yet ratified the Palermo Convention, it is recognised that St. Lucia is a signatory to both Conventions and has adopted the provisions of both Articles 3(1) (b) & (c) of the 1988 Vienna Convention and Article 6(1) of the 2000 Palermo Convention into its laws.

70. Accordingly, it can be concluded that the criminalization of money laundering is on the basis of the Conventions.

71. Relevant statistical data cannot be produced by St. Lucian authorities and the examiners were mindful of the fact that there were reportedly only 2 Suspicious Transaction Reports filed last year which were proffered to the Director of Public Prosecution's office. Further recognition was made of the fact that there have been no prosecutions of money laundering cases, very limited convictions for predicate offences such that, confiscation or forfeiture hearings for proceeds of crime were a moot point. Added to the general deficiencies in the legal and institutional frameworks was the observation by examiners that a lack of sufficient personnel with the investigative skills and a lack of prosecutorial training on AML/CFT matters has severely hampered the effectiveness of criminalising money laundering.

72. The requisite statistics for R. 2 with regard to the sentence precedents in relation to sanctions for the predicate offences vary between magistrates and between Summary and High Court. Nonetheless, illustrations lead to a pattern which seems to lean towards a more lenient sentencing practice. Consequently, the feedback from the law enforcement and prosecutorial authorities supports the view that the effectiveness of ML investigations and prosecutions would be lost by the less than dissuasive nature of the sentences.

73. In fact, the impression that could easily be drawn is that St. Lucia is still in the teething stage of awareness and implementation of an AML/CFT regime. There are also lacunas noted in the MLPA and POCA legislations which significantly decrease the effectiveness of criminalising money laundering and accordingly this has affected the rating of this recommendation.

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2. [2] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

74. By virtue of **Section 18 of MLPA**(No. 27 of 2003), the offence of Money Laundering is criminalised and the liabilities therein imposes *penalties ranging from 5 to 10 years imprisonment or half million to one million dollars in fines* which thereby categorizes the predicate offences **(set out in the First Schedule of the MLPA**) as serious crimes in St. Lucia.

75. Also included within *the interpretation section 2 of **MLPA*** is the *definition of money laundering* which incorporates the physical and material elements of the articles of the Conventions by use of the terms of reference of "*directly or indirectly engaging in a transaction which involves property that is the proceeds of crime" and "receiving, possessing, concealing, disposing of, or bring into St. Lucia property that is proceeds of a prescribed offence knowing or having reasonable grounds to believe the property to be the proceeds of a prescribed offence."[Prescribed offence being an offence listed in the First Schedule].*

76. However, the effectiveness of the provisions of the MLPA are yet to be seen in light of three (3) factors:

i The government of St. Lucia has a policy not to ratify Conventions until the legal framework is in place and needs to ratify the Palermo Convention.
ii The legal framework which is taken to encompass establishment of the institutions and human and technical resources has not been implemented particularly as the investigative and prosecutorial sectors require training.
iii There has been insufficient money laundering cases for investigation, no money laundering prosecutions and thus no convictions upon which to test the effectiveness of criminalisation of the offence.

77. The interpretation section of the MLPA (2003) defines **"property"** as "including money, movable and immovable property, corporeal or incorporeal and an interest in property".

78. The Proceeds of Crime Law 2004 also incorporates a similar definition as regards proceeds of crime as its interpretation section also notes that "**property**" "include money and all other property, real or personal, including things in action and other intangible or incorporeal property".

79. Therefore, by definition, it is presumed that the offence of ML extends to any type of property regardless of value.

Definition of proceeds

80. Pursuant to the Proceeds of Crime Law (POCA) which is: AN ACT to provide for the forfeiture or confiscation of the proceeds of certain crimes and for connected matters:

"**Proceeds**" means any property that is derived, obtained or realised, directly or indirectly, by any person from the **commission** of a scheduled offence;

"**Proceeds of crime**" means —

proceeds of a scheduled offence; or

any property or benefits derived, obtained or realised, directly or indirectly, by any person from any act or omission that occurred outside St. Lucia, and would, if it had occurred in St. Lucia, have constituted a scheduled offence;

81. In fact, pursuant to Part 2 Section 4 of POCA, an application for forfeiture order or confiscation order is **"on conviction"** and specifically states that;

82. Despite the provisions of section 28 of the Drugs (Prevention of Misuse) Act and subject to subsection (2), **where a person is convicted of a scheduled offence…**the Director of Public Prosecutions shall apply to the Court for one or both of the following orders:

i. a forfeiture order against property that is tainted property in respect of the scheduled offence;

ii. a confiscation order against the person in respect of benefits derived by the person from the commission of the scheduled offence.

83. In both instances the ***commission of the scheduled offence*** is a condition precedent for "proceeds".

84. Further, it is apparent from the interpretation section of the MLPA that when proving that property is the proceeds of crime it presupposes by its definition that the "proceeds are derived directly or indirectly from a transaction of a "prescribed offence".

85. The "prescribed offences" are listed in the First Schedule of the Law and are referred to generally as the *"predicate offences"* for the offence of money laundering.

86. Consequently, this essential criterion is not fulfilled as it is necessary that a person be convicted of the predicate offence in order to secure a conviction for ML and under the MLPA self laundering is not covered as an offence.

87. Further, it has been recognised that the need for a conviction of a predicate offence has been a significant factor which acts as an impediment to prosecuting ML cases. To date there have been no specific cases of ML investigations leading to prosecution and hence no convictions.

88. The absence of statistical data with respect to theses areas therefore leaves no measures by which effectiveness or efficiency of systems for combating ML can be assessed by the examiners.

89. St. Lucia has sought to include all serious offences under their national law; The Criminal Code by virtue of the penalties which can be imposed upon conviction for the predicate offences.

90. The predicate offences for money laundering which are the "prescribed offences" listed in the First Schedule of the POCA (Statutory Instrument, 2004, No. 55 are as follows:

- *Possession of drugs with intent to supply, Trafficking in Drugs, Assisting another to retain the benefit of drug trafficking, Money Laundering, Abduction, Blackmail, Corruption, Bribery, Counterfeiting, Drug trafficking, Drug Trafficking offences, Extortion, Firearms trafficking, Forgery, Fraud, Gambling, Illegal deposit taking, Prostitution, Robbery, Terrorism, Financing of Terrorism, Stealing, Trafficking in Persons, Aiding and Abetting or counselling or procuring the commission of or being an accessory before or after the fact, or attempting or conspiring to commit any other offence listed above.*

91. Despite, a national attempt at making predicate crimes serious offences or at least within the designated categories of offences, in their analysis the examiners have noted two (2) factors existing within the prosecutorial framework which lessens its impact in St. Lucia:

92. All the designated categories are not covered within the First Schedule list of offences. The offences omitted are as follows:

i. Smuggling
ii. Migrant Smuggling
iii. Hostage Taking
iv. Sexual exploitation of children
v. Piracy
vi. Insider trading and market manipulation
vii. Counterfeiting and piracy of
viii. Illicit Trafficking in stolen or other goods
ix. Participation in organised criminal group
x. Environmental crimes
xi. Murder/ Grievous bodily harm

93. Some of the offences listed above are notably within various laws of St. Lucia. For example; "insider trading" falls under the Companies Law, "smuggling" falls under the Customs Act, "Murder, Grievous Bodily harm, Sexual exploitation of children" falls under the Criminal Code 2004.

94. Despite their listings elsewhere these offences which have been omitted from the schedule cannot be said to be covered by definition of those which exist.

95. Trafficking in persons cannot technically be included into the offence of migrant smuggling. The interpretative notes of the 40 + 9 Recommendations on "designated offences" notes the trafficking in human beings as a separate offence from migrant smuggling although coupled within one heading.

96. Therefore, the St. Lucian law is deficient in its categorization of predicate offences.

97. St. Lucia does not apply either a threshold approach or a combined approach to categorizing the predicate offences.

98. Therefore**,** the minimum standards have not been achieved as the scheduled predicate offences:

- Do not all fall within the category of serious offences under the law which must be "indictable only' and generally carry life sentences or a sentence of five years imprisonment where no sentence is specifically provided. Some of the offences are "hybrid" offences and thus could also be triable summarily and carry a maximum 3 years imprisonment where no other sentence is provided on summary conviction.
- Are all punishable by a maximum penalty of more than one year's imprisonment. However sentencing precedents in the Magistrate's Court suggests that the penalties imposed can be non-custodial depending on the circumstances and mitigations and Magistrate's are not considered bond to any particular sentencing guideline.
- Are punishable by a minimum penalty of more than six months imprisonment but this penalty would not be applicable to the drug trafficking offences for which fines are generally imposed rather than a term of imprisonment.

99. Consequently, St. Lucian law by virtue of its thresholds in its legal system must revert to the threshold approach which adopts the approach that predicate offences should at minimum comprise all offences that fall within the category of serious offences under the national law. That being the case, with reference to the Criminal Code of St. Lucia 2004, serious offences are indictable offences and a number of offences listed in various categories within the Code would of necessity, need to be included in the schedule.

100. Additionally, given the deficiency in the list of predicate offences as it stands, it is clear that the widest range of offences have not been implemented in accordance with *Recommendation 1.*

101. The interpretative section of POCA has made reference to "unlawful activity" as an act or omission that constitutes an offence against law in force in St. Lucia or against a law of any other country". Similarly, within the interpretative section of the MLPA an "unlawful act" means "an act which under law in any jurisdiction is a crime and is punishable by imprisonment of a period of not less than 12 months or is punishable by death. Additionally, by amendment No. 15 of 2004 of the MLPA, section 2A has been added wherein for the purposes of the Court to have jurisdiction to try an offence in St. Lucia; "an act or omission committed outside St. Lucia and which would, if committed in St. Lucia constitute an offence under the Act, shall be deemed to have been committed in St. Lucia if any of the provisions included in subsections (a) to (e) therein are satisfied."

102. Consequently, whilst the provisions added with subsections (a) to (e) of section 2 A of the law does not appear to be the optimum situation, they do not detract from the ultimate criterion which is that "dual criminality" is provided for by this amendment.

103. Interestingly, in the MLPA 27 of 2003, the offence of money laundering by definition does not make direct reference to its application to a person who commits the predicate offence. Yet, it is a criterion that money laundering should apply to persons who commit the predicate offence when establishing that money laundering has occurred or that the proceeds are derived from a predicate offence. Consequently, this disparity needs to be addressed by the legislature. Self laundering is not covered by legislation.

104. Ultimately, the ability to charge both the predicate offence and the offence of money laundering at the same time may have offered a practical solution to the inconsistency between law and practice as the act of receiving, disposing of or concealing would suggest that a third party by their action and knowledge of the proceeds being proceeds of crime could be charged for money laundering. Nevertheless, both scenarios are covered in the law.

105. Section 18(2) of the MLPA 27 of 2003 provides that a person who attempts, aids, abets, counsels, or procures the commission of, or who conspires to engage in money laundering commits an offence and is liable -—

on summary conviction to fine not exceeding one million dollars or to imprisonment for five years or both;

on conviction on indictment to a fine not exceeding two million dollars or to imprisonment for fifteen years or both.

106. This provision has therefore created appropriate ancillary offences to the offence of money laundering although there has been no reliance upon these offences by the prosecution.

Additional Elements

107. Where the offence is committed outside of St. Lucia but would have constituted an offence if it were committed in St. Lucia, though it is not an offence outside, is a money laundering offence and the Court has jurisdiction to try the person by virtue of section 2 (A) (e) of the MLPA where the person who commits the act or omission is, after its commission, present in St. Lucia. No reliance is place on dual criminality in this instance. Additionally, in the definition of proceeds of crime at part (b) in the interpretative section of the Proceeds Of Crime Act (POCA) a similar provision is laid out.

Recommendation 2

Scope of liability

108. Pursuant to **Section 19 of the MLPA**, the law provides that where an offence under section 18 (money laundering) is committed by a body of persons, whether corporate or incorporate, a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly.

109. The intent and knowledge required to prove the offence of money laundering may be inferred from factual circumstances.

110. Within the MLPA; by definition, the act of "**directly or indirectly** engaging in a transaction that involves property that is the proceeds of a prescribed offence…" as also within section 19, the use of the terms **acted or purported to act** affords the interpretation that the *"intentional element"* of the offence of money laundering has been provided.

111. Legal persons by virtue of section 17(1) of MLPA acts on behalf of a body corporate shall be deemed, for the purpose of this Act, to be engaged in by that body corporate or as person with consent or authority to do such acts. According the law extends to legal persons.

112. Section 19 of the MLPA provides that where an offence under section 18 is committed by a body of persons, whether corporate or incorporate, a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly.

113. The penalties under s. 20 of the MLPA 2003 apply to both natural and legal persons. A person found guilty of an offence of ML on conviction or indictment is liable to a fine of not less than one hundred thousand dollars and not exceeding five hundred thousand dollars or to imprisonment for a term of not less than seven years and not exceeding fifteen years or both. Consequently, a legal person can be held criminally liable for money laundering.

114. Parallel criminal, civil or administrative proceedings are not precluded by making legal persons subject to liability by virtue of the provisions in POCA set out in section 22 thereof which allows the court to lift the corporate veil and to determine the interest in property of which the person may have had effective control. The law specifically notes that the Court may lift the veil of the company without prejudice to a finding with respect to any legal or equitable interest held by a person.

115. Additionally, at section 68 of POCA the law provides that there is no prejudice, limit or restriction to a) the operation of any other law which provides for forfeiture or imposition of a penalty or fine or (b) remedies available to the Crown for enforcement of its rights or (c) powers to seize, search or detain property by the police.

116. The MLPA provides the appropriate sanction for the offence of money laundering within section 18. However, having had no prosecutions and thus no conviction upon which a sentence could be passed no measure as to its proportionality exists.

117. The statistics with regard to the sentence precedents in relation to sanctions for the predicate offences vary but do nonetheless illustrate a pattern which seems to lean towards a more lenient sentencing practice. Consequently, the feedback from the law enforcement and prosecutorial authorities supports the view that the effectiveness of ML investigations and prosecutions would be lost by the less than dissuasive nature of the sentences.

Recommendation 32 (Money laundering/prosecution data)

*Statistics****: NO DATA was available as there are no prosecutions & no convictions for ML.***

2.1.2 Recommendations and Comments

118. The MLPA should be amended to specifically provide that the offence of money laundering does not of necessity apply to persons who committed the predicate offences in light of the lacuna that presently exists in the law.

119. The offence of self-money laundering must be distinct from the offences which are predicates.

120. The country needs to ensure that the widest possible categories of offences as designated by Convention are included within the MLPA and are definitively defined by legislation.

2.1.3 Compliance with Recommendations 1, 2

	Rating	**Summary of factors underlying rating**[3]
R.1	PC	• AML legislation has not been effectively utilized and therefore could not be measured and the Palermo Convention needs to be ratified. • The lack of effective investigations and prosecutions also negatively impacts the effectiveness of the AML legislation and regime. • Self- laundering is not covered by legislation. • Conviction of a predicate offence is necessary

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

		• All designated categories of offences not included
R.2	LC	• Lack of effectiveness of sanctions which are also considered not dissuasive in nature

2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

2.2.1 Description and Analysis

Special Recommendation II

121. The offences of Terrorism and Financing of terrorism have been included in the list of "prescribed offences" in the First Schedule of the MLPA (Amendment 2004). However there is no provision in effect in any law which criminalizes "terrorist financing".

122. The Anti-Terrorism Act is being tabled by the Hon. Attorney General for enactment. This Act is intended to cure all omissions with regard to St. Lucia's capacity to deal with the international terrorism. It is anticipated that this Law will take effect within the next three months.

123. There is however, the reluctance to enact this law in light of St. Lucian legislative policy that it will not ratify any convention or law without first having the legal framework and mechanisms in place. As such, it is highlighted that to date the UN Convention on the Suppression of Crime & Financing of Terrorism (1999) has NOT been ratified by St. Lucia.

124. Terrorist financing will be criminalised within the Anti-Terrorist Act to be enacted in St. Lucia. Although St. Lucia is a signatory to the Terrorist Financing Convention, it has not yet ratified same and thus there is no basis for comparison of definitions. The prosecution however, interprets that it is able in the interim to attach the offence of terrorist financing as an "ancillary offence" to the offence of Terrorism. This interpretation however, has not been tested in any court proceedings or prosecutions.

125. Additionally, given that the Magistrate is a creature of statute, the lack of an expressed provision which criminalizes terrorist financing will be an impediment to the prosecution in attaining the requisite criminal standards in order to secure a conviction. Thus, the examiners with reluctance offer no evaluation of the intended effectiveness as a CFT measure where no illustrative case is forthcoming.

126. Under the First schedule of the MLPA – Terrorism and Financing of Terrorism are listed as predicate offences.

127. Law enforcement (Immigration and Customs departments) as well as the Financial Sector have adopted international standards within their AML/CFT policies and as such have made references to posted alert lists in the course of their investigations and CDD practices. This approach is commendable but again, in the absence of any actual TF investigations or ML prosecutions with a TF component, St. Lucian legal framework is devoid of an offence of terrorist financing.

128. Criteria 2.2 to 2.5 cannot be given effect in relation to the offence of FT as there is no legislation enacted that would give rise to issues relating to legal persons, parallel liabilities or sanctions.

Recommendation 32 (terrorist financing investigation/prosecution data)

Statistics and effectiveness

129. *NO DATA will be forthcoming as there have been NO instances of TF investigation or prosecution in St. Lucia in the last 4 years or pending to date.*

2.2.2 Recommendations and Comments

130. The government needs to ratify the Conventions and UN Resolutions and establish the proper framework to effectively detect and prevent potential vulnerabilities to terrorists and the financing of terrorism.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
	NC	• Terrorist financing is not criminalized as the anti terrorism act whilst passed by parliament is not yet in force. • No practical mechanisms that could be considered effective

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

2.3.1 Description and Analysis

Recommendation 3

131. The Proceeds of Crime Act provides for the confiscation of property which constitutes the proceeds from the commission of any ML, FT or other predicate offences.

Confiscation of instrumentalities

132. ***The instrumentalities used in or intended to be used in the commission of the offence*** are subject to the provisional measures of confiscation, freezing and seizure without prejudice to a third party.

133. A forfeiture fund may be established under the administration and control of the Accountant General. However, as there has not been any action taken o have this fund the practical resolve is to have any monies placed into the treasury.

134. Additionally, judicial review of the protection afforded to bona fide third parties suggests that in most instances where applications were made before the court such persons were able to satisfy the tribunal that their interest was obtained without knowing that the property was proceeds of crime or was intended for use in the commission of a crime.

135. The imposition of a bond for non-disposal of the property has been used as a practical measure to prevent any transfer or disposal of a property subject to confiscation.

136. In the last 2 years, it has been recognised that there has only been three cases of assets been frozen. One as a result of an allegation of it being the proceeds of fraud and there were two (2) Restraining Orders obtained relating to drug trafficking activity. However, having not obtained a conviction, the assets were released.

137. In determining the benefit of or in assessing the value of property perceived to be the proceeds of crime and which is the subject of confiscation, POCA section 18 (d) states that "any property received or considered to have been received by the person at any time as a result of, or in connection with, the commission by him or her of that scheduled offence, or those scheduled offences as property received by him or her free of any interests therein."

138. Therefore by definition the instrumentalities used in and intended for use in the commission of ML is prescribed by law. In the absence of legislation criminalising terrorist financing, the above provision would only be limited to the reference of terrorist financing as a prescribed offence listed in the First Schedule under the MLPA. As such, this option, in the view of this examiner would not preclude the offence of terrorism.

139. The effectiveness of this section has however never been tested in light of the fact that instrumentalities which have been seized have been released without any application for confiscation because a conviction has never been secured for money laundering in St. Lucia. Nonetheless, the principal component therein is with respect to the "use or intended use" of the instrumentalities.

140. The laws of St. Lucia equally apply to "property subject to confiscation".

141. Property that is derived directly or indirectly from proceeds of crime including income, profits or other benefits can be the subject of restraint and seizure orders.

142. Subject to an application regarding interests in the property, such property confiscate may be ordered regardless of whether it is held or owned by the defendant or a third party.

143. This criterion is covered within the interpretative section of the POCA which defines benefit as "benefit includes any property service or advantage whether direct or indirect." Reference to a benefit derived or obtained by, or otherwise accruing to a person and includes a reference to benefit derived or obtained by or accruing to another person at A's request or direction.

Provisional measures

144. Section 31 of POCA provides for Restraining Orders to be made as a form of provisional measure to prevent any dealing, transfer or disposal of property or the interest therein and which is subject to confiscation. The Royal Police Services of St. Lucia have used the practical measure of a bond being entered into by the defendant or the third party which

ensures that the person will be liable for its value in the event that the property is disposed of before the completion of any confiscation hearing or release of same.

145. St. Lucia law allows for the initial application to freeze or seize property subject to confiscation to be made ***ex parte***. This application would be made by the Director of Public Prosecution pursuant to section 30 (2) of POCA and is usually supported by affidavit prepared by the Director of the Financial Intelligence Authority and includes the grounds for believing that the property is tainted and is in the possession of the person identified within the application.

146. Law Enforcement may exercise its information gathering powers of identifying and tracing property that is reasonably suspected of being tainted property under section 41 of the POCA.

147. The FIA generally has limited powers of investigations under the section 5 (b) MLPA to require the production of such information as it considers relevant to fulfilling its functions.

Protection of rights

148. St. Lucian laws provides protection for the rights of bona fide third parties in Section 15 of the MLPA wherein the Court must publish forfeiture orders in a Gazette as notice to a third party with a legitimate legal interest to allow a claim to be made in satisfaction of their assertion that their interest was obtained without knowledge of the property being tainted. Additionally, a similar provision exists in the POCA at section 12 wherein a third party may make a claim of interest before a forfeiture order is made or within 12 months of the order in proof of the assertion that the property was acquired with adequate consideration and without knowledge of suspicious circumstances which would suggest that the property was tainted and without being involved in the commission of the offence.

149. The protection given to third parties by these laws are consistent with the standards provided in the Palermo Convention.

150. In the event that an order for restraint is breached, the law makes provision for steps to be taken by an authority (law enforcement or DPP) to prevent or void actions whether contractual or otherwise of persons who as a result of their action would prejudice recovery of property.

151. Section 36 of POCA in fact mandates that such action would constitute an offence which is punishable by a fine of $500,000 or 5 yrs imprisonment upon conviction. Alternatively, the Court may void the transaction if it is determined that the property was not obtained for a sufficient consideration and for favour in good faith.

Additional Elements

152. The St. Lucian laws provide for confiscation of the property of organisations that are found to be primarily criminal in nature by virtue of section 22 of POCA wherein the veil of incorporation may be lifted by the Court such that it may treat property of the person as that person having effective control of it whether or not he or she has a legal or equitable interest or a right or privilege in connection with the property.

153. Application for forfeiture and confiscation orders can only be made after a person has been convicted of a predicate offence.

154. Under section 4 (2), the DPP cannot make an application in any case where a forfeiture has been effected under the Drugs (Prevention of Misuse) Act.

155. The POCA also provides that an offender is required to demonstrate the lawful origin of the property and thus the court shall consider the rights of a third party, the gravity of the offence committed, and the hardships expected as a result of the order and whether the property was used ordinarily or intended use.

Recommendation 32 (confiscation/freezing data)

156. Despite the lack of cases, all competent authorities i.e. the AG, the DPP, the FIA, The Law Enforcement JIU, the Court/Judiciary should consider establishing a database to secure any and every information or file or request received both domestically and internationally are recorded.

Statistics and effectiveness

TABLE 1: Property seized

The following statistical data was provided by the DPP's office:

	Money Laundering	**Financing of Terrorism**	**Proceeds of Crime**	**Amount Seized**	**Year**
No of Cases	0	0	3	3 parcels = land 2 bank accounts 6 vehicles Total= EC$ 2M	2004
No of Cases	0	0	1	Fishing Vessel Total= EC$60,000	2005
No of Cases	0	0	1	Fishing Vessel Total = EC$ 60,000	2006
No of Cases	0	0	1	Vehicle Total= EC$150,000	2007

Table 2: Referrals by the FIA

R. 32.2 ***Statistics TABLE 2:***	Total # of ML investigations referred by **FIA ****	Total # of ML prosecutions & convictions from FIA referral

Results:	3	0

Table 3: Convictions for predicate offences

Convictions for Predicate Offences (2007)	**Types of Predicate Offences prosecuted:**	****No cases for ML/ P/O**
304	*Drug Trafficking Fraud Robbery Stealing	*No related ML orders

The above statistical data noted in TABLES 1 & 2 relate to the last 4 years. The asterisk "" are for the following footnotes:*

** The statistics indicating the sentences imposed in respect of these predicate offences are being compiled manually from the records of the District Court as there is no computerised record.*

*** Reasons for FIA referral NOT proceeding to ML prosecution:*
(i) Insufficient evidence to conduct a prosecution
(ii) STR resulted in prosecution for Fraud = case dismissed
(iii) Police investigation of Robbery = Pending

**** Statistics included in table above.***
* Drug Trafficking is noted as the offence for which the most prosecutions were done.
- Most of the cases were charges for possession of drugs.
- The penalties imposed ranged from fines to terms of imprisonment.
- *None resulted in ML prosecutions or for ancillary ML offences or orders

Additional Elements 32.3: Statistics Report cont'd

* There has been no prosecution of the following predicate offences (P/O):

- Abduction	- Blackmail
- Corruption	- Extortion
- Firearm Trafficking	- Gambling
- Illegal deposit taking	- Prostitution
- Terrorism	- Trafficking in Persons

- Recommendations and Comments:

157. Despite the lack of ML prosecutions there have been convictions for predicate offences and the reasons elucidated are not attributed to a lack of restraint action nor from lack of action by the DPP to suggest a less than effective attempt at obtaining a court sanction. Notwithstanding, The St. Lucian authorities have not demonstrated that there is effective implementation of these measures. The absence of any confiscation speaks to legislation that has never been tested.

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**PC**	• Lack of effective implementation as there are no prosecutions noted for ML. Additionally there are other avenues such as forfeitures and confiscations which are effective measures which have not been utilized and thus add to the lack of effectiveness in implementation of the AML regime.

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

2.4.1 Description and Analysis

Special Recommendation III

158. There are provisions under the MLPA & POCA with respect to freezing of funds which are derived from a prescribed offence of which terrorist financing has been added by virtue of the2004 amendment of the MLPA.

159. Independent of the MLPA, terrorist financing has not been criminalised. The Anti-Terrorism Act has been assented to and awaits ratification.

160. Provisions are provided for the freezing of funds related to terrorist financing which is listed as a prescribed offence. There is no formal arrangement/ relationship for the exchange of information or contact with the Sanction Committee pursuant to the UN Council Resolution. St. Lucia is a signatory to the UN Convention on the Suppression of Terrorist Financing however, same has not been ratified.

161. The power to freeze terrorist funds is inferred in section 13 of MLPA and the offence of terrorism being a predicate offence. It is noted that there is no expressed provision for an exparte application, hence the only noted obligation with regard to notice is that the Court registry must publish the order in the Gazette within 14 days.

162. The MLPA mandates that the person upon whom the freezing action was taken must be charged with an offence within 7 days otherwise the Order shall expire.

163. The MLPA does provide for the freezing of funds held as property of a body corporate where the unlawful conduct is proven to have been conducted by the director, servant or agent of the body corporate or by a person with express consent or agreement to so act by a director or owner of the body corporate [section 17 MLPA]

164. There is legislative provision for communicating the action. Section 14 (6) (b) of the MLPA – the Court may direct as to the disposal of the funds hence timely disposal is anticipated.

165. Under Section 14 (8) of the MLPA a forfeiture Fund must established and subsection 8 – 11 outline the percentage allocations for disposal after the forfeiture sum and costs have been paid.

166. With respect to property, this may have been addressed by the definition of property in the Anti-Terrorism Law which is not yet enacted.

167. POCA has provision which outline unfreezing of funds generally. In the MLPA only reference is to the fact that the order expires within 7 days if the person is not charged.

168. Procedures are outlined in section 14 (8) to (11) as to allocations upon the establishment of the Forfeiture Fund.

169. POCA has provisions which outline the procedures for challenging applications for forfeiture and confiscations and the requirements for proof bona fide ownership of the property.

170. Under POCA section 14 a fine may be imposed instead of order for forfeiture

171. Third Party rights are protected in both legislations. [MLPA section 15 and POCA section 12].

172. This perhaps falls within the ambit of the Minister of External Affairs who will be mandated under that law to ensure compliance with the law and UNRSC

Additional Elements

173. The Anti-Terrorism law has not been enacted to give rise the issue of access to frozen funds. Under the MLPA, no funds have been held hence, a Fund has never been established.

2.4.2 Recommendations and Comments

174. St. Lucia authorities need to implement the Anti-Terrorism legislation such that it addresses the following criteria:

- Criminalisation of terrorist financing
- Access to frozen funds
- Formal arrangements for exchange of information (domestic and international)
- Formal procedures for recording all requests made or received pursuant to the ATA.

175. Further, there needs to be an express provision which allows for exparte applications for freezing of funds to be made under the MLPA.

176. Also, the St. Lucian need to ensure that there are provisions to allow contact with UNSCR and the ratification of the UN Convention on the Suppression of Terrorist Financing.

Recommendation 32 (terrorist financing freezing data)

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• There is no specific legislation in place • No reported cases of terrorism or related activities, • The extent to which the provisions referred to the MLPA are effective cannot be judged. • The Anti-Terrorism law has not been enacted.

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

2.5.1 Description and Analysis

Recommendation 26

Functions and responsibilities of the FIA

177. The Money Laundering Prevention Act 2003 (MLPA) establishes the Financial Intelligence Authority. In exercising its functions under the Act the Authority shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which relate to or may relate to the proceeds of the offences under the Act and the Proceeds of Crime Act No.10 of 1993 or any enactment replacing it. The functions of the FIA are described in section 4 and 6 of the Act. These functions include the following:

i. to collect, receive and analyse reports submitted to the Authority by financial institutions and businesses of a financial nature under this Act and the Proceed of Crime Act No 10 of 1993 and information received from any Foreign Financial Intelligence Unit;

ii. to advise the Minister in relation to the detection and prevention of money laundering and financing of terrorism in St. Lucia;

iii. to disseminate information to the Commissioner or the Director of Public Prosecutions;

178. There are additional functions in the legislation which are applicable to the FIA

179. The Financial Intelligence Agency in the national agency responsible for receiving, analysing and disseminating disclosures of STR's and other relevant information concerning ML and TF.

Issuing of guidelines

180. Section 5 (f) of the MLPA requires the FIA to issue AML/ CFT guidelines to financial institutions or businesses of a financial nature. Money Laundering Guidelines were

endorsed by the Attorney General's Office and during the onsite visit the FIA was in the process of distributing these guidelines. The guidelines give detailed outlines on the method and procedures institutions should follow when reporting. Standardize reporting forms prepared by the FIA are said to be issued to financial institutions. However there were a number of stakeholders who told the Examiners that they have never seen the form issued by the FIA, in some instances they would resort to using their own reporting form to report to the FIA.

Access to information

181. The FIA has access to financial, administrative and law enforcement information. With respect to financial institution, section 5 of the Money Laundering Prevention Act authorises the FIA to enter any financial institution, during normal working hours to inspect any business transaction record kept by that financial institution and ask any questions relevant to such record and to take notes or take any copies of the whole or any part of such record.

182. There are no administrative mechanisms in place in St Lucia between the FIA the FSSU and the ECCB, which provides for the exchange of information of mutual interest in a prompt and timely fashion regarding any person or organization suspected of being involved in money laundering and related activities.

183. With regards to law enforcement information, an MOU exist between the Police and the Customs. The MOU is dated March 16, 2007. It provides for both parties to co-operate and exchange information on matters relating to money laundering, terrorism and other crimes. FIA officials advised that the FIA could access information in the databases of other government agencies, such as, the Police, Customs, Transport Division, Land registry and Immigration by making a simple request to any of these agencies. The examiners are satisfied that the FIA has adequate access to relevant information.

184. Section 4 (h) of the MLPA gives the FIA the power to consult with a person, institution or organisation for the purpose of performing its functions. Section 5 (b) as amended allows the FIA to require the production from any person of such information that the FIA considers relevant to its functions.

185. As previously stated section 5 of the MLPA authorises the FIA to seek additional information from financial institutions. Section (5) (h) of the said Act also allows the FIA to consult with a person, institution or organization for the purpose of performing its functions or exercising its powers under the Act. A number of the financial institutions interviewed confirmed that the FIA had made written and onsite request for additional information related to Suspicious Transaction Action Reports reported. Section 5 of the MLPA also allows the FIA directly to enter an institution to inspect, make notes, copies and ask questions in relation to a transaction record and to instruct the institution as to the steps to be taken in order to assist an investigation.

Dissemination of information

186. As indicated earlier, one of the functions of the FIA is to disseminate information, which relates to the proceeds or may relate to the proceeds of the offences under the act and the Proceeds of Crime Act no.10 of 1993, or any enactment replacing it. Section 4 (c) of the

MLPA authorises the FIA to disseminate information to the Commissioner of Police or the Director of Public Prosecution.

Structure of the FIA

187. The FIA of St Lucia was established as a statutory governmental authority by virtue of the MLPA 2003.The Act mandates that the Authority should consist of five persons appointed by the Minister and having expertise in the area of law, accounting and law enforcement. The Act also mandates the Authority to appoint, with the approval of the Minister, a Director on terms and conditions as the Authority may determine. The Director is to serve as the Chief Executive Officer of the Authority.

188. The Director reports directly to the Board who in turn reports to the Minister who is the Attorney General and Minister of Justice. In carrying out their duties and acting in good faith, the Board, Minister, the Director, Officers and personnel of the FIA have protection from personal liability under section 23 of the MLPA.

189. Section 3 (4) of the MLPA empowers the Authority to be serviced by a secretariat comprising of a Director who shall be the Chief Executive Officer of the Authority. The law also permits the Authority to engage other support personnel, as the Authority considers necessary.

190. Section 3 (6) of the MLPA empowers the Authority, with the written approval of the Minister, to appoint Consultants having suitable qualification and experience to provide service to the Authority. As it relates to the appointment of the Director of the Authority, the policy, as it exists presently infringes on the Boards ability to appoint a Director independently of the Minister.

Security of premises and information

191. The FIA is currently housed in rented office space in downtown Castries. The offices are located on the top floor of a two-story building, which is also shared by another Government agency. A dividing wall distinctly separates the two agencies. Upon entering the offices of the FIA visitors have to first identify themselves through the intercom before access is gained.

192. All offices of the FIA are secured by an alarm system that provides twenty-four hours monitoring. Also there are metal bars over the windows and at the main entrance to the building. The facility appears to be adequate at this time, however additional space would have to be found for any future expansion of the agency.

193. All confidential records obtained by the FIA are kept at the FIA offices. Records are kept in locked fireproof cabinets and a metal safe, access to these facilities are restricted to only a limited number key holders. Information is also kept on a Microsoft Access Database, which is secured by password and firewalls. The database is not connected to any other external database. A member of the Customs Intelligence Unit provides computer-engineering support to the FIA.

194. The computers are only accessible to FIA staff. Password and other devises are installed on these computers as safeguards against unauthorised usages. Additionally, section 25 of the MLPA imposes a fine of $50,000.00EC or a term of imprisonment not exceeding ten years or both on anyone who disclose information to any person except as far as it is required or permitted under the Act or other enactment.

195. Section 28 (1) of the MLPA requires the Authority to submit from time to time, written reports to the Minister on matters that could affect public policy or the priorities of the Authority.

Submission of annual reports

196. The law also requires the Authority to submit to the Minister on or before 1st June in each year or such other later time as the minister direct, an annual report reviewing the work of the Authority. The Authority is also required to prepare and submit interim reports every three-month reviewing the work of the Authority. The FIA has produced annual reports for the years 2004 to 2006. Examination of these reports show that they don't provide any information on trends and activities, a number of the stakeholders were interviewed as to whether the reports were available publicly and no evidence was found that this was so.

EGMONT Group status

197. St Lucia is not yet a member of the Egmont Group. The country has made application for membership for some two years prior to the onsite visit. According to the Financial Intelligence Authority, approval for membership with the group remains outstanding pending the coming into force of the Anti Terrorism Legislation.

198. The FIU is aware of the Egmont Group Statement of Purpose and its Principles for Information Exchange and takes cognisance of them in its method of sharing information with foreign counterparts.

Recommendation 30

Resources

199. As previously mentioned the Financial Intelligence Authority falls under the Attorney General and the Ministry of Justice. The Authority's board is comprised of five (5) persons drawn from the public and private sectors, all having experience in the area of law, Law enforcement and Accounting. The total staff compliment of the FIA is five (5) this include a Director who is an Attorney at Law, three Investigators and one Administrative Secretary. The Investigators are seconded from the Police the Customs and the Revenue Service. The Financial Intelligence Authority has indicated the need for two additional members of staff, a Legal Officer and another Financial Investigator to compliment the existing staff.

200. Based on the organizational chart of the FIA provided to the Examiners, there are no provisions for the appointment of a Deputy Director. The absence of this post in the structure of the FIA is critical; it is the view of the examiners that the absence of a Deputy Director can potentially have an adverse impact on the FIA to effectively carry out its work in the absence of the Director.

201. As it relates to the appointment of a Director and Consultants, The FIA Act mandates that these appointments be done with approval of the Minister. It is the view of the examiners that the appointment of the Director and any Consultants should be the sole responsibility of the Board. The practice as it is now could compromise the independence of the Authority.

202. The present structure of Financial Intelligence Authority is very narrow, apart from the Director, all the other officers are classified as Investigators. There are no dedicated Analysts who have the sole responsible for analysing Suspicious Transaction Reports. Analysis of STR's according to the FIA is also done by the same Financial Investigators. St Lucia has a fairly large and growing financial sector hence there is a greater need for more effect AML / CFT supervision of the sector, to do so the Authority should seek to increase the staff compliment of the Authority.

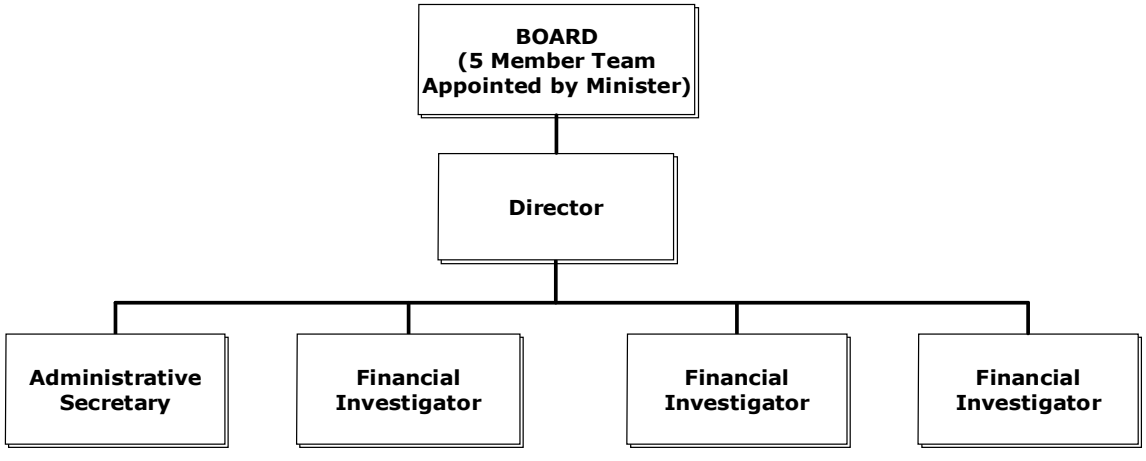
203. Funding for the FIA is done from allocations made to Ministry of Justice and the Attorney's Chambers by Parliament from the Consolidated Fund of the Government of St Lucia.

Table 3: FIA Budget

YEAR	BUDJET ALLOCATION
2007- 2008	$560,000.00 EC
2006- 2007	$494,582.00 EC
2005- 2006	$398,550.00 EC
2004- 2005	$379,005.33 EC

Source: FIA

Figure 1: Organizational Chart of the FIA



Professional standards, skills and confidentiality of staff

204. The staff at the FIA consists mainly of seconded officers from other agencies namely, one from the police, one from Customs and one from the Revenue Department. According to

the FIA all three officers along with the Director and the Administrative Secretary are subjected to stringent security checks by the Special Branch Department of the Royal Police Force of St Lucia, prior to employment and posting to the FIA.

205. Section 25 (1) and (2) of the MLPA imposes sanctions and restrictions on anyone who obtains information in any form as a result of his or her connection with the Authority and who discloses that information to any person except as far as it is required or permitted under the Act or other enactment. Any person who wilfully discloses to any person in contravention of subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding ten years or both.

206. Financial Investigators are trained in financial investigations, 2 investigators are accredited.

207. During the period 2004 to 2007, Investigators at the FIA attended seventeen (17) courses on AML / CFT and other related matters. Some of the training courses attended are Intelligence gathering and Analysis, Techniques of Financial Investigations, among others. The World Bank, REDTRAC, DEA, USOTA and CIFAD provided the courses.

Recommendation 32 (FIU)

Statistics and effectiveness

208. The FIA maintains basic statistics on matters relevant to the effectiveness and efficiency of its system for combating ML and FT. As it relates to STR received, analysed and disseminated, the following statistics were provided.

Table 4: STRs received from the financial Sector

Year	Domestic Banks	Offshore Banks	Car Dealers	Credit Unions	Insurance Companies	Lending Agencies	Total
2004	32		1				33
2005	56	1		2			59
2006	41	1			2		44
2007	31	4		3		1	39

Table 5: STRs disseminated

	No reports received	STR received and analysed	STR disseminated	Police	DPP	Customs
	33	33	7	5	2	0
	59	59	4	3	1	0

	44	44	2	0	2	0
	39	39	1	1	0	0
			14	9	5	0

Table 6: Reports of Suspicious International Wire Transfers

Year	Amount
2004	1
2005	4
2006	3
2007	4

209. According to the FIA the statistics provided on International Wire transfers were generated as a result of the analysis of STR's. There is no legal requirement for reporting of wire transfers based on the threshold of the transaction.

Additional Elements

210. The FIA provided the following statistics as it regards STR resulting in investigation, prosecution, or conviction for ML, FT or an underlying predicate offence.

Table 7: STRs resulting in Investigations

Year	Investigation	Prosecution	Conviction
2004	5	0	0
2005	3	0	0
2006	0	0	0
2007	1	0	0
Total	**9**	**0**	**0**

2.6.2 Recommendations and Comments

211. St Lucian Authorities should move quickly and pass the Prevention of Terrorism Act. This will certainly help to strengthen the AML / CFT framework of the Country.

212. Consideration should be given to the establishment of clear and unambiguous roles in the FIA.

213. The FIA should be staffed with at lease two dedicated Analyst.

214. Consideration should be given to developing a process that would allow for a systematic review of the efficiency of the system that provide for combating ML and FT.

215. The authorities should consider giving the Board of the Financial Intelligence Authority the power to appoint the Director and staff without reference to the Minister.

216. Consideration should be given to the FIA to providing regular feedback to financial institutions and other reporting parties who file Suspicious Transactions Reports.

217. The authorities should consider reviewing the level of involvement of the FIA within the financial community, though there have been some interaction, there is clearly a need to provide additional seminars, presentations, guidance and advice to financial institutions and other reporting parties.

218. St Lucian Authorities may wish to consider sourcing additional specialize training for the staff, particularly in financial crime analysis, money laundering and terrorist financing.

2.5.3 Compliance with Recommendations 26,

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• There is no systematic review of the efficiency of ML and FT systems • Periodic reports produced by the FIA are not published; also they do not reflect ML trends and activities. • A number of reporting bodies are yet to receive training with regards to the manner of reporting. • Some stakeholders were unaware of a specified reporting form

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

219. Section 7 of the Money Laundering Prevention Act authorises the FIA to investigate only for the purpose of ensuring compliance, by the financial institutions or a business of a financial nature, with the Act. This limited scope granted to the FIA to investigate doesn't allow it to properly investigate ML and TF.

220. There are no designated law enforcement authorities in St Lucia that have the responsibility for ensuring that money laundering and the financing of terrorist are properly

investigated. Section 7 of MLPA 2003 prohibits the FIA from conducting any investigation other than for the purpose of ensuring compliance by the financial institution or a business of a financial nature with this Act.

221. No piece of legislation gives specific powers to the police or customs to set up a designated entity with the specific authority for investigating ML and FT.

222. No legislative or other means have been put in place to allow law enforcement authorities in St Lucia, when investigating money laundering to postpone or waiver the arrest of suspected persons and or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

Additional Elements

Special investigative techniques

223. The Laws of St Lucia makes no specific provision as it relates to matters of special investigative techniques, such as controlled delivery and undercover agents. However there is legislation in place to address issues of wire-tapping, as it relates to control delivery and the use of undercover agents, there is nothing in the law that prevents law enforcement officers from utilising these techniques. According to law enforcement authorities a number of controlled delivery operations have been successfully conducted in the past with their international counterparts in a number of drug trafficking matters.

224. As it relates to wire tapping, the Telecommunications Act of 2000 allows for law enforcement to covertly obtain records when persons are suspected of committing criminal offences. The Interception of Communication Act of 2005 allows for real time interception of communication in the investigation criminal offences. The examiners were informed that there were a number of administrative and infrastructural challenges to the implementation of these pieces of legislations.

Table 8: No. of control deliveries with the United Kingdom

YEAR	NO OF CONTROLLED DELIVERIES
2007	23
2008	3

225. According to law enforcement authorities, if necessary during the course of the investigation of drug trafficking and other predicate offences they could use other special investigative techniques such as surveillance and targeted profiling in pursuit of their investigation. The team was however advised that these techniques have never been employed in any money laundering or terrorist financing investigation.

226. There are no permanent or temporary groups in St Lucia who specialises in the investigation of the proceeds of crime. The police have not undertaken any proceeds of crime investigation, since the inception of the legislation. Currently the scheduled/predicate offences are only in relation to drug trafficking related matters.

227. Information received during interviews with law enforcement authorities and the MEQ has indicated that money laundering and terrorist financing methods, techniques and trends are not reviewed regularly by law enforcement agencies.

Recommendation 28

Power of production

228. A police officer can apply to a Judge in chambers for a production order under section 41 (1) of the POCA where a person has been convicted of a schedule offence and the officer has reasonable grounds for suspecting that a person has possession or control of-

i. a documents relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence.

ii. a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property to the offence.

229. Section 5 (b) of the MLPA empowers the FIA for the purpose of carrying out its work to compel any financial institution to produce any such information that the Financial Intelligence Authorities considers relevant to the fulfilment of its functions.

Search Warrants

230. A police officer can apply to a Judge in chambers for a search warrant under section 46 (1) of the POCA where-

i. a person is convicted of a schedule offence and a police officer has reasonable grounds for suspecting that there is in any premises any documents of the type specified in section 41; or

ii. a police officer has reasonable grounds for suspecting that a person has committed a schedule offence and there is in any premises any document of the type specified in section 41.

231. Police officers can also obtain search warrant using the provisions of the Criminal Code.

232. Section 5 of the MLPA grants these powers to the FIA–and (c) Section 12 of the MLPA and Section 622 of the Criminal Code of St Lucia 2004 grants powers of search and seizure. Albeit in relation to the examination and seizure of documents from financial institutions and other business entities in the course of criminal investigations, the police usually obtain this information by way of a formal letter of request from the Commissioner of Police or his designate. In respect of non co-operating entities a court order has to be sought. In cases where matters are already before the courts, Section 125 of The Evidence Act of St Lucia authorises the DPP to apply to the court for an order much like a production order.

233. The FIA, which is the designated law enforce authority charged with the investigation of money laundering offences does not have any legal authority to take witness statements for use in investigation and prosecution of ML, TF and other underlying predicate offences.

234. Members of the Royal Police Force of St Lucia under the criminal code and the evidence act are empowered to take witness statements during the course of an investigation.

Recommendation 30 (Law Enforcement and prosecution authorities only)

Royal Police Force of St Lucia

235. The Police Force is funded through allocations made by the Government of St Lucia from the consolidated fund. Police officials are of the view that that there is a shortage of resources generally. The Force has a total compliment of 835 officers; a figure that includes a number of Special Constables, this figure is said to be enough to effectively carry out the work of the force.

236. Officials have also expressed concerns about the increased demands placed upon the services of the Force, one example given was the number of officers required for service at Government Ministries and according to officials this practice reduces the Force's ability to place sufficient numbers of Officers on the streets. It was felt that alternative measures should be put in place so as to free up the Officers so that they can be deployed in the Communities. Police Officials have also indicated that as it relates to technical resources the force is in need of new telecommunications equipments for command and control. Police Officials made it clear that they were not aware of any political interference into the Royal St Lucia Police Force.

Customs and Excise Department

237. The Customs and Exercise Department has a staff compliment of 250 persons of which 150 are of Officer Rank and the others are made up of clerks and auxiliary staff. It is felt that additional 40 or 50 new members to the staff would significantly relieve other staff members of the pressures they have faced, particularly in recent times.

238. So far twenty-one officers, all members of the Enforcement Section have been vetted and polygraphed. The Regional Security System RSS administered this process. The process according to officials is ongoing. Customs Officials has informed the Examiners that there has been some instances of political interference in customs fraud cases, which effectively frustrates successful litigation.

239. With regards to disciplining of staff, Customs Official has expressed frustration at the lack of ability to discipline staff members in a timely manner. This is so because of a lack of independence to do so on the part of Customs. Any matter of indiscipline has to be referred to the Public Service Commission which according to Customs Officials takes many years before they are dealt with.

240. Funding and resources for Customs and Excise Department are provided through the Governments consolidated fund. Customs officials are of the view that there is a need for additional funds to meet the demanding challenges that the agency faces. There is said to be a shortage of technical resources such as computers.

241. Customs Officials have indicated that the way forward is to have customs removed from Central Government and set up as a statutory corporation or under a Revenue Authority. This structure would allow for more readily access to resources among other things.

Director of Public Prosecution's Office

242. The Office of the Director of Public Prosecution is established by the constitution of St Lucia, the person holding this office is responsible for the overall conduct of prosecutions in the Country. For administrative purposes the Office falls under the Attorney General and Minister of Justice.

243. The staff compliment of the DPP's includes 1 DPP, 1 Deputy, 4 four Crown Counsels, and 15 Police Prosecutors. The Office of the DPP handles matters consistently throughout the year. Attorneys prosecute matters in the Magistrates Court, High Court and the Court of Appeal. While the 15 Police Officers prosecutes summary cases and conduct preliminary inquiries. There are no specialists in the office; all the Prosecutors do regular prosecutions. The DPP has indicated that the present staff numbers are inadequate to meet the needs of the Office and as such is of the opinion that an additional 4 Counsels along with a senior admin staff with training in management would be a welcome addition to the office.

244. In the area of equipments and technology the DPP would like to have additional space and additional computers in order to fully computerise the office. Funding for the Office of the DPP is done by allotments from the Governments Consolidation Fund. The DPP's Office doesn't have its own budget.

Table 9: Office of the Director of Public Prosecution's Budget

YEAR	BUDGETED AMOUNTS
2003/2004	$ 560,068 EC
2004/2005	$ 648,619 EC
2005/2006	$ 1,210.076 EC
2006/2007	$ 1,166.396 EC
2007/2008	$ 1,646.403 EC

245. The Police Force has not established any specific measures to ensure its officers maintain high professional standards and integrity. However about seventy 70 officers has been vetted and polygraph by the Regional Security System administrators based in Barbados. This process is said to be ongoing. As it relates to indiscipline behaviour by officers, examiners were informed that sanctions which range from warnings to dismissal are available under the Police Act and the Civil Service Act.

246. So far twenty- one (21) Custom Officers all members of the Enforcement Section have been vetted and polygraphed. The Regional Security System RSS administered this process. The process according to officials is ongoing. Customs Officials has also informed the Examiners that there is blatant political interference in customs fraud cases, which effectively frustrates successful litigation. With regards to disciplining of staff, Customs Official has express frustration at its lack of ability to discipline staff members. All disciplinary matters must be referred to the Public Service Commission, which according to custom official takes a very long time.

247. Very little or no training has been provided to the staff of the Office of the Director of Public Prosecutions, apart from the DPP who received some training at a workshop in Trinidad, no other member of staff has been afforded training in the area of AML and CFT.

There is clearly a need for additional training particularly in the area of Money laundering and the Financing of Terrorism.

248. Only a total of nine officers in the Royal Police Force of St Lucia have received some training in the area of money laundering and terrorist financing investigations. More training is clearly needed in this area.

249. At present the police force has three officers who are accredited by the Financial Intelligence Authority of St Lucia. There are a further five who have done the basic financial course and the FIT course. They are awaiting attachment to an FIU to pursue mentoring. This will not happen if the individuals themselves do not take steps to help themselves in that regard. There are an additional two officers who have done basic training in financial investigations. Training was provided by CALP and USOTA as well as The US Department of Treasury in the case of two of the officers.

Additional Elements

250. Some training was provided to Judges at a special workshop conducted by the Eastern Caribbean Supreme Court in St Lucia. Considering the role of the judiciary it is it very important that they be sensitised on issues of money laundering and terrorist financing.

- Recommendations and Comments

251. The authorities should consider providing additional resources to law enforcement agencies since present allocations are insufficient for their task. All of these entities are in need of additional training not only in ML / TF matters but also in the fundamentals, such as investigating and prosecuting white-collar crime.

252. Greater priority should be given to the investigation of ML / TF cases by the Police and the DPP's Office.

253. Adequate training in ML and TF should be sourced for Judges Prosecutors and Magistrates so as to broaden their understanding of the various legislations.

254. It is recommended that a Financial Investigation Unit be set up as part of the Police Force to investigate money laundering, terrorist financing and all other financial crimes. The necessary training should be provided to Officers who will staff this unit

Recommendation 32

255. St Lucia should give consideration to implementing a system that would allow for the review of the effectiveness of their system for combating ML and FT.

256. It is recommended that additional technical resources be dedicated to the compilation of statistical data, this would allow for more comprehensive and timely presentation of statistics.

2.6.3 Compliance with Recommendation 27, 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**NC**	• No legislation or other measures have been put in place to allow for the postponement or waiver the arrest of suspected persons when investigating ML or seizure of cash so as to identify other persons involved in such activity • Investigation structure not effective • Low priority given to ML and FT crime by the Police, there has been no prosecution to date • Investigative structure mechanism is ineffective – unable to ensure police did its function property
R.28	**LC**	• The FIA is not able to take witness statements for use in investigations • FIA cannot search persons or premises that are not financial institutions or businesses of a financial nature

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

257. St Lucia's Customs and Excise Department administers the Customs (Control and Management) Act. Section 86 of the Act makes provisions for a person entering or leaving St Lucia to do the following-
Declare anything contained in his or her baggage or carried with him or her which- (s) he or she obtained outside of St Lucia: or (b) being dutiable goods he or she has obtained without payment of duty.

258. Any person entering or leaving St. Lucia shall answer such questions as the proper officer may put to him or her with respect to his or her baggage and anything contained therein or carried with him or her, 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.

259. Any person failing to declare any baggage or thing as required by this section commits an offence and is liable to a fine of $ 5.000,00 or three tomes the value of the thing not declared or the baggage or thing not produced as the case may be which ever is greater.

260. The provision above doesn't specify currency or bearer negotiable instruments neither does it speak to any threshold amount allowed in and out of St Lucia.
261. In practice passengers entering St Lucia are required to fill a declaration form, which seeks to establish whether they are carrying cash in excess of $10.000, USD. This form and its requirements are not established in legislation. The Examiners were unable to establish the effectiveness of the practice since no statistics were provided by Customs.

262. Even though section 86 of the CCMA does establish a framework for persons entering and leaving St Lucia to declare anything contained in his or her baggage, there are no specific reference or provisions in the law as it relates to ML / TF or a threshold sum.

263. According to Customs officials, in practice Customs, Police and Immigration administer a single passenger arrival declaration, on which all importations of Currency or Bearer negotiable Instruments above US$10,000.00 must be declared to Customs.

264. The Customs (Control and Management) ACT, Cap.15.05 of the Revised Laws of St. Lucia, 2001, section 86, 113 and 116 Mandates the declaration of all goods on arrival or upon request by Customs personnel or persons empowered to act for the Comptroller of Customs (e.g. Police)

265. Failure to declare any baggage or thing is an offence which may result in the imposition a fine of $5000.00 or three times the value of the thing not declared or falsely declared and possibly forfeiture.

266. Failure to declare or false declarations may result in fines of up to three times the value of the thing or currency not declared or falsely declared and possibly forfeiture, and under section arrest.

267. The Act also empowers Customs and other agencies acting with or for Customs to search passengers' luggage openly or covertly, with the carriers' presence to ascertain declarations made or in response to reasonable suspicion.

268. Most interceptions of foreign currency have been intelligence led and random searches are done. However physical and documentary indicators are heavily relied upon in determining suitable targets, both personal and luggage.

269. Section 86 (2) states that "Any person entering or leaving St Lucia shall answer such question as the proper officer may put to him or her with respect his or her baggage and anything contained therein or carried or carried with him or her

270. The financial authority is informed of substantial seizures and trans-border currency / instrument movements which warrant follow-up.

271. Improvement in interagency liaison and follow-up is needed to accelerate the mechanism in tracing such currency.

272. There are no specific provisions in the legislation that allows for customs authorities to stop and restrain currency or bearer negotiable instrument for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found.

273. St. Lucian authorities have indicated that Customs are capable, and do seize suspected cash where a false declaration is made and can detain where terrorist financing is suspected to facilitate investigations by the competent authority.

274. A request was made to Customs officials for statistics on the number of false declaration or failure to declare currency and bearer negotiable instruments, none was provided.

275. Seizures liable to forfeiture are normally effected and the FIA informed, while Customs initiates its administrative or forfeiture procedures.

276. There is no mechanism in place to allow for the sharing of information as it relates to the declaration of currency with the FIA or any other competent authorities. No information was provided by Customs during the interview indicating that it has been done before as a matter of practice. However according to statistical data received from the FIA, during the years of 2004 and 2005, there were a total of three (3) referrals were received from Customs two of which were in relation to cash seizures. The nature of the other referral was not clear to the Examiners.

277. FIA is normally informed and all documentation requested is provided for their investigations. FIA is notified through written reports of all particulars surrounding the transaction and seizure. More use needs to be made of FIA's presence during the interrogation process to ensure that all its requirements and queries are satisfied.

278. There is no evidence of any organised or structured method of co-ordination between Customs, Immigration and other related authorities on issues related the implementation of this recommendation. Coordination between these agencies is achieved through each agency's Liaison officers in their Intelligence Units. Executive personnel of Customs serve on FIA's board of directors. 1 senior Customs officer are embedded in the FIA. Joint training occurs on various interdepartmental courses, normally with an intelligence focus. Operational staff needs to have scheduled meetings to ensure implementation of Special recommendations.

279. Customs is a member of the Caribbean Customs Law Enforcement Council (CCLEC) and the World Customs Organisation. The secretariat of CCLEC is based in St Lucia and the country held the chairmanship of the organisation during the period 2004 to 2007. According to Customs there is nothing in the laws of St Lucia that prevents Customs from sharing information with its counterparts.

280. Information sharing is generally good among some members of the region. However certain major powers only seek local assistance without being reciprocal in information, intelligence or forfeited asset sharing, to fund further investigations or as incentives to investigators.

281. Money laundering is undoubtedly entrenched in the commercial trading sector however, most Customs to Customs assistance is predicated on MOUs, which preclude the use of such information in legal proceedings.

282. There has been some instances of political interference in Customs fraud cases, frustrate successful litigation. Such actions destroy the effectiveness and authority of Mutual Legal Assistance Treaties, and force Customs departments to revert to using MOU documents which are not admissible at court in Criminal matters.

283. St. Lucia's lack of adoption of significant (legally binding) Multilateral, and Bilateral Customs Agreements within the World Customs Environment prevent the successful solution of substantial commercial fraud and laundering cases, which can provide predicate offences for The Financial Authorities progression of cases. Perfect examples of this are the Johannesburg Convention and Nairobi Conventions, both of which are significant conventions on mutual administrative assistance for the prevention, investigation and repression of customs offences.

284. St. Lucia is not a signatory to either, though being a member of the World Customs Organization. Major trading partners of St. Lucia as the USA, UK and Canada are either non-signatories or subscribe only to one annex of the convention.

285. As stated previously the legislation doesn't make any provisions for cross border transfer of cash and bearer negotiable instruments

286. No provisions in the legislation to allow for the further detention of any currency seized.

287. Section 19 of the MLPA states that; where an offence under section 18 is committed by a body of persons, whether corporate or incorporate, a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly.

288. The ECCB and the FSSU have regulatory sanctions that can be imposed on financial institutions. These include among others, written warnings, ordering regular reports and suspensions or revocation of license.

289. The legislation does not address specifically the failure to report to a Custom Officer assigned for duty at the point of arrival or departure or to supply full and correct information when a passenger is in possession of currency or other bearer negotiable instrument in the sum of $10.000, 00 USD or more.

290. Section 17 (1) of the proceeds of Crime Act provides for the confiscation of property, which constitutes the proceeds from the commission of ML and other offences.

291. Section 31 of the Proceeds of Crime Act provides for Restraining Orders to be made against property by the Director of Public Prosecution.

292. As it relates to FT there is no anti terrorism legislation setting out a framework to deal with cross border transportation of cash. However the law allows for the initial application to freeze property subject to be made ex-parte. Section 30 (2) of the POCA allows this application to be made by the DPP.

293. There is no anti terrorism legislation to deal with issues of seizing cross border transportation of currency or bearer negotiable instrument related to terrorist financing. In relation to ML section 41 of POCA empowers law enforcement to identify and trace property that is reasonable suspected of being tainted property.

294. There is no anti terrorism legislation to deal with issues of seizing cross border transportation of currency or bearer negotiable instrument related to terrorist financing. Section 15 of the MLPA provides protection for the rights of bono fide third parties. The Court must publish forfeiture orders in a Gazette as a notice to third party with legitimate interest to allow claim to be made in satisfaction of their assertion that their interest was obtained without knowledge of the property being tainted. Section 12 of the POCA also has similar provisions where a third party may make a claim of interest before a forfeiture order is made or within 12 months of the order in proof of the assertion that the property was acquired with adequate consideration and without knowledge of suspicious circumstances

which would suggest that the property was tainted and without being involved in the commission of the offence.

295. With regards to an order for restraint been breached, the law makes provision for steps to be taken by law enforcement authorities to prevent or void actions whether contractual or otherwise of a person who as a result of their action would prejudice recovery of property.

296. No Terrorist Financing Legislation is in force in St Lucia.

297. The Authorities have indicated that there is no system in place to address the issue of the discovery of an unusually large cross-border movement of gold, precious metals, or precious stones in St Lucia, which requires notifying the Customs Service or other competent authorities of the countries from which the items originated. Official however told the Examiners that if there is a need to notify counterparts in other countries, it could be done since there is nothing in the law, which prevents them from sharing information.

298. Duty Free shops in St. Lucia with large operators as Colombian Emeralds, Diamonds International, Jewellers Warehouse, etc. cater to the cruising and other passengers, including local and short stay vacationers. Due to the lax after sales system in all the shops, much revenue is lost through goods not being exported as mandated under the terms of operations. The risk is unreasonably high for crime syndicates and other persons to purchase precious metals and stones with the proceeds of criminal activity as a means of money laundering. Customs has identified some situations of large purchases by suspect persons over the years. In one case a high profile Colombian, drug operative was involved in these purchases.

299. The system for reporting cross border transactions is inadequate as they rely too much on human reliability. There should be a system where when data is entered, that allows that data to be transmitted to FIA, etc. automatically. Or a system of strict audits, incentives and censures should be implemented to ensure resolute compliance by staff of Law enforcement and border management units.

Additional elements

300. Customs officials have indicated that all information collected by Customs is kept on computers and only authorised officers have access to this information.

301. St Lucia has not implemented or considered establishing the measures set out in the Best Practices Paper for SR.1X. According to Customs Authorities all information retained by customs are kept on computers. This information can be shared with other competent authorities upon request.

Recommendation 30 (Customs authority)

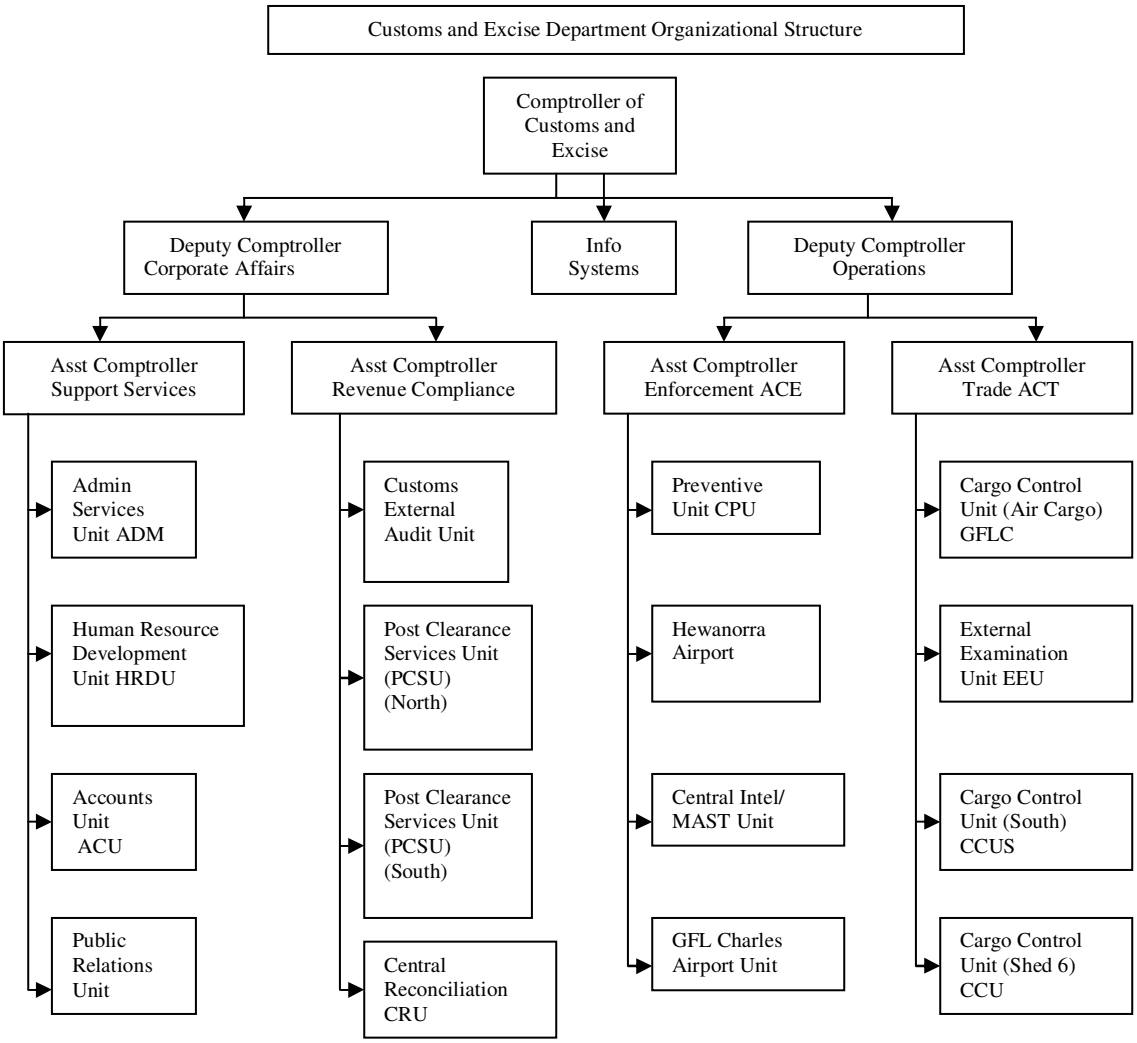
302. The Customs and Exercise Department has a staff compliment of 250 persons of which 150 are of Officer Rank and the others are made up of clerks and auxiliary staff. It is felt that additional 40 or 50 new members to the staff would significantly relieve other staff members of the pressures they have faced, particularly in recent times.

303. So far twenty-one (21) officers all members of the Enforcement Section have been vetted and polygraph. The Regional Security System RSS administered this process. The

process-according official is ongoing. Customs Officials has informed the Examiners that there has been what Customs Officials referred to as blatant political interference in customs fraud cases, which has effectively frustrates successful litigation. With regards to disciplining of staff, Customs Official has express frustration at the lack of ability to discipline staff members in a timely manner; this is so because of a lack of independence to do so, on the part of Customs. Any matter of indiscipline has to be referred to the Public Service Commission, which according to Customs Officials takes many years before they are dealt with. Funding and resources for Customs and Exercise Department are provided through the Governments consolidated fund. Customs officials are of the view that there is a need for additional funds to meet the demanding challenges that the agency faces.

304. Customs Officials have indicated that the way forward is to have Customs removed from direct Government control and be set up as a statutory corporation. This structure according to Customs Officials would allow for more readily access to resources among other things.

Figure 2: Customs and Excise Organizational Chart



Structure

305. Within Customs Enforcement for the combating of Money Laundering and Terrorist Financing there is need for A subunit (Team) adequately positioned and staffed; Funding for equipment, manpower, training, mentoring, incentives and informant management; Dedicated Senior Officer within the Fiscal Intelligence Team (Inspector) Dedicated analytical staff; dedicated tactical staff to investigate and intercept money laundering/terrorist financing instruments and offenders at the border and within the state operating within the trading community; Adequate training of Customs tactical and operational officers in latest tactics (investigative and analytical) employed in detection and interdiction.

306. Confidentiality, personal and professional integrity measures should be introduced department wide and maintained through polygraph testing of Customs and other law enforcement staff at regular intervals and as needed in integrity probes.

307. Integrity, prudence checks of lifestyle habits, financial openness / declaration of assets should be normal for intelligence, investigations, and administrative staff of Customs should be introduced.

308. All Customs Special operations staff were polygraph tested prior to deployment 2006 with a 100%departmental pass-rate.

309. Administrative Staff to be trained in management of penalties and case settlement regarding suspected money laundering / Terrorism financing cases

310. Custom Officers generally have not been trained on issues of ML and TF; no information on any courses attended has been provided to the Examiners.

Recommendation 32

Statistics and effectiveness

311. Customs has not produced any statistics on cross border transportation of currency and bearer negotiable instruments.

312. Customs Asycuda++ automated system allows comprehensive data query capabilities, which can quantify by differentiation, commercial fraud being investigated, revenue loss and recovery. Migration to Asycuda World will enhance these capabilities.

313. An adequate case management system for Customs is needed to manage adequately all case data/ statistics, flow of case files and to provide case / offender history across the enforcement sector for adequate case handling.

314. Customs should implement STRs for suspect monetary transactions in payment of duties and taxes due at Customs, for subsequent submission to the FIU.

315. These are recorded in individual passenger baggage declarations but are not compiled for statistical or intelligence purposes. Currency is only declared where enforcement activity is robust posing high risks to launderers.

Additional material

316. Over the past ten years Customs has seized over 200 motorcycles smuggled from Martinique into St. Lucia.

317. Most are returning proceeds of Drug trafficking and outright robberies to the French West Indies.

318. The lack of a judicial assistance treaty/agreement between the French dependencies and St. Lucia pose severe restrictions in cross border investigations and crime management.

2.7.2 Recommendations and Comments

319. It is recommended that for the avoidance of ambiguity and the need for the exercise of discretion that legal provisions be put in place requiring reporting of the transfer into or out of the country of cash, currency or other bearer negotiable instruments valued in excess of US $10,000.00 and that appropriate reporting forms be simultaneously published and put in use, and that proportionate and dissuasive sanctions be provided for.

320. It is further recommended that officers of the Police Force, Customs and the Marine Services be empowered to seize and detain cash, currency or bearer negotiable instrument valued in excess of US$10,000.00 which has not been properly declared or about which there is suspicion that they are the proceeds of crime.

321. Provisions should be made for any detained funds to be held for a specified renewable period to facilitate the investigation of the origin, ownership and intended use of the funds.

322. Consideration should be given to providing law enforcement officers with the power to detain cash, currency or other bearer negotiable instruments suspected of being the proceeds of crime wherever in the country seized, without being restricted to matters of cross border transfers with the view to facilitating appropriate investigations into the source of the funds.

323. There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing.

324. Consideration should be given to have Customs officers trained in the area of ML and TF.

325. Statistics should be kept on all aspects of Customs and Excise operations, these statistics should be readily available.

326. All Customs fraud cases with substantial values should be submitted to the FIA, Prosecutor's office for predicate offence consideration regarding offences pursuant to ML, FT and proceeds of Crime legislation with a view to prosecution of offenders.

327. Customs must take more drastic action against suspected ML offences and Commercial fraud offenders.

328. Provision of basic analytical and case management software must be supplied as a priority and basic and advanced training in the use of such software is required.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	• No legal provision for reporting or for a threshold • The provisions in the legislation are not sufficiently clear and specific. • No stand alone Prevention of Terrorism Legislation • The legislation dosen't specifically address the issue of currency and bearer negotiable instruments. • No specific provisions in the legislation that allows Customs authorities to stop and restrain currency and bearer negotiable instruments to determine if ML/FT may be found. • No mechanism in place to allow for the sharing of information.\No comprehensive mechanism in place to allow for proper co-ordination by the various agencies. • In some instances, the effectiveness of the international co-operation in customs cases are impeded by political interference

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

Risk of money laundering or terrorist financing

329. In St. Lucia, the two relevant pieces of AML legislation are the Proceeds of Crime Act and the Money Laundering Prevention Act, the provisions of which are general in nature and are applicable to all defined financial institutions and persons engaged in other business activity.

330. As at the date of the mutual evaluation there was no enacted Terrorism legislation.

331. The Second Schedule of The Money Laundering (Prevention) (Amendment of Schedules) Order – Statutory Instrument, 2004 No. 59 identifies all of the financial and non-financial institutions which are covered under the Money Laundering Prevention Act (MLPA). The financial institutions include:

i. A bank licensed under the Banking Act #7 of 1991 or any enactment replacing it,

ii. A building society registered under the Building Societies Ordinance #3 of 1965 or any enactment replacing it;

iii. A credit union registered under the Cooperatives Societies Act #28 of 1999 or any enactment replacing it;

iv. An insurance company registered under the Insurance Act #6 of 1995 or any enactment replacing it;

v. A company that perform international financial services under the international financial services legislation in force in St. Lucia;

vi. A trust companies, finance company or deposit taking company declared by the Minister by Order published in the Gazette to be a financial institution;

vii. Registered agents and trustees licensed under the Registered Agent and Trustee Licensing Act #37 of 1999;

viii. A trust licensed under the International Trust Act #39 of 1999;

ix. A person licensed to operate an exchange bureau,

x. A person licensed as a dealer or investment adviser,

xi. A person who carries on cash remitting services, and

xii. A person who carries on postal courier services.

332. The other business activity (non- financial) includes real estate business, car dealerships, casinos (gaming houses), courier services, jewellery business, internet gaming and wagering services, management companies, asset management and advice- custodial services, nominee services, registered agents, any business transaction conducted at a post office involving money order, lending including personal credits, factoring with or without recourse, financial or commercial transaction including forfeiting cheque cashing services, finance leasing, venture risk capital, money transmission services, issuing and administering means of payment, guarantees and commitments, trading for own account of customers in (a) money marketed instruments (cheques, bills, certificates of deposit) (b) foreign exchange (c) financial futures and options (d) exchange and interest rate instruments and (e) transferable instruments, underwriting share issues and the participation in such issues, money broking, investment business, deposit taking, bullion dealing, financial intermediaries, custody services, securities broking and underwriting, investment and merchant banking, asset management services, trust and other fiduciary services, company formation and management services, collective investment schemes and mutual funds, attorney –at- law and accountants.

333. The MLPA requires each of the various sectors noted above inter alia to

i) Undertake reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

ii) Establish and maintain transaction records of a transaction for period of seven years after the completion of the transaction recorded.

iii) Report to the FIA all suspicious transactions

iv) Develop and apply internal policies, procedures or controls to combat money laundering;

v) Develop audit functions to evaluate the internal polices, procedures and controls.

334. Section 49 of the Proceeds of Crime Act also applies to financial institutions :-

1. Financial institution shall retain, in its original form for the minimum retention period applicable to the document –
   a) A document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document that relates to –
      i) the opening and closing by a person of an account with the institution,
      ii) the operation by a person of an account with the institution,
      iii) the opening or use by a person of a deposit box held by the institution,
      iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person,
      v) the transmission of funds between St. Lucia and a foreign country or between foreign countries on behalf of a person, or
      vi) an application by a person for a loan from the institution, where a loan is made to the person under the application; and
   b) A document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.
2. For the purposes of this section, the expression "minimum retention period" means –
   a. where the document relates to the opening of an account with the institution, the period of seven (7) years after the day on which the account is closed;
   b. where the document relates to the opening by a person of a deposit box held by the institution, the period of seven (7) years after the day on which the deposit box ceases to be used by the person; and
   c. in any other case the period of seven (7) years after the day on which the transaction takes place.
3. Subsection (1) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed $5,000 or such larger amount as may be prescribed for purposes of this subsection.
4. A financial institution required to retain documents under this section shall retain them on microfilm or in such other manner that makes retrieval of the information contained in the documents or the documents as the case may be reasonably practicable.
5. A financial institution that contravenes subsection (1) or (4) commits an offence against this section and is liable, on summary conviction to a fine of $50,000.
6. This section does not limit any other obligation of a financial institution to retain documents.

335 The national authorities have not conducted any ALM/CFT risk assessment exercise of its financial sector. St. Lucia has not identified vulnerabilities in businesses

and financial products and services which could for the basis for introducing simplified or reduced CDD measures.

336. The supervisory authorities of financial institutions are, the ECCB, the FSSU, Registrar of Cooperatives and the Eastern Caribbean Securities Exchange.

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

Description and Analysis

Recommendation 5

337. AML Guidance Notes issued by ECCB provide that financial institutions are to identify their customers on the basis of an official or other reliable identifying document and record the identity of their clients, either occasional or usual when establishing business relations or conducting transactions (in particular opening of accounts or passbooks etc.). In practice however, banks do request incorporation documents for the purpose of establishing the identity of corporate entities.

338. The MLPA section 8(2) and (3) also requires financial institutions to inquire whether a customer is acting on his own behalf or as agent for another. Where a customer is acting for another, a financial institution must determine whether the customer has the requisite authority to do so, and in what capacity the customer is acting, that is whether as trustee, nominee, agent or otherwise. The financial institution must where it reasonably appears that a customer is acting on behalf of another, take steps to verify the identity of the principal.

339. There are no legislative requirements for financial institutions, including money remitters to include accurate and meaningful originator information on funds transfers and related messages that should remain with the transfer or related message through the payment chain. Similarly there are no legislative requirements for originator information to include name, address, and account number (when being transferred from an account).

340. There is no explicit provision in the MLPA which prohibits financial institutions from keeping anonymous accounts or accounts in fictitious names. Similarly, there are no provisions which permit numbered accounts.

341. The MLPA requires verification of customer identity regardless of the amount involved in a transaction. There is no reference to a threshold amount in the legislation.

342. There are no provisions in the legislation which require financial institutions to renew identification when doubts arise.

343. In determining what constitutes reasonable measures for the purposes of section 8 (4), a financial institution shall have regard to

i. whether the person is resident or is a corporate body incorporated in a country in which there are in force provisions applicable to it to prevent the use of a financial institution for the purpose of money laundering or

ii. to custom or practice current to the relevant business

344. Nothing in section (4) requires the production of identity records where —

i. the applicant itself is a financial institution or business of a financial nature to which this Act applies; or

ii. there is a transaction or series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

345. With respect to the offshore sector the Director of Financial Services has issued Guidance Notes for Registered Agents and Trustees, which outline what constitute appropriate identification documentation.

346. The Guidance Notes issued by the Director of Financial Services requires that identification information should be obtained on the beneficial owners of corporate entities and where appropriate, their nominees

347. AML Guidance Notes issued by ECCB provide that financial institutions should not keep anonymous accounts or accounts in obviously fictitious names and to identify their customers on the basis of an official or other reliable identifying document and record the identity of their clients, either occasional or usual when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe-deposit boxes, the use of safe custody facilities, performing large cash transactions) In practice however, commercial banks do request incorporation documents for the purpose of establishing the identity of corporate entities.

348. In respect of identifying account holders as well as underlying beneficiaries, the ECCB as part of its on-site examination procedures conduct various tests to determine the adequacy of AML policies and procedures of banks.

349. The finalised guidance notes to be issued to the sector (sections 32, 33)identifies the points of guidance in regard to verification of the customer and - will apply to:

ii) the legal personality of the applicant for business (which may consist of a number of verification subjects); and
iii) the capacity in which he or she is applying.

350. An institution undertaking verification should establish to its reasonable satisfaction that every verification subject, relevant to the application for business, really exists. All the verification subjects of joint applicants for business should normally be verified. On the other hand, where the guidelines imply a large number of verification subjects it may be sufficient to carry out verification to the letter on a limited group only, such as the senior members of the family, the principal shareholders, the main directors of the company, etc. An institution should carry out verification in respect of the parties operating the account.

351. Where there are underlying principals, however, the true nature of the relationship between the principals and the account signatories must also be established and appropriate enquiries performed on the former, especially if the signatories are accustomed to acting on their instructions. In this context “principals” should be understood in its widest

sense to include, for example, beneficial owners, settlors, controlling shareholders, directors, major beneficiaries, etc., but the standard of due diligence will depend on the exact nature of the relationship.

352. Financial institutions are required to undertake customer due diligence (CDD) measures when establishing all business relations. The commercial banks also undertake additional CDD when single or structured transactions are above the source of funds declaration limit of EC$10,000. Commercial banks do not fully comply with the requirement with respect to carrying out CDD for occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.

353. In practice, commercial banks do not open accounts where initial CDD requirements cannot be completed. Additionally, where there may be doubts about the adequacy of information previously obtained or if such information cannot be verified the relationship would be terminated. Where there is suspicion of ML or TF, the relationship would be terminated but a STR may not necessarily be filed in all cases. There appears to be a reluctance to file STRs because the MLRO / Compliance officer would be identified.

354. Financial institutions are required to identify all its customers and to verify that customer's identity using reliable, independent source documents, data or information.

355. Sections 68 to 78 of the finalized guidance note outlines what information is considered relevant when trying to establish identity and indicates that the relevance and usefulness in this context of the following information should be considered:

i. full name/s used;
ii. date and place of birth;
iii. nationality;
iv. current permanent address including postal code (any address printed on a personal account cheque tendered to open the account, if provided, should be compared with the address);
v. telephone and fax number;
vi. occupation and name of employer (if self employed, the nature of the self employment); and
vii. specimen signature of the verification subject (if a personal account cheque is tendered to open the account, the signature on the cheque should be compared with the specimen signature).

356. In this context "current permanent address" means the verification subject's actual residential address as it is an essential part of identity.

357. To establish identity, the following documents are considered to be appropriate, in descending order of acceptability:

ii) current valid passport;
iii) national identity card;
iv) armed forces identity card; and
v) driver's licence, which bears a photograph.

358. Documents sought should be pre-signed by, and if the verification subject is met face to face, preferably bear a photograph of, the verification subject.

359. Documents which are easily obtainable in any name should not be accepted uncritically. Examples include:

i. birth certificates
ii. credit cards
iii. business cards
iv. national health or insurance cards
v. provisional health or insurance cards
vi. provisional driver's licences
vii. student union cards.

360. It is acknowledged that there will sometimes be cases particularly involving young persons and the elderly, where the appropriate documentary evidence of identity and independent verification of address are not possible. In such cases a senior member of key staff could authorize the opening of an account if he is satisfied with the circumstances and should record these circumstances in the same manner and for the same period of time as the identification records.

361. If the verification subject is an existing customer of an institution acting as an intermediary in the application, the name and address of that institution and that institution's personal reference on the verification subject should be recorded.

362. If information cannot be obtained from the sources referred to above to enable verification to be completed and the account to be opened, a request may be made to another institution or institutions for confirmation of such information from its/their records. Failure of that institution to respond positively and without undue delay should put the requesting institution on its guard.

Companies

363. All account signatories should be duly accredited by the company.

364. The relevance and usefulness in this context, of the following documents, (or their foreign equivalent) should be carefully considered:

a. Certificate of Incorporation (duly notarized where such body is incorporated in St. Lucia);
b. The most recent annual return filed with the Registrar, duly notarized where such corporate body is incorporated outside St. Lucia;
c. The name(s) and address(es) of the beneficial owner/s and/or the person/s on whose instructions the signatories to the account are empowered to act;
d. Articles of Association on by laws;
e. Resolution, Bank Mandate, signed application form or any valid account opening authority, including full names of all directors and their specimen signatures and signed by no fewer than the number of directors required to make up a quorum;
f. Copies of identification documents should be obtained from at least two directors (if there is more than one) and authorized signatories in

accordance with the general procedure for the verification of the identity of individuals;

g. Copies of Powers of Attorney or other authorities given by the directors in relation to the company;

h. A signed director's statement as to the nature of the company's business;

i. A statement of the source of funds and purpose of the account should be completed and signed. This should show the expected turnover or volume of activity in the account;

365. For large corporate accounts, the following may be obtained: annual reports/audited financial statements, description and place of principal line(s) of business, list of major business units, suppliers and customers, etc. where appropriate; and

366. If information cannot be obtained from the sources referred to above to enable verification to be completed and the account to be opened, a request may be made to another institution or institutions for confirmation of such information from its/their records. Failure of that institution to respond positively and without undue delay should put the requesting institution on its guard.

367. As legal controls vary between jurisdictions, particular attention may need to be given to the place of origin of such documentation and the background against which it is produced

Partnerships and Unincorporated Businesses

368. The relevance and usefulness of obtaining the following (or other foreign equivalent) should be carefully considered as part of the verification procedure:

a. The partnership agreement;

b. The information listed in paragraph 68 in respect of the partners and managers relevant to the application for business; and

c. A copy of the mandate from the partnership or unincorporated business authorizing the establishment of the business relationship and confirmation of any authorized signatories.

369. The finalised guidance note provides that for customers that are legal persons or legal arrangements, the financial institution is required to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person and also to verify the legal status of the legal person or legal arrangement.

370. Section 8(3) of the MLPA states that "*where it reasonably appears that a financial institution or persons engaged in other business activities that a person requesting to enter into a transaction is acting on behalf of another person, the financial institution or persons engaged in other business activities shall take reasonable measures to establish the true identity of the other person on whose behalf or for whose benefit the person may be acting in the proposed transaction, whether as a trustee, nominee, agent or otherwise".*

371. Sections 41-43 of the finalized guidance note provides that if the intermediary is a locally regulated institution and the account is in the name of the institution but on behalf of an underlying customer (perhaps with reference to a

customer name or account number) this may be treated as an exempt case but otherwise the customer himself (or other person on whose wishes the intermediary is prepared to act) should be treated as a verification subject.

372. If documentation is to be in the customer's name but the intermediary has power to operate any bank, securities or investment account, the intermediary should be treated as a verification subject.

373. Where an institution suspects that there may be an undisclosed principal (whether individual or corporate) it should monitor the activities of the customer to determine whether the customer is in fact merely an intermediary. If a principal is found to exist, further enquiry should be made and the principal should be treated as a verification subject.

374. The finalised guidance note (section 37-44) provides for the verification of identity for Individuals, companies, partnership, charitable organisations. It further states that identity must be verified in all cases where money laundering is known or suspected.

Clubs, Societies and Charities

375. In the case of accounts to be opened for clubs, societies and charities, the financial institution should satisfy itself as to the legitimate purpose of the organization by, for example, requesting a copy of the constitution. Where there is more than one signatory to the account, the identity of at least two signatories should be verified initially and, when signatories change, care should be taken to ensure that the identity of at least two current signatories have been verified.

Trustees

Individuals

376. An individual trustee should be treated as a verification subject unless the institution has completed verification of the trustee in connection with a previous business relationship or one-off transaction and termination has not occurred. Where the applicant for business consists of individual trustees, all of them should be treated as verification subjects unless they have no individual authority to operate a relevant account or otherwise to give relevant instructions.

377. A trustee should verify the identity of a settlor/guarantor or any person adding assets to the trust in accordance with the procedures relating to the verification of identity of clients. In particular, the trustee should obtain the following minimum information:

a. **Settlor or any person transferring assets to the trus**t: name, business, trade or occupation, and other information in accordance with the procedures relating to the verification of client identity outlined in these guidelines;
b. **Beneficiaries:** name, address and other identification information such as passport number etc;
c. **Protecto**r: name, address, business occupation and any relationship to the settlor;
d. **Purpose and nature of the trus**t: a statement of the true purpose of the trust being established, even where it is a purpose or charitable trust;
e. **Source of fund**s: identify and record the source(s) of funds settled on the trust and the expected level of funds so settled; and

f. The trustee should also ensure that payments from the trust are authorized and made in accordance with its terms.

Partnerships and Unincorporated Businesses

378. Institutions should treat as verification subjects all partners/directors of a firm which is an applicant for business who are relevant to the application and have individual authority to operate a relevant account or otherwise to give relevant instructions. Verification should proceed as if the partners were directors and shareholders of a company in accordance with the principles applicable to non-quoted corporate applicants In the case of a limited partnership, the general partner should be treated as the verification subject. Limited partners need not be verified unless they are significant investors.

Companies (including corporate trustees)

379. Unless a company is quoted on a recognized stock exchange or is a subsidiary of such a company or is a private company with substantial premises and pay roll of its own, steps should be taken to verify the company's underlying beneficial owner/s - namely those who ultimately own or control the company.

380. The expression "underlying beneficial owner/s" includes any person/s on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

Other institutions

381. Where an applicant for business is an institution but not a firm or company (such as an association, institute, foundation, charity, etc.), all signatories who customarily operate the account should be treated as verification subject/s.

~~382.~~ Financial institutions are statutorily required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner and are guided as to independently sourced relevant information so that the financial institution is satisfied that it can determine the identity of the beneficial owner. The relevant data required to determine the identity of the customer is detailed in the finalised guidance note.

383. Section 8(1) of the MLPA states that *"a financial institution or persons engaged in other business activities as listed in the Second Schedule of the MPLA shall take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it"*

384. Additionally, Section 8(2) states that *"where a person requests a financial institution or persons engaged in other business activities to enter into a transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person"*.

385. There is a statutory requirement that the financial institution must determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

386. Section 8 (2) provides guidance in that where a person requests a financial institution or –a person engaged in other business activity to enter into a transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person. Further subsection 3 states that where it reasonably appears to a financial institution or a person engaged in other business activity that a person requesting to enter into a transaction is acting on the behalf of another person, the financial institution or person engaged in other business activity shall take reasonable measures to establish the true identity of the other person on whose behalf or for whose benefit the person may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

387. As part of its operational procedures, financial institutions in practice, seek to understand the ownership and control structure of its corporate customers especially where they are members of a conglomerate. This is done by determining the beneficial owners of the account and organisation charts, directorships and ownership structures are analysed.

388. The MLPA does not require financial institutions to obtain information on the purpose and intended nature of the business relationship. However, it refers to reasonable measures, in that a financial institution shall have regard to all circumstances of the case.

389. Section 8(4) (a) of the MLPA provides that in determining what constitutes reasonable measures for the purposes of customer identity verification, a financial institution or a person engaged in other business activity shall have regard to all circumstances of the case and in particular as to whether the person is resident or is a corporate body incorporated in a country in which there are in force provisions applicable to it to prevent the use of a financial institution for the purpose of money laundering.

390. The MLPA does not address on-going due diligence on a business relationship. In practice, subsequent due diligence is triggered upon the occurrence of certain events such as any significant changes for example a change of shareholder or director.

391. The performance of on-going due diligence is not a statutory requirement. However, some financial institutions in practice determine the risk profile of their customer and trend of business activity and any deviation is questioned and may lead to a STR being submitted to the FIA. Accounts are monitored on an exception basis e.g. where funds deposited are in excess or not consistent with the customer's profile. Also any activity beyond the stipulated EC$27,000 is investigated and the appropriate action taken.

392. Customarily, financial institutions do not have policies and procedures to ensure that CDD information received upon the opening of an account is updated on a periodic basis. Some financial institutions have instituted an annual review process which in part would review existing records. This exercise is not performed on a risk basis.

393. The MLPA has not identified high risk customers e.g. Politically Exposed Persons. Additionally, the financial sector in its entirety has not adopted a risk based approach with respect to its AML/CFT policies and procedures. Consequently, enhanced due diligence is not performed for higher risk categories. While in some instances polices have identified higher risk customers the definition is not consistent with FATF's

394. While legislation does not refer to a risk based measurement – section 8(4) refers to reasonable measures in regard to identifying the true identity of a person seeking to enter into a transaction with it. There are no provisions in the finalised guidance notes

which address the issue of reduced or simplified CDD measures. Generally all customers are subject to CDD measures.

395. The finalised guidance note sections 45 – 51 provide for exempt CDD under specified circumstances. The issue of reduced or simplified measures have not been addressed.

EXEMPT CASES

396. Unless a transaction is a suspicious one, verification is not required in the following defined cases, which fall into two categories: those which do not require third party evidence in support and those which do. However, where an institution knows or suspects that laundering is or may be occurring or has occurred, the exemptions and concessions as set out below do not apply and the case should be treated as a case requiring verification (or refusal) and, more importantly, reporting.

CASES NOT REQUIRING THIRD PARTY EVIDENCE IN SUPPORT

Exempt institutional applicants

397. Verification of the institution is not needed when the applicant for business is an institution itself subject either to these Guidelines or to their equivalent in another jurisdiction. Reasonable effort should be made to ensure that such institutions actually exist and are contained on the relevant regulator's list of regulated institutions or by checking with a correspondent bank in the home country.

Small one-off transactions

398. Verification is not required in the case of small one-off transactions (whether single or linked) unless at any time between entry and termination it appears that two or more transactions which appeared to have been small one-off transactions are in fact linked and constitute a significant one-off transaction. Transactions which are separated by an interval of three months or more are not required, in the absence of specific evidence to the contrary, to be treated as linked.

399. An institution is not required to establish a system specifically to identify any aggregate linked one-off transactions but institutions should exercise care and judgment in assessing whether transactions should be treated as linked. If however, an existing system does indicate that two or more one-off transactions are linked, it should act upon this information in accordance with its vigilance system.

Certain postal, telephonic and electronic business

400. In the following paragraph the expression "non paying account" is used to mean an account or investment product which does not provide:

i cheque or other money transmission facilities; or
ii the facility for transfer of funds to other types of account which do provide such facilities; or
iii the facility for repayment or transfer to a person other than the applicant for business whether on closure or maturity of the account, or on realization or maturity of the investment, or otherwise.

401. Given the above definition, where an applicant for business pays or intends to pay monies to an institution by post, or electronically, or by telephoned instruction, in respect of a non-paying account and:

i. it is reasonable in all the circumstances for payment to be made by such means; and
ii. such payment is made from an account held in the name of the applicant for business at another regulated institution or recognized foreign regulated institution; and
iii. the name/s of the applicant for business corresponds with the name/s of the paying account-holder; and
iv. the receiving institution keeps a record of the applicant's account details with that other institution; and
v. there is no suspicion of money laundering, the receiving institution is entitled to rely on verification of the applicant for business by that other institution, to the extent that it is reasonable to assume that verification has been carried out and completed.

Certain mailshots, off-the-page and coupon business

402. The exemptions set out immediately above also apply to mailshots, off-the-page and coupon business placed over the telephone or by other electronic media. In such cases, the receiving institution should also keep a record of how the transaction arose.

403. Neither legislation nor the finalised guidance notes permit financial institutions to apply simplified or reduced CDD measures to customers resident in another country which is in compliance with and have effectively implemented the FATF Recommendations.

404. There is no guidance in legislation on the issue of simplified CDD measures and its applicability towards suspicious transactions of money laundering and terrorist financing.

405. Section 8(4)(a) of the MLPA states that in determining what constitutes reasonable measures for the purposes of this section, a financial institution or a person engaged in other business activity shall have regard to all the circumstances of the case and in particular (*a*) as to whether the person is resident or is a corporate body incorporated in a country in which there are in force provisions applicable to it to prevent the use of a financial institution or a business of a financial nature for the purpose of money laundering.

406. Only some financial institutions have adopted a risk based approach to AML/CFT. Nevertheless, there is a relatively consistent approach to CDD as outlined in the MLPA. The instances in which verification are not required are outlined in the finalised guidance note.

407. Section 8(1) of the MLPA mandates a financial institution or a person engaged in other business activity to take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

408. The file of each applicant for business should show the steps taken and the evidence obtained in the process of verifying each verification subject or, in the appropriate cases, details of the reasons which justify the case being an exempt case.

409. In practice, some institutions may allow a customer limited access and operation of an account prior to the completion of CDD. There are also instances where the process of establishing an account was aborted due to the inability of the financial institution to complete the CDD process.

410. There is no requirement in law or in guidelines for banks to apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview nor is there any requirement for banks to establish specific and adequate measures to mitigate the higher risk.

411. There are no provisions in the Insurance Act or in the MLPA prohibiting insurance companies from entering business relationships or carrying out significant one-off transactions unless they have verified the identities of their customers.

412. Where a customer is permitted to utilise the business relationship prior to verification, financial institutions adopt very simplified risk management procedures concerning the conditions under which an account may be operated prior to the completion of CDD. The procedure is generally that the account is closed when the CDD process cannot be completed due to the lack of information. Financial institutions would not permit a customer to engage in a significant one off transaction without the CDD being completed.

413. Section 135 of the finalised guidance note states that if verification has not been completed within a reasonable time, then the business relationship or significant one-off transaction in question should not proceed any further. However, it does not specify that in cases where (i) the customer cannot be identified (whether permanent or occasional and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable identification data (ii) beneficial owner cannot be identified using relevant information or data from a reliable source cannot be determined, the relationship must not be established and consideration should be given to filing a suspicious transaction report to the Financial Intelligence Authority.

414. Section 82 of the finalised guidance note states that in the event of failure to complete verification of any relevant verification subject and where there are no reasonable grounds for suspicion, any business relationship with, or one-off transaction for, the applicant for business should be suspended and any funds held to the applicant's order returned in the form in which it was received, until verification is subsequently completed (if at all). Funds should never be returned to a third party but only to the source from which they came. If failure to complete verification itself raised suspicion, a report should be made to the Reporting Officer for determination as to how to proceed.

415. Neither legislation nor the finalised guidance notes requires financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. The current practices of the financial institutions do not incorporate the requirement to apply CDD requirements to existing customers on the basis of materiality and risk and to

conduct due diligence on such existing relationships at appropriate times. Some institutions engage in an annual review of its customers (mainly commercial) when either a significant transaction takes place which is not consistent with its profile; there has been a shift in the revenue base of the customer or the unsatisfactory operation of the account.

416. There is no legal prohibition against financial institutions opening anonymous accounts, accounts in fictitious names and numbered accounts. However, the practice adopted by the financial institutions has been not to open any such accounts.

417. Additionally, the ECCB 1995 guideline advises that Financial Institutions should not keep anonymous accounts or accounts in obviously fictitious names: they are required to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe-deposit boxes, the use of safe custody facilities, performing large cash transactions).

Recommendation 6

418. Neither the MLPA nor the finalised guidance note addresses the issue of PEPS notwithstanding that section 8 requires all financial institutions to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

419. Although, it is not a statutory requirement, the commercial banks have adopted a risk based approach to AML/CFT. In practice, some commercial banks profile their customers and where they are determined to be of higher risk, additional due diligence is performed. They are identified by cross referencing to software tools e.g. alchemy, World-Check and published lists e.g. OFAC. PEPs have not been specifically mentioned as a high risk customer.

420. Other parts of the financial sector e.g. the insurance companies and credit unions are not fully aware of AML/CFT obligations under the MLPA. While some have documented policies and procedures, an adequate risk based approach is not used and the issue of PEPs has not been specifically identified as a category of high risk customer.

421. There is no documented practice which requires financial institutions to obtain the approval of senior management for establishing a business relationship with a PEP.

422. There is no documented practice which requires financial institutions to establish the source of wealth and source of funds for customers and beneficial owners identified as PEPs.

423. There is no documented practice which requires financial institutions to conduct enhanced ongoing due diligence on any customer. Where there is a material change in a customer e.g. director, shareholder or source of income, this would trigger additional due diligence.

Additional elements

424. Some financial institutions identify persons who hold prominent public functions domestically, but such persons have not been identified as a higher risk customer.

425. St. Lucia has not signed, ratified and implemented the 2003 United Nations Convention against Corruption.

Recommendation 7 (Correspondent banking)

426. Neither the MLPA nor the finalised guidance notes addresses the issue of correspondent / respondent banking relationship notwithstanding that section 8 requires all financial institutions to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

427. However, in practice when such relationship is established information is requested on the respondent institution such as its financial statements, whether it is being regulated; its anti- money laundering procedures. This is fully followed through in regard to the offshore banks and the ECCB also caries out a similar process with its commercial banks.

428. The established practice has been that prior to the establishment of a corresponding banking relationship, commercial banks must comply with the AML/CFT requirements of their foreign counterparts. Similarly, where the commercial banks are approached by commercial banks to establish a respondent banking relationship, such commercial banks must comply with the on-shore commercial bank's AML/CFT policies and procedures. However, there was no confirmation that requirements include whether the potential respondent commercial bank has been subject to a money laundering or terrorist financing investigation or regulatory action.

429. It is customary that additional information such as its financial statements, its status as a regulated institution and its anti- money laundering procedures will be assessed in terms of its adequacy and effectiveness.

430. The on-shore banks have long-standing ongoing relationships with correspondent banks located in the United States, United Kingdom and Canada etc. Traditionally, senior management approval was sought prior to the establishment of the relationship.

431. There was no corroboration as to whether respective AML/CFT responsibilities of each institution are either discussed or documented.

432. There was verification that in practice financial institutions satisfy themselves that their respondent bank performed all normal CDD obligations on its customers which have direct access to the accounts of the correspondent financial institution. However, there was no assertion as to whether there is a requirement that the

respondent financial institution would be able to provide relevant customer identification data upon the request of the correspondent financial institution.

Recommendation 8 (Technological developments and non-face-to-face transactions)

433. There is no legislation that addresses the issues of technology/ e commerce / e banking. However, the MLPA does require financial institution to take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

434. There was no evidence that financial institutions are required to document and implement measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

435. In practice, financial institutions do not document and implement policies and procedures to address specific risks associated with non-face to face business relationships or transactions.

436. There are some institutions which have websites which allow customers to complete application forms via the internet. However, in practice, these accounts are not opened or operated until there has been face to face contact with the applicant and the identity of the intended owner of the account is ascertained.

3.2.2 Recommendations and Comments

Recommendation 5

437. The St. Lucian authorities should consider either amending the MLPA or giving enforceable means to the Guidance Notes issued by the FIA.

438. The MLPA should be amended to include provisions that would require all financial institutions to undertake CDD in the following circumstances:

i when performing occasional transactions above a designated threshold,
ii carrying out occasional transactions that are wire transfers under SR VII and
iii where the financial institutions is in doubt about the veracity or adequacy of previously obtained customer identification data:
    a on an ongoing basis;
    b based on materiality and risk at appropriate times.

439. Consistent practices should be implemented across all sectors for dealing with AML/CFT issues. The awareness levels of obligations under the MLPA are different within the sub-sectors. Supervisory oversight by the several regulators is also not consistent.

440. The MLPA should be amended so that financial institutions and persons engaged in other business activity should be required to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking routine reviews of existing records.

441. The MLPA should be amended so that financial institutions are required to

i. undertake customer due diligence (CDD) measures when they have doubts about the veracity or adequacy of previously obtained customer identification data.
ii. undertake customer due diligence (CDD) measures when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.
iii. take reasonable measures to understand the ownership and control structure of the customer and determine who the natural persons are that ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement.
iv. obtain information on the purpose and intended nature of the business relationship.
v. ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.
vi. provide for performing enhanced due diligence for higher risk categories of customer, business relationship or transaction
vii. provide for applying reduced or simplified measures where there are low risks of money laundering, where there are risks of money laundering or terrorist financing or where adequate checks and controls exist in national system respectively.
viii. provide for applying simplified or reduced CDD to customers resident in another country which is in compliance and have effectively implemented the FATF recommendations.

Recommendation 6

442. Enforceable means should be introduced for dealing with politically exposed persons (PEPs). All financial institutions should be required to have:

(i) Documented AML/CFT policies and procedures and appropriate risk management systems;
(ii) Policies and procedures should deal with PEPs – definition should be consistent with that of FATF, IT systems should be configured to identify PEPs, relationships with PEPs should be authorised by the senior management of the financial institutions, source of funds and source of wealth must be determined, enhanced CDD must be performed on an on-going basis on all accounts held by PEPs.

443. The government of St Lucia should take steps to sign, ratify and implement the 2003 Convention against Corruption.

Recommendation 7

444. Commercial Banks should be required to:

i. assess a respondent institution's AML/CFT controls to determine whether they are effective and adequate;
ii. document the AML/CFT responsibilities of each institution;
iii. ensure that the respondent institution is able to provide relevant customer identification data upon request.

Recommendation 8

445. Legislation should be enacted to prevent the misuse of technological developments in ML / TF.

446. Financial institutions should be required to identify and mitigate AML/CFT risks arising from undertaking non-face to face business transactions or relationships. CDD done on conducting such business should be undertaken on an on-going basis.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• The MLPA is significantly deficient. These essential criteria are required to be in the law and are not, and even where they are, it does not adequately meet the standard of the essential criteria. • The MLPA does not create a legal obligation to undertake CDD above designated threshold, carrying out occasional wire transfers covered by SR VII, where the financial institution has doubts about the veracity of the adequacy of previously obtained customer identification data. • There is no legal obligation to carry on due diligence on an ongoing basis • There is no legal obligation to carry out enhanced due diligence for higher risk categories of customers / business relationships • All financial institutions do not apply CDD to existing customers on the basis of materiality and risk and also do not conduct due diligence on such existing relationships at appropriate times. • There is no legal obligation which requires financial institutions to obtain information on the purpose and intended nature of the business relationship. • There is no legal obligation which requires Customer Due Diligence information to be updated on a periodic basis.
R.6	**NC**	• There are no provisions in the law, guideline or industry practice which completely satisfies the essential criteria. • The financial sector does not have procedures in place where senior management approval is required to open accounts which are to be operated by PEPs, as defined by FATF. • Majority of financial institutions do not utilise a risk based approach to AML/CFT issues • Major gate keepers do not are required ~~to~~ deal with the subject of PEPS pursuant to ECCB guidelines. • Insurance companies & Credit Unions do not treat with the issue • The financial sector does not have on-going enhanced CDD for PEPs.
R.7	**NC**	• There are no provisions in the law, guideline or practice which

		completely satisfies the essential criteria. • Commercial banks policies and procedures are deficient. There are no measures in place to : o assess a respondent institution's AML/CFT controls to determine whether they are effective and adequate, o document the AML/CFT responsibilities of each institution o ensure that the respondent institution is able to provide relevant customer identification data upon request
R.8	**NC**	• There are no provisions in the law, guideline or practice which completely satisfies the essential criteria. • There is no framework which mitigate against the risk of misusing technology in ML/TF. • Financial institutions are not required to conduct on going CDD on business undertaken on non face to face customers.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

447. The MLPA does not address the issue of CDD with third party or intermediaries. However, section 133 of the finalised guidance note identifies this issue in a limited way. It addresses the situation where an agent/intermediary acts for a customer, whether for a named client or through a client account, but deals in his own name, then the agent/intermediary is a verification subject and (unless the applicant for business is a recognized foreign regulated institution) the customer is also a verification subject.

448. Financial institutions have not incorporated into their AML/CFT policies and procedures that where reliance is placed upon a third party they should immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

449. In practice, even though business is introduced or referred to financial institutions, such referrals are subject to the CDD/ KYC requirements.

450. Insurance brokers who introduce business to general and life insurance companies are not required to do CDD / KYC on their customers because they do not fall directly under the purview of the MLPA.

451. The recently finalized guidance note indicates that verification may not be needed in the case of a reliable introduction from a locally regulated institution, preferably in the form of a written introduction. Judgment should be exercised as to whether a local introduction may be treated as reliable, utilizing the knowledge which the institution has of local institutions generally, supplemented as necessary by

appropriate enquiries. Details of the introduction should be kept as part of the records of the customer introduced.

452. Verification may not be needed where a written introduction is received from an introducer who is:

i a professionally qualified person or independent financial advisor operating from a recognized foreign regulated institution; and

ii the receiving institution is satisfied that the rules of his/her professional body or regulator (as the case may be) include ethical guidelines, which taken in conjunction with the money laundering regulations in his/her jurisdiction include requirements at least equivalent to those in these Guidelines; and

iii the individual concerned is reliable and in good standing and the introduction is in writing, including an assurance that evidence of identity would have been taken and recorded. Such assurance may be separate for each customer.

453. Details of the introduction should be kept as part of the records of the customer introduced.

Exemption from verification

454. Verification is not needed where the introducer of an applicant for business is either an overseas branch or member of the same group as the receiving institution. In such cases, written confirmation or evidence of the relationship should be obtained from the holding or parent company.

455. To qualify for exemption from verification, the terms of business between institution and introducer should require the latter to:

i complete verification of all customers introduced to the institution or to inform the institution of any unsatisfactory conclusion in respect of any such customer;
ii keep records in accordance with these Guidelines; and
iii supply copies of any such records to the institution upon demand.

456. In the event of any dissatisfaction on any of these, the institution should (unless the case is otherwise exempt) undertake and complete its own verification of the verification subjects arising out of the application for business either by:

i carrying out the verification itself; or
ii relying on the verification of others in accordance with these Guidelines.

457. Where a transaction involves an institution and an intermediary, each needs to separately consider its own position to ensure that its own obligations regarding verification and records are duly discharged.

458. There is no requirement either in law or practice in which financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

459. In practice, all institutions implement a practice whereby all new customers whether introduced by a third party or not are subject to the full CDD process. Additionally, insurance companies do not have policies and procedures which require that they should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the broker upon request without delay.

460. There is no requirement either in law or as a matter of practice in which financial institutions are required to satisfy themselves that third party is regulated and supervised in accordance with Recommendations 23, 24, and 29 and has measures in place to comply with the CDD requirements set out in recommendations 5 and 10.

461. Insurance brokers and registered agents and trustees are registered under the Insurance Act and Registered Agents and Trustees (RAT) Acts respectively and supervised by the Financial Sector Supervision Unit (FSSU) of the Ministry of Finance. RATs have a direct obligation under the MLPA but the insurance brokers do no fall under the purview of the MLPA. In the latter case, the CDD obligation rests with the insurance company.

462. There is no requirement either in law or guideline which requires financial institutions to implement a risk based approach to AML/CFT. Therefore there are no requirements which oblige competent authorities to take into account information available on whether those countries adequately apply the FATF Recommendations.

463. Under the MLPA, the ultimate responsibility for customer identification and verification is that of the financial institutions and persons engaged in other business activities as outlined in Schedule A and B of the MLPA.

3.3.2 Recommendations and Comments

464. Financial institution should be required to immediately obtain from third parties information required under the specified conditions of the CDD process.

465. Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay.

466. Financial institutions should be obligated to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.

467. The competent authority for dealing with AML/CTF matters should circulate to all financial institutions lists e.g. OFAC, UN. The financial institutions should be required to incorporate into their CDD the use of assessments / reviews concerning AML/ CFT which are published by international / regional organisations.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
	PC	• Legislation or other enforceable means do not address CDD requirements where business is introduced by third parties or intermediaries. • Adequate steps are not taken by insurance companies to ensure that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. • Financial institutions do not implement procedures to satisfy themselves that third parties are regulated and supervised.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

468. The provision of secrecy as provided in the relevant legislation governing the offshore sector (wording is similar in all of the various pieces of legislation) does not in any way inhibit the implementation of the FATF Recommendations.

469. Sections 20 and 19 of the International Insurance Act and International Banking Act provides inter alia that:

no information shall be disclosed relating to—
(a) an application made to the Minister for a licence under this Act;
(b) the affairs of a licensee; or
(c) the affairs of a customer of a licensee;

470. However, subsection 2 states that Subsection (1) does not apply to a disclosure by the Director—

(a) necessary for the effective regulation in St. Lucia of a licensee;
(b) lawfully required or permitted by any court of competent jurisdiction within St. Lucia;
(c) permitted under this Act or under any other law; or
(d) in respect of the affairs of the licensee or a customer of a licensee with the authority of the licensee or the customer of the licensee which has been voluntarily given.

471. Subsection 3 provides for the sharing of information but on certain conditions i.e. the Minister may disclose to another regulatory authority outside St. Lucia information concerning the affairs of a licensee where—
(a) the other regulatory authority permits reciprocal disclosure;
(b) the disclosure is in the interest of prudential regulation of a licensee;

(c) the disclosure pertains to actions in violation of any law or with respect to the failure of a licensee to comply with generally accepted principles relating to the international banking business.

472. Nothing in subsection (3) authorises the Director to make disclosure referred to in that subsection unless-

(a) the Director is satisfied that the intended recipient authority is subject to adequate legal restrictions on further disclosures which may include the provisions of a undertaking of confidentiality; and

(b) the disclosure does not relate to customers of a licensee other than information relating to large credit exposure of the licensee.

473. Section 53 of the International Trust Act provides that "without affecting the rights of the protectors under Part VII, but subject to the terms of the instrument creating an international trust and subsection (2), a trustee, protector, or other person shall not disclose to any person not legally entitled thereto, any information or documents respecting an international trust, including without limitation-

i The name of the settlor or any beneficiary
ii The trustee's deliberations as to the manner in which power or discretion was exercised or a duty conferred by the terms of the trust or by law was performed;
iii The reason for the exercise of power or discretion or the performance of the duty or any evidence upon which such reason might have been based;
iv Any information relating to or forming part of the accounts of an international trust; or
v Any other matter or thing in respect of an international trust.

Notwithstanding subsection (1) but subject to any other more specific terms of the trust instrument, the registered trustee shall, at the written request of a beneficiary named in the international trust disclose any document or information relating to or forming part of the accounts of the international trust as described in subsection (1)(d) to that beneficiary provided that the beneficiary or the advisor

a shall be bound by the restrictions on disclosure of such information provided for in this section and;

b shall not be entitled to any other document relating to the international trust listed or described in the forgoing paragraph, including without limitation, letters of wishes ir like expressions of the settlor's intent.

474. A similar provision also exists in the International Mutual fund legislation.

475. Section 32 of the Banking Act inter alia states that no person who has acquired knowledge in his or her capacity as 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 Central Bank, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except—

a) with the written authorisation of the depositor or customer or of his or her heirs or legal personal representatives;
b) for the purpose of the performance of his or her duties within the scope of his or her employment in conformity with the provisions of this Act;
c) when lawfully required to make disclosure by any court of competent jurisdiction within St. Lucia; or
d) under the provisions of any law of St. Lucia or agreement among the Participating Governments;
Except that nothing shall prevent the Central Bank from providing access, to any officer of a foreign authority responsible for the supervision or regulation of financial institutions in order to assess the safety and soundness of a foreign financial institution on a reciprocal basis, and subject to an agreement of confidentiality and a Memorandum of Understanding between the Central Bank and such authorities.

476. Financial institutions are not specifically required to share information with each other for AML/CFT purposes. While not effectively practiced for purposes of Recommendation 7, in the case of wire transfers, the funds are rejected pending the receipt of the missing or incomplete information and introduced business is subject to CDD so that no reliance is placed on the introducer.

3.4.2 Recommendations and Comments

477. The Insurance Act and the Registered Agents and Trustee Act do not have expressed provision for the sharing of information. While in practice, this has not prevented them from sharing with authorities, for the avoidance of doubt it is recommended that expressed provisions in the respective pieces of legislation together with the requisite indemnity for staff members making such disclosures.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• There are no bank secrecy laws which impede the sharing of information. The minor shortcoming arises from the reluctance of entities to share certain information in practice. • There is no obligation which requires all categories of financial institutions to share information among themselves for purposes of AML/CFT

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

3.5.1 Description and Analysis

Recommendation 10 (Record keeping)

478. Section 9(1)(a) of the MLPA provides for financial institutions or persons engaged in other financial activity to establish and maintain records of transactions for a period of seven years after the completion of the transaction recorded. Section 9(1)(b)

provides for records of the evidence obtained to verify a customer's identity to be copied and maintained by the institution. Section 49(2) of the Proceeds of Crime Act (POCA) states that relevant documents should be retained for minimum period of 7 years.

479. Section 49(1) of POCA also specifies that financial institutions should retain, in its original form for the minimum retention period applicable to the document,

(a) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document that relates to:
   i. the opening or closing by a person of an account with the institution;
   ii. the operation by a person of an account with the institution;
   iii. the opening or use by a person of a deposit box held by the institution;
   iv. the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
   v. the transmission of funds between St. Lucia and a foreign country or between foreign countries on behalf of a person; or
   vi. an application by a person for a loan from the institution, where a loan is made to the person pursuant to the application; and

(b) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

480. Section 49(4) of POCA states that a financial institution required to retain documents under this section shall retain them on microfilm or in such other manner that makes retrieval of the information contained in the documents or the documents as the case may be reasonably practicable.

481. The fulfilment of this recommendation requires that the country has stipulated in its laws/ regulations that financial institutions should be required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority). Further, this requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.

482. The MLPA does not specifically address the issue that the necessary records includes both domestic and international transaction and neither is there provision for such records to be kept whether the relationship is on-going or terminated. Section 9(1) (a) of the MLPA 2003 and the finalised MLPA guidance note require a retention period of seven (7) years of all records of transaction. The finalised MLPA guidance note~~s~~, sections 103-104 identifies the records in relation to verification to generally comprise:

i a description of the nature of all the evidence received in relation to the identity of the verification subject; and
ii the evidence itself or a copy of it or, if that is not readily available, information reasonably sufficient to obtain such a copy.

483. Records relating to transactions will generally comprise details of personal identity, including the names and addresses, of:

i the customer;
ii the beneficial owner of the account or product;
iii any counter-party;

details of securities and investments transacted including:

i the nature of such securities/investments;
ii valuation(s) and price(s);
iii memoranda of purchase and sale;
iv source(s) and volume of funds and bearer securities;
v destination(s) of funds and bearer securities;
vi memoranda of institution(s) and authority(ies);
vii book entries;
viii custody of title documentation;
ix the nature of the transaction;
x the date of the transaction; and
xi the form(e.g. cash, cheque) in which funds are offered and paid out.

484. Even though the MLPA generally provides for the retention of records, it does not explicitly state that the transaction records must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

485. Section 101 of the finalised MLPA guidance note identifies the particular records which must be kept in order to facilitate the investigation of any audit trail concerning the transactions of their customers, institutions should observe the following:

i. **Entry records:** institutions should keep all account opening records, including verification documentation and written introductions, for a period of at least **7 years** after termination or, where an account has become dormant, seven years from the last transaction.

ii. **Ledger records:** institutions should keep all account ledger records for a period of at least **7 years** following the date on which the relevant transaction or series of transactions is completed.

iii. **Supporting records:** institutions should keep all records in support of ledger entries, including credit and debit slips and cheques, for a period of at least **7 years** following the date on which the relevant transaction or series of transactions is completed.

486. Further section 102 of the finalised MLPA guidance notes provides where an investigation into a suspicious customer or a suspicious transaction has been initiated, the FIA may request an institution to keep records until further notice, notwithstanding that the prescribed period for retention has elapsed. Even in the absence of such a request, where an institution knows that an investigation is proceeding in respect of its customer, it should not, without the prior approval of the FIA, destroy any relevant records even though the prescribed period for retention may have elapsed.

487. There is no obligation which requires financial institutions to maintain records of business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).

488. Within the sector the practices adopted varies because of the absence of standard requirements. Although the finalised MLPA guidance note addresses this partially, it does not expound on the need to also maintain business correspondence for the same time period as is required for identification data.

489. At present, there is no obligation which requires that financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

490. Although the finalised MLPA guidance note addresses the retention period of certain types of information and while it does specify the method of retention, it does not address the issue of the timely availability of information.

491. Section 51 of the POCA states that where a financial institution has information about an account held with it, and the institution has reasonable grounds for believing that (a) the information is relevant to an investigation of, or the prosecution of, a person for an offence; or (b) the information would otherwise be of assistance in the enforcement of the POCA or regulations made there under, the institution may give the information to a gazetted officer or the DPP.

492. The MLPA 2003 section 9(1)(e) states that a financial institution shall permit a member of the FIA to enter its premises during normal working hours to inspect records kept by it; make notes or take copies of any records and the financial institution should be able to answer any question of the FIA in relation to its records.

Special Recommendation VII

493. As a matter of practice, the banks keep sufficient details on all incoming and outgoing wire transfers. On an exception basis, outgoing transfer transactions are performed for persons who are not existing customers of the bank.

494. Section 105 of the finalised MLPA guidance note states that in the case of electronic transfers, institutions should retain records of payments made with sufficient detail to enable them to establish:

i. the identity of the remitting customer;
ii. origin of the funds ;
iii. as far as possible the identity of the ultimate recipient;
iv. The form of instruction and authority; and
v. Destination of the funds.

495. There are no provisions in the MLPA requiring financial institutions to give enhanced scrutiny to wire transfers that do not contain complete originator information.

In practice, incoming wire transfers without complete information are rejected and only processed where the missing information is provided.

496. Section 49 of POCA provides for the retention of information with respect to electronic transfer of funds domestically and internationally.

497. Section 49(1)(a)(iv) of the POCA requires the financial institution to maintain records relating to telegraphic and electronic transfers in their original form. In practice the original form includes originator information on customer name, account number and identification.

498. Records are not required to be retained where the transaction are less than EC$5,000. This exemption limit is relatively higher than the requirement of the essential criteria which obliges financial institutions to obtain and maintain specific information on all wire transfers of EUR/USD 1 000 or more.

499. All wire transfers exceeding EC$5,000 must contain information to sufficiently identify the customer. As noted above, this limit exceeds that required under Special recommendation VII.

500. The finalised MLPA guidance note requires that all financial institutions retain records of payments made with sufficient detail to enable them to establish:

i. the identity of the remitting customer;
ii. origin of the funds ;
iii. as far as possible the identity of the ultimate recipient;
iv. The form of instruction and authority; and
v. Destination of the funds.

501. In practice, all domestic wire transfers are subject to the CDD requirements as contained in the MLPA.

502. In practice, the financial institutions require that the origin of the funds must be identified and originator information provided regardless of whether it is acting as an intermediary or and beneficiary in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. This is not specifically addressed in legislation and the finalised guidance note.

503. Where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer (during the necessary time to adapt payment systems), a record must be kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institution.

504. Financial institutions are not required to adopt a risk based approach to AML/CFT. Neither the MLPA, finalised MLPA guidance note nor the current practice requires that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Although in practice, where wire transfers cannot be completed or

insufficient information is contained in the transfer the funds are returned to the sending financial institution, a suspicious transaction report is not generated.

505. There is no requirement in the law or finalised guidance note which provides that there should be measures in place to monitor compliance by the financial institutions with special recommendation VII.

506. Sanctions are not available for all the essential criteria under special recommendation VII. Only a penalty of EC$50,000 on summary conviction is available under section 49(5) of POCA in instances where financial institutions fail to retain records.

Additional elements

507. There is no explicit obligation in the MLPA for financial institutions to require that all incoming transfers to contain full and accurate information. To a limited extent, POCA under Section 49(1)(iv) implies that where originator information is obtained, it should be retained for the minimum statutory period. As a matter of practice, financial institutions require that complete and accurate originator is available for all incoming wire transfers.

508. As a matter of practice, all financial institutions perform customer due diligence on all customers who transact wire transfer business. Additional, as a matter of policy most financial institutions only transact this type of business for its existing customers.

Recommendations and Comments

3.5.2 Recommendation 10 & SRVII

509. The MLPA should be strengthened to provide that the records to be kept are both domestic and international and also that such records must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

510. The guidance note should be amended to provide details of special recommendation VII with respect to dealing with wire transfers where there are technical limitations. POCA and MLPA should be amended to require a risk based approach to dealing with wire transfers. Sanctions should be available for failure to comply with the essential criteria.

511. The MLPA should be strengthened to provide that financial institutions should maintain records of business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).

512. The provisions in both the POCA and MLPA should create a statutory obligation and a corresponding offence for instances where information is not maintained in a form which enables the competent authority to retrieve the information on a timely basis. Even though the various pieces of information may be available, the

timely ability to reconstruct the transaction or sufficient evidence to procure a prosecution may be impeded.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**NC**	• Requirement not contained in law or other enforceable means • No requirement to maintain records of domestic and international transactions for at least five years whether or not the relationship has been terminated • No requirement to maintain identification data, account files and business correspondence for at least five years following the termination of a relationship • No requirement to make available customer and transaction records and information on a timely basis. • No requirement to transaction records which are retained must be sufficient to permit reconstruction of individual transactions, so as to provide, if necessary, evidence for prosecution of criminal activity. • No requirement for financial institutions to maintain records of business correspondence for at least five (5) years following the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.
SR.VII	**PC**	• There is no enforceable requirement to ensure that minimum originator information is obtained and maintained for wire transfers. • There are no risk based procedures for identifying and handing wire transfers not accompanied by complete originator information. • There is no effective monitoring in place to ensure compliance with rules relating to SRVII. • The exemption of retaining records of transactions which are less than EC$5,000 is higher than the requirement of the essential criteria which obliges financial institutions to obtain and maintain specific information on all wire transaction of EUR/USD 1,000 or more. • Sanctions are unavailable for all the essential criteria under this recommendation.

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

513. The MLPA does not specifically refer to complex, unusual large transactions, or even to unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Section 9(1) of the MLPA does provide that (a) a financial institution or business of a financial nature shall establish and maintain transaction records of a transaction for a period of seven years after the completion of the transaction recorded; (b) financial institutions shall establish and maintain a record that indicates the nature of the customer identification evidence obtained pursuant to section 8 of the MLPA; and (c) report to the FIA a transaction where the identity of a person involved in the transaction or the circumstances relating to the transaction gives an employee of the financial institution reasonable grounds to suspect that the transaction involves the proceeds of a prescribed offence.

514. The ECCB tests for compliance with this provision as part of its on-site inspections of banks.

515. The ECCB's AML Guidance Notes provide that financial institutions should review and properly document the background and purpose of all complex, unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

516. Section 85 of the draft MLPA guidance notes states that suspicious transactions should be recognizable as falling into one or more of the following categories:

i any unusual financial activity of the customer in the context of his own usual activities;
ii any unusual transaction in the course of some usual financial activity;
iii any unusually linked transactions;
iv any unusual employment of an intermediary in the course of some usual transaction or financial activity;
v any unusual method of settlement; and
vi any unusual or disadvantageous early redemption of an investment product.

517. The finalised guidance note also includes examples of suspicious transactions. This should assist the financial institutions and the other persons engaged in other business activity in identifying such transactions. While this is not an exhaustive list, because it does not contain examples for all the business types which fall under the MLPA, unusual transactions have not been dealt with at all.

518. All financial institutions as well as persons engaged in other business activity as outlined in the second d schedule of the MLPA are required to apply know your customer procedures and policies. In practice, the commercial banks document the nature and scope of business activities for both individual and commercial customers. Where the account activity is not consistent the accounts are reviewed and the customers provide explanations. The insurance companies also attempt to do this when it sells its various products to the industry and an evaluation is done to determine the source from which the premiums will be received. The credit union also apply this practice since its members contributions usually come in the form of a salary deduction from the payroll department of government and commercial businesses. Where amounts are not consistent with what is known of the customer, enquiries are made. In practice, business relationships have been terminated because of unsatisfactory explanations or inability to

provide adequate explanations. It should be noted that such situations have not resulted in the filing of a suspicious transaction report to the FIA.

519. Neither the POCA nor MLPA provides that where financial institutions terminate business relationships because they are unable to satisfy themselves as to the background and purpose of the transaction, that all relevant information must be retained. In a limited way, POCA provides that documentation for transactions should be retained, when accounts are closed. There is an additional weakness because in practice this is not considered a suspicious transaction for a STR to be filed with the FIA

Recommendation 21(Countries that insufficiently apply the FATF Recommendations)

520. There is no legal requirement for financial institutions to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.

521. There are no formal measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries. However, the country is provided with a list from the US embassy of suspected terrorist and money launderers as well as countries which are considered to be supporting terrorism. In practice some financial institutions have access to the OFAC and UN lists and utilise various enquiries using software such as ALCHEMY and World-Check.

522. Section 86 of the finalised MLPA guidance notes states that from time to time, the authorities or management may determine that because a high incidence of money laundering is associated with persons from certain countries or regions, additional precautions are required to safeguard against use of accounts or other facilities by such persons, their immediate relatives, associates and representatives. The source of wealth and economic activities that generated the level of wealth should be substantiated. Under these circumstances, it may be necessary to request a letter of reference (confirmed), in addition to other identification requirements, from a regulated bank, which is not from the countries or regions in question.

523. There is neither provision in law nor the finalised guidance note which would ensure that financial institutions have implemented measures where they are advised of concerns about weaknesses in the AML/CFT systems of other countries.

524. At present, the FIA does not disseminate any of the publicly available lists. However, the electronic systems implemented by the commercial banks would include access to this information. While the FIA should be entrusted with the responsibility to discharge this responsibility, financial institutions do have access to publicly available information e.g. FATF and CFATF reports and also IMF/World Bank reports. The duty of the Compliance Officer should include the review of such reports and procedures for dealing with high risk countries implemented. If the financial institutions were required to implement a risk based approach to AML/CFT, this type of information would assist in keeping track of jurisdictions in which the financial intuitions would have a higher risk of conducting business.

525. There is no requirement which deals with reporting transactions which have no apparent economic or visible lawful purpose, the background and purpose of such

transactions should, as far as possible, be examined, and written findings should be available to assist competent authorities and auditors.

526. There is no obligation for financial institutions to adopt a risk based approach when dealing with other countries especially where they are high risk in terms of AML/CFT systems and appropriate mechanisms implemented to mitigate or eliminate the risk of doing business with such a country.

527. Financial institutions should be required that in instances where transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined and written findings should be made available to assist competent authorities and auditors.

528. There is no obligation which requires St. Lucia to apply appropriate countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.6.2 Recommendations and Comments

Recommendation 11

529. Financial institutors should be encouraged to develop various examples of what would constitute suspicious, unusual and complex transactions. This should be disseminated to staff to make them become aware of such transactions. Internal reporting procedures should also be initiated to generate reports for review and appropriate action to be taken and ultimately to develop typologies for each type / sector of the financial sector.

530. There should be legal obligation for financial institutions to report such transactions which the institution deems to be suspicious to the FIA as a suspicious transaction

531. The MLPA and POCA should specifically provide that all documentation relating to the background and purpose of a transaction should be retained for a similar period of 7 years.

Recommendation 21

532. The FIA should be required to disseminate information about areas of concern and weaknesses in AML/CFT systems of other countries. Financial institutions should also be required as a part of their internal procedures to review these reports.

533. Financial institutions and persons engaged in other business activities should be required to apply appropriate counter-measures where a country does not apply or insufficiently applies the FATF recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
	NC	• A legal obligation does not exist for financial institutions to pay special attention to complex, unusual or large transactions. • Financial institutions do not document findings on the background and purpose of complex, large or unusual transactions • There are no procedures which would require financial institutions to keep the findings on the background and purpose of all complex, unusual transaction and to store such information to enable it to be retrievable by the competent authorities or auditors.
	NC	• There are no obligations which require financial institutions to give special attention to business relationships and transactions with persons including legal persons and other financial institutions from or in countries which do not or insufficiently apply the FATF recommendations. • There are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries • There is no obligation with regard to transactions which have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined and written findings should be available to assist competent authorities and auditors. • There is no obligation that where a country continues not to apply or insufficiently applies the FATF recommendations for St. Lucia to be able to apply appropriate countermeasures.

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

3.7.1 Description and Analysis

Recommendation 13

534. Section 4(2)(a) of the MLPA provides for the FIA to receive suspicious transaction reports from financial institutions. Further, the Money Laundering Prevention (Amendment) Act No 15 of 2004 amends section 9 of the MLPA by inserting the following immediately after paragraph (h), a new paragraph (i) so that "a financial institution or person engaged in other business activity shall report to the authority any suspicious transaction relating to money laundering as soon as reasonable practicable, and in any event, within seven days of the date of the transaction was deemed to be suspicious".

535. Section 9 of the MLPA provides for internal reporting procedures to be adopted by financial institutions and section (c) allows for financial institutions to report to the Authority a transaction where the identity of a person involved in a transaction or the circumstances relating to the transaction gives the employee of the financial

institution or business of a financial nature reasonable grounds to suspect that the transaction involves the proceeds of a prescribed offence.

536. Section 4(3) of the MLPA provides that persons failing to produce information required by the FIA commit an offence and are liable on summary conviction to a fine not exceeding EC$50,000.00 or to imprisonment for ten years or both. The Money Laundering Prevention (Amendment) Act No 15 of 2004 amends section 20 of the MLPA by inserting after subsection (6) a subsection (7) so that "a financial institution of person engaged in other business activity which fails to report a suspicious transaction as required by section 9(i) commits an offence and is liable on indictment to a fine of five hundred thousand dollars. Additionally, the draft ATA there will be a penalty of 10 years imprisonment for any person in a financial institution who fails to file STRs in relation to terrorism.

537. Section 4(2)(e) of the MLPA authorizes the FIA, to provide information relating to suspected money laundering or information relating to a suspicious activity report to any foreign financial intelligence unit subject to the conditions the financial intelligence authority may considers appropriate.

538. Essential criteria 13.1, 13.2 and 13.3 are required to be contained in the legal framework or other enforceable means. This is not the case. While there is a general obligation in the MLPA to report suspicious transactions, it does not fully cover all the offences as required under the various conventions. St Lucia does not have anti terrorism legislation.

539. In practice, the financial institutions do not generate STRs when they should because their policies do not always define what a suspicious transaction is. Even though the finalised MLPA guidance note now provides some examples, these should be brought to the attention of the necessary staff members.

540. The MLPA has provisions for considering violation of the tax law, a money laundering offence. The Money Laundering (Prevention) Order, Statutory Instrument No 156 of 2006 has amended the First Schedule of the Money Laundering (Prevention) Act to include "An offence contrary to section 141, 144 or 145 (2) of the Income Tax Act, Cap 15.02" as offences for which the requirement to report suspicious transactions pursuant to Section 9 (1) (c) of the said MLPA applies.

Additional elements

541. Section 9(i) of the MLPA creates a legal obligation for financial institutions and persons engaged in other activity as described in the Second schedule to report to the FIA any suspicious transaction relating to money laundering as soon as practicable and in any event within seven days of the date the transaction was deemed to be suspicious. The requirement to file the STR in a specified format is not a direct obligation under the law. In practice, although there is a standard form, some financial institutions have used their own form.

542. As mentioned above in 13.5, section 9(i) of the MLPA creates a direct, legal obligation to report a suspicious transaction report. Even though there is no anti-terrorism legislation enacted in St. Lucia, the MLPA does refer to terrorism as a prescribed offence for which reporting obligations are applicable.

543. As indicated in the discussion of recommendation 13, St. Lucia does have provision in its law which creates a legal obligation to report all suspicious transactions but it does not specify that an STR should be filed for attempted transactions regardless of the amount of the transaction. The list of predicate offences under the MLPA includes tax.

Recommendation 14

544. Section 9 (3) of the MLPA provides that where a financial institution or person engaged in other business activity discloses information to the FIA in accordance with the MLPA, but in breach of another enactment or a contract, the financial institution or person engaged in other business activity, its directors or its employees shall not be liable for such breach.

545. Additionally, section 52 of the POCA protects a financial institution or a person who is an officer, employee or agent of the institution where information is given to the DPP or a gazetted officer where it may be relevant to an investigation or prosecution or a person for an offence or the information would otherwise be of assistance in the enforcement of POCA.

546. These provisions do not specify whether it protects from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIA.

547. The protection is not expressly available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

548. There is a prohibition under section 20 of the MLPA that provides that where a person has reasonable grounds to believe that an investigation into money laundering has been, is being or is about to be made, shall not prejudice the investigation by divulging that fact to another persons. Section 20(4) further provides that a person who has reasonable grounds to believe that an investigation into money laundering has been, is being or is about to be made shall not prejudice the investigation by falsifying, concealing, destroying or otherwise disposing of or causing or permitting the falsification, concealment, destruction or disposal of matter or thing that is or is likely to be material to the investigation.

549. There is no specific offence where a director, officer or employee "tips off" that a STR has been filed.

Additional Elements

550. There are neither laws, regulations nor any other measures which protects the names and personal details of staff of financial institutions that make a STR to the FIA.

Recommendation 25 (only feedback and guidance related to STR)

551. There is no legal obligation for the FIA to provide feedback to financial institutions which are required to file STRs. This is also not the practice. In practice, STRs are acknowledged but any further communication e.g. whether it is useful to create or inform an investigation does not occur.

Recommendation 19

552. Persons entering or leaving St. Lucia with currency in excess of EC$10,000 or equivalent foreign currency or negotiable bearer instruments are required to complete a declaration form. Administration of this requirement is the responsibility of customs.

553. There are no legal obligations either in the POCA or MLPA which requires large cash transaction reporting. In practice, Customs has implemented a declaration requirement for EC$10,000 and above. Customs maintains a database with information collected from these forms.

554. In practice a source of funds declaration is used by financial institutions to verify the origin of funds. This declaration is used for both cash and monetary instruments. There is no obligation for financial institutions to implement an IT system for reporting currency transactions above a specified threshold to the FIA. Consideration has not been given to the implementation of a reporting system for large currency transactions.

Additional elements

555. The Customs reports of currencies entering and leaving the island un-declared and found are all computerised and are easily assessable by the FIA if necessary for AML/CFT purposes.

Recommendation 32.2

Statistics

556. Section 4(g) of the MLPA imposes a duty on the FIA to compile records. In practice the competent authority- FIA does present to its Board statistical information /data.

3.7.2 Recommendations and Comments

Recommendations 13
The POCA and MLPA should be amended to provide that:

a) Financial institution should report to the FIA (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1.

b) The filing of a STR must apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance

terrorism. All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.

c) Examples of suspicious transactions as provided for in the finalised guidance note should be incorporated into policies and procedures as appropriate and staff should be made aware of the types of suspicious transactions.

SR IV

The MLPA should be amended to provide that all suspicious transactions must be reported to the FIA regardless of the amount of the transaction.

Recommendation 14

557. The indemnity should expressly include MLROs and Compliance Officers. Additionally it should explicitly include legal and civil liability which may arise. The protection should be available where there is a suspicion or a reasonable belief even though the underlying criminal activity is unknown and whether a criminal activity has occurred.

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

559. The MLPA should be amended to make it an offence creating an offence for MLROs, Compliance Officers, directors and employees who tip off that a STR has been file.

Recommendation 25

560. The FIA should be given a statutory obligation to provide feedback to financial institutions. Such feedback can be either general, or specific.

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

	Rating	Summary of factors underlying rating
R.13	**NC**	• Essential criteria 13.1 -3 should be in law / regulations - this is not the case. • The reporting obligation does not apply to all designated categories of predicate offences under Recommendation 1. • There is no legally enforceable obligation for financial institutions to report transactions which are attempted but not completed regardless of the value of the transaction. • STRs are not generated by financial institutions when they should because there is neither any guidance from the FIA or in their policies and procedures as to what constitutes a suspicious transaction.

R.14	**PC**	• There is no specific protection from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIA. • There is no prohibition against financial institutions, their directors, officers and employees (permanent and temporary) from "tipping off" the fact that a STR or related information is being reported or provided to the FIA.
R.19	**NC**	• There has been no consideration on the implementation of a system for large currency transaction reporting. • There is no enforceable requirement for financial institutions to implement an IT system for reporting currency transactions above a specified threshold to the FIA.
R.25	**NC**	• See factor in section 3.10
SR.IV	**NC**	• Terrorism is noted as a predicate offence in the MLPA but it is doubtful whether this can be enforced since there is no anti-terrorism legislation in place. • The mandatory legal requirements of Recommendation 13 are not codified in the law.

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

561. Section 9 (1)(f) of the MLPA provides for financial institutions to develop and apply internal policies, procedures or controls to combat money laundering and develop audit functions to evaluate the internal policies, procedures or control of the financial institution.

562. Section 11 of the MLPA imposes an obligation on financial institutions and persons engaged in other business activity to take measures to ensure that its employees are made aware of the law and also train them in the recognition and handling of money laundering transactions.

563. In practice, not all entities which fall under the purview of the MLPA has documented or implemented internal policies, procedures and controls to prevent ML and TF. The policies varied in terms of content and were found to be deficient in several areas which included the detection of unusual, complex and suspicious transactions.

564. While a few financial institutions indicated that their staff is aware of the contents of the policies, there is generally a lack of awareness of AML /CFT issues

within the sector. The commercial banks and the registered agents and trustees are relatively more aware of legal and procedural matters relating to AML/CFT than the credit unions and insurance companies. Some of the credit unions also received awareness training from the FIA of pertinent obligations under the MLPA.

565. The MLPA does not create an obligation for financial institutions to appoint a Compliance officer at the management level with responsibility for on-going compliance with AML/CFT laws, regulations and best practices. It however requires that there be a reporting officer, but the designated level is not specified. Section 10 of the MLPA provides that a financial institution shall establish and maintain internal reporting procedures to (a) identify persons to whom an employee is to report information which comes to the employee's attention in the course of employment that a person may be engaged in money laundering; (b) enable a person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 9(1)(c); (c) require the person referred to in paragraph (b) to report the matter pursuant to section 9(1)(c) in the event that the person determines that sufficient basis exists.

566. The finalised MLPA guidance notes refers to a reporting officer – section 90 states that financial institutions and persons engaged in other business activity should ensure:

i. that key staff know to whom their suspicions should be reported; and

ii. that there is a documented procedure approved by the board of directors for reporting such suspicions without delay to the Reporting Officer.

567. Further section 91 of the guidance notes states that Key staff should be required to report any suspicion of laundering either directly to their Reporting Officer or if the institution so decides to their line manager for preliminary investigation in the event that there are any known facts which may negate the suspicion.

568. In practice, the ECCB requires that the commercial banks appoint a compliance officer and this officer's scope of duties is broader than that contained in the MLPA.

569. Neither legislation nor guidance notes provides for the timely access to information by MLROs. In regard to timely information and other CDD information section 9 of the MLPA calls for financial institutions to establish and maintain transaction records of a transaction for a period of 7 years after the completion of the transaction recorded and that where evidence of a person identity is obtained, establish and maintain a record that indicates the nature of the evidence obtained and which comprises either a copy of the evidence or information as would enable a copy of it to be maintained.

570. In practice, the Compliance Officers at the commercial banks have timely access to CDD information, transaction records and other relevant information. The practice in other parts of the financial sector is inconsistent.

571. Section 9 (1)(f) of the MLPA provides for financial institutions to develop and apply internal policies, procedures or controls to combat money laundering and

develop audit functions to evaluate the internal policies, procedures or control of the financial institution.

572. Further section 9(g) calls for financial institutions to develop a procedure to audit compliance with the Act (MLPA)

573. In practice, not all segments of the financial services sector have documented and implemented policies, procedures to address AML/ CFT. Further, not all of the segments have implemented an independent audit function which performs compliance testing with the MLPA.

574. The ECCB has indicated that all the commercial banks are in compliance with the statutory obligations under the MLPA. Section 19 of the Banking Act imposes a statutory obligation for the external auditor to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the financial institutions and are being implemented in accordance with the applicable laws.

575. Financial institutions and persons engaged in other business activity should be required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

576. Section 11 (b) of the MLPA provides for employees to be provided with appropriate training in recognition and handling of money laundering transactions. There is no obligation that this should be on an on-going basis.

577. The finalised MLPA guidance notes–outlined the need for training which should include:

i. the company's instruction manual;

ii. a description of the nature and processes of laundering;

iii. an explanation of the underlying legal obligations contained in the Act and any Regulations made thereunder; and other anti- money laundering legislation and guidelines;

iv. an explanation of vigilance policy and systems, including particular emphasis on verification and the recognition of suspicious transactions and the need to report suspicions to the Reporting Officer (or equivalent).

578. *The* finalised *MLPA guidance notes (section 110)* requires institutions to have a duty to ensure that key staff receives sufficient training to alert them to the circumstances whereby they should report customers/clients and/or their transactions to the Reporting Officer. Such training should include making key staff aware of the basic elements of:

i. the Act and any Regulations made thereunder and in particular the personal obligations of key staff thereunder, as distinct from the obligations of their employers thereunder;
ii. vigilance policy and vigilance systems;
iii. the recognition and handling of suspicious transactions;
iv. other pieces of anti- money laundering legislation identified at the beginning of these notes;
v. any Code of Conduct/Practice issued under regulatory legislation or voluntarily adopted by various industry associations; and
vi. any additional guidelines and instructions issued by the FIA.

579. There are no legal obligations under the MLPA which requires that financial institutions and persons engaged in other business activity document and implement screening procedures for employees on an on-going basis.

580. In practice, commercial banks monitor the activity in staff accounts. Generally, financial institutions and persons engaged in other business activity do background checks before hiring staff. However, the depth and scope of the due diligence before hiring employees varies from institution to institution.

581. The finalised MLPA guidance note notes the importance of knowing your employees and that proper screening procedure should be adopted to ensure that only honest and law-abiding persons are employed.

Additional elements

582. Section 10 of the MLPA provides that a financial institution shall establish and maintain internal reporting procedures to (a) identify persons to whom an employee is to report information which comes to the employee's attention in the course of employment that a person may be engaged in money laundering; (b) enable a person identified in accordance with paragraph (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 9(1)(c); (c) require the person referred to in paragraph (b) to report the matter pursuant to section 9(1)(c) in the event that the person determines that sufficient basis exists. However legislation does not refer to the seniority of the person and their reporting line.

Recommendation 22

583. Legislation does not provide for financial institutions or persons engaged in other business activity to ensure that their foreign branches and subsidiaries observe AML/CFT measures which are consistent with the home country requirement. However the MLPA guidance notes addresses the issue by stating:-

584. Where a group whose headquarters is in St. Lucia operates branches or controls subsidiaries in another jurisdiction, it should ensure that:

a) such branches or subsidiaries observe these Guidelines or adhere to local standards if those are at least equivalent;

b) such branches and subsidiaries are informed as to current group policy; and

c) each such branch or subsidiary informs itself as to its own local reporting point; equivalent to the FIA in St. Lucia and that it is conversant with the procedures for disclosure equivalent to Appendix F outlined in the finalised guidance note.

585. In practice, where a financial institution or persons engaged in other business activity is part of a group of companies, a group AML/CFT policy is adopted throughout the group. Each member of the group adapts the policy to ensure that it is compliant with domestic law and guidelines. Where there is a compliance function at the group level, adherence with the group policy as well as domestic law is reviewed. There are inconsistent practices within the financial sector.

586. Where an application is made, either the ECCB or FSSU would assess the adequacy of the AML/CFT policy and procedures and also for compliance with the MLPA. Between 2002 and 2004, the ECCB did targeted onsite examinations of the commercial banks to determine compliance with the MLPA. With the exception of two commercial banks, the banking sector is in compliance with the MLPA.

587. There are inconsistent practices within the other segments of the financial sector. When an application is made to the FSSU for approval to conduct business, the AML/CFT framework is reviewed.

588. In practice, some financial institutions and persons engaged in other business activity which are part of a larger group, apply the more stringent standard which is often the group policy. Where there is a compliance function at the parent company level, the domestic institution would feed its compliance reports to the head office.

589. There is no legal requirement or practice which requires financial institutions or persons engaged in other business activity to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

Additional Elements

590. There is neither legal obligation nor practice which requires financial institutions subject to the Core Principles to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide. In practice, this is done by some institutions which are part of a conglomerate.

3.8.2 Recommendations and Comments

Recommendation 15

591. The provisions of the MLPA should be extended so that all financial institutions and other persons engaged in other business activity should appoint a Compliance Officer at the management level who must be a fit and proper person,

approved by the Board of Directors of the financial institution with the basic functions outlined in the law.

592. The MLPA guidance notes should be expanded to require that internal policies and procedures provide for the Compliance Officer to have access / report to the board of directors.

Recommendation 22

593. The details outlined in the guidance note should be adopted in the MLPA and applied consistently throughout the industry.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Provisions are contained in the law but all financial institutions do not comply. • There is no requirement to appoint a compliance officer at the management level and on going due diligence on employees. • Where the financial institutions do have policies and procedures there are deficiencies e.g. do not provide guidance on treatment of unusual, complex and suspicious transactions. • The general requirements are contained in documents which have no enforceability for non compliance • There is no obligation for financial institutions and persons engaged in other business activity to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. • There is no obligation for financial institutions and persons engaged in other business activity to document and implement screening procedures for employees on an on-going basis.
R.22	**NC**	• There are no statutory obligations which require financial institutions to adopt consistent practices within a conglomerate structure. Although this is done in practice, given the vulnerabilities, it should be made a legal obligation. • There are no enforceable means which require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT standards consistent with the home country. o No requirement for financial institutions to inform their home supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by the host country.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

594. The International Banks Act Chapter 12.17 states that a person shall not carry on international banking business from St. Lucia unless that person is granted and holds a valid licence to do so under section 4. Further, section 5 states that a licence shall not be granted to an eligible company unless it has and it designates and notifies to the Minister by name, a registered agent, which is not an official of the applicant, to act as its registered agent and registered office in St. Lucia. A licensee shall not:

i. cease to have a registered office or registered agent in St. Lucia;
ii. change its registered office or registered agent in St. Lucia without the prior approval of the Minister.

595. The Banking Act 12.01 section 3, states a person shall not carry on banking business in St. Lucia without a licence granted by the Minister. Further, section 7 states:

i. Any licence granted under this Act shall authorise the licensed financial institution to carry on banking business in St. Lucia at the place of business designated in the licence and at such other place as the Minister may after consultation with the Central Bank in writing authorise.
ii. A financial institution shall not open a new place of business or change the location of an existing place of business in St. Lucia without the prior approval of the Minister after consultation with the Central Bank and no financial institution shall close an existing place of business in St. Lucia without having given 90 days prior notification to the Minister and the Central Bank.
iii. A local financial institution shall not open a place of business elsewhere than in St. Lucia without the prior approval of the Minister after consultation with the Central Bank.

596. There are no shell banks operating in this jurisdiction. All banks both offshore and domestic must have a physical presence in the jurisdiction. The physical presence refers to mind and management.

597. Legislation does not address this directly however in practice within the offshore sector one of the requirements for licensing is the provision of information on the correspondent bank, and its financial statement. On the domestic side, the ECCB has guidelines in regard to establishing correspondent relationship.

598. At present there is no correspondent relationship with any shell banks both within the offshore and domestic sector.

599. Neither legislation nor the finalised MLPA guidance note require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

600. The MLPA guidance note should be amended to require financial institutions to ensure that their correspondent banks in a foreign country do not permit accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**NC**	• There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

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 role and duties & structure and resources – R.23, 30

601. The Financial Intelligence Authority ("FIA") established under section 3 of the MLPA, has general responsibility for the prevention of money laundering in financial institutions.

602. Section 4 (2)(i) states that the FIA shall advise financial institutions of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime Act or any other enactments replacing it. Further the FIA shall advice the Minister as to the participation of St. Lucia in the international effort against ML and FT.

603. Section 5 of the MLPA provides for the power of the FIA which includes entering into the premises of a financial institution or person engaged in other business activity; requiring the production of such information; ask questions relevant to the transaction record; make notes or take a copy of part or all of the transaction record and instruct a financial institution to take steps as may be appropriate to facilitate an investigation.

604. The financial sector is supervised by the ECCB, FSSU and the Registrar of Cooperatives (under the Ministry of Finance). A study conducted by CARTAC in 2004 recommended that a single regulatory unit (SRU) should be established. Steps are being taken to establish the SRU as a statutory body, thereby bringing all the financial sector supervisory agencies under the Ministry of Finance. The ECCB will continue as the regulator of the on-shore commercial banks but there will be a functional relationship with the FSSU. This proposed structure would enable consistent supervisory practices to be adopted by the various supervisors. Cooperation would also be enhanced under this new structure.

605. The FIA established under section 3 of the MLPA, shall act as the agency responsible for receiving, analysing, obtaining and disseminating information which

relates to or may relate to the proceeds of offences under POCA or the MLPA or any enactment replacing it.

606. Section 4 (2) (i) of the MLPA states that the FIA shall advise financial institutions and persons engaged in other business activity of their obligations under measures that have been or might be taken to deter, prevent and deter the commission of offences under the Proceeds of Crime Act or any other enactments replacing it. Further section 5 (e) provides for the FIA to instruct a financial institution and persons engaged in other business activity to take steps as may be appropriate to facilitate an investigation by the FIA.

607. The effectiveness of the FIA is negatively impacted because awareness of the FIA and its role in AML/CFT matters is relatively low in some parts of the financial sector.

608. The FIA has only recently provided written guidance to the sector ant all stakeholders are aware of the existence of the guidance notes.

609. The FIA is technically responsible for receiving all reports on suspicious transactions as are required to be made pursuant to the provisions of the Proceeds of Crime Act and the Money Laundering (Prevention) Act No. 36 of 1999, including information from any Foreign Financial Intelligence Unit subject to the conditions the FIA may consider appropriate. Subsection 4(2) (e) provides that the FIA may provide information relating to suspected money laundering or information relating to suspicious activity report to any foreign financial intelligence unit.

R.30 Resources (Supervisor)

610. The FIA being the main responsibility for combating of ML and FT has a director and 3 staff to assist in the efforts against ML and FT. Two of the 3 officers have been trained extensively in the area of ML with the third being a new addition to staff.

611. The FSSU is now responsible for supervising both the on-shore and offshore financial sector with the exclusion of on-shore banks which is supervised by the ECCB. The Unit consists of a Director and 7 regulators. Recommendations have been put forward for the hiring of an additional 2 regulators. There has been some training in AML and CFT but there is still some work to be done in this area.

612. The FSSU and the Registrar of Cooperatives are part of the Ministry of Finance. Staff is seconded from within the public service. This has posed challenges for the regulators because when other more lucrative public service positions become available, the supervisory staff takes advantage of such opportunities.

613. The ECCB who has the responsibility for regulating the on-shore banks for the Eastern Caribbean islands. It has a staff compliment of approximately 271 staff consisting of research staff and staff from the supervision unit. The staff is qualified and trained.

614. FSSU staff is required to abide by the code of conduct for all public servants. In addition, the secrecy provisions contained in the legislation also applies to staff of the regulator.

615. Training is done on a limited basis due to budgetary constraints of the various units. The staff of the ECCB has been exposed to AML/CFT training conducted by the IMF / Federal Reserve and U.S. SEC. In the FSSU, staff has been exposed to training conducted by the Federal Reserve and CFATF. The FIA has conducted short seminars to the credit union sector to make them aware of the requirements under the MLPA.

Authorities Powers and Sanctions – R.29 & 17

616. Section 5 of the MLPA provides for the power of the FIA which includes entering into the premises of a financial institution; requiring the production of such information; ask questions relevant to the transaction record; make notes or take a copy of part or all of the transaction record and instruct a financial institution to take steps as may be appropriate to facilitate an investigation. Further section 5 (e) provides for the FIA to instruct a financial institution to take steps as may be appropriate to facilitate an investigation by the FIA.

617. The financial sector supervisors the ECCB, FSSU, Registrar of Cooperatives all have the power to conduct on-site examinations. The FSSU also has the power to conduct onsite examinations and access records, documents and information relevant to monitoring compliance. During the period December 2004-2007 3 onsite examinations were conducted on international banks. The standards differ among the sector supervisors. The SRU would assist in harmonising supervisory practices and may lead to more effective use of staff.

618. Supervisory practices also include the submission of various types of reports (financial, qualitative and review of policies and procedures)

619. With respect to the domestic banks, section 19(2) of the Banking Act requires them to annually appoint an auditor satisfactory to the Central Bank whose duties shall inter alia include: "*to certify whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the licensed financial institution, and are being implemented in accordance with the applicable laws"*.

620. The ECCB has incorporated AML/CFT as part of its overall risk-based on-site examination process. Additionally, in instances where remedial action is required, ECCB increases its monitoring of such institutions. The enforcement power of the ECCB has been enhanced to include letters of commitment, MOUs, written warnings, cease and desist orders, fixed monetary penalties, instituting legal proceedings and restriction and revocation of licenses.

621. In the case of the ECCB, there appears to be a more collaborative working relationship with the commercial banks. The enforcement ladder for non compliance appears to work effectively and this is supplemented by the internal audit departments of the commercial banks.

622. The authority to inspect and require the production of any transaction can be done by the FIA without court order.

623. The MLPA section 4(3) states that any person failing or refusing to provide such information as is required in the production of information that the FIA considers relevant to the fulfilment of its functions commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding 10 years or both. Person as defined in the MLPA includes both corporate and unincorporated body.

624. Section 9 (5) of the MLPA states that where a financial institution or a person engaged in other business activity acts in contravention of subsection 4, a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or an the behalf of the body of persons, commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand dollars and not exceeding five hundred thousand dollars or to imprisonment for a term of not less than seven years and not exceeding 15 years or both.

625. Section 18 of the MLPA states that a person who engages in money laundering commits an offence and is liable to summary conviction to a fine of not less than half million dollars and not exceeding one million dollars or to imprisonment for a term of not less than 5 years and not exceeding 10 years or both; on conviction on indictment to a fine of not less than one million dollars and not exceeding two million dollars or to imprisonment for a term of not less than 10 years and not exceeding 15 years or both.

626. Section 18 (2) states that a person who attempts, aids, abets, counsels, or procures the commission of, or who conspires to engage in money laundering commits an offence and is liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for 5 years or both and on conviction on indictment to a fine not exceeding two million dollars or to imprisonment for 15 years or both. There are no provisions for administrative sanctions.

627. The draft ATA 2003 section 6(1) states that: " Any person who, directly or indirectly, provides or makes available financial or other related services intending that they be used, in whole or in part for the purpose of committing or facilitating the commission of a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; knowing that in whole or part, they will be used by, or will benefit a terrorist group, commits an offence and is on conviction on indictment, liable to imprisonment for a term of twenty five years." The draft ATA also provides for criminal sanctions for persons engaged in FT

628. Section 12 of the MLPA gives the Magistrate the power in accordance with the Criminal Code, 1992 to issue to a Police Officer, a warrant to search the premises and remove any document material or other thing of an employee of a financial institution or a person engaged in other business activity where it is believed that the employee is committing or has committed or is about to commit an offence under the MLPA. Section 16 of the MLPA states that conduct engaged in on behalf of a body corporate by a director, servant or agent within the scope of their authority or by the direction of a director, servant or agent of a body corporate when the direction is in the director, servant or agent's authority shall be deemed to have been engaged in by the body corporate. Conduct engaged in on behalf of a person by a servant or agent or under the direction of the servant or agent of the person shall be deemed to be have been engaged in by the person.

629. In addition to criminal sanctions, the supervisory authorities can also apply other sanctions. The FSSU can restrict / revoke licenses and also not renew licenses. In 2006, the ECCB enhanced its ladder of enforcement to include letters of commitment, MOUs, written warnings, cease and desist orders, fixed monetary penalties, institute legal proceeding and also restrict / revoke licenses.

630. Since there have been no convictions for money laundering for any of the predicate offences prescribed in the MLPA, it is difficult to determine whether the sanctions are effective despite the high dollar values of the fines.

631. The sanctions which are applicable for failure to comply with AML/CFT requirements appear to be proportionate. However owing to the fact that St. Lucian authorities have never imposed any sanctions for any such breaches, the effectiveness and dissuasiveness of such sanctions cannot be ascertained.

632. In the case of the ECCB, there appears to be a more collaborative working relationship with the commercial banks. The enforcement ladder for non compliance appears to work effectively and this is supplemented by the internal audit departments of the commercial banks.

Market entry – R.23

633. Under regulatory measures both the ECCB and the FSSU play a significant role in preventing criminals or their associates from holding or being beneficial owners in a financial institution. This is maintained by the due diligence that is undertaken when such persons apply to the regulatory authorities as well as the on-going due diligence that is done.

634. All new applications for conducting financial activities in St Lucia are subject to due diligence by the respective sector supervisor. In the offshore sector, the FSSU conducts a detailed review of the application which includes criminal checks on the beneficial owners and site visits to the applicants. The registered agents and trustees are themselves supervised by the FSSU.

635. Regulations within the various legislation governing the offshore sector refers to the numerous processes that needs to be undertaken in determining the fit and proper criteria. The ECCB has developed guidelines on the fit and proper test that needs to be undertaken.

636. There is no legislation which governs persons providing money or currency changing services.

637. Sections 4 and 5 of the Registered Agents and Trustees Act requires that no person may carry on an aspect of the business of international financial services representation directly or indirectly in or from St Lucia unless that person is granted and holds a valid license.

638. Section 5(3) provides that a company shall not be granted a license unless that company is ultimately beneficially owned or controlled by a resident or by a foreign bank having a license under the Banking Act.

Ongoing supervision and monitoring – R.23 & 32

639. All financial institutions wishing to conduct business in St Lucia must submit an application which has to be approved by the Minister of Finance. For example, Section 5 of the banking act provides inter alia that:

1. In order to obtain a licence as a financial institution, a person shall apply in writing to the Minister and submit the documents and other information as specified in Schedule 1.

2. In considering an application for a licence the Minister shall request the Central Bank to conduct such investigation as it may deem necessary to ascertain –

i. the validity of the documents submitted in accordance with Schedule 1;
ii. the financial condition and history of the applicant;
iii. the character of the business of the applicant;
iv. the experience of the person or persons who are to constitute its management;
v. the adequacy of its capital structure;
vi. the earning prospects of the applicant; and
vii. the convenience and needs of the community to be served by the granting of the licence.

3. A foreign financial institution that intends to open a branch or an affiliate within St. Lucia must in addition to submitting the documents and other information required under subsection (1), submit with its application:
   i. a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organised has no objection to its application for a license to do business n St. Lucia; and
   ii. evidence satisfactory to the Central bank that it is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in its home country.
4. Within a reasonable time of its receipt of the application for a licence the Central Bank shall make its recommendations to the Minister.
5. Within 30 days of the receipt of the recommendations of the Central Bank the Minister shall either grant the licence or, if the Minister is of the opinion that it would be undesirable in the public interest to grant the licence, he or she may refuse to grant the same and need not give any reason for so refusing but shall inform the applicant that he or she has refused to grant the licence.
6. A financial institution shall not be granted a licence under this section unless it fulfills the capital requirements specified in section 13.

640. Sections 4 and 5 of the Registered Agents and Trustees Act requires that no person may carry on an aspect of the business of international financial services representation directly or indirectly from St Lucia unless that person is granted and holds a valid license.

641. Section 5(3) provides that a company shall not be granted a license unless that company is ultimately beneficially owned or controlled by a resident or by a foreign bank having a license under the Banking Act.

R.32

642. Comprehensive statistics are not readily available or maintained as to the effectiveness and efficiency for combating ML and TF.

Statistics

FSSU:

2007 – 9 registered trustees, 3 trustees

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

643. The practice has been for the ECCB and FSSU to issue guidance notes as opposed to guidelines. The guidance notes do not have the force of law. The FSSU has not issued any guidance on AML/CFT. In 1995 the ECCB issued guidance note on AML. It outlines the minimum contents of an AML programme. It is a dated document which does not reflect the current provisions to the MLPA. Subsequently new guidance notes was issued to the financial sector for adoption.

644. Section 5(f) of the MLPA gives the FIA the statutory power to "issue from time to time guidelines to financial institutions or persons engaged in other business activity as to compliance with the MLPA and regulations made under the MLPA. The FIA has prepared a comprehensive guidance note dealing with AML/CFT matters. It seeks to clarify details of the MLPA and also gives examples of suspicious transactions but did not address typologies of ML and TF techniques and methods. There are parts of the financial sector which were unaware that a draft of this document was circulated to the industry for comment. While the document has been signed-off by the Attorney General, at the time of the Mutual Evaluation it was not yet circulated to the industry for adoption.

3.10.2 Recommendations and Comments

Recommendation 23

645. St. Lucia should consider a registration or licensing process for money or value transfer service businesses.

Recommendation 25

646. The guidance notes issued by the FIA should be circulated to all stakeholders

Recommendation 29

647. St. Lucia should expedite the implementation of the SRU which will assist in harmonizing supervisory practices and may lead to more effective use and cross training of staff.

Recommendation 30

648. The staff of the ECCB in terms of numbers, skills and training is adequate. However, because the staff of the FSSU and the Registrar of Cooperatives fall under the public service (Ministry of Finance) there are budgetary and staffing issues. Additionally, training budgets are small and not all supervisory staff are adequately

exposed to AML/CFT training – this therefore limits the ability to adequately conduct on-site examination with an AML/CFT focus

Recommendation 32

649. Supervisors should maintain statistics on an ongoing basis

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• The full range of sanctions (civil, administrative as well as criminal) is not available to all supervisors. • The lack of enforcement of criminal sanctions negatively impacts the effectiveness of the imposition of criminal sanctions.
R.23	**NC**	• The effectiveness of the FIA is negatively impacted because awareness of the FIA and its role in AML/CFT matters is relatively low in some parts of the financial sector. • The FIA has only recently attempted to provide written guidance to the sector and not all stakeholders are aware of the existence of the guidance notes. • The regulatory and supervisory measures which apply for prudential purposes and which are also relevant to money laundering is not applied in a similar manner for anti-money laundering and terrorist financing purposes, except where specific criteria address the same issue in the FATF methodology. • Money or value transfer service businesses are not licensed
R.25	**NC**	• The guidance notes issued by the FIA does not give assistance on issues covered by relevant FATF recommendations • FIA does not provide feedback to the financial institutions on STR filed and FATF best practices.
R.29	**PC**	• Effectiveness of the ability of supervisors to conduct examinations is negatively impacted by the differing levels of the scope of the examinations and the training of staff. • There is no obligation which gives the FIA adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing consistent with the FATF recommendations.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

650. Money Services are not presently regulated since there is no legislation for them. There is a draft legislation- however they are covered under the MLPA and

therefore must comply with the provisions of the Act. The draft legislation does call for the registration of such persons.

651. It should be noted that, with respect to electronic transfers, section 105 of the MLPA guidance notes requires institutions to retain records of payments made with sufficient detail to enable them to establish:

652. Ultimately, there is no effectiveness of the implementation of AML/ CFT related to money and value transfers services since the MLPA does not address that issue. Additionally, there is no anti-terrorist financing legislation in this regard.

653. There is no provision in the MLPA related to money or value transfer services.

654. The MLPA does not address the issue of money or value transfer services. However, according to the interviews, money or value transfer services operators are subject to the applicable FATF Forty Recommendations and FATF Nine Special Recommendations (in particular SR VII) because they are required to by their correspondents.

655. In St. Lucia, there is no obligation in the law or the MLPA guidance note that requires the country to have a system in place for monitoring money or value transfer services operators. Ultimately, the country cannot ensure that MVT services operators comply with the FATF Recommendations.

656. There is no explicit obligation in the law that requires each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the competent authority.

657. The MVT service operators have no explicit obligation under the MLPA. Additionally, in St. Lucia, there is no Anti-Terrorist Act (ATA). So, there is no failure to comply with anti-money laundering or terrorist financing. Ultimately, there is no provision for sanctions.

Additional Material

3.11.2 Recommendations and Comments

658. Legislation should be adopted to require money transfer services to take measures to prevent their being used for the financing of terrorism, and to comply with the principles of the FATF Nine Special Recommendations on the subject.

659. St. Lucia should ensure that persons who perform MVT services are either licensed or registered and that this function is specifically designated to one or more competent authority.

660. MVT service operators should be made subject to the AML & CFT regime.

661. St Lucia should ensure that MVT service operators maintain a listing of its agents and that this listing is made available to competent authorities.

662. MVT operators should be made subject to effective, proportionate and dissuasive sanctions in relation to their legal obligations.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	• No legal requirement under the MLPA • No obligation to persons who perform MVT services to licensed or registered • No obligation for MVT service operators to subject to AML/CFT regime • No listing of MVT operators is made available to competent authorities • No effective, proportionate and dissuasive sanctions in relation to MVT service are set out

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

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

4.1.1 Description and Analysis

663. Legislation (MLPA) requires that similar measures applied to financial institutions are also applied to DNFBP. Statutory Instrument, 2004, No. 59 has expanded the scope of institutions as follows:

i. Real estate business
ii. Car dealerships
iii. Casinos (gaming houses)
iv. Courier services
v. Jewellery business
vi. Internet gaming and wagering services
vii. Management companies
viii. Asset management and advice-custodial services
ix. Nominee agents
x. Registered agents
xi. Any business transaction conducted at a post office involving money order;
xii. Lending(including personal credits, factoring with or without recourse, financial or commercial transactions including forfeiting cheque cashing services;
xiii. Finance leasing
xiv. Venture risk capital
xv. Money transmission services
xvi. Issuing and administering means of payment (e.g. credit cards, travelers' cheques and bankers' drafts)
xvii. Guarantees and commitments
xviii. Trading for own account of customers in:

a money market instruments (cheques, bills, certificates of deposit etc);
b foreign exchange
c financial futures and options
d exchange and interest rate instruments and
e transferable instruments
xix. Underwriting share issues and the participation in such issues
xx. Money broking
xxi. Investment business
xxii. Deposit taking
xxiii. Bullion dealing
xxiv. Financial intermediaries
xxv. Custody services
xxvi. Securities broking and underwriting
xxvii. Investment and merchant banking
xxviii. Asset management services
xxix. Trusts and Other Fiduciary services
xxx. Company formation and management services
xxxi. Collective investment schemes and mutual funds
xxxii. Attorneys-at-Law
xxxiii. Accountants.

664. Lawyers as professionals who take on various activities which have been labelled as "other business activities" under the MLPA 2004 No. 59 Part B of the Schedule have been complaining that there is no formal relationship nor is there any contact with FIA such that the members of the Bar Association can attribute their lack of training in AML/CFT measures and the general reactive methods adopted to KYC and KYE powers.

665. The Bar Association though a well established organisation which has a Council and many responsibilities has in recent times faced a grave problem in repairing the loss of members and subscriptions with the advent of the Legal Profession Act which upon enactment no longer made membership to the Bar Association mandatory in St. Lucia.

666. Accordingly, though lawyers of necessity avail themselves of the relevant laws and guidelines and information existing, there is a proposed action plan to be implemented within the term of the newly nominated board.

667. Given that the other activities are non-financial but somehow encapsulate the mechanism operating in the banking sector. This goes right at the root of the fact that every transaction requires the service of an Attorney particularly with regard to transfers of title, company secretary and corporate management as well as legal counsel in real estate transactions and also as registered trustees or agents (as the need arises.)

Recommendation 12 (Applying Recommendation 5)

668. With respect to DNFBPs, customer identification requirements are set out in the MLPA.

669. Section 9 (2) of the MLPA effectively prohibits anonymous accounts or account in fictitious names. It states that a financial institution or a business of a

financial nature (Other Businesses or DNFBPs: MLPA 2003, second schedule, Statutory Instrument, 2004, No. 59) shall keep an account in the true name of the account holder.

670. Section 8 (1) of the MLPA states a financial institution or a business of a financial nature shall take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

671. The MLPA Guidance note (section 37- 44) provides for the verification of identity for Individuals, companies, partnership, charitable organizations. It further states that identity must be verified in all cases where money laundering is known or suspected.

672. Lawyers should be obliged to file or report STRs. However, lawyers have reiterated that whether the transaction is a one off client service or not, it matters not as any conflicts must be resolved by erring on the side of caution and by maintaining their right to exercise their profession privilege advantage.

VERIFICATION OF SUBJECT

Individuals

673. The verification subject may be the account holder himself or one of the principals of the account. An individual trustee should be treated as a verification subject unless the institution has completed verification of the trustee in connection with a previous business relationship or one-off transaction and termination has not occurred. Where the applicant for business consists of individual trustees, all of them should be treated as verification subjects unless they have no individual authority to operate a relevant account or otherwise to give relevant instructions.

Partnerships and Unincorporated Businesses

674. Institutions should treat as verification subjects all partners/directors of a firm which is an applicant for business who are relevant to the application and have individual authority to operate a relevant account or otherwise to give relevant instructions. Verification should proceed as if the partners were directors and shareholders of a company in accordance with the principles applicable to non-quoted corporate applicants. In the case of a limited partnership, the general partner should be treated as the verification subject. Limited partners need not be verified unless they are significant investors.

Companies (including corporate trustees)

675. Unless a company is quoted on a recognized stock exchange or is a subsidiary of such a company or is a private company with substantial premises and pay roll of its own, steps should be taken to verify the company's underlying beneficial owner/s - namely those who ultimately own or control the company.

676. The expression "underlying beneficial owner/s" includes any person/s on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.

Intermediaries

677. If the intermediary is a locally regulated institution and the account is in the name of the institution but on behalf of an underlying customer (perhaps with reference to a customer name or account number) this may be treated as an exempt case but otherwise the customer himself (or other person on whose wishes the intermediary is prepared to act) should be treated as a verification subject.

678. Where an institution suspects that there may be an undisclosed principal (whether individual or corporate) it should monitor the activities of the customer to determine whether the customer is in fact merely an intermediary. If a principal is found to exist, further enquiry should be made and the principal should be treated as a verification subject.

679. Section 8 of the MLPA requires the financial institutions and the DNFBPs to undertake customer due diligence measures when establishing business relationship.

680. Realtors are not aware of the MPLA or about AML policies for St. Lucia. Because of affiliation with the U.K. in particular and in particular the Institute of Chartered Accountant, trade standards are applicable and due diligence procedures are incorporated in this sector.

681. With respect to residents, realtors do the following due diligence:

i. verification of identification of client
ii. passport id and utility bill
iii. source of funds to be validated before the funds is put as deposit in escrow
iv. notarized
v. proof any additional documents or ID if client is from abroad

682. With respect to non- residents, realtors do the following due diligence:

ii ID (verified)
iii Fingerprints
iiii Police Clearance
iiv Personal reference
iv Financial/Bank reference
ivi Alien land holding license approval

683. There is no obligation concerning an applicable threshold nor is there regulations requiring that DNFBPs undertake customer due diligence (CDD) measures when carrying out occasional transactions above the applicable designated threshold. This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

684. There is no obligation requiring the DNFBPs to undertake customer due diligence (CDD) measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.

685. No legislation exists to permit compliance with Special Recommendation VII against the financing of terrorism.

686. There is no obligation requiring the DNFBPs to undertake customer due diligence (CDD) measures when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.

687. No obligation requiring the DNFBPs to undertake customer due diligence (CDD) measures when the DNFBPs has doubts about the veracity or adequacy of previously obtained customer identification data.

688. St. Lucia has no obligation to require the DNFBPs to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information.

689. The MLPA under its section 8 (2) requires DNFBPs to take reasonable measures to establish whether the person is acting on behalf of another person. However, DNFBPs are not required to determine if that person is authorized. Additionally, there is no obligation to identify and verify the identity of hat person.

690. DNFBPs have no obligation under the MLPA to verify the legal status of the legal person or legal arrangement, e.g. by obtaining proof of incorporation or similar evidence of establishment or existence, and obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

691. With respect to acting on behalf of another person, the MLPA does not specify that the DNFBPs should take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

692. Concerning the customers that are legal persons or legal arrangements, DNFBPs have no obligation under the MLPA to take reasonable measures to understand the ownership and control structure of the customer and determine who are the natural persons that ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement. DNFBPs are required under the law to perform CDD, however they are not required to file this information. Nevertheless under Section 22 of the MLPA they can disclose with protection.

693. DNFBPs are not required under the MLPA to obtain information on the purpose and intended nature of the business relationship.

694. DNFBPs have no obligation under the MLPA to conduct ongoing due diligence on the business relationship.

695. The MPLA does not specify that DNFBPs should pay attention to transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

696. There is no obligation under the MLPA that requires DNFBPs to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

697. The MLPA does not provide for performing enhanced due diligence for higher risk categories of customer, business relationship or transaction.

698. Legislation in St. Lucia does not provide for applying reduced or simplified measures where there are low risks of money laundering or terrorist financing.

699. With respect to DNFBPs, legislation in St. Lucia does not provide for applying reduced or simplified customer due diligence measures where there are risks of money laundering or terrorist financing or where adequate checks and controls exist elsewhere in national system

700. With respect to applying simplified or reduced CDD to customers resident in another country which is in compliance and have effectively implemented the FATF recommendations, the MLPA keeps silent concerning DNFBPs.

701. Section 9(1) (c) of the MLPA provides for the reporting of suspicious transactions. However, there is no guidance in legislation on the issue of simplified CDD measures and its applicability towards suspicious transactions of ML and TF.

702. The MLPA does not provide for permission to determine the extent of the CDD measures on a risk sensitive basis.

703. The MLPA does not provide for verification of identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

704. The MLPA does not provide for utilization of the business relationship prior to verification. Additionally, section 147 of the MLPA guidance note stipulates "Whether a transaction will result in an entry into a significant one-off transaction and/or into be carried out within a business relationship, verification of the customer should be completed prior to the acceptance of any premiums from the customer and/or signing of any contractual relationship with an applicant for business.

705. With respect to a failure to satisfactorily complete CDD, regarding the DNFBPs, section 135 of the MLPA guidance notes states that if verification has not been completed within a reasonable time, relationship or significant one-off transaction in question should not be proceed any further. However, in that situation, the MLPA does not provide for making a suspicious transaction report. The MLPA stays silent regarding existing customers.

706. Section 8(3) (4a) of the MLPA states In determining what constitutes reasonable measures for the purposes of this section, a financial institution or a business of a financial nature shall have regard to all the circumstances of the case and in particular - as to whether the person is resident or is a corporate body incorporated in a country in which there are in force provisions applicable to it to prevent the use of a

financial institution or a business of a financial nature for the purpose of money laundering.

Recommendation 12 **(Applying Recommendations 6 and 8-11)**

707. No legal provision was found requiring DNFBPs to carry out the CDD measures demanded by Recommendation 5, in order to determine whether a possible customer falls under the description of a Politically Exposed Person (PEP), nor any rules indicating when the source of wealth, or the origin of the funds of such customers should be determined. Nor are there any guidelines for procedures concerning the recording of transactions performed by customers, the scope of such information and the length of time should be preserved.

708. There is no legislation in St. Lucia dealing with the misuse of technological developments in AML/CFT schemes.

709. With regard to non face-to-face customers, the MLPA does require DNFBP to take reasonable measures to satisfy itself as to the true identity of a person seeking to enter into a transaction with it or to carry out a transaction or series of transactions with it.

710. By Virtue of section 9 (1) (a), the MLPA 2003 requires DNFBPs to establish and maintain record of transactions for a period of 7 years after the completion of the transaction recorded.

711. The MLPA guidance note at section 103 – 104 requires a retention period of 7 years of all records of transactions.

1. Verification records will generally comprise:

   i. A description of the nature of all the evidence received in relation to the identity of verification subject ; and
   ii. The evidence itself or a copy of it or, if that is not readily available, information reasonably sufficient to obtain such a copy.

2 Records relating to transactions will generally comprise:

i Details of personal identity , including the names and addresses, of:

1. The customer;
2. The beneficial owner of the account or product;
3. Any counter-party;

ii. Details of securities and investments transacted including:

1. The nature of such securities/investments;
2. Valuation(s) and price(s)
3. Memoranda of purchase and sale;
4. Source(s) and volume of funds and bearer securities;'
5. Destinations(s) of funds and bearer securities
6. Memoranda of institutions(s) and authority/ies
7. Book entries;
8. Custody of title documentation;

9. The nature of the transaction;
10. The data of the transaction; and
11. The form (e.g. cash, cheque) in which funds are offered and paid out..

712. The MLPA does not address specifically the issues of:
713. Record on ***international transaction.***
714. Customer and transaction records and information to be available on a ***timely basis*** to domestic competent authorities.

Recommendation 12 (Applying Recommendation 17)

715. Section 18 of the MLPA states that a person who engages in money laundering commits an offence and is liable to summary conviction to a fine of not less than half million dollars and not exceeding one million dollars or to imprisonment for a term of not less than 5 years and not exceeding 10 years or both; on conviction on indictment to a fine of not less than one million dollars and not exceeding two million dollars or to imprisonment for a term of not less than 10 years and not exceeding 15 years or both.

716. Subsection 2 states that a person who attempts, aids, abets, counsels, or procures the commission of, or who conspires to engage in money laundering commits an offence and is liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for 5 years or both and on conviction on indictment to a fine not exceeding two million dollars or to imprisonment for 15 years or both. There are no provisions for administrative sanctions.

717. The sanctions which are applicable for failure to comply with AML/CFT requirements appear to be proportionate. However owing to the fact that St. Lucian authorities have never imposed any sanctions for any such breaches, the effectiveness and dissuasiveness of such sanctions cannot be ascertained. In addition, in St Lucia, DNFBPs are not supervised. So, their failure to comply with AML/CFT requirements cannot be determined.

4.1.2 Recommendations and Comments

718. Deficiencies identified for all financial institutions as noted in Recommendations 5, 6, 8-11 in the relevant sections of this report are also applicable to listed DNFBPs. Implementation of the specific recommendation in the relevant sections of this report will also apply to listed DNFBPs.

719. Though lawyers are aware of the potential vulnerabilities in processing transactions without doing customer due diligence, it is not mandatory for them to make any reports with respect to PEPs, no face to face businesses, 3rd party referral and cross border banking relationships for suspect FT activities where the offence of FT has not been criminalised.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• No requirement for DNFBPs to undertake CDD measures when: o They have doubts as to the veracity or adequacy of previously obtained customer identification data. o Transaction is carried out in a single operation or in several operations that appear to be linked o Carrying out occasional transactions in relation to wire transfers in the circumstances covered by the Interpretative Note to SR VII. o There is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations. o Entering relationship with customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. • No requirement for DNFBPs to undertake CDD measures (when a person is acting on behalf of another person) to verify the identity and the authorization of mandatory of that person. • No obligation under MLPA to verify the legal status of legal person or legal arrangement. • No threshold amount is addressed in the MLPA. • No legislation exits to permit compliance with Special Recommendation VII against Financing of Terrorism. • No requirement to conduct ongoing due diligence on the business relationship • No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant • No requirement for simplified CDD measures to be unacceptable in specific higher risk scenarios • There are no rules or regulations requiring DNFBPs to comply with the essential criteria of Recommendation 6, • There are no rules covering the proposals of Recommendation 8, and requiring financial institutions DNFBPs to take steps to give special attention to the threats posed by new technologies that permit anonymity • No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. • There are no rules requiring DNFBPs to pay particular attention to relationships with persons in countries that do not apply the FATF Recommendations. • There are no rules to ensure that the financial institutions are informed of

		Concerns about the weaknesses in the AML/CFT systems of other countries. • There are no counter-measures for countries that do not apply the FATF Recommendation, or apply them to an insufficient degree. • Lawyers for the most part claim legal professional privilege and a denial of awareness s to the prescribed STR form

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

4.2.1 Description and Analysis

Recommendation 16

720. Similar reporting obligations have already been described in Section 3 However, there is a concern on the poor reporting by lawyers, real estate businesses, car dealer, and jewellery businesses. There are no umbrella associations and this therefore makes it difficult to have them comply with the AML/CFT issues.

721. The FIA is having consultation with some of the DNFBP in order to help them understand their obligation under the MLPA and their reporting on suspicious transactions. Lawyers present the greatest challenge and there has been an attempt to have them comply.

***Recommendation 16* (Applying Recommendation 13)**

722. Section 9(b) (i) of the MLPA 2003 amendment No. 15 of 2004 requires DNFBPs to report to the FIA any suspicious transaction relating to money laundering as soon as reasonably practicable and in any event within seven days of the date the transaction was deemed to be suspicious.

723. The DNFBPs don't have obligation under the MLPA to make STRs that apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

724. The MLPA does not require DNFBPs to report transactions regardless of whether they are thought, among other things, to involve tax matters.

725. At the time of the Mutual Evaluation none of the DNFBPs interviewed had ever filed a STR to the FIA. But according to statistics provided by the FIA, in 2004, car dealers submitted 1 STR.

726. DNFBP should be required to comply with Recommendation 13.1 to 13.4.

727. Accordingly, given that terrorist financing is not criminalised and that lawyers are not obliged to break confidentiality and secrecy rules, the criteria of Recommendation 16 are not met.

728. As it relates to attorneys, notaries, other independent legal professionals and accountants, the option of having them report to their SRO who would then have to cooperate with FIA is not applicable in St. Lucia as the MLPA provides by its establishment of the FIA that STRs be reported directly to the Director or unit. In any event, the Bar Association of St. Lucia has no compulsory power which would require lawyers to make any reports to the Bar Council. In fact, disciplinary proceedings only arise as a result of a complaint by a client and where the response is felt to warrant a further inquiry over and above a warning.

Recommendation 16 (Applying recommendations 14, 15 &21)

729. Section 9 of the MPLA provides protection to DNFBPs for disclosing of information to the authority: "*Where a financial institution or a business of a financial nature discloses information to the Authority in accordance with this Act, but in breach of another enactment or a contract, the financial institution or a business of a financial nature, its directors or its employees shall not be liable for such breach".*

730. The MLPA at section 9 (4) (a) (b) prohibits from disclosing ("tipping off") the fact that STRs or related information is being reported or provided to the FIA. It states:

731. "Where a financial institution or a business of a financial nature makes a report under subsection 9(c), the financial institution or a business of a financial nature and employees, staff, directors, owners or other representatives shall not disclose to anyone else that the financial institution or a business of a financial nature has formed a suspicion that information has been communicated to the Authority"

732. Section 9(1) (f) of the MLPA provides for financial institutions to develop and apply internal policies, procedures or controls to combat money laundering and develop audit functions to evaluate the internal policies, procedures or control of the financial institution.

733. DNFBPs had no obligation to establish and maintain internal procedures, policies and controls to prevent Terrorist Financing. Additionally, it is not specified in the MLPA that DNFBPs should communicate these internal procedures, policies and controls to their employees.

734. DNFBPs have no obligation under the MLPA to develop appropriate compliance management arrangements at a minimum the designation of an AML/CFT compliance officer at the management level.

735. At the time of the on-site visit, DNFBPs did not provide any statistical data related to the establishment of ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

736. DNFBPs have no obligation under the MLPA to put in place screening procedures to ensure high standards when hiring employees.

737. The MLPA does not require DNFBPs to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.

738. The MLPA does not require DNFBPs to put effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

739. Section 86 of the MLPA guidance notes however states:

> "*From time to time, the authorities or management may determine that because a high incidence of money laundering is associated with persons from certain countries or regions, additional precautions are required to safeguard against use of accounts or other facilities by such persons, their immediate relatives, associates and representatives. The source of wealth and economic activities that generated the level of wealth should be substantiated. Under these circumstances, it may be necessary to request a letter of reference (confirmed), in addition to other identification requirements, from a regulated bank, which is not from the countries or regions in question".*

740. The MLPA states that any person failing or refusing to provide such information as is required in the production of information that the FIA considers relevant to the fulfillment of its functions commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding 10 years or both.

741. Section 9 (5) of the MLPA states*:*

> *"Where a financial institution or a business of a financial nature acts in contravention of subsection (4), a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand dollars and not exceeding five hundred thousand dollars or to imprisonment for a term of not less than seven years and not exceeding fifteen years or both".*

742. Section 18 of the MLPA stipulates:

i. A person who engages in money laundering commits an offence and is liable on summary conviction to a fine of not less than half a million dollars and not exceeding one million dollars or to imprisonment for a term of not less than five years and not exceeding ten years or both;
ii. on conviction on indictment to a fine of not less than one million dollars and not exceeding two million dollars or to imprisonment for a term of not less than ten years and not exceeding fifteen years or both.

743. A person who attempts, aids, abets, counsels, or procures the commission of, or who conspires to engage in money laundering, commits an offence and is liable

i on summary conviction, to a fine not exceeding one million dollars or to imprisonment for five years or both;
ii on conviction on indictment, to a fine not exceeding two million dollars or to imprisonment for fifteen years or both.

744. Sanctions in the MLPA reported in sections above are not effective, proportionate and dissuasive to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements. Criminal, civil or administrative sanctions are available

745. R. 14, 15 & 21 deals specifically with STR reported in good faith, high standards and competence of foreign counterparts and the application of R. 13 – 13.4 to theses matters.

746. The same conclusion must be drawn as above. Despite the general compliance to these recommendations which results from the Code of Ethics in the Legal Profession Act, a mandatory legislative provision is still required and to date the offence of financing terrorism does not exist in St. Lucia's regime.

Additional elements

747. The reporting requirement is extended to the rest of the professional activities of accountants, including auditing.

748. There are reporting requirements for some professionals for example; Accountants and Registered Agents and Auditors. These professions recognise that by virtue of their activities as they relate to financial institutions and the policies and laws which apply thereto, the requirements of reporting naturally extend to them.

749. For professionals in this arena, maintaining their reputation and due diligence is key to their code and in practice would decline to do business with clients who are suspected of ML.

750. DNFBP are required to report to the FIA any suspicious transaction relating to money laundering as soon as reasonably practicable and in any event within seven days of the date the transaction was deemed to suspicious.

751. By virtue of sections 9 and 10 and by inclusion of their activities/profession into the category of "any other business" under schedule 2 of the MLPA, DNFBP are required to report to the FIA suspicious funds and to develop internal reporting procedures to detect and report anything which is suspected on reasonable grounds to be funds which are the proceeds of crime.

4.2.2 Recommendations and Comments

752. St. Lucian authorities may wish to consider amending the MLPA to require DNFBPs to establish and maintain internal procedures, policies and controls to prevent Money laundering and Terrorist Financing.

753. St. Lucian authorities may wish to consider amending the MLPA to ensure that DNFBPs communicate internal procedures, policies and controls, develop appropriate compliance management arrangements and put in place screening procedures to ensure high standards when hiring employees. Such amendments should

also require DNFBPs to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate AML and CFT systems.

754. St. Lucian authorities may wish to consider amending the MLPA to ensure that sanctions imposed are effective, proportionate and dissuasive to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• No obligation to establish and maintain internal procedures, policies and controls to prevent Terrorist Financing. • No obligation to communicate internal procedures, policies and controls to prevent Money Laundering and Terrorist Financing to their employees. • None of the DNFBPs interviewed has ever filed a STR to the FIA. • No obligation to develop appropriate compliance management arrangements at a minimum the designation of an AML/CFT compliance officer at the management level. • No obligation to put in place screening procedures to ensure high standards when hiring employees. • No obligation to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. • No obligation to put effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. • Sanctions are not effective, proportionate and dissuasive

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and Analysis

Recommendation 24

755. There is no supervision of these DFNPS however there has been a move by the FIA to contact these bodies and point out their obligation under the Act and their obligation to report suspicious transactions.

756. As countries should_ensure a comprehensive regulatory and supervisory regime, legislative provision must be enacted and effectively implemented. The MLPA was designated for this purpose however, the regime has been found wanting in many areas particularly regarding training, proper reporting procedures, the dissemination of AML/CFT guidance notes and general awareness of and cooperation with the FIA by DNFBPs. As such, the powers of the FIA are far from effective.

757. There are no casinos or internet casinos noted by the government or regulatory agencies of St. Lucia. Nevertheless, given the deficiencies in monitoring and supervising many sectors and "other businesses" which carry on financial activities for example; hotels, this supposed non-existence needs to be revisited by the Authorities. Examiners have noted visible advertisements for "casino nights" as well as the availability of Internet services and Internet casinos.

758. In St. Lucia, DNFBPs are regulated under the MLPA. But they are not subject to a supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations.

759. Powers to monitor and sanction are really within the purview of the FIA or FSSU or ECCB however, for DNFBP their respective Associations are given certain mandates. The sanction of lawyers can only be done by the Court. Hence, the Bar Association's power goes only as far as making recommendations for suspension of membership or sufficient grounds for that individual to be struck off the roll. Consequently, the Bar Association falls outside the ambit of a "competent authority."

760. There are no recognised casinos and as such there is no designated competent authority.

761. St. Lucian authorities claim that no casino exists or are operating. However, by virtue of the gambling law, a license may be applied for and obtained for the operation of casino. Additionally, some hoteliers host casino nights as entertainment packages for guest. Having not interviewed a hotel operator no conclusion can be drawn with respect to the legality of this business. In any event casinos are not regulated by any authority in St. Lucia and the FIA has not indicated receipt any STR from casinos.

762. FSSU is aware of only one gambling license being granted. However, the casino which was granted that licence had started operation.

763. As the activities associated with casinos would constitute offences under the Gaming Law for a criminal conviction could result, the Bar Association notes within its code of ethics that an attorney being called to the bar must present a police clearance and satisfactory character references. Accordingly, this provides some regulation and measure to ensure compliance.

764. Having recognised that the Bar Association is unable to effectively monitor and sanction the activities or misconduct of lawyers, it stands to reason that the Association has no effective measures to conduct on-going monitoring of its membership. It was already conceded that there was no AML component to the provision under the Legal Profession Act and no due diligence requirement outside of maintaining proper financial records and client accounts. Hence, there are no obligations for compliance.

765. The Legal Profession Act removed the compulsory membership of lawyers to the Bar Association. As a result thereof, the Association does not have adequate powers to perform its functions and lacks sufficient funding and technical resources to fulfil its mandates under the law.

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

766. Section 4 (i) states that the FIA shall advice DNFBPs of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime Act or any other enactments replacing it.

767. The FIA established guideline, the MLPA guidance note, to assist financial institutions and DNFBP to implement and comply with their respective AML/CFT requirements.

768. There is a lack of communication between DNFBPs and the FIA. DNFBPs, namely realtors, have no relationship with the FIA. Based on the interviews, globally, DNFBPs are not aware of the MLPA guidance notes. But according to statistics provided by the FIA, in 2004, car dealers submitted 1 STR.

769. The MLPA guidance notes has been submitted by the FIA and approved by the Minister of Justice/ AG but has not been disseminated to DNFBPs. The Anti-Terrorism legislation is not enacted and needs to be reviewed with regard to DNFBPs.

770. The Bar Association Council members had to admit that having no internal rules or procedures for AML/CFT as well as having had no training on the subject would make it extremely difficult to implement guidelines.

771. In addition, it is recognised that although individual members are aware of their obligations and the provisions of the MLPA, it is difficulty to rate compliance given their limited supervision of members

4.3.2 Recommendations and Comments

772. St. Lucian authorities may wish to consider regulating DNFBPs and strengthen the relationship between the FIA and DNFBPs.

773. The Legal Profession Act needs to be re-visited with respect to the monitoring and sanctions that may be applied by the Bar Association.

774. Additionally, the Association needs funding, its own secretariat office and other technical resources so as to decrease its reliance upon the Registrar of the Court.

775. More focus also needs to be placed upon continuing legal education of members and implementing an AML/CFT policy component into the Code of Ethics.

776. The concept of legal professional privilege also needs to be put in context if lawyers are to be expected to report STRs and the recommendations which outlines, good faith, high standards and competent counterparts must be factored into these provisions.

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

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• No supervision of the DNFBPs • No supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations • No monitoring by Bar Association.
R.25	**NC**	• No enforceable means in existence and code of conducts have limited enforcement

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

777. Under current MLPA investment advisers are provided for. No pawns shops or auction houses exist in the jurisdiction. Similar provisions such as record keeping, due diligence, reporting of unusual and suspicious transactions are applicable to non-financial businesses.

778. Generally, DNFBP are aware of their obligations to carry out due diligence procedures and to report an STR when required. The limited scope of their regulators to monitor and sanction and supervise to prevent misuse of DNFBP and only few on site examinations noted, leaves little confidence in the effectiveness of any of the measures adopted for the sector.

779. The ECCB uses its threshold system as a modern secure transaction technique. As well as the St. Lucia government intends to enact the Money Remittance Law to regulate secured automated transfer systems. Many professions face internal auditing and as such must keep update accounts and in particular escrow accounts for large sums to be held on deposit for their clients.

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

4.4.2 Recommendations and Comments

781. More on-site inspections are required.

782. The Money Remittance Laws should be enacted.

783. Standard provisions regarding complex and unusually large transactions should be imposed such that DNFBP are mandated to do enhanced due diligence and modern secured transaction techniques should be scheduled under the MLPA.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**PC**	• Lack of effectiveness of procedures which have been adopted for modern secure techniques

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

784. Legal persons are defined in the 40 Recommendations Glossary as "bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property."

785. Accordingly, a number of types of legal persons exist in St. Lucia within the classification of:

a Domestic private companies, External/foreign companies, Public companies, Companies limited by shares, Partnerships, Bodies corporate with a business name (*which are registered with the Registrar of Companies),*

b Credit Unions, Cooperative societies, Friendly societies (which are registered with the Registrar of Cooperatives),

c International private businesses, International trust companies (which are registered with the Registrar of International Business Companies and Trustees)

d International Mutual Fund Administrators which are also registered with *the Registrar of International Business*

786. Each Registrar is governed by their respective legislation and they are not regulated per se by any authority in St. Lucia. However reports are informally made as a matter of course to the Attorney General who also has the role of Minister of Justice by the Registrar of Companies. Likewise, the Registrar of Cooperatives and the Registrar of the IBCs & Trustees report to the Ministry of Finance, if and when required.

787. There are some 400 – 500 incorporated entities (including non-profit organizations). Additionally, there are approximately 30 active Cooperatives in St. Lucia presently.

788. Legal entities operating in St. Lucia must renew their registration annually in order to maintain their "active, good standing" status and upon initial application for incorporation and registration must be successfully vetted as regards (i) the name of the company submitted, (ii) submission of the company's Articles of Association, Notice of Directors, Notice of Address and a Declaration of Signatories along with (iii) the prescribed fee. The Registrar follows the mandates of the Companies Law (Cap. 13.01) and is empowered to impose fines and to report offences for which penalties are prescribed and can be imposed both in the Summary Courts and High Courts of St. Lucia.

789. Generally, there are no AML/CFT guidelines that have been issued to the Registrar of Companies and consequently, no office policy in place which addresses measures to prevent the unlawful use of legal persons by money launderers.

790. There presently exists a manual system of recording and updating of files which are notably not subjected to any checks and balances with respect to discrepancies (which is also referred to as the "human error factor"), so as to ensure the accuracy and currency of the files. Consequently, heavy reliance is placed upon the vetting process that is conducted by the Registrar and the Deputy Registrar and the occasional requests for proof of documents or verification of ownership as their due diligence mechanism.

791. The registry is publicly accessible and any file may be examined and extracts copied upon the payment of a nominal fee. Law enforcement and government agencies are exempt from this search fee and are generally given the necessary cooperation upon request even though there are no formal channels for domestic cooperation in place.

792. Admittedly the staffing of the Registry of Companies is not adequate in relation to the large volume of matters to be dealt with in the registry. In light of the fact that the registry handles the register of intellectual property, trademarks, copyrights, name and search requests and certification of documents along with general incorporations and renewals, recommendations have been made to the Honourable Attorney General which are intended to address the shortfalls in order to meet the criteria of an efficiently operated registry. Nonetheless, the equipment, funding and experienced staff are considered sufficient to meet the present daily demands.

793. The registry for the cooperatives suffers a similar deficiency with respect to the lack of AML/CFT guidelines or policies. The lack of training of the somewhat inadequate number of staff that makes frequent on site visits to the entities registered by them is also a factor for consideration on the issues of implementation and effectiveness.

794. It is however recognized that the cooperatives have a Cooperative Credit Union League which is in fact responsible for developing management rules, training and guidelines for its members. Consequently, the Registrar of Cooperative is not considered the regulatory body of the cooperatives and extends itself only to a general survey of the bi-laws of the cooperatives and spot checks to ensure compliance of their single most significant rule which is that *"deposits are only to be accepted from members."*

795. Despite the added factor that there is no direct relationship between the Financial Intelligence Agency and the Registrar of Cooperatives, it is fortuitous that the

League has signed an MOU with the FIA and therefore has an AML policy in place for reference by its members.

796. Needless to say, a number of cooperatives are unaware of their specific roles under the MLPA and neither the Registrars nor the cooperatives were familiar with anti-terrorism or anti-terrorism mechanisms which could be utilized by accessing international alert lists. This begs the question as to how extensively the policy manual was disseminated to cooperative members and the extent of the exposure of the Registry staff to the appropriate laws and/or guidelines.

797. The answer given to the examiners on site undoubtedly highlighted a disparity in the training of staff in the various cooperatives and that more vigilance is required to ensure that due diligence is being performed particularly as it relates to suspicious activity reports, the transactions and activities of fishing tradesmen as well as to a risk based approach being applied to politically exposed persons (PEPS).

798. Conversely, a proactive approach to due diligence is being proffered by encouraging only face to face transactions, non-reliance upon third party referrals, ongoing due diligence and targeting the recruitment of skilled staff.

799. The Registrar of Cooperatives having appreciated the nuances that arise from political interference has sought to improve the level of supervision of the cooperatives as a sector by adding an AML component to inspections and by allowing the League to take the lead in providing self best practices.

800. Additionally, the following were concluded with respect to the essential criteria for this area:

801. Legal persons are not required to state the shareholders upon initial application for registration. Therefore, no legislative provision exists for adequate transparency of the beneficial owner and control of the legal persons.

802. The following mechanisms have however been implemented to afford some transparency with respect to the control of legal persons:

1. A national registry records system which is publicly available for examination. *Pursuant to section 494 of the Companies Law 1996 of St. Lucia the Registrar must maintain a register of companies which keeps the name of every body corporate that is a) incorporated b) continued as a company c) registered or d) restored as a company e) has not been subsequently struck off . Additionally, by virtue of section 495 the files are publicly accessible having paid the prescribed fee any person is thereby entitled to examine, make copies and extract from the record or register any information , during the normal business hours.*

2. Furnishing of certificates by the Registrar who by virtue of section 508 of the Companies Law may furnish any person upon request with a certificate stating a) a body corporate has or has not sent docs, b) that a name, whether that of a company or not is, or is to on the register and c) a name, of a company or not, was or was not registered.

3. The updating of registry files manually in tandem with renewals and changes submitted with respect to ownership or control or address. The file mirrors all the documents submitted and kept on file.

4. The verification of information received by requesting proof of the documents or authentication of the documents by affidavit or affirmation. This is in accordance with s. 506 of the companies law

5. Retention of records for a period of 7 years. This is a requirement by law whereas in practice, retention far exceeds this limitation as it is recognised that active files must remain on the register, inactive files are sometimes required and should be produced in the event of a search request, struck off files may be restored/resurrected at any time. Hence, files are never destroyed or discarded.

6. Verification of records done by the request for proof or by a request for a declaration of signatories notarized by an Attorney and generally by vetting of the documents submitted with a application such that all cross references correspond.

7. Reliance may be placed by Law enforcement on being able to access these records and conversely, the registry may rely on these records to perform functions such as name searches, trademark infringements and in providing certificates of good standing.

8. Additionally, competent authorities are able to obtain or have access in a timely fashion to accurate information.

9. Effectiveness of the use and access to the registry by competent authorities for the purposes of investigations is illustrative of the strong compulsory powers to obtain relevant information.

803. In some instances, the information required as to the beneficial owner is kept by the registered agent or the administrator for the legal person therefore current information can be obtained by accessing the address of the agent or registered office. Indeed, there are also instances in which the agent or company in filing changes or its share holdings adds current information with respect to the beneficial owners. All information kept on the register may be accessed publicly.

804. Under section 8 of the MLPA DNFBPs are required to perform CDD however there is no requirement to file this information. Specifically under the Registered Agents & Trustees Regulations the registered agents and trustees are mandated to perform due care and diligence with thrie clients, know their customers and take reasonable measures to ensure that their services are not being utilized by persons involved in criminal activity.

805. The Company Law section 29 (2) provides that no company shall issue bearer shares or bearer share certificates. This was also confirmed by the Registrar who has had conduct of the registry for the last 7 years. In demonstrating the adequacy and effectiveness of the measures above, it is noted that requests have been received from the police and the Attorney General's department as well as from other government

agencies namely NIS department and inland revenue department and the request were fulfilled in a timely basis.

806. The shortfall however is that records are not updated via any initiative by the Registrar to do due diligence and there is a need to increase the level of supervision of entities both by the Registrar of Companies and the Registrar of cooperatives. Consequently, to a large extent it depends on the discretion of the entity whilst filing its documents to provide current information on the entity.

Additional elements

807. It is reiterated that the Companies law makes the registries publicly available. Financial institutions are therefore able to access same by paying a fee and entering the search room and examining the documents. However, it cannot be said the information regarding the beneficial owner or control of the legal person is always available so as to allow the institution to easily verify the customer identification for the following reasons:

i. No check and balances to ensure that records are accurately recorded during the manual procedures.
ii. There is no obligation on the legal person to file information as to the beneficial owner
iii. There is no electronic database or system of registering. Thus, all searches are manual and require a physical search for the records which are not collated by type or nature of the company.
iv. The registered file simply mirrors whatever information was tendered upon incorporation.

5.1.2 Recommendations and Comments

808. The St. Lucian authorities may wish to adopt the following measures:

i Adequate training for the staff on AML/CFT measures.
ii Adequate database that allows for timely and easy verifications of type, nature and ownership and control of legal persons and customer identification data.
iii Recruitment of additional staff with the requisite qualifications, training and expertise or experience in handling corporate matters.
iv Legislative amendment which mandates adequate transparency concerning the beneficial ownership and control of legal persons.
v Legislative amendments which addresses the effectiveness of penalties and the imposition of sanctions by the Registrars as well as the judiciary.
vi Policy manuals that provide rules in relation to regular reporting to the Ministers, proper policing of companies, AML/CFT guidelines on detecting and preventing the use of legal persons by money launderers.
vii An internal or external auditing regime which provides the necessary checks and balances for accuracy and currency of files.
viii Operational independence of the Registrars

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• There are inadequacies and lack of transparency in collating and maintaining accurate information which negatively affects access to beneficial information • Minor shortcoming in the transparency of trust deeds. • Registered agents have to be compelled by court order to comply even at onsite visit by FSSU.

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

5.2.1 Description and Analysis

Recommendation 34

809. International trends peeked St. Lucia's interest in the offshore sector and in 1999 legislation was enacted in which the registration of international businesses was prescribed. With the growth of the sector various laws were further enacted to facilitate this process.

810. A national registry was created under the auspices of a Registrar who derives his powers from the International Business Companies Act No. 40 of 1999

811. The International Trust Act No. 15 of 2002 is an ACT to provide for the registration and regulation of international trusts in St. Lucia and for related matters and its provisions are read in conjunction with the requirements under the International Business Companies Act.

812. Trust law, insurance law and commercial law principles are applicable in this arena as generally, Registered Agents' businesses consist of *90% -incorporation of IBCs and wealth and asset management, 5% - international banking activities (which include mutual fund investments) and 5% - international insurance businesses which includes captives and insurance management*.

813. AML/CFT policies must be approved by the Directors and sent to FSSU which act as their regulator. The FSSU is mandated to do on site visits on a random basis and often look at samples of files to ensue compliance with CDD and KYC measures. Additionally, captives requires a license and thus the FSSU does its own due diligence with respect to the agents and the client information provided before any approval for the license is granted.

814. Registered Agents have obligations under the Registered Agents & Trustees Act as well as the rules mandated under the Code of conduct within the Regulations as well as the requirements of the laws to provide a due diligence questionnaire and information containing the purpose, Shareholders/Directors, registered address and any other relevant information concerning verification of identity and special provisions.

815. Clients can only be accepted by the Directors and although much of the business is generated by 3rd party referrals there is also an audited component which at times creates more due diligence. Audits should have assurances for registered agent, business policies and claims and reasonableness of provisions and have an AML/CFT component. Audits of the banks and insurance companies are also subject to rigorous due diligence.

816. No suspicious transaction report has ever been made to the FIA. The contact with the FIA has been limited in this sector with no recognised training (though it seemed unnecessary). However, given the close relationship with the FSSU their feedback is relied upon. Additionally, there are no prohibitions to sharing information with the FIA or the FSSU.

817. The retention period for records is 7 years and beyond and in order to have a continuous verification of the details in the records, the Registered Agents will issue "Confirmation particulars" requests.

818. Registered Agents are also required to file a source of funds declaration where the funds exceed the threshold particularly as the funds are wire transfers. However, the financial institutions generally will have done KYC and have an appreciation of the amounts and general transaction trends of the particular agent.

819. The searches of the registries and office document files are manual but this does not preclude the timely access to information by competent authorities.

820. It was noted that of the 2500 registered international business companies approximately 61 presently constitute registered trusts.

821. There is no requirement in law to file the information concerning the beneficial owner.

822. Additionally, the trust instrument is a private document and is only filed in circumstances where the registered agent sees a need for transparency or by consent of the trustees and beneficiaries. Alternatively, the Registered Agent keeps a copy filed at their office and the information therein can only be disclosed in instances of production warrants or supervisory audits or upon consent.

823. Interestingly, the Examiners noted the conclusion drawn with respect to beneficial ownership generally within this sector was that the trusts created are usually well layered such that even upon initial examination the beneficial owner would not be easily discerned.

824. The thrust of the Registrar of the IBCs in this arena suggested that the criterion of adequate transparency would be more effectively satisfied by assessing the responses as to the documentations collated in compliance and completion of the due diligence questionnaire which is tendered by the agent with the application and which is mandated (and referenced in the Schedule) in the Registered Agents & Trustees (Forms) Regulations.

825. Additionally, pursuant to section 5 of the Int'l Trust Act 2002 a central register is kept upon registration of the international trust through the registered trustee

who must list the number of settlors, trustees, beneficiaries, protectors and any other legal arrangements and upon renewal must declare and file any changes in ownership and control information in order to be given a certificate of good standing.

826. This register is publicly available and although the Registrar of IBC & Trusts admittedly does not keep a copy of the trust deed, these records are obtained, verified and retained in accordance with the law by the trust service providers.

827. Pursuant to section 52 (1) of the International Trusts Act 2002 the Registered Trustees keeps confidential on file;

a) a copy of the trust instrument and any amendments thereon
b) information of (i) name of settler (ii) purpose or charitable trust (iii) name of protectors of trusts
c) documents in support of the true financial position of the international trust

828. The FSSU in having the role of monitoring Registered Trustees and IBCs has access to the information on file and jurisdiction to obtain information for investigations. In most instances, agents require information for the purposes of obtaining records on good standing statuses whereas, the FSSU in doing on site visits and audits are precluded from accessing trust instruments unless by court order.

829. Although there is only an informal liaison agreement between agents and the FSSU and limited communications with FIA, information can be accessed in a timely fashion by competent authorities.

830. In the last 4 years there have been a total of 4 requests ~~noted~~ to the Registrar for information: 1 from the RSSP and 3 from the FIA. No difficulties were noted domestically with respect to the sharing of information. From an international standpoint, no requests have been received by the Attorney General's Chambers or the DPP's office. Informal FIU to FIA requests have however been made and granted.

831. The accuracy of the information received is assumed by virtue of the due diligence done prior to the issuing of a good standing certificate by the FSSU. However, the law does not mandate or require agents to file changes however, renewal of certificates are done every year and as such this process would necessitate filing any relevant changes on their file.

832. In light of the lack of a mandatory obligation to disclose the beneficial ownership, the accurate and current information regarding legal arrangements would have to be obtained through an audit of the agent or via a court order.

5.2.2 Recommendations and Comments

833. It is recommended that St. Lucian Authorities implement measures to facilitate access by financial institutions to beneficial ownership and control information so as to allow customer identification data to be easily verified.

834. Also, given that any compulsory power for the purpose of obtaining relevant information would have to originate from the exercise of the Court's powers or FSSU in auditing the Registered Agent, there appears to be no guarantees that the information

would be provided. Notably, no attempts have been made via the Courts to instill this compulsory power. Hence, attempts at Court action is recommended as a means of improving the effectiveness of the FSSU to obtain relevant information

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NC**	• No requirement to file beneficial ownership information • Non disclosure of beneficial ownership to Registered Agents is enabled by the secrecy provision of the International Trusts legislation • No obligation to disclose beneficial ownership information to the competent authorities without a warrant from the court or the FSSU stating the direct purpose of the request to inspect individual file • Trusts created within the sector are usually well layered so that beneficial ownership is not easily discerned

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

835. Non-profit organization refers to a legal entity or organization that primarily engages in raising, disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes or for the carrying out of other types of "good works" These also exist in St. Lucia notably, *The St. Lucia Planning Parenthood Association, St. Lucia Red Cross, St. Lucia Cancer Association (which are also registered with the Registrar of Companies).*

836. *The St. Lucia Planning Parenthood Association is the largest noted entity in this sector which consists of about 8 NPOs.*

837. The PPA is noted as having been established since 1968 with over 40 staff (including 11 volunteers) with an unlimited amount of persons assisting. Their activities are not concentrated to a district or location but cover the entire country, both men and women of all ages, children within all the schools who have attained the level of appreciation for life skill training, family life education and reproductive health care. This group also has established clinics and public annual general meetings. Therefore, it can safely be surmised that a non-profit organization, depending on its activities is able to target the entire St. Lucian society. Similarly, the fact that it requires private funding to carry out its activities these entities are rated high on the scale of being potentially vulnerable to terrorist organizations posing as legitimate donors or interested volunteers.

838. There is no AML/CFT policy specifically created for the non-profit organizations and no specific guidelines or advisory papers have been disseminated to

the sector. There is random spot checking by the Ministry of Social Transformation which has informally undertaken the role of regulator as part of its functioning when reviewing the activities of the entities it has funded. The supervision however, does not have a CFT component.

839. Generally however, because most of these organizations are careful in maintaining their reputation so that they may continue to obtain funding and as such comply with the requirements of the Registrar of Companies for renewal of registration as well as with the requirements for the Ministry of Social transformation and Ministry of Finance for audited financial statements, board approved project plans outlining specific activities which must be completed with the projected period.

840. The crux of the concern from an AML/CFT view is that there is no designated body that ensures transparency and integrity nor to impose sanctions or to promote and monitor public confidence in the activities and administrative framework to detect, prevent and suppress terrorist financing.

841. There is no legislation or guidance notes dealing with non- profit organisations. Further the draft Anti- Terrorism Act makes no provision on the matter of non- profit organisations. Examples of non-profit organisations include the St. Lucia Red Cross; St. Lucia Planned Parenthood Association; St. Lucia Cancer Association.

842. Special Licensing rules and approval by the Attorney General are required before registration by the Registrar of Companies.

843. The Companies Registry does not monitor NPOs after they are registered. There is no formal enforcement regime for NPOs licensed under section 80 of the Companies Law. No competent authorities engage in any formal monitoring of NPOs after the licensing stage.

844. There are no domestic laws and/or regulations that relate to NPO. The Attorney general's Chambers undertakes the initial review of the NPO by virtue of the fact that the AG has the discretion to approve the application for such classification and incentives. Without this approval, the Registrar of Companies will not register the entity as an NPO.

845. During the initial application to the AG the entity must supply its articles of association which will include the objectives and purpose (whether charitable, social or religious or otherwise), the known person(s) to operate the organisation and written permission (if required) where there is an international parent body.

846. Re-assessments would fall within the purview of The Registrar of Companies who upon registration and re-registration will also conduct its due diligence procedures. These procedures however, do not require information with respect to the size or source of funds being utilised. Further, no actual verification of the entity is done as it is assumed that the AG would have already done so in order to issue approval.

847. The sourcing of information is not always a timely process and in fact is noted as being time consuming on occasions particularly when the organisation or persons are known in the community and there is no readily accessible statistical data institution which could provide relevant information.

848. The Ministry of Social Transformation does not undertake any outreach programmes. Its main concern is whether the NPO is approved and that the funds are used for the projects tendered.

849. There are no AML policies in place in any internal rules of the NPO or in any regulation or laws.

850. No training has been noted for NPO in relation to their awareness of the risks of terrorist abuses by the FIU or any other regulatory body.

851. There have been no papers issued by the Attorney General that have been instructive in this area.

852. There are no published guidelines for the conduct of activities by n NPO in St. Lucia. Transparency of an NPO exists only by virtue of their published reports issued at AGMs which would generally state the mission or vision, objectives and services, its Board and its audited financial statement, annual returns to the Registrar of Companies and its minutes of last AGM and achievements which it must provide to the Ministry of Social Transformation (which does project spot checks).

853. Integrity issues are a focus with regard to KYE and in maintaining the reputation of the organisation in order to continue to garner public support and raise funds.

854. Best practices arise only from affiliations internationally but are not mandatory except in so far as it achieves public awareness and public confidence.

855. St. Lucia is unable to demonstrate that steps have been taken to promote effective supervision or monitoring of NPOs which hold a significant share of the financial resources under control of that sector.

856. There is no designated supervisory body. The Ministry of Social Transformation has adopted the role of monitoring to some extent, but neither the Ministry nor the AG effectively manage the NPOs or have relevant information as to whether any NPO has a substantial share of the sector's international activities.

857. The size, its activities and general member components are publicly available by virtue of being registered with the Registrar of Companies having submitted its articles of association which must include its purpose and objects, its directors and Board of Directors compilation. More information is often times submitted to the Ministry but these are not considered publicly accessible documents.

858. St. Lucia is unable to demonstrate that there are appropriate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting upon their behalf as there is no specific law which governs NPOs.

859. The general principles against engaging in activities which amount to unlawful or criminal conduct would apply as it does to legal or natural persons. Additionally, internal policies dictate rules of conduct for which misconduct may result in dismissal of employment or disassociation from the organisation.

860. De-certification is a procedural process which usually arises from delinquency in payment of registration fees or late filing on application. However, there are no specific regulations within the domestic laws geared specifically towards sanctioning of NPOs which have been misused for ML or FT for not having measures to combat potential abuse.

861. NPOs are registered with the Registrar of Companies whose records are publicly available.

862. The AG as a competent authority would have vetted the NPO's documents initially and generally as a matter of policy, the SG would keep a copy of information received upon the application.

863. Records of domestic and international transactions are kept by NPOs in their audited internal and externally audited books. Minimum retention of five years is observed as in most instance records are kept for longer periods to facilitate searches and on spot examination from an international parent body or from the Ministry of Social Transformation with respect to a specific project, to ensure that the funds are being used in the manner prescribed by the NPO's articles of association.

864. The Attorney General may use his prerogative power as the Central Authority to investigate an NPO. The MLPA and MACMA laws do not specifically refer to NPOs. It is however assumed that once the criteria of the relevant law are satisfied by a Request, then investigation and gathering of information on an NPO could be effectively done in St. Lucia.

865. The AG's Chambers is the only authority that has sought to rely upon domestic cooperation in respect of NPOs. No formal coordination or protocol is observed domestically and it is apparent that only 3 agencies may have any possible or relevant information for sharing. Hence, without any regulations or procedures, the effectiveness of information sharing at a domestic level cannot be assessed.

866. As there are no specific laws governing NPOs, ensuring full access to information is not achieved. Nonetheless, it is possible, though not mandatory, that the FSSU in the performance of its function may, by virtue of a submission that the NPO falls within the extended category of "other business activities" seek to obtain information. However, the FIU does not have investigatory powers to apply the MLPA provisions to NPOs.

867. St. Lucia has not developed and has not implemented any mechanisms for prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action.

868. No training has been undertaken neither has there been any recruitment of law enforcement officials with the expertise nor capability to examine an NPO suspected of ML or FT or being exploited by a terrorist.

869. The Attorney General by virtue of being the Central Authority which receives international requests and the Competent Authority which receives application for classification for NPOs is considered the appropriate point of contact. Its general

procedures would apply. Practically, however, without effective monitoring or ongoing regulation or investigations of NPO, the AG would be hard-pressed to execute a request in a timely manner if it is to effectively provide accurate information on a NPO.

5.3.2 Recommendations and Comments

870. The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.

871. A supervisory programme for NPOs should be developed to identify non-compliance and violations.

872. Systems and procedures should be established to allow information on NPOs to be publicly available.

873. Points of contacts or procedures to respond to international inquiries regarding terrorism related activity of NPOs should be put in place.

5.3.2 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No supervisory programme in place to identify non-compliance and violations by NPOs. • No outreach to NPOs to protect the sector from terrorist financing abuse • No systems or procedures in place to publicly access information on NPOs • No formal designation of points of contact or procedures in place to respond to international inquiries regarding terrorism related activity of NPOs.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.2 Description and Analysis

Recommendation 31

874. National cooperation and coordination is facilitated by the provisions in the Money Laundering Prevention Law (2003). The Financial Intelligence Authority (FIA) is designated as a central authority by virtue of its functions under section 4 of the Law. Therein the FIA in section 4 subsections (c) and (h) may disseminate information to the Commissioner of Police and the Director of Public Prosecutions and may also consult with any person, institution or organisation for the purposes of performing its functions.

875. The co-operation and coordination domestically by the FIA has been mostly informal as there are no written protocols, memorandum of understanding (MOU) or internal policies in place which dictate the format for national coordination.

876. Except for a MOU that has been signed with the Department of Customs no other mechanisms have been enacted between the FIA and law enforcement agencies within St. Lucia. In fact, it was noted that FIA and the Commissioner of Police and the Joint Investigative Unit are yet to sign an agreement.

877. Further, as there is limited staffing and a lack of successive planning it is apparent that only the Heads of Departments are aware of the protocols. Generally, as the need arises, the Director of the FIA would address the heads of departments personally. Likewise, the Attorney General's Chambers would send general requests directly to an agency rather than through the FIA or Court which it only notably recognises when the request involves the issue of money laundering or terrorism. Overall, there are no formal, effective mechanisms to enable policy makers to co-ordinate the development or implementation of AML/CFT policies and activities.

878. Additionally, were it that the Guidance notes issued by the FIA considered "other enforceable means" then the usefulness of informal channels would by no means be undervalued. For the greatest possible level of effective cooperation both policy and operational measures should be specified within the law and effectively implement by agreements or policies by these agencies.

879. The MLPA does not create a direct provision for the Policy makers, the FIA, law enforcement and supervisors and other competent authorities with effective mechanisms to enable them to effectively develop and implement policies and activities for AML/CFT. Although the FIA shall advise the Minister in relation to the detection and prevention of money laundering and financing of terrorism in St. Lucia [section 4(2) (b)], there is no provision(s) in the law which:

a) addresses operational cooperation

b) specifies that where, appropriate coordination between authorities at the law enforcement/FIU levels; it is assumed that by virtue of the general power of the FIA "to consult with a person, institution or organisation for the purpose of performing its power under the MLPA"[section 4 (2) (f) there is a mechanism. However, there is no reciprocal enforcement provision by which the law enforcement agencies are mandate to cooperate with the FIA. In fact, this is perhaps why there is the need for MOUs (only one of which has been signed with Customs Department).

c) Addresses policy cooperation across all relevant competent authorities. Section 4 (2) (c) notes that the FIA must disseminate information to the Commissioner of Police and the Director of public Prosecutions but there is no mechanism which effective implementation of the information nor is there any assurance or feedback that the informal channels that presently operate afford the greatest efficiency in detecting and preventing money laundering and financing of terrorism.

Additional elements

880. The FIA has issued Guidance notes, which was approved by the Attorney General and Minister for Justice, and has approached law enforcement to signify by signing an MOU, as has been done by the Customs Department, that certain policies will be adopted. In light of the informal mechanisms that are relied upon with respect to coordinating and cooperating between agencies, some recognition is given to the fact that as a small community, domestic cooperation, in practice, are not be as formal as required.

Recommendation 32

881. The FIA has provided information to suggest some consultation with other competent authorities. However, an ongoing system of monitoring is required to ensure that reviews of the effectiveness of the mechanisms are done on a regular basis. There is no noted ongoing system of monitoring by the FIA.

R.30 Resources (Policy makers)

882. Relative to Prosecutorial Agencies, neither the Office of the Director of Public Prosecutions nor the Attorney General's Chambers can be considered adequately staffed. More prosecutors are required particularly counsels qualified in AML/CFT matters. Only one Counsel has been recruited in recent times from overseas but is under-utilised given the infrequency of ML files, no FT files and a general lack of technical resources to create a database of precedents for future reference.

883. The Attorney General's Chambers has sought to keep an updated precedents database and an updated library. However, there are no simultaneous civil actions nor have there been an actions instituted by the Chambers for local precedents to be created.

884. The DPP claims operational independence from the Minister of Justice despite the fact that approvals for funding and policies await the Minister's leisure. The DPP also claims that the department is free from undue influence or interference however, notes that there are criticisms tendered by the judiciary from time to time. There is also the one off incident which the Collector of Customs has noted with respect to the charging of a public official for fraudulent evasion of customs duties and the lack of any forthcoming prosecution or explanation outside of "undue influences".

885. The Ag's Chambers is headed by the Solicitor General who carries out the daily operation of the department and to some extent has autonomy in carrying out her responsibilities. However, Te Attorney General is also noted as the minister of Justice and has responsibility over all policy targets for the Chambers as well as those for the DPP's office, therefore, any operational independence is limited by his powers and approvals.

886. With regards to the Judiciary, and from the Magisterial perspective, inadequate organisational structure, staffing, funding and insufficient technical resources such as updated laws and reports or AG references and sentencing guidelines from the Chief Justice is a significant factor which has severely hampered their effectiveness in

detecting and preventing money laundering and financing of terrorism and in handling predicate offences.

887. The Chief Justice has not been noted as causing any undue influence and The Chief Magistrate's role is more administrative rather than intrusive upon the functions of the 2 District Magistrates. The autonomy of Magistrates remains encompassed in their role as "creatures of statute" and their discretionary powers as well as the mitigating factors to be considered which must be treated on an individual case by case basis.

888. The staff comprising the Judiciary, Court staff, DPP staff and AG staff must sign an oath of integrity as well as being governed by the rules encapsulated within the Civil Service Staff Orders which dictates codes of conduct and levels of professionalism required for which disciplinary measures may be taken in the event of non-compliance with these rules.

889. The quality of the staff of the competent authorities is not an issue at present given present demands. Also the recruitment procedures ensure that a minimum standard of skill, adequate references of character and police clearances are obtained prior to employment.

890. There has been no training of the prosecutorial staff and the funding provided for this area is insufficient. Additionally, the Bar Association does not provide any continuing education nor has the FIA facilitated any exposure to the AML/CFT regime. Also, noted is the lack of attractive salary packages to invite quality recruits or for updating of the technical resources to a level that would provide efficiency.

891. As it relate to the judiciary, training has been provided to some extent but again, given that St. Lucia has not ratified many of the Conventions, the training is considered more academic than functional.

892. There has been no training in the areas of:

i. The scope of predicate offences
ii. ML and FT typologies/ techniques to investigate and prosecute
iii. Techniques for tracing property which is proceeds of crime
iv. Techniques to ensure the freezing, seizing and confiscation of proceeds of crime
v. Techniques used by supervisors to ensure that financial institutions are complying with their obligations
vi. The use of information and technology and other resources relevant to the execution of their functions.
vii. Special training and/or certification for financial investigators – prosecutors should also be trained in them powers of investigators or have the ability to instruct investigators

6.1.2 Recommendations and Comments

893. Consideration should be given to the establishment of an Anti- Money Laundering Committee. The Committee should be given the legal authority to bring the various authorities together regularly to develop and implement policies and strategies to tackle ML and TF. The Committee should also be tasked with providing public education on issues of ML and TF.

894. St Lucia may wish to consider establishing a multilateral interagency memorandum between the various competent authorities. This would enable them to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF.

895. Consideration should be given towards putting in place a comprehensive framework to review the effectiveness of the system to combat ML and TF on a regular and timely basis.

896. The policy targets proffered by the AG/Minister of Justice should be implemented particularly:

i. The training of the prosecutorial agencies particularly in the areas noted above for which they are wholly deficient

ii. The funding of internal programmes to improve the quality of technical and human resources

iii. The dissemination of information on AML/CFT policies and activities for implementation as internal policies.

iv. A structured system which promotes effective national cooperation between local authorities.

6.1.3 Compliance with Recommendations 31

	Rating	Summary of factors underlying rating
	NC	• There are no effective mechanisms in place to allow policy makers, such as the FIA, FSSU and other competent authorities to cooperate and where appropriate, coordinate domestically with each other • Coordination and cooperation amongst agencies is ad-hoc and inconsistent. • No provision for competent authorities to effectively develop and implement policies and activities for AML/CFT.

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

6.2.1 Description and Analysis

Recommmendation35 & Special Recommendation I

897. St. Lucia has signed and ratified only the Vienna Convention. However, it is yet to ratify the Palermo Convention and to sign and ratify the Terrorist Financing Convention and the UN Special Resolutions even though the country voted in favour of the resolutions and accepted the terms of the Conventions. In fact, having implemented the terminologies in the criminalisation of money laundering it should seek to enact its

Anti-terrorism legislation and become a party to and fully implement all three conventions listed as criteria for compliance.

Table 10: Table of Treaties

Treaty	Articles	St. Lucia's Situation
Vienna Convention (1988)	3 (Offences and Sanctions)	MLPA 2003 defines money laundering. This legislation covers offences & sanctions and lists the scheduled drug offences however a conviction of a predicate offence is necessary.
	4 (Jurisdiction)	Mutual Assistance in Criminal matters Act [MACMA] as noted in the interpretation section POCA as well defines "unlawful activity" such that "an act or omission that constitutes an offence against a law in force in St. Lucia or against a law of any other country." There is however, no direct inclusion of commission of offences on vessels.
	5 (Confiscation)	POCA incorporates provisions which fully satisfy the jurisdictional elements. There are extensive provisions for the tracing of assets as well as adequate investigatory powers.
	6 (Extradition)	Extradition Act facilitates such measures and where no treaty exists the Minister may enter into special arrangements with a Foreign state.
	7 (Mutual Legal Assistance)	MACMA covers the various provisions for rendering assistance to the greatest extent possible. MLPA [s. 21] also provides for cooperation with a foreign court or competent authority in giving mutual assistance including freezing and forfeiture of proceeds laundered.
	8 (Transfer of Proceedings)	Unable to ascertain whether there is legislation permitting the transfer of proceedings
	9 (Other forms of co-operation and training)	Informal means are utilised as other forms of cooperation by authorities. No formal protocols or procedures noted
	10 (International Co-operation and Assistance for Transit states)	Transit states are not directly excluded from mutual assistance by the establishment of bilateral treaty.
	11 (Controlled Delivery)	Unable to ascertain whether there exists any provision for controlled delivery.
	15 (Commercial carriers)	There are measures in place to ensure that commercial carriers are not used for unlawful drug activity by incorporating provisions from various convention e.g. 1971 Convention for suppression

		of unlawful acts against the Safety of civil aviation & 1968 Convention on offences and certain Acts committed on board of aircrafts
	17 (Illicit Traffic at sea)	Need to reference the Drug Law- Examiners were not provided with a copy.
	19 (Use of mail)	Unable to ascertain whether postal services are covered.
Palermo Convention	Accepted January 23, 2003	Not yet ratified by St. Lucia
	5 (Criminalization of participation in an organized criminal group)	The laundering of proceeds of crime have been criminalized under POCA & MLPA . POCA refers to conspiracy, aiding & abetting & inciting another to commit an offence. Whilst, listed in the First Schedule of the MLPA are offences of corruption, extortion and terrorism **but** these laws do not address in a comprehensive way "organised criminal activity".
	6 (Criminalization of laundering of the Proceeds of Crime)	Enacted in the provisions of POCA & MLPA
Palermo convention	7 (Measures to combat money laundering)	Full implementation of measures is hampered by lack of ratification and establishment of the proper framework especially supervisory regime for NPOs, certain DNBPs and Law firms.
	8 (Criminalization of corruption)	i. Corruption is listed within the scheduled offences under the MLPA ii. Separately, UN Convention against Corruption has been accepted since 2003 by St. Lucia but unclear as to whether same has been put in force.
	9 (Measures against corruption)	iii. Similarly, the need for establishment of frameworks affects the applicability of the measures against corruption
	10 (Liability of Legal persons)	Covered in the provisions of the MLPA i.e persons corporate or incorporate.
	11 (Prosecution Adjudication and sanction)	iv. Also covered in POCA but limited in its application to criminalized groups.
	12 (Confiscation and Seizure)	POCA provisions incorporated as adequate as regards the defined "property" subject to seizure and confiscation.

	13 (International Co-operation for the purposes of confiscation)	MACMA [section 16] provides specifically for international cooperation for the purposes of confiscation. As well as MLPA [s.23 (1) (e)] allows for seizure of assets.
	14 (Disposal of confiscated proceeds of crime or property)	POCA [section 40] makes provisions for the disposal of proceeds of crime. Compensation may also be ordered as an additional sanction by the court pursuant to section 64 of POCA.
	15 (Jurisdiction)	Provisions according jurisdiction applies.
	16 (Extradition)	Measures may not be applicable as regards a distinct offence of orgainsed criminal activity and can be utilised only by Party States
	17 (Transfer of sentenced persons)	MACMA allows for transfer of prisoners for the purposes of giving evidence or providing evidence as distinct from extradition proceedings.
	18 (Mutual Legal Assistance)	Provisions are encapsulated in MACMA
	19 (Joint Investigations)	Law enforcement authorities participate in joint investigations and MOUs are established with the FIA.
	20 (Special Investigative Techniques)	Training and development are targeted for special techniques especially with regard to the interception of information and trafficking activity.
	21 (Transfer of Criminal Proceedings)	Of necessity to the issue of jurisdiction, the courts will ascertain whether the offence was committed in the island. Alternatively, there are provisions under MACMA as to the allowable use of evidence provided to a foreign authority.
	22 (Establishment of criminal record)	Unable to ascertain any provision
	23 (Criminalization of obstruction of justice)	Interpretation of the provisions which prohibit tipping off may be construed as criminalization of "obstruction of justice" in the context of ML. Otherwise the offence is covered in the Criminal Code.

	24 (Protection of witnesses)	No comprehensive provision was ascertained as envisaged by this Article.
	25 (Assistance and protection of victims)	No comprehensive provision was ascertained as envisaged by this Article.
	26 (Measures to enhance cooperation with law enforcement authorities)	Provisions of Immunity, no liability for disclosure and for confidentiality apply as practicable measures to enhance cooperation.
	27 (Law Enforcement cooperation)	Both national and international cooperation measures via MOUs have been adopted by St. Lucia.
	28 (Collection, exchange and analysis of information on the nature of organised crime)	Informal net-working exists. No defined protocols are noted and seem unnecessary for a small island. Connections with international agencies are also utilized.
	29 (Training and technical assistance)	In the context of this Article –specific training and technical assistance must be established. St. Lucia has not demonstrated use of same specially as effective in the fight against organised crime
	30 (Other measures)	Memoranda of Understanding [MOUs] & Agreements have been used as other measures.
	31 (Prevention)	Prevention is not effectively covered in light of lack of provisions for supervision of all sectors to include NPOs & DNBPs.
	34 (Implementation of the Convention)	The Convention requires the criminalization of distinct offences in relation to organised crimes. Additionally, the Convention is not yet ratified by St. Lucia.
Terrorist Financing Convention	2 (Offences)	This Convention has not yet been accepted or implemented. The legislative and structural framework does not exist
	4 (Criminalization)	It is intended that the Anti-Terrorism Law will be enacted. Terrorism is listed in the scheduled offences under the MLPA but no distinct definition exists for the criminal act or for financing terrorism.
	5 (Liability of legal persons)	The legislative and structural framework does not exist. The Anti-Terrorism Law to be enacted

	6 (Justification for commission of offence)	Same as above
	7 (Jurisdiction)	The legislative and structural framework does not exist. The Anti-Terrorism Law to be enacted
	8 (Measures for identification, detection, freezing and seizure of funds)	Same as above
	9 (Investigations & the rights of the accused).	Same as above
	10 (Extradition of nationals)	Same as above
	11 (Offences which are extraditable)	Same as above
	12 (Assistance to other states)	Same as above
	13 (Refusal to assist in the case of a fiscal offence)	Same as above
	14 (Refusal to assist in the case of a political offence)	Same as above
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	Same as above
	16 (Transfer of prisoners)	Same as above
	17 (Guarantee of fair treatment of persons in custody)	Same as above
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Same as above
	19 Communication of outcomes to UN Secretary General	Same as above

898. The Anti-Terrorism Act of St. Lucia has not been enacted. Further, the government's policy is that it will not ratify any convention unless the legal framework has been implemented to ensure its effectiveness.

899. There is no outward recognition of the Security Council's resolutions as there are no laws or regulations enacted which refer to the provisions or requirements contained in those resolutions.

900. Neither is there any evidence to suggest that S/RES/1267 (1999) and its successive resolutions and S/RES/1373 (2004) have not been ratified.

Additional Elements

901. No references in the laws, regulations or consolidated index to indicate that other relevant conventions have been ratified although between 1983 and 2004, 6 conventions were signed. The Conventions for the Suppression of Unlawful seizure of aircraft, suppression of unlawful acts of violence at airports serving international civil aviation, suppression of unlawful acts against the safety of maritime navigation and safety of fixed platforms located on the continental shelf and the Convention on offences and certain other acts committed on board aircraft.

Table 10: Treaties Table

6.2.2 Recommendations and Comments

902. St. Lucia needs to sign and ratify or otherwise become a party to and fully implement the Conventions which relate particularly to the Palermo Convention, Terrorist Financing Convention, Suppression of FT and UNSCRs relating to terrorism.

903. Implement the legal frameworks for these conventions – in particular, enact its Anti-Terrorism Act.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	**Summary of factors underlying rating**
	NC	i. Palermo and Terrorist Financing Conventions have not been ratified.
	NC	• UNSCR not fully implemented. • Anti-Terrorism Act not yet enacted. • ***No laws enacted to provide the requirements to freeze terrorists'***

		funds or other assets of persons designated by the UN Al Qaida & Taliban Sanctions Committee. • ***The necessary (Anti-terrorism Act), regulations, UNSCR and other measures relating to the prevention and suppression of financing of terrorism have not been implemented.***

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

6.3.1 Description and Analysis

Recommendation 36

904. The Mutual Assistance in Criminal Matters Act (1996) [**MACMA]** provides for assistance within the Commonwealth and to other countries other than Commonwealth countries and to facilitate its operation in St. Lucia. The Law in its schedule also attaches "the Treaty" as the (extension and application to the United States of America. The Law allows the St. Lucian central authority the powers to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecution and related proceedings.

905. The MLPA also affords the FIA with the ability to provide information to Foreign Financial Authorities within the confines of the laws (dual criminality is mandatory in order to be able to offer assistance.)

906. Additionally, the Central Authority should be able to give assistance in a timely, constructive and effective manner and in this area the authorities seems to range from one (1) to six (6) months to fully dispose of a request.

907. The MACMA was amended by statutory authority to designate the Attorney General as the Central Authority and not the Minister of foreign affairs and trade as previously footnoted under section 3 of the MACMA.

908. As a separate authority, FIA or the Court is stated as the Central Authority under the MLPA in section 21 (2).

909. The provisions of the Money Laundering Prevention Act [2003] (MLPA) and the Mutual Legal Assistance in Criminal Matters Act [2001] (MACMA) affords competent authorities in St. Lucia the opportunity to provide the widest range of international cooperation to their foreign counterparts subject to the definitions therein.

910. Section 4 of the MLPA permits the FIA to provide information relating to ML or to a report of suspicious activity to any Foreign Financial Intelligence Unit subject to the conditions the FIA may consider appropriate. Pursuant to section 4 (2) (e) of the MLPA, the FIA may enter into any agreement or arrangement in writing, with any Foreign Intelligence Unit for the purpose of performing its functions. The FIA has not established any MOU's directly with their foreign counterparts.

911. "Central Authority" means "the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme **[Section 2 (b) of MACMA]**.

912. "Foreign Financial Intelligence Unit" means "such body or bodies outside of St. Lucia which performs functions similar to those of the FIA and which may be designated by the Minister by order for purposes of this Act." **[Section 4 (2) (e) of MLPA].**
913.

914. Whereas, in practice, it is noted that the Attorney General acts as the Central Authority for all Requests and passes the request to the appropriate agency depending on the nature of the Request. The Attorney General does not make any distinction between itself as the Central Authority for mutual legal assistance to Requesting States and the FIA generally. However, where the Request involves a matter of money laundering, the Attorney General being the local authority suggests that there are overlaps.

915. Additionally, the Court is mentioned at this juncture because the MLPA at section 21(2) does make reference that "the court or the authority (FIA) shall cooperate with a court or other competent authority of a Requesting State…" which has been utilised directly for the taking of evidence (depositions) and for order for production of records and search warrants and seizures and enforcement of overseas judgments.

916. Thus, there appears to be no distinct Central Authority and no formal channels for mechanisms to be used for effective international and national cooperation.

917. Part 2 Sections 6 to 13 and Part 3- sections 14 to 16 provides and includes the criteria set out as regards obtaining evidence and articles, locating persons, arranging attendance & transferring of persons, service of documents and restraints, freezing and confiscation of assets.

918. Although the central authorities are able to provide assistance, it is admitted that in order to give constructive and effective assistance, same will not always be in a timely manner. Delays occur due to the fact that manual searches are often times required.

919. The MACMA has restrictive conditions. Section 5 places a restriction on the operation of the Act such that its provisions should not derogate from existing forms or prevent the development of other forms of cooperation. This restriction is not however considered as unreasonable.

920. Section 12 however, is a restriction on the use of evidence or information obtained or provided by any person such that it may only be used by or on behalf of St. Lucia, for the purpose of investigation and criminal proceedings to which the request relates unless consents. Additionally, section 18 outlines a number of conditions upon which a request may be refused to include the lack of dual criminality. This is considered as a disproportionate and unduly restrictive condition.

921. Clear processes are in place for the execution of mutual legal assistance requests. As to their efficiency this would only be considered a minor shortcoming in light of the fact that there are so few requests and that the Heads of Departments has

direct channels of communication with one another. Additionally, FIA appears to be applying the Egmont rules in sharing information.

922. There is no impediment to assistance based on the amendment to the MLPA which included offences under the Income Tax Act into the schedule of predicate offences.

923. The provisions in section 22 of the MLPA (2003) override the rules of secrecy or confidentiality and are subject only to Constitutional rights.

924. The powers to compel production of documents or evidence by means of searches of person or premises or seizure has been incorporated in the legislations [MLPA and MACMA]. In addition, requests have been granted to identify assets and produce transaction records.

925. Issue of conflict of jurisdiction is addressed in the amendment to the MACMA [No 15 of 2006] by adding section 2A to the law on 'jurisdiction to try offences if the at or omission would constitute an offence committed in St. Lucia.

926. Additionally, The Extradition Act Chapter 2.10 in Part 1- section 3 in describing an "extradition crime" addresses the issue of jurisdiction in relation to a foreign country such that an offence, if committed in St. Lucia, would be a crime as set out in the schedule.

Additional elements

927. Under the MLPA, the FIA and the Court are designated as a "Central Authority". Therefore, the competent authority may accept a direct request from foreign judicial authorities. In fact included in section 4 relating to the functions of the FIA is the power under section 4 subsection (e) to provide SARs to foreign FIA on a request relating to suspected money laundering. Also section 4 subsection (f), FIA may sign MOUs with any foreign FIA where it may be necessary in order to discharge its functions.

Recommendation 37 (dual criminality relating to mutual legal assistance)

928. The MLPA prescribes the condition that dual criminality is required. In its absence the Central Authority shall refuse the request for legal assistance.

929. The use of the word shall in section 18 of the Mutual Assistance in Criminal Matters Act preclude any possible assistance in the absence of dual criminality.

930. For extradition, there is no legal impediment where there is dual criminality or has criminalized the underlying conduct. [section 12].

931. Technical difference between laws eg. Categorisation does not pose as an impediment unless it falls within the listed categories of offences which would prejudice the security, public interest, constitutional rights or political character or unduly burden the resources of the country.

Recommendation 38

932. MLPA makes reference in its provisions for the particular types of requests. The procedures are simple and are easily followed such that a request may be given effectively and in a timely manner. Manual searches and delegation of responsibilities often causes delays but the requests are generally granted within a six months period.

933. There is no mandate as to value and hence, requests can be met where the request relates to property of corresponding value.

934. There are no noted official arrangements outside of the reciprocal considerations anticipated for an outbound request.

935. The MLPA provides that FIA and the Minister of Finance should establish asset forfeiture fund. However, no funds have been forfeited such that the establishment of the fund is required.

936. The authorities seem in practice, to consider each share by virtue of its own merits. However, in the Law [MLPA] at section 14, provision is made for the percentage of shares to be applied.

Additional elements

937. The POCA seems to draw a reference to a conviction and thus assumes that a Confiscation Order would be criminal in nature to be recognised and enforced.

Special recommendation V

938. There is no financing of terrorism legislation. Although, terrorism and terrorist financing is listed in the schedule to the laws, they have not been individually criminalised in any piece of legislation to date. Therefore, dual criminality would never be satisfied under those constraints.

939. There are legal impediments where the offence does not exist.

940. Similarly, request for seizing or freezing of assets derived from terrorist activities would first have to satisfy that the proceeds of crime came from such an offence. Again, without having criminalised these offences, the courts will be hard pressed to comply with such a request.

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

941. The Attorney General as the Central Authority has delegated its responsibilities to the Solicitor General who maintains and operates the Chambers daily. There are mechanisms in place to perform its function. However, the human and technical resources and funding for same poses some difficulties.

942. The Civil Service Staff orders as well as the Oath of integrity and the generally high level qualifications required allow the authorities to meet these criteria.

943. Training is inadequate and piecemeal. Some of the staff of the authorities have however attended various training programmes.

Recommendation 3

Statistics
Table 11: Incoming Requests

Year	Total # Received	Type/Nature of Request	# of Countries assisted
2008	1	Information obtained/ Telephone records	1
2007	1	Assets identified	1
2006	5	2 cases- assets identified 2 cases – Information sought 1 case- Production order obtained	4
2005	3	Assets identified	1

Table 12: Outgoing Requests

2006 – 2007 = 3 Requests made for Banking information and verification of documents
Since 2006 = 2 Extradition matters

Additional elements

944. No comprehensive statistics provided on other formal request made or received by law enforcement authorities. No assessment could be made as there are no statistics with regard to any requests made which involved Terrorism or financing of terrorists.

6.3.2 Recommendation and comments

945. The underlying condition of dual criminality should be addressed.

946. Comprehensive statistics in a readily accessible database is required.

947. Emphasis should also be placed on keeping statistics on formal request made and received by law enforcement including FIA.

Compliance with Recommendations 36 to 38, Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	• The underlying restrictive condition of dual criminality is a shortcoming • Laws that impose secrecy or confidentiality requirements is a shortcoming that may preclude effective mutual legal assistance • No clear channels for co-operation.
R.37	NC	• Dual criminality is a prerequisite and the request shall be refused if absent • The condition of dual criminality apply to all MLA requests including those involving coercive method
R.38	LC	• No formal arrangements for coordinating seizures, forfeitures, confiscations provisions with other countries.
SR.V	NC	• No provisions implemented to address terrorism in this area • Terrorism and Terrorist Financing not extraditable offences

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

6.4.1 Description and Analysis

Recommendation 39

948. The Extradition Act 1986 provides for St. Lucian authorities to deal with extradition crimes which relate to Commonwealth countries and foreign countries and for which it has sought to apprehend and surrender a fugitive or return an offender to St. Lucia. Additionally, the law sets out the powers of the judiciary and the proceedings to be adopted and applications which are relevant to treaty versus non-treaty states.

949. There are no provisions relating to money laundering being an extraditable offence.

950. ML is not an extraditable offence as described and included in the Schedule to the law.

951. The law provides for extradition of its own nationals

952. Where no treaty exists section 40 applies. The Minister of Foreign affairs may by order declare that a treaty or agreement is made and the fugitive must be brought before a magistrate as soon as practicable.

Additional elements

953. Since ML is not an extraditable offence, there are no principles of domestic law or procedures that will allow extradition requests.

Recommendation 37 (dual criminality relating to extradition)

954. Dual criminality is mandatory. The provisions are intrusive and non-compulsory. The measures state that it must be a crime described in the schedule or contemplated by reference to any intent or to circumstances of aggravation, necessary to constitute the offence. Also, the punishment must at minimum be 12 months imprisonment for the offence. The offence must fit within the meaning of an "extradition crime".

955. Technical differences cannot circumvent the requirements of the Act.

Special recommendation V

956. Terrorism or financing terrorism is not covered as an extraditable offence.

Additional elements

957. Additional element does not apply to FT. No law enacted. No reference to FT in the Extradition Act.

6.4.2 Recommendations and Comments

958. It is recommended that the St. Lucian Authorities consider legislative amendment to:

a) Include money laundering, terrorism and terrorist financing as extraditable offences.
b) Criminalize Terrorism as an additional offence.
c) Provide mechanisms that will permit prompt and constructive exchange of information by competent authorities with non-counterparts

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**NC**	• Money laundering is not an extraditable offence. • Dual criminality is a prerequisite and the request shall be refused if absent • The condition of dual criminality apply to all MLA requests including those involving coercive method
R.37	**NC**	• Dual criminality is a prerequisite and the request shall be refused if absent • The condition of dual criminality apply to all MLA requests including those involving coercive method • Money laundering is not an extraditable offence.
SR.V	**NC**	• Terrorism and Terrorist Financing not extraditable offences • Dual criminality is a prerequisite and the request shall be refused if absent

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

6.5.1 Description and Analysis

Recommendation 40

959. There are provisions available under the MLPA and the Mutual Legal Assistance in Criminal Matters Act that will allow St Lucian Authorities to provide a wide range of international co-operation to their foreign counterparts. However despite having the necessary legislative mechanism in place there has been only a small number

of request made to the country in the last four years, no MOU's has been signed with any other country.

960. Notably**,** the wide powers given to the Minister in the MLPA and the Extradition Act would lie in proof of the presumption that where necessary any foreign counterpart providing the same functions of either, the Financial Intelligence Authority, the Attorney General, the Minister of Foreign Affairs or Senior Foreign Officer of St. Lucia may be designated as a "competent authority."

961. During the onsite visit officials of the FIA informed the Examiners that notwithstanding the non-existence of MOU's with other countries, the FIA can share information both formally and informally with foreign FIU's in relation to ML and other predicate offences. It was however noted that the FIA has never received a formal request for information or assistance. All request made to the FIA were done through the informal process.

962. The Royal Police Force of St Lucia is able to share information with its counterparts through Interpol. Despite having this mechanism in place the Force only provided statistics for the year 2007.

963. St Lucia has a bilateral Mutual Legal Assistance Treaty with the USA and for co-operation with Commonwealth Countries the Mutual Assistance in Criminal Matters Act, concerning obtaining evidence serving documents, obtaining articles among others.

964. The St. Lucian competent authorities have noted that in every instance of a receipt of a request, same is given priority such that assistance may be given in a rapid, constructive and effective manner, subject to the technical and human resources available and having been assured that execution of the request would not unduly impose an "excessive burden upon the resources in St. Lucia."

965. Bilateral and Multilateral Treaties and Agreements by competent authorities along with Memorandums of Understanding have been used as effective mechanisms for regional bodies in the Egmont Group for coordinating cooperation. St Lucia has applied for membership of Egmont if accepted this will serve as an additional gateway for the exchange of information. The Police using the Interpol terminal also does Exchange of information.

966. There is a bilateral Mutual Legal Assistance Treaty with the USA and the Mutual Assistance in Criminal Matters Act for the exchange of information between Commonwealth Countries. The MLPA also allows the FIA to exchange information with Foreign FIU's.

967. In practice, St. Lucia is able to provide information both spontaneously and upon request in relation to ML and underlying predicate offences. Article 5 of schedule 1 of the MACMA extended to the USA provides that the central authority shall promptly update the Requesting State on the status of the execution of the request.

968. According to officials of the FIA spontaneous and requested information in relation to ML and predicate offences are done during the normal operations of the FIA. Some statistics were provided to support the statement.

969. St. Lucian laws expressly provide and ensure that their competent authorities are able to conduct inquiries on behalf of their foreign counterparts having given a general discretion to the Minister to designate any authority as necessary to be considered competent if its functions are similar to that of the authority in St. Lucia.

970. A shortcoming for the FIA however, is that its power does not extend to investigations and it would have to refer the request through the Attorney General to the relevant law enforcement division.

971. The FIA conducts inquiries on behalf of foreign FIU's. The Customs Department is a member of the World Customs Organization and as such conducts enquiries on behalf of its counterparts who are also members of the organization. The Police conduct inquiries and investigations on behalf of its members who are members of Interpol. The Commissioner of Police in St Lucia is also the Chief Immigration Officer, which means that the Immigration Department also has the same resources available to it to conduct enquiries on behalf of its counterparts.

972. The FIA by virtue of Section 4 (c) of the MLPA may provide information relating to suspected money laundering to a Foreign FIU or information relating to a suspicious activity report to any foreign FIU subject to any conditions it deems appropriate. The FIA also has the power to require the production of information that is relevant, [Section 5 c] and may consult with any person, institution or organization for the purpose of performing its functions [section 4 (h) MLPA].

973. As indicated earlier, section 4 (c) of the MLPA allows the FIA to provide information relating to ML or to a report of suspicious activity to any Foreign Financial Intelligence Unit subject to the conditions the FIA may consider appropriate. The FIA doesn't have direct access to the databases of other law enforcement agencies, public databases or commercially available databases however, according to the Director of the FIA when the FIA requires information from any of these databases a request would be made to that agency for the information required.

974. Section 21 (2) of the MLPA stipulates that the Authority shall cooperate with other competent authority of a requesting State by taking the appropriate measures under the Act and within limits of the requesting State's legal system to provide assistance in matters of money laundering offences.

975. The Authority upon receipt of such a request from a requesting State takes the appropriate measures. The FIA is able to forward to the Commissioner of Police any request that requires further investigation.

976. The Commissioner of Police has powers to mandate his divisions to the investigation of matters for which there is reasonable grounds to suspect that an offence has been committed and that proceeds of such crime are being used or intended for use by the criminal.

977. Having received a SAR, the FIA may report it to the Commissioner of Police and the Director of Public Prosecutions as information derived from its functions which is suspicious and gives reasonable ground to suspect that it is the proceeds of crime,

[Section 6 (a) MLPA]. Having done so pursuant to section 5 (k) of the MLPA, which gives the FIA powers to do anything "incidental" to its functions, the FIA though it cannot investigate, is able to delegate this function to the Commissioner thus, indirectly, the foreign FIU is assisted.

978. There are disproportionate and unduly restrictive conditions which apply to the exchanges of information as the law mandates that there must be dual criminality. Added by its amendment, the MLPA gives jurisdiction to the authorities by virtue of dual criminality and in the absence of same the authority shall refuse the request. This is a compulsory provision.

979. There is no legal provision that stipulates refusal of any request solely on the grounds of fiscal matter. By its amendment, Statutory Instrument No. 156 of 2006 appends to the First Schedule of the MLPA "an offence contrary to sections 141, 144, 145 (2) of the Income Tax Act". Consequently, St. Lucia is not precluded from assisting where the request involves fiscal matters.

980. Section 22 of the MLPA mandates an obligation as to secrecy or other restriction upon disclosure of information received pursuant to the Law. Accordingly, certain confidentiality rules attached thereto and an employee of the FIA is precluded from disclosure and commits an offence by failure to comply. [Section 25 of MLPA-provision for confidentiality].

981. Financial Institutions in St Lucia are subject to secrecy and confidentially requirements, these requirements are however overridden by the MLPA 2003.The Examiners were told that no request for assistance has ever been refused under any circumstances.

982. Safeguards are established and expressly stated within section 12 of the Mutual Assistance in Criminal Matters Act, such that the information or evidence obtained via request can only be used for the purpose to which the request is related or to proceedings which are a consequence of the investigation to which the request related.

Additional elements

983. St Lucia has not established any formal mechanisms to facilitate the prompt and constructive exchange of information with foreign non-counterparts. However, the wide power of the Minister to designate a central authority is a mechanism that permits such exchanges to a non-counterpart.

984. Criteria are set out in the MACMA which indicates the contents of the request which are required to facilitate the execution of the request. Thus, as a matter of practice, the purpose of the request is stated therein and often relied upon as proof of dual criminality or that there is sufficient nexus or evidence linking information being sought in St. Lucia to the Requesting States' investigations or proceedings.

985. FIA may request the production of information or may require search and seizure upon entry into premises and may consult with any person, institution or organisation in order to perform its functions.

Special recommendation V:

986. St. Lucia has not enacted any legislation regarding terrorism and/or the financing of terrorists, therefore the provisions of criteria 40.1 to 40.9 cannot be fulfilled in total. If the offence is treated as a "predicate offence" then it is likely that St. Lucia may assist foreign country.

987. The practical difficulty which arises is that St. Lucia could not make a similar request to its foreign counterparts having not criminalised these offences.

Additional elements

988. Accordingly SR. V would have no effect as international cooperation would be precluded by the lack of dual criminality and hence, lack of jurisdiction.

Recommendation 32:

Statistics

989. There are statistics as such for other international cooperation. The Financial Intelligence Unit did not produce any statistics relating to MLA. Some statistics were provided as it relates to informal request on issues of ML whilst no statistics were provided on FT.

990. St. Lucia provided a list of Conventions which references those which have been signed or accepted by St. Lucia. However, these Conventions have not been ratified and there is no legal framework which illustrates that these have been fully adopted in law and used to achieve effective AML/CFT policies and measures. Hence are not relevant to assessing the country's efficiency or effectiveness in offering mutual legal assistance to foreign counterparts.

6.5.2 Recommendations and Comments:

991. St. Lucia should enact provisions which allows for assistance in the absence of dual criminality.
992. St. Lucia must enact legislation that specifically criminalises terrorism and financing of terrorism.
993. St. Lucia should consolidate the statutory instruments of the MLPA to avoid any inconsistencies.

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	**PC**	• Unduly restrictive condition which requires dual criminality. • Several are yet to be ratified • No Anti-Terrorism Law • No MOU has been signed with any foreign counterpart
SR.V	**NC**	• No Anti-Terrorism law or regulation

7. OTHER ISSUES

7.1 Resources and Statistics

994. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant section of the report i.e. all of sections 2, parts of section 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	• The FIA is not sufficiently staffed and trained to fully and effectively perform its functions • The Law enforcement agencies are not sufficiently staffed and trained to fully and effectively perform their functions. • The independence and autonomy of the Authority as is presently structured could be subjected to undue influence and or interference • Inability to maintain trained staff • Inability to maintain ongoing staff training • The FIA and the other competent authorities are lacking in the necessary technical and human resources to effectively implement AML/CFT policies and activities and prosecutions
R.32	**NC**	• Legislative and Structural framework does not exist and there are no cases relative to terrorism as a predicate offence. Thus no statistical data was available • They do not keep comprehensive statistics and these are not disseminated or acknowledged as received • There are no reviews of the effectiveness of the systems for combating money laundering and terrorist financing.

995. A risk assessment with regard to DNBPs needs to be addressed. Particularly, the activities of Hotels which operate casinos and internet cafes should be considered.

996. Additionally, the Customs Department has noted that there are potential vulnerabilities in the area of cross border declarations or disclosures especially with respect to goods which are being under -valued by Hotels.

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

997. The requirement for a conviction of a predicate offence greatly inhibits the effectiveness of the AML/CFT regime. Additionally, a significant impairment is the lack of training of prosecutors. Whether the inhibition stems more from a lack of training in identifying possible prosecutions or from the lack of training being a deficiency which causes a lack of confidence or an unwillingness to direct the police to investigate is

debatable. Nevertheless, practical approaches to prosecuting money laundering are being overlooked.

998. For example, an approach which has been noted and which should be tested with respect to Customs offences which are predicate offences and for which there has been administrative settlement, is the interpretation that can be given that this admission could constitute a conviction for the purposes of the law thereby establishing the foundation for the money laundering prosecution.

999. Another example is with regard to charging both the predicate offence and the money laundering offence at the same time. This could be a strategic measure used in joining trials and expediting matters particularly where the assets to be confiscated are dissipating or devaluing.

1000. The requirement for a conviction of a predicate offence greatly inhibits the effectiveness of the AML/CFT regime. Additionally, a significant impairment is the lack of training of prosecutors. Whether the inhibition stems more from a lack of training in identifying possible prosecutions or from the lack of training being a deficiency which causes a lack of confidence or an unwillingness to direct the police to investigate is debatable. Nevertheless, practical approaches to prosecuting money laundering are being overlooked.

1001. For example, an approach which has been noted and which should be tested with respect to Customs offences which are predicate offences and for which there has been administrative settlement, is the interpretation that can be given that this admission could constitute a conviction for the purposes of the law thereby establishing the foundation for the money laundering prosecution.

1002. It is also apparent that better co-ordination is required between the agencies/ competent authorities to ensure consistency of data and that the information contained therein is comprehensive.

1003. Authorities should consider the additional role of investigation and develop expertise to improve the countries capability to detect, prevent or cure incidents or potential vulnerabilities to ML and FT.

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[4]
Legal systems		
1. ML offence	**PC**	AML legislation has not been effectively utilized and therefore could not be measured and the Palermo Convention needs to be ratified. The lack of effective investigations and prosecutions also negatively impacts the effectiveness of the AML legislation and regime. Self- laundering is not covered by legislation. Conviction of a predicate offence is necessary All designated categories of offences not included
2. ML offence – mental element and corporate liability	**LC**	Lack of effectiveness of sanctions which are also considered not dissuasive
3. Confiscation and provisional measures	**PC**	Lack of effective implementation as there are no prosecutions noted for ML. Additionally there are other avenues such as forfeitures and confiscations which are effective measures which have not been utilized and thus add to the lack of effectiveness in implementation of the AML regime.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	There are no bank secrecy laws which impede the sharing of information. The minor shortcoming arises from the reluctance of entities to share certain information in practice. There is no obligation which requires all categories of financial institutions to share information among themselves for purposes of AML/CFT
5. Customer due	**NC**	The MLPA is significantly deficient. These essential criteria

4. [4] These factors are only required to be set out when the rating is less than Compliant.

diligence		are required to be in the law and are not, and even where they are, it does not adequately meet the standard of the essential criteria. The MLPA does not create a legal obligation to undertake CDD above designated threshold, carrying out occasional wire transfers covered by SR VII, where the financial institution has doubts about the veracity of the adequacy of previously obtained customer identification data. There is no legal obligation to carry on due diligence on an ongoing basis There is no legal obligation to carry out enhanced due diligence for higher risk categories of customers / business relationships All financial institutions do not apply CDD to existing customers on the basis of materiality and risk and also do not conduct due diligence on such existing relationships at appropriate times. There is no legal obligation which requires financial institutions to obtain information on the purpose and intended nature of the business relationship. There is no legal obligation which requires Customer Due Diligence information to be updated on a periodic basis.
6. Politically exposed persons	**NC**	There are no provisions in the law, guideline or industry practice which completely satisfies the essential criteria. The financial sector does not have procedures in place where senior management approval is required to open accounts which are to be operated by PEPs, as defined by FATF. The financial sector does not have on-going enhanced CDD for PEPs. Majority of financial institutions do not utilise a risk based approach to AML/CFT issues Major gate keepers do not deal with the subject of PEPS pursuant to ECCB guidelines. Insurance companies & Credit Unions do not treat with the issue
7. Correspondent banking	**NC**	There are no provisions in the law, guideline or practice which completely satisfies the essential criteria. Commercial banks policies and procedures are deficient. There are no measures in place to : assess a respondent institution's AML/CFT controls to determine whether they are effective and adequate, document the AML/CFT responsibilities of each institution ensure that the respondent institution is able to provide relevant customer identification data upon request

8. New technologies & non face-to-face business	**NC**	There are no provisions in the law, guideline or practice which completely satisfies the essential criteria. There is no framework which mitigates against the risk of misusing technology in ML/TF. Financial institutions are not required to conduct on going CDD on business undertaken on non face to face customers
9. Third parties and introducers	**PC**	Legislation or other enforceable means do not address CDD requirements where business is introduced by third parties or intermediaries. Adequate steps are not taken by insurance companies to ensure that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. Financial institutions do not implement procedures to satisfy themselves that third parties are regulated and supervised.
10. Record keeping	**NC**	No requirement to maintain records of domestic and international transactions for at least five years whether or not the relationship has been terminated No requirement to maintain identification data, account files and business correspondence for at least five years following the termination of a relationship No requirement to make available customer and transaction records and information on a timely basis. No requirement to transaction records which are retained must be sufficient to permit reconstruction of individual transactions, so as to provide, if necessary, evidence for prosecution of criminal activity. No requirement for financial institutions to maintain records of business correspondence for at least five (5) years following the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.
11. Unusual transactions	**NC**	A legal obligation does not exist for financial institutions to pay special attention to complex, unusual or large transactions. Financial institutions do not document findings on the background and purpose of complex, large or unusual transactions There are no procedures which would require financial institutions to keep the findings on the background and purpose of all complex, unusual store such information to enable it to be retrievable by the competent authorities or auditors.
12. DNFBP – R.5, 6, 8-11	**NC**	No requirement for DNFBPs to undertake CDD measures when:

		They have doubts as to the veracity or adequacy of previously obtained customer identification data. Transaction is carried out in a single operation or in several operations that appear to be linked Carrying out occasional transactions in relation to wire transfers in the circumstances covered by the Interpretative Note to SR VII. There is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations. Entering relationship with customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. No requirement for DNFBPs to undertake CDD measures (when a person is acting on behalf of another person) to verify the identity and the authorization of mandatory of that person. No obligation under MLPA to verify the legal status of legal person or legal arrangement. No threshold amount is addressed in the MLPA. No legislation exits to permit compliance with Special Recommendation VII against Financing of Terrorism. No requirement to conduct ongoing due diligence on the business relationship No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant No requirement for simplified CDD measures to be unacceptable in specific higher risk scenarios There are no rules or regulations requiring DNFBPs to comply with the essential criteria of Recommendation 6, There are no rules covering the proposals of Recommendation 8, and requiring financial institutions DNFBPs to take steps to give special attention to the threats posed by new technologies that permit anonymity No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. There are no rules requiring DNFBPs to pay particular attention to relationships with persons in countries that do not apply the FATF Recommendations. There are no rules to ensure that the financial institutions are informed of Concerns about the weaknesses in the AML/CFT systems of other countries. There are no counter-measures for countries that do not apply

		the FATF Recommendation, or apply them to an insufficient degree. Lawyers for the most part claim legal professional privilege and a denial of awareness s to the prescribed STR form
13. Suspicious transaction reporting	**NC**	Essential criteria 13.1 -3 should be in law / regulations - this is not the case. The reporting obligation does not apply to all designated categories of predicate offences under Recommendation 1. There is no legally enforceable obligation for financial institutions to report transactions which are attempted but not completed regardless of the value of the transaction. STRs are not generated by financial institutions when they should because there is neither any guidance from the FIA or in their policies and procedures as to what constitutes a suspicious transaction.
14. Protection & no tipping-off	**PC**	There is no specific protection from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIA. There is no prohibition against financial institutions, their directors, officers and employees (permanent and temporary) from "tipping off" the fact that a STR or related information is being reported or provided to the FIA.
15. Internal controls, compliance & audit	**PC**	Provisions are contained in the law but all financial institutions do not comply. There is no requirement to appoint a compliance officer at the management level and on going due diligence on employees. Where the financial institutions do have policies and procedures there are deficiencies e.g. do not provide guidance on treatment of unusual, complex and suspicious transactions. The general requirements are contained in documents which have no enforceability for non compliance. There is no obligation for financial institutions and persons engaged in other business activity to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. There is no obligation for financial institutions and persons engaged in other business activity to document and implement screening procedures for employees on an on-going basis.
16. DNFBP – R.13-15 & 21	**NC**	No obligation to establish and maintain internal procedures, policies and controls to prevent Terrorist Financing.

		No obligation to communicate internal procedures, policies and controls to prevent Money Laundering and Terrorist Financing to their employees. None of the DNFBPs interviewed has ever filed a STR to the FIA. No obligation to develop appropriate compliance management arrangements at a minimum the designation of an AML/CFT compliance officer at the management level. No obligation to put in place screening procedures to ensure high standards when hiring employees. No obligation to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. No obligation to put effective measures in place to ensure that financial are advised of concerns about weaknesses in the AML/CFT systems of other countries. Sanctions are not effective, proportionate and dissuasive
17. Sanctions	**PC**	The full ranges of sanctions (civil, administrative as well as criminal) are not available to all supervisors. The lack of enforcement of criminal sanctions negatively impacts the effectiveness of the imposition of criminal sanctions.
18. Shell banks	**NC**	There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**NC**	There has been no consideration on the implementation of a system for large currency transaction reporting. There is no enforceable requirement for financial institutions to implement an IT system for reporting currency transactions above a specified threshold to the FIA.
20. Other NFBP & secure transaction techniques	**PC**	Lack of effectiveness of procedures which have been adopted for modern secure techniques
21. Special attention for higher risk countries		There are no obligations which require financial institutions to give special attention to business relationships and transactions with persons including legal persons and other financial institutions from or in countries which do not or insufficiently apply the FATF recommendations. There are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

		There is no obligation with regard to transactions which have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined and written findings should be available to assist competent authorities and auditors. There is no obligation that where a country continues not to apply or insufficiently applies the FATF recommendations for St. Lucia to be able to apply appropriate countermeasures.
22. Foreign branches & subsidiaries	**NC**	There are no statutory obligations which require financial institutions to adopt consistent practices within a conglomerate structure. Although this is done in practice, given the vulnerabilities, it should be made a legal obligation. There are no enforceable means which require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT standards consistent with the home country. No requirement for financial institutions to inform their home supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because it is prohibited by the host country.
23. Regulation, supervision and monitoring	**NC**	The effectiveness of the FIA is negatively impacted because awareness of the FIA and its role in AML/CFT matters is relatively low in some parts of the financial sector. The FIA has only recently attempted to provide written guidance to the sector and not all stakeholders are aware of the existence of the guidance notes. The regulatory and supervisory measures which apply for prudential purposes and which are also relevant to money laundering is not applied in a similar manner for anti-money laundering and terrorist financing purposes, except where specific criteria address the same issue in the FATF methodology. Money or value transfer service businesses are not licensed
24. DNFBP - regulation, supervision and monitoring	**NC**	No supervision of the DNFBPs No supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations No monitoring by Bar Association.
25. Guidelines & Feedback	**NC**	The guidance notes issued by the FIA does not give assistance on issues covered by relevant FATF recommendations FIA does not provide feedback to the financial institutions on STR filed and FATF best practices
Institutional and other measures		
26. The FIU	**PC**	There is no systematic review of the efficiency of ML and FT systems

		Periodic reports produced by the FIA are not published; also they do not reflect ML trends and activities A number of reporting bodies are yet to receive training with regard to the manner of reporting Some stakeholders were unaware of a specified reporting form.
27. Law enforcement authorities	**NC**	No legislation or other measures have been put in place to allow for the postponement or waiver the arrest of suspected persons when investigating ML or seizure of cash so as to identify other persons involved in such activity Investigation structure not effective Low priority given to ML and FT crime by the Police, there has been no prosecution to date Investigative structure mechanism is ineffective – unable to ensure police did its function property
28. Powers of competent authorities	**LC**	The FIA is not able to take witness statements for use in investigations FIA cannot search persons or premises which are not financial institutions or businesses of financial nature
29. Supervisors	**PC**	Effectiveness of the ability of supervisors to conduct examinations is negatively impacted by the differing levels of the scope of the examinations and the training of staff. There is no obligation which gives the FIA adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing consistent with the FATF recommendations.
30. Resources, integrity and training	**NC**	The FIA is not sufficiently staffed and trained to fully and effectively perform its functions The Law enforcement agencies are not sufficiently staffed and trained to fully and effectively perform their functions. The independence and autonomy of the Authority as is presently structured could be subjected to undue influence and or interference Inability to maintain trained staff Inability to maintain ongoing staff training The FIA and the other competent authorities are lacking in the necessary technical and human resources to effectively implement AML/CFT policies and activities and prosecutions
31. National co-operation	**NC**	There are no effective mechanisms in place to allow policy makers, such as the FIA, FSSU and other competent authorities to cooperate and where appropriate, coordinate domestically with each other Coordination and cooperation amongst agencies is ad-hoc and inconsistent. No provision for competent authorities to effectively develop and implement policies and activities for AML/CFT.
32. Statistics	**NC**	Legislative and Structural framework does not exist and there are no cases relative to terrorism as a predicate offence. Thus

		no statistical data was available They do not keep comprehensive statistics and these are not disseminated or acknowledged as received There are no reviews of the effectiveness of the systems for combating money laundering and terrorist financing. There are no reviews of the effectiveness of the systems for combating money laundering and terrorist financing. Could not be applied as there is no data where no ML prosecutions have been conducted
33. Legal persons – beneficial owners	**PC**	There are inadequacies and lack of transparency in collating and maintaining accurate information which negatively affects access to beneficial information Minor shortcoming in the transparency of trust deeds. Registered agents have to be compelled by court order to comply even at onsite visit by FSSU. Minor shortcoming in the transparency of trust deeds. Registered agents have to be compelled by court order to comply even at onsite visit by FSSU.
34. Legal arrangements – beneficial owners	**NC**	No requirement to file beneficial ownership information Non disclosure of beneficial ownership to Registered Agents is enabled by the secrecy provision of the International Trusts legislation No obligation to disclose beneficial ownership information to the competent authorities without a warrant from the court or the FSSU stating the direct purpose of for the request to inspect individual file Trusts created within the sector are usually well layered so that beneficial ownership is not easily discerned
International Co-operation		
35. Conventions	**NC**	Palermo and Terrorist Financing Conventions have not been ratified. No Anti-Terrorism Act UNSCR not fully implemented.
36. Mutual legal assistance (MLA)	**PC**	The underlying restrictive condition of dual criminality is a shortcoming The condition of dual criminality apply to all MLA requests including those involving coercive methods No clear channels for co-operation.
37. Dual criminality	**NC**	Dual criminality is a prerequisite and the request shall be refused if absent The condition of dual criminality apply to all MLA requests including those involving coercive methods
38. MLA on confiscation and freezing	**LC**	No formal arrangements for coordinating seizures, forfeitures, confiscations provisions with other countries

39. Extradition	**NC**	ML is not an extraditable offence
40. Other forms of co-operation	**PC**	Unduly restrictive condition which requires dual criminality. Several conventions are yet to be ratified No Anti-Terrorism Law No MOU has been signed with any foreign counterpart
Eight Special Recommendations	**Rating**	Summary of factors underlying rating
SR.I Implement UN instruments	**NC**	UNSCR not fully implemented. Anti-Terrorism Act not yet enacted. No laws enacted to provide the requirements to freeze terrorists' funds or other assets of persons designated by the UN Al Qaida & Taliban Sanctions Committee. The necessary (Anti-terrorism Act), regulations, UNSCR and other measures relating to the prevention and suppression of financing of terrorism have not been implemented.
SR.II Criminalise terrorist financing	**NC**	Terrorist financing is not criminalized as the anti terrorism act whilst passed by parliament is not yet in force. No practical mechanisms that could be considered effective
SR.III Freeze and confiscate terrorist assets	**NC**	There is no specific legislation in place No reported cases of terrorism or related activities, The extent to which the provisions referred to the MLPA are effective cannot be judged. The Anti-Terrorism law has not been enacted.
SR.IV Suspicious transaction reporting	**NC**	Terrorism is noted as a predicate offence in the MLPA but it is doubtful whether this can be enforced since there is no anti-terrorism legislation in place. The mandatory legal requirements of recommendation 13 are not codified in the law.
SR.V International co-operation	**NC**	Terrorism and Terrorist Financing not extraditable offences Dual criminality is a prerequisite and the request shall be refused if absent
SR VI AML requirements for money/value transfer services	**NC**	No legal requirement under the MLPA No obligation to persons who perform MVT services to to licensed or registered No obligation for MVT service operators to subject to AML/CFT regime No listing of MVT operators is made available to competent authorities No effective, proportionate and dissuasive sanctions in relation to MVT service are set out
SR VII Wire transfer		There is no enforceable requirement to ensure that minimum

rules	**PC**	originator information is obtained and maintained for wire transfers. There are no risk based procedures for identifying and handing wire transfers not accompanied by complete originator information. There is no effective monitoring in place to ensure compliance with rules relating to SRVII. The exemption of retaining records of transactions which are less than EC$5,000 is higher than the requirement of the essential criteria which obliges financial institutions to obtain and maintain specific information on all wire transaction of EUR/USD 1,000 or more. Sanctions are unavailable for all the essential criteria under this recommendation.
SR.VIII Non-profit organisations	**NC**	No supervisory programme in place to identify non-compliance and violations by NPOs. No outreach to NPOs to protect the sector from terrorist financing abuse No systems or procedures in place to publicly access information on NPOs No formal designation of points of contact or procedures in place to respond to international inquiries regarding terrorism related activity of NPOs.
SR.IX Cross Border Declaration & Disclosure	**NC**	No legal provision for reporting or for a threshold The provisions in the legislation are not sufficiently clear and specific. No stand alone Prevention of Terrorism Legislation The legislation dosen't specifically address the issue of currency and bearer negotiable instruments. No specific provisions in the legislation that allows Customs authorities to stop and restrain currency and bearer negotiable instruments to determine if ML/FT may be found. No mechanism in place to allow for the sharing of information.\No comprehensive mechanism in place to allow for proper co-ordination by the various agencies. In some instances, the effectiveness of the international co-operation in customs cases are impeded by political interference.

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	
Criminalisation of Money Laundering (R.1, 2 & 32)	• The MLPA should be amended to specifically provide that the offence of money laundering does not of necessity apply to persons who committed the predicate offences in light of the lacuna that presently exists in the law. • The offence of self-money laundering must be distinct from the offences which are predicates. • The country needs to ensure that the widest possible categories of offences as designated by Convention are included within the MLPA and are definitively defined by legislation.
Criminalisation of Terrorist Financing (SR.II, R.32)	• The government needs to ratify the Conventions and UN Resolutions and establish the proper framework to effectively detect and prevent potential vulnerabilities to terrorists and the financing of terrorism.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• Despite the lack of ML prosecutions there have been convictions for predicate offences and the reasons elucidated are not attributed to a lack of restraint action nor from lack of action by the DPP to suggest a less than effective attempt at obtaining a court sanction. Notwithstanding, the St. Lucian authorities have not demonstrated that there is effective implementation of these measures. The absence of any confiscation speaks to legislation that has never been tested.
Freezing of funds used for terrorist financing (SR.III, R.32)	• St. Lucia authorities need to implement the Anti-Terrorism legislation such that it addresses the following criteria: i. Criminalisation of terrorist financing ii. Access to frozen funds iii. Formal arrangements for exchange of information (domestic and international) iv. Formal procedures for recording all requests made or received pursuant to the ATA. • Further, there needs to be an expressed provision

	which allows for exparte applications for freezing of funds to be made under the MLPA. • Also, the St. Lucian authorities need to ensure that there are provisions to allow contact with UNSCR and the ratification of the UN Convention on the Suppression of Terrorist Financing.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• St Lucian Authorities should move quickly and pass the Prevention of Terrorism Act. This will certainly help to strengthen the AML / CFT framework of the Country. • Consideration should be given to the establishment of clear and unambiguous roles in the FIA. • The FIA should be staffed with at lease two dedicated Analyst. • Consideration should be given to developing a process that would allow for a systematic review of the efficiency of the system that provide for combating ML and FT. • The authorities should consider giving the Board of the Financial Intelligence Authority the power to appoint the Director and staff without reference to the Minister. • Consideration should be given to the FIA to providing regular feedback to financial institutions and other reporting parties who file Suspicious Transactions Reports. • The authorities should consider reviewing the level of involvement of the FIA within the financial community, though there have been some interaction, there is clearly a need to provide additional seminars, presentations, guidance and advice to financial institutions and other reporting parties. • St Lucian Authorities may wish to consider sourcing additional specialize training for the staff, particularly in financial crime analysis, money laundering and terrorist financing.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• The authorities should consider providing additional resources to law enforcement agencies since present allocations are insufficient for their task. All of these entities are in need of additional

	training not only in ML / TF matters but also in the fundamentals, such as investigating and prosecuting white-collar crime. • Greater priority should be given to the investigation of ML / TF cases by the Police and the DPP's Office. • Adequate training in ML and TF should be sourced for Judges Prosecutors and Magistrates so as to broaden their understanding of the various legislations. • It is recommended that a Financial Investigation Unit be set up as part of the Police Force to investigate money laundering, terrorist financing and all other financial crimes. The necessary training should be provided to Officers who will staff this unit
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	Recommendation 5 • The St. Lucian authorities should consider either amending the MLPA or giving enforceable means to the Guidance Notes issued by the FIA. • The MLPA should be amended to include provisions that would require all financial institutions to undertake CDD in the following circumstances: i. when performing occasional transactions above a designated threshold, ii. carrying out occasional transactions that are wire transfers under SR VII and iii. where the financial institutions is in doubt about the veracity or adequacy of previously obtained customer identification data: iv. on an ongoing basis; v. based on materiality and risk at appropriate times. • Consistent practices should be implemented across all sectors for dealing with AML/CFT issues. The awareness levels of obligations under the MLPA are different within the sub-sectors.

	Supervisory oversight by the several regulators is also not consistent. • The MLPA should be amended so that financial institutions and persons engaged in other business activity should be required to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking routine reviews of existing records. • The MLPA should be amended so that financial institutions are required to i. Undertake customer due diligence (CDD) measures when they have doubts about the veracity or adequacy of previously obtained customer identification data. ii. Undertake customer due diligence (CDD) measures when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations. iii. Take reasonable measures to understand the ownership and control structure of the customer and determine who the natural persons are that ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement. iv. Obtain information on the purpose and intended nature of the business relationship. v. Ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. vi. provide for performing enhanced due diligence for higher risk categories of customer, business relationship or transaction vii. Provide for applying reduced or simplified measures where there are low risks of money laundering, where there are risks of money laundering or terrorist financing or where adequate checks and controls exist in national system respectively. viii. Provide for applying simplified or reduced

	CDD to customers resident in another country which is in compliance and have effectively implemented the FATF recommendations. Recommendation 6 i. Enforceable means should be introduced for dealing with politically exposed persons (PEPs). All financial institutions should be required to have: ii. Documented AML/CFT policies and procedures and appropriate risk management systems; iii. Policies and procedures should deal with PEPs – definition should be consistent with that of FATF, IT systems should be configured to identify PEPs, relationships with PEPs should be authorised by the senior management of the financial institutions, source of funds and source of wealth must be determined, enhanced CDD must be performed on an on-going basis on all accounts held by PEPs. • The government of St Lucia should take steps to sign, ratify and implement the 2003 Convention against Corruption. Recommendation 7 • Commercial Banks should be required to: i. assess a respondent institution's AML/CFT controls to determine whether they are effective and adequate; ii. document the AML/CFT responsibilities of each institution; iii. ensure that the respondent institution is able to provide relevant customer identification data upon request. Recommendation 8 • Legislation should be enacted to prevent the misuse of technological developments in ML / TF. • Financial institutions should be required to identify and mitigate AML/CFT risks arising from undertaking non-face to face business transactions or relationships. CDD done on

	conducting such business should be undertaken on an on-going basis.
Third parties and introduced business (R.9)	• Financial institution should be required to immediately obtain from third parties information required under the specified conditions of the CDD process. • Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. • Financial institutions should be obligated to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29 and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. • The competent authority for dealing with AML/CTF matters should circulate to all financial institutions lists e.g. OFAC, UN. The financial institutions should be required to incorporate into their CDD the use of assessments / reviews concerning AML/ CFT which are published by international / regional organisations.
Financial institution secrecy or confidentiality (R.4)	• The Insurance Act and the Registered Agents and Trustee Act do not have expressed provision for the sharing of information. While in practice, this has not prevented them from sharing with authorities, for the avoidance of doubt it is recommended that expressed provisions in the respective pieces of legislation together with the requisite indemnity for staff members making such disclosures.
Record keeping and wire transfer rules (R.10 & SR.VII)	• The MLPA should be strengthened to provide that the records to be kept are both domestic and international and also that such records must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • The guidance note should be amended to provide details of special recommendation VII with respect to dealing with wire transfers where there

	are technical limitations. POCA and MLPA should be amended to require a risk based approach to dealing with wire transfers. Sanctions should be available for failure to comply with the essential criteria. • The MLPA should be strengthened to provide that financial institutions should maintain records of business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority). • The provisions in both the POCA and MLPA should create a statutory obligation and a corresponding offence for instances where information is not maintained in a form which enables the competent authority to retrieve the information on a timely basis. Even though the various pieces of information may be available, the timely ability to reconstruct the transaction or sufficient evidence to procure a prosecution may be impeded.
Monitoring of transactions and relationships (R.11 & 21)	Recommendation 11 • Financial institutors should be encouraged to develop various examples of what would constitute suspicious, unusual and complex transactions. This should be disseminated to staff to make them become aware of such transactions. Internal reporting procedures should also be initiated to generate reports for review and appropriate action to be taken and ultimately to develop typologies for each type / sector of the financial sector. • There should be legal obligation for financial institutions to report such transactions which the institution deems to be suspicious to the FIA as a suspicious transaction • The MLPA and POCA should specifically provide that all documentation relating to the background and purpose of a transaction should be retained for a similar period of 7 years. Recommendation 21 • The FIA should be required to disseminate information about areas of concern and

	weaknesses in AML/CFT systems of other countries. Financial institutions should also be required as a part of their internal procedures to review these reports. • Financial institutions and persons engaged in other business activities should be required to apply appropriate counter-measures where a country does not apply or insufficiently applies the FATF recommendations.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	Recommendations 13 • The POCA and MLPA should be amended to provide that: i. Financial institution should report to the FIA (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. ii. The filing of a STR must apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. *SR IV* • The MLPA should be amended to provide that all suspicious transactions must be reported to the FIA regardless of the amount of the transaction. Recommendation 14 • The indemnity should expressly include MLROs and Compliance Officers. Additionally it should explicitly include legal and civil liability which may arise. The protection should be available where there is a suspicion or a reasonable belief even though the underlying criminal activity is unknown and whether a criminal activity has occurred. • The MLPA should be amended to make it an

	offence for MLROs, Compliance Officers, directors and employees who tip off that a STR has been filed. Recommendation 25 • The FIA should be given a statutory obligation to provide feedback to financial institutions. Such feedback can be either general, or specific. Recommendation 19 • St. Lucia is advised to consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FIA. In this regard St. Lucia should include as part of their consideration any possible increases in the amount of STRs filed, the size of this increase compared to resources available for analyzing the information.
Cross Border declaration or disclosure (SR.IX)	• It is recommended that for the avoidance of ambiguity and the need for the exercise of discretion that legal provisions be put in place requiring reporting of the transfer into or out of the country of cash, currency or other bearer negotiable instruments valued in excess of US $10,000.00 and that appropriate reporting forms be simultaneously published and put in use, and that proportionate and dissuasive sanctions be provided for. • It is further recommended that officers of the Police Force, Customs and the Marine Services be empowered to seize and detain cash, currency or bearer negotiable instrument valued in excess of US$10,000.00 which has not been properly declared or about which there is suspicion that they are the proceeds of crime. • Provisions should be made for any detained funds to be held for a specified renewable period to facilitate the investigation of the origin, ownership and intended use of the funds. • Consideration should be given to providing law enforcement officers with the power to detain cash, currency or other bearer negotiable instruments suspected of being the proceeds of crime wherever in the country seized, without being restricted to matters of cross border transfers with the view to facilitating appropriate

	investigations into the source of the funds. • There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing. • Consideration should be given to have Customs officers trained in the area of ML and TF. • Statistics should be kept on all aspects of Customs and Excise operations, these statistics should be readily available. • All Customs fraud cases with substantial values should be submitted to the FIA, Prosecutor's office for predicate offence consideration regarding offences pursuant to ML, FT and proceeds of Crime legislation with a view to prosecution of offenders. • Customs must take more drastic action against suspected ML offences and Commercial fraud offenders. • Provision of basic analytical and case management software must be supplied as a priority and basic and advanced training in the use of such software is required.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	Recommendation 15 • The provisions of the MLPA should be extended so that all financial institutions and other persons engaged in other business activity should appoint a Compliance Officer at the management level who must be a fit and proper person, approved by the Board of Directors of the financial institution with the basic functions outlined in the law. • The MLPA guidance notes should be expanded to require that internal policies and procedures provide for the Compliance Officer to have access / report to the board of directors. Recommendation 22 • The details outlined in the guidance note should be adopted in the MLPA and applied consistently throughout the industry.
Shell banks (R.18)	• The MLPA guidance note should be amended to require financial institutions to ensure that their correspondent banks in a foreign country do not permit accounts to be used by shell banks.

The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	Recommendation 23 • St. Lucia should consider a registration or licensing process for money or value transfer service businesses. Recommendation 25 • The guidance notes issued by the FIA should be circulated to all stakeholders Recommendation 29 • St. Lucia should expedite the implementation of the SRU which will assist in harmonizing supervisory practices and may lead to more effective use and cross training of staff.
Money value transfer services (SR.VI)	• Legislation should be adopted to require money transfer services to take measures to prevent their being used for the financing of terrorism, and to comply with the principles of the FATF Nine Special Recommendations on the subject. • St. Lucia should ensure that persons who perform MVT services are either licensed or registered and that this function is specifically designated to one or more competent authority. • MVT service operators should be made subject to the AML & CFT regime. • St Lucia should ensure that MVT service operators maintain a listing of its agents and that this listing is made available to competent authorities. • MVT operators should be made subject to effective, proportionate and dissuasive sanctions in relation to their legal obligations.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Deficiencies identified for all financial institutions as noted in Recommendations 5, 6, 8-11 in the relevant sections of this report are also applicable to listed DNFBPs. Implementation of the specific recommendation in the relevant sections of this report will also apply to listed DNFBPs. • Though lawyers are aware of the potential vulnerabilities in processing transactions without

	doing customer due diligence, it is not mandatory for them to make any reports with respect to PEPs, no face to face businesses, 3rd party referral and cross border banking relationships for suspect FT activities where the offence of FT has not been criminalised.
Suspicious transaction reporting (R.16)	• St. Lucian authorities may wish to consider amending the MLPA to require DNFBPs to establish and maintain internal procedures, policies and controls to prevent Money laundering and Terrorist Financing. • St. Lucian authorities may wish to consider amending the MLPA to ensure that DNFBPs communicate internal procedures, policies and controls, develop appropriate compliance management arrangements and put in place screening procedures to ensure high standards when hiring employees. Such amendments should also require DNFBPs to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate AML and CFT systems. • St. Lucian authorities may wish to consider amending the MLPA to ensure that sanctions imposed are effective, proportionate and dissuasive to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements.
Regulation, supervision and monitoring (R.24-25)	• St. Lucian authorities may wish to consider regulating DNFBPs and strengthen the relationship between the FIA and DNFBPs. • The Legal Profession Act needs to be re-visited with respect to the monitoring and sanctions that may be applied by the Bar Association. • Additionally, the Association needs funding, its own secretariat office and other technical resources so as to decrease its reliance upon the Registrar of the Court. • More focus also needs to be placed upon continuing legal education of members and implementing an AML/CFT policy component into the Code of Ethics. • The concept of legal professional privilege also

	needs to be put in context if lawyers are to be expected to report STRs and the recommendations which outlines, good faith, high standards and competent counterparts must be factored into these provisions.
Other designated non-financial businesses and professions (R.20)	• More on-site inspections are required. • The Money Remittance Laws should be enacted. • Standard provisions regarding complex and unusually large transactions should be imposed such that DNFBP are mandated to do enhanced due diligence and modern secured transaction techniques should be scheduled under the MLPA.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• The St. Lucian authorities may wish to adopt the following measures: i. Adequate training for the staff on AML/CFT measures. ii. Adequate database that allows for timely and easy verifications of type, nature and ownership and control of legal persons and customer identification data. iii. Recruitment of additional staff with the requisite qualifications, training and expertise or experience in handling corporate matters. iv. Legislative amendment which mandates adequate transparency concerning the beneficial ownership and control of legal persons. v. Legislative amendments which addresses the effectiveness of penalties and the imposition of sanctions by the Registrars as well as the judiciary. vi. Policy manuals that provide rules in relation to regular reporting to the Ministers, proper policing of companies, AML/CFT guidelines on detecting and preventing the use of legal persons by money launderers. vii. An internal or external auditing regime which provides the necessary checks and balances for accuracy and currency of files. viii. Operational independence of the Registrars
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• It is recommended that St. Lucian Authorities implement measures to facilitate access by financial institutions to beneficial ownership and control information so as to allow customer

	identification data to be easily verified. • Also, given that any compulsory power for the purpose of obtaining relevant information would have to originate from the exercise of the Court's powers or FSSU in auditing the Registered Agent, there appears to be no guarantees that the information would be provided. Notably, no attempts have been made via the Courts to instill this compulsory power. Hence, attempts at Court action is recommended as a means of improving the effectiveness of the FSSU to obtain relevant information
Non-profit organisations (SR.VIII)	• The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse. • A supervisory programme for NPOs should be developed to identify non-compliance and violations. • Systems and procedures should be established to allow information on NPOs to be publicly available. • Points of contacts or procedures to respond to international inquiries regarding terrorism related activity of NPOs should be put in place.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• Consideration should be given to the establishment of an Anti- Money Laundering Committee. The Committee should be given the legal authority to bring the various authorities together regularly to develop and implement policies and strategies to tackle ML and TF. The Committee should also be tasked with providing public education on issues of ML and TF. • St Lucia may wish to consider establishing a multilateral interagency memorandum between the various competent authorities. This would enable them to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF. • Consideration should be given towards putting in place a comprehensive framework to review the

	effectiveness of the system to combat ML and TF on a regular and timely basis. • The policy targets proffered by the AG/Minister of Justice should be implemented particularly: i. The training of the prosecutorial agencies particularly in the areas noted above for which they are wholly deficient ii. The funding of internal programmes to improve the quality of technical and human resources iii. The dissemination of information on AML/CFT policies and activities for implementation as internal policies. iv. A structured system which promotes effective national cooperation between local authorities.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• St. Lucia needs to sign and ratify or otherwise become a party to and fully implement the Conventions which relate particularly to the Palermo Convention, Terrorist Financing Convention, Suppression of FT and UNSCRs relating to terrorism. • Implement the legal frameworks for these conventions – in particular, enact its Anti-Terrorism Act.
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• The underlying restrictive condition of dual criminality should be addressed
Extradition (R.39, 37, SR.V & R.32)	• It is recommended that the St. Lucian Authorities consider legislative amendment to: i. Include money laundering, terrorism and terrorist financing as extraditable offences. ii. Criminalize Terrorism as an additional offence. iii. Provide mechanisms that will permit prompt and constructive exchange of information by competent authorities with non-counterparts
Other Forms of Co-operation (R.40, SR.V & R.32)	• St. Lucia should enact provisions which allows for assistance in the absence of dual criminality. • St. Lucia must enact legislation that specifically criminalises terrorism and financing of terrorism. • St. Lucia should consolidate the statutory

	instruments of the MLPA to avoid any inconsistencies.
7. Other Issues	
Other relevant AML/CFT measures or issues	
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
Abbreviations Used

ATA	Anti-Terrorism Act
CALP	Caribbean Anti-money Laundering Programme
CCLEC	Caribbean Customs Law Enforcement Council
DEA	Drug Enforcement Agency
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
FIA	Financial Intelligence Agency
FIU	Financial Intelligence Unit
FSSF	Financial Services Supervision Unit
IMF	International Monetary Fund
MACMA	Mutual Assistance In Criminal Matters Act
MLPA	Money Laundering Prevention Act
MOU	Memorandum of Understanding
OECS	Organisation of Eastern Caribbean States
POCA	Proceeds of Crime Act
REDTRAC	Caribbean Regional Drug Law Enforcement Training Centre
SEC	Securities Exchange Commission
SRU	Single Regulatory Unit
STR	Suspicious Transaction Report
UNRSC	
USOTA	United States Treasury Department, Office of Technical Assistance
WCO	Worlds Custome Organisation

ANNEX 2
All Bodies Met During the On-site Visit

Government Bodies
Attorney General
Director, Financial Sector Supervision
Financial Intelligence Authority
Director of Public Prosecutions
Office of the Commissioner of Police
Registrar of Cooperatives
Registrar of Companies
Registrar of International Business Companies
Immigration Department
Customs and Excise Department
DPP
Magistracy/Judiciary
Financial Sector Institutions
Bank of St. Lucia
Destiny Investment Bank Ltd
Adco Incorporated
St. Lucia Bar Association
Scotia Bank
Western Union
CLICO International Life Insurance Company
Price Waterhouse Coopers
Civil Service Cooperative Credit Union
CSB Financial Services Inc.
St. Lucia Teachers Credit Cooperative Ltd
Fidelity Risk Management Co.
Atlantic International Insurance
Sagicor
Panacea Ins Co.

ECCB
ST. Lucia Motor & General Insurance Company
1st National Bank
Industry Bodies
St. Lucia Bar Association
St. Lucia Planned Parenthood Assoc. (NPO)