



Anti-money laundering  
and counter-terrorist  
financing measures

# Trinidad and Tobago

Mutual Evaluation Report

June 2016



# MUTUAL EVALUATION REPORT OF TRINIDAD AND TOBAGO

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## **Executive Summary**

1. This report provides a summary of the anti-money laundering (AML)/ countering the financing of terrorism (CFT) measures in place in Trinidad and Tobago as at the date of the on-site visit of January 12-23, 2015. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Trinidad and Tobago's AML/CFT system, and provides recommendations on how the system could be strengthened.

### **A. Risks and General Situation**

2. Trinidad and Tobago is currently undertaking its National Risk Assessment (NRA) in relation to money laundering (ML)/ terrorist financing (TF). At the time of the on-site, Trinidad and Tobago had commenced, but not completed its NRA. Draft sector reports had been compiled and preliminary results had been communicated to the relevant sectors, however the Authorities advised that the draft reports could not be shared with the Assessors at that time. The National Anti-Money Laundering and Counter Financing of Terrorism Committee (NAMLC) advised that Trinidad and Tobago was in the process of reviewing, consulting on and finalizing the collated Report before sending to the World Bank. The different Competent Authorities (CAs) including law enforcement authorities (LEAs) have indicated to the Assessors that they are aware of the risk ML and predicate offences pose to the jurisdiction. However no documentation was produced to substantiate the information provided by law enforcement in this regard. The Financial Intelligence Unit of Trinidad and Tobago (FIUTT) produced information to show that the predicate offences of Tax Evasion, Fraud and Drug Trafficking are some of the highest generators of the proceeds of crime as a result of the suspicious transaction reports (STRs)/ suspicious activity reports (SARs) submitted to the FIUTT. The Assessors were informed that the location of the jurisdiction and its nexus to international trade also makes it vulnerable to cross-border ML risks. The information reflected the volume of currency declarations that were submitted by the Customs and Excise Division to the FIUTT along with the number of cash seizures that occurred throughout the port. The information provided to the Assessors shows that Money Value Transfer Service (MVTS) providers are second only to the banks in filing STRs/SARs to the FIUTT. The large volume of currency declarations being reported to the FIUTT by the Customs and Excise Department coupled with the increasing amount of reports the FIUTT has been receiving from the MVTS providers and the monetary value of cash seized by the Customs and Excise Division are indicators that significant amount of monies are being moved across the border.
3. The offence of Terrorism is not unknown to the jurisdiction. Law Enforcement and Intelligence Officials have indicated that nationals of Trinidad and Tobago are currently being held in Venezuela on suspected terrorist activity offences. The information provided to the Assessors also indicated that Trinidad and Tobago has extradited one of its nationals to New York, USA for terrorist related activities. Currently, LEAs and other intelligence agencies within the jurisdiction have intelligence information to suggest that its nationals are travelling to places such as Syria to fight with terrorist organisations such as ISIS/ISIL. The FIUTT has received information in the form of STRs/SARs which may indicate that some legal entities are engaged in conducting businesses with entities that may be involved in terrorism activities.

## B. Key Findings

### *Overall Level of Compliance and Effectiveness*

- x **Identifying, assessing and understanding risk:** Trinidad and Tobago is currently conducting its NRA in collaboration with the World Bank. This assessment is being spearheaded by NAMLC. The Assessors note that Trinidad and Tobago's understanding of risk is limited and there has been varied assessments of such risk by CAs. The NRA, therefore, would be helpful in assisting Trinidad and Tobago with identifying, assessing and mitigating the risk posed by ML/TF.
- x **The Limited Use of Financial Intelligence:** Trinidad and Tobago has robust legislation that allows for LEAs to gather financial intelligence and information to investigate ML, TF and associated predicate offences. These enactments being the POCA and the ATA also provides for the LEAs to trace, restrain and confiscate the proceeds of crime. The FIUA allows for the FIUTT to receive, analyse and disseminate financial information to the relevant LEAs. The FIUTT has disseminated several Intelligence Reports (IRs) to LEAs as part of its mandate. Three of these reports have led to the arrest and prosecution of five individuals for ML offences. However, the Assessors observed that a large number of SARs received by the FIUTT are still awaiting analysis or have been filed for intelligence purposes. It should also be noted that a number of the IRs disseminated to the Financial Investigations Branch (FIB) are still under investigation. The Assessors were informed that there has been an improvement in the quality of IRs submitted by the FIUTT as of 2014.
- x **Money Laundering Investigation and Prosecution:** LEAs in Trinidad and Tobago considered the risk associated with ML as being medium to high. The jurisdiction has recorded three cases of ML that have resulted in charges being brought against five individuals. The cases are currently pending before the Court. The information provided indicates that these cases were as a result of parallel investigations conducted between the FIB and the Fraud Squad. There are no arrests for stand-alone ML. The investigation of ML is not properly prioritized by LEAs. The lack of ML arrests coupled with the risks associated with the jurisdiction along with the lack of priority given to investigation suggests that the offence of ML is not properly investigated. Furthermore, none of the cases for which persons have been charged with ML have been adjudicated by the Court and this therefore creates a difficulty in determining whether these cases have been properly investigated. In the absence of convictions for ML, it is not possible to say conclusively that matters are being properly investigated. The absence of convictions for the offence of ML means that no sanctions have been applied by the Court. The offence of ML is not given priority within the Court system.
- x **Confiscation:** Confiscation is not treated with priority within Trinidad and Tobago. Trinidad and Tobago does not have any confiscation proceedings pertaining to ML, TF or any predicate offences. Recent changes to the POCA have created a loophole whereby confiscation may not be possible if the criminal ML conduct is not linked to a specified offence.
- x The Seized Assets Fund (SAF) which is for monies seized under the POCA and the ATA has not been properly established as persons have not been appointed to the Seized Assets Committee and Regulations governing the management and operation of the fund have not as yet been developed.
- x **Terrorist Financing:** The offence of terrorist financing has been adequately criminalised in the ATA and related regulations. The FIUTT has mandated in its Standard Operating Procedures (SOP) that STRs relating to TF are to be given priority and outlines the procedure upon receipt of these

STRs. The Assessors were informed that these IRs were delivered to the relevant person within the Trinidad and Tobago Police Service (TTPS). There has been no feedback to the FIUTT in relation to these IRs. The Assessors note that a report of TF was submitted since 2013 and there is no evidence to suggest that any actions have been taken against the individuals or entities mentioned in the report. There is no indication that TF is prioritized and properly investigated by LEAs as there has been no designation of entities or persons as terrorists, no assets restrained nor any arrests or convictions for TF offences. The framework for targeted sanctions related to the financing of terrorism needs to be significantly tightened up. There are not adequate sanctions or prohibitions in respect of making funds or facilities available to designated persons and all the requirements for freezing funds are not covered in the ATA. There is no comprehensive policy on the proliferation of financing of weapons of mass destruction and there is no adequate legislation on this issue. There does not appear to be a thorough appreciation of the risk of TF amongst the relevant authorities. There are inadequate resources to effectively investigate and prosecute TF.

- x **Non Profit Organisations (NPOs):** NPOs are required to register with the Registrar General's Department however there is no proper AML/CTF policy in relation to the management, supervision and monitoring of these entities. A targeted risk assessment for these entities has not been done as yet, neither are there adequate laws to address this area which means that for most intents and purposes the sector is not being sufficiently regulated.
- x **Preventive Measures** – The regulatory framework in relation to preventive measures is largely in place as demonstrated by the level of technical compliance by Trinidad and Tobago. However, significant gaps exist in the manner in which FIs and listed businesses (LBs) in Trinidad and Tobago implement these requirements. Gaps exist in understanding risk, applying enhanced due diligence to PEPS, internal controls and performance of CDD measures based on risk.
- x **Supervision** – The supervisory regime undertaken by the Central Bank of Trinidad and Tobago (CBTT) is robust and well developed given that it has had significantly more years of experience than the other CAs. Supervision performed by the CBTT is sound. Additionally, the FIUTT as a supervisor has demonstrated its capabilities while the Trinidad and Tobago Securities and Exchange Commission (TTSEC) has only recently begun direct AML/CFT supervision. Except for the CBTT there are issues of resources and expertise. Across the board, Regulators have not demonstrated sufficient understanding of risk and applied that understanding to how they regulate on a risk sensitive basis. Sanctions imposed by supervisors have been limited and the range of sanctions available have not been utilised adequately by supervisors. Supervisors need to consider wider use of those powers as well as seeking additional powers such as the ability to impose monetary administrative penalties.
- x **National AML/CFT Policies and Coordination** – There is an overall AML/CFT framework in place. The framework is coordinated by the NAMLC. Domestic coordination occurring amongst the key stakeholders has resulted in a number of positive strides within the AML/CFT framework. However, all sectors have not been covered in terms of articulation and thorough dissemination of the AML/CFT policy and in assessing and understanding the country-wide risks. There is need for greater resources to be invested so that all the key agencies are sufficiently funded.
- x **Legal Persons and Legal Arrangements** - Trinidad and Tobago is a thriving centre for commercial activity. It has a very active Registrar General's Department (RGD) that oversees the registration of companies, NPOs and the registration of business names amongst other functions. A publicly searchable electronic database for general records of the RGD has been invaluable in

increasing accessibility to basic information on companies. Some beneficial ownership information is kept and made available but the accuracy of this is questionable since there is no requirement in the Companies Act to demand and maintain such information. Trinidad and Tobago is not a major centre for legal arrangements. Recent improvements in the filing of annual returns has improved the accuracy of records within the RGD and the verification process but there is still significant room for improvement. No risk analysis pertaining to legal arrangements has been done.

- x **International Cooperation** – FIUTT has been working effectively to use mechanisms to share, exchange and respond to requests for information. The FIUTT is able to share information spontaneously. LEAs have not maximised the possibility of exchanging information with their foreign counterparts. Both the BIR and the Customs and Excise Division have limitations in providing or obtaining information from foreign counterparts. Requests for information are not always processed in a timely manner. All the provisions of the Vienna Convention, the Merida Convention, the Terrorist Financing Convention and the Palermo Convention need to be given effect to. A proper case management system does not exist for either mutual legal assistance or extradition cases. There are some limitations in the Mutual Legal Assistance Act that may affect the provision of information.

### C. **Priority Actions**

- x Trinidad and Tobago needs to continue its efforts to complete its NRA, so that policy makers and all stakeholders are aware of the risks ML/TF pose to the jurisdiction and to ensure that the necessary resources are allocated to the relevant LEAs and CAs based on risk.
- x The FIUTT should conduct an assessment review of its operational analysis of STRs/SARs to ensure that its analysis is in keeping with the operational needs of LEAs. This will also ensure that there are more prosecutions for ML offences originating from the IRs disseminated to law enforcement.
- x The FIUTT needs to conduct detailed strategic analysis on an on-going basis in an effort to apprise stakeholders, reporting entities and law enforcement of the ML/TF trends and typologies that are being observed within the jurisdiction. Strategic analysis should also be linked to TF.
- x More resources and training need to be afforded to the Analytical Section of the FIUTT to ensure that its primary function of analysing STRs/SARs, preparing proper IRs and disseminating to law enforcement is achieved. This recommendation is made as a result of the increase of STRs/SARs received by the FIUTT and a backlog in analysis.
- x LEAs need to prioritize the offence of ML with focus on high threat areas such as organised crime, fraud, tax evasion and drug trafficking.
- x There should be an increase in resources and training to LEAs in relation to the investigation and prosecution of ML and confiscation proceedings.

- x Greater emphasis on the ties between corruption and AML/CFT needs to be made and a definitive plan of action relating to this area should be incorporated within the national AML/CFT policy.
- x LEAs and other CAs should ensure that ML/TF investigations are given priority and ensure that investigations are conducted within a timely manner and that measures are in place to ensure that intelligence obtained by the relevant Intelligence Agencies on terrorist activities are transformed into evidence. This would enable the CAs to proceed before the relevant Court, have persons listed as terrorists or terrorist organisations, if the circumstances warrant such designations and ensure that any relevant assets are appropriately confiscated.
- x A comprehensive policy on the implementation of measures for targeted financial sanctions related to terrorism and terrorist financing needs to be done. The ATA needs to be amended to provide clearly for requirements of the recommendations pertaining to designated persons, listing and delisting requirements, freezing and other related measures in keeping with the obligations of the UN Sanctions regime.
- x A comprehensive policy on proliferation of financing of WMDs needs to be developed.
- x The ability for LBs to refuse entry to the FIUTT should be addressed.
- x The entire sanctions regime for AML/CFT must be reviewed, made dissuasive and a policy on how these sanctions will apply, needs to be implemented.
- x A comprehensive policy on NPOs including a thorough risk analysis needs to be done and appropriate legislation and other measures should be implemented.
- x Trinidad and Tobago should ensure that FIs and LBs, primarily Credit Unions and SIFIs, take immediate steps to identify and verify the beneficial ownership of all accounts including legal entities and arrangements that were in place prior to the FOR amendments which required RDD and take corrective action to rectify cases of non-compliance.
- x Steps should be taken to ensure that the time it takes FIs and LBs from when it determines that a transaction is unusual to when it files an STR/SAR is significantly reduced.
- x A policy decision should be made as to whether the jurisdiction will require that beneficial ownership information be provided to the RGD. This would require an amendment to the Companies Act. The Companies Act should also be amended to strengthen the penalties for violations under the Act. A comprehensive analysis of the AML/CFT risk associated with legal arrangements should be carried out.
- x All the necessary elements of the international conventions need to be satisfied. There should be an overall requirement set out in the Mutual Legal Assistance legislation, the Extradition Act and any related law that speaks clearly to the timely provision of assistance by the State. A case management system for both mutual legal assistance and extradition should be implemented.

**Table of Compliance with FATF Recommendations**

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> <li>x The authorities in Trinidad and Tobago have not fully identified or assessed the ML and TF risks of the jurisdiction neither do they fully understand these risks.</li> <li>x The NRA was incomplete during the on-site, hence, there is no report or identifiable measures to update.</li> <li>x As the NRA was incomplete, information to share with relevant CAs, SROs, and financial institutions (FIs) and Listed Businesses (DNFBPs) (LBs) was limited.</li> <li>x AML/CFT policies, controls and procedures are based on the limited understanding of risk and are being updated based on the preliminary outcome of the NRA.</li> <li>x Trinidad and Tobago has not fully applied a risk-based approach to allocating resources or implementing measures to prevent or mitigate ML and TF risks.</li> <li>x There is no comprehensive and consistent basis across the sectors for applying enhanced due diligence for transactions which pose a high risk for ML and TF.</li> <li>x FIs and LBs have begun the process of identifying and assessing ML and TF risks. However, the level of awareness is generally low with the exception of banks, although there are signs of improvement.</li> <li>x Financial sector participants which are subsidiaries / branches of entities overseas appeared to have stronger AML/CFT controls than local entities.</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>x Since the NRA has not been completed, Trinidad and Tobago could not fully develop AML/CFT policies which were informed based on identified ML/TF risks.</li> <li>x NAMLC, the co-ordinating body for AML/CFT needs to be properly constituted in law as this would create more stability for that entity.</li> <li>x There are mechanisms in place which enable policy makers, the Financial Intelligence Unit, law enforcement, supervisors and other relevant CAs to co-operate and co-ordinate the development and implementation of AML/CFT policies and activities. However, these mechanisms do not address the combating of the proliferation of weapons of mass destruction. There is insufficient emphasis on corruption as a risk within the jurisdiction. Additionally, some key agencies do not appear to have MOUs in place – specifically Customs and the Counter-Trafficking Unit.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>x No specific provision in law for “facilitating” as an ancillary offence to ML.</li> <li>x No specific penalty for legal entity.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>x SAF not properly established.</li> <li>x There are limited measures which will enable the jurisdiction to void actions which would prejudice its ability to freeze or seize property subject to confiscation.</li> </ul>

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
5. Terrorist financing offence	C	
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> <li>x No specific provision for proposing persons or entities to the 1267/1989 Committee to be designated.</li> <li>x No mechanisms for identifying targets for designation as required by the UNSCRs.</li> <li>x No provisions to facilitate UNSCR 1373 listing based on requests from other countries.</li> <li>x No specific measure have been provided to facilitate the collection or solicitation of information to identify persons and entities who meet the criteria for designation pursuant to UNSCRs 1267, 1988 or 1373.</li> <li>x All the requirements and procedures for freezing funds or assets are not covered in the ATA.</li> <li>x No provisions expressly prohibiting its nationals or persons or entities from within the jurisdiction from making any funds or other assets, economic resources, or financial services .available for the benefit of designated persons and entities.</li> <li>x Rights of bona fide third party parties are not fully covered.</li> <li>x No measures for submitting de-listing requests to the UN Sanctions Committees – 1267, 1989, 1988.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>x No implementation of targeted financial sanctions without delay related to proliferation of weapons of mass destruction.</li> <li>x No legal authority or CA has been identified relative to the implementing and enforcing targeted financial sanctions.</li> <li>x No measures have been adopted for monitoring and ensuring compliance by FIs and LBs with any laws governing this area.</li> <li>x Publicly known procedures have not been adopted for the submission of de-listing requests in this area.</li> <li>x No provisions have been made governing dealing with contracts, agreements or obligations affecting accounts that have since become subject to targeted financial sanctions.</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>x There are no laws requiring the Non-Profit Organisations (NPO) Sector to be subject to an AML/CFT regime.</li> <li>x There is a lack of proportionate and dissuasive sanctions for violations of the standards for NPOs.</li> <li>x No evidence of outreach to the NPO Sector concerning TF issues.</li> <li>x There have been no adequate policies articulated concerning NPOs.</li> <li>x Standards for NPOs are very limited.</li> <li>x Information held by different authorities may make difficult the effective gathering of information on the sector.</li> <li>x No relevant measures applied to those NPOs that would be identified as high risk and that account for a significant portion of the financial resources and/or international activities.</li> </ul>
9. Financial institution secrecy laws	C	

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
10. Customer due diligence	LC	x The requirement to not perform customer due diligence (CDD) where ML or TF is suspected and to file a SAR is not mandatory.
11. Record keeping	C	
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	C	
15. New technologies	C	
16. Wire transfers	LC	x No requirement for the intermediary institution to maintain records where technology limitations prevent the required originator or beneficiary information from being maintained as required in criterion 16.10.
17. Reliance on third parties	C	
18. Internal controls and foreign branches and subsidiaries	C	
19. Higher-risk countries	PC	x There is no requirement in Trinidad and Tobago for counter-measures to be applied independently. x FIs and LBs are not advised of weaknesses in the AML/CFT regime of countries not included in the FATF advisory
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	LC	x The offence of Tipping-off is only applicable when an STR/SAR has been reported and not when an STR /SAR is being filed.
22. DNFBPs: Customer due diligence	LC	x The same deficiency noted for FIs for compliance with Rec. 10 are also applicable LBs.
23. DNFBPs: Other measures	LC	x The deficiencies identified in Rec 19 and 21 apply equally.
24. Transparency and beneficial ownership of legal persons	PC	x Assessment of ML/TF risks associated with all legal persons in the country not comprehensively done nor completed. x No express legal requirement for the keeping of beneficial ownership and control information within the Companies' Registry. x No specific mechanism to ensure that beneficial ownership and control information is adequate, accurate and updated on a timely basis. x Sanctions are not dissuasive in the Companies Act. x Bearer share warrants are not specifically prohibited in the Companies' Act.

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>x Deeds of trust are not clearly covered in law.</li> <li>x The need for ongoing due diligence is not fully covered in the legislation.</li> <li>x No requirements in law for trustees to hold basic information on other regulated agents of and service providers to the trust.</li> <li>x Not all trustees are currently required to disclose their status when forming a business.</li> <li>x No specific powers provided for obtaining timely access to information held by trustees and other parties.</li> <li>x No certainty as to availability of information in the online registry pertaining to trustees.</li> <li>x Trustees not held legally liable for failing to perform their duties and obligations as trustees.</li> </ul>
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>x Except for the regime undertaken by CBTT, the registration regime is not sufficiently robust to prevent criminals and their associates from abusing financial institutions or mitigating ML/TF risks.</li> <li>x The system to properly identify and correct AML/CFT violations and, where necessary, apply sanctions is not effective sector-wide.</li> <li>x The regulation and supervision of the sector is not fully conducted using a risk-based approach.</li> <li>x Except by the CBTT and to a limited degree the FIUTT, the frequency and intensity of off-site and on-site supervision is not based on the ML/TF risks, policies or internal controls of institutions as assessed by the supervisory authority. Further, the ML/TF risks in the jurisdiction do not guide the supervisory regime.</li> <li>x The ML/TF risk profile of financial institutions is not reviewed, especially where the institution is not subject to group-wide supervision. For example the TTSEC assessment is relatively new and requires more time for assessing its impact.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>x The requirement in Section 18G of the Financial Intelligence Unit of Trinidad and Tobago Act, Chapter 72:01 to obtain consent from the owner or occupier of a business can be an impediment to the AML/CFT on-site inspection process and contradicts the FATF's requirement that a competent authority should not have to obtain a Court Order to obtain access for supervisory purposes.</li> <li>x Deficiencies in R. 35 apply.</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>x The regulation and supervision of LBs is not adequate for ensuring compliance with AML/CFT requirements. There is no adequate AML/CFT regulation or supervision of Private Members Clubs (PMCs) which operate as casinos.</li> <li>x There are no mechanisms in place which prevent criminals or their associates from holding (or being the beneficial owners of) a significant or controlling interest or holding a management function or being an operator of a PMC.</li> </ul>

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
		<ul style="list-style-type: none"> <li>x The fitness and propriety tests for registration as LBs is inadequate for preventing criminals and their associates from being professionally accredited or holding a significant or controlling interest or holding a management function in LBs;</li> <li>x The supervisory regime does not sufficiently take into account the risks associated with terrorist financing, terrorist organizations and terrorist financiers given the huge vulnerabilities of these entities.</li> <li>x The FIUTT is designated as the competent authority for monitoring and ensuring that LBs comply with AML/CFT obligations. However, there are insufficient resources allocated to the FIUTT to adequately carry out this function given the scope of its remit.</li> </ul>
29. Financial intelligence units	LC	<ul style="list-style-type: none"> <li>x The FIU SOP makes provision for the FIUTT to conduct strategic and operational analysis. However, the purpose of this analysis is not in keeping with the requirements of the FATF as strategic analysis is only applicable to ML and not TF.</li> <li>x The FIUTT's ability to effectively deploy its resources can be affected as a result of budgetary constraints. The budget of the FIUTT has been less than what was budgeted at most times during the period under review.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>x Law Enforcement and Investigative Authorities investigating the offence of ML and TF are unable to conduct these investigations utilizing a wide range of investigative techniques such as Control Delivery and Under-cover Operations.</li> </ul>
32. Cash couriers	PC	<ul style="list-style-type: none"> <li>x Civil and Administrative sanctions that are applicable to failing to declare are dissuasive but not proportionate.</li> <li>x Limited coordination and cooperation between Customs and other LEAs regarding the implementation of R.32.</li> <li>x No legal or other measures mandating the Customs and Excise Division to maintain records relating to declarations.</li> </ul>
33. Statistics	PC	<ul style="list-style-type: none"> <li>x The Authorities in Trinidad and Tobago have maintained some statistics. However, some of the information (statistics) cannot be used to demonstrate the effectiveness and efficiency of the AML/CFT systems.</li> <li>x There are no comprehensive statistics on some of the decisions made by the Authorities for the AML/CFT programme. An example would be data used to inform the inclusion of certain activities under the supervisory regime.</li> <li>x There is no legislation or internal measures mandating that the Law Enforcement or Prosecutorial Authorities maintain statistics. However, some of these Authorities have</li> </ul>

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
		demonstrated that they maintain statistics, although some of the statistics provided by the different agencies did not sync with each other.
34. Guidance and feedback	C	
35. Sanctions	PC	<ul style="list-style-type: none"> <li>x Sanctions to address non-compliance with AML/CFT obligations, in some cases, are not proportionate to the infraction or sufficiently dissuasive to discourage reoccurrence.</li> <li>x Except for TTSEC there are no monetary administrative penalties for AML/CFT breaches.</li> <li>x FIUTT has a limited range of sanctioning power.</li> <li>x Deficiencies in the sanctions regime for R 6 and 8-23.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>x Several provisions of the relevant international instruments have not been provided for in the following Conventions: Merida Convention, Vienna Convention, Terrorist Financing Convention and Palermo Convention.</li> </ul>
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> <li>x Mutual Assistance in Criminal Matters Act (MACMA) does not make any express provisions on the need to provide rapid assistance to satisfy a request for assistance.</li> <li>x No formal case management system in place.</li> <li>x A request may be refused in respect of a criminal offence under the tax laws.</li> <li>x The Central Authority has a general discretion to refuse a request.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>x Requests from Non-Commonwealth countries for freezing, seizing and confiscation are subject to limitations and qualifications.</li> <li>x The SAF is not properly established as the relevant persons have not been selected to sit on the Seized Assets Committee and Regulations for the operation of the Fund have not been prescribed. The SAF makes provision for the management and disposal of frozen properties. This also impacts the issue of asset sharing.</li> <li>x No provision in legislation for non-conviction based confiscation.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>x No formal system of case management in place.</li> </ul>
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> <li>x The spontaneous exchange of information by the CAs is not adequately provided for.</li> <li>x No legal basis for the FIUTT or LEAs to provide responses to their foreign counterparts on the usefulness of information provided and the outcome of its analysis.</li> <li>x There is no provision for Income Tax officials to exchange information with their foreign counterparts in relation to ML, TF, predicate offences and tracing the proceeds and instrumentalities of crime.</li> </ul>

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
		<ul style="list-style-type: none"> <li>x No legislative measures that enable law enforcement to form joint investigative teams to conduct cooperative investigations.</li> <li>x LEAs have no clear process in place to ensure the security of information received.</li> <li>x There is no safeguard and control in place for LEAs to ensure that information shared is only used for the purpose for which the information was sourced or provided unless authorization was given.</li> <li>x FIUTT is the only competent authority with a clear and secure gateway to information.</li> <li>x No clear indication as to whether besides the FIUTT any other law enforcement or supervisory agency has written policies on prioritisation and timely processing of requests.</li> <li>x No indication that the CBTT can enter into bilateral and multilateral agreements to cooperate.</li> <li>x No apparent measures requiring requesting CAs to provide timely feedback upon request to CAs that they have received information from.</li> <li>x Limitations on sharing information with counterpart authorities.</li> <li>x Protection of confidential information provided by a requesting state is not adequately covered.</li> <li>x No provision for sharing regulatory information on the domestic system and general information on the financial sectors and need for clearer provisions for sharing of prudential information.</li> <li>x No measures to allow foreign counterparts to conduct their own inquiries within the jurisdiction.</li> <li>x No measures on the receipt of prior authorisation of the requested supervisor for the dissemination of information.</li> <li>x No clear indication as to the extent that information may be shared with foreign counterparts.</li> <li>x Sufficient evidence not provided to confirm agreements with foreign counterparts.</li> <li>x No clear indication that information could be exchanged with non-counterparts.</li> </ul>

**Table of Effective Implementation of Immediate Outcomes**

<b>Effectiveness</b>		
<b>Immediate Outcome</b>	<b>Level</b>	<b>Factor(s) underlying the rating</b>
1. Risk, Policy and Coordination	Moderate	<ul style="list-style-type: none"> <li>x The authorities in Trinidad and Tobago do not adequately understand the ML/TF risks of the jurisdiction.</li> <li>x The ML/TF risks have not been fully identified, therefore, related national AML/CFT policies and activities are limited.</li> <li>x As there is no national assessment of ML/TF risks, there is no basis for exemptions or the application of simplified or enhanced due diligence measures for low risk entities, or enhanced measures for higher risks.</li> <li>x CAs have commenced co-operating and co-ordinating their efforts to develop and implement policies and activities to combat ML and TF. Work has been undertaken on a jurisdictional policy and framework to combat the financing of the proliferation of weapons of mass destruction. That work should be fast tracked.</li> </ul>
2. International Cooperation	Moderate	<ul style="list-style-type: none"> <li>x The FIB has not been effectively utilising all powers at its disposal to obtain assistance from foreign agencies. No clear guidelines on the requesting and sharing of information. Timeliness of execution is an issue.</li> <li>x The relevant legislation should be revisited to provide clearly and comprehensively to allow the FIUTT to facilitate all levels of cooperation especially pertaining to spontaneous information and non-counterparts.</li> <li>x Customs and Excise Department has experienced significant challenges in obtaining assistance/information from a foreign jurisdiction.</li> <li>x No evidence provided that BIR is sharing information with foreign counterparts. BIR legislation prohibits disclosure of information pertaining to income tax.</li> <li>x There are many outstanding articles of critical International Conventions that have not been complied with including articles of the Terrorist Financing Convention.</li> <li>x Timeliness of transmitting information was an issue</li> <li>x The deficiencies in the accuracy and adequacy of beneficial ownership information that is available and being maintained affects this IO. Powers and sanctions of the Registrar under the Companies Act need to be revisited.</li> <li>x MACMA needs to be amended to provide for clear and efficient processes for rapid provision of assistance where a request is made. There is an existing limitation on provision of assistance involving a fiscal offence. Limited basis on which confiscation orders can be made. Central Authority may refuse assistance.</li> <li>x No case management system for mutual legal assistance and extradition matters.</li> </ul>

<p>3. Supervision</p>	<p>Moderate</p>	<ul style="list-style-type: none"> <li>x Despite the FIUTT’s surveillance and enforcement process there are entities operating which have not been registered primarily in the areas of PMC, real estate and lawyers.</li> <li>x The FIUTT’s registration process does not prevent criminals and their associates from holding critical positions in LBs.</li> <li>x Except for the work of the CBTT and to a limited extent that of TTSEC, there is no evidence that supervisors mitigate or manage ML/TF risks using a risk-sensitive basis or determine whether FIs and LBs comply with their AML/CFT requirements.</li> <li>x The remedial actions applied against entities for various breaches, in many cases, are not proportionate or dissuasive.</li> <li>x Supervisors have in place manuals and procedures for supervision which includes onsite and offsite supervisions. However, in the view of the Assessors the number, intensity and scope of on-site examinations are not sufficient and are not fully representative of the ML/TF risks within the jurisdiction. The sole exception being the onsite process of CBTT and to a lesser extent the FIUTT.</li> <li>x The FIUTT does not have adequate resources to supervise and monitor relevant entities based on their size, complexity and risk profiles while performing its non-supervisory tasks as a regular FIU.</li> </ul>
<p>4. Preventive Measures</p>	<p>Moderate</p>	<ul style="list-style-type: none"> <li>x FIs and LBs do not have a full appreciation of the ML/TF risks. For example, Money Remitters, banks, insurance companies, PMCs, real estate agents, attorneys and credit unions do not consistently apply AML/CFT measures which are commensurate with the risks inherent in their respective products and services.</li> <li>x FIs and LBs do not adequately apply CDD and record-keeping measures. The retrospective due diligence exercise, which should have been mandatory, did not result in satisfactory level of compliance.</li> <li>x FIs and LBs have some internal controls in place to ensure that business transactions are refused when CDD is incomplete. However, Assessors understood during the onsite is that some entities do not adhere to this.</li> <li>x FIs and LBs do not sufficiently apply enhanced due diligence when dealing with politically exposed persons (PEPs), correspondent banks, when using technologies or wire transfers or transacting business with entities from high-risk countries.</li> <li>x FIs and LBs do not sufficiently meet their reporting obligations on suspected proceeds of crime and funds in support of terrorism. Assessors conclude that those interviewed had limited understanding of tipping-off and its implications irrespective of the fact that internal policies were developed to address these. A significantly higher level of understanding and</li> </ul>

		<p>compliance was shown by those supervised by the CBTT.</p> <ul style="list-style-type: none"> <li>x The internal policies and controls in FIs and LBs do not demonstrate timely review of (i) complex or unusual transactions, (ii) potential STRs for reporting to the FIUTT, and (iii) false positives.</li> <li>x There are no measures or tools in place to assess ML/TF risks or institute appropriate risk mitigation and systems and controls for ML/TF risks. There are no policies in place to mitigate or manage ML/TF risks.</li> <li>x There is a mechanism to provide feedback to FIs and LBs for detecting and reporting suspicious transactions. However, the feedback appears to have been limited and in many cases no feedback had been provided.</li> </ul>
5. Legal Persons and Arrangements	Moderate	<ul style="list-style-type: none"> <li>x Basic information on different types of companies is generally available from the Companies Registry which also stores that information in an electronic database which is accessible online. Since 2013, the Registrar of Companies has been imposing sanctions for failure to file annual returns however there are still a significant number of annual returns that are outstanding and for which the companies still remain on the Register. RGD should focus efforts on ensuring annual returns are made on a timely basis and delinquents penalised or struck off the Register.</li> <li>x The RGD cannot compel the production of beneficial ownership information and is unable to ensure the timely provision of accurate, current, adequate beneficial ownership information.</li> <li>x No comprehensive risk assessment of the various types of legal arrangements in the country has been done.</li> <li>x Comprehensive supervision across the board needs to be done to ensure adequate monitoring and verification of information submitted.</li> <li>x Increased resources needed for FIUTT and RGD to ensure proper monitoring and supervision.</li> </ul>
6. Financial Intelligence	Moderate	<ul style="list-style-type: none"> <li>x The FIUTT has increased the amount of IRs disseminated to LEA, however, there still remains very minimal prosecution, no convictions and confiscation from these IRs and information disseminated. The FIUTT and other stakeholders should therefore ensure that the IRs and information disseminated supports the operational need of LEAs. This would generate prosecution for ML, TF, associate predicate offences and asset tracing.</li> <li>x The FIUTT has increased its analysis and its output in relation to the IRs disseminated to LEAs. However a significant amount of STRs received for the corresponding period have not been analysed.</li> <li>x A significant amount of STRs have been filed for intelligence purposes as they do not meet the criteria for dissemination to the LEAs. This suggests that the</li> </ul>

		<p>standard of the STRs/SARs filed by FIs and LBs needs improving.</p> <ul style="list-style-type: none"> <li>x The FIUTT has not undertaken regular and updated strategic analysis which therefore undermines its ability to provide proper guidance on developing and emerging trends pertaining to AML/CFT. There is no provision for the strategic analysis relating to TF.</li> <li>x Law Enforcement Authorities are not effectively utilizing the FIUTT and the other mechanisms to obtain information that would assist in their investigations. It should be noted that there is evidence to show that the FIB, does request information from the FIUTT and has utilized the POCA to obtain financial information but this has not been extensively and effectively taking place.</li> <li>x There is cooperation between the relevant law enforcement authorities, prosecutorial authorities as a result of the meetings initiated by the FIUTT. The Assessors note however that these meetings do not appear to be regular and there is no set time frame for these meetings. Whilst some law enforcement entities indicated that there are regular meetings between themselves, no data was presented to the Assessors to substantiate the information.</li> </ul>
<p>7. ML Investigation and Prosecution</p>	<p>Low</p>	<ul style="list-style-type: none"> <li>x Whilst Trinidad and Tobago has made arrests and charges for ML offences, there is no indication that the offence of money laundering is treated with priority. It should be noted that all arrests were as a result of charges emanating from the predicate offence of fraud.</li> <li>x The amount of parallel investigation for ML conducted by the law enforcement is minimal, taking into consideration the volume of predicate offences that have been reported to the TTPS. The information presented to the Assessors suggests that the FIB is not involved in the investigation at the earliest opportunity or the FIB is not informed.</li> <li>x There have been no prosecutions for stand-alone ML offences.</li> <li>x There are no measures in place to ensure ML offences are prosecuted in a timely manner. The information received showed that there are ML cases pending from 2012 with no indication when these matters would be adjudicated by the Court.</li> <li>x No indication that ML offences are properly investigated, this is as a result of the limited number of arrests and prosecutions for ML offences. Taking into consideration the ML cases that are currently before the Court, the Assessors are still unable to determine whether these cases are properly investigated as the evidence has not been examined and tested in a Court of Law. Furthermore, there is no indication that other LEAs besides the FIB are actively involved in ML investigation.</li> </ul>

		<ul style="list-style-type: none"> <li>x No sanctions have been applied to any ML cases as there were no convictions for ML for the period under review.</li> </ul>
8. Confiscation	Low	<ul style="list-style-type: none"> <li>x Trinidad and Tobago does not have any record of confiscation in relation to ML, TF or predicate offences.</li> <li>x Confiscation proceedings are not prioritized by law enforcement and the prosecutorial authority.</li> <li>x Law enforcement and prosecutorial authority lack the necessary training and expertise to effectively conduct confiscation proceedings.</li> <li>x Predicate offences that have a propensity to generate criminal proceeds are not consistently reported to the FIB for investigation so as to facilitate that entity to conduct asset tracing.</li> <li>x Prosecutorial Authority lacks the resources to actively review and ensure confiscation proceedings are initiated in cases where there is an acquisitive crime.</li> </ul>
9. TF Investigation and prosecution	Low	<ul style="list-style-type: none"> <li>x The offence of TF is not prioritized by law enforcement or properly investigated.</li> <li>x No arrests, prosecutions or convictions for TF offences.</li> <li>x LEAs lack the relevant training to ensure that TF is properly investigated.</li> <li>x No sanctions for TF offences have been applied therefore unable to determine whether such sanctions are proportionate or dissuasive.</li> </ul>
10. TF Preventive measures & financial sanctions	Low	<ul style="list-style-type: none"> <li>x There is no adequate legislative framework for the regulation of NPOs and this was compounded by the fact that there was no evidence of either an AML/CFT policy or implementation of such a policy in relation to that sector. In the absence of a policy or strategy in respect of the sector any progress in terms of preventing terrorists, terrorist organisations and terrorist financiers from raising, moving and using funds and from abusing the NPO sector would be sporadic in nature. In fact there have been no sanctions applied that would have resulted in the desired outcomes.</li> <li>x Trinidad and Tobago has not designated any persons or entities as being terrorist in nature.</li> <li>x There is no evidence that Trinidad and Tobago has implemented targeted financial sanctions pursuant to UNSCR1267 and UNSCR1373.</li> <li>x The Authorities in Trinidad and Tobago have not demonstrated any emphasis on NPOs. The Assessors were not provided with any information to demonstrate any supervision or outreach to NPOs.</li> <li>x The Assessors were not provided with any information relative to any terrorists, terrorist organization or terrorist financiers being deprived of their assets or instrumentalities through criminal, civil or administrative processes. The CAs in Trinidad and Tobago have not placed emphasis on the risks associated with terrorism or terrorist financing</li> </ul>

		considering the high vulnerability for such activities in the jurisdiction.
11. PF Financial sanctions	Low	<ul style="list-style-type: none"> <li>x There is no policy in place that would lead to persons and entities involved in the proliferation of weapons of mass destruction being prevented from raising, moving and using funds, consistent with the relevant UNSCRs.</li> <li>x There is no comprehensive or adequate legislative framework in place that would lead to the application or implementation of targeted financial sanctions.</li> <li>x No persons or entities have been identified or designated by Trinidad and Tobago as being involved in PF and therefore no sanctions have been applied in that regard.</li> <li>x There was little evidence of understanding of obligations on the part of FIs and LBs as it relates to this particular outcome.</li> <li>x There was no evidence of monitoring and ensuring compliance on the part of the CAs.</li> </ul>

## MUTUAL EVALUATION REPORT OF TRINIDAD AND TOBAGO

### Preface

This report summarises the AML/CFT measures in place in Trinidad and Tobago as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Trinidad and Tobago's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Trinidad and Tobago, creditable open source information and information obtained by the evaluation team during its on-site visit to Trinidad and Tobago from January 12-23, 2015. The evaluation was conducted by an assessment team consisting of: Mr. Glenford Malone, Mission Leader, (Virgin Islands); Ms. Karen Hughes, Legal Expert (St. Kitts and Nevis); Ms. Janet Johnson-Haughton, Financial Expert (Jamaica); Mr. Stephen Thompson, Financial Expert (The Bahamas) and Mr. Pedro Harry, Law Enforcement Expert (St. Vincent and the Grenadines). The responsible Secretariat Staff are: Mrs. Diana Firth and Ms. Ana Folgar assisted by Ms. Dawne Spicer, Mr. Roger Hernandez and Mr. Jefferson Clarke. The report was reviewed by Mrs. Rhondalee Braithwaite-Knowles (Turks and Caicos Islands); Mr. Marc Richard (Canada) and Ms. Jasmine Wade (Antigua and Barbuda).

Trinidad and Tobago previously underwent a CFATF Mutual Evaluation in May-June, 2005, conducted according to the 2004 FATF Methodology. The 2005 evaluation and follow-up reports to May 2014 have been published and are available at <https://www.cfatf-gafic.org/> For the sake of brevity, on those topics where there has not been any material change in the situation of Trinidad and Tobago or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation, but includes a cross-reference to the detailed analysis in the previous report.

Trinidad and Tobago's 2005 Mutual Evaluation concluded that the country was compliant with one (1) Recommendation; largely compliant with six (6); partially compliant with thirteen (13); and non-compliant with twenty-eight (28). Trinidad and Tobago was rated compliant or largely compliant with one (1) of the 16 Core and Key Recommendations. SR.IX was not approved by the CFATF as a Special Recommendation at the time of the 2005 evaluation and was therefore not evaluated by the Assessors. Based on ongoing improvements made by Trinidad and Tobago, the country is now rated as outlined hereafter.

## 1. ML/TF RISKS AND CONTEXT

1. Trinidad and Tobago is located at the southern end of the Caribbean island chain, just off the coast of South America a mere seven miles off Venezuela's north eastern coast. Trinidad and Tobago occupies a land area of about 5,128 square miles. The official currency is the Trinidad and Tobago Dollars (TT\$), although US Dollars are also commonly used. <sup>1</sup>The islands are a 3 hour and 19 minute flight from Miami, 4 1/2 hours from New York and 58 minutes from Caracas. The island is surrounded by the tranquil Caribbean Sea on its North Coast with the less calm Atlantic Ocean on its southern and western sides. The country is one of the most prosperous in the Caribbean thanks largely to petroleum and natural gas production and processing. Tourism, mostly in Tobago, is targeted for expansion and is growing. Trinidad and Tobago's population stands at 1,223,916 (as of July 2014).
2. Trinidad and Tobago is a twin island Republic with a two-party system and a bicameral parliamentary system based on the Westminster System. The Head of State of Trinidad and Tobago is the President, The Head of Government is the Prime Minister. The President is elected by an Electoral College consisting of the full membership of both Houses of Parliament. The general direction and control of the government rests with the Cabinet, led by a Prime Minister. The 41 members of the House are elected to terms of at least five years. Elections may be called earlier by the President at the request of the Prime Minister or after a vote of no confidence in the House of Representatives. The Senate's 31 members are appointed by the President: 16 on the advice of the Prime Minister, six on the advice of the Leader of the Opposition, and nine Independents selected by the President from among outstanding members of the community.
3. The nation of Trinidad and Tobago has been the leading supporter of the Caribbean Community (CARICOM). Trinidad and Tobago was one of the four members in 1973 which then along with Barbados, Guyana and Antigua and Barbuda moved to establish the organisation that today is known as the Caribbean Community and Common Market.
4. Trinidad and Tobago is a member of the Organization of American States and the United Nations and many of its specialized agencies. Trinidad and Tobago also participates in the following International Organizations ACP, AOSIS, CARICOM, CDB, CELAC, CFATF, EITI (candidate country), FAO, G-24, G-77, IADB, IAEA, IBRD, ICAO, ICC (NGOs), ICRM, IDA, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), LAES, MIGA, NAM, OAS, OPANAL, OPCW, Paris Club (associate), UN, UNCTAD, UNESCO, UNIDO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO.

### 1.1 ML/TF Risks

5. **Banking:** With regard to ML and TF, Trinidad and Tobago has several areas that pose a high risk for money laundering and terrorist financing. Trinidad and Tobago is considered to be one of the largest financial centres within the region with a significantly high number of banks and other

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<sup>1</sup> Statistic and other Trinidad and Tobago's general information was taken from: <https://www.cia.gov/library/publications/the-world-factbook/geos/td.htm>, consulted on January 12<sup>th</sup>, 2015.

financial institutions. In terms of total assets, the banking sector represents 48% of the total financial system.

6. **Other financial institutions:** Credit Unions. Credit Unions are currently licensed under the Cooperatives Societies Act. Credit Unions alone are estimated to have membership of around 500,000 persons and assets in excess of four billion T and T dollars. This represents about 4% of total assets within the financial system. The Regulator of Credit Unions for purposes of AML/CFT is the FIUTT. The fact that there is no comprehensive legislation regulating Credit Unions poses a significant level of risk for the jurisdiction. For instance there is no current requirement for fit and proper assessment for senior managers of these entities. Additionally, the number of members involved makes it extremely difficult for these institutions to adequately carry out their AML/CFT obligations as well as poses a significant challenge for the regulators to appropriately monitor and supervise these entities. One Credit Union alone had a membership base of 128,000 persons.
7. **Drug Trafficking:** In its Third Follow –Up Report, the jurisdiction indicated that its geo-strategic location between illicit drug producing and drug consuming countries of the world exposed it to a level of vulnerability to ML from that aspect. This proposition is supported domestically by a relatively high level of drug trafficking offences which adds to the risk of ML. The Crime and Problem Analysis (CAPA) Branch of the TTPS reports that in terms of serious crimes, since 2011, there has been an average of 450 reported offences of trafficking in narcotics.
8. **Criminal Gang Activity:** Criminal activity poses a risk of both ML and TF for the jurisdiction. There are 89 listed gangs in the jurisdiction. The Criminal Gang Intelligence Unit indicated that because of the nature of the activities of gangs there is a tendency and opportunity to engage in ML. The Unit also indicated that several of the gangs engage in legitimate activities to acquire clean funds and then use those legitimate businesses as a front to cover for their illicit activities. There are two major gangs in the jurisdiction. Intelligence has revealed that persons from one of the major gangs have travelled to Syria and Iraq. There is a trend where gangs use violence to intimidate and corrupt public officials by obtaining favours and having contracts awarded to them or to their legitimate companies. Violence is not the only factor that gangs use to intimidate and corrupt public officials, the promise of political campaigning and intimidating citizens to vote for a particular political party are other measures that gangs use to exert influence.
9. **Fraud:** Fraud also poses a risk in the jurisdiction with other spin-off issues such as illegal brokering of fuel for yachts and similar vessels and illegal bunkering and quarrying.
10. **Connections with Terrorist Groups:** Recent evidence of persons from Trinidad and Tobago being linked to the ISIS terrorist group is instructive since persons having actually left the jurisdiction to join that group has been a cause for concern. The jurisdiction may seem more attractive to certain terrorists or terrorist causes because of the particular ethnic and religious landscape. Conversely, these factors may also render such causes to be more attractive to persons within the jurisdiction. The jurisdiction had previously been the subject of terrorist activities in the past. These factors create a vulnerability for ML/TF activity.
11. **Non-Profit Organisations:** The non-regulation of the NPO sector is also a cause for concern. Since such organisations could be used to facilitate ML/TF activity.
12. **Private Members Clubs:** There is a significant presence of PMCs within the country which provide gambling activities through gaming tables and machines that are similar to casinos. The high-cash turnover of these institutions, the nature of the clientele and the non-rigorous application of the AML/CTF requirements are a cause for concern. It is of note that some banks have refused to do business with some of these entities as a result of the perceived high risks of the industry.

13. **Money Value Transfer Services:** There is insufficient regulatory oversight of this service having regard for the enormous risk inherent in this sector for ML and TF. These risks increase significantly when the transactions move across jurisdictions.
14. **Jewellers:** The level of awareness of the ML risks associated with jewellery is very low. The operators of this sector do not demonstrate regard for CDD obligations, including managing high-risk transactions with PEPs, new technology or third-parties.
15. **Attorneys:** There is no evidence that the legal profession complies with AML/CFT measures. This is a serious deficiency having regard for the significant role played by these professionals as financial intermediaries (gatekeepers) in introducing and facilitating such a large percentage of financial transactions.
16. **Corruption:** Trinidad and Tobago was rated as being 38 out of 100 on the 2014 Transparency Corruption Index. This was the same rating the jurisdiction had received in 2013 and one better than it was in 2012 when it was rated at 39. This means that the country is ranked amongst one third to one quarter of what are perceived to be the world's most corrupt countries.<sup>2</sup>

## **1.2 Materiality**

17. Trinidad and Tobago attracts considerable foreign direct investment from international businesses particularly in energy investment. It has one of the highest per capita earnings in the Caribbean and Latin America. Trinidad and Tobago is one of the leading producers in oil and gas hence the economy is heavily dependent on these natural resources.

## **1.3 Structural Elements**

18. Trinidad and Tobago has established a relatively sound framework towards effectively preventing and combating ML/TF.
19. The AML/CFT policy is spearheaded by the NAMLC which is a multi-sectoral group made up of a number of key stakeholders. The main objectives of NAMLC include the following:
  - x make recommendations for the formulation of a National Policy in respect of AML/CFT;
  - x engage and consult with the AML/CFT stakeholder community on the design and/or updating or implementation of action plans, priority steps and risk assessments;
  - x act as a forum of consultation and collaboration among reporting and supervisory authorities, accountable institutions and organs of the State; also to promote and maintain productive stakeholder relationships by co-ordinating strategic level fora for the discussion of topical issues including international developments and initiatives to inform AML/CFT policy and allow the authorities to identify priorities, bottlenecks and possible challenges to implementation;
  - x provide technical assistance to the AML/CFT stakeholder community by periodically reviewing the overall needs assessments of the various organizations that are involved or

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<sup>2</sup> [www.transparency.org/cpi2014](http://www.transparency.org/cpi2014).

within the AML/CFT framework, conducting national assessments of AML/CFT risks and vulnerabilities to the various sectors and providing awareness raising seminars/symposiums on AML/CFT legal framework and implementation issues;

20. A high level of political commitment has been demonstrated in addressing AML/CFT issues. To this end, in February 2014, an Inter-Ministerial Committee (IMC) was established by Cabinet that consists of the Attorney-General, the Minister of National Security and the Minister of Finance, technical persons from each of the respective ministries and other key stakeholders in the AML/CFT network. The IMC was set up with the intention of among other things; fast-tracking the approval and implementation of compliance measures. NAMLC reports to the IMC and the Assessors were informed that the impetus created by the IMC has clearly helped to bring legitimacy to the process and has aided in accelerating the rate of decision-making past some of the more typical delays of governmental bureaucracy.
21. The responsibilities for Trinidad and Tobago AML/CFT policy are divided amongst the following Ministries of the Government and independent entities: Finance and Economy, National Security, Office of the Attorney General and the Office of the Director of Public Prosecutions (ODPP). The responsibilities of these Ministries and Offices are as follows:
22. **Financial Intelligence Unit Trinidad and Tobago:** The FIUTT is an independent body within the Ministry of Finance and the Economy. The FIUTT has two important functions, the first being the receipt and analysis of STRs/SARs. Having analysed these STRs/SARs the agency is mandated to disseminate same in the form of IRs to LEAs including the Commissioner of Police, Comptroller of Customs and Excise, Chief Immigration Officer and the Chairman of the Board of Inland Revenue. The second function of the FIUTT is one of a supervisory nature as it is responsible for the supervision of LBs.
23. **Trinidad and Tobago Police Service:** The TTPS is the premier intelligence and investigative body in Trinidad and Tobago and is headed by a Commissioner of Police. The umbrella body for this institution is the Ministry of National Security. The FIB is the agency that is tasked to investigate ML/TF and to trace the asset of criminals. The FIB is an agency within the TTPS and is commanded by the Deputy Commissioner of Police with responsibility for crime. The operation of the FIB is managed on a daily basis by a senior Police Officer.
24. **Customs and Excise Division:** The Customs and Excise Division is responsible for the cross border movement of currency and bearer negotiable instruments along with their regular customs duty. The Customs and Excise Division consists of several departments including the Preventive Section. This section is mandated to conduct investigations into IRs disseminated by the FIUTT along with conducting other functions.
25. **Board of Inland Revenue:** The BIR is considered to be a law enforcement authority under the POCA and is responsible for investigating tax offences along with their regular duties as specified under the Income Tax Act and other relevant legislation.
26. **The Office of the Director of Public Prosecutions:** The ODPP has sole responsibility for the prosecution of criminal offences. The POCA also gives the DPP the powers to institute confiscation proceedings against persons who would have benefitted from the proceeds of crime.

27. Trinidad and Tobago has demonstrated a high regard for the rule of law and has a number of stable institutions in place. The Judiciary is capable and independent and seeks to prioritise its cases based on the severity of the crimes brought before the Courts. Notwithstanding this position of the judiciary, there are clear indications that there are serious resource constraints within the judicial system which has resulted in an inability to achieve the timely and efficient processing of matters through the Courts. Consequently the jurisdiction has been severely hampered in its prosecution of ML/TF cases and related matters.

#### **1.4 Other Contextual Factors**

28. Trinidad and Tobago has an independent Integrity Commission which was established under the Integrity in Public Life Act. The objective of the Integrity Commission is to ensure that Public Officials are not corrupted and allegations of corruptions against Public Officials are investigated. The Integrity in Public Life Act captures a wide range of policy makers including politicians. Persons captured under the Act are required to file annual declaration of assets including monies with the Commission. The Integrity Commission is headed by a Chairman who is a Retired Justice of Appeal with the other Commissioners being a second Retired Judge, an Accountant and an Engineer.
29. The regulatory regime in Trinidad and Tobago ranges from the CBTT, which is undoubtedly the oldest and most matured arm of the framework, to the FIUTT which is the newest regulatory agency. The spin-off effect of this range is that those financial institutions which are regulated by the CBTT are subject to a more vigorous and developed regime than their counterpart-institutions which are regulated by the TTSEC and the FIUTT. Noteworthy is the level of co-operation and assistance rendered to the TTSEC and the FIUTT by the CBTT. In fact, the TTSEC was the beneficiary of a secondment programme with the CBTT. The result of this arrangement is that some of the regulatory programmes of the TTSEC are similar to those of the CBTT. Of particular note is the on-site and off-site examination process.
30. Trinidad and Tobago ought to be commended for its efforts on financial inclusion. This exercise which is still a work-in-progress is of critical importance to the jurisdiction which is largely a cash-based economy. Any further development can only strengthen the AML/CFT regime for Trinidad and Tobago.
31. In respect of financial inclusion with its population of approximately 1.3 million citizens, the jurisdiction is focused around ensuring that people have the knowledge to make responsible decisions about managing money, rather than about access, given a population where more than 75 percent of adults have an account at a financial institution. In this regard, from 2004, Trinidad and Tobago had already established an Office of the Financial Services Ombudsman as a consumer protection financial agency. There was also the establishment in September, 2014, of an agency to link financial supervision and financial literacy, Financial Inclusion Development Agency (FIDA), which provides an outreach mechanism to the populace, through reputable education and training courses which demonstrate that financial knowledge is power. Trinidad and Tobago also signed Memoranda of Understanding with Suriname, and Guyana in 2014, as part of the efforts to fulfil its Maya Commitment in the transfer of knowledge on financial inclusion. The actual impact of these initiatives is not clear given the recent implementation
32. On the other hand, Trinidad and Tobago faces enormous challenges in the area of terrorist financing having regard to its geographic location which increases the risk for movement of suspicious

persons and products. Yet another concern is the cross-border nature of some of its financial products and services. Trinidad and Tobago is also a trans-shipment point for many businesses and trading hub. This makes the jurisdiction susceptible to terrorist risk. The absence of strong measures to combat the financing of terrorism makes the jurisdiction susceptible to terrorist financing activities. By its own admission, the Authorities in Trinidad and Tobago have not placed particular emphasis on the financing of terrorist threats in the jurisdiction.

### **1.5 Scoping of Higher-Risk Issues**

33. During the onsite visit the assessment team gave increased focused to the areas listed below, which not only represented areas of higher risk for ML/TF (threats and vulnerabilities) but also concern topics that were of significant interest to the assessment team based on information that was provided by credible open sources.
34. **Criminal Activities:** This was flagged as a main area of concern as it relates to the risk of ML/TF based on the TTPS serious crimes statistics,<sup>3</sup> narcotics (drug trafficking), larceny, robberies and burglaries represent the highest number of reported crimes. There is a strong perception that a lot of the criminal activity is gang related.
35. **Human Trafficking:** The Authorities have indicated that the Counter-Trafficking Unit (CTU) was established January 2, 2013 to address the increased prevalence of human trafficking in Trinidad and Tobago. The CTU is an independent Unit within the General Administration Division within the Ministry of National Security and reports to the Permanent Secretary within that Ministry.
36. **Corruption:** The Assessors felt that this was a possible area of threat to the AML/CFT framework. Special attention was paid to this during the onsite visit and whilst some entities found that it was a low-risk area, some key LEAs flagged it as an underlying risk that was medium to high in nature since there were links to organised crime, fraudulent activity and procurement issues in terms of government contracts being unlawfully awarded. There were issues with the Integrity Commission not having met for a significant portion of 2014.
37. **Tax Evasion:** The Government of Trinidad and Tobago recently instituted a tax amnesty in 2011, and the 2014 budget is evidence that tax evasion is a problem with the jurisdiction.
38. **No Conviction for Money Laundering:** The absence of convictions for ML offences in the jurisdiction despite the passage of legislation for the past fourteen years.

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<sup>3</sup> <http://www.ttps.gov.tt/Statistics.aspx>

## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings*

- x There is an overall AML/CFT framework in place that is being driven by NAMLC.
- x The Authorities in Trinidad and Tobago have assembled a strong cadre of relevant stakeholders to assist in recommending to the policy makers the appropriate AML/CFT policies and procedures. The Assessors have noted that several private-sector interest groups appeared to have at least a cursory appreciation of the work of NAMLC although some were not involved in its work.
- x A review of the agendas of the NAMLC's meetings, although not prescriptive, suggests that matters noted for discussion provided the framework for instructive deliberations.
- x There appears to be some understanding of risk by some CAs in certain sectors however there is a definite need for improvement since some sectors have not as yet been covered or adequately covered and there needs to be an overall comprehensive understanding and articulation of the country-wide risks so that adequate prioritisation of both resources and efforts can be targeted to the most critical areas.
- x A proper policy on proliferation of financing has not been developed.
- x The current AML/CFT policy needs to be revised since it was officially done between 2006-2008. National Authorities have advised that this would be done once the NRA process is completed.
- x There is a commendable level of cooperation and coordination amongst the key stakeholders that has contributed to the progress to date of the country in bolstering their AML/CFT framework. More work needs to be done in this area in terms of rationalisation of the focus and outcomes of activities to address areas of greatest threats or vulnerabilities.
- x There is a general concern that despite heavy emphasis on collaboration and inter-agency coordination that there remains a disconnect in terms of the low level of prosecution of ML offences and the confiscation of the proceeds of crime.

### 2.1 *Background and Context*

#### (a) *Overview of AML/CFT Strategy*

39. Trinidad and Tobago has established a NAMLC to ensure that the relevant agencies including Regulators, Law Enforcement, Prosecutions and the Attorney General's Office are developing ideas which are then forwarded to the Government to ensure that sound AML/CFT policies are developed. Development of these Policies by members of the NAMLC increases the likelihood that they will be implemented. Additionally, Trinidad and Tobago in 2014 established an IMC that comprises of the three essential Ministries dealing primarily with AML/CFT matters. These Ministries being the Ministry of National Security, Ministry of Finance and the Office of the Attorney General. The Head of these Ministries, all being members of the Cabinet and having representation in NAMLC ensure that information and ideas developed by NAMLC are taken to Cabinet in a timely manner thereby enabling a fast and effective process. The information provided indicated that in 2010 when the Government was sworn into office, the jurisdiction was on the FATF grey list, however measures such as the IMC provide that the information and ideas of NAMLC are dealt with efficiently by taking same to Cabinet and having the relevant legislation enacted within the Parliament.

40. The Attorney General and the Minister of National Security are also members of the National Security Council under the chairmanship of the Prime Minister. The result of these two important offices being in these positions, is the discussion of AML/CFT matters at a National Security level. The CAs have indicated whilst statistics do not show the effectiveness of the system, significant work has been undertaken on the legislative framework. The Assessors were further informed that there is a need for an educational campaign in relation to AML/CFT as law enforcement officials are only focusing on the predicate offences.

(b) *The Institutional Framework*

41. Trinidad and Tobago's institutional framework involves a host of Ministries and CAs that are responsible for implementing aspects of the country's AML/CFT regime. However, on a national level NAMLC, established by the Cabinet of Ministers, is responsible for coordinating the work of the different agencies in relation to AML/CFT. NAMLC is comprised of officials from key agencies including the FIUTT, TTSEC, CBTT, Central Authority, ODPP and the TTPS.

(c) *Coordination and Cooperation Arrangements*

42. There are different agencies within the jurisdiction that are responsible for supervision and regulating different sectors within Trinidad and Tobago's ML/TF regime. NAMLC has the responsibility to ensure that these agencies coordinate and cooperate with each other on a national level in relation to AML/CFT policies. The Assessors note that agencies such as the AML/CFT Compliance Unit within the Ministry of National Security along with the Attorney General continue to play an integral part in also ensuring that these agencies continue their coordination and cooperation on a national level.

43. The NAMLC comprises a dedicated group of persons who appear to share a common objective of strengthening the AML/CFT regime of the jurisdiction. The level of enthusiasm and support across Government Ministries, Departments, Agencies, Regulatory Agencies and other relevant CAs demonstrates a co-ordinated and collaborative AML/CFT body at the operational level.

44. Trinidad and Tobago has the benefit of an IMC which has the potential of ensuring the highest level of political support for the AML/CFT programme among policy makers. This can bolster the entire regulatory regime in Trinidad and Tobago. The initiative to establish policies or mechanisms to address the risks associated with the financing of proliferation is only in its infancy/planning stage. In August 2014 the Government of Trinidad and Tobago submitted a formal request to the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) to obtain assistance for strengthening the implementation of resolution 1540(2004)<sup>4</sup>. The primary mandate of NAMLC to date, has focussed on the ML risks in the jurisdiction. Additionally, the risks related to the financing of proliferation did not appear to be included in the NRA.

(d) *Country's assessment of Risk*

45. The jurisdiction is currently undertaking its NRA in collaboration with the World Bank. The Assessors were informed that the NRA is between seventy five to eighty percent completed with the scheduled completion date being April-May, 2015. The Assessors were informed that whilst

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<sup>4</sup> A formal Plan was drafted coming out of this for implementation in first quarter 2015.

the NRA has not been completed the jurisdiction is aware of the inherent ML/TF risk that is associated with each sector such as Banking. The Assessors were informed that the county is aware of the risks that are associated with the sectors through onsite examinations conducted by the Regulators such as the CBTT and the FIUTT.

46. As the NRA had not been concluded at the time of the on-site, the Assessors were not privy to any comprehensive assessment of ML or TF risks in Trinidad and Tobago. However, the Assessors can reasonably expect that the results of the NRA will reveal that there are products and services offered in and from the jurisdiction that are susceptible to the risk of ML and TF.
47. Once the NRA has been completed, it can be a useful tool to facilitate the development of appropriate AML/CFT policies. These policies and underlying procedures can be used to mitigate and manage ML/TF risks and provide the foundation for a risk-based supervisory framework.

## **2.2 Technical Compliance (R.1, R.2, R.33)**

48. For the full narrative see the technical compliance annex.
  - x Recommendation 1 (assessing risks and applying a risk-based approach) is rated PC.
  - x Recommendation 2 (national cooperation and coordination) is rated LC.
  - x Recommendation 33 (statistics) is rated PC.

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

49. It is clear that Trinidad and Tobago has invested considerable resources and done a significant amount of work in an effort to identify and understand its risks of ML/TF. Trinidad and Tobago, through the channel of the NAMLC has embarked on a NRA. The country had created a National Anti-Money Laundering Policy in 2008 and has generally proceeded along the lines of that policy which had contained a provision for the possibility of taking risk assessments on board. Whilst the country seemed well on its way with the NRA and generally seems to have paid attention to some areas of potential risk, it appeared that reliance was being placed on the overall completion of the NRA in order to make a comprehensive determination about the national AML/CFT risk.
50. NAMLC and the NRA process clearly has political endorsement and buy-in at the highest level. There is an IMC which has assisted greatly with critical policy decisions as well as expediting the implementation of those decisions when needed.
51. The NRA process seems to be engaging a wide range of stakeholders from across a gamut of ministries as well as key partners from the private sector. The latter include the Trinidad and Tobago Stock Exchange and the Law Association.
52. The level of understanding of such risk varies and there is no documentary evidence that risk assessments have been done across all sectors. However, CAs such as FIUTT, CBTT and TTSEC seem to have a general understanding of some areas of the risk posed. The FIUTT indicated that it had adopted a risk-based approach to supervision and had identified five high risk sectors amongst LBs: Attorneys-at-law, Accountants, Private Members Clubs, Real Estate and Motor Vehicle Sales.

Additionally, Credit Unions and Money Value Transfer Services were similarly categorised. <sup>5</sup>The jurisdiction is currently undertaking an NRA which will be used to get an overall understanding of its risk. Sufficient information was forthcoming from different working groups of the NRA and sectors to glean where the country has focussed some of its efforts. The banking sector and other financial institutions have received a considerable amount of attention. Some sectors such as the jewellers and the automotive industry did not appear to have fully grasped the nature of that risk.

53. Several systems have been put in place in some sectors to address the risks. Amendments to the POCA and the Financial Obligation Regulations (FOR) have been made in an effort to deal with legislative shortcomings. The Supervisory frameworks have generally benefitted from a serious level of attention. Within the FIUTT, the awareness of the need to adequately monitor and supervise LBs has generated an increased number of onsite inspections and there has been a concerted effort to disseminate information to the regulated sectors and to try and ensure that there is at least a basic compliance programme in place. The jurisdiction indicated that questionnaires were issued across the various supervisory sectors to determine what types of framework different entities had in place.
54. That being said however, there is still a definite need for improvement, it did not appear that the links between ML and certain predicate offences were being actively pursued – for instance in the area of Human Trafficking. In that field more of the emphasis seemed to be placed on the offence itself rather than pursuing the money trail. It was evident too that there needs to be greater collaboration between the Counter- Trafficking Unit (CTU) and the FIB at a much earlier stage of the investigation.
55. More attention should be paid to the possible links between corruption and ML/TF activity. There was no indication that the jurisdiction as part of its regime had given serious consideration to corruption-related risk in a manner that would have driven the application of its AML/CFT policies. The Criminal Gangs Investigation Unit (CGIU), the Organised Crime Narcotics and Firearms Bureau (OCNFB) and the Fraud Squad (FS) all flagged corruption as being an area of at least Medium to High Risk of ML/TF however the overall AML/CFT policy and resources did not appear to be focussed on this area. Issues with the adequacy and effectiveness of the Integrity in Public Life Act<sup>6</sup> seem to have a dampening effect on the effectiveness of the Integrity Commission since the body can only recommend that matters under investigation be passed on to the ODPP for further action and not actually sanction. In its 2013 Annual Report the Integrity Commission identified deficiencies in the Prevention of Corruption Act in terms of the need to criminalise a number of corrupt activities which are not presently captured. There are staffing issues with that body: in 2013 Commissioners were not appointed for three and a half months and five key staff members from the Compliance Division left in that year and in 2014 the Integrity Commission only operated for approximately six months out of the year. <sup>7</sup>The effect of this was an increase in the backlog of declarations that need to be verified and then certified by the Integrity Commission. In other words there were key periods of time within which the assets and income of public officials were not adequately monitored or monitored in a consistent manner.

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<sup>5</sup> Case File 33 SD4 FIUTT Statistics Compliance and Outreach.

<sup>6</sup> Integrity in Public Life Act Cap. 22:01 section 21.

<sup>7</sup> The Integrity Commission: 26<sup>th</sup> Annual Report to Parliament for the Year 2013.

56. In terms of policy coordination, the jurisdiction has identified and is using the remit of NAMLC to do overall formulation and coordination of AML/CFT matters within Trinidad and Tobago. There is a high level of domestic coordination and cooperation within the jurisdiction. This has been demonstrated through the provision of sample agendas for LEA meetings and the attendance register for several of those meetings. The Assessors noted that the processes are not ideal and that there are some inconsistencies in reporting. Most of the relevant LEAs indicated, for instance, that there was a monthly LEA meeting that was held regularly – although notes or minutes do not necessarily appear to be consistently maintained at those meetings. The statistics pertaining to those Meetings do not necessarily appear to bear out this assertion since there was apparently only one LEA meeting on record in 2014 and four in 2013. This could most probably be attributed to a failure in proper record keeping in respect of those meetings. The inconsistency in reporting and the keeping of minutes might also be the rationale for difficulties in achieving some of the desired outcomes of those meetings.
57. Trinidad and Tobago is currently undertaking its NRA. CAs have developed a NRA Working Group that comprises of various stakeholders such as FIUTT, CBTT and LEAs. The three regulators also comprise the Supervisory Working Group. The function of the Supervisory Working Group is to ensure that entities that are supervised by the various Regulators are involved in the process. The Supervisory Working Group ensures that communication is done through the relevant Associations such as the Bankers Association hence all sectors within the Banking Industry are aware of the NRA. The NRA Working Groups were:
- a) Group One – ML/TF Threat Analysis
  - b) Group Two – National Vulnerability
  - c) Group Three – Banking Sector Vulnerability
  - d) Group Four – Securities Sector Vulnerability
  - e) Group Five – Insurance Sector Vulnerability
  - f) Group Six – Other Financial Institutions Vulnerability
  - g) Group Seven – Listed Businesses
58. The first phase of the NRA started in March, 2014. The NRA is being conducted using the World Bank tool, which includes a process in which the World Bank provides guidance at various stages of the exercise. The first phase involves training and technical assistance on the use of the tool, template and how to develop an action plan. The second phase of the NRA included data collection, reports from the sub-working groups and preparation of the Working Group report. The third and final phase of the process would involve meeting with the World Bank and Public Officials along with developing a plan of action. The report is currently in its preliminary stage and is subject to change. The CA has indicated that the time frame for submitting the report to the World Bank is April, 2015. They have indicated that they are hoping to finalize the NRA in May, 2015. The Assessors were informed that some of the methods utilized to identify risk of ML/TF by the relevant authorities include: conducting onsite examinations by Regulators such as the CBTT and the FIUTT. The Assessors were informed that the CBTT has a long history in conducting onsite examinations and would have shared such expertise and assisted the FIUTT in conducting some of these onsite inspections as the FIUTT is new to conducting onsite inspections. Risks were also identified by the FIUTT through the analysis of STRs/SARs and this was shared with the Working Group to develop the NRA. The risks that were identified by the TTPS via the FIB as higher generating proceeds of crime offences were examined and regular meetings were held with the relevant heads of departments to make them aware of the roles of the FIB. Some of the risks that were identified by LEAs includes Drug trafficking and Human Trafficking. LEAs also identified the illegal bunkering of fuel as an emerging threat.

59. The CAs also conducted outreach with the various sectors that are involved in AML/CFT such as the LBs. These sectors would have provided feedbacks. Having identified the risks that were associated with the relevant sectors newsletters and other information were distributed and onsite inspections were conducted to ensure that measures are in place to mitigate the risk. The Assessors were informed that some of the measures that were put in place by the CAs include:

- x Development of an AML/CFT regime whereby institutions are required to develop a client risk profile, this was achieved through onsite inspections.

- x Revisiting the guidelines issued to these institutions and issue further guidelines.

60. The Assessors were informed that the NRA process is approximately seventy five to eighty percent completed. Some of the challenges experienced by members of the NRA Working Group include ensuring that the data is properly collected and that those involved were not solely dedicated to the NRA but also had substantive jobs.

#### **Overall Conclusion of Immediate Outcome 1**

61. Whilst it can be stated that Trinidad and Tobago and the relevant CAs have taken steps to identify and mitigate the risks that are associated with certain industry sectors limited data or documentation was provided to the Assessors to evidence that such necessary steps were taken. There are also indications that not all entities that are involved in AML/CFT policy are aware of the risks that are associated with their particular sector. The Assessors acknowledged that agencies such as the CBTT has been engaged in onsite examination over a long period and therefore possess the relevant skill set to identify and mitigate the risk that is associated with the sectors they regulate. However, Regulators such as TTSEC and the FIUTT have more recently begun a process of onsite inspection and this may pose a challenge to these entities. The FIUTT's experience with onsite inspections demonstrates that they are capable of carrying out this task though avenues for improvements remains. The Assessors also note that a number of entities under the supervision of the TTSEC and the FIUTT have not been subject to onsite inspections although many of those supervised by the FIUTT have been labelled as high risk in relation to ML/TF whilst the TTSEC has identified a number of medium risk entities. Whilst LEAs have indicated that they are aware of the risks that are associated with their sector, limited evidence or documentation was provided to show that they are aware of these risks. Furthermore, there is limited evidence that efforts are being undertaken to mitigate these risks.

62. **Trinidad and Tobago has a moderate level of effectiveness in Immediate Outcome 1.**

#### **2.4 *Recommendations on National AML/CFT Policies and Coordination***

63. In terms of Recommendation 1, whilst it appears to be on the right track, the jurisdiction needs to complete the NRA so it could comprehensively chart a course for its AML/CFT policy. That policy needs to include a plan for addressing issues surrounding the proliferation of weapons of mass

destruction, articulation of a strategy for dealing with NPOs, prioritisation and commensurate allocation of resources to address the most significant threats and risks.

64. In terms of Recommendation 2, more resources need to be channelled into key agencies such as FIUTT, FIB, Special Branch, ACIB, CGIU, OCNFB and LEAs in general to be able to fully implement policy directives and to foster the desired outcomes from national cooperation and coordination.
65. Once the NRA has been completed and the results (or findings) have been communicated to all relevant parties, the CAs, supervisors, FIs and LBs should immediately develop a comprehensive risk-based approach to their AML/CFT initiatives.
66. Supervisors need to embark upon a comprehensive and consistent AML/CFT training and awareness programme for their respective entities and the public in general. These efforts will ensure a fuller appreciation of the risks associated with ML and TF. There must be a concerted effort in Trinidad and Tobago to strengthen the regulatory regime for oversight of terrorist financing risks.
67. The off-site and on-site examinations process of supervisors should be intensified on a risk-sensitive basis to determine the level of understanding and/or compliance by FIs and LBs with their AML/CFT obligations.
68. The Authorities in Trinidad and Tobago should ensure that priority is given to strengthening the supervisory regime for those businesses which pose a great risk for ML and TF. Akin to these efforts is enhancing the licensing and registration process to include more of these businesses within the regulatory scope.
69. There should be an intense effort towards strengthening the regulation of NPOs. Based on the serious vulnerability of NPOs, Trinidad and Tobago should review and update its national strategy for this sector.

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### *Key Findings*

- x Trinidad and Tobago has a well-established FIUTT that receives STRs/SARs from the relevant FIs, Non-Regulated FIs and LBs. These reports are then analysed and disseminated in the form of IRs to LEAs namely TTPS (FIB), Immigration, Customs and Excise Division and the BIR.
- x The FIUTT has access to a wide range of information which is utilized to analyse its STRs/SARs. However, there seems to be limited requests for information from the LBs and Government Agencies by the FIUTT in the conducting of its functions.
- x The Assessors conclude that the FIUTT operational analysis does not support the operational needs of the LEAs. The reason for such conclusion is based on the limited amount of prosecutions from the IRs, information disseminated, assets traced and restrained along with the absence of confiscation proceedings. Furthermore, the information presented to the Assessors indicated the LEAs have only recently seen an improvement in the quality of the IRs disseminated by the FIUTT.
- x A significant number of STRs/SARs filed by the FIs and LBs have been categorized as solely for intelligence purpose as they do not reach the threshold for dissemination to LEAs. This is an indication that the quality of STRs/SARs is low and that FIs and LBs are seemingly involved in defensive filings and more guidance maybe needed for these institutions in filing STRs. The Assessors also observed that a significant number of STRs/SARs for the period 2011 and 2012 are still being subjected to ongoing analysis. However, it is also important to note that the FIUTT did increase the output of IRs disseminated to the LEAs and analysis of STRs received for the period 2013 and 2014.
- x Whilst a significant amount of training has been provided to Analysts employed at the FIUTT, there is a need for more detailed and in-depth training related to operational and strategic analysis with respect to STRs/SARs.
- x LEAs are not effectively utilizing the legislation and mechanisms such as the FIUTT to effectively obtain information that would assist in their investigations of predicate offences, ML, TF and to identify and trace assets.
- x ML investigations are not prioritized by LEAs. Whilst statistical data was presented by some agencies to show the number of cases currently being investigated, there is no evidence to show that these cases are being aggressively pursued. There is no indication that these investigations are at an advanced level and ready for prosecution. There is no evidence that other LEAs in receipt of IRs from the FIUTT are engaged in any ML investigations. Furthermore the statistical information provided by law enforcement shows that there are few cases of standalone ML investigations as all ML investigations are parallel investigations.
- x The FIUTT should be commended for initiating the LEAs meetings. These meetings assist in fostering and developing relationships between the agencies that are involved in the investigation and prosecution of ML and the associated predicate offences. However, there needs to be an established framework and time period for these meetings as the information presented to the Assessors showed that there were minimal meetings between the entities.
- x The jurisdiction has minimal ML prosecutions, considering the number of serious crime being reported along with the number of IRs being submitted to the various law enforcement authorities. There are factors such as the level of training and expertise that are preventing the law enforcement from effectively investigating the offence of ML.
- x No sanctions have been applied to the offence of ML as there is no recorded conviction within the jurisdictions. The information provided showed that there are cases of ML currently before the Court from the year 2012. The CA has indicated that ML cases are not given priority by the Court, hence the reason for the delay. LEAs have indicated that there should be a specialized court solely for the purpose of ML offences. However, the Judiciary has indicated that not enough cases of ML

are being brought before the Court for prosecution to justify the allocation of specific resources to these types of matters.

- x The ODPP along with the FIB and other LEAs are primarily responsible for confiscation. Information was provided to the Assessors to show that the jurisdiction has obtained Restraint Orders. However, considering the volume of predicate offences in conjunction with the limited number of Restraint Orders obtained, it suggests that law enforcement and prosecutorial authorities are not targeting the proceeds of crime.
- x Prosecutorial staff and LEAs, whilst they would have received some training in the investigation and prosecution of ML, have received limited or no training in the area of confiscation. LEAs who are engaged in the investigation of predicate offences have not been provided with any training or outreach programs in relation to confiscation and the importance of confiscation.
- x The amount of cross-border seizure of currency and bearer negotiable instruments is minimal considering the risk that is associated with this activity.
- x The FIUTT, Law Enforcement and Prosecutorial Authorities are under staffed. Limited resources therefore have an impact on their ability to effectively conduct their functions in relation to analysis, investigation of ML, prosecution and confiscation proceedings.

### **3.1 Background and Context**

#### **(a) Legal System and Offences**

70. ML has been adequately criminalized in the POCA, based on Article 3(1)(b) and (c) of the Vienna Convention and Article 6(1) of the Palermo Convention. The offence is defined in short as an act where a person knowingly engages directly or indirectly in a transaction that involves criminal property. The offence extends to a range of actions including receiving, possessing, transferring or converting that criminal property.
71. Trinidad and Tobago uses an approach of categorizing predicate offences as specified offences. These offences are set out in a Schedule to the Act and have a threshold of a fine of not less than five thousand dollars or to imprisonment for a period of not less than twelve months. These offences include acts committed outside of the jurisdiction which would be specified offences if they had actually been committed within Trinidad and Tobago. Recent amendments to the POCA have now made it possible that persons can be convicted of money laundering without first having to be convicted of a predicate offence.
72. According to section 3 of the POCA, Trinidad and Tobago provides for the possibility of confiscation of the proceeds of a specified offence where it appears that a person convicted may have benefitted from the commission of that offence. Where a Magistrate or the DPP believes that there is such a case then that matter would be sent to the High Court for a determination as to whether a confiscation order should be made. The confiscation order would be in respect of realizable property which is held by the defendant or someone who has received a gift that would constitute a benefit under the Act.
73. The DPP is constitutionally responsible for the prosecution of all crimes in Trinidad and Tobago. In that capacity, the ODPP provides advisory services on matters of a criminal nature to all government departments and agencies. It is also responsible for the prosecution of money laundering offences, corruption, confiscation of criminal proceeds and extradition proceedings.

### **3.2 Technical Compliance (R.3, R.4, R.29-32)**

74. For the full narrative see the technical compliance annex.

- x Recommendation 3 (money laundering offence) is rated LC.
- x Recommendation 4 (confiscation and provisional measures) is rated LC.
- x Recommendation 29 (financial intelligence units) is rated LC.
- x Recommendation 30 (responsibilities of law enforcement and investigative authorities) is rated C.
- x Recommendation 31 (powers of law enforcement and investigative authorities) is rated LC.
- x Recommendation 32 (cash couriers) is rated PC.

### 3.3 *Effectiveness: Immediate Outcome 6 (Financial intelligence)*

75. The FIUTT has direct and indirect access to a wide range of information that is used to conduct its functions. Some of the databases to which the FIUTT has direct access include that of the TTPS and the Companies' Registry. The databases to which FIUTT has indirect access to, requires the Director to produce a Letter of Request that would allow for the production of information. As a result of the access to these databases, the FIUTT can conduct its functions as mandated under the FIUA. The Assessors were informed that whilst the FIUTT has access to a wide range of information, they are not authorized to receive in-depth information pertaining to tax. The FIUTT would receive a generic report from the Tax Authorities indicating whether a person or entity has filed any income tax returns or is registered with the BIR. The reason for this generic report is based upon provision contained within the Income Tax Act that prohibits the disclosure of tax information. There is provision in the FIUA for the FIUTT to obtain information from FIs and LBs where an STR/SAR has been filed and additional information is required to conduct a proper analysis of the STR/SAR. The information provided by the FIUTT shows that most of its requests for information were to the FIs followed by the Non-regulated FIs (See Table 3.1). There were minimal requests for information sent to the Government Agencies and the LBs by the FIUTT in conducting its functions. The FIUTT did not provide any information to the Assessors as to the usefulness of the information that was provided by these entities and the timeliness of these responses.

*Table 3.1: No of Requests sent by the FIUTT*

	2011	2012	2013	2014	Total
<b>FIs</b>	150	142	748	1056	2096
<b>Non-Reg FIs</b>	26	27	171	212	436
<b>LBs</b>	00	00	00	02	02
<b>Government Agencies</b>	08	06	12	23	49
<b>Total</b>	184	175	931	1293	2583

76. The FIUTT is the agency that is mandated to receive and analyse STRs/SARs from all FIs and LB in accordance with the FIUA and has been conducting this function. STRs/SARs received are detailed in tables 3.2, 3.3 and 3.4. The FIUTT has received STRs/SARs from different FIs, Non-Regulated FIs and LBs with the Banks representing the FIs that file the largest number of the STRs/SARs. The information provided to the Assessors shows that there was an increase in the number of STRs/SARs filed by the Reporting Entities during the period under review (2011-2014). STRs/SARs are hand delivered to the FIUTT in sealed envelopes and are opened only by the

Director or the Deputy Director in the absence of the Director. These reports are then inputted into a database that is only accessible to the Director, Deputy Director and staff in the Analytical Division. The FIUTT has indicated that they can also receive STRs/SARs by facsimile as there is a separate facsimile to do this. However, the Unit reserved the rights to receive reports via this channel.

*Table 3.2: STRs received from Financial Institutions*

<b>Reporting Entity</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>Banks</b>	58	151	152	230	687
<b>Exchange Bureau</b>	0	0	03	14	17
<b>Insurance Company</b>	09	10	03	23	45
<b>Mutual Fund</b>	28	22	26	16	92
<b>Mortgage Company</b>	14	07	05	14	40
<b>Security Dealer</b>	00	05	04	01	10
<b>Total</b>	202	198	193	298	891

*Table 3.3: STRs received from Non-Regulated Financial Institutions*

<b>Reporting Entity</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>Co-operatives Society</b>	05	16	20	161	202
<b>MVTS</b>	90	38	314	216	658
<b>Postal Service</b>	0	0	01	0	01
<b>Total</b>	95	55	334	377	861

*Table 3.4: STRs received from Listed Business*

<b>Reporting Entity</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>Attorney at Law</b>	02	01	06	11	20
<b>Jewellers</b>	00	01	02	15	18
<b>Motor Vehicle Sales</b>	01	03	09	26	39
<b>Real Estate</b>	03	00	03	02	08
<b>Private Members Club</b>	00	00	07	25	32
<b>Total</b>	06	05	27	79	117

77. The two primary functions of the FIUTT are analysis and supervision. The FIUTT is further divided into three different segments that include Legal, IT and Administration. The primary role of the Analytical Department is to analyse the STRs/SARs received from FIs and LBs to determine whether there are any elements of ML/TF or a predicate offence. Having analysed the STRs/SARs, should they reach the required threshold for dissemination, IRs (see table 3.6) are prepared and disseminated to the relevant LEAs. Spontaneous Reports are also disseminated to foreign LEAs once these reports contained information that impact on a foreign jurisdiction. The LEAs that are mandated to receive IRs from FIUTT include the Commission of Police, the Comptroller of Customs and Excise, Chief Immigration Officer and the Chairman of the Board of Inland Revenue.

78. The Assessors were shown samples of IRs disseminated to LEAs. These reports contained among other things association charts, money flow charts and the type of predicate offence suspected of being committed. These offences include drug trafficking, fraud or money laundering. The FIUTT has not received feedbacks with regard to action and pending status of the IRs it has disseminated to the LEA. However, the information provided shows that five persons have been charged for ML offences by the FIB who received a total of 185 reports during the period 2011-2014 (see table 3.6).
79. The FIUTT, besides having access to a wide range of databases containing information to facilitate its analysis, also utilizes two major pieces of software. These two pieces of software are the iBase and i2 Analytical Notebook. The Unit also utilized geographical software which can provide information in relation to a person's address and other information. Based on the analysis of STRs/SARs received by the FIUTT, the information shows that most of the reports received by the FIUTT are suspected to be linked to stand alone money laundering, fraud, tax evasion and drug trafficking (see table 3.7).
80. The FIUTT has developed a system where STRs/SARs are prioritized according to the risk. The higher risk reports such as TF are given a higher rating and priority for analysis. The reports are then sent to the FIB. Information regarding reports of TF are also shared with the Office of the Attorney General.
81. According to the FIUTT, the quality of the STRs/SARs received from FIs and LBs has been improving. The FIUTT has developed a system where it provides feedbacks to the reporting entity in two different formats namely Deficiency Feedbacks and Special Feedbacks. The Deficiency Feedback is a letter sent to the reporting entity outlining the deficiencies observed in the report filed. The Special Feedback informs the reporting entity of the status of the analysis conducted and the action taken by the FIUTT as a result of the analysis. The Assessors were informed that the FIUTT meets with Reporting Entities regarding deficiencies relating to the filing of STRs/SARs and specific recommendations are made in this regard. However, there was no data provided to the Assessors to reflect such meetings and recommendations made. The FIUTT made reference of one case in which they experienced difficulty in the past with one regulated entity that was not filing any STRs/SARs with the FIUTT. This resulted in the FIUTT reporting the entity to the Regulator. The outcome of this action saw entities beginning to report STRs/SARs to the FIUTT.
82. The information provided to the Assessors showed that the majority of the STRs/SARs received by the FIUTT are still awaiting analysis or have been filed for intelligence purpose (see table 3.5). The FIUTT has indicated that STRs/SARs are filed for intelligence when such reports have been analysed and were determined not to have met the required reporting threshold. Hence they are not disseminated to LEAs for investigation. Although, a significant number of STRs/SARs has been filed for intelligence purposes or are the subject of ongoing review, the data presented shows an increase in the amount of STRs/ SARs analysed. The data provided also shows that there was a decrease in the amount reports filed for intelligence purposes and an increase in the amount of IRs disseminated. The FIUTT attributes this increase of analysis and dissemination to the recruitment of additional staff in the Analytical Department along with training and awareness to FIs and LBs in identifying and filing proper STRs/SARs. The FIUTT has recorded a significant increase in STRs/SARs and recognized that there is a need for more agency thrust in training of Analysts to improve the quantity and quality of its analyses. Training for staff has been sought from several different agencies in the UK/Caribbean base including Caribbean Criminal Asset Recovery Program (CCARP). The intention of the FIUTT is to enter into agreement with another Unit to provide mentorship for its Analysts so as to increase its analytical abilities.

83. The FIUTT Analytical Department is staffed with a total of six (6) Analysts who are responsible for conducting analysis of the STRs/SARs received by the FIUTT. The Analysts are also responsible for processing request for information received by the FIUTT from its local and foreign counterparts. These Analysts also assist the Supervisory Department in conducting onsite inspections on entities that are supervised by the FIUTT. The Analysts have attended several training programmes/courses in relation to ML/TF. The recruitment of more staff at the FIUTT including Analysts has been identified by the Unit and a proposal for an increase of staff has been sent to the Cabinet. The need for the recruitment of more staff is necessary because the Unit is moving towards conducting more strategic analysis, which the Assessors were informed started in 2013. The increase in staff would also result in an increase in the Unit's operational analysis and the output of IRs.

*Table 3.5: STRs Status*

	2011	2012	2013	2014	Total
<b>STRs/SARs Received</b>	303	258	554	754	1869
<b>STRs/ SARs generating IRs</b>	13	16	162	231	421
<b>Ongoing Analysis</b>	219	90	52	162	523
<b>File For Intelligence</b>	71	153	340	398	962

*Table 3.6: IRs Disseminated*

<b>IRs Disseminated</b>	2011	2012	2013	2014	Total
<b>TTPS/FIB</b>	15	14	63	93	185
<b>BIR</b>	01	08	30	52	91
<b>Customs</b>	00	01	00	01	02
<b>Immigration</b>	00	02	06	01	09
<b>Total</b>	16	25	99	147	287

*Table 3.7: Predicate Offence of STRs*

<b>Predicate Offence</b>	2013	2014	Total
Corruption	08	05	14
Drug Trafficking	44	110	154
Extortion	20	09	29
TF	02	08	10
Fraud	58	100	158
Human Trafficking	01	06	07
ML	102	246	348
Suspicious Activity	261	135	396
Tax Evasion	44	112	156
Other Offences	14	22	36
<b>TOTAL</b>	<b>554</b>	<b>754</b>	<b>1308</b>

84. Training sessions have been held with the FIs and LBs who are required to file STRs/SARs. These training sessions were conducted by the FIUTT and focused on the effectiveness of STR/SAR reporting. The FIUTT has published industry specific STR Guidance Notes on how to identify “red flags” in transactions. The reporting entities are encouraged to file more STRs/SARs with the FIUTT. These entities are also encouraged to do more analysis on the report at its initial stage before it is submitted to the FIUTT.

**Case Study: Usefulness of Financial Intelligence:**

On Tuesday 22<sup>nd</sup> December, 2014 members of the FIB arrested and charged a national of Trinidad and Tobago on sixteen counts of money laundering involving the sum of 5.5 million Trinidad and Tobago dollars. The offences were committed during the period of the April 2<sup>nd</sup>- 4<sup>th</sup>, 2013. These charges were laid indictable by an officer from the FIB. The case involves the assistance of several agencies including FIUTT who provided financial information. The other agencies involved in the case are the DPP, Fraud Squad (TTPS), Criminal Investigative Department (TTPS) and the National Operations Centre. This case is still pending before the Court in Trinidad and Tobago.

**Operational Independence**

85. The FIUTT is a department within the Ministry of Finance and the Economy. The Director is responsible for the operation and supervision of the Unit. The budget of the Unit is allocated from within the Ministry of Finance. The budget information provided shows that the FIUTT, during the period 2011-2013 (see Table 3.8), received a budgetary allocation less than the amount it had requested. The statistics for the years 2011-2014 it reveals that the FIUTT’s budgetary allocation from the Central Government has increased over the years, the figures show that the allocation increased just over two million Trinidadian dollars in 2011-2012 to more than sixteen million dollars in 2014-2015. This represents an increase of about 800 percent. This seems to be an indication that there is great political backing to further the aims, objectives and the work of the Unit. Notwithstanding the significant infusion of finances, the funds allocated to the FIUTT was less than what was budgeted by the Unit. Taking into consideration the new responsibilities being undertaken by the Unit including the supervision of a large number of entities in conjunction with its core functions of analysis of STRs/SARs along with the processing of requests for information, there are insufficient resources for the FIUTT to operate at its maximum levels of efficiency. The Assessors were informed that the shortfall in the budget allocation does not affect the daily operation of the FIUTT such as the recruitment of staff outreach and training. However, large projects that are costly were affected, this resulted in projects having to be completed in phases and over longer time periods. Some of these projects included information technology development.
86. The FIUTT is in the process of recruiting more staff, but these positions are subject to the approval of the Cabinet. The FIUA sets out the manner in which staff is recruited at the FIUTT. The Director and Deputy Director are appointed by the Public Service Commission whilst the Permanent Secretary (PS) may with the advice of or in consultation with the Director appoint other employees, consultants and experts on a contractual basis. The PS is required under the legislation to be guided by guidelines for contractual employment issued by the Chief Personnel Officer (CPO) from time to time. One such guideline was issued on May 18, 2006 but was retrospective from August 1, 2004 namely “Guidelines for Contract Employment in Government Ministries, Department and Statutory Authorities subject to the Statutory Authorities Act, Chapter 24:01”. These Guidelines set out the procedure for the recruitment, approval and termination of contractual employees in Government Ministries, Department and Statutory Authorities including the FIUTT. These Departments/Agencies and Statutory Bodies are required to submit requests for contractual positions for consideration to Cabinet through the appropriate Minister. The Guidelines also note that once Cabinet has approved the contract position, the vetting procedure for the recruitment of

these staff are conducted by the FIUTT. This process involves advertising of the position and conducting interviews. The extension of subsisting contracts are also subject to the approval of Cabinet and the retention of that contract position. The Guidelines make provision for persons to be dismissed from their contract and the authority responsible for dismissing such persons from their contract is the Government, only for good and sufficient reason based on sound evidence. However, there are sufficient safeguards within the process to ensure that the independence of the FIUTT is not compromised.

*Table 3.8: Budgetary Allocation of FIUTT 2011-2014*

2011-2012		2012-2013		2013-2014		2014-2015	
Budgeted	Actual	Budgeted	Actual	Budgeted	Actual	Budgeted	Actual
\$16,762,096	\$2,165,662	\$7,536,640	\$4,652,320	\$8,720,230	\$10,863,410	\$26,403,961	\$16,037,020

87. The FIUTT and the Customs and Excise Division have a written agreement to exchange information in relation to cross border declarations and false declarations of cash and bearer negotiable instruments (BNIs). The information from the Customs and Excise Division is received on a monthly basis by the FIUTT. The FIUTT has received information regarding the declaration of cash and BNIs during the period 2011-2014 (see table 3.9). The Unit has since received twenty three (23) reports containing one thousand and eighteen entries. These reports were analysed and some were disseminated to Regional and International law enforcement authorities and FIUs.

*Table 3.9: Table represents the currency declaration received by FIUTT from Customs Department*

	2011	2012	2013	2014	Total
No of Currency Declaration Reports Filed	1	1	9	12	23
No of Entries Contained in Reports Filed	1381	1406	2185	1653	6625
Spontaneous Disclosures Generated from Declarations	0	0	0	3	3

*\*Each file from Customs contained multiple declarations*

88. The FIUTT has taken the initiative of organising meetings with the various LEAs. These meetings started in 2011 and include different LEAs that are listed under the POCA including the different departments of the TTPS including the FIB, Customs and Excise Division and Immigration Division. The meetings are also attended on different occasions by a representative from the ODPP who is responsible for prosecutions of ML offences along with other criminal offences. The FIUTT also extends invitations to members of the foreign law enforcement authorities (i.e. FBI) that are based in the jurisdiction to these meetings when there are cases to be discussed that concern those foreign jurisdictions. The two main aims for these meetings are firstly, to discuss the cases that are under investigation by these different agencies as a result of the IRs that were disseminated by the FIUTT. The second aim of the meetings is to foster relationships and networking between the relevant agencies. Table 3.10 shows the number of meetings for 2011-14 which have decreased from their peak of seven to three in 2014.

*Table 3.10 Represents LEA Meetings*

Year	No of Meetings
2011	06

2012	07
2013	03
2014	03

**Areas where Financial Information and other information is not being used**

89. The information provided shows that LEAs are utilizing the FIUTT and the relevant laws to obtain financial information and intelligence to advance their investigations. The extent, consistency and effectiveness of the information obtained and used to investigate predicate offences, ML and TF still remain outstanding. The number of requests for information sent by the LEAs to the FIUTT is very minute, taking into consideration the number of currency declaration, cash seizure, IRs disseminated by the FIUTT and predicate offences that are considered to be acquisitive crimes. There appear to be limited if any financial enquiries relating to large and complex criminal cases that are linked to the proceeds of crime or that have some relation to an STR/SAR that may be used as evidence. The FIUTT has indicated that the STRs/SARs received are of a good quality. This is based on the small amount of deficiency feedback that was sent to the FIs and LBs. However, the number of IRs disseminated together with the number of STRs/SARs received suggests that there is some deficiency existing within the Analytical Department. Moreover, the limited amount of arrests and prosecution coupled with no convictions from the IRs disseminated by the FIUTT suggest that the information disseminated does not meet the operational needs of LEAs or they are lacking the necessary investigative capabilities. The information provided by LEAs indicated that the relationship between the FIUTT and the LEAs has improved with the sharing of training courses. This has also led to improvement in the information and analysis contained in the IRs disseminated in 2014.

*Table 3.11: Local Requests from LEAs to the FIUTT*

	2011	2012	2013	2014	Total
<b>Request Received</b>	36	79	57	64	236
<b>Response Disseminated</b>	36	71	56	61	224

90. The information provided to the Assessors indicated that most of the requests for information sent from the FIUTT were from the TTPS followed by the Immigration Division, Customs and Excise Division and then BIR. The information provided also shows that whilst the FIUTT has provided response in relation to these request, some responses were not provided. The Assessors were not provided with any reasons why these requests for information were not processed and the information disseminated. The Assessors observed that most local requests for information received by the FIUTT were processed within a time period of thirty days. It should be noted that a substantial amount of requests are processed within a thirty one (31) to sixty (60) day time period as can be seen from the data in Table 3.12. The reasons for such lengthy delays in processing these requests for information as stated by the CA were due to several factors including the information being sourced from third parties (foreign FIUs), the number of subjects contained in the report, the retrieval of financial records for the number of subjects and the compilation of a quality report from the FIUTT. It should be noted that there is an improvement in the time period in which requests for information are processed.

*Table 3.12: Time period in which local requests for information are processed*

<b>Year</b>	<b>30 days</b>	<b>31-60 days</b>	<b>61-90 days</b>	<b>&gt;90 days</b>	<b>Total</b>
<b>2012</b>	18	08	10	35	71
<b>2013</b>	37	13	01	05	56
<b>2014</b>	27	28	06	0	61
<b>Total</b>	82	49	17	40	188

91. The Commissioner of Police has mandated all Divisions/Sections/Units within the TTPS to utilize the specified R6 form and report all crimes where it has been established that there could be a parallel financial investigation leading to proceeds of crime being seized or restrained. However, there appears to be limited and in some instances no use of this form by the Divisions/Sections/Units within the TTPS to obtain financial information which would lead to parallel investigations and trace the proceeds of crime. The FIB is the designated Unit within the TTPS that is mandated to investigate ML and TF. This Department should be acknowledged for utilizing the FIUTT and the legislation to some extent to obtain information to conduct its investigation. However, taking into consideration the number of the acquisitive predicate offences reported to the TTPS and IRs disseminated to the FIB, there should be a greater effort by law enforcement and related agencies to obtain more financial information. There appears to be little or no effort by the other Divisions/Sections/Unit of the TTPS to access financial information to conduct investigations or to trace the proceeds of crimes. There is only one predicate offence for which information was requested and that was in relation to human trafficking. The information provided to the Assessors shows that the BIR, Customs and Excise Division and the Immigration Division have utilized the FIUTT and the legislation to obtain information to conduct its investigation. However, this has not extensively and effectively taking place. Table 3.13 below shows that sixty four requests involving 539 subjects were made by the FIB during the period 2012-2014 to the FIUTT for information pertaining to intelligence. The Assessors were informed that this was in relation to proactive investigations being undertaken by the FIB and parallel investigations between the FIB and other departments of the TTPS. Table 3.13 also shows that forty three requests were made from the FIB to the FIUTT as a result of IRs received from the FIUTT based on STRs they would have analysed. There were also fifteen requests concerning cash seizures and two concerning human trafficking from the FIB to the FIUTT.

*Table 3.13: Requests for Information from FIB to FIUTT*

	<b>Intelligence</b>	<b>Intelligence Reports</b>	<b>Cash Seizures</b>	<b>Human Trafficking</b>	<b>Total</b>
<b>2014</b>	19	16	05	-	40
<b>2013</b>	23	18	04	02	47
<b>2012</b>	22	09	06	-	37
<b>Total</b>	64	43	15	02	124

92. The FIUTT has direct access to the Companies' Registry database and this has provided vital information to assist in its analysis of STRs. The FIB has also grasped the opportunity of having indirect access to the Companies' Registry database along with the Customs and Excise Division. However, whilst these three agencies have accessed this database, there appears to be limited effort by the other LEAs that are involved in investigating ML offences to access this database.

#### **Overall Conclusion of Immediate Outcome 6**

93. The FIUTT has been utilizing the relevant legislation to request and obtain information from FIs and LBs. The Assessors, however note the limited number of requests for information that are being sent from the FIUTT to the other stakeholders such as LBs and Government agencies to enable them to conduct their functions.
94. Whilst the LEAs especially the FIB have utilized the FIUTT in obtaining financial information to conduct investigations, the assessment shows that they have not been maximizing the use of the FIUTT in obtaining information to assist in their investigations of ML and predicate offences. There is no evidence that the different Sections/Units/Branches of the TTPS utilized the FIUTT information and its ability to effectively investigate complex predicate offences where there is nexus to ML/TF. Whilst there is information to suggest that financial information is being used to identify and trace assets, the information presented by the CA is not reflective of this being done effectively. This is evidenced from the limited amount of Restraint Orders and Confiscation Proceedings.
95. The FIUTT must be commended for ensuring that there are meetings held between the LEAs and that Unit. However, these meetings should be held on a more regular and consistent basis. The FIUTT and the LEAs should ensure that there are more results from cases discussed in these meetings.
96. The FIUTT has shown that it has disseminated IRs to the LEAs as result of STRs it received. However, based on the low level of IRs that have been disseminated to the LEAs and the limited amount of arrests and prosecutions from these IRs, the Assessors conclude that the information disseminated by the FIUTT does not support the operational needs of the LEAs or the LEAs are lacking the relevant resources or investigative capabilities to effectively utilized this information in developing these cases and prosecute offenders. Furthermore, the low number of disseminations to the LEAs by the FIUTT based on the volume of STRs/SARs is also an indicator that the quality of STRs received by the FIUTT requires improvement.
97. Whilst there are some indicators to show that the FIUTT has conducted some limited strategic analysis in the form of indicators and typology, there is a need for continuous and detailed strategic analysis. It should be noted that the Assessors were informed that the FIUTT is in the process of preparing a strategic analysis report. Strategic analysis should also encompass TF and not only ML as is mandated in the SOP and FIUA.
98. The information provided to the Assessors indicated that the FIUTT was unable to receive its budgetary allocation during the period under review. The information provided showed that the allocated amount to the FIUTT significantly differed from the amount that was budgeted. The failure of providing the FIUTT with the budget requested has not caused any disruption to the daily functions of the FIUTT, neither has it affected the operation of the Unit. However, several large projects which are costly had to be delayed or had to be undertaken in different phases.
99. **Trinidad and Tobago is rated as having a moderate level of effectiveness for Immediate Outcome 6.**

### **3.4 *Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)***

#### **The Trinidad and Tobago Police Service: Overview**

100. There are several agencies that are mandated to investigate ML offences and its predicate offences under their respective enabling legislation. These agencies include the TTPS of which the FIB is a Branch, BIR and the Customs and Excise Division. The FIB was established in 2011 and is managed by a member of the First Division which is the management division within the structure of the TTPS. The goal of the TTPS is to ensure that the FIB is the regional leader in financial investigations. The Commissioner of the TTPS indicated that a recent assessment was conducted by an external consultancy firm on the FIB and the necessary recommendations would be made to the Commissioner of Police to enhance the operations of the FIB. This assessment document was not available to the Assessors as it has to be first made available to the Cabinet. The FIB works closely with the other specialised units within the TTPS that are mandated to conduct investigations into predicate offences. These include the OCNFB, CGIU, ACIB, FS and the SB. The Authorities indicated that there are regular meetings among the FIB, the heads of these specialized units and the Divisional Commanders of the different divisions of the TTPS. The information presented to the Assessors shows there were seven (7) meetings in 2014 which was started in the month of August and one (1) meeting in 2015 between the FIB and Specialized Units of the TTPS such as the Special Branch, OCNFB, CGIU and the Fraud Squad. These meetings were mandated to foster networking between the FIB and these Specialized Units. Several issues relating to AML/CFT were discussed at these meetings including Cash Seizures, Human Trafficking and Proliferation of weapons of mass destruction, Gang Investigations, Anti- Corruption, Co-operation and training. The various Divisions/Departments/Units/Sections of the TTPS are mandated to report predicate offences that have a nexus to ML/TF to the FIB utilizing the TTPS F6 forms that have been modified for such purpose. The information reflected on table 3.14 below shows the major acquisitive crimes that were reported to the TTPS. The major acquisitive offences being Robbery, Drug Trafficking and Fraud. An analysis of this information shows that drug trafficking offences reported and detected have been consistent whilst the other offences have been fluctuating.

*Table 3.14: Sample Statistics of Major/Acquisitive Crime*

Crime Categories	2011		2012		2013		2014	
	Reported	Detected	Reported	Detected	Reported	Detected	Reported	Detected
Drug Trafficking	486	486	437	437	474	474	419	419
Fraud	225	123	219	75	307	87	192	88
Robberies	3718	435	4436	528	2958	420	2559	408

101. The TTPS sees ML and TF as a risk to the jurisdiction. The TTPS was one of the stakeholders that was involved during discussion on the NRA and views the inherent risk associated with ML as high. The FIB which is primarily responsible for investigation of ML/TF is considered to be fully staffed by some of its members who were interviewed. However, the CAs indicated that there is a need for additional personnel with a high level of expertise. This was one of the recommendations of the Deloitte Audit that was conducted on the FIB. The Deloitte Report also makes several other recommendations that would enhance the effectiveness of the FIB. Some of these recommendations are employing specialist staff members such as Forensic Accountants, reviewing the compensation packages of staff so as to encourage them to stay with the Unit, enhancing the integrity of the Unit and provision to make the FIB a Unit that is free from external influence. This Deloitte report was not given to the Assessors as it has to be presented to the Cabinet for approval.

102. Staff attached to the FIB are carefully selected by the Commissioner of Police and are subjected to background checks and polygraphs so as to ensure that the integrity of the FIB is maintained. The risk associated with the offence of corruption has been assessed as medium to high risk in the

jurisdiction. There are two Units within the TTPS that are mandated to investigate the offence of corruption, namely the Professional Standard Bureau that investigate the membership of the TTPS and the ACIB that is mandated to investigate all national corruption issues.

**The FIB**

103. The FIB is the Unit within the TTPS that is mandated to investigate all offences of ML under the POCA. The Unit works closely with the other specialized units within the TTPS and are of the opinion that the offences of fraud and drug trafficking are the two main predicate offences with a nexus for ML. The majority of the Unit’s reports, beside the IRs it received from the FIUTT, emanate from the Fraud Squad, CGIU and the OCNFB. The Assessors were informed that the ACIB has recently started working closely with the FIB. The FIB and the other specialized units are mandated to have Heads of Department meetings. The purpose of these meetings is to share information and to ensure that there are parallel investigations of the predicate offence and ML among the different Units. The FIB has also indicated that it has held meetings with the Counter-Trafficking Unit and considered those meetings to be successful. The Assessors were informed that meetings held with the Counter-Trafficking Unit would have resulted in a joint investigation between the Cyber Crime Unit of the TTPS and ODPP. It should however be noted that no evidence of such meetings was provided to the Assessors. The FIB does not have a written departmental strategy in relation to its operations and functions. However, the Assessors were informed that this is something that the FIB is currently developing but the extent of the development of this document is not known to the Assessors.

104. The FIB indicated that it has seen improvements in the quality of the IRs that are submitted by the FIUTT. This quality improvement was seen as of 2014 since more information is in the reports. IRs are also given priority ratings to assist the investigators at the FIB. The FIB is comprised of three teams with each team headed by an inspector of police who assigns IRs to members of the team. The progress of each report that has been disseminated is followed through regular meetings between team members who are mandated to give updates on their investigations. The information provided and stated in Table 3.15 shows that most of the investigations for ML conducted by the FIB was referred to the Branch by the FIUTT in the form of an IR. These reports amounted to two hundred and thirty four in comparison to the sixty one proactive investigations undertaken by the FIB during the period 2011-2014. The information provided shows that there are three ML cases currently awaiting prosecution and that those cases were as a result of parallel/proactive investigations by the FIB and the Fraud Squad.

*Table 3.15: Source of ML Investigations*

	<b>Intelligence Reports (FIUTT)</b>	<b>FIB Initiated/Parallel Investigations</b>
<b>2011</b>	15	02
<b>2012</b>	15	10
<b>2013</b>	91	28
<b>2014</b>	113	21
<b>No of ML Cases currently prosecuted</b>	00	03

*\*The FIB initiated cases includes those that were referred to the Unit for parallel investigations*

**Money Laundering Investigation**

105. The FIB is actively involved in the investigation of ML Offences. Table 3.16 provides details of the number of ML investigations and related charges. The information provided shows that three hundred and nineteen (319) ML investigations were conducted by the FIB during the period 2011-2014. These investigations include proactive investigations, parallel investigations and investigations arising as a result of cash seizures. The information provided also showed from the ML investigations initiated, twenty three cases (23) were closed and two hundred and ninety six (296) cases are currently under investigation. The FIB has initiated sixty one investigations as a result of parallel investigations being conducted with other departments of the TTPS and the cash seizure information received. The Assessors are unable to determine how advanced these investigations were. However, the FIB has indicated that they are liaising with the ODPP in relation to two of the matters currently under investigation with the intention of bringing money laundering charges against these individuals. This information was confirmed by the ODPP.

*Table 3.16: ML Investigations and Charges*

Year	ML Investigation Conducted	ML Investigation Closed	ML Charges	ML investigation Carried forward	Ongoing ML Investigation
2011	9	5	00	4	04
2012	34	15	2*	19	23
2013	130	03		123	150
2014	146	00	37**	146	296

*\*One Individual on two counts of ML*

*\*\* Three individuals-21 counts of ML in May, 2014 and one individual -16 counts of ML, Dec, 2014*

106. The Assessors were informed that the major challenge experienced by the FIB and which had impacted the Unit's ability in initiating more charges of ML was that the POCA required LEAs to prove the predicate offence before ML charges could be introduced. The decision was taken to amend the POCA and this was done in October, 2014, thus making the offence of ML a stand-alone offence. The FIB is now seeking guidance as to whether they can retroactively charge persons for stand-alone ML. The IRs received by the FIB from the FIUTT are prioritized by the team leaders who assign the cases to Financial Investigators at the FIB. The investigations that have clear cogent evidence are given priority over those that are more intricate. Furthermore, those that involve persons being charged for predicate offences are also given priority.

107. Several investigative tools are available under the POCA for LEAs to conduct their investigations including Production Orders and the FIB has demonstrated that they have utilized Production Order to conduct its investigations. This investigative tool was used to obtain financial information from FIs and LBs in relation to ML investigations, IRs investigations, cash seizure investigation and for intelligence gathering. The number of Production Order Applications filed by the FIB with the Court and served on the relevant FIs and LBs have increased during the period 2011-2014 as illustrated in Table 3.17. The information received showed that sixty nine (69) Applications for Production Orders were granted by the Court. The Application consisted of one hundred and fifteen (115) Orders that were served on the respective FIs and LBs. The information presented showed that most of the Production Orders obtained were in relation to investigations of IRs the Department received from the FIUTT. The FIB has experienced challenges in relation to obtaining information from the entities on which these Production Orders were served. One such challenge includes obtaining the information in a timely manner from FIs and LBs.

*Table 3.17: Production Orders*

<b>Year</b>	<b>No. Of Applications</b>	<b>ML</b>	<b>Cash Seizure</b>	<b>MLAT</b>	<b>IRs</b>	<b>Intelligence</b>	<b>CTU</b>
<b>2011</b>	<b>07</b>	<b>01</b>	<b>01</b>	<b>00</b>	<b>03</b>	<b>02</b>	<b>00</b>
<b>2012</b>	<b>12</b>	<b>01</b>	<b>02</b>	<b>03</b>	<b>04</b>	<b>02</b>	<b>00</b>
<b>2013</b>	<b>22</b>	<b>03</b>	<b>02</b>	<b>02</b>	<b>12</b>	<b>02</b>	<b>01</b>
<b>2014</b>	<b>28</b>						

### **Charges for Money Laundering**

108. There are three recorded cases of charges for money laundering offences, these cases involved five (5) individuals charged with twenty nine counts (29) counts of ML offences by the FIB during the period 2011-2014. These cases were as a result of parallel investigations conducted by the FIB in conjunction with the Fraud Squad and also saw the individuals charged with fraud offences. The Assessors were informed that an IR was submitted by the FIUTT in relation to one of the cases. However, there was no prior ML investigation before these persons were charged for the offence of fraud. The role of the FIUTT was integral in the investigation of these cases.

109. Whilst there have been charges for ML offences from 2012, these cases are currently before the Court and have been adjourned for April and May, 2015. Law Enforcement and Prosecutorial Authorities are of the opinion that ML Cases are not given priority and there is need for a separate and distinct Court to deal specifically with Offences under the POCA.

#### **Case Example:**

In July, 2010, a passenger cruise liner enter into agreement with Mrs. X who is the owner of a Travel Agency to charter the cruise liner. Mrs. X then forwarded two letters of credit to the Cruise Liner's account which were later discovered to be fraudulent and the matter was referred to the Fraud Squad of the TTPS for investigations. Mrs. X was subsequently charged on May 7, 2011 for fraudulent offences under the Forgery Act. A further investigation of ML was conducted by members of the FIB and on August 30, 2012 Mrs. X was charged for ML offences. This matter is still pending before the Court.

### **FIB Staffing and Resources:**

110. The Assessors were informed that the FIB currently has a staff compliment of eighteen (18) persons comprising Managers, Supervisors, Attorneys, Analysts and Financial Investigators. The full staffing complement of the FIB should be twenty nine (29) personnel. The FIB is in need of more staff for it to effectively investigate ML offences. The FIB also requires more technological analytical resources for it to effectively analyse the information it receives on a daily basis. Training in relation to ML has been provided to some members of the FIB. The training courses available and attended by participants from the FIB have been increasing over the period. Five training courses were attended by staff of the FIUTT in 2011 whilst twenty one training courses were attended by staff of the FIB in 2014. However having assessed the information provided by the FIB, the Assessors observed that some financial investigators do not have the requisite and extensive training that would enable them to conduct a proper financial investigation.

### **Fraud Squad**

111. The Fraud Squad works closely with the FIB in conducting parallel investigations. The Fraud Squad has a close working relationship with the Bankers Association and the Registrar General Office as information is normally requested from these entities and received in a timely manner. The Fraud

Squad has utilized the FIUTT in requesting information from the FIs and LBs to assist in conducting its investigation. The information received indicates that the Fraud Squad and the FIB conducted an operation in 2014 in which close to two million Trinidad and Tobago dollars (TT\$2,000,000) were seized. The defendants in relation to this investigation have since absconded and the matter are still pending in the Court. Most of the parallel investigations conducted by the Fraud Squad and the FIB were initiated by the Fraud Squad. Fraudulent offences are seen as medium to high risk as it relates to ML. Whilst the Fraud Squad has been successful in conducting its investigation, the need for more human resources is necessary for it to function effectively.

### **Criminal Gang Intelligence Unit**

112. Gang related offences are considered to be a primary concern for the TTPS and the CGIU has been tasked to investigate gang offences. The mandates of the CGIU includes identifying gangs, suppressing gang activities and rehabilitating former gang members. Criminal activity relating to gangs includes homicides, robbery and human trafficking, drugs and firearms. The emerging trend that is associated with gangs is the merging of smaller gangs with the major gangs, thus creating larger and complex criminal organisations. In the context of ML, gangs are engaged in ML activities through legitimate enterprises and illicit activities. ML activities are done through legitimate enterprises as gang members incorporate companies in the names of families, friends and associates. Gang members have been known to use fear to control territories. This fear extends to public officials and creates corruption. The gang members are known to use companies that are incorporated in their names, families and associates to get contracts and earn legitimate monies which is then use to purchase firearms and narcotics. The proceeds generated from legitimate enterprise are also used to conceal the source of the profits derived from illicit activities. The CGIU has seen an increase in assets of gang members and a trend where these assets are then transferred to other individuals upon their arrest. This has been brought to the attention of the FIB.
113. The CGIU and the FIB have a close working relationship as there are regular meetings that are held once per week between the Units. These meetings are held at the higher level of the command structure of both Units. These meetings are considered to be successful; however, there is a need for meetings that include the lower ranks to discuss ideas and cases. Through the collaborated efforts of the CGIU and the FIB the sum of nine hundred thousand Trinidad and Tobago dollars (TT\$900,000) was seized and detained. This matter is currently pending in the Court.
114. One challenge experienced by the CGIU is the lack of resources to effectively investigate and monitor gang activities. Gangs also have the propensity to use violence which results in persons being reluctant to give information to law enforcement and evidence in the Court.

### **Organised Crime, Narcotics and Firearm Bureau**

115. The OCNFB was formally established in 2005. The mandate of the Unit is to dismantle organised crime that is linked to narcotics and firearms trafficking. The OCNFB has a good working relationship with the FIB. Reports received by the OCNFB are reviewed by a legal officer within that Department after which an investigative team would determine whether the FIB should be involved. Should the FIB become involve in the investigation, the relevant information would be forwarded to the FIB. The OCNFB has observed that the leader of the narcotics organisations does not deal with assets as they are registered in the name of third parties. The ML that is associated to narcotics and organised crime is considered to be medium-high. Trinidad and Tobago is considered to be one of the leading financial capitals in the Caribbean with a deep water harbour and is actively involved in international trade. This coupled with the location of the jurisdiction makes it susceptible for narcotics and organise crime trade. Hence it is not immune from the risk of ML.

The authorities have indicated that seven parallel investigations were conducted in conjunction with the FIB, however the outcome of these investigations are unknown. The major challenge experienced by the OCNFB is that of the limited resources that are available in comparison to the numerous reports and investigations.

### **Anti-Corruption Investigation Bureau (ACIB)**

116. The ACIB was created in 2002 by the Cabinet in Trinidad and Tobago. The Bureau comprises mainly Police Officers with support from civilian staff. The Bureau is an entity within the Attorney General's Chambers but reports directly to the Commissioner of Police. The rationale for the ACIB to operate as a Unit within the Office of the Attorney General is to give it greater access to resources such as legal advice, forensic and accommodation. The mandate of the ACIB is to investigate reports of corruption within the Public Service, State Boards and Public Officials. The ACIB has access to a wide range of information when conducting investigations of corruption. The access to information includes the Registrar General Office, financial information and telephone records. The information sought is considered to be obtained in a timely manner by the CA.

117. Corruption is considered a medium to high level risk in relation to ML within the jurisdiction. There are two major corruption investigations being conducted by the ACIB with one of these matters currently before the Court. The ACIB and the FIB have a good relationship; however, there is no established regular working relationship. There is one known case where the FIB and the ACIB would have worked on a case which is still in its infancy stage. The ACIB has one recorded conviction for the offence of corruption. The main challenge experienced by the ACIB in conducting its investigations is the lack of human resources to effectively investigate reports of corruption.

### **Counter-Trafficking Unit**

118. The Counter Trafficking Unit was established in 2013 and is an independent body that comprises Police Officers Immigration Officers and civilians. The primary role of the Unit is to investigate the offences of human trafficking. The Unit currently has thirty five investigations where victims have been identified and two reports where suspects have been identified. The Counter-Trafficking Unit has liaised with the FIB to conduct parallel investigation when it has initiated investigations or charged persons for human trafficking offences. The results of these investigations are communicated back to the Unit verbally.

### **Customs and Excise Division**

119. The Customs and Excise Division is one of the LEAs that is mandated to conduct investigations under the POCA. The Division is headed by a Comptroller. The Customs and Excise Division collaborates with other agencies such as the FIB, Immigration Division and other Police agencies to investigate and prosecute offences under the POCA and Customs Act. Customs and Excise Division Officials informed the Assessment Team that they have seen an improvement in the quality of the IRs received from the FIUTT and they have participated regularly in the LEAs that are hosted by the FIUTT. The Assessment Team was informed by the Customs and Excise Division Officials that there is a close working relationship between the Division and the FIUTT pertaining to investigations. Customs and Excise Officials rely on information from the FIB to ensure that their matters are properly investigated and prosecuted. There are several cash seizure investigations and ML investigations being conducted by the Customs and Excise Division. However these investigations are in their infancy stage and there are no timelines as to when ML charges would be brought against individuals. The Customs and Excise Division has not utilized any of the

investigative tools such as Production Orders specified within the POCA to conduct any of its investigations. The Customs and Excise Division is divided into a number of departments that are responsible for carrying out different functions. The Preventive Section of the Customs and Excise Division is tasked to investigate the IRs received from the FIUTT and offences of ML. Two Officers within this Unit are specifically assigned to conduct these investigations. These two Officers are also tasked with other duties within the Preventive Section. Training has been provided to the Customs and Excise Department staff in relation to the investigation of ML.

### **Immigration Division**

120. The Immigration **Division** is one of the entities that that FIUTT indicated that it would have disseminated IRs to be further investigated. The Immigration **Division** however indicated that it is not involved in any investigation into ML but acts merely as a support agency to the other law enforcement authorities and FIUTT which are involved in ML. This support is provided in the form of sharing information with these agencies upon request. The Immigration **Division** believes that Human Trafficking is a risk that is associated with the offence of ML. The ML risk that is associated to Human Trafficking is considered to be medium as this predicate offence is linked to prostitution which can generate proceeds of crime. Personnel from the Immigration **Division** have attended workshops in relation to ML. The Assessors were informed that whilst the Immigration **Division** is considered to be one of the LEAs under the POCA and to which IRs are disseminated, these reports are not related to the offence of ML. CAs indicated that information that is transmitted to the Immigration **Division** pertains to the suspected offence of human trafficking. This information is then transmitted unto the Counter Trafficking Unit for investigation.

### **Criminal Tax Division**

121. The Criminal Tax Division (CTD) is a Unit within the BIR that conducts investigation into ML that would have arisen as a result of IRs received from the FIUTT. The CTD considers all offences under the Income Tax Act to be predicate offences under the POCA. The CTD has conducted investigations into tax offences with persons being charged for these offences. The Assessors were informed that 63 persons were charged for tax offences in 2014, all of which are currently before the Court. The reason advanced for these matters being still before the Court is the lack of priority given to tax offences by the Courts in the jurisdiction. The CA indicated that it is the intention of the CTD that once these matters are adjudicated upon, criminal charges of ML will be brought against the individuals. This is as a result of the POCA, prior to its amendment, requiring the Investigator to prove the predicate offence from which the monies were generated. IRs are filed with the BIR by the FIUTT, these reports are then forwarded to the CTD for investigation. The CA has indicated that there are no investigations and prosecutions for ML in relation to these IRs. However, the information provided by the FIUTT would be used in the prosecution of the predicate offence. The Assessors were informed that training in relation to the investigation of ML was provided to the staff of the CTD. However no information was provided in this regard. The information provided by the Authorities stated that for the period 2011 -2014, three search warrants and five Production Orders were obtained by the Division. These investigative tools were obtained in relation to the predicate tax offences that are currently before the Court.

### **Prosecutorial Authority**

122. The ODPP is the office that is constitutionally responsible for the prosecution of all criminal offences including money laundering. The ODPP is consulted on investigations of cases of ML from an FIB standpoint and by attending the LEAs meetings. There is one Senior Prosecutor within the ODPP that is tasked with providing guidance to law enforcement in relation to investigation of

ML and prosecution of these offences. However, it must be noted that this Senior Prosecutor is tasked with other responsibilities such as prosecuting other offences and supervising Prosecutors within a specific district. The ODPP is understaffed and lacks the ability to effectively carry out its functions. It should however be noted that the Assessors were informed by the CAs that the necessary recommendations have been made to the Cabinet to increase the staffing of the DPP. The Assessors were also informed that there are plans within the ODPP to create a Financial Crimes Unit which would be responsible for the prosecution of all financial crime offences including ML. It is proposed that this Unit would also refer cases to the FIB that may have some nexus to ML should the police fail to bring them to the attention of the FIB. The Assessors were not provided however with any indication as to when this new unit would be created. The ODPP has received some level of training in AML, however there is no information provided to show that detailed training as it relates to prosecution of financial crimes including ML has been provided to Prosecutors.

123. Additionally the Assessors were informed that the other major challenges to ML prosecution are the overall number of crimes on the docket within the jurisdiction, the number of capital crimes that have to be prosecuted and some limitations in the quality of the investigations that were being done by the TTPS. The ODPP has indicated that it is providing regular training to both police officers and the FIB to bring them up to speed to ensure that cases are properly investigated in order to satisfy evidentiary hurdles.
124. Whilst there have been persons who were arrested and charged for the offence of ML there is no recorded conviction in this area. These arrests have been made as a result of parallel investigations conducted primarily with the Fraud Squad. The Assessors cannot give any details into these cases as they are all pending before the Court. As a result of there being no convictions within the jurisdiction for the offence of ML, no sanction has been applied. The explanation given for the lack of prosecutions by the prosecutorial and investigative authority is the lack of priority given to ML by the Court system. However, the Judiciary has indicated that training is provided to Judges and Magistrate every year at the Judicial Education Institute in Trinidad and Tobago. The Judiciary is trained based on the type of cases that are prevalent before the Court and an undertaking was given that should the ML cases be brought before the Court, the relevant training would be provided to the Judges and Magistrate.
125. The Judiciary accepts that the use of Preliminary Inquiries (PI) is a lengthy process and is of the opinion that this process should be abolished. The length of the process was attributed in part to the level of readiness of the Prosecutors and Defence Attorneys. The process of paper committals for trials has been approved in principle however its actual application seems to be limited in nature and no evidence was provided to indicate that it was actively being utilised.

### **The Integrity Commission**

126. The Integrity in Public Life Act Chapter 22:01 makes provision for the establishment of an Integrity Commission for the prevention of corruption of persons in public life. The Commission is mandated to provide public disclosure, to regulate the conduct of persons exercising public functions and to preserve and promote the integrity of public officials and institutions. The Commission comprises four Commissioners, the Chairman being a Retired Justice of Appeal. The Integrity Commission consist of two departments namely the Investigative and Compliance Departments. The legislation makes provision for persons captured under its remit to declare their assets and finances to the Commission. One of the primary aim of the Commission is to ensure that public officials do not acquire wealth through corruption and corrupt practices. The Compliance Section of the Integrity Commission is responsible for ensuring that persons captured under the legislation submit their

assets and other financial declarations and review these declarations. Having reviewed these declarations, the necessary investigations and checks are conducted to ensure that the declarations are true and correct. The Commissioners are then required to certify these reports when the relevant checks are conducted. The Assessors were informed that the process for certification involves, checking and verifying the bank statement of the declarant, interviewing the declarant and doing a comparative review of the years. Table 3.18 shows the number of declarations and demonstrates the difficulties of the Commission in certifying declarations. This may point to a particular ML risk which should be analysed and addressed.

127. The Investigative Department of the Integrity Commission is staffed by former police officers who have attained senior ranks within various Policing Organisations. The staffing of the Investigative Department includes seven (7) police officers and the Commission considered this to be an adequate amount. The Assessors were informed that the Compliance Department of the Integrity Commission is staffed by Accountants and consists of a staff of twenty one persons.
128. The Assessors were informed that the Integrity Commission is concerned about the efficacy of the legislation pertaining to having someone being prosecuted for an offence under the said legislation. The power to prosecute offenders under this Act resides with the ODPP. The Assessors were informed that the process prior to forwarding a report to the ODPP involves investigating the allegation/offence and writing to His Excellency the President to establish a Tribunal once evidence of the allegation is obtained. This Tribunal is then appointed from amongst the Commissioners with the Integrity Commission. The Tribunal would then listen to the evidence to determine whether there is a prima facie case and then forward the report to the DPP.
129. Whilst the Commission is currently fully staffed there were two periods in 2014 when it was not fully staffed with the recommended Commissioners and this would have hampered the work of the Commission. The effect of a not fully staffed Integrity Commission resulted in less certification of declarations, thereby creating a backlog.

*Table 3.18: Declarations to the Integrity Commission*

<i>Year</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>
<i>No of Declaration</i>	<i>1775</i>	<i>1764</i>	<i>1187</i>	<i>1201</i>
<i>No of Certification</i>	<i>1602</i>	<i>2019</i>	<i>1211</i>	<i>822</i>
<i>No of Certifications Outstanding</i>	<i>2962</i>	<i>2707</i>	<i>2683</i>	<i>3062</i>

130. The Assessors were informed that the Integrity Commission also investigates anonymous reports and reports from members of the public. The Assessors were further informed that there was one notable case that was referred for prosecution to the DPP by the Integrity Commission. The Commission noted that it is in the process of writing to His Excellency the President to appoint a Tribunal to conduct hearing into an individual who falls within the remit of the legislation. There is no evidence to suggest that the Integrity Commission is adequately staffed with the relevant resources to conduct its functions. There is no information to suggest that any public persons have been successfully prosecuted within the period under review for corruption offences as a result of investigations conducted by the Integrity Commission. The lack of arrest and prosecution of persons for the offence of corruption is of concern to the Assessment Team, taking into consideration the offence of Corruption was one of the areas highlighted for increased focus during the onsite visit.

## **Overall Conclusion of Immediate Outcome 7 (Sanctions)**

131. Trinidad and Tobago has a robust legislative framework to investigate and prosecute the offence of ML. Institutional structures have been identified to investigate and prosecute ML offences. There are a fairly good amount of investigations being conducted for potential cases of ML by the FIB. There is no timeline as to when these investigations would be completed or how far the cases have been advanced. The information supplied showed that within the first half of 2014, 53 IRs were received by the FIB from the FIUTT and there were 53 investigations conducted by the FIB into these IRs. During the same period, nine new ML investigations were commenced in addition to the eight ML investigations that were already ongoing.
132. The Assessors were informed that parallel and joint investigations have taken place and close collaboration occurs regularly between the FIB and Fraud Squad, CGIU, CTU, FIUTT, OCNFB, Special Branch and a number of other Units including the Counter-Trafficking Unit and the Cyber Crime Unit. Some of the FIB's work with the Fraud Squad also involves the tracing and identification of assets. Liaison officers have been dispatched from the FIB to work more closely with the Fraud Squad as a result of the high number of cases that have been emerging from that Department. Liaison officers from the FIB have also been appointed to work with the Strategic Services Agency (SSA) which is a separate and distinct Intelligence Agency and to work with the Joint Intelligence Group. The Assessors were informed that the ODPP conducts training sessions once a month with the FIB. Training has also been provided to the staff from several other internal and external agencies including the CGIU in the form of gang intelligence training and at the Regional Drug Law Enforcement Training Centre (REDTRAC). The Executive of the TTPS Police has mandated regular Heads of Departments meetings.
133. The investigative and prosecutorial agencies that investigate the offence of ML meet regularly to discuss cases and ways to develop these cases. The Assessors were informed that the outcomes of some of these meetings resulted in the forfeiture of cash and the money laundering cases that are currently before the Court. Whilst there have been some successes in this regard, the Assessors also considered the limited amount of cases that have been developed as a result of these meetings. The FIB indicated that potential ML cases seem to arise predominantly from drug trafficking or fraud cases. The 2014-2016 Strategic Operation Plan of the TTPS makes provision to enhance the detection of white collar crime by expanding training and strengthening the investigative techniques of the FIB and the Fraud Squad. The Police Executive indicated that a recent audit of the FIB was conducted and has given the assurance of working towards bringing the level of the FIB up to the desired standards. This would be achieved through recruiting more analysts and experts in forensic accounting. The FIB recruited eight persons to supplement its staff in December 2014. The FIB relies greatly on networking with the other departments of the TTPS due to the high volume of work and its limited resources. The result of this networking is improving the FIB's ability to maximize its resources.
134. FIB currently has three cases that are all fraud related before the court awaiting prosecution. The Assessors note the limited amount of cases that are currently before the Court considering the large number of predicate offences that were reported to the TTPS coupled with the IRs disseminated by the FIUTT. The jurisdiction has no recorded convictions for ML offences for the period under review.
135. The FIB is the premier Unit that is responsible for the investigation of ML and has conducted several parallel investigations all with the Fraud Squad which have resulted in ML charges. Whilst the CA indicated that parallel investigations are conducted between the FIB and the other

departments that are responsible for conducting investigations into predicate offence, there is no indication that these investigations are conducted in a proper and organised manner. This is evidenced by the numerous reports and arrests for predicate offences and the lack of parallel ML investigations associated with these offences. LEAs have indicated that there are investigations into stand-alone ML offences, however the Assessors were not provided with any evidence to indicate that stand-alone money laundering offences are investigated properly. The IRs received by the relevant investigative agencies are not seemingly investigated properly by these agencies or are lacking quality analysis. This is evidenced by the limited arrests and prosecutions for ML offences associated with these IRs.

136. There have been some meetings between the FIB and the other Specialized Departments of the TTPS with discussion focusing on several aspects of AML/CFT. However, the information provided shows that these meetings have recently been instituted. Having reviewed the minutes of these meetings, the Assessors conclude that the desired outcome of these meetings has been achieved to a very limited extent due to their recent inception and the time of this evaluation. The meetings also focused on the specialized departments of the TTPS and do not include the other Divisional Commanders of the TTPS.
137. There is no documented risk assessment in relation to the offence of the ML and the impact it has on the jurisdiction. There is also no NRA as this process is currently being conducted by the jurisdiction. Therefore, there is no strategy for prioritizing the offence of ML on a risk basis.
138. The information provided by the LEAs does not indicate that measures are taken to identify, initiate and prioritize ML investigation. The Assessors note that the resources and expertise available to the LEAs and Prosecutorial Authority to investigate and prosecute ML offences are lacking and therefore hamper the effectiveness of the system.
139. Additionally, there are several other barriers to successful investigation and prosecution. These include the following:
  - x Hindrances to obtaining information in a timely manner via production orders. At times information requested is only stored manually and it becomes a timely process for such information to be retrieved.
  - x ML cases do not receive priority on the court calendar which has a significant amount of cases that are backlogged. It therefore means that there is no quick turnaround of cases. The Assessors were informed that Capital Offences and other cases are given priority over these cases. The Assessors were informed that one ML matter has been brought to the Court since 2011 and is currently still pending. The Preliminary Enquiry in the said case has not started, which is the first step for getting the case before the High Court.
  - x The POCA has only recently been amended and prior to that, potential ML cases were subject to the legislative requirement that ML could only be sought once there was a predicate offence to ML and that matter had already been tried so that stand alone ML offences could not be pursued. This position was only changed in late 2014 when the amendments to the POCA were passed in the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act No. 15 of 2014.
  - x Paper Committals need to be used more comprehensively in order to reduce the time taken for forwarding matters for trial.
140. **Trinidad and Tobago has a low level of effectiveness for Immediate Outcome 7.**

### 3.5 *Effectiveness: Immediate Outcome 8 (Confiscation)*

141. Trinidad and Tobago possesses a good legal framework to freeze, restrain and confiscate proceeds of crime. The legislative provision provides for confiscation to be initiated once a person has been convicted for a specified offence. However, during the period under review the CAs have not instituted any confiscation proceedings against any individual or entity. A difficulty has been created though with the amendment to POCA now being linked to criminal conduct as opposed to a specified offence. The confiscation of proceeds is still linked to specific offences scheduled under POCA, which means that confiscation may not be possible if a specific ML offence is not identified. LEAs such as the FIB are responsible for tracing assets and are working in conjunction with the ODPP to have criminal assets restrained.
142. The TTPS through its Departmental Order which is a policy document of the organisation has mandated that all Divisions/Departments/ Units/Branches submit information of crimes where they suspect there are proceeds of crime to be recovered to the FIB. However, there is no evidence available to demonstrate that this is being done. The FIB has in collaboration with the ODPP obtained four Restraint Orders during the period 2011-2014 as stated in Table 3.19. Three of these Restraint Orders were obtained as a result of parallel investigations conducted with the Fraud Squad whilst the fourth was obtained in relation to drug trafficking offences. The items that are restrained by the CA include land, motor vehicles and cash.
143. The Assessors were informed that in most cases such as drug trafficking, the couriers are the persons who are caught and would accept responsibility for the drugs. These persons are normally unwilling to co-operate with LEAs, hence the main conspirator would not be subject to prosecution. The Assessors were informed that the couriers normally do not have assets in their possession which would be liable for confiscation. The Assessors acknowledged the information provided however, no information was presented to the Assessors to show that financial investigations were conducted to determine that these persons had no assets in their possession or in the name of third parties. The information provided by the LEAs indicates that criminals including gang leaders are laundering their proceeds of crime through the use of legitimate companies. The assets obtained as a result of their criminal conduct are transferred to family members upon their arrest so as to disguise the true owners. The Departmental Order of TTPS mandates that Divisions and other specialized Units submit information to the FIB pertaining to crimes where criminal proceeds can be recovered. However, there is no indication that all crimes that are generating criminal proceeds are reported to FIB so as to facilitate the necessary asset tracing investigations, restraining assets and confiscating same. Taking into consideration the statistics of the various criminal offences from which criminal proceeds can be generated that were reported to the TTPS and the number of Restraint Orders that were obtained by the jurisdiction, the Assessors conclude that not enough emphasis is placed on tracing assets, restraining assets and confiscation proceedings. The Assessors also note that whilst LEAs have received some level training in relation to ML, no substantial training has been provided in relation to confiscation proceedings.

### **Office of the DPP**

144. The ODPP is the entity that is responsible along with LEAs to initiate confiscation proceedings. The ODPP views confiscation proceedings as new to the LEAs including the FIB, hence the reason why there are no confiscation proceedings. The information provided to the Assessors indicated that there seems to be a culture of only proceeding with the predicate offence and not with financial aspect and confiscation. The ODPP is of the view that this may be as a result of lack of outreach and training by the ODPP and LEAs. The ODPP has indicated that there are plans to establish a Financial Crimes Unit within that office which would be mandated to deal specifically with crimes relating to ML and confiscation proceedings. The ODPP is moving to implement measures which would ensure that all files referred to the ODPP for prosecution of predicate offences and that have

a nexus to proceeds of crime are referred to the FIB. This procedure would enable the FIB to trace assets and recover the proceeds of crime. The Assessors were informed that some level of training has been provided to the ODPP, in relation to confiscation proceedings. However, the training courses have been minimal.

*Table 3.19: Restraint Orders*

No	Date Received	Particulars	Value (TT\$)	Predicate Offence
1	1.05.2012	Lands and Vehicles	Unknown	Possession of cocaine for trafficking
2	12.07.2012	Unknown	\$1,831,000.48	Conspiracy to defraud
3	1.09.2012	Vehicles and Land	\$4,784,371.00	Fraud
4	8.05.2014	Cash and Property	Cash-\$1,000,000	Fraud

### **Cross Border-Declaration Seizures/ Cash Seizures**

#### **Customs and Excise Division**

145. The POCA makes provision for cash seizures by LEAs including members of the TTPS and the Customs and Excise Division. The Assessors believe that Trinidad and Tobago has to be concerned with the risk of smuggling by couriers. This belief is based upon the volume of cross border declarations submitted by the Customs and Excise Division to the FIUTT coupled with the country's geographical location. The Customs and Excise Division has been engaged in the seizure of monies that travellers would have failed to declare. Although Customs indicated that it actively pursues these cross border seizures and confiscations, no actual figures were provided regarding same. The Customs and Excise Division experienced several challenges in relation to seizure and investigation. These challenges include lack of human and technical resources at the Ports of Entry and getting the information from other jurisdictions to advance cases as most of the cash seizures involve non-nationals of Trinidad and Tobago. Customs have pursued cash forfeiture, however these forfeitures were proceeded and granted in accordance with the Customs Act and not the POCA.

#### **FIB**

146. The information provided by the FIB shows that within the period 2011-2014 a total of TT\$3,316,933.38 was seized and detained by the FIB under the POCA. The information further shows that TT\$138,277.80 was forfeited in total during 2012 and 2014. The monies forfeited during this period were as a result of seizures that occurred in 2010 and 2011. The Assessors also note the value attached to the amount of monies seized and detained by the FIB but the amount forfeited by the Court is minimal. The information provided by the FIB officials indicated that the reason for such limited amount of forfeitures when taking into consideration the amount of cash seized is that most of the matters are currently under investigation.

### **Overall Conclusion for Immediate Outcome 8 (Confiscation)**

147. Trinidad and Tobago has robust legislation which makes it possible to confiscate the proceeds from any specified offence once the person is convicted and there is evidence to show that he has benefited from the proceeds of crime. Whilst there is some evidence that confiscation is being pursued in theory as an overall policy objective the levels and types of confiscation are not commensurate with that policy. Additionally, whilst a policy on confiscation exists there is no evidence at all of any such confiscation having been done. Prior to the 2014 amendment of the

POCA, the ODPD indicated that emphasis was on the pursuit of predicate offences for ML purposes since stand-alone ML had not been provided for, however pursuit of those predicate offences did not yield confiscations within the assessment period. There seems to be a disconnect between within the investigative and prosecutorial processes. There have been indications that the level of experience in terms of adequate preparation of cases for prosecution might be lacking however there have been definite efforts to bring the key players up to speed with the requisite training and exposure. There were also indications that ML cases have been forwarded to the courts but that there is an enormous backlog of cases and priority has traditionally been given to capital offences.

148. The TTPS, the major law enforcement agency that is responsible tracing the proceeds of crime and assisting in initiating confiscation proceedings, has mandated that all crimes where the proceeds of crime can be recovered should be forwarded to the FIB for investigation. However, whilst these policies and the legislation are instituted, there is no indication that the relevant departments are adhering to this policy and submitting the relevant reports to the FIB. Law Enforcement appears to be focusing on awaiting the outcome of the ML charges that are before the Court before initiating confiscation. There seems to no emphasis on proceeding with confiscation for persons who have been convicted of other predicate offences. The jurisdiction during the period under review has not initiated confiscation proceedings against anyone and therefore no assets have been confiscated. There is only a limited amount of cases where Restraint Orders were obtained by the CA and this is not satisfactory considering the number of serious crimes reported to the relevant authorities. LEAs including the FIB and Customs have recorded some success as it relates to cash seizure, detention and forfeiture. The FIB appears to be actively pursuing cash seizures as an overall policy objective. Since its inception in June 2011, the FIB has seized cash of TT\$ 3, 438,668.37 and has been responsible for the forfeiting of TT\$138, 227.80. These actions were taken pursuant to sections 38 and 39 of the POCA. These seizures and forfeitures are in respect of funds that were over the prescribed statutory limit and which investigations revealed to be the benefits of crime. The jurisdiction has indicated critically though that since a conviction is the pre-cursor to confiscation and there are no convictions, there have not been any confiscations to date of the proceeds and instrumentalities of crime. There seems to be a willingness to pursue confiscations but the investigators' hands are tied in terms of achieving overall this particular policy objective.
149. In terms of the Customs and Excise Division, Assessors were pointed to one instance in the Magistrates' Court where foreign proceeds were pursued. The overall policy in terms of such types of matters is that they are not generally pursued. The Division has indicated that this is a result of the difficulties involved in establishing foreign predicate offences within the jurisdiction particularly where there is no nexus with a domestic offence. The authorities indicated that where there is such a nexus then those matters are pursued however no statistics were provided with respect to this assertion.
150. The challenges experienced by law enforcement inhibit their ability to effectively seize more cross border cash and bearers negotiable instruments and investigate same. Law enforcement and Prosecutors lack the relevant training and expertise to effectively deal with confiscation proceedings.
151. To the extent that outside of cash seizures and forfeitures that no confiscations have been done, it is an indication that the jurisdiction needs to pay particular attention to the legislation governing this area since this is where part of the problem seems to lie. Additionally, prioritization needs to be given to problems within the investigative process and to addressing issues on the timely moving of cases onto the prosecution's docket and to obtaining hearings before the Court.
152. **Trinidad and Tobago has a low level of effectiveness for Immediate Outcome 8.**

### 3.6 *Recommendations on legal system and operational issues*

#### **FIUTT and Financial Information**

153. The FIUTT needs to improve and enhance its operational analysis. Continuous training relating specifically to analysis should be provided to the Unit Analysts and a concerted effort should be made to increase its analytical staff so as to ensure that there is more analysis and better quality IRs are disseminated to the LEAs.
154. The FIUTT should develop and enhance its strategic analysis.
155. Whilst the FIUTT budget allocations have increased during the period under the review, provision should be made by the Central Government to ensure that the FIUTT budget allocation is consistent or in line with that which is requested so to ensure that it undertakes its functions adequately and within a reasonable period of time.
156. The FIUTT should develop a system to ensure that feedback is received from LEAs in relation to the IRs disseminated to include the usefulness of the information, how the information was utilized and aligned its IRs with the LEAs priorities.
157. The FIUTT needs to create clear demarcation and guidelines between its analytical and supervisory functions.
158. LEAs including the TTPS, BIR and Customs and Excise Division should ensure that they maximize use of financial information by utilizing the FIUTT and the POCA to conduct their investigations including ML, associated predicate offences and to identify and trace the proceeds of crime.
159. Training and outreach should be provided to a wide range of members of the TTPS especially those within the specialized Units such as OCNFB, CGIU and other Divisions, sensitizing them to the importance of financial investigation, the FIUTT and the FIB. This should be done at earliest level such as at the training school for new recruits

#### **Money Laundering Investigation and Prosecutions**

160. LEAs should ensure that ML investigations are clearly prioritized and ensure that more emphasis is placed on complex investigations.
161. CAs to ensure that Law Enforcement and Prosecutors are exposed to more training and expertise specifically in the area of investigation and prosecution of ML.
162. CAs to ensure that measures are put in place to ensure that the requisite expertise is available to law enforcement during investigation of complex ML cases.
163. CAs should put measures in place to ensure that information is obtained by LEAs in a timely manner.
164. CAs should put measures in place to ensure that ML cases are given priority within the Court system.

165. CAs should ensure that LEAs including the FIB, and Prosecutorial Authorities are provided with adequate resources and tools to ensure that ML offences and related predicate offences are properly investigated.

### **Confiscation**

166. Law enforcement and Prosecutorial Authority should develop a policy and procedure document with clear guidelines mandating that all predicate offences, ML, TF and related offences from which there can be a pecuniary benefit are investigated to ensure that criminal proceeds are traced and recovered.
167. CAs should provide training and outreach to all LEAs, especially the FIB and financial investigators and Prosecutorial Agencies. The training should include all aspect of confiscation including assets tracing techniques, preparation of prosecution statements along with information on the importance of confiscation and procedures and guidelines on how to confiscate the proceeds of crimes.
168. Trinidad and Tobago should identify the shortcomings within the system that are hindering the successful prosecution of ML offences. Trinidad and Tobago needs to critically make a serious investment in bolstering of resources both within the ODPP and within the judicial system. The current framework and protocols for moving a ML case from start of investigations through to successful prosecution and the confiscation of assets need to be thoroughly examined to determine where the gaps and deficiencies exist. The jurisdiction should complete its NRA to have a better understanding of the gaps and vulnerabilities within its systems and processes.
169. Whilst confiscation of assets appears to be a priority in theory, Trinidad and Tobago should re-examine whether (a) it is actively being pursued and if so, (b) whether any efforts are being stymied by the condition precedent of a prior conviction. The jurisdiction needs to amend the POCA to permit permanent deprivation of the assets where such assets have been proven to be connected to the commission of an offence. Trinidad and Tobago therefore needs to ensure that confiscation proceedings are prioritized and the necessary mechanisms are in place to ensure that confiscation proceedings are effectively and efficiently conducted. Trinidad and Tobago should revisit the POCA to reconcile the gap created by the fact that ML is linked to criminal conduct and not necessarily to a known predicate offence, whilst confiscation continues to be linked to a specified scheduled offence.
170. Whilst there appears to be very good information sharing and collaboration amongst the LEAs, greater resources should be invested in the FIB, the FIUTT and other key investigative agencies and the ODPP so as to enable these agencies to properly trace and identify assets that may have been derived from criminal offence.

#### 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

##### *Key Findings*

- x The jurisdiction has set out a good legal framework overall for the criminalisation of TF. There is an issue in terms of the proportionality of sanctions for TF when compared with the sanctions for ML. Targeted financial sanctions for some of the UNSCRs have been provided however there are deficiencies in terms of the extent of those provisions that do not cover all the required elements.
- x There does not appear to be a comprehensive policy or the completion of such a policy as it relates to the financing of the proliferation of weapons of mass destruction. There is no adequate legislation in this area and there does not appear to be any corresponding investigations in respect of same.
- x There is no adequate legal framework governing NPOs. There does not appear to have been any risk assessment done in this area nor any particular AML/CFT measures that have been taken to properly address the sector.
- x There is no indication that TF is prioritized in Trinidad and Tobago.
- x Law Enforcement and Prosecutorial Authorities are not properly trained to investigate and prosecute the offence of TF.
- x There is no evidence to show that relevant Authorities are aware of the risk that is associated to TF.
- x The FIUTT and Regulators have identified reports that are associated to TF with these reports being disseminated to LEAs.
- x The resources allocated to law enforcement and prosecutorial authorities to effectively investigate and prosecute TF are insufficient.
- x The jurisdiction has taken no steps to designate persons as terrorists or to freeze their property despite information suggesting that there is some TF activity in or associated with the jurisdiction and that nationals of Trinidad and Tobago are associated to ISIS/ISIL.
- x There seems to be a disconnect between the Office of the Attorney General and the relevant LEAs to effectively convert intelligence to evidence so as to designate persons as terrorists or members of a terrorists organisations or to designate the organisations themselves as terrorist organisations.

##### **4.1 Background and Context**

171. Terrorist financing is criminalised in accordance with the provisions of the ATA. The definition of terrorist in Section 2 includes a person who organises or directs others to commit terrorist acts or the financing of terrorism; who participates in the financing of terrorism or who contributes to the financing of terrorism. Additionally, the Act makes it an offence to provide services for the commission of a terrorist act. Terrorist property includes proceeds from the commission of a terrorist act and property which has been collected for the purpose of funding a terrorist act or terrorist organisation. Section 22A of the ATA criminalises the direct or indirect provision or collection of funds or attempts to do same where the person involved knew that the funds were to be used in whole or in part by a terrorist or terrorist organisation or to carry out a terrorist act. Persons who commit acts of financing of terrorism are liable upon conviction to a hefty penalty of twenty-five years imprisonment or to a fine of five million dollars or in the case of a legal entity, to a fine of twenty-five million dollars.

172. TF offences fall into the category of offences that are predicate offences to ML.

173. FIs and LBs are required by Section 22C of the same law to report to the FIUTT any suspicion that funds within the financial institution or listed business belongs to an individual or legal entity that

commits a terrorist act or participates in or facilitates the commission of terrorist acts or the financing of terrorism.

174. There is currently no adequate legal framework for the targeting of sanctions related to financing of proliferation of WMD.

#### 4.2 Technical Compliance (R.5-8)

175. For the full narrative see the technical compliance annex

- x Recommendation 5 (terrorist financing offence) is rated C.
- x Recommendation 6 (targeted financial sanctions related to terrorism and terrorist financing) is rated PC.
- x Recommendation 7 (targeted financial sanctions related to proliferation) is rated NC.
- x Recommendation 8 (non-profit organisations) is rated NC.

#### 4.3 *Effectiveness: Immediate Outcome 9 (TF investigation and prosecution)*

176. Trinidad and Tobago has legislation which criminalized terrorist financing. The FIB has been identified as the agency that is responsible for the investigation of TF offences with support from other specialized Departments within the TTPS such as the Special Branch. The ODPP is mandated to conduct prosecution pertaining to TF charges. It should be noted that the Office of the Attorney General also plays an important role in the fight against TF.

#### **FIUTT**

177. The FIUTT is tasked with the responsibility of receiving reports as it relates to the offence of TF under the ATA. Reports from the FIs and LBs are submitted to the FIUTT in the form of STRs and Quarterly Terrorism Reports (QTRs). FIs and LBs are mandated to conduct checks on their records utilizing the relevant lists provided such as UNSCR 1267 to verify whether they have any Terrorist Property in their possessions. The SOP of the FIUTT mandates that TF reports be given urgent analysis and the information be disseminated to the relevant law enforcement authorities being TTPS and more specifically the FIB. Priority ratings are attached to STRs/SARs that related to TF. STRs/SARs related to TF are analysed within a period ten (10) to fourteen (14) days receipt by the FIUTT and are urgently delivered to the Commissioner of Police for investigation. According to the information provided by the FIUTT, the Attorney General is also informed urgently once a report of TF is received since this Office is responsible for designating persons or entities as terrorist or terrorist organisations. No such designations have been made to date. The information received from the FIUTT and contained in Table 4.1 showed that it has received a total of ten (10) STRs/SARs relating to TF with 14 entities being the subject of these reports. The FIUTT has analysed and disseminated ten (10) IRs relating to TF. These IRs were disseminated to both local and foreign LEAs. The local authorities include Commissioner of Police and the FIB whilst the foreign LEAs include the United Kingdom and the United States of America. The status of these investigations is unknown to the FIUTT as no feedback was provided by LEAs neither was any further information requested. The FIUTT is of the opinion that the risk of TF to the jurisdiction is low despite the number STRs/SARs it received in relation to TF. The Assessors were informed that this risk is being reviewed.

*Table 4.1: STRs relating to TF.*

	2011	2012	2013	2014	Total
<b>STRs Received</b>	0	0	2	8	10
<b>IRs Disseminated</b>	0	0	4	6	10

### **TTPS/ FIB**

178. The TTPS has received information regarding nationals of Trinidad and Tobago that are suspected of being involved in terrorism activities. The TTPS specifically FIB which is responsible for the investigation of TF. LEAs are of the opinion that the offense of TF is at a medium risk and this information was obtained as a result of the NRA being undertaken by the jurisdiction. The Assessors were informed that IR reports relating to TF are prioritized for investigation and are urgently disseminated to members of the teams at the FIB for investigation. During the investigation other law enforcement authorities are contacted to assist with the investigations. The Assessors were informed that meetings between the investigative agencies are also held every two to five days to strategize and receive updates in relation to these investigations. There are currently seven reports of TF that are being investigated by the FIB as can be seen from table 4.2. The challenges experienced by the FIB during these investigations are the lengthy delay in receiving information from the FIs, the lengthy delay in getting information from external sources and the investigations are considered to be time consuming. The Assessors were informed that there is one TF investigation which is at an advanced stage. There are several LEAs that are involved in this investigation and the relevant investigative orders such as Production Orders and Restraint Orders are being processed in relation to this investigation.

*Table 4.2: TF Investigations*

2011	2012	2013	2014	2015
0	0	2	2	3

179. The Assessors note that whilst the FIB has provided statistics showing the number of TF related cases under investigation, this statistical information differs from those provided by the FIUTT. The Assessors were informed that the reasons for such difference in the information is as a result of the FIUTT calendar years being different to that of the FIB. The difference in statistics meant that the Assessors could not properly verify the information.

### **The Special Branch**

180. The Special Branch is a Unit within the TTPS and is the main Intelligence Unit within the country. Information pertaining to terrorism activities and terrorist financing obtained by the Special Branch is analysed and disseminated to the relevant LEAs including the FIB for investigation.

181. The Special Branch possesses intelligence which suggests that several nationals of Trinidad and Tobago are suspected to be involved in terrorism activities. The Assessors were informed that the jurisdiction extradited one of its nationals to the United States of America (USA) for terrorist related activities in 2008. The Authorities also indicated that several nationals of Trinidad and Tobago were recently arrested in Venezuela on terrorist related activities. There is also intelligence suggesting that Trinidad and Tobago nationals are currently fighting with the terrorist group ISIS/ISIL. The activities of these individuals are being monitored by local LEAs.

182. The designation of persons or entities as terrorists or terrorist organisations falls under the authority of the Office of the Attorney General. The information provided by the Special Branch indicated that intelligence on persons suspected to be involved in TF and terrorist activity were reported to the Attorney General. The Office of the Attorney General is then required to make an ex-parte application to designate such persons or entities as terrorists and terrorist organisations. No such designations have been made to date. The Assessors were informed that information passed to the Office of the Attorney General is considered to be actionable. The Assessors were informed that discussions are currently taking place amongst key stakeholders on a draft Counter-Terrorism Strategy. The Assessors were not provided with any information in relation to this document, therefore the content of this document was not available to the Assessors for scrutiny or to verify the authenticity of same.
183. The sector which LEAs consider to be vulnerable to TF is NPOs. The rationale being that NPOs are not properly regulated and the composition of NPOs in Trinidad and Tobago include those which have international connection to high risk geographical areas such as Syria.
184. The Special Branch has other functions besides being the main intelligence Unit of the TTPS. One such function includes providing security for VIPs such as the President and the Prime Minister. Hence, the Unit's human resource is also used for this purpose. The Unit like other departments of the TTPS is inadequately staffed to effectively conduct its functions. Whilst the CAs believe that Trinidad and Tobago has a history of terrorism, they note that the focus on the area is increasing and note that the country is more alert to deal with the issue.
185. The Special Branch works closely with the FIB and the SSA which is a civilian intelligence agency of the Government of Trinidad and Tobago. The SSA and the Special Branch share information in relation to TF and this information is also shared with the FIB.

#### **Office of the Attorney General**

186. The Assessors were informed that there is greater collaboration between the USA, LEAs and the Office of the Attorney General in relation to TF and terrorism. The threat of TF and terrorism is deemed to be taken seriously as a result of the coup attempt against the Government in 1990. The Assessors were informed that the Government of Trinidad and Tobago recently conducted a Commission of Enquiry into the failed attempted Coup and recommendations were made by the Commissioner from that Commission of Enquiry. The Assessors were informed by the CA that strict measures have been put in place to deal with the issue of TF. One such measure is the monitoring of the inflow and outflows of cash by banks and the Regulators. The Assessors were informed that the concerns are not necessarily with TF but with those who have left the jurisdiction to fight with groups such as ISIS/ISIL. The jurisdiction has not designated anyone as a terrorist or terrorist organisation despite there being intelligence to suggest that persons are engaged in terrorist financing and terrorist activities and are members of a terrorist organisation. The reason advanced for this lack of designation is that relevant LEAs having the intelligence to suggest that persons are engaged in TF and terrorist activities does not translate into evidence which is required by the Court to designate such persons.

#### **Office of the DPP**

187. The Assessors were informed that the ODPP conducts checks on every file it receives from law enforcement officials to ensure that there is no risk of TF attached to same with one such example being a file returned to one of the investigative units as it has a nexus to TF. The risk that was identified as being associated to the offence TF by the ODPP is considered to be medium to high.

It should be noted that no documentation was provided as to how this level of risk was determined or to support the statement that every file is reviewed for TF. The Assessors were informed that the ODPP received training in relation to the investigation of TF. However no information or data was provided to substantiate the information provided to the Assessors.

#### **Overall Conclusion for Immediate Outcome 9 (TF investigation and prosecution)**

188. The offence of TF has been adequately criminalised under the ATA. Work has been done on a Draft Counter-Terrorism Strategy. Agencies such as the Special Branch and the FIB have a specific remit for investigation of terrorist offences. There have been suspicious reports filed from regulated entities and investigations into possible terrorist activities have taken place. Trinidad and Tobago has the relevant systems in place to receive, analyse and disseminate STRs relative to TF. The FIUTT have demonstrated that it has received, analysed and disseminated reports relating to TF to the different LEAs. The necessary intelligence agencies such as the Special Branch are aware that the jurisdiction is vulnerable to the threat of TF and acts of terrorism as their nationals have been arrested in the past for terrorist related activity in the USA. Furthermore, nationals from the jurisdiction are suspected to be fighting in Syria with the terrorist group ISIS/ISIL.

189. The area of NPOs has been flagged as a medium that may be exploited by terrorists or by those who are sympathetic to their cause. Information with LEAs and Intelligence Agencies indicates that NPOs registered within the jurisdiction have international affiliation and are not properly regulated. LEA and Intelligence Agencies are seemingly grossly understaffed and not trained to investigate and monitor the activities of persons involved in TF. There seems to be a disconnect between the intelligence agencies and the Office of the AG, as intelligence gathered by the relevant agencies cannot be transcended into evidence for use in a Court of Law that would enable the jurisdiction to classify persons and organisation as terrorists. The jurisdiction does not have a Counter- Terrorism strategy. No persons or entities have been designated to date as terrorists or terrorist organisation. There are questions about the prioritisation of terrorist investigations and prosecutions within the jurisdiction as there is no indication that TF is given priority. As at the date of the onsite, there were no arrests, prosecutions or convictions for TF offences despite the fact that IRs were disseminated in relation to TF and that there have been terrorist related activities within Trinidad and Tobago

190. **Trinidad and Tobago has a low level of effectiveness for Immediate Outcome 9.**

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

191. In 2014 there were approximately 5,558 registered NPOs. There was a marked increase in the numbers of this type of entity being established from 2012-14. This could be partially explained by the fact that a Government subvention was an incentive to the formation of NPOs. Whilst NPOs are required by law to register with the RGD, there is no adequate legislative framework from an AML/CFT perspective. There has been little to no evidence of outreach to the sector. There was also no evidence that a targeted approach or any oversight was exercised in respect of NPOs in general or any NPOs in particular that might be a threat for terrorist abuse. There was no indication or evidence put forward to ensure that funds or other assets collected by or transferred through NPOs were not diverted to support the activities of terrorists or terrorist organisations. There did appear that some amount of unofficial monitoring of a small percentage of NPOs was being done by intelligence agencies.

192. To date, the jurisdiction has not designated any persons or entities as being terrorist in nature. Some information during interviews suggested that there may be some basis for such designation, but that there is a disconnect between information received and translation into sufficiency of evidence. There was no evidence provided that terrorists, terrorist organizations and terrorist financiers have been deprived of any assets or instrumentalities related to terrorism. The requirement of the submission of quarterly reports – whilst a good practice in principle - seems generally to have been translated by the reporting persons and entities as the main requirement for making a check for such activity. There did not appear to be as much focus on the need for regular checking for such activity and for urgent reporting.
193. The ATA provides for the confiscation of proceeds of or used in or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organizations, however there are still outstanding issues emanating from Recommendation 6 in terms of identifying and designating targeted financial sanctions related to terrorism and terrorist financing. This includes the non- identification of a competent authority or a court as having responsibility for proposing persons or entities to the 1267/1989 Committee and the issues that flow from that. There are also deficiencies in the processes of freezing and unfreezing of assets of designated entities.
194. The jurisdiction has not completed its risk assessment at this point in time and has therefore not assigned a particular risk rating to TF.
195. Several elements are still outstanding in terms of the International Conventions.

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

196. There is no adequate legislative framework for the regulation of NPOs as it pertains to AML/CFT and this was compounded by the fact that there was no evidence of either an AML/CFT policy or implementation of such a policy in relation to that sector. In the absence of a policy or strategy in respect of the sector any progress in terms of preventing terrorists, terrorist organisations and terrorist financiers from raising, moving and using funds and from abusing the NPO sector would be sporadic in nature. In fact there have been no sanctions applied that would have resulted in the desired outcomes. No individuals have been designated as terrorists or entities as terrorist organisations. Regular quarterly reporting of possible terrorist activity by FIs and LBs seemed in some cases to be more of a perfunctory exercise rather than a serious consideration. There are deficiencies in the ATA relating to the identifying and designation of entities and targeted financial sanctions related to terrorism and TF. The legislation does not adequately provide for the freezing and unfreezing of assets of designated entities.
197. **Trinidad and Tobago has a low level of effectiveness for Immediate Outcome 10.**

#### **4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions)**

198. Trinidad and Tobago has solicited the aid of UNILIREC to assist them in formulating a policy to address proliferation of weapons of mass destruction and sanctions against offenders or would-be offenders. There has not been sufficient time allocated for the implementation and enforcement of such a policy.
199. The ATA criminalises the use of chemical, biological or nuclear weapons.

200. The CBTT indicated that in the absence of a legislative framework that local banks with international parents generally have procedures in place to act on UNSCR designations issued by OFAC, OSFI and EU regulatory bodies but no evidence was forthcoming in that regard.
201. As a new Recommendation under the Fourth Round, the jurisdiction still appears to be in the preparatory stages of coming to a proper understanding of the requirements of Recommendation 7 and therefore there was no evidence of concrete measures in place that could be assessed by the Assessors.
202. There did not appear to be any real understanding or even knowledge by FIs and LBs on the requirements of this Recommendation to combat the proliferation of weapons of mass destruction. In the absence of understanding the nature of the recommendation, compliance would be more accidental in most cases rather than a targeted activity as part of a robust AML/CFT framework. No persons or entities have been identified or designated by the jurisdiction as being involved in PF and therefore no sanctions have been applied in that regard. There was additionally no evidence of monitoring on the part of the CAs to ensure that FIs and DNFBPs were complying with the requirements of this recommendation.

#### **Overall Conclusion Immediate Outcome 11 (PF sanctions)**

203. A policy on this area has been articulated but not yet implemented. Trinidad and Tobago has not demonstrated that it has an adequate framework as yet to properly implement a policy to prevent persons or entities who are involved in proliferation of WMDs from raising, moving and using funds as mandated by the relevant UNSCRs. Whilst the ATA criminalises the use of chemical, biological or nuclear weapons, the legislation does not go far enough to provide for implementing targeted financial sanctions against perpetrators.
204. **Trinidad and Tobago has a low level of effectiveness for Immediate Outcome 11.**

#### **4.6 Recommendations on Terrorist Financing and Financing of Proliferation**

205. The jurisdiction needs to develop a comprehensive CTF strategy taking account of the risks identified in the NRA and currently by LEAs and other CAs. This strategy then needs to be supported and buttressed by the necessary resources applied in the area. The strategy needs to properly address the issues of financing of proliferation of WMD. The current policy in relation to PF of WMDs needs to be properly communicated to key stakeholders and disseminated amongst regulated persons before it can be implemented
206. The resources of the FIUTT, FIB, SB, FB, CGIU, OCNFB and other related LEAs need to be augmented to better handle the imperatives of effective implementation of those strategies.
207. The ATA needs to be re-examined to adequately provide for missing elements in terms of the designation and listing of entities.
208. CAs should put measures in place to assist LEAs in obtaining information within a timely manner from outside of the jurisdiction in relation to the investigation of TF.
209. The activities of those who are suspected to be involved in terrorism and TF activities should be consistently monitored by LEAs.

210. LEAs and the ODPP should be provided with the relevant resources such as staffing to ensure that the activities of those involved in TF and terrorism are consistently being monitored. This should also extend to LEAs who are involved in the investigations.
211. LEAs and the Office of the Attorney General need to develop measures to convert intelligence into evidence which would result in the jurisdiction designating persons or entities involved in TF and terrorism as a terrorist or terrorist organization.
212. The investigation of TF needs to be treated as a priority and be properly investigated as there is no indication that priority is given to TF.
213. LEAs and the ODPP should be provided with more training in relation to the investigation and prosecution of TF.
214. A comprehensive policy on the proper supervision and monitoring of the NPO sector needs to be formulated and implemented to thwart the possibility of this sector being used or manipulated by terrorists or those sympathetic to their cause.

## 5. PREVENTIVE MEASURES

### *Key Findings*

- x Significant enhancements were made to the preventive measures regime in 2014 to better align with the new 2012 FATF Recommendations. In terms of TC, amendments were made to bring the legislation largely in line.
- x The NRA though not completed involves all relevant stakeholders in the jurisdiction. It has also led to better awareness and understanding of risks faced by the jurisdiction. More sensitisation is required to develop a full understanding of ML/TF risk throughout.
- x LBs, particularly those in the real estate, jewellery and PMC businesses do not have a well-developed understanding of ML/TF risk or the scope and depth of measures required to mitigate varying ML/TF risks.
- x The banking sector is the key gatekeeper to the financial system in Trinidad and Tobago. Banks are well aware of the risks and their AML/CFT obligations. It is also noted that four of the commercial banks are each part of an international group headquartered in North America where they appear to be subject to the more stringent AML/CFT requirement of the home country.
- x CDD, Enhanced Due Diligence (EDD), and Retrospective Due Diligence (RDD) have been the foundation of the AML/CFT system but there are weaknesses with regard to the necessary CDD measures required to identify and understand beneficial owners, which undermines effectiveness.
- x Concerns exist over the application of preventive measures in some key areas such as PEPs, wire transfers and correspondent banking where the ML/TF risks were relatively higher and required EDD.
- x Requirements for ongoing monitoring and periodic review of customers have been recently implemented and the implementation has been minimal in that those interviewed indicated that they have not fully assessed their client base.

### *5.1 Background and Context*

#### *(a) FIs and LBs (DNFBPs)*

Table 5.1: Reporting Entities in Trinidad and Tobago as of 31 December 2014

Banks	<b>8</b>
Systemically Important Financial Institutions (SIFIs)	<b>5</b>
Insurance Companies	<b>40</b>
Private Pension Funds	<b>193</b>
Bureaux De Changes	<b>5</b>
Non-Banks/Securities Dealers*	<b>17</b>
Stock Exchange	<b>1</b>
MVTS / Money Remitters	<b>5</b>
Credit Unions/Cooperative Societies	<b>131</b>
Attorneys at Law	<b>599</b>
Private Members Clubs	<b>62</b>

Accountants	<b>61</b>
Real Estate Agencies	<b>420</b>
Motor Vehicle Sales	<b>153</b>
Trust and Company Services Providers	<b>22</b>
NLCB	<b>1</b>
Art Dealers	<b>10</b>
Pool Betting/Gaming Houses	<b>14</b>
Jewellers	<b>120</b>
Building Societies	<b>2</b>
Investment Advisors	<b>18</b>
Broker Dealers*	<b>45</b>

\* Includes 11 securities dealers which are dual registrants between CBTT and TTSEC

215. Trinidad and Tobago has a thriving financial services sector which is well-developed and expanding. The financial sector accounts for almost one-fifth of the non-energy economy and employs close to one-tenth of the non-energy workforce. The CBTT at the time of the onsite supervised 8 banks, 17 non-banks, 5 bureaux de changes, 40 insurance companies and more than 190 private pension funds.
216. Apart from the traditional banking products and services available to the population, there are a number of institutions such as money remitters (6) and credit unions (approx. 130 active), that offer financial products and services to persons, including those who may not qualify for or who do not have banking products and services. Credit Unions account for 4% of the total financial assets in the system.
217. The Banking sector is a critical element in the AML/CFT regime in Trinidad and Tobago, as they are the main gatekeepers. Total assets held by commercial banks in 2014 was TT\$133,658,000,000 compared to TT\$5,827,560,000 for other non-banks such as finance companies. Banks offer mobile banking, pre-paid cards and internet banking products and services. There is a high penetration of bank branches (151), Automated Teller Machines (ATM) and Point of Sale (POS) machines. The country also has a high mobile phone penetration and several banks offer mobile banking services, in addition to tele-banking and internet banking services. (See [http://www.central-bank.org.tt/annual\\_atm\\_stats](http://www.central-bank.org.tt/annual_atm_stats)).
218. Seventy-five percent (75%) of the banks licensed in Trinidad and Tobago are subsidiaries of foreign institutions. They are also often part of wider financial groups that include mortgage companies, finance companies, securities dealers, and insurance companies.
219. Also under the supervisory mandate of the CBTT, are five, (5), entities designated systemically important financial institutions (SIFIs). SIFIs comprise 19% of the financial system of Trinidad and Tobago based on asset size. The major impetus for designating the entities as a SIFI was the financial shock of the collapse of the formerly largest insurance company Colonial Life Insurance Company (CLICO) and the significant negative impact it had on the jurisdiction's and regional financial system.
220. Insurance companies and brokers are also supervised by the CBTT. The insurance sector is comprised of registered insurance companies which provide life and or general insurance products

and services. Total assets of life insurance companies in 2014 was in excess of TT\$20.5 Billion and non-life in excess of TT\$5,241 Billion There are companies referred to as composite companies which provide both life and general insurance products and services.

221. The pension sector comprises private occupational pension plans registered under the Insurance Act Chap 84:01, and is supervised by the CBTT. A new Occupational Pensions Plan Act is being developed to update the current provisions and to ensure that pension plans are governed and regulated in accordance with international best practices.
222. There are over 190 pension funds, 94 of which are in the process of being wound up. The assets of this sector represent a significant portion of the total assets of the financial sector of Trinidad and Tobago. As at July 2014, pension plan assets totalled approximately TT\$45.8 billion.
223. Credit Unions are estimated to have membership of around 500,000 persons from a population of 1.3M, and assets in excess of TT\$11B, comprising 4% of the financial sector. They currently are registered under the Cooperatives Societies Act Chap 81:03 (CSA). In July 2005, the Cabinet of Trinidad and Tobago agreed that the supervision of the financial activities of all credit unions should be integrated under the aegis of the CBTT<sup>8</sup>.
224. There are a number of Credit Unions registered with the Commissioners for Co-operative Development who have failed to register with the FIUTT. The FIUTT has initiated enforcement action against the twenty-seven, (27) credit unions so identified to be in breach.
225. The Bureaux du Changes sector is also supervised by the CBTT. Currently, there are five, (5), bureaux de change operators licensed in Trinidad and Tobago. These enterprises are dedicated only to buying and selling foreign currency notes and coins, and purchasing travellers' cheques, in exchange for notes and coins of another currency.
226. For the MVTs providers, it seems there are little to no barriers to enter this cash intensive market segment, though an obligation to register with the FIUTT exists, and it is a criminal offence where this is not done. Identified in 2014 as a FI under the POCA, STRs/SARs are required to be submitted to the FIUTT. Along with the banks, they provide most reports to the FIUTT, and the indications from this sector are that there is a very strong regulatory framework, with feedback provided on a timely basis.
227. The larger two MVTs providers account for over 90% of business in Trinidad and Tobago and have significant systems and resources in place though there is a need for continuous monitoring given the high number of transactions. The smaller entities have significant issues of compliance and resources. One small player in the market with less than 5% of the market is considering whether the regulatory burden is so much that its business model is no longer viable.
228. For the securities sector, there are sixty-three (63) registrants which include eighteen (18) investment advisors, and the funds under management are approximately TT\$295M. Mutual Funds are also offered. The TTSEC is the supervisor for this sector.

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<sup>8</sup> The Cabinet also agreed that the CSA, should be amended to remove the supervision of the financial activities of credit unions from the mandate of the Commissioner for Co-operatives Development, a Division under the Ministry of Labour and Small and Micro Enterprise Development.

229. The TTSEC is also the supervisor for the Trinidad and Tobago Stock Exchange (TTSE) and has oversight for the AML/CFT programme of its registrants.

230. There are industry associations, as follows:

- x Bankers Association of Trinidad and Tobago (BATT);
- x Securities Dealers Association of Trinidad and Tobago (SDTT);
- x Mutual Funds Association of Trinidad and Tobago (MFATT);
- x Association of Trinidad and Tobago Insurance Companies (ATTIC); and
- x Insurance Brokers Association of Trinidad and Tobago (IBATT)

231. In Trinidad and Tobago, DNFBSs are classified as LBs. Of the LBs covered, there are some vulnerability for criminal activities including ML/TF risks. Coverage includes real estate agents, PMCs, Jewellers, Attorneys, Accountants, motor vehicle sales dealers and trust and company services providers. See Table 5.2 which provides an indication of size of the sector. Compared to banking sector this sector is very small though assessors view some significant risk. While there is evidence of an increase in the awareness of ML/TF risks in the jurisdiction by the Supervisors, the Assessors are not satisfied that this understanding reaches across the financial services sector as a whole or within individual institutions. Assessors thus decided to pay particular attention to these LBs given the risk for ML/TF.

*Table 5.2: Relative Size of LB Sector*

Estimated Annual Income of the Listed Business Sector registered with the FIU as at June 2014		
Listed Business Sector	Estimated Annual Income (EAI)	% Representation based on EAI
Motor Vehicle Sales Agents	\$5.3B	49.7%
National Lotteries On-Line Betting	\$2.1B	19.7%
Real Estate Agents	\$2B	18.8%
Private Members Clubs	\$299M	2.8%
Attorneys-at-Law	\$298M	2.8%
Game & Pool Betting Shops	\$276M	2.6%
Accountants	\$199M	1.9%
Jewellers	\$148M	1.4%
Trust & Company Service Providers	\$27M	0.2%
Art Dealers	\$7M	0.1%
<b>TOTAL ESTIMATED ANNUAL INCOME</b>	<b>\$ 10.65B</b>	<b>100%</b>

(b) *Preventive Measures*

232. AML/CFT obligations on FIs and LBs, are underpinned by legislation which includes the following:

- x Proceeds of Crime Act, (2000);
- x Anti-Terrorism Act 2005;
- x Miscellaneous Provisions, (Proceeds of Crime, Anti-Terrorism, Financial Intelligence Unit of Trinidad and Tobago) Act, , 2012;

- x Prevention of Corruption Act, 1987;
- x Accessories and Abettors Act; 1980
- x Gambling, Gaming and Betting Control Bill, 2014;
- x The Insurance Act, 1980;
- x The Securities Act, 2012;
- x The Co-operative Societies Act; 1971
- x The Exchange Control Act , 1970 ;
- x The Central Bank Act 1964;
- x The Financial Institutions Act (2008);
- x Financial Obligations Regulations 2010; and
- x Financing of Terrorism Regulations, 2011.

233. Trinidad and Tobago made a deliberate decision to strengthen its regulatory regime for the financial services sector through utilisation of the FIUTT under Section 18A of the FIUA. This Unit has been given the task of ensuring AML/CFT compliance of all LBs and non-regulated FIs in the jurisdiction.

(c) *Risk-Based Exemptions or extensions of preventive measures*

234. Regulation 14 (1) of the FOR allows for simplified due diligence to be applicable under certain circumstances including where the customer is regulated by the CBTT or TTSEC and where the customer is listed on the TTSE. Further, Regulation 29 of the FOR allows for exemptions to verification of identity in two (2) cases:

- a) Where the applicant for an insurance contract is a FI or LB operating in Trinidad and Tobago and is regulated by a supervisory authority; or
- b) Where an insurance company offers the facility of money due to the insured in respect of one policy of insurance to fund the premium payments for another policy of insurance and the insured uses the facility.

235. Regulation 35 of the FOR allows for exemption of a wire transfer from certain CDD requirements on transactions from one financial institution to another where both the originator and beneficiary are FIs acting on their own behalf.

236. No specific sectors or activities have been generally exempted from the requirements. The NRA, which may be a tool to be utilised in this regard, was still a work in progress at the time the assessors undertook the on-site assessment.

237. Trinidad and Tobago also embarked on an extensive KYC campaign, referred to as a RDD, programme for CBTT registrants and licensees. All sectors which were assessed as being at a high risk of being used as conduits for ML/TF activities were required to undertake this RDD within the prescribed period.

238. The RDD which was started in 2013 is still ongoing. It is being undertaken to enhance the KYC regime by providing assurance that due diligence has been conducted on all customers. However, while there was some level of success in obtaining relevant information, the exercise revealed that deficiencies exist in CDD processes.

239. The Assessors have concluded that the RDD programme met with some serious challenges for certain sectors such as banks, insurance companies, mutual funds, credit unions, the SIFIs etc. This was particularly true of relationships with customers which were dated (i.e. more than five (5)

years). It appeared that some institutions were not optimistic of the prospects of obtaining information from some of their customers and resigned themselves to ensuring that the requisite CDD information is provided going forward. By their own admission, the volume of transactions and the fact that there were relationships which were inactive made it extremely challenging to complete the RDD programme despite their best efforts. Some of these efforts included mass mailing, telephone calls and personal contact with customers presenting themselves for transactions.

240. Trinidad and Tobago made a decision to include Motor Vehicles Sales, Art Dealers, National Lotteries and Pool Betting as part of its AML/CFT regime. Although there has never been a comprehensive national assessment on the ML/TF risks posed by businesses in Trinidad and Tobago, it is still reasonable to infer that the decision was based on risk primarily derived from customs and TTPS crime data. The NRA includes an analysis of these sectors and the risk posed. It is noteworthy that discussions held during the on-site suggest that there is a growing awareness of criminal activity in certain sectors. This concern is supported by the fact that, in recent years, there has been a marked increase in the reporting of suspicious activities within these sectors. Therefore the inclusion of the aforementioned sectors is seen by the Assessors as appropriate. The Assessors were not able to determine whether on-site inspections of these entities revealed any specific deficiencies or if there were adequate AML/CFT measures implemented by them to mitigate or manage ML and TF risks.

## 5.2 *Technical Compliance (R.9-23)*

241. For the full narrative see the technical compliance annex.

- x Recommendation 9 (financial institution secrecy laws) is rated C.
- x Recommendation 10 (customer due diligence) is rated LC.
- x Recommendation 11 (record-keeping) is rated C.
- x Recommendation 12 (politically exposed persons) is rated C.
- x Recommendation 13 (correspondent banking) is rated C.
- x Recommendation 14 (money or value transfer services) is rated C.
  
- x Recommendation 15 (new technologies) is rated C.
- x Recommendation 16 (wire transfers) is rated LC.
- x Recommendation 17 (reliance on third parties) is rated C.
- x Recommendation 18 (internal controls and foreign branches and subsidiaries) is rated C.
  
- x Recommendation 19 (higher-risk countries) is rated PC.
  
- x Recommendation 20 (reporting of suspicious transactions) is rated C.
- x Recommendation 21 (tipping-off and confidentiality) is rated LC.
- x Recommendation 22 (DNFBPs – customer due diligence) is rated LC.
- x Recommendation 23 (DNFBPs – other measures) is rated LC.

## 5.3 *Effectiveness: Immediate Outcome 4 (Preventive Measures)*

a) *Understanding of AML/CFT risks and obligations*

### **Fls**

242. The level of understanding of reporting entities in the financial sector, of the ML/TF risks faced in this jurisdiction and in their sectors, has been considered by the assessment team as varied. FIs as with all reporting entities were required to undertake identification and verification of all existing customers when the FOR was amended. Based on the regulators' findings most FIs have not completed the process of identifying and verifying existing customers and in fact are only concentrating on high risk clients as recently required by the CBTT. Interviews with FIs indicated that they have not completed the process and most have done so for a bare minority of existing clients. This remains a significant AML/CFT risk.
243. Amongst FIs the Banking sector appears to have the most significant understanding of its risks and obligations to carrying out AML/CFT measures. Credit Unions have a limited understanding of the AML/CFT risks posed. Credit Unions consider that due to their nature in terms of only doing business with members the risk is rather low. However, the regulators appear to have a different view. Given the sheer size of the credit union sector in terms of number of members (upwards of 500,000) the risks posed are significant and should be assessed urgently.

### **LBs (DNFBPs)**

244. Generally, LBs have not demonstrated a full understanding of their ML/TF risks although there is a progressive move in this direction. While some of these entities have developed AML/CFT policies, the level of implementation varies across the different groups.
245. Many LBs, including PMCs, real estate agents and jewellers in Trinidad and Tobago, are not cognizant of the ML/TF risks posed by PEPs. Through discussions held between the Assessors and representatives of these entities, there is no particular emphasis placed on the risks associated with domestic PEPs. In fact, based on LBs' response to the Assessors it is apparent that domestic PEPs are not treated any differently. Additionally, the regime for foreign PEPs is inadequate. There is no risk management system which is adequate to determine whether a customer or beneficial owner is a PEP either at the commencement of the relationship or subsequently becomes a PEP.
246. A greater effort should be placed on assisting entities to understand the ML/TF risks inherent in their respective products, services and customer-base. The AML/CFT training offered by the FIUTT and the other CAs should be intensified to include intensive review of ML/TF trends and typologies of the various businesses and professions.
247. The frequency and quality of AML/CFT training, although improved over the past two (2) years, need to be enhanced on a risk-sensitive basis and should be sector-specific.
248. LBs do not place sufficient emphasis on risks associated with new products, services and technology. Also, there is no appropriate measure to mitigate or manage the risk associated with new technologies.
249. The degree to which LBs ensure that the compliance function has access to relevant information should be improved.
250. There are no measures in place to ensure that LBs communicate their AML/CFT policies and controls to senior management and staff. The degree to which these entities have remedial actions and sanctions when AML/CFT obligations are breached by employees varies across the sector. LBs should ensure that their AML/CFT controls are communicated and adhered to consistently across the entity.

251. There is no evidence that LBs in Trinidad and Tobago create and document their ML/TF risks assessments and, where they do that the assessments are kept up-to-date. Supervisors should ensure that supervised entities conduct risk assessments, document their assessments and keep them updated.
252. Only a limited number of LBs appeared to have allocated adequate resources to implementing AML/CFT policies and controls relative to their size, complexity, business and risk profile. Supervisors should ensure that LBs allocate resources based on the components above.

b) *Implementation of measures commensurate with the risks*

253. The Assessors conclude that the degree to which LBs assess customer risk vary across sectors. The vast number of attorneys and real estate agents represent an inordinate challenge for the supervisors. It appears that most entities conduct risk assessment in a cursory and general manner but primarily from an overall business standpoint- not necessarily based on ML or TF risks. Additionally, there is nothing to substantiate a process of ongoing or periodic re-assessment of the risk customers may pose to an institution.

**FIs**

254. The FIs interviewed generally expressed a good understanding of how to assess the risk posed by new clients and to some extent existing customers. For example the Banking sector has a well-developed application process for new clients which included evidence of country risk and product risk. Similar measures are in place for the other FIs. However, more work needs to be done by Credit Unions and the designated SIFIs. The Assessors are concerned that although five (5) entities have been designated as SIFIs, only two (2) of them have been the subject of an on-site examination. Trinidad and Tobago has indicated this is largely due to the risk identification. However, assessors conclude that at the least all SIFIs should be visited.
255. FIs such as Banks also expressed some concern as to how they are supposed to deal with account holders and applicants for business which are NPOs. They consider that there has not been sufficient guidance by the supervisors nor are there sufficient legislative means as it relates to NPOs. Additionally, FIs are concerned that the AML/CFT regime is unequally being applied across sectors whereby Banks and Insurance companies felt they were more targeted.
256. Most FIs interviewed indicated that they would undertake a review of each customer when a transaction is triggered. This is being undertaken to ensure that they meet the obligation of RDD. The gaps in such verification and identification of existing clients remain problematic and a vulnerability.
257. FIs have not established appropriate risk management systems for customer identification. Further, the requirement for senior management approval for continuing the relationship when the customer becomes a PEP, and for appropriate CDD on BOs identified as PEPs and requirements for domestic PEPs, are just being brought into legislative effect with the passage of the FOR.

**LBs (DNFBPs)**

258. Assessors are of the view that, though required to be registered, there are many LBs such as PMCs, real estate brokers that have failed to do so but are in operation. The level of ML/TF risk posed by these unregulated businesses is unknown as the number of such businesses, the level of activities and the customer-base are indeterminable. Every effort should be made in the shortest possible timeframe to intensify the licensing and registration regime to include all entities which pose a risk for ML/TF.
259. In the absence of a comprehensive risk-based supervisory regime, it is difficult to determine whether entities which pose the highest risk for ML and TF are given adequate attention. The Assessors have concluded that the current resources allocated for the conduct of its supervisory role is inadequate for the FIUTT. Consideration should be given to increasing the resource allocation for the FIUTT commensurate with its expanded role.
260. The FIUTT has adopted a graduated approach to supervision in mitigating ML/TF risks as follows: low intensity (website guidance, bulletins, media articles, presentations), to moderate intensity (off site reviews) to high intensity (onsite examinations, enforcement action). Assessors conclude that it appears that not all risks are borne out in this process. For example FIs have indicated that they have particular concerns with doing business with real estate entities and lawyers that buy and sell real estate due to concerns that there is inadequate AML/CFT understanding and application of the requirements such as CDD. It is not clear the FIUTT's process accounts for this concern. The FIUTT should ensure that the selection, frequency and scope of on-site examinations are based on ML/TF risks.

c) *CDD measures and record keeping*

**FIs**

261. FIs are required to identify and verify any person with whom they have or intend to enter into a business relationship. Appropriate documentary evidence of identity is requested. However, verification of identity for directors, beneficial owners and shareholders are not consistently applied across all FIs. Banking, Insurance and funds sectors have demonstrated the capability to verify the identity of new customers. However, all FIs interviewed indicated that they rely to some extent on the information available through the RGD for details of shareholders and beneficial ownership information. This information is not mandated to be kept or submitted to the RGD. Therefore the information is not accurate and current and cannot be relied upon as is currently the norm across sectors.
262. The CDD for existing clients is also an issue here. The inability of many FIs to risk assess their existing clients means that they are unable to apply enhanced due diligence measures where this would be required. Additionally, FIs and LBs have not demonstrated on a consistent basis the ability to identify a PEP or when an existing client becomes a PEP.
263. There is also concern expressed across some sectors that the Banking sector may not be implementing the AML/CFT measures appropriately. The issue for these sectors is that they rely on the CDD undertaken by the banking sector. For example the Jeweller sector felt that most of the issue of risk lay with the Banking sector and not with them.
264. Significant concerns remain as to whether SIFIs and Credit unions are applying the AML/CFT requirements sufficiently. For example one SIFI is reported to have over 500,000 accounts with the

majority existing before the AML/CFT regime became applicable. Therefore, full CDD including identification and verification has yet to be undertaken on existing customers. As indicated, the CBTT has mandated that its supervised entities including SIFIs concentrate only on high risk clients. This SIFI indicated when interviewed that it has 10,000 high risk clients and they have yet to complete the RDD process. Identical concerns exist for the other SIFI interviewed. In relation to credit unions, one specific credit union has 170,000 members, 310 employees, nine branches and only one person in compliance department. This credit union as well has not completed the identification and verification process for existing clients.

#### **LBs (DNFBPs)**

265. The deficiencies which apply to FIs with respect to the CDD obligations of Rec. 10 also apply to LBs. There is no evidence that CDD measures vary based on the ML/TF risks across different sectors, types of institutions or individual institution. LBs should be required to implement CDD measures based on risk i.e. Simplified or reduced due diligence for lower risks transactions or individuals and Enhanced Due Diligence for transactions and individuals posing a higher level of risk. There is no consistent application by LBs relative to record-keeping measures which includes beneficial ownership information along with ongoing monitoring. The Assessors were not satisfied that business is refused when CDD information is incomplete. Supervisors should ensure that LBs maintain effective recordkeeping procedures and that transactions are suspended when CDD information is not provided.

#### *d) EDD measures*

##### **FIs**

266. From interviews and the information submitted it was clear that FIs apply enhanced due diligence only at the commencement of the business relationship. Because there is a significant gap in terms of identifying and verifying existing clients and risk assessing those clients it is clear that enhanced due diligence is not appropriately applied on an ongoing basis.

#### **LBs (DNFBPs)**

267. Many LBs, particularly PMCs, real estate agents, jewellers and attorneys, have not properly assessed their ML/TF risk nor have they sufficiently applied mitigating measures commensurate with their risks. As an example, the PMCs pose a very high risk for ML and TF but do not consistently apply enhanced AML/CFT controls to manage these risks. The CDD measures need to be strengthened and consistent across the sector.

268. In accordance with the obligations of Regulation 14 of the FOR, Supervisors should ensure that all LBs implement EDD measures for high risk transactions and customers. Particular emphasis should be placed on PEPs, correspondent banking relationships, PMCs, real estate and wire transfers.

#### *e) Reporting Suspicious transactions*

##### **FIs**

Table 5.3: STRs received from Financial Institutions

<b>Reporting Entity</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>Banks</b>	151	154	152	230	687
<b>Exchange Bureau</b>	0	0	03	14	17
<b>Insurance Company</b>	09	10	03	23	45
<b>Mutual Fund</b>	28	22	26	16	92
<b>Mortgage Company</b>	14	7	5	14	40
<b>Security Dealer</b>	0	5	4	1	10
<b>Credit Unions/Co-operatives Society</b>	5	16	20	161	202
<b>MVTS</b>	90	38	314	216	658
<b>Total</b>	297	252	527	675	1751

269. The understanding of FIs as to when and under what circumstances to file an STR/SAR has increased from 2011-2014. There have been significant training initiatives undertaken by the FIUTT in terms of outreach to FIs and LBs as to filing STRs/SARs and timing of such filing. However, the FIs interviewed seem to have some inconsistent approaches as to the timing of when a transactions becomes suspicious and then requires submission of an STR/SAR. For example in some Banks it could take upwards of two months from the time the transaction is identified through their systems as 'unusual' to when the determination is made that the transaction is suspicious. Once the transaction is determined to be suspicious a report is filed immediately.

270. Whilst FIs indicated that they received some feedback from FIUTT from filing STRs/SARs, they indicated that this was not timely and in many cases none was provided. FIs such as Banks felt that only where they received a court order in relation to an STR/SAR were they able to ascertain the benefits and quality of their submission. They felt that they required more feedback so as to understand whether the mechanisms they have in place are working.

271. In 2014 most sectors filed more STRs than 2013 except MVTS providers. The increase in filings could be attributed to educational outreach and training undertaken by the FIUTT and other supervisors on filing STRs/SARs. There is no clear rationale for the decrease in MVTS providers filing though this could be attributed to better quality submission efforts. The data further shows that the STRs/SARs submitted by Credit Unions have significantly increased. The relevant regulators including FIUTT should make a full assessment as to the possible reason for this increase and what AML/CFT risks are posed by credit unions.

#### **LBs (DNFBPs)**

272. The level of reporting of suspicious transactions by LBs has improved in the past two (2) years. Table 5.4 sets out data on the reporting of such and shows increase awareness. The amount of training with respect to detecting and reporting suspicion has also shown signs of improvement. Also, the level of feedback given to LBs falls within the remit of the FIUTT and, although improving, needs be enhanced.

Table 5.4: STRs received from Listed Business

<b>Reporting Entity</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Total</b>
<b>Attorney at Law</b>	<b>2</b>	<b>1</b>	<b>6</b>	<b>11</b>	<b>20</b>
<b>Jewellers</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>15</b>	<b>18</b>
<b>Motor Vehicle Sales</b>	<b>1</b>	<b>3</b>	<b>9</b>	<b>26</b>	<b>39</b>
<b>Real Estate</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>8</b>
<b>Private Members Club</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>25</b>	<b>32</b>
<b>Total</b>	<b>6</b>	<b>5</b>	<b>27</b>	<b>79</b>	<b>117</b>

*f) Internal controls*

273. Both FIs and LBs are required to undertake AML/CFT compliance audits on an annual basis and submit the findings to the relevant regulator. Also, in relation to TF all entities are required to submit Quarterly Terrorism Reports (QTRs). The preparation and submission of these quarterly reports does not appear to have a specified purpose or any utility to the regulators in terms of addressing TF risk. The preparation and submission of these reports now seem an academic affair. FIs and LBs interviewed are cognizant of the need to submit these reports but they are not certain as to how effective they are. There are concerns about the utility of this report which is quarterly.

**FIs**

274. Internal controls within FIs are sound. FIs have implemented internal procedures for staffs at all levels. Furthermore, the internal audit functions and external AML/CFT audits supplements the internal control mechanisms across sectors. From the interviews it was clear that the understanding of the need to have proper internal controls have reached management level in all sectors and this can be credited to the role played by the regulators as well as the FIUTT to increase awareness.

**LBs (DNFBPs)**

275. Some of the LBs in Trinidad and Tobago have internal controls though they are not particularly focussed on AML/CFT compliance. There appears to be limited appreciation for establishing compliance management arrangements. Supervisors should ensure that all LBs have strong internal controls pursuant to Rec. 18. Only some entities have screening procedures to ensure high standards when hiring employees. Supervisors of LBs should ensure that they exercise due diligence when hiring staff to mitigate ML/TF risks. LBs do not consistently implement an audit function to test their ongoing compliance with the AML/CFT system. Annual AML/CFT audits are prepared however outside of these there is no clear effective ongoing implementation. Therefore, Assessors concludes that all LBs should have an independent audit function which is capable of testing their AML/CFT system.

**Overall Conclusion of Immediate Outcome 4 (Preventive Measures)**

276. Trinidad and Tobago has enacted the relevant laws and regulations to demonstrate a significant level of technical compliance with the recommendations. However, gaps remain and there are significant issues in the manner in which those technical requirements are implemented by FIs and LBs. Generally, FIs and LBs have varied levels of understanding risk and consequently have applied measures to combat these risks on an inconsistent level. The Banking sector tends to have a significantly better understanding than other FIs. However, understanding of AML/CFT risk and mitigating such risk by LBs is low. Implementation of measures to reduce risk, apply CDD and enhanced CDD and record keeping requirements are not strong or consistent across sectors with LBs understanding being low. Therefore, the Assessors concluded that they do not adequately understand the nature of their ML/TF risks and have not applied sufficient AML/CFT measures to mitigate such risks.

277. **Trinidad and Tobago has a moderate level of effectiveness in Immediate Outcome 4.**

#### **5.4      *Recommendations on Preventive Measures***

278. Trinidad and Tobago should take measures to ensure the FIs and LBs apply a risk based approach and take steps to identify, assess and mitigate the risk of ML/TF.

279. Trinidad and Tobago should ensure that FIs and LBs, primarily Credit Unions and SIFIs, take immediate steps to identify and verify the beneficial ownership of legal entities and arrangements that were in place prior to the FOR amendments which required RDD and take corrective action to rectify cases of non-compliance.

280. Given the identified ML/TF risks due to corruption, as well as the weaknesses in the operations and effectiveness of the Integrity Commission, the FIs should advance the dialogue with the supervisors to enhance the identification of PEPs, and in particular local PEPs.

281. Trinidad and Tobago should ensure that all SIFIs are subject to an on-site inspection at the earliest date.

282. The supervisors and the relevant associations should collaborate more to ensure that the sectors are fully aware of the AML/CFT legislative requirements and their requisite obligations to implement these requirements. This involves a review of the frequency and quality of AML/CFT sector specific training. For example the FIUTT should have more outreach to Jewellers, lawyers, PMCs and real estate agents. Further there should be more outreach to the credit union sector.

283. Trinidad and Tobago should implement measures to ensure that the recent changes in legislation including those made to the FOR are implemented by FIs and LBs. This could include the use of increased onsite and offsite supervision having regard to risk assessments by the supervisors.

284. There needs to be clear guidance and legislation to assist FIs and LBs to deal with NPOs and the risks they pose.

285. There needs to be an assessment of the value of the Quarterly Terrorism Reports to ensure its desired purposes are achieved and that it is not used as a substitute for ongoing monitoring of the relevant UN Resolutions.

286. A greater effort should be placed on assisting entities to understand the ML/TF risks inherent in their respective products, services and customer-base. The AML/CFT training offered by the FIUTT should be intensified to include intensive review of ML/TF trends and typologies of the various businesses and professions.
287. CAs should review guidance materials and other measures to guide FIs and LBs to better ascertain CDD.
288. Steps should be taken to ensure that LBs and FIs are not fully relying on the inadequate information from the RGD on beneficial owners of corporate entities.
289. Measures should be taken to ensure that those LBs that operate without authorisation are brought within the regime or actions taken against them for carrying on activity without authorisation.
290. Steps should be taken to ensure that the time it takes a bank from when it determines that a transaction is unusual to when it files an STR/SAR is significantly reduced. Similar measures for other FIs and LBs should be implemented as well.
291. Steps should be taken to ensure that LBs have proper internal controls including those related to employees.
292. The FIUTT should ensure that appropriate feedback is provided.
293. The FIUTT should analyse the increase in STRs/SARs by credit unions to ascertain any trends or shift in risk.
294. Supervisions should take steps to ensure that LBs terminate a business relationship whenever CDD is not provided.

## 6. SUPERVISION

### *Key Findings*

- x Except for the CBTT, the Authorities in Trinidad and Tobago should intensify the licensing and registration regime as there are businesses which operate particularly in the credit unions, PMCs, those engaged in real estate and lawyers but which remain unregistered with the FIUTT.
- x The system of AML/CFT supervision in Trinidad and Tobago is a developing one. Three agencies share the responsibility for supervision of the various financial sectors. These agencies are fully supported at the policy level through the NAMLC.
- x There is a concern with respect to the number of entities which are neither licensed nor registered to conduct financial intermediary business, but are doing so on a daily basis (for example PMCs). Some of these entities, by their nature are inherently high risk for ML/TF activities.
- x ML/TF risks have not been adequately identified and or fully understood. The NRA is being undertaken, and although not complete, has helped FIs to have a better understanding of the AML/CFT risks faced by the jurisdiction.
- x A combination of off-site and on-site examinations is used by the three supervisors in a co-ordinated and collaborative way. Large, complex institutions are being addressed through the SIFI designation, but for conglomerates, the approach to be taken is unclear.
- x Feedback and guidance on compliance with AML/CFT requirements has been provided, and this has generally been supportive of improved knowledge where there were gaps on some core issues, particularly for CDD and STR/SAR.
- x The CBTT is aware that compliance with the obligation to undertake RDD is not at a level it should be and has instigated a monitoring process to ensure CDD on all clients.
- x There is generally a wide enough range of powers to sanction though there are no monetary penalties that could be applied outside of criminal prosecutions.
- x Sanctions are not sufficiently dissuasive.
- x Although more vigorous sanctions exist, Supervisors have not made sufficient use of them even in cases where they may be appropriate. Supervisors, are either unwilling or unable to impose the most severe penalties for AML/CFT breaches with written warnings to FIs and LBs being utilised most often, and very few cases of more severe sanctions such as referral for criminal prosecution or withdrawal of the license.
- x The FIUTT has undertaken some inspections of the sector but the inspections are considered inadequate in terms of breadth and depth given that many are being performed over a one day period and in some cases hours.

### *6.1 Background and Context*

295. The CBTT, TTSEC, and the FIUTT, are the three named Supervisory Authorities under the FOR. The CBTT is responsible for ensuring compliance with AML/CFT legislative requirements for licensees under the FIA, registrants under the Insurance Act, Bureaux de Change, and SIFIs. The TTSEC is responsible for registrants under the SA, while the FIUTT has responsibility for FIs regulated by neither the CBTT nor the TTSEC, money remitters, and LBs.

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<sup>9</sup> These are referred to as Non-Regulated FIs.

296. All three agencies carry out their supervisory responsibilities by issuing Guidelines and Circulars, and utilizing both off-site and on-site examinations, whether separately, or jointly. Guidelines and circulars are crafted and circulated by the supervisors in an advisory capacity so as to support the compliance efforts of the regulated entities. For the CBTT, FIUTT and TTSEC, these are also posted on their websites for easy access and reference.
297. The CBTT is the lead regulator for the financial system. There is a 50 year record of Supervision and Regulation. The CBTT considers itself to have the competence and skills set to protect the financial sector from risks. It is a government agency established through statute, the Central Bank Act. It is headed by a non-executive board of five (5) members appointed for three year terms by the President of Trinidad and Tobago. The Governor is the Chief Executive Officer of the CBTT which itself is organised into twenty-two departments, with employees executing a range of functions and activities for prudential as well as AML/CFT supervision. In addition to banks and pensions and insurance entities, the CBTT has oversight for the Bureaux de Change and MVTS sectors. The regulatory framework for MVTS sector has yet to be developed by the CBTT, however the FIUTT supervises these entities for AML/CFT compliance. The CBTT operates on the basis of the Central Bank Act and administers the IA, FIA and Exchange Control Act. CBTT utilises international standards for the supervision and regulation of the financial sectors of banking, insurance and pensions it supervises. Sanctions can be and are imposed as a result of non-compliance with AML/CFT obligations based on the legislative provisions in the FIA.
298. The CBTT has stated that two particular steps were recently taken to increase its supervisory reach and address some issues of risks. These steps are:
- x The up-scaling of the supervisory oversight of banks was undertaken. Along with in-house and external training of its existing staff, a specialist was brought in specifically for the AML/CFT component, as well as a Chief Actuary, and credit risk and pensions funds specialists.
  - x Efforts were made to close the gaps in regulation, with the designation of the five, (5), SIFIs. Though not necessarily driven by AML/CFT exposure, because the entities hold approximately 10% of the financial system assets, it was felt that there were systemic risks. There was no pushback from the identified SIFIs to be brought into regulation.
299. The NRA exercise though not yet complete, provided the CBTT as an integral participant, indicators which were based on the quantitative measures on system status, that for banking (Medium), Insurance (Medium/High), and the other sectors (Medium), that the challenge still remains how to mitigate the risks, to bring them to a level to be rated as Low. From the perspective of the CBTT, the order of risk on the basis of the Risk Profile with the highest listed first, is as follows:
- x Banks
  - x Non-banks
  - x Life Insurers
  - x Non-Life Insurers
  - x Insurance Brokers
300. In terms of the risks, one area of focus would be enhanced due diligence, and in that regard, the RDD programme conducted as a risk mitigating strategy undertaken to help to provide clarification, although the outcomes and effectiveness are not yet apparent given that this programme was just recently given a deadline for completion by CBTT licensees in relation to their high risk entities. Compounding this is that those licensees have not completed the process for their high risk customers.

301. Terrorism and its financing is a clear risk in Trinidad and Tobago. Though not required, there is no National Watch List, which would serve to provide support to licensees in relation to counter-financing of terrorism efforts, which includes quarterly references to the UN 1267 List. The Integrity Commission possesses information on local PEPS and maintains documentation in this regard. Discussions were had between the Commission and the CBTT on producing a “PEP List” which can provide support to the fitness and propriety assessment and can be utilised to deny entry into the financial sector. Discussions are ongoing.
302. The FIUTT, which became operational in 2010, operates under the ambit of the Ministry of Finance and the Economy. It is autonomous with its own offices, resources, and staff. It has its own separate budget, though it is approved by the Permanent Secretary, and from an initial budget of TT\$2.16M, the current budget is now TT\$16M in the fiscal year 2014/15.
303. The FIUTT operates as an administrative FIU, with the core functions of the FIUTT being in relation to STR receipts and analysis from all FIs, LBs and other reporting entities. The FIUTT is also responsible for supervision of specified FIs not regulated by other CAs and LBs.
304. A Strategic Plan developed for 2013-2016, and the projections for the next year included increased human resources which would see staff complement increased to 42 posts; IT initiatives to address data management, data centre, and IT security with some consultative assistance from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), as funded by the Government of Canada’s Anti-Crime Capacity Building Program; strategic analyses with the development of typologies; and facilitation of co-ordination and collaboration with LEAs. Currently the FIUTT has a regulatory staff complement of 8 staff responsible for supervision including onsite inspections and compliance and authorisation.
305. The TTSEC, under the aegis of the SA, has supervision responsibility for the securities sector where the funds under management are approximately TT\$295M. There are sixty-three (63) registrants, which includes eighteen (18) investment advisors.
306. The TTSEC has three primary functions: registration of all market actors and the securities that they offer; surveillance of the market; and enforcement of the legislation which governs the functioning of the industry.
307. The TTSEC is structured with four functional areas which deal with legal advisory and enforcement, disclosure registration and corporate finance, market regulation and surveillance, and compliance and inspections. This latter division was just formally established in 2014 with its new mandate to conduct on-site inspections. This Compliance and Inspections Division is also responsible for issuing directions, and referring matters for enforcement where there is non-compliance with those directions.

## **6.2      *Technical Compliance (R.26-28, R.34, R.35)***

308. For the full narrative see the technical compliance annex.
- xRecommendation 26 (regulation and supervision of financial institutions) is rated PC.
  - xRecommendation 27 (powers of supervisors) is rated LC.

xRecommendation 28 (regulation and supervision of DNFBPs) is rated PC.

xRecommendation 34 (guidance and feedback) is rated C.

xRecommendation 35 (sanctions) is rated PC

### 6.3 *Effectiveness: Immediate Outcome 3 (Supervision)*

309. The level of understanding of supervisors of the money laundering and TF risks which the jurisdiction faces varies with the CBTT having a good understanding. The FIUTT as well demonstrates some understanding with the TTSEC understanding increasingly developing. However, Assessors note that the supervisory authorities are awaiting the outcome of the NRA exercise to build on this understanding. The NRA is being undertaken with the involvement of a wide cross-section of stakeholders. The NRA process provided the opportunity for the financial services sector to contribute to the development of the national risk profile and develop a better understanding of the ML/TF risks. All supervisory authorities have indicated that the initial findings of the NRA are consistent with the risk assessments of FIs and LBs and all relevant sectors that are subject to supervision. However, this increased understanding has not been sufficiently manifested in the risk management or risk mitigating measures in supervised entities.
310. The supervisory authorities, FIs and LBs do not apply sufficient attention and resources to the TF risk as this is not considered a significant risk particularly by the FIs in Trinidad and Tobago.
311. In general the examination processes for all three supervisors are similar. It involves an off-site risk assessment being undertaken to determine prioritization and priorities for the on-site examination. Once determined, the team then undertakes the preparatory work and develops a plan, then sends advisories to the regulated entity to inform of the plan to examine, and once the timing is agreed, the on-site phase of the examination process is started. The length of time for the examination will vary, depending on the focus of the examination. Having accessed and reviewed all the requisite records, the on-site is concluded with an exit meeting where preliminary findings on deficiencies are shared with the management of the regulated entities, where an opportunity is provided for additional documentation to be presented which would address the deficiencies. A formal deficiency letter which includes the report of the examination findings would be finalised and sent to the regulated entity which will be required to develop and submit to the supervisor, an action plan to address the deficiencies.
312. This general process is in line with standards of operations for supervisors. Whilst the process might be sufficient to identify and mitigate risks, there is one element of the process that needs scrutiny. Specifically, for the FIUTT, there is a requirement for permission to be sought to undertake an on-site inspection, and where permission is not granted, then the only recourse for the FIUTT, is to the Courts. Assessors consider that this could potentially pose a risk for the timing of inspections and the supervision of entities. Being subjected to the scheduling of the court system poses an issue. Assessors conclude that the FIUTT should have unfettered access to LBs, as per the requirements of criterion 28.4. The CBTT as the oldest regulator has the most experience followed by FIUTT and the TTSEC whom recently commenced onsite examinations.

a) *Registration, Licensing and 'fit and proper' checks on directors and shareholders*

## **FIs (CBTT and TTSEC)**

### **CBTT**

313. The licensing process for FIs in Trinidad and Tobago is robust in terms of those applied by the TTSEC and CBTT. All applicants have to go through a vigorous assessment process which includes fit and proper assessments of directors, shareholders and persons that exercise control. Both the TTSEC and CBTT have taken measures to ensure that there are no entities operating without a licence or registration. Assessors saw no evidence that there were FIs operating without the requisite licence. Furthermore, the CBTT has indicated that they have sought and been granted injunctive relief against one entity for operating as a bank and one for operating as an insurance company without a licence.
314. Directors and shareholders are subject to the fit and proper guidance issued by CBTT. This is sufficient to reduce the risk of criminals from holding those positions. The CBTT has on four occasions over the period 2011-2014 refused applications. The fit and proper test is applied both at the application stage and where a change is to be made. It is also ongoing where someone can be deemed to be not fit and proper based on ongoing issues. CBTT receives reference and police certificates. They also make various checks of databases and where required of foreign counterparts.

### **TTSEC**

315. The fit and proper test for registrants regulated by the TTSEC has only recently become a requirement though it has been adequately applied in the past. Based on the experience the assessors would conclude that the TTSEC would have no difficulty to apply the test to directors and shareholders.

## **LBs (DNFBPs) (FIUTT)**

316. The supervisory regime implemented by the FIUTT has been established pursuant to the FOR. LBs are required to be registered with the FIUTT. However, despite the surveillance and enforcement process of the FIUTT, there are many LBs which have not been registered. This poses a significant risk for ML and TF. For example, the Real Estate Association identified that there are a significant number of participants in the sector who remain unregistered. In fact, there is an estimate that the amount unregistered is maybe three times more than those registered. This potential risk has not been addressed by the FIUTT and has not been identified through its surveillance process for unauthorised business.
317. Additionally, there appears to be a gap in the registration of lawyers. Specifically, the sector expressed that the great majority of its members do not qualify for inclusion as an LB as they do not carry out the designated services. However, many lawyers simply registered. Assessors are concerned that the regulatory regime undertaken by FIUTT for lawyers is not sufficiently robust to identify who should be registered. Therefore, there is likely unregistered activity being done and the risk identified for lawyers could be skewed.
318. There are inadequate measures in place to prevent criminals and their associates from holding or being the beneficial owners of or having a significant or controlling interest or a management function in a LB. This is of particular concern in PMCs that provide gambling activities through

gaming tables and machines that are similar to casinos in Trinidad and Tobago. Given the significant risks for ML and TF by such entities, this deficiency ought to be addressed. There are also real estate agents which have yet to be registered with the FIUTT. Assessors conclude that the number is significant based on interviews. Additionally, except for a few cases by the FIUTT, there is no evidence that breaches of the registration obligations are detected and appropriately addressed.

319. Having reviewed the remedial actions taken by the FIUTT for various infractions such as failure to register, etc., there is no evidence that such actions are effective, proportionate or dissuasive.

*b) AML/CFT controls/Risk Identification of financial institutions*

**Controls by CBTT**

320. Risk Identification – CBTT has over the years made an assessment of the ML risk posed by the services and products of its registrants. However the risk of TF seems to be minimally identified. With its experience in onsite inspections and supervision primarily of Banks and Insurance companies they have developed a comprehensive risk based approach.

321. From information provided and the number of onsite inspections CBTT has applied a higher intensity and frequency of supervision of the banking sector due to inherently higher ML/TF vulnerability. CBTT has indicated that since enactment of the POCA and subsequently, the issuance of the Central Bank AML/CFT Guidelines in 2007 and succeeding amendment in 2011, an AML/CFT component has been included in each banking onsite examination conducted by the CBTT. CBTT also identified that within the Insurance sector there was a low level of understanding and compliance with the AML/CFT regime. CBTT considered that the ML/TF risk in the insurance sector was primarily in the Life Insurance sector due to the wealth management type products, and therefore the CBTT dedicated resources to working with this sector and according to CBTT, compliance and understanding has increased. Based on assessors’ interviews with the Insurance sector it was confirmed that there was significant outreach by CBTT as well as FIUTT. The understanding of the insurance sector has clearly improved.

322. In 2013, CBTT commenced an intense surveillance programme targeted at AML/CFT for sectors within its purview. According to CBTT this was with a view to developing an AML/CFT risk profile for each institution and ultimately the system. As at the end of December 2014, all banks, non-banks and insurance companies have been subjected to an AML/CFT onsite as stated in the Table 6.1. Additionally, in 2014, risk based onsite reviews were carried out on Bureaux de Change and Insurance Brokers. Focus was placed on larger institutions based on volume of transactions (Bureaux) and market share (Brokers).

Table 6.1: CBTT Data on AML/CFT Inspections (2011-14)

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Banks</b>	3	2	2	4
<b>Non-Banks</b>	1	-	4	11
<b>Insurance</b>	2	6	2	27
<b>Brokers</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	5
<b>Bureaux</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	3

323. The Table 6.2 shows the major deficiencies which were found. Generally across all sectors regulated by CBTT there are compliance issues related to CDD, EDD, risk assessment and governance. Therefore, the CBTT must take steps to target these deficiencies. This could include undertaking other inspections such as thematic inspections on those specific issues to ensure that they are indeed the risk areas.

Table 6.2: Common deficiencies found during On-Site Inspections

<b>Banks</b>	<b>Non-Banks</b>	<b>Insurance</b>
CDD/KYC (18% of all issues)	CDD/KYC (14% of all issues)	CDD/KYC (12% of all issues)
EDD/HRC (15%)	Compliance Program & Risk Assessments (12%)	Compliance Program & Training (10%)
Risk Assessment (13%)	EDD/HRC & Governance (9%)	Risk Assessments (9%)
Governance and STR (10%)	Compliance Function and STR (8%)	ECC/HRC & STRs (8%)

324. The CBTT uses a risk-based approach to supervision. It risk assessed each one of its supervised entities. The assessment takes account of the necessary criteria to ensure that the relevant risk rating is applied. CBTT has stated that the results of onsite reports coupled with external audit findings and institutions' internal AML risk assessments are used as a baseline to categorize and assign an AML risk rating (High, Medium or Low or a combination) to each institution or a peer group. This rating will define the frequency and scope (desk-based, on-site or combination) of AML supervision from 2015. The CBTT has risk assessed its licensees as well as the sectors. Tables 6.3 and 6.4 summarize the findings of these risk assessment.

Table 6.3 – Risk Assessment of CBTT Licensees

<b>Licensees &amp; Registrants Supervised by the Central Bank of Trinidad &amp; Tobago</b>		
<b>Sector</b>	<b>Risk Profile</b>	<b>Number of Entities</b>
<b>Banks</b>	High	0
	Medium	8
	Low	0
<b>Non-Banks</b>	High	2
	Medium	11
	Low	4
<b>Insurance</b>	High	2
	Medium	10
	Low	17
<b>Exchange Bureaus</b>	Medium	5
<b>Five (5) SIFI Institutions</b>	Medium	3

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Table 6.4 – Risk Assessment of Sectors Supervised by CBTT

<b>Sectoral AML/CFT Risk Profile</b>	
<b>Sector</b>	<b>Vulnerability Rating</b>
Banks & Non-Banks	Medium
Life Insurance	Medium High
Exchange Bureaux	Medium
General Insurance	Medium Low
Occupational Pension Funds	Low

325. As part of the Central Bank’s strategy to boost its technical capability, an AML Specialist from the private sector was recruited in July 2014 to assist with enhancing the Bank’s supervisory framework and coordinate efforts to support the national agenda as it relates to AML and CFT.
326. CBTT has been designated the supervisors of five (5), SIFIs, which originally fell outside the supervisory ambit, specifically in respect of AML/CFT. They were so designated based on criteria such as asset size. Only three, (3), SIFIs have been examined to date and these were undertaken during the past year, 2014, which shows progress. The combined asset size of the three (3) Mortgage & Development Finance companies represents less than 2% of the total financial system assets. Two of the companies offer residential mortgages and the third provides funding for agriculture development and commercial fishing industries. Therefore the CBTT considers the ML/TF risk profile to be medium low. The National Insurance Board provides social security services. Funding/contributions are via salary deductions and are paid by employers on behalf of employees. Outflows represent payment of claims and instances of overpayments, for which there is a robust validation process before funds are disbursed. The CBTT considers that the ML/TF risk is therefore low.

#### **Helping Stakeholders understand ML/TF risks**

327. The CBTT has issued Guidelines on issues such as corporate governance and product development as well as AML/CFT. Generally, there has been a collaborative approach amongst the TTSEC, FIUTT and CBTT on informing stakeholders on relevant AML/CFT issues. Independently the CBTT has also reached out to its supervised entities. Entities interviewed stated that there was good outreach and communication from the CBTT and that issues relevant to AML/CFT were regularly communicated.

#### **Remedial Actions and Sanction**

328. The CBTT has indicated that its policy is to ensure compliance and where breaches have occurred to ensure that the entity remedies the breach. The range of powers and ladder of sanctions available to the CBTT includes: warning letters, compliance directions, restrictions and revocations. The CBTT can also pursue criminal sanctions and other forms of injunctive relief through the Courts

and have done so in a few cases. The CBTT does not have the power to issue monetary penalties (administrative penalties) for AML/CFT breaches. The CBTT has referred entities that have carried on unauthorised insurance and banking business to LEAs for investigation and prosecution. Assessors consider that as a remedial measure the ladder of sanctions leads to compliance in most instances as entities take remedial actions including remedying flaws found during onsite examinations. However, Assessors are not convinced that the sanctions overall have any deterrent capabilities and therefore do not have a preventive effect nor are they dissuasive given that those sanctions applied are overall minor. Table 6.5 below demonstrates that in most cases only warnings are issued. The CBTT has also pursued and obtained injunctive relief against two FIs conducting the business of banking and the business of insurance, respectively without being approved to do so under the respective legislation. No sanctions are published publicly except those attained through the court process. The entire sanction regime for AML/CFT must be reviewed and a policy on how these sanctions will apply needs to be implemented.

Table 6.5: Enforcement Actions Taken by CBTT

	2011			2012			2013				2014			
	Letters	Notices	CDs <sup>10</sup>	Letters	Notices	CDs	Letters	Notices	CDs	Other	Letters	Notices	CDs	Other
<b>Banks</b>	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	1 <sup>11</sup>	0	0	0	0
<b>Non Banks</b>	-0-	-0-	-0-	2	-0-	-0-	2	-0-	-0-	-0-	0	0	0	0
<b>Insurance</b>	4	7	2	9-	1	-0-	13	1	-0-	-0-	1	0	0	0
<b>Brokers</b>	-0-	-0-	-0-	10	-0-	-0-	-0-	-0-	-0-	-0-	0	0	0	0
<b>Bureaus</b>	0	0	0	0	0	0	0	0	0	2 <sup>12</sup>	0	0	0	1
<b>TOTAL</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>21</b>	<b>1</b>	<b>0</b>	<b>15</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>

#### Case Study: Supervisory Response to AML/CFT Weakness (CBTT)

In March 2013, the CBTT conducted a Credit and AML/CFT risk based onsite examination of a systemically important commercial bank. AML/CFT controls were assessed as inadequate. The deficiencies were determined to be serious and the bank was directed to address the deficiencies as a matter of priority. Furthermore, based on the findings of the examination and off-site monitoring, the bank's CRA rating was downgraded to a CRA of 3 (Fair/Substantial Weaknesses). Significant operational weaknesses were noted in the bank's AML/CTF compliance program in respect of:

1. Corporate Governance and Oversight
2. Customer Due Diligence
3. Risk based monitoring of financial activities
4. On-going Due Diligence
5. High Risk Customers
6. Suspicious Activity Reporting

<sup>10</sup> Compliance Directions

<sup>11</sup> Risk Rating of Bank downgraded from CRA 2 (Satisfactory) to CRA 3 due to AML/CFT deficiencies.

<sup>12</sup> Licence was renewed for six months and not a year due to issues identified from the AML/CFT onsite. The license was eventually not renewed.

## 7. Training

Follow-up reports from the bank and off-site monitoring indicated that the institution has been adhering to its action plan to remedy its AML/CFT deficiencies. In August 2014, a follow-up examination was conducted on the operations. In the onsite report, the CBTT noted the progress made by the bank in implementing the recommendations of the March 2013 onsite, including the creation of a Compliance Unit headed by a Senior Manager and with an increased staff complement, upgrade of the AML/CFT monitoring system, enhanced reporting to the Board and increased training for all staff. Three (3) areas of concern with respect to KYC/CDD were noted.

### **Controls by TTSEC**

### **Understanding Risk**

329. The TTSEC has also conducted focussed examinations, and has partnered with the CBTT on on-site examinations of the securities sector in support of capacity-building at the TTSEC. The Compliance Department consists of nine persons all of whom have received training and are qualified professionals. A senior person from the CBTT with significant experience in onsite inspections has been seconded to the TTSEC. TTSEC has undertaken a vigorous training program for its onsite team. The TTSEC undertook five (5) examinations of the relevant sixty three (63) registrants. . One FI commented that the TTSEC has been very engaged and intrusive primarily through the onsite process.
330. The TTSEC has developed a risk based approach to inspections. The risk based approach initially commenced when the TTSEC conducted a Compliance Risk assessment survey in 2013, to collect historical and background data, financial information, and AML/CFT compliance data from its registrants. The TTSEC found a general awareness of AML/CFT issues but discovered gaps in the following areas:
- x incomplete retrospective client due diligence;
  - x lack of a proper system in place to identify PEPs;
  - x incomplete source of fund declarations;
  - x inadequate monitoring of complex or unusual larger transactions;
  - x inadequate AML/CFT training; and
  - x issues relating to non-filing of suspicious activities.
331. The results of the survey formed part of the TTSEC overall risk assessment process and was built into determining which FIs are ultimately inspected. TTSEC has assessed the majority of entities and applied a risk rating. Only those entities that responded to the survey were risk rated. According to the TTSEC, of the 63 registrants there were 15 who had not responded and for whom a risk assessment had not been made. The 15 comprised 10 broker-dealers and 5 investment advisors. The risk methodology is similar to the one developed by CBTT but takes into account the specific issues unique to registrants of the TTSEC. The possible rating for each entity is between 1-5, with 1 representing a strong entity with minor weakness, and 5 representing a firm with critical weaknesses. It is the assessors understanding that entities receiving a 1 or 2 rating are considered low risk and 5 high risk. Table 6.6 below identifies that of the registrants, thirty-seven, (37), have been rated at 2, whilst eleven, (11), were rated at 3. It is expected that those rated 3 would be inspected annually and those rated 2, every two years. The TTSEC must therefore ensure it has

sufficient resources to carry out inspections given that the large majority of registrants will potentially be inspected every year. Where registrants have not been risked assessed this should be done.

Table 6.6: TTSEC Risk Ratings

Type of Financial Institution	Risk Rating	
	Two	Three
Broker/Dealer	31	4
Investment Advisor	6	7
Underwriter	0	0

**Helping Stakeholders understand ML/TF risk –**

332. TTSEC has engaged in various outreach programs to registrants in relation to their AML/CFT requirements. For example the TTSEC has entered into a MoU with the Securities Dealers Association. The TTSEC has also issued AML/CFT Guidelines. However, to date there is no particular evidence that the TTSEC has undertaken an outreach to the regulated sector in relation to what the TTSEC considers to be the AML/CFT risks posed. Further, no public information has been put out by TTSEC which communicates its understanding and determination of specific AML/CFT risk areas. Sectors such as securities dealers felt that the TTSEC should provide more guidance on how to carry out their AML/CFT obligations.

**Remedial Actions and Sanctions**

333. The TTSEC has a range of powers for sanctions. However, no sanctions have been applied to date for AML/CFT breaches; therefore there is no data to indicate whether those sanctions are appropriate, effective or dissuasive. TTSEC has indicated that the deficiencies found during the 2014 inspections are in the process of being assessed and TTSEC’s Enforcement Division is being consulted on the possibility of enforcement actions being taken for non-compliance. The TTSEC has stated that if an onsite inspection reveals deficiencies with respect to AML/CFT compliance, a deficiency letter is issued giving the registrant a deadline to comply. The materiality of the deficiency would inform the urgency with which the deficiency must be remedied. In the event that there is a failure to cure the deficiency, a Compliance Direction will be issued by the TTSEC in accordance with the provisions of section 90 of the SA, 2012. Failure to abide by the terms of the Compliance Direction, will then lead to the matter being referred for enforcement. Enforcement sanctions can range from a reprimand, monetary penalty, suspension, revocation of licence, cease trade orders and on conviction to a fine of up to five million dollars and imprisonment for five years. There is no requirement or policy that sanctions be published publicly. Assessors have concluded that the entire sanctions regime for AML/CFT must be reviewed and a policy on how these sanctions will apply needs to be implemented.

c) *AML/CFT controls/Risk Identification of LBs (DNFBPs)*

**Controls by FIUTT**

334. The FIUTT, as a supervisor for LBs, has commenced the process of identifying and maintaining an understanding of the ML/TF risks between sectors as well as across and within institutions.

335. There is no evidence to substantiate whether the FIUTT mitigates risks within LBs on a risk-sensitive basis and ensures AML/CFT compliance.

### **Understanding Risk**

336. The FIUTT has commenced risk assessments of the sectors for which they are responsible as set out in Table 6.7. They have assessed some sectors such as lawyers, PMCs, accountants, real estate agencies, motor vehicle sales, MVTS and Co-operative Societies as high risk.

Table 6.7: Risk Assessment of LBs

<b>CATEGORIZATION OF TYPES AND NUMBER OF DNFBS BY RISK CATEGORY AS AT DEC 2014</b>	
<b>SECTOR</b>	<b>NUMBER OF ENTITIES</b>
<b>HIGH RISK</b>	
Attorneys-at-Law	599
Private Members Clubs	62
Accountants	61
Real Estate Agencies	420
Motor Vehicle Sales	153
Money or Value Transfer Services	5
Co-operative Societies	131
<b>MEDIUM RISK</b>	
Trust and Company Service Provider	22
NLCB	1
<b>LOW RISK</b>	
Art Dealers	10
Pool Betting /Gaming Houses	14
Jewellers	120
Building Societies	2
<b>Total Number of Entities Registered</b>	<b>1600</b>

337. The FIUTT has completed on-site examinations (see Table 6.8) though prioritization may not have been the outcome of a risk-based assessment. The Assessors conclude that the frequency and scope of on-site examinations are not reflective of known or perceived ML/TF risks within the jurisdiction. However, it is somewhat based on the limited understanding of the FIUTT of such risk. For example, having regard to the high risk associated with real estate agents, only eight (8) on-site examinations have been conducted. The FIUTT has indicated that on-site examinations have been planned between January and June, 2015 for Attorneys-at Law or PMCs both of which are designated by the Authorities in Trinidad and Tobago as high risk.

338. The On-site examinations reveal deficiencies such as inadequate CDD standards, ineffective ongoing monitoring, etc.

Table 6.8: FIUTT Onsite-Examinations

<b>NUMBER OF CONDUCTED ON-SITE EXAMINATIONS</b>						
<b>OCT 2010 - DEC 2014</b>						
<b>Supervised Entities</b>	<b>Frequency</b>					
<b>DNFBPs</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>OCT-DEC 2014</b>	<b>2011-2014</b>
Accountants	-	-	4	8	2	<b>14</b>
Attorneys-at-Law	2	1	5	10	5	<b>23</b>
Jewellers	-	1	3	13	2	<b>19</b>
Motor Vehicle Sales	-	3	7	7	6	<b>23</b>
Art Dealers	-	-	-	-	-	-
NLCB	-	-	-	1	1	<b>2</b>
Pool Betting / Gaming Houses	-	-	-	9	2	<b>11</b>
Private Members Clubs	-	2	7	22	5	<b>36</b>
Real Estate	-	1	-	5	3	<b>9</b>
Trust and Company Service Provider	-	-	-	1	-	<b>1</b>
<b>Non-Regulated Financial Institutions</b>						-
Money or Value Transfer Services	-	1	1	1	-	<b>3</b>
Co-operative Societies	-	1	4	13	5	<b>23</b>
Building Societies	-	-	-	-	-	-
<b>Total Number of On-site Examinations</b>	<b>2</b>	<b>10</b>	<b>31</b>	<b>90</b>	<b>31</b>	<b>164</b>

### **Helping Stakeholders understand ML/TF risk**

339. Where there were knowledge gaps, the FIUTT has sought to provide Guidance Notes to specifically address the deficiency, and these Guidance Notes are also posted on the FIUTT Website. Such guidance has been provided on the gambling, art, real estate, dealers in precious metals and stones, and motor vehicle dealers sectors, as well as accountants and attorneys-at-law, on their legal obligations for measures to deter and detect money laundering and financing of terrorism activities. Training seminars have also been rolled out by the FIUTT to build awareness of AML/CFT by registrants, by conducting sector specific sessions focussed presentations on issues such as STR submissions to improve utility in intelligence gathering.

### **Remedial Actions and Sanctions**

340. The FIUTT has indicated that its policy is to ensure compliance and where breaches have occurred to ensure that the entity remedies the breach. This includes entities which have carried on activities without being registered. The range of powers and ladder of sanctions available to the FIUTT includes: Directives and Court Actions. The FIUTT also follows the administrative process of issuing what they term as “warning letters” for breaches. This process is not clearly nor expressly covered in law. In practice, the FIUTT has issued a first and a second warning letter. The law speaks to a directive being issued by the FIUTT which should be preceded by a notice that a directive will

be issued should proper representation not be given as to why the directive should not be issued. There is no monetary penalty except those attributed to a court process whereby it is an offence to breach certain AML/CFT legislation. In that regard, there is in effect, one administrative sanction set out in the law. To date the FIUTT has not made any formal request to the relevant LEAs for matters of breach of registration or other AML/CFT laws to be investigated and prosecuted. Assessors consider as a remedial measure the sanctions applied have led to compliance in most instance as entities take remedial actions. However, Assessors are not convinced that the sanctions overall have any deterrent capabilities nor are they dissuasive given that those sanctions applied are overall minor. Table 6.9 below demonstrates that in most cases only warnings are issued. Only in a few cases were matters taken to court. These cases were not for prosecution of the offence. Sanctions are not published publicly except those attained through the Court process. The FIUTT should be prepared to take actions such as referral for prosecutions. Furthermore, Assessors consider that applying the same penalty to a minor AML/CFT breach as would be applied to someone who is unregistered could not be determined to be proportionate. Assessors conclude that having regard to the risk posed by various sectors regulated by the FIUTT more intrusive actions to deter breaches should be done. The entire sanction regime for AML/CFT must be reviewed and a policy on how these sanctions will apply needs to be implemented.

Table 6.9: FIUTT ENFORCEMENT ACTION October 2012 - December 2014\*

Nature of Sanction	Sanction	Enforcement Action Taken by the FIU				TOTAL
		2012	2013	2014	Oct - Dec 2014	Total Issued
		Issued	Issued	Issued	Issued	
Failure to submit Compliance Programme**	1st Warning	220	59	136	0	415
	2nd Warning	50	47	83	0	180
	Directive	-	21	27	0	48
<b>Sub-total</b>		<b>270</b>	<b>127</b>	<b>246</b>	<b>0</b>	<b>643</b>
Failure to Register with the FIU	1st Warning	7	12	67	60	146
	2nd Warning	6	3	4	0	13
	Directive	-	3	1	0	4
<b>Sub-total</b>		<b>13</b>	<b>18</b>	<b>72</b>	<b>60</b>	<b>163</b>
Failure to submit Quarterly Terrorist Reports***	1st Warning	-	79	-	28	107
	2nd Warning	-	-	-	-	0
	Directive	-	-	-	-	0
<b>Sub-total</b>		<b>0</b>	<b>79</b>	<b>0</b>	<b>28</b>	<b>107</b>
<b>TOTAL</b>		<b>283</b>	<b>224</b>	<b>318</b>	<b>88</b>	<b>913</b>

**\*NOTE- Previous statistics provided showed enforcement action by the number of entities. Each entity can be sanctioned for various breaches, hence the larger totals in this table**

**\*\*Compliance Programme** – law was amended in October 2014 requiring immediate implementation of AML/CFT compliance programmes and submission to the FIU for review and approval is no longer a legal requirement.

### **Overall Conclusions of Immediate Outcome 3 (Supervision)**

341. The supervisory, monitoring and regulatory regime in Trinidad and Tobago would be challenged when considering the huge cross-section of financial intermediaries. Of particular note is the fact that this challenge increases tremendously with the inclusion of the unregulated sector i.e. those businesses and individuals which should be regulated, but are neither licensed nor registered. The unregulated sector would generally be one of the most susceptible and vulnerable for criminal activity. The registration process of the Supervisors particularly the FIUTT is mandatory but there are significant number of entities which have failed to register though records indicate this number appears to have decreased. This is due the FIUTT's efforts of surveillance. However, this effort should now be targeted to those PMCs, real estate dealers, dealers in precious metals and stones and lawyers to ensure compliance with registration requirements.
342. Assessors have reviewed the manuals and guidelines developed by the supervisors and conclude that they do provide some assistance to regulated entities. Nevertheless, these documents should provide more practical guidance on AML/CFT issues.
343. While the on-site and off-site examination processes demonstrate a good avenue for engagement between the regulated entities and the supervisors, the primary drawback is that they are not performed on a risk-sensitive basis mainly for the institutions which are not banks. Furthermore, though there is a process for how inspections are to be scheduled and undertaken, the frequency and scope of examinations do not clearly follow a precise AML/CFT methodology that accounts for the risks posed.
344. The Assessors have concluded that the Supervisors, except for the CBTT, in general do not appear to have sufficient resources to properly carry out their regulatory and monitoring functions.
345. The jurisdiction has begun the process of on-going monitoring and periodic review. Compliance gaps have been identified by the supervising authorities. The authorities have placed focus on providing deficiency letters, doing follow-up work and agreeing on Plans of Actions developed based on the desk and on-site reviews conducted.
346. The supervisory regime of the FIUTT shows the potential for becoming an effective oversight for LBs. At the time of the on-site, the FIUTT appears to carry out its functions relative to receiving and analysing suspicious transactions reports. However, the agency has resource constraints with respect to supervision of relevant entities. The Assessors concluded that the scope of entities to be supervised exceeds the capacity of the FIUTT. In fact, it is noteworthy that there are what assessors consider to be a significant number of entities which are subject to AML/CFT oversight but are not registered. Thus, the FIUTT would have an enormous remit once the registration process is strengthened.
347. **Trinidad and Tobago has a moderate level of effectiveness with Immediate Outcome 3.**

#### **6.4 Recommendations on Supervision**

348. On completion of the NRA, Trinidad and Tobago must move expeditiously to implement the recommendations developed, in order to improve ML/TF risk management and mitigation and to adequately protect its financial system.

349. TTSEC has to continue to build capacity by adding new human resources and other technological resources to its inspection and enforcement units to enable it to effectively carry out its responsibilities.
350. The FIUTT needs to fully supervise in a manner which mitigates ML/TF risks on a risk-sensitive basis and ensure that its entities comply with AML/CFT requirements.
351. The surveillance and enforcement process of the FIUTT needs to be enhanced to include all relevant businesses in a more aggressive manner that ought to be registered, in particular, the real estate sector, PMCs and lawyers.
352. The FIUTT should intensify its ability to ensure that the entities it supervises identify and understand its ML/TF risks given the dissonance of registrant responses.
353. The FIUTT should be allotted more resources to allow it to carry out its supervisory function, based on a comprehensive needs assessment. The current staff complement is inadequate for the dual role of the FIUTT particularly when one considers the fact that there are entities yet to be register with the FIUTT.
354. The ability for LBs to refuse entry to FIUTT should be addressed.
355. The FIUTT should improve the level and timeliness of feedback to institutions which submitted STRs. The information obtained from STRs can be very instructive for developing AML/CFT training material.
356. Care must be taken to ensure that the CBTT is not overwhelmed with additional licensees requiring supervision, as there are evident supervisory gaps to be addressed including the building out of its own programme of inspection so the quality is improved and to build upon its group-wide inspection modules.
357. CBTT, TTSEC, and FIUTT should expand the range of powers to impose sanctions, including administrative monetary penalties.
358. Sanctions available to CBTT, TTSEC and FIUTT should be made dissuasive, proportionate and effective.
359. Trinidad and Tobago needs to continue to put more focus on strengthening the supervision by TTSEC of the AML/CFT regime of its licensees.
360. The supervisory authorities must take more direct and proactive measures to ensure that FIs and LBs are adequately aware of the filing requirements and all applicable AML/CFT obligations. Where, for example, the publication of data of results of onsite inspections and other data on compliance with the AML/CFT regime, is not providing the expected results, more intensive feedback through dedicated staff might be appropriate.

361. Supervisory authorities should take measures to ensure that cooperation primarily through joint onsite inspections of licensees is undertaken and the relevant risks mitigated. The ongoing process of joint outreach should continue and be intensified primarily for the LBs sector.
362. Trinidad and Tobago should put in place measures to ensure that the recent changes in legislation including those made to the FOR are being implemented by FIs and LBs. This could include the use of increased onsite and offsite supervision having regards to risk assessments by the supervisors.
363. The regulation and supervision of Credit Unions should be addressed by passage of the draft legislation and applicable inspections be conducted to identify and mitigate the AML/CFT risk posed.
364. CAs, FIs and LBs should develop a better understanding of TF risks, and devote the necessary resources and attention.
365. The CBTT should continue to monitor ML/TF risks in the SIFI sector and develop a sound AML/CFT Supervision strategy.
366. The CBTT should take clear steps to target and address compliance issues regarding CDD, EDD, Risk Assessments and governance across all of the sectors that it supervises.
367. All CAs including the TTSEC should provide more guidance.
368. TTSEC should immediately take steps to risk assess or take more direct and intrusive measures to ascertain compliance by the 15 registrants who failed to respond to their questionnaire.

## 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings*

- |   |  |
|---|--|
| x | The jurisdiction has a Registrar General's Department (RGD) that is responsible for the registration of domestic companies, external companies and NPOs. The RGD administers a Civil Registry, Land Registry and the Companies Registry. |
| x | Basic information is available on companies and NPOs. Information on the annual returns of companies is also available   |
| x | Some beneficial ownership information is kept but is not required in law to be kept by RGD in the Company Registry but by the Company, hence such information is provided by the Company if a request is made to the Company.            |
| x | There are no adequate measures in place to ensure the obtaining of adequate, accurate and current beneficial ownership information in a timely fashion. The availability is therefore sporadic.  |
| x | The Companies' Act prohibits the use of bearer shares, nominee shares or nominee Directors.  |
| x | The Companies' Act does not explicitly prohibit the use of bearer share warrants.  |
| x | The main type of legal arrangement in the country is the trust and corporate service providers. Firms and Partnerships must register under the Registration of Business Names Act.   |
| x | There has been improvement in the filing of annual returns but the RGD should not relax its efforts in going after delinquents and penalising them or having them struck off the books.  |
| x | Sanctions could be more dissuasive   |

- |  |
|--|
| <ul style="list-style-type: none"><li>x There is some understanding of the relevant competent authorities of the vulnerabilities of legal persons although the bulk of this understanding lies more with the FIUTT.</li><li>x The country has partially implemented measures to prevent the misuse of legal persons in respect of the requirements for legal persons and arrangements that fall under the POCA regime to solicit that information.</li></ul> |
|--|

## **7.1 Background and Context**

### *(a) Overview of legal persons*

369. The RGD houses the Civil Registry, the Land Registry and the Companies' Registry. The RGD also administers the Registration of Business Names Act the Companies' Act and the registration of external companies under the latter Act. In addition to external companies, the RGD handles information pertaining to non-profit companies which are established under the Companies Act as well as those established pursuant to an Act of Parliament. Credit Unions are formed under the Co-operative Societies Act and are regulated by the Commissioner of Cooperatives.

370. Most companies in the jurisdiction are formed under the Companies Act and all such entities must be registered within the Companies Registry and come under the purview of the RGD. Upon registration, a company is required to provide basic information: to record the company name, give proof of incorporation where an application is being made by an external company, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. A statement of the intended main type(s) of business activity is also required to be set out in the articles of incorporation. This information is made publicly available within the RGD upon payment of a fee and access to that information is also provided in the Companies' Registry Online database. Once a company has been formed it is required to submit an annual return not later than thirty (30) days after the anniversary date of its incorporation in each succeeding year.

371. Individuals, firms and partnerships are required to register under the Registration of Business Names Act and to provide details on the names and former names of both individual partners and corporations who are partners within the firm. In 2014, there were approximately 67,000 registered companies. These companies are classified into Profit Non-Public which are the bulk of registered companies, profit public (very negligible in terms of numbers) – non-profit and external companies<sup>13</sup>. The effectiveness of the work of the RGD is impacted by the extent of the legislative framework. Overall, there are measures that require the filing of basic beneficial ownership information on legal persons with the Registrar of Companies, and the retention of such information with the latter. Additional information relative to substantial shareholders (10% or more for public companies) is kept by companies at their registered office. Legal persons are also required to submit their articles of incorporation upon registration. The Registrar has access to registers kept at the companies' registered offices. There are requirements to provide updated information to the Registrar by the filing of annual returns. There is also public access to the information on beneficial ownership kept at the Companies' Registry upon payment of a fee and in some cases an affidavit. No comprehensive risk analysis pertaining to legal persons has been done. The Companies Act prohibits the use of bearer share warrants, nominee shares or nominee Directors. There is access to BO information for sharing foreign FIUs and LEAs via their local counterparts. Information sharing can also be facilitated through the MLAT process.

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<sup>13</sup> Ministry of Legal Affairs Registrar General's Department Companies' Registry 2014 Handbook, page 24.

(b) *Overview of legal arrangements*

372. In terms of legal arrangements, traditionally these entities have not featured prominently in terms of the numbers of entities in operation. The sector seems to consist mainly of trusts and corporate service providers. Typically, these types of businesses appear to have been largely owned, controlled or operated by the banking institutions however there is an emerging trend of more independent types of operations. The FIUTT has indicated that there are around 22 of such entities. The asset size of the sector is approximately TT\$15.5 million.
373. The Companies Act generally does not permit the entry of notices of express, implied or constructive trusts on the Companies' Registry (see section 186).

(c) *International context for legal persons and arrangements*

374. The majority of legal persons are local incorporations and there is a very negligible amount of external companies. In 2014 there were approximately 572 external companies – less than one (1) per cent of the number of registered companies within the jurisdiction.

**7.2 *Technical Compliance (R.24, R.25)***

375. For the full narrative see the technical compliance annex:

- x Recommendation 24 (transparency and beneficial ownership of legal persons) is rated PC.
- x Recommendation 25 – (transparency and beneficial ownership of legal arrangements) is rated PC.

**7.3 *Effectiveness: Immediate Outcome 5 (Legal Persons and Arrangements)***

376. Basic information on registered companies is generally available through the RGD's database which can be accessed on the payment of a fee. There is publicly available information at the RGD which is easily accessible. This includes information on forms of legal persons in Trinidad and Tobago which are incorporated or registered under the Companies Act (i.e. domestic companies inclusive of NPOs) and external companies. Some information on NPOs is also made available on the RGD's database. The following information is required to be kept on NPOs: names, occupations and addresses of directors and the Secretary of the Organisation. However there is no fit and proper person test that is required for such directors. Apart from the filing of annual returns there was no information given to Assessors as to the monitoring of information provided by registrants or with respect to the testing, certifying or verification of information submitted.
377. In the case of the RGD, there seems to be a reasonable grasp of the AML/CFT issues that are being dealt with however the current systems in place have not as yet caught up fully with all the requirements of a sound AML/CFT framework. Even though there are no current requirements in the legislation (Companies Act or Registration of Business Names Act), the RGD indicated that it has already begun to request evidence of identity upon the submission of documentation for incorporation of a company. There was no evidence provided to support that statement, save for discussions and outcomes from NAMLC as to the knowledge by the CAs of the extent to which legal persons created within the country are being misused for ML/TF. Most of the impetus in this

area would have to come from a change in the laws to require beneficial ownership information to be kept at the Companies Registry.

378. The legal framework has some loopholes that need to be addressed to ensure satisfactory compliance. It is of great benefit that the information is readily available on the electronic database which is accessible online upon the payment of a fee. This facility is actively being used by LEAs, by legal persons themselves and by the supervisory authorities. The danger with that facility is what might be described as two-fold. Firstly, there is great reliance being placed by the LEAs and the supervisory authorities on the information maintained in the database of the RGD. To the extent that that information might not be accurate or necessarily kept up to date – particularly as it concerns beneficial ownership information and control - then there is a fundamental weakness in the system. Secondly, as a consequence of the supervised entities relying heavily on the information captured in the RGD's files and database, the level of due diligence was not necessarily being thoroughly carried out by some of those entities.
379. The FIUTT and the CBTT have done a significant amount of work in creating awareness amongst the supervised entities and there seems to be a general understanding across the sectors of what the requirements are concerning legal persons and arrangements.
380. The actual implementation of CDD measures in respect of these entities varied from sector to sector.
381. The jurisdiction has not apparently done much if any outreach within the NPO sector in terms of sensitisation. There was no indication that the NPO sector had been covered as part of the NRA exercise.
382. To a reasonable extent, basic information on legal persons is available since this is required by law to be provided upon incorporation. There has been an issue in terms of the failure by companies to file annual returns which is now in the process of being addressed. In 2011, the number of non-compliant companies who had failed to file annual returns was 24,068. This was more than halved by 2014 which is remarkable progress. However there are approximately 9554 companies that have not filed annual returns and which have not been struck off the books of the RGD. This presents a loophole in terms of adequacy, accuracy, and current nature of the information being provided. It also presents the possibility of ownership and control of those companies being vested in the hands of criminals or their associates that goes un-detected and whose activities are therefore not being monitored, detected or sanctioned. Additionally, there is no provision in the Companies' Act that compels the provision and maintenance of beneficial ownership and control information. This therefore means that there is nothing to guarantee the adequacy, accuracy or the current nature of the information that is provided. There was also no requirement for the timely provision of information except that the Companies Act requires changes to be notified to the RGD within fifteen (15) – thirty (30) days. Officials from the RGD's Department indicated however that they aim to provide information to LEAs and related agencies in a timely fashion – typically responding to requests within one (1) – two (2) days. No evidence was provided to substantiate this assertion.
383. In terms of sanctions, the Companies' Act provides in section 489 for a company to be struck off the Register if it fails to file an annual return. The Act provides for a notice to be sent to the company giving it thirty days to remedy the situation. Where a company fails to file within the period stated, the company may be struck off the Register. It is difficult to understand why the language is couched in the terms of discretion at that point and it is submitted that the sanction would be stronger if the requirement for the company to be struck off were stated more definitively. An offence by the Directors or Officers of the company is punishable by a fine of ten thousand dollars

or imprisonment for six months. These are blanket penalties and it is submitted that these are not proportionate and it is highly questionable whether they are dissuasive depending on the size and asset base of the company.

384. In terms of Legal Arrangements, it was recommended coming out of the Third Round of Mutual Evaluations that the jurisdiction should take steps to implement a mechanism to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements. This situation was legislatively remedied by the recent amendments to the POCA in terms of setting up the appropriate legislative framework. This amendment was made in October 2014, which means that it is difficult to do a comprehensive assessment of its effectiveness across the board. There is evidence however that the FIUTT has conducted outreach and sought to create awareness amongst its supervised entities. FIUTT indicates that between the period of October 2010 and December 2014, about 61 sessions were held across the sector of LBs. There was no indication as to what percentage of participants was derived from the sector of Trusts and other legal arrangements. Within that same period, only one Trust and Company Service provider received an onsite examination. FIUTT has indicated that of the 22 registered entities around 11 of them can be classified as medium to high risk. Of the entities interviewed during the onsite it was clear, that there was a general understanding of what was required in terms of customer due diligence processes however, the entities were still working on elements of putting all the requirements of a proper compliance programme and a CDD framework in place. Questions of risk- rating of customers and clients were still being resolved. One entity had indicated that it traditionally had relied on the bank – which would recommend certain clients - to conduct a risk rating of its clients and that it had recently begun to undertake such activities for itself. Assessors found that whilst the FIUTT is highly motivated, its supervision was not comprehensive – because of the sheer numbers of entities that are involved. At least 1400 different entities fall under its purview. There was no concrete evidence that the sector was being adequately or thoroughly monitored for compliance. There is a clear need for greater resources on the part of both the FIUTT and the RGD so that entities can be adequately monitored and proper verification could be carried out.
385. The RGD in various ways has looked at the risk associated with various types of legal persons. Through NAMLC there is some evidence of such assessment and the outcome of such assessments through changes in policies and procedures of the RGD and some amendments to legislation. However, there was no comprehensive risk assessment associated with all the various types of legal arrangements within the country.
386. **Trinidad and Tobago has a moderate level of effectiveness for Immediate Outcome 5.**

#### **7.4      *Recommendations on Legal Persons and Arrangements***

387. A proper framework for identifying the different kinds of legal persons and legal arrangements needs to be identified and it must account for identification of the particular risk associated with same.
388. Bearer share warrants should be explicitly prohibited by the Companies Act and the Regulations thereto and/or a proper framework put in place in keeping with the FATF Standards.

389. Adequate supervision needs to be undertaken of the sector to ensure compliance across the board, which would necessitate an increase in the resources of the FIUTT and of the RGD. This compliance should be reflected in the comprehensive monitoring and verifying of information submitted to and by FIs and other entities who submit information to the RGD.
390. RGD should address gaps in legislation causing issues in terms of adequacy, accuracy, and current nature of the information being provided on beneficial ownership of companies and for such information to be provided in a timely manner.
391. RGD should take measures to ensure the consistent filing of annual returns.
392. Sanctions should be revisited in the Companies Act to make them more dissuasive.

## 8. INTERNATIONAL COOPERATION

### *Key Findings*

- x The FIUTT has demonstrated that it has effectively utilized the relevant channels of information sharing to exchange and respond to Requests for Information. They have also demonstrated that they are engage in spontaneous dissemination.
- x The FIUTT has responded to processing of some Requests within a timely manner. However the Assessors observed that the majority of Requests are processed over a thirty days period. The reason(s) given for such time period includes the complexity of the case and the number of subjects in the case.
- x The FIUTT has demonstrated that the appropriate safeguards are in place to ensure the integrity of the information and that information is used in the authorized manner.
- x LEAs have not demonstrated that they have been utilizing the necessary channels to exchange information with their foreign counterparts. However it must be noted that the FIB has shown that it has rendered assistance that would have led to repatriation of monies.
- x LEAs have not demonstrated that Requests for Information are processed within a timely manner.
- x The Mutual Assistance in Criminal Matters Act (MACMA) has limitations.
- x International Conventions are not being fully implemented.
- x BIR and Customs and Excise Division have limitations with either the provision to obtaining of information from foreign counter-parts.
- x Absence of proper case management system for extradition and mutual legal assistance.

### *8.1 Background and Context*

393. Trinidad and Tobago has several legislative provisions to facilitate the exchange of information across the jurisdiction. These legislative provisions include the POCA and the MACMA. Apart from these legislative provisions, agencies such as the FIUTT have utilized secure networks such as Egmont Group to facilitate the exchange of information between itself and other FIUs who are members of the Egmont Group. The FIUTT has also utilized Memoranda of Understanding (MOUs) which were signed with other agencies to exchange information. Law Enforcement including the TTPS and the Customs and Excise Division have used agencies such as Interpol and CCLEC to facilitate the exchange of information. Trinidad and Tobago's closest allies in the exchange of information are other Caribbean countries, United Kingdom/Europe and the USA.

### *8.2 Technical Compliance (R.36-40)*

394. For the full narrative see the technical compliance annex.

- x Recommendation 36 (international instruments) is rated LC.
- x Recommendation 37 (mutual legal assistance) is rated PC.
- x Recommendation 38 (mutual legal assistance: freezing and confiscation) is rated PC.
- x Recommendation 39 – (extradition) is rated LC.
- x Recommendation 40 – (other forms of international cooperation) is rated PC.

### 8.3 *Effectiveness: Immediate Outcome 2 (International Cooperation)*

395. There is clear evidence that a wide range of international cooperation is being provided by the jurisdiction, through the FIUTT, on a large scale. Requests have been sought and facilitated by the FIUTT internationally and regionally. There are limitations however in terms of the breadth of that cooperation which may be hindered by the failure to provide comprehensively on all levels of technical compliance. The lion's share of international cooperation is being done by the FIUTT. This is a very good effort on the part of the jurisdiction however this is not the same position with other agencies such as the FIB, the Customs and Excise Division and the BIR.
396. As it relates to the International Conventions, whilst Trinidad and Tobago has ratified all of the relevant Conventions, there are many outstanding articles that have not as yet been implemented. These include articles of the Palermo Convention, Terrorist Financing Convention, the Merida Convention and the Vienna Convention.
397. The Assessors found that information was being shared both spontaneously and upon request. The quality of that assistance has been good in terms of supplying the information requested. At times the information supplied by the FIUTT showed that there were significant gaps of time between receiving the request and transmitting the request to another key agency.
398. There is capacity across all agencies to provide and exchange information with and on behalf of foreign counterparts. There was no evidence provided of the Agreement with Interpol to facilitate such an exchange.
399. In terms of the provision of information on basic and beneficial ownership information, the CAs have responded well in terms of the information that was actually available to them, however the fact that there are deficiencies in terms of maintaining the adequacy and accuracy of that information and possibly the timeliness of it are restrictions. Where a company fails to file an annual return, it has a year before any sanctions are applied and those sanctions are limited to two warning letters before the company can be struck off. There are currently approximately 9554 companies who have not filed annual returns. Since the annual returns would contain any relevant information on changes in the ownership structure of the company, this is an important deficiency. Additionally, there is no requirement in law that mandated the RGD to demand beneficial ownership and control information.

#### **FIUTT**

400. The FIUTT is actively engaged in the exchange of information with other international law enforcement authorities and foreign FIUs. The FIUTT as a member of Egmont also disseminates information to foreign FIUs which are members of the Egmont Group. The information provided to the Assessors also showed that several MOUs have been signed between the FIUTT and other FIUs both regional and international. The purpose of these MOUs is to facilitate the smooth exchange of information between these entities. The information presented by the FIUTT showed that most requests for information are facilitated within a thirty day period with some requests taking ninety days to be processed. The reason for such lengthy time includes complexity of the case being investigated.

Table 8.1: List of MOUs signed by the FIUTT and its foreign counter-parts

<b>Name of Country</b>	<b>Date Signed</b>
Bangladesh	3.06.2014
Bermuda	4.02.2014

Canada (FINTRAC)	6.02.2014
Guyana	28.05.2013
Jamaica	13.11.2012
Montserrat	28.05.2013
St. Maarten	19.11.2013
Saint Vincent and the Grenadines	22.05.2013
Suriname	19.11.2013
Republic of China (Taiwan)	5.06.2014

401. The FIUTT has demonstrated that it is not only involved in the sharing of information upon request but also through spontaneous dissemination. Spontaneous dissemination has taken place with a number of countries including the United States of America, Grenada, Jamaica and St. Vincent and the Grenadines. The information provided by the FIUTT (See tables 8.2 and 8.3) showed that there were 156 spontaneous disseminations by the FIUTT to other regional and international LEAs within the period under review. The Assessors observed that there was a significant increase in relation to the number of spontaneous disseminations by the FIUTT to its foreign counterparts during the period 2014. The Assessors were informed that this increase was credited to the FIUTT recruiting more personnel in its Analytical Department.

Table 8.2: Spontaneous Report Disseminated

Year	Numbers Sent
2011	3
2012	6
2013	29
2014	122

Table 8.3: International Request received by the FIUTT

	2011	2012	2013	2014	Total
<b>International Request Received</b>	36	21	26	33	116
<b>International Request Processed</b>	36	21	26	31	114

402. During the period under review the FIUTT also disseminated Requests for Information to various LEAs. The information provided by the FIUTT showed that a total of fifty five (55) Requests for Information was made by the FIUTT to its foreign counterparts and other LEAs. The information showed that thirty-eight (38) responses were received.

**Case Example of International Cooperation:**

Former Tourism Board Executive Director Donovan Lorde was extradited to his homeland of St. Lucia after appearing before a Magistrate in the Port of Spain Court. Lorde was accused of embezzling the sum of EC\$300,000 from the St. Lucia Tourism Board and fled to Trinidad and Tobago in July, 2011. Lorde was arrested on a provisional warrant by members of the Counter-drug Crime Task Force and the Organised Crime and Narcotics and Firearm Bureau. Lorde did not contest his extradition when he appeared in the Court. It should be noted that this exercise was conducted among several agencies including the FIUTT.

## **FIB**

403. The FIB has been providing international assistance to its foreign counterparts via MLATs. This is done through the Office of the Attorney General. The TTPS of which the FIB is a department has channels such as International Police (Interpol) through which information is exchanged. However, there is no indication that the FIB has been effectively utilizing this network to exchange information between itself and its foreign counterparts. The Assessors were provided with information that shows that during the period under review the FIB executed two Requests for Information that were received through Interpol. The information provided also showed that several requests for assistance were facilitated via MLATs. The number of MLATs received and their status are reflected in the table listed below. The Assessors note that for a number of the MLATs status remains unknown or the matter is still ongoing. Whilst the FIB has rendered some assistance to LEAs, there is no indication that it is utilizing its full scope of authorities to request information from International Agencies. Furthermore, there is no indication that information is provided by the FIB within a timely manner. The Assessors were informed that the reason for such delay in obtaining the information is that providers of the Production Orders information are usually tardy in providing information to the FIB

Table 8.4: Incoming MLATS

Year	Amount	Status	Comments
2011	11	Ongoing	
2012	07	Unknown	
2013	01	Completed	Restitution ordered in the amount of US\$1,286,657
2014	01	Ongoing	

404. The information provided showed that the FIB has made one Request for Information in 2014, no other information was provided to the Assessors to show that any other Request for Information was made from the FIB.

### **Case Example: Source: Miami Herald**

Oscar Sanchez pleaded guilty to laundering millions in stolen Medicare payments and agreed to cooperate fully with the US Attorney General Office in the hopes of reducing his sentence to nine years. The laundered money was deposited into a bank account in Canada and later the proceeds wired to shell companies in Trinidad and Tobago.

## **Customs and Excise Division/ Board of Inland Revenue Department**

405. Whilst the Customs and Excise Division has indicated that organisations such as the CCLEC have been used to facilitate the sharing of information, no documentation was provided to evidence that this organisation or other mechanisms are being used to exchange information with their foreign counterparts. The Assessors were unable to determine whether this channel for sharing information is secured and the type of information that can be shared. The Assessors were informed that one of the greatest challenge experienced by Customs Officials when conducting investigations into cross border currency and BNIs is obtaining information from a foreign jurisdiction.

406. The Assessors were informed that the BIR has one Tax Information Exchange Agreement which is with the United States of America. The extent to which information can be shared under this treaty is unknown to the Assessors as this information was not provided. Furthermore, the Assessors were advised that the legislation that governed the BIR prohibits that agency from disclosing information pertaining to income tax.

407. **Trinidad and Tobago has a moderate level of effectiveness for Immediate Outcome 2.**

#### **8.4      *Recommendations on International Cooperation***

408. The jurisdiction needs to give effect to all the provisions of the Vienna Convention, the Merida Convention, the Terrorist Financing Convention and the Palermo Convention.

409. The Central Authority needs to introduce a proper case management system for both mutual legal assistance and extradition matters.

410. The MACMA needs to be amended to provide as follows:

- x for clear and efficient processes for the rapid provision of assistance where a request is made;
- x remove the restriction on provision of assistance in the case of certain tax offences;
- x remove the discretion from the Central Authority for refusal of assistance; and
- x expand the basis on which confiscation orders can be made.

411. A clear basis for the FIB to share information spontaneously or upon request needs to be provided.

412. Clear guidelines should be established for the FIB to respond to requests and to share information within a timely manner. The process for obtaining a Production Order by FIB and other LEAs should be improved.

413. The FIB needs to utilize its channel of information to share and request information from its foreign counterparts as there is no indication that the FIB is doing this effectively.

414. The Companies Act should be amended to provide clearly for maintenance of accurate, up to date records of both basic information and beneficial ownership and control information.

## TECHNICAL COMPLIANCE ANNEX

### 1. INTRODUCTION

415. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations of Trinidad and Tobago. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
416. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in May-June 2005. This report is available from <https://www.cfatf-gafic.org>.

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

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

417. This Recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation.
418. *Criterion 1.1* – Trinidad and Tobago began its first National Risk Assessment (NRA) in March 2014. On a country level limited assessment has been done in relation to identifying and assessing ML/TF risk.
419. *Criterion 1.2* – The AML/CFT Compliance Unit and the National Anti-Money Laundering and Counter Financing of Terrorism Committee (NAMLC) are coordinating the conduct of the NRA.
420. *Criterion 1.3* – Frequency of the NRA will be addressed in the final report of the 2014 NRA report.
421. *Criterion 1.4* – A mechanism for distributing the results of the NRA is to be determined by NAMLC. This criterion is outstanding. The exact mechanism to effect same was not communicated to the Assessors although Assessors were made to understand that the results of the risk assessment would be disseminated by the National Coordinating Authority – NAMLC.
422. *Criterion 1.5* – Trinidad and Tobago's response has not provided evidence that their understanding of risks at a national level has been the basis for the allocation of resources and implementing of measures to prevent or mitigate ML/FT.
423. *Criterion 1.6* – While Trinidad and Tobago does allow for the exemptions, the authorities have advised that the basis for such exemptions will be determined by the NRA. No evidence was provided that this measure was in place with regard to simplified due diligence.
424. *Criterion 1.7* – The identification of higher risks at a national level will be determined by the NRA. At present, the FOR does provide for enhanced measures to be applied for specific scenarios in

regulations 7, 17, 20, 21, 22, and 23 of the FOR. Guideline 12 of the CBG requires FIs to apply ECDD measures on a risk sensitive basis for such categories of customer, business relations or transactions as the FIs may assess to present a higher risk of money laundering or terrorist financing. A similar requirement for registrants of the SA is set out in guideline 64 of the TTSEC Guidelines on AML/CFT. These measures are applicable to FIs supervised by the CBTT and the TTSEC. An amendment to Regulation 7 of the FOR to address the requirements of this criterion was approved in SRO 392 /2014.

425. *Criterion 1.8* – Regulation 14(3) of the FOR as amended by the FOAR 2014 allows for FIs or LBs to implement simplified CDD measures where lower risks have been identified either through a NRA or where a NRA does not exist through an adequate analysis of risk by the financial institution or listed business. The criterion also requires that any assessment of lower risk by financial institutions should be consistent with a country’s assessment of its ML/TF risks.
426. *Criterion 1.9* –The 2014 Amendment to the FOR requires in Regulation 7 that a compliance programme of a financial institution or listed business must be designed to include policies, procedures and controls for “adoption of a risk-based approach to [the] monitoring of financial activities which would include categories of activities that are considered to be of a high risk”; “an effective risk-based audit function to evaluate the compliance programme” and “adoption of risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification”. Additionally a FI or LB is required to take appropriate steps to identify, assess and understand their ML risks for customers, countries or geographic areas as well as products, services, transactions or delivery channels and measures that would be taken to manage and mitigate those risks.
427. *Criterion 1.10* – There are legislative requirements for FIs and DNFBPs to implement risk based approach for the monitoring of financial activities (Reg. 7 (c) of the FOR) and an audit function (Reg. 7 (e) of the FOR). The CBG refers to implementing a risk-rating framework appropriate for the type of customers and capable of assessing the level of potential risk of each client relationship. The specifics as outlined in the criterion for FIs and DNFBPs to identify, assess and understand their ML/TF risks, document their risk assessments, consider all relevant risk factors, keep risk assessments current and provide risk assessment information to CAs are addressed in Regulations 7-12 of the FOR.
428. *Criterion 1.11* – Section 55(c) of POCA requires senior management approval for compliance programmes which must include policies, controls and procedures to manage and mitigate risks that have been identified either by the country or by the FIs or LBs. While regulation 7 (e) of the FOR stipulates an effective risk-based audit function to evaluate the compliance programme there is no requirement to enhance controls if necessary. As already indicated above, both the CBTT and the TTSEC required their supervised entities to take enhanced measures to manage and mitigate risks where higher risks are identified in their respective guidelines for AML/CFT.
429. *Criterion 1.12* – FIs and LBs are allowed to take simplified measures to manage and mitigate risk as set out in regulation 14(3) of the FOR. As indicated above, criteria 1.9 to 1.11 have been met. Additionally, FIs and LBs are required by regulation 11 (2) of the FOR to perform full CDD in cases of suspicion of ML/TF.

#### *Weighting and Conclusion*

430. The majority of the criteria have not been met since Trinidad and Tobago is currently conducting an NRA in an effort to comply with the main criterion to identify and assess its ML/TF risks. The results of the NRA are required to comply with most of the other criteria of this Recommendation. While aspects of a RBA have been imposed they are fragmentary at present and require completion of the NRA to implement measures for full compliance.

431. This Recommendation is rated PC.

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

432. This Recommendation (previously R.31), was rated ‘PC’ in the 3rd MER. At that time, the NAMLC was not fully operational. Also, there were no Memoranda of Understanding (MOUs) to cooperate among CAs such as the CBTT, TTSEC, and the FIUTT. Since then, Trinidad and Tobago has implemented several measures that have increased compliance with this Recommendation, however, this did not address some of the new elements of this Recommendation, as explained below. Amongst improvements implemented, were (i) the establishment of NAMLC in November 2010. The NAMLC is in charge of implementing Trinidad and Tobago’s AML/CFT regime, reviewing AML/CFT legislation, securing technical assistance and drafting AML/CFT policy amongst other functions. It is a fully functional organisation. Also, (II) pursuant to the section 8 (2) of the FIA, the CBTT can enter into MOUs with the Deposit Insurance Corporation and other Regulatory Bodies. Similarly for the TTSEC, section 19 of the SA provides for the possibility of cooperation with a broad range of authorities and entities, such as the CBTT, Securities or Financial Regulatory Authorities, Stock Exchanges, Clearing Agencies, Self-Regulatory Bodies or Organizations, LEAs and other Government Agencies or Regulatory Authorities. That same section also provides for the TTSEC to enter into a MOU with the stock exchange and any other agencies from both local and foreign governments, foreign securities regulator, among others. Similar provisions are included in the IA and the FIUA.

433. *Criteria 2.1*– Trinidad and Tobago has national AML/CFT policies, however, as indicated in their “National Policy to Develop Monitor and Promote a Counter Money Laundering and Terrorist Financing Framework”, the AML/CFT framework is not based on a comprehensive risk assessment in the manner conceived by the FATF 40 + 9 Recommendations. Authorities indicated that the 2008 Policy will be revised and that the revision will be informed by the results of the NRA and recommendations of the NAMLC. Trinidad and Tobago has not yet submitted an update to its 2008 AML/CFT Policy.

434. *Criteria 2.2*- In March 2006, according to Minute #350 of Cabinet (cited in the 2008 Policy, page 10) Cabinet agreed to the establishment by the Ministry of National Security, of a National Committee to Develop, Monitor and Promote a Counter Money Laundering and Terrorist Financing Framework. This Committee was re-constituted in November, 2010 and re-named the NAMLC. It is important to clarify that though relevant citation was provided, Minutes of Cabinet are confidential, and could therefore not be shared by the Country. The Assessors are of the opinion that it would be beneficial if the NAMLC was to become a creature of statute created by the Parliament of Trinidad and Tobago as this would bring more stability to this body. The NAMLC plays a significant role in implementing the national AML/CFT Policies. The Assessors note that Cabinet in itself can be a political creature and Cabinet minutes are subject to confidentiality.

435. *Criteria 2.3*.- Mechanisms seem to be in place to enable policy makers, the FIUTT, law enforcement authorities (though customs and other specialized agencies (i.e. Human Trafficking) do not seem to have agreements in place), supervisors and other relevant CAs to co-operate and

where appropriate, coordinate domestically with each other in the implementation of AML/CFT policies and activities, since the composition of the NAMLC includes a representative from the Legislative Drafting Department, FIUTT, LEAs, Supervisory Authorities, ODPP and other government offices.

436. *Criteria 2.4-* There are currently no provisions to cooperate and coordinate domestically, specifically with regard to the financing or proliferation of weapons of mass destruction. Whilst it is clear that the jurisdiction has strong cooperation and coordination mechanisms in place, the difficulty is that those mechanisms have not as yet been activated in relation to combating the financing of proliferation of weapons of mass destruction. In actual fact, a policy has not yet been fully formulated in relation to this issue.

*Weighting and Conclusion*

437. While Trinidad and Tobago has mechanisms for authorities to cooperate and coordinate domestically, national policies are not necessarily informed by risk, nor are they regularly reviewed. The Assessors were not provided with any documentation to show that there are mechanisms for local law enforcement authorities to cooperate with each other. Trinidad and Tobago has also no policies or mechanisms in place to cooperate and coordinate with regard to combating the financing of the proliferation of weapons of mass destruction. The Assessors, however note that it could be beneficial for Trinidad and Tobago to make the NAMLC permanent in statute.

438. This Recommendation is rated LC.

***Recommendation 33 – Statistics***

439. This Recommendation (formerly R. 32) was rated ‘PC’ in the 3rd MER with the only deficiency being that “Review of the effectiveness of AML/CFT systems should be introduced and available review systems thoroughly reevaluated”. That deficiency is not relevant for the 4th mutual evaluation because R. 33 now only focuses on the maintenance of statistics in four categories.

440. *Criterion 33.1 –* (a) The FIUTT maintains statistics on STRs/SARs received and disseminated. The statistics are publicized in the FIUTT’s annual report pursuant to section 17(1)(b) of the FIUA. (b) –(d) The Authorities have indicated that statistics on ML investigations and prosecutions, frozen, seized and confiscated property and MLA requests received or made are held by the FIB. They have also indicated that a case management system to deal with these types of statistics is being developed by the ODPP. This is not provided for in law or enforceable means.

*Weighting and conclusions*

441. Existing measures relating to the maintenance of statistics only cover the FIUTT. Whilst not mandated by law or any existing measure entities such as the FIB and the Office of the Director of Public Prosecution maintain some statistics. However, it was observed that some of the statistical data provided by some of these entities significantly differs.

442. This Recommendation is rated PC.

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### *Recommendation–3 - Money laundering offence*

443. R. 3 was previously rated ‘NC’, with the main deficiencies being the recognition of property being the proceeds of crime only where there has been a conviction for the predicate offence; predicate offences not extending to conduct that occurred in another jurisdiction that would have been considered an offence had it occurred in Trinidad and Tobago. Based on amendments to the POCA, the definition of a specified offence was amended to include conduct occurring in another country (paras. 7-8 of the 2nd Follow-Up Report (FUR)). The issues requiring new analysis are as follows: (i) whether bribery is a specified offence since the penalty at summary conviction is imprisonment for four (4) months; (ii) the need for a conviction of a predicate offence to prove that property is the proceeds of crime (Para. 106 of 3rd round MEVAL Report and paras. 10-12 of the 2nd FUR.) and (iii) whether ‘facilitating’ is covered as an offence.
444. *Criterion 3.1* – ML has been criminalized based on the Article 3(1)(b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. (See. Paras. 94-101 of the 3rd MER). While the Palermo Convention was not ratified at the time of the previous evaluation, it has since been ratified by Trinidad and Tobago.
445. *Criterion 3.2* – Predicate offences for ML are considered to be specified offences. As defined in the POCA, a ‘specified offence’ is an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily and any act committed or omitted to be done outside Trinidad and Tobago that would constitute an indictable in Trinidad and Tobago or offences specified in the 2nd schedule (offences under the Income Tax Act; the Corporation Tax Act; the Valued Added Tax Act and the Copyright Act; See para. 108 of the 3rd MER).
446. *Criterion 3.3* – Predicate offences for ML are covered under the meaning of ‘specified offences’ as discussed above. At para. 112-113 of the 3rd MER, the Assessors noted that predicate offences included all serious offences as such offences will be tried on indictment.
447. *Criterion 3.4* – The ML offence extends to any type of property (See. POCA section 2 for definition of property) that is derived, obtained or realised, directly or indirectly from a specified offence.
448. *Criterion 3.5* – This issue was raised during the 3rd round evaluation and found to be deficient. The issue was subsequently noted as addressed in the 2nd FUR at paras 10-12. The analysis for complying suggests that since a restraint or charging order can be made against realizable property without a conviction that it is not necessary for a person to be convicted of the predicate offence to determine the proceeds of crime. However, the realisation of the proceeds of crime by the enforcement of a confiscation or forfeiture order requires that the person be convicted of a predicate offence. The POCA does not provide a definition of proceeds of crime, but refers to ‘realisable property’, which is any property that is held by the defendant and any property that is held by a person to whom the defendant made a gift either directly or indirectly. Both restraint and charging orders are made against realisable property, while confiscation orders are made only when the Court makes a determination of the defendant’s benefit from the commission of the specified offence for which the defendant has been convicted. This is called the ‘proceeds of a specified offence’ and is synonymous with the ‘proceeds of crime.’ Pursuant to sections 4 and 5 of the POCA, the Court makes a distinction between simple and aggravated benefit. Further, in making the determination of a benefit the Court will make certain ‘assumptions’. Amongst the assumptions (See. Section 5(3) of the POCA); is that ‘any property appearing to the Court to be held by the defendant at the date

of conviction....’

449. *Criterion 3.6* – This criterion was successfully addressed in the amendment to the meaning of a ‘specified offence’ in the POCA (See. 2nd FUR at paras. 6-7).
450. *Criterion 3.7* – The ML offence is applicable to persons who commit the predicate offence pursuant to Section 44 of the POCA.
451. *Criterion 3.8* – Pursuant to Part II of the POCA, the ML offences all require the mens rea of ‘knowing or having reasonable grounds to suspect’ which incorporates the ability to prove ML from objective factual circumstances. Additionally, the case *Revenga v. Mackintosh* (1824) 2 B&C 693, establishes that the intentional element of the ML offence can be inferred from the objective factual circumstances based on circumstantial evidence. (See also. Para. 118 of 3rd MER).
452. *Criterion 3.9* – Dissuasive sanctions apply to persons convicted of ML. Specifically, Section 53 of the POCA includes ML penalties. The offence of ML for a natural person is punishable on indictment by a fine of TT\$25M fine and imprisonment for 15 years. The offence of tipping off is subject to a penalty of five million dollars and to imprisonment of five years. There is an issue with proportionality however. The penalty for an individual under the ATA for the main TF offence is quite different from that of POCA. Under Sec 22A (3) (a) of the ATA, the individual is liable to receive twenty five years in prison and a fine of five million dollars. Under the POCA therefore, the guilty money launderer would pay far more but would spend less time in prison. Additionally, there seems an inconsistency between the provisions of section 53 and section 54 which is applicable to civil servants. Section 54(1) provides that the Minister may make Regulations in certain circumstances for the main offence sections of ML to be applicable to civil servants. This means that there is discretion when it comes to the liability of a significant category of persons within the jurisdiction. In other words, such persons may be excluded from prosecution. This is further supported by the fact that there is no provision in the POCA that it binds the Crown. This means that it is possible that actions of the State are excluded from the application of the Act. There is also no evidence that such Regulations have been made by the Minister (See. Para. 121).
453. *Criterion 3.10* – Based on the Interpretation Act, Ch. 3:01, the word ‘person’ includes ‘corporations whether aggregate or sole, and unincorporated bodies of persons’ and accordingly legal persons can be convicted of ML. (See. Paras. 119-120 and 122 of the 3rd MER). The 3rd MER concludes that the measures against a company are not dissuasive because there are no specific criminal or administrative sanctions for companies; only directors, officer or agents are liable whether or not the company has been prosecuted or convicted of an offence (Section 57(2) of the POCA.). This allows the company to remain in operation without the risk of a loss of licence etc. The fact that the legal person can be prosecuted for ML and be subject to the hefty Section 53 penalties seem to offset the operation of Section 57 as it pertains to companies.
454. *Criterion 3.11* – The 3rd MER found that there were no ancillary offences to ML (Para. 116 of the 3rd MER). However, based on the Accessories and Abettor Act, Chap. 10:02 the ancillary offences are included as part of the ordinary principles of criminal law in Trinidad and Tobago for inchoate criminality and joint enterprise. Additionally, Section 66 of the Interpretation Act, provides that a reference in law to an offence includes an attempt, aiding, abetting, counselling or procuring and conspiracy to commit that offence. It is unclear whether facilitating is applicable to ML offences. Section 41(2) of the POCA provides a meaning for facilitating but only within the context of

forfeiture orders. In the absence of specific provisions either in the POCA or in the Accessories and Abettors Act and the fact that there has been no specific ruling on how the word “facilitating” would be interpreted by the Court, there still remains an element of supposition or guess work. The criterion specifically names each of the different kinds of actions that would constitute that of an accessory. It means that there are nuances that distinguish each offence from the other. Whilst procuring may indeed involve an element or elements of facilitating, facilitating may not necessarily involve procurement at all. The intent of the inclusion of the various elements is to ensure that there are no possible holes in the net of prosecution that would enable an offender to slip through.

### *Weighting and Conclusion*

455. The criminalisation of ML has in large part been addressed. The main issue that gives cause for concern pertains to criterion 3.5, where there is a need to have a conviction for a specified offence to prove the proceeds of crime. This tends to place a higher burden of proof on law enforcement authorities. On the issue of bribery and whether it adequately falls within the threshold of an indictable offence, the definition of the expression “corruption” includes the elements of bribery and since corruption as an offence passes the required threshold for a predicate offence then the Recommendation has been satisfied – albeit not in an ideal manner. The offence of facilitating a ML offence has not been adequately covered.
456. Several of the deficiencies identified in the Third Round were addressed in respect of this Recommendation.
457. On the issue of bribery and whether it adequately falls within the threshold of an indictable offence, the definition of the expression “corruption” includes the elements of bribery and since corruption as an offence passes the required threshold for a predicate offence then the Recommendation has been satisfied – albeit not in an ideal manner.
458. The outstanding issue surrounds the fact that no final confiscation order can be made in respect of property that represents the proceeds of crime unless there has first been a conviction. The POCA refers to proceeds of crime as “realisable property”. There is a hurdle therefore in being able to ultimately confiscate or have that property forfeited outside of an actual conviction.
459. Some other small issues of cohesion remain, in terms of the full liability of a company that has been found to be guilty of a ML offence. There is no specific provision that provides for a company to lose its licence where it has been convicted of an offence which means that there are questions raised as to how fully dissuasive the penalties in question are.
460. There have been no ML convictions to date. The fact that this is the status quo is a cause for concern within the reality of a system where there are the following:
  - x a high percentage of drug offences;
  - x drug trafficking occurs both within Trinidad and Tobago and the jurisdiction is used as a transit point;
  - x fraud offences are relatively high;
  - x private members clubs are prevalent;
  - x high volume of cash being moved around both within and going out of the jurisdiction; and
  - x a thriving banking and financial investment sector.
461. This recommendation is rated LC.

#### ***Recommendation—4 - Confiscation and provisional measures***

462. Trinidad and Tobago was rated PC for R.4 (then R.3) in its 3rd MER. There were three (3) deficiencies identified at the time which were (i) confiscation was limited to persons convicted for predicate offences; (ii) Provision for confiscation under the POCA is not widely used/implemented; and (iii) production orders were only obtainable for offences under the Dangerous Drugs Act.
463. As a cure to these noted deficiencies, the 3rd MER Assessors had recommended that the Trinidad and Tobago authorities should consider expanding/widening the scope of offences that are subject to production orders and search warrants by expanding the definition of a “specified offence” contained in section 2(1) of the POCA.
464. According to the 4th follow-up report, the deficiency identified at (i).above fell outside of the scope of the 3rd round methodology and was more related to the establishment of civil forfeiture provisions. Trinidad and Tobago’s 3rd FUR noted that the deficiency at (iii) above was addressed because the definition of specified offence under section 2 of the POCA was amended to include ‘an indictable offence’ thereby broadening the range of offences for which production orders and search warrants, under the POCA, were applicable. The (ii) deficiency was deemed to be an implementation issue relating to the ineffective use of the legislative provisions. This assessment will determine whether measures now exists to void prejudicial actions and for CAs to take any appropriate investigatory actions.
465. *Criterion 4.1* – (a) Section 3(1)(a) & (b) of the POCA provides for the confiscation of realizable property that is the proceeds of a specified offence. Section 6 of the POCA applies to confiscation orders for drug trafficking matters. The measures apply to both the criminal defendant and third parties, a realizable property pertains to any property held by a defendant or a person who has obtained a gift from a defendant. (b) As indicated previously, section 3(1) of the POCA provides for the confiscation of realizable property. Confiscation orders can only be made after conviction and where it can be determined that the defendant has benefited. The determination of a benefit is separate for drug trafficking (See. Section 6 of the POCA) and other predicate/specified offences. (Sections 3(3) and 4 of the POCA). Instrumentalities of a specified offence can be forfeited pursuant to section 41 of the POCA. No citations were provided to the measures for which instrumentalities of drug trafficking may be forfeited. (c) Section 37(1) of the ATA provides for ‘terrorist property’ to be forfeited through application by the Attorney General. Additionally, section 35(1) of the ATA provides for ‘property’ used for, or in connection with or which was obtained as proceeds from an offence under the ATA or a terrorist offence under any other Act to be forfeited upon conviction. (d) Property of corresponding value is captured under the confiscation measures through provisions for releasable property. It is noted that confiscation proceedings can be invoked where it appears that the defendant has either benefited or possesses realizable property. Such property also includes property which he has gifted.
466. *Criterion 4.2* - (a) Section 32 of the POCA enables a police officer to obtain a production order, which is an investigative tool used to obtain material to determine whether a person has benefited from a specified offence or the extent or whereabouts of the proceeds of such a benefit. Under section 33 of the POCA a search warrant can be obtained for the same purposes noted above or in instances where a production order has not been complied with. Section 11 of the FIUTTA permits the Director of the FIUTT to request ‘further’ information from a FI or LB to trace the location of the proceeds of crime. (b) Section 19 of the POCA provides for the High Court to issue a restraint order prohibiting any person from ‘dealing with’ realizable property. The term dealing with property includes making a debt reduction payment and removing property from Trinidad and Tobago (Section 19(10) of the POCA). Pursuant to section 20 of the POCA the High Court can

issue a charging order against realizable property which is in the form of land in Trinidad and Tobago, or securities, for securing payment to the State. Measures for restraining terrorist property are covered at section 34 of the ATA, whilst section 36(1) of the ATA provides for the seizure of terrorist property subject to forfeiture and prohibiting persons from disposing or otherwise dealing with such terrorist property. At section 38A of the ATA cash suspected to be instrumentalities of an offence under the ATA, or cash suspected to be terrorist property is liable to seizure. (c) Section 19 of the POCA quoted above provides for a level of freezing since a restraint order would prohibit the dealing with realizable property. It is arguable whether there is an inherent power in the court to void a transaction that was intended to defraud the state by depriving it of the ability to recover the proceeds of crime. There is no clear provision in the legislation on this and no actual cases were submitted to substantiate this point. (d) No information was provided as to whether measures exist which enable CAs to take any appropriate investigatory measures.

467. *Criterion 4.3* - Sections 19(8) and 20(9) of the POCA provide measures to protect the rights of bona fide third parties, by allowing for the discharge or variation of a restraint or charging order respectively, to be made by anyone affected by it. Additionally, at section 4 of the POCA, the victim of a specified offence that is not drug trafficking can make an application to the Court for payment with respect to loss, injury or damage sustained in connection with the defendant's conduct.

468. *Criterion 4.4* - The legal measures for managing and disposing of property confiscated, forfeited or seized are contained at section 58 of the POCA. There are no specific measures with regard to the disposal of property that is seized, frozen or confiscated. Sec 58 of the POCA makes provision for the establishment of a Seized Assets Fund. In accordance with Sec 58A, monies and properties seized under the POCA are to be deposited into this fund. The funds may be used for a number of activities including reciprocal sharing with a foreign state as indicated by the POCA. Sec 58F of the POCA makes provision for the Minister with responsibility for National Security to appoint a Seized Assets Advisory Committee to advise on which areas the funds are to be used. That Committee has not as yet been appointed. The Authorities have indicated that they are in the process of enhancing mechanisms for the Seized Assets Fund and establishing a Seized Assets Advisory Committee. Section 58M makes provision for the Minister with responsibility for finance to make Regulations pertaining to the management of the fund, the accounts, books and form to be used in the management of the fund and the general operation of the fund. At section 37(4) of the ATA a Judge can direct how terrorist property that is the subject of a forfeiture order can be disposed.

#### *Weighting and conclusions*

469. There are provisions which enable the confiscation and forfeiture of property laundered, property of corresponding value and the proceeds of ML and predicate offences. Provisions in the POCA enable the competent authority to identify, trace and evaluate property and also use provisional measures to restrain individuals from dealing with property, whether or not such property has been particularised, which may be subject to confiscation. However, there is limited ability to take steps to prevent or void actions that prejudice the country's ability to utilise its provisional measures and the absence of measures allowing CAs to take any appropriate investigative measures can have the effect of stymying or reversing the effective use of its provisional measures. There was no legislative measure provided to deal with that issue. The failure to appoint the Seized Assets Advisory committee and the failure of the Minister to make the necessary regulations may only become relevant at the point when it has become necessary to dispose of confiscated property.

470. The requirement that the jurisdiction should have the ability to prevent or void actions that prejudice its ability to freeze, seize or recover property that is subject to confiscation has not been fully satisfied. Section 19 of the POCA may be utilised as a means of freezing property that is subject to confiscation since it prohibits dealing in realisable property. This partially satisfies the criterion.
471. This Recommendation is rated LC.

### ***Operational and Law Enforcement***

#### ***Recommendation –29 - Financial Intelligence Units***

472. Trinidad and Tobago was rated ‘NC’ for R.29, (then R.26), in its 3rd MER. The main deficiency at the time was that there was no legally established FIU. This deficiency was cured by the enactment of the FIUA. Issues that arise based on the new measures is whether the FIU (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information (iii) has the ability to disseminate information spontaneously; (iv) information is protected by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU’s facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions from its overarching ministry; (d) is able to individually and routinely deploy its resources as it freely determines (vi) has applied for Egmont membership.
473. *Criterion 29.1* - The FIUTT was established pursuant to section 3 of the FIUA and given responsibility for money laundering including specified offences under the POCA and terrorist financing under the ATA. (See. Section 8 of the POCA).The FIUTT is an Administrative type FIU. It also has some supervisory functions. The primary functions of the FIUTT include receiving STRs and SARs from FIs and LBs and analysing them to determine whether there is sufficient basis to warrant dissemination for investigation into ML and TF. Additional functions of the FIUTT include the general responsibility for the collection of financial intelligence and information.
474. *Criterion 29.2* - (a) At section 8(2) of the FIUA the functions of the FIUTT include the receipt of STRs and SARs from FIs and LBs. (b) Criteria 29.2(b) does not apply to FIUTT.
475. *Criterion 29–3* - (a) Measures at section 8(3) (a) of the FIUA enable the FIUTT to request financial information from a FI or LB in order to facilitate the exercise of its powers under the FIUA. Where, following the receipt of a STR/SAR, the Director is of the opinion that additional information is required to further an analysis, section 11 of the FIUA provides measures for requesting further information from a FI or LB. (b) Pursuant to sections 8(3)(k) and 16 of the FIUA, the FIUTT can enter into an agreement with a local authority and a foreign FIU and the Director can cooperate, liaise and request information respectively.. These measures allow for the FIUTT to have access to a wide range of databases.
476. *Criterion 29.4* - Section 8(3)(c)(ii) of the FIUA mandates the FIUTT to collect information required for tactical analysis, in order to generate activity patterns, investigative leads, and identify possible future behaviour. Regulation 26(1)(d)(ii) of the FIUR allows the FIUTT to conduct analysis on current techniques, methods and trends or typologies and examples of actual ML cases with no direct references as to persons or institutions. FT is however not covered. However, the FIUTT SOP for its Analytical Division makes provision for the FIUTT to conduct strategic analysis

with the view to understand activities, behaviour and environment of interest. The product of strategic analysis is to provide guidance for policy development to assist the FIUTT in understanding the issues and methods of ML and predicate offences. The Assessors note that whilst the end result of the strategic analysis relates only to ML and predicate offences and not TF which is an important component of the criterion.

477. *Criterion 29.5* - Under section 8 (3) (f) of the FIUA, the FIUTT is empowered to disseminate financial intelligence and information to local and foreign authorities and its affiliates within the intelligence community. Also, section 15 (1) of the FIUA provides for the Director to disseminate information to law enforcement where it is determined that an investigation is warranted. Regulation 19(1) of the FIUR permits the FIUTT to disseminate financial intelligence information, upon request, to local authorities and foreign authorities and law enforcement authorities. The FIUTT also has a SOP that allows for the spontaneous dissemination of information. The Assessors were also provided with evidence to show that the FIUTT is engaged in the spontaneous dissemination of information. The Authorities have indicated that dissemination to foreign authorities is done via secured Egmont channels, where applicable, and by utilizing passwords where Egmont secure channels cannot be used. The FIUTT does have an SOP that makes provision for the information sent to local authorities and law enforcement to be transmitted via protected channels. However, the SOP makes provision for STR to be reported via telephone and facsimile. The SOP also makes provision for disclosure of information pertaining to terrorist financing orally/electronically via telephone to the Central Authority. The CA could not provide any information about how secure are these means of communication. It should be noted that the Assessors were informed that these means of communication has not been utilized although the provisions makes reference to them.

478. *Criterion 29.6* - (a) The FIUR Regs. 8-13 provide for the storage and protection of financial intelligence and information. The Director is required to develop internal procedures governing data protection requirements. With regard to the security and confidentiality of its database, at Reg.11 the Director is required to limit the FIUTT personnel who have access to the FIUTT's database; grant specific authorization in that regard and cause an access log to be created. Unauthorized access to the FIUTT database is an offence according to Reg. 11 (3) of the FIU regulations. The procedures for storage and handling are found at Reg.12 which requires the Director to ensure that a daily back-up is maintained on-site and off-site. Reg. 13 provides for the Director to ensure that security systems are in place for the physical storage of the database. During the onsite visit, the Assessors were taken to the Office of the FIUTT where they observed that limited access is only granted to certain staff. Access to the areas where STRs are filed and the servers located are restricted to the Director, Deputy Director, Analytical Director and the IT personnel. This area is secured by an electronic key card and locks on doors. The rooms are also equipped with cameras which are monitored by the Deputy Director. The Assessors also observed that information is also backed up on external hard drive. The FIU SOP also makes provision for the manner in which information is to be disseminated by the FIUTT. This SOP also provides for a chain of command and how information is handled when it arrived at the FIUTT. However, there seems to be no separation between the persons from the Supervisory and the Analytical Department. Persons have access between both departments, however this does not have any impact on confidentiality of information as persons employed within the Supervisory section do not have access to the database used by persons employed within the analytical department. It should also be noted that the FIUTT information Policy document makes provision for vetting of persons employed at the FIUTT.

479. *Criterion 29.7* - (a) & (b) Section 4 of the FIUA gives the Director of the FIUTT responsibility for the overall supervision of the department and the implementation of policies with respect to ML

and FT, in accordance with the said FIUA and any other law in Trinidad and Tobago. Additionally, section 15 (1) gives the Director the sole discretion to disseminate information to law enforcement. (b) Section 8(3)(e)(f)(g) allows for the FIUTT to independently exchange information with domestic and foreign counterparts. (c) Although the FIUTT is established as a department within the Ministry of Finance, it is governed by the FIUA which has given it distinct core functions specifically related to AML/CFT. (d) The Director of the FIUTT can freely deploy its resources. It should further be noted that during the period under review, the budget allocations to the FIUTT have been less than what had been proposed, save and except for 2013- 2014 which showed an increase. The Assessors were informed that this had no impact on the daily operation of the FIUTT. However, projects that are considered to be large and costly had to be undertaken in different phases. Furthermore, the FIUTT lacks the necessary human resource to adequately conduct his functions. The Assessors were informed that the relevant staff would be recruited, however, these positions are subjected to the approval of Cabinet of Ministers. The FIU is also staffed with several persons who are employed on a contractual basis, the approval, renewal and termination of contracts are at the discretion of the Minister based only for good and sufficient reason based on sound evidence on the Guidelines for Contract Employment in Government Ministries, Department and Statutory Authorities. However, there are adequate safeguards in place to ensure the independence of the FIUTT.

480. *Criterion 29.8* - The FIUTT was admitted to the Egmont group on July 3, 2013.

*Weighting and conclusions*

481. The FIUTT is the national centre for the receipt and analysis of STRs/SARs relative to ML, associated predicated offences and FT. Additionally, whilst the FIU is able to request further information from FIs and LBs in relation to the analysis of STRs, the FIUA does make provision for the FIUTT to access a significant number of databases to undertake its functions. The FIUTT has demonstrated in practice that it has utilized a wide range of databases to conduct its function including sharing of information with local and foreign counterparts. There are provisions within the SOP for the FIUTT to conduct operational and strategic analysis, however the outcome of these analyses does not meet the threshold as is specified by the criterion as it is only limited to ML and Predicate Offences and does not include the offence of TF. The Director of the FIU is responsible for the supervision of the Unit and is therefore responsible for deployment of its own resources. However, its ability to deploy financial resources to facilitate the implementation of completion of certain projects with the FIUTT are sometimes constrained by the budgetary allocation to the FIUTT by the Central Government. The Central Government is responsible for providing the budgetary allocation to the FIUTT, the information provided shows that the Unit has been provided with lesser amounts than what was budgeted for the period. The Assessors also note that the recruitment of staff is subject to the approval of Ministers, along with the approval, renewal and termination of contractual staff subject to the discretion of the Minister only for good and sufficient reason based on sound evidence. However, the vetting procedure for the recruitment of these staff are conducted by the FIUTT and there are adequate safeguards in place to ensure the independence of the FIUTT. .

482. This Recommendation is rated LC.

### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

483. Trinidad and Tobago was rated ‘LC’ for R.27 in its 3rd MER. The main deficiency at the time was the lack of resources available to LEAs to properly investigate ML and TF offences. According to para. 188 of the 3rd MER, the then Financial Investigations Unit was established within the Counter Drug-Crime Task Force and was responsible for the investigations of ML of all indictable offences in Trinidad and Tobago. The investigative functions of the Financial Investigations Unit have been assigned to the FIB. Recommendation 30 now has three additional criteria which are relevant to this analysis of Trinidad and Tobago’s TC. The issues are (i) under what authority has the FIB been designated as the LEA for ML/TF investigations; (ii) do FIB investigators have the authority to pursue investigations of related ML/TF offences during a parallel financial investigation; (iii) whether there are any designated CAs that can expeditiously identify, trace and initiate freezing and seizing of property subject to a confiscation order or the proceeds of crime; (iv) whether measures for Rec.30 also apply to CAs which are not LEAs (v) whether anti-corruption authorities also have sufficient powers to identify, trace and initiate freezing and seizing of assets.
484. *Criterion 30.1* - The FIB is a department within the TTPS under the supervision of a senior Police Officer who reports to the Deputy Commissioner of Police. The Unit was created as a result of the creation of Departmental Order (DO) No. 235 of 2010 of the TTPS. This was further supplemented by DO No.107 of 2011 and DO No 43 of 2014. The mandate of the FIB based on the DOs are to investigate and prosecute all persons involved in the act of ML/TF, offences which are derived from SARs and have general responsibility for investigation of all other matters relating to the POCA, FORs and the ATA.
485. *Criterion 30.2* –DO 43 of 2014 which was issued on March 20, 2014 mandates the FIB to conduct money laundering investigations into any specified offence undertaken by any Section/Unit/Branch/Division of the TTPS where it has been established that there are proceeds of crime to be seized or restrained. The DO further authorizes that the information of such arrests be transmitted to the FIB within twenty four hours of the arrest or the execution of the warrant. Whilst this document gives notice for the FIB to conduct parallel investigations, it should be noted that it limits the FIB inclusion to the point where there are assets to be seized and restrained and also to the point where the person has been arrested or the warrant has been executed. It should be noted that the FIB should be involved in the investigation from the earliest opportunity and there exists the possibility that not every case the proceeds of crime would be recovered, seized or restrained. A parallel financial investigation includes identifying the extent of criminal networks and or scale of criminality and developing evidence that can be used in criminal proceedings.
486. *Criterion 30.3* - POCA makes provision for identifying, tracing, and initiating freezing and seizing of property that may become subject to confiscation or the proceeds of crime Sec 19 of the POCA allows for the DPP to make an application for a Restraint Order. Sec 32 of the POCA makes provision for a Police Officer for the purpose of conducting an investigation into a specified offence, whether the person may have benefitted from a specified offence or the extent or whereabouts of the proceeds of a specified offence to make an application before a Judge. There are also further provision under the POCA for law enforcement to identify, trace and initiate freezing and seizing of property. Sec 33 (1) makes provision for a Police Officer to apply for a search warrant before a Judge. Sec 38 (1) makes provision for a Police Officer to seize and detain cash.
487. *Criterion 30.4* – There are no non-LEA entities authorised to conduct financial investigations in Trinidad and Tobago.

488. *Criterion 30.5* - The Anti-Corruption Investigations Branch (ACIB) is a branch of the TTPS which is staffed by police officers and conducts investigations into related predicate offences. Even though police officers are empowered to utilize the investigative tools created by the POCA the ACIB must refer related predicate offences to the FIB for the conduct of parallel financial investigations. This criterion is met.

489. This Recommendation is rated C.

***Recommendation –31 - Powers of law enforcement and investigative authorities***

490. Trinidad and Tobago was rated ‘C’ for R.28 (now R. 31) in its 3rd MER. Rec 31 and now has three additional criteria which are relevant to this analysis of Trinidad and Tobago’s TC. The issues are (i) whether CAs conducting investigations can use a wide range of investigative techniques; (ii) whether the country has mechanisms in place to identify in a timely manner whether natural or legal persons hold or control accounts and can identify such assets without prior notification to the owner (iii) whether CAs conducting ML and investigations into predicate offences and terrorism can ask for all relevant information held by the FIUTT.

491. *Criterion 31.1* - (a) The FIB is a division of the TTPS and as a competent authority is staffed by police officers. Consequently the investigative tools created by the POCA can be utilized by the FIB for the production of records held by FIs and LBs. See paragraph 195 and 196 of the 3rd MER. (b) Where production orders are not practical, search warrants can be utilized. See paragraph 197 of the 3rd MER. (c) General police powers apply in terms of taking witness statements as well as searching persons and premises. See para.199 of the 3rd MER. (d) The FIB is empowered to apply for and obtain search and seizure warrants under the POCA.

492. *Criterion 31.2* - (a) The Authorities have indicated that the TTPS can conduct undercover operations as part of an investigation into any area of criminality. The FIB as a division of the TTPS can therefore utilize this measure in the investigation of ML and associated predicate offence and TF. The related legislative or other measures empowering the TTPS to conduct such operations were not provided. (b) As the CA for the investigation of ML, associated predicate offences and TF it is not clear whether the FIB can utilize cyber communication intercepting techniques in furthering ML and TF investigations. (c) The TTPS Cyber Crime Unit is charged with this area of expertise and with acquiring the relevant judicial warrant for an evidential search of computer systems. As the CA for the investigation of ML, associated predicate offences and TF it is not clear whether the FIB can utilize this measure in furthering ML and TF investigations. The Assessors however do note that Sec 32 (10) (a) of POCA does make provision for information contained in a computer. (d) Section 35 of the Firearms Act states that evidence obtained by controlled delivery shall be admissible in a Court of law. No measures were noted as allowing the FIB to utilize controlled delivery as an investigative technique in the furtherance of ML and TF investigations.

493. *Criterion 31.3* - (a) The CA indicated that this criterion is met as a Police Officer can apply for a Production Order under Sec 32 of POCA. However a Production Order should not be obtained to identify accounts. A Production Order is not to be used as a “fishing tool”. The Production Order under POCA is an ex-parte application and therefore prevents the agency from notifying the subject of the investigation. Provisions applicable under section 11 of the FIUA can only be invoked following the analysis of a STR/SAR whilst requests pursuant to section 16 of the FIUA are in relation to entities which do not hold account information on natural or legal persons. (b)

Production Orders, pursuant to section 32 of the POCA are made and granted ex parte.

494. *Criterion 31.4* - The FIUR regulation 19 authorizes the Director to disclose information, upon request to local and foreign authorities including LEAs. The Regulation also notes that the Director can impose conditions upon which the information should be use. The requesting party is required to agree to those conditions before the information is disseminated. The Assessors are unaware of the conditions that are attached to the Request. The CA has also provided information to show where the requests for information were sent to the FIUTT from the FIB.

*Weighting and conclusions*

495. The FIB, as the CA for investigating ML, TF and their associated predicate offences can obtain the necessary documents and information, search persons and premises take witness statements and seize evidence. There are however no indication that measures exist allowing them to conduct undercover operations, use intercept techniques, access computer systems or conduct controlled deliveries in furthering financial investigations into ML/TF and related predicate offences. There are also no measures for the timely identification of natural or legal persons holding or controlling accounts.

496. This Recommendation is rated LC.

***Recommendation 32 – Cash Couriers***

497. At the time of Trinidad and Tobago’s 3rd Round MEVAL, SR IX (now R. 32) was not adopted by the CFATF and it was therefore not assessed. Trinidad and Tobago however legislatively addressed some of the SR.IX issues on their own.

498. *Criterion 32.1* - Based on the Customs Regulations (CR), Trinidad and Tobago has implemented a declaration system for the incoming and outgoing currency and BNIs, which comprises the completion of forms under section number 5 of the Customs Act (CA). There is no express provision for declaration of cash. However, Section 31 of the Postal Act allows for Customs Laws to apply to goods contained in foreign postal articles. Customs and Excise Department has also relied on the provision of Section 22 and 23 of the Exchange Control Act which places restriction on the importation and exportation of cash or BNIs TT\$20,000 or US\$5000.00 without the authorization of the Governor of the Central Bank. Travellers are exempted from this provision should a declaration be made under the Customs Act. The authorization and declaration is also relevant for persons importing currency via cargo.

499. *Criterion 32.2* - Under Reg. 87 all travellers are required to make a written declaration on Form C15 “Customs Declaration”. In addition to indicating whether or not certain goods are being held by the passenger there is also a declaration as to whether passengers have currency or monetary instruments over US\$5,000.00 or equivalent. There is also an enquiry about any currency in excess of TT\$20,000.00. This currency declaration is also applicable to travellers entering or leaving the jurisdiction. However, form C-15 is only given to a traveller who are entering the jurisdiction. A traveller who is leaving the jurisdiction is required to locate the Customs Department and declare the cash in his possession to such Customs Officer.

500. *Criterion 32.3* – Trinidad and Tobago does not have a disclosure system, but rather a declaration system. See. Criterion 32.1. This criterion is not relevant to the system used by Trinidad and Tobago.
501. *Criterion 32.4* - The Authorities advised that Customs officers have the authority to request and obtain further information from persons carrying cash and BNI on its origin and intended use. Section 63 (1) CA provides that “any person entering or leaving Trinidad and Tobago shall answer such questions as the proper Officer may put to him with respect to his baggage and anything contained therein or carried with him”. This enables Customs officers to request and obtain any information required concerning persons carrying cash and BNI, including its origin and intended use.
502. *Criterion 32.5* - Section 212 of the Customs Acts sets out the penalty for false declaration, which is a fine of TT\$125,000 or approximately US\$19,000.00 which appears to be dissuasive but not proportionate. There is no alternative sanction under this section. There is provision under Part Two of the Exchange Control Act for criminal sanctions where a person would have imported cash or BNIs without the authorization of the Governor of the Central Bank. These penalties include fine and imprisonment of two years on summary conviction, fine and imprisonment for five years. There is also provision within the Exchange Control Act for the Judge or Magistrate to forfeit the cash. The Assessors were informed that importation without the necessary authorization under the Exchange Control Act automatically triggers an offence under Section 213 which deals with importation of prohibited items. The sanctions for this offence varies and includes fines and imprisonment.
503. *Criterion 32.6* – Customs stated that the declaration information is made directly available to the FIUTT (under option b) through a secure system on a monthly basis, this information is supplied pursuant to an agreement between the Customs and Excise Department and FIUTT. The evidence of such agreement was provided to the Assessors during the onsite visit. Pursuant to section 16(2) of the FIUA, the FIUTT in the performance of its functions, may request information from a public authority.
504. *Criterion 32.7* - The Authorities indicated that the LEA group was established to facilitate coordination. The information provided in relation to the LEA group shows that representatives of several LEAs including BIR, Customs and Police meet with the FIUTT and DPP on a monthly basis to discuss matters under investigation. These meetings and their agendas are initiated by the FIUTT. The main focus of the LEA group is to discuss cases under investigation and reports disseminated by the FIUTT. Whilst the LEA group meetings foster some level of cooperation between LEAs and the FIU, the focus of these meetings primarily relates to investigations and limited co-ordination surrounding the implementation of Recommendation 32.
505. *Criterion 32.8* - (a) Under section 38 of the POCA, a Customs and Excise Officer or a Police Officer, may seize and detain any cash, where there is reason to believe that the cash directly or indirectly represents any person’s proceeds of a specified offence, or is intended by any person for use in the commission of such an offence. (b) There is no evidence that the cited legal basis includes the restraint of currency in cases where there is a false declaration or false disclosure.
506. *Criterion 32.9* - There is no legal basis or measures for Customs and Excise Department to keep records. However, the Assessors were informed by the authorities that records are maintained for a period of seven years. Based on the information submitted to the FIUTT in relation to declarations

by passengers, all relevant information appeared to be captured by the Customs and Excise Department. The Assessors were however unable to verify whether information is retained relating to false declarations and disclosures along with cases where there is suspicion of ML/TF.

507. *Criterion 32.10* - Section 280 (1) of the Customs Amendment Act, No. 6 of 2013 makes provision for a person having an official duty or being employed in the administration of the Act, to have regard and deal with all data, entries and declaration as secret and confidential and shall make and subscribe a declaration in the prescribed form before a Justice of the Peace. Subsection 2 of the legislation also prevents the unauthorized disclosure of information including declaration. Section 281 of the Act makes provision for the authorized disclosure of information by third parties who were provided with information by Customs except where authorized by law. However, there is no information to suggest that the relevant prescribed form has been created and such are being signed before a Justice of the Peace.
508. *Criterion 32.-11* - The provisions contained within the Exchange Control Act make it a criminal offence for persons to engage in the importation and exportation of cash and other BNI s without the necessary authorization from the Governor of the Central Bank or where such cash and BNI was not declared to an Officer of Customs. The legislation makes provision for criminal sanctions that include fines, imprisonment and forfeiture. The Assessors were informed that a breach of the Exchange Control Act creates an offence in accordance with Section 213 and 214 for the Customs Act, which deals with the importation of prohibited goods. Sections 213(a) and 214 of the Customs Act deals specifically with the importation of a prohibited goods. The Assessors were informed that prohibited goods includes currency that were not declare in accordance with the Exchange Control Act. The Assessors note that whilst criminal sanctions are proportionate and dissuasive, sanctions that can be imposed administratively are not proportionate. (b) Section 38 of the POCA makes provision for a Customs Officer of the rank of Grade III or higher in the jurisdiction to seize or detain any cash where he has reason to believe that the cash directly or indirectly represents any person's proceeds of a specified offence or is intended by any person to be used in the commission of such an offence. The provisions contained under this section of the legislation are under the civil jurisdiction of the Court. Having completed the relevant investigation, the DPP or the Comptroller of Customs can make the necessary Application for Forfeiture of cash in accordance with Section 39 of the POCA. The Assessors also note that persons engaged in the cross border transportation of currency and BNI can also be subject to money laundering charges in accordance with Section 42A of the Act which is a criminal offence. The sanctions that are applicable in relation to this criterion are dissuasive and proportionate.

*Weighting and conclusions:*

509. While Trinidad and Tobago has a declaration system that monitors cash and BNIs by persons entering, there are several deficiencies which adversely affect the level of compliance. Firstly, the definition of cash or BNIs is not defined under the Customs Act. CAs have informed the Assessors that "goods" includes cash and sought to provide case law to support same. Secondly, there is no legal basis in the Customs Act to provide information on declarations that exceed the stipulated amounts, false declarations or suspicions of ML to the FIUTT. It should however, be noted that there is an agreement in place between the FIUTT and Customs, that makes provisions for Customs to share declaration information with the FIUTT. Thirdly, with regard to physical cross border transportation there are no measures to ensure that information is retained when there is a false declaration or disclosure. Fourthly, there is limited coordination amongst Customs, Immigration

and other agencies to ensure that Recommendation 32 is implemented. The Assessors also note that whilst criminal sanctions are considered to be proportionate and dissuasive, civil sanctions are not proportionate.

510. This Recommendation is rated PC.

#### **4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION**

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

511. During the 3rd Round, this Recommendation was rated ‘NC’ given that when the MEVAL was conducted, there was no legislation in Trinidad and Tobago criminalizing TF. The main change was the approval of the ATA, which made it possible to meet this Recommendation. The revised R. 5 incorporates an explicit reference to the International Convention for the Suppression of the Financing of the Terrorism.

512. *Criterion 5.1* - Section 22A and Section 2 in the definition of terrorist of ATA, incorporate the criminalization of the offence of FT according to Article 2 of the International Convention for the Suppression of the Financing of Terrorism. As described along with the following analysis of this Recommendation, the elements of Article 2 of the cited Convention, was incorporated by Trinidad and Tobago through the cited legal basis.

513. *Criterion 5.2* - Section 22A of the ATA extends the offence of financing of the terrorism in accordance with this criterion. As well, the definition of terrorist in Section 2 of the ATA extends the TF offences to the persons who unlawfully commit a terrorist act.

514. *Criterion 5.3* - Under the Section 22A of the ATA, the offence of financing of terrorism extends its applicability to funds in general terms, without making any distinction between legal or illegal funds. Funds are defined at section 2 of the ATA.

515. *Criterion 5.4* - (a) Section 22A(2)(a) of the ATA establishes that the offence of financing of terrorism is committed irrespective of whether the funds are actually used to commit or attempt to commit a terrorist act. (b) Based on section 22A(2)(b) the TF offence does not require that the funds be linked to a terrorist act.

516. *Criterion 5.5* – The Authorities have indicated that the intentional element of the TF offence can be inferred from circumstantial evidence on the basis of case law: *Revenga v Mackintosh* (1824) 2 B & C 693.

517. *Criterion 5.6* - Based on section 22A(3) a person who commits the offence of TF is liable on conviction on indictment in the case of an individual, to imprisonment for twenty-five years. This sanction appears sufficiently dissuasive but has yet to be tested.

518. *Criterion 5.7* - The sanctions applied to legal persons are dissuasive but are not proportionate with the penalties for ML.

519. *Criterion 5.8* – (a) Section 22A of the ATA includes the attempt to commit the offence of TF. (b) Section 2 of Accessories and Abettors Act sets out that any person who aids, abets, counsels or procures the commission of any indictable offence may be indicted, tried and punished as a principal offender. In addition, section 3(1) of the Accessories and Abettors Act sets out that any person who aids, abets, counsels or procures the commission of any offence punishable on

summary conviction is liable to the same punishment as the principal offender. c) Section 2 of the ATA defines terrorist, to include a person who organises or directs others to commit terrorist acts or TF. (d) Section 2 in the definition of terrorist of ATA incorporates the criminal conduct of contributing to the offence of financing of terrorism and the criminal conducts committed by a terrorist or a terrorist organization, acting with a common purpose. Subsections (i) and (ii) of the same definition incorporates the intention to commit these crimes.

520. Criterion 5.9 - The offence of TF is an indictable offence and as such falls within the definition of a specified offence according to POCA Section 2, thereby making it a predicate offence for ML.
521. *Criterion 5.10* - Under Section 22A (2) (c), the offence of TF is committed irrespective of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist or terrorist organisation is located or the terrorist act occurred or will occur.
522. This Recommendation is rated C.

#### ***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

523. At the time of the 3rd round mutual evaluation of Trinidad and Tobago there was no terrorism or terrorist financing legislation enacted, accordingly SR. III was rated 'NC'. The ATA was enacted in September 2005 and subsequently amended to address identified deficiencies, such as the criminalisation of the financing of terrorism and the designation and listing of entities. Based on the 10th FUR, SR. III is considered to be fully compliant. However, since additional elements have been added to R. 6 under the new Methodology, there are new issues that need to be analysed as follows: (i) whether a framework exists that permits the competent authority to designate persons or entities pursuant to UNSCR 1267/1989 and 1988 sanctions regimes; (ii) whether there are mechanisms for identifying targets for listing; requests from countries to list, or the ability to make a request to another country in connection with freezing mechanisms pursuant to UNSCR 1373 ; (iii) whether there is the ability to collect or solicit information with regard to the criteria for designation; (iv) whether the obligation to freeze or make available funds or other assets under the conditions noted in criterion 6.5(b) exists; (v) whether there is a proper framework for the de-listing and unfreezing of funds and other assets and (vi) whether there is access to funds that have been frozen pursuant to the UNSCRs.
524. *Criterion 6.1* – The Attorney General is the CA for dealing with matters pertaining to the operation of the ATA. However, the ATA does not contain any measures that allow the Attorney General to propose persons or entities to the 1267/1989 Committee to be designated. Section 22B(1) cited by the Authorities pertains to the Attorney General's ability to apply to a Judge to declare a designated or legal entity as a listed entity and to freeze the funds of the listed entity. This measure is in keeping with required responses by countries to UNSCR 1267 designations and to 1373 listings/designations and accordingly is not met. There are no mechanisms for identifying targets for designation based on the designation criteria that is set out in the relevant UNSCRs. The Authorities have cited ATA, Section 22B(9), but this measure does not address this issue, but rather deals with the Attorney General's power to review all Orders that are made pertaining to UNSCRs 1267 and 1373 designations. The issue of reasonable grounds or basis for making a proposal for designation does not arise since there is no mechanism in place for making such proposals. The measures noted in sub-criterion (d) and (e) are also not in place.

525. *Criterion 6.2* – As noted above the Attorney General is the CA for designations pursuant to UNSCR 1373. Pursuant to Section 22B(1)(b) of the ATA, the Attorney General can apply to a Judge to have an individual or legal entity declared a listed entity and freeze the funds of the listed entity. However, the criteria for listing in the cited section do not include all the UNSCR 1373 listing criteria (See. INR6, Section E. para. 13(c)). There are no measures for UNSCR 1373 listing based on requests from other countries. At para. 90 of the 2nd FUR it was noted that the provision for listing was only applicable to entities, however, Section 22AA specifies that the term designated entities means individuals or entities and their associates designated as terrorists entities by the Security Council of the United Nations. Moreover 22B(1)(b) specifies individuals or entities. There is no mechanism for identifying targets for 1373 designation or dealing with requests for designations by other countries and so the ATA has no measures requiring the Attorney General to make a determination as to whether or not a request is supported by reasonable grounds or a reasonable basis. Trinidad and Tobago uses an evidentiary standard of ‘reasonable ground’ when determining whether to propose an individual or entity for designation pursuant to 1373 and there is no requirement that a criminal matter must exist. There is however, no mechanisms that provide for Trinidad and Tobago to make a request to another country to give effect to its 1373 freezing mechanism.
526. *Criterion 6.3* – The Authorities have cited Section 24 of the ATA, which provides for a search warrant for the seizure and retention of any material other than items that are subject to legal privilege. This measure does not satisfy the requirement to collect or solicit information that meet the criteria for designation for UNSCRs 1267, 1988 or 1373. There is no specific measure to operate ex parte against a person or entity who has been identified for a possible proposal for designation although the Trinidad and Tobago Authorities have cited the Civil Proceedings Rules as being able to facilitate an ex parte request.
527. *Criterion 6.4* – The Authorities have cited the Civil Proceedings Rules 1988, Part 17 as making provisions for ex parte orders that can expedite requests.
528. *Criterion 6.5* – The process for having all natural and legal persons freeze without delay funds or assets of a designated person or entity is contained at Section 22AA of the ATA. This section makes the FIUTT responsible for circulating the list of designated entities and requiring financial institutions and listed businesses to provide information as to whether designated entities have funds in Trinidad and Tobago. The list is then provided to the Attorney General who where there is a designated entity can make an application for an order to freeze pursuant to Section 22B(1)(a). The obligation for the requirement to freeze funds or other assets under the conditions noted in sub-criterion (b) is not in place and the Authorities have indicated that this will be addressed in an amendment to the ATA. With regard to prohibiting nationals or other persons from making funds or other assets or economic resources etc. available to designated persons, the Authorities have cited the offences under Sections 4 and 22A of the ATA, which pertain to provision of services for the commission of terrorist acts and financing of terrorism, but not specifically for the use of designated persons or entities. There are measures for communicating designations through the process described above. Additionally, pursuant to Section 22B(5) of the ATA, once a freezing order has been made the Attorney General shall, within seven days have the Order published in the Gazette and two daily newspapers that are in general circulation in Trinidad and Tobago. For attempted transactions by a designated person or entity the financial institution or listed business is required to immediately file a SAR and not enter or continue business with the person or entity. The rights of bona fide third parties with regard to R. 6 are not specifically covered. The ATA provides for the rights of bona fide third parties at Sections 36(5) and 37(6) and (7) as it pertains to Destruction and Forfeiture Orders respectively.

529. *Criterion 6.6* – There are no measures to submit de-listing requests to the relevant UN Sanctions Committee (1267/1989 and 1988). Sections 22B(7), (9) and (10) of the ATA provide mechanisms to de-list and unfreeze funds or other assets of persons designated pursuant to 1373. However, the ATA does not contain all the designation criteria as noted above in criterion 6.2 and this remains a missing element for consideration of de-listing and unfreezing. Pursuant to Section 22B(6) of the ATA, persons or entities designated under 1373 can make an application to a Judge for a review of the Order to freeze the funds. The procedure that will be followed by the Judge is contained in Section 22B(7) of the ATA. With regard to UNSCR 1988, there are no apparent mechanisms to facilitate review by the 1988 Committee in accordance with any guidelines established by that Committee. There are no provisions in the ATA that require that designated persons and entities are informed of the availability of the UN Office of the Ombudsman pursuant to UNSCRs 1904, 1989 and 2083 to accept de-listing petitions. The current framework of the ATA does not provide any measures for the de-listing of ‘false positives’. There are no direct measures for communicating de-listings and unfreezing to financial institutions and listed businesses; it is done indirectly through publication in the Gazette and two daily newspapers in general circulation in Trinidad and Tobago (Section 22B(10) of the ATA).
530. *Criterion 6.7* – The Authorities have cited Section 34(3A) of the ATA, but this pertains to providing for living and legal expenses when a restraint order is made against terrorist property. Section 22B(4) is however relevant since it directly relates to provisions for living and legal expenses as the Court deems fit based on sub-section (3) Orders which relate to freezing under the UNSCRs. Since the Court has the discretion as to what expenses will be covered, it can be considered within the ambit of UNSCR 1452.

#### *Weighting and Conclusion*

531. There are several outstanding issues with R. 6 primarily due to the fact that the new standards enhanced the provisions required to meet compliance with the UNSCRs. Accordingly, there is no framework in the ATA to address mechanisms required under the majority of the criteria as noted above. The inability to address requests for freezing from other countries pursuant to UNSCR 1373 or to make such requests is significant. Additionally, the freezing mechanism only applies to funds and does not take into consideration other types of assets and as such limits the applicability of the entire framework for targeted financial sanctions for terrorism and TF.
532. There is currently no specific provision for proposing persons or entities to the 1267/1989 Committee to be designated nor are there any mechanisms for identifying targets for designation based on the requirements mandated in the UNSCRs.
533. The Attorney General is named in the ATA as the CA for designations pursuant to UNSCR 1373. Section 22AA provides for designation of entities including individuals or entities and their associates designated as terrorist entities by the Security Council of the United Nations. There are no provisions to facilitate UNSCR 1373 listing based on requests from other countries. In the absence of measures to facilitate such requests, there is therefore no possibility for the Attorney General to make a determination on the bona fides of such a request.
534. There is no specific measure to facilitate the collection or solicitation of information on persons who may be subject to designation pursuant to UNSCRs 1267, 1988 or 1373.
535. The rights of bona fide third party parties are not generally covered but are limited to destruction and forfeiture orders.

536. There are no measures to submit de-listing requests to the UN Sanctions Committees -1267/1989 and 1988.

537. This Recommendation is rated PC.

### ***Recommendation 7 – Targeted financial sanctions related to proliferation***

538. This Recommendation is entirely new, no previous ratings or country information to include.

539. *Criteria 7.1.–7.5* - Authorities indicated that the Ministry of National Security (MNS) is currently developing a Policy to guide the drafting of legislation which will allow for the implementation of financial provisions of United Nations Security Council Resolutions (UNSCRs) to counter the Proliferation of Weapons of Mass Destructions. Once completed, same will engage the attention of the NAMLC.

#### *Weighting and Conclusion*

540. Trinidad and Tobago has not implemented targeted financial sanctions as required by Recommendation 7, for combating the financing of the proliferation of weapons of mass destruction.

541. There has been no implementation of targeted financial sanctions related to proliferation of WMD and there has not been an express provision in law relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

542. Notwithstanding that there is no express provision on proliferation, the ATA provides in section 22AB that once a financial institution or listed business suspects that a designated person or entity has funds in Trinidad and Tobago, that there is an obligation to immediately notify the FIUTT of the suspicion and pursuant to that suspicion the FIUTT shall be responsible for providing the Attorney General with the necessary information so that he or she might apply ex parte to the a judge of the High Court to have the funds frozen (section 22B(1),(2)and(3). Section 22AA (1) defines “designated entities” as meaning “individuals or entities and their associates designated as terrorist entities” by the UN’s Security Council. There seems to be a need however to make a more direct connection between sections 22A, 22AA and sections 20, 21 and 22 which speak to nuclear, chemical and biological offences. It is not absolutely certain that these provisions are necessarily referring to the earlier provisions relating to proliferation of weapons of mass destruction. In addition to this uncertainty the issues earlier identified under Recommendation 6 which suffered from a lack of specific provisions are also applicable to subparagraphs (b) to (f) of this criterion.

543. This Recommendation is rated NC.

### ***Recommendation 8 – Non-profit organisations***

544. This Recommendation which was formerly SR. VIII was rated ‘NC’ in the previous mutual evaluation. The Assessors found that there were no AML/CFT measures in place to deal with non-profit organisations (NPOs) (See. 3rd MER, paras. 531-534). To date, there are still no measures in place to address AML/CFT as it pertains to NPOs. The Authorities have noted that the

AML/CFT IMC has directed a sub-Committee of NAMLC to formulate a policy on this Recommendation.

*Weighting and Conclusion*

545. Recommendation 8 remains fully outstanding, since the Authorities are still in the process of developing a policy to address the issues raised by the Recommendation.
546. There are no AML/CFT measures governing NPOs. This is an issue which remains outstanding from the Third Round of Mutual Evaluations.
547. This Recommendation is rated NC.

## **5. PREVENTIVE MEASURES**

### ***Recommendation 9 – Financial institution secrecy laws***

548. This Recommendation formerly R. 4 was rated ‘PC’ in the 3rd MER since there were no measures allowing CAs to share information locally and internationally or for FIs to share information as necessary for former R. 7, 9 and SR. VII ( R. 13, 16 and 17). During the follow-up process, the deficiency with regard to CAs was addressed by amendments to the FIUA, IA and the SA. The last deficiency is outstanding.
549. *Criterion 9.1* - As indicated in paragraphs 313 and 316 of the MER, the CBTT has the power to access information of both banking and insurance entities under its supervision. Section 7 (2) of the SA provides for the TTSEC to access information from registrants under the SA and section 8(3) of the FIUA provides similar power to the FIUTT with regard to FIs and LBs. Section 8 (2) of the FIA, section 6A of the IA and sections 14 and 19 of the SA permit the CBTT and the TTSEC respectively to share information for supervisory/regulatory purposes including AML/CFT on the FIs they supervise with local and foreign regulatory agencies and bodies. Section 8 (3)(e)(g) of the FIUA and regulation 21 of the FIUR permits sharing of information by the FIUTT with foreign FIUs and local authorities. The authorities have advised that there are no secrecy laws prohibiting the implementation of FATF Recommendations.

*Weighting and Conclusion*

550. This Recommendation is rated C.

### ***Customer due diligence and record-keeping***

### ***Recommendation 10 – Customer due diligence***

551. This Recommendation formerly R. 5 was rated ‘NC’ in the 3rd MER since none of the CDD requirements were included in legislation, regulations or other enforceable means and existing requirements were only applicable to FIs supervised by the CBTT. During the follow-up process, a substantial number of the deficiencies including a significant number of the criteria for former R.5 was implemented through enactment of the FOR, revision of the CBTT Guideline on AML/CFT and issuance of the TTSEC Guidelines on AML/CFT. The remaining deficiencies include the provision for the application of reduced or simplified CDD measures not fully

complying with criterion E.C. 5.9 of former R. 5 and no prohibition against simplified CDD measures whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios. The main changes to this Recommendation have been clarification in the requirement to verify beneficial ownership and specific measures for beneficiaries of life insurance policies.

552. *Criterion 10.1* – The requirements of the criterion is met by regulation 19 (1) of the FOR as stated in paragraph 13 of the 2nd FUR.
553. *Criterion 10.2* – The requirements of the criterion is met by regulations 11 and 18(1) of the FOR as indicated in paragraphs 14 to 16 of the 2nd FUR.
554. *Criterion 10.3* – The requirement of the criterion is met by regulation 11(3) which encompasses provisions in regulations 15, 16 and 17 of the FOR as set out in paragraph 17 of the 2nd FUR.
555. *Criterion 10.4* – The requirement of the criterion with regard to legal persons or legal arrangements is met by regulation 12(2) of the FOR as set out in para. 21 of the 2nd FUR. Regulation 13 as amended by the FOAR 2014 extends the requirement to all customers.
556. *Criterion 10.5* – The criterion is met by regulation 12(1) of the FOR which requires FIs and LBs to identify and verify the identity of the beneficial owner of any accounts or potential accounts using original identification documents, data or other information.
557. *Criterion 10.6* – Regulation 15 (1) (h) of the FOR requires FIs and LBs to obtain relevant documentation on the purpose and intended nature of the proposed relationship or transaction.
558. *Criterion 10.7* – Most of the requirements of the criterion are met by regulation 12 (3) of the FOR as indicated in paragraph 25 of the 2nd FUR. The outstanding requirement for undertaking reviews of existing records particularly for higher risk categories of customers was included in regulation 11 (1G) as amended by the FOAR 2014..
559. *Criterion 10.8* –Sub-regulation 12 (2) (c) of the FOR as amended by the FOAR 2014 requires FIs and LBs to understand the nature of the business and the ownership and control structures of customers that are legal persons and legal arrangements.
560. *Criterion 10.9* – Regulations 15, 16, and 17 of the FOR details the information necessary for FIs and LBs to identify and verify the identity of customers that are legal persons or legal arrangements in accordance with all requirements of the criterion.
561. *Criterion 10.10* - Regulation 12 (1) of the FOR requires FIs and LBs to identify and verify the identity of the beneficial owner of any accounts or potential accounts. Beneficial owner is defined in the FOR as the person who ultimately owns or controls an account, or who exercises ultimate control over a legal person or legal arrangement. Additionally, sub-regulation 12 (2) (d) of the FOR requires FIs or LBs to determine the natural persons who have effective control over a legal person. These provisions comply with criterion 10.10 (a). While measures allowing for the alternatives outlined in criteria 10.10 (b) and 10.10 (c) are not in place, it is noted that regulation 16 (1) of the FOR requires the verification of the identity of the directors and other officers of a company and partners of a partnership and beneficial owner.

562. *Criterion 10.11* - Regulation 17 of the FOR requires FIs and LBs with regard to trusts or other legal arrangements to verify the identity of the trustee which is defined to include the settlor, protector, person providing the trust funds, controller or any person holding power to appoint or remove the trustee. Regulation 17(2) requires verification of the identity of the beneficiary of a trust or other legal arrangement before pay-out or the exercise of vested rights.
563. *Criterion 10.12* – The requirements of this criterion are addressed by a regulations 27(2) and (3) of the FOR as amended by the FOAR 2014.
564. *Criterion 10.13* - The requirements of this criterion is addressed by regulations 27(2), (4) and (5) of the FOR.
565. *Criterion 10.14* – Regulations 11, 12, 15 – 17 of the FOR require the identification and verification of the customer and beneficial owner before a business relationship or occasional transaction as indicated in paragraph 12 of the 10th FUR. The requirement is applicable except as stated in regulation 24(2) of the FOR where insurance companies for sound business reasons have to enter into an insurance contract before verification of the identity of the customer. In these circumstances as stipulated in regulation 24(2) verification procedures are to be completed as soon as reasonably practicable, anti-money laundering risks are effectively managed and any funds payable are not passed to third parties before identification procedures are completed . The above measures are also covered in relation to terrorist financing risk under the FOFTR.
566. *Criterion 10.15* – Regulations 11, 12, 15 – 17 of the FOR require the identification and verification of the customer and beneficial owner before a business relationship or occasional transaction as indicated in paragraph 12 of the 10th FUR. As such criterion 10.15 is not applicable.
567. *Criterion 10.16* – As noted in paragraph 33 of the 2nd FUR regulation 37 of the FOR requires all FIs and LBs to conduct CDD on all existing accounts in a time-frame to be agreed. The requirement does not specify implementation on the basis of materiality and risk or the timing of CDD of individual accounts. No information on whether the above exercise was completed was submitted during the follow-up process. Regulation 37 as amended by the FOAR 2014 specified due diligence to existing accounts on the basis of materiality and risk and taking into account whether and when CDD had been taken and the adequacy of data obtained.
568. *Criterion 10.17* – Regulation 14(2) of the FOR as amended by the FOAR 2014 requires FIs and LBs to performed enhanced due diligence where ML risks are higher. Terrorist financing risks as required by the criterion are covered under the FOFTR. As indicated in paragraph 13 of the 10th FUR, the CBTT and the TTSEC have included the requirement of the criterion in their Guidelines on AML/CFT which are only enforceable on the banking, insurance and securities sectors.
569. *Criterion 10.18* - Regulations 14(3) and 14(4) of the FOR as amended by the FOAR 2014 allows for FIs and LBs to carry out simplified CDD measures where lower risks have been identified either through a NRA or in the absence of a NRA an adequate analysis by the FI or LB. Additionally, simplified measures are prohibited whenever there is a suspicion of ML/TF or specific high risk scenarios apply.

570. *Criterion 10.19* - Regulations 11 (5) of the FOR stipulates that a business relationship or occasional transaction should be terminated where satisfactory evidence of identity has not been obtained and the matter reported to the Compliance Officer to determine whether an STR/SAR will be filed. Regulation 18 of the FOR has similar requirements when correct CDD information concerning discrepancies in previously acquired information cannot be obtained in situations where there are doubts about the veracity and adequacy of previously obtained CDD information.

571. *Criterion 10.20* - Regulation 11(8) of the FOR as amended by the FOAR 2014 allows for FIs and LBs where they form a suspicion of ML or TF to not pursue the CDD process where they believe doing so will tip-off the customer and consider filing a STR. It is noted that the FI and the LB “may file” a STR as stipulated in the regulation rather than should as required by the criterion.

#### *Weighting and Conclusion*

572. As indicated above, 16 criteria are rated compliant, 1 is partially compliant and 3 are largely compliant. It should be noted that the significant criteria concerning when CDD is required and specific CDD measures for all customers (10.2 – 10.7) are met. The other significant criteria deal with specific CDD measures for legal persons and legal arrangements (10.8 – 10.10) and risk-based approach (10.17 – 10.18). Only criterion 10.20 has a minor deficiency.

573. This Recommendation is rated LC.

#### ***Recommendation 11 – Record-keeping***

574. This Recommendation formerly R. 10 was rated NC in the 3rd MER due to the requirements not being mandatory and applicable only to those FIs supervised by CBTT. During the follow-up process, a substantial number of the deficiencies covering all the essential criteria of former R. 10 was implemented through enactment of the FOR. The outstanding deficiency was the need to include account files and business correspondence in records required to be kept. The only change in this Recommendation is an additional requirement for records of any analysis undertaken of an account.

575. *Criterion 11.1* – As indicated in paragraph 35 of the 2nd FUR, the requirements of this criterion are set out in regulations 31 (1) (a) and 32 (2) of the FOR.

576. *Criterion 11.2* – Paragraph 36 of the 2nd FUR indicates that regulation 32 (1) of the FOR requires the types of records to be maintained to include transaction details and identification data. Regulation 31(1) as amended by the FOAR 2014 requires FIs and LBs to maintain records of account files, business correspondence or the results of any analysis undertaken related to the account or a transaction.

577. *Criterion 11.3* – Regulations 31 (3) (a) and 32 (1) (a) of the FOR requires that transaction records contain sufficient detail to permit reconstruction of individual transactions and contain details including the amount and type of currency to provide evidence necessary for the prosecution of criminal activity.

578. *Criterion 11.4* – Regulation 31 (3) (b) of the FOR requires that transaction records should be made available to the Supervisory Authority upon its request. Based on the content of 31(1)(b) transactions records includes CDD information and record keeping. The criterion requires that all CDD information and transaction records are available swiftly to domestic CAs upon appropriate authority which is contained in Regulation’s 31 of the FOR.

*Weighting and Conclusion*

579. The Recommendation is rated C.

***Additional Measures for specific customers and activities***

***Recommendation 12 – Politically exposed persons***

580. Trinidad and Tobago was rated ‘NC’ for R.12, (then R.6), in its 3rd MER. The main deficiency was that none of the legislative requirements were included in law, regulation or other enforceable means and the existing requirements were only applicable to FIs supervised by the CBTT. During the follow-up process Trinidad and Tobago enacted the FOR which implemented all the legislative measures except the requirement for senior management approval for the continuation of a business relationship when a customer or BO becomes a PEP subsequent to the establishment of the business relationship.

581. *Criterion 12.1* - (a) This is met through Reg. 20(2) of the FOR which mandates that FIs and LBs put appropriate measures in place to determine whether a customer, potential customer or beneficial owner is a PEP. (b) This is addressed in Reg. 20(4) of the FOR as amended by the FOAR 2014 requiring senior management approval before establishing a business relationship with a PEP or continuing a business relationship with existing customers that become PEPs. Para. 12.3.2 of the CBG, which is applicable to FIs supervised by the CBTT, have fully covered the requirement. (c) This is dealt with in Reg.20 (5) of the FOR as amended by the FOAR 2014 requiring determination of the source of wealth and the source of funds of customers and BOs identified as PEPs. Para. 12.3.2 (vii) of the CBG which are applicable to FIs supervised by the CBTT has fully covered the measures. (d) Fully covered by Reg. 20(5) of the FOR which mandates that FI and LBs conduct ongoing enhanced monitoring of the relationship with the PEP.

582. *Criterion 12.2* - (a) Reg. 20(1) of the FOR as amended by the FOAR 2014 defines PEPs to include domestic PEPs and persons entrusted with prominent functions by an international organisation. Reg. 20(2) mandates that FIs and LBs put appropriate measures in place to determine whether a customer, potential customer or beneficial owner is a PEP. Reg. 20(3A) of the FOR as amended by the FOAR 2014 requires enhanced due diligence to be applied when higher risks are identified with domestic PEPs and international organisation PEPs.

583. *Criterion 12.3* - The amendment in the definition of PEPs in reg. 20(1) to include family members and close associates of all types of PEPs results in the requirements applicable to PEPs being extended to family members and close associates.

584. *Criterion 12.4* - Reg. 27(6) and 27(7) of the FOR as amended by the FOAR 2014 fully complies with all the requirements of the criterion.

*Weighting and Conclusion*

585. This Recommendation is rated C.

### ***Recommendation 13 – Correspondent banking***

586. The Recommendation formerly R. 7 was rated NC in the 3rd FUR since none of the requirements were included in legislation, regulations or other enforceable means and existing requirements were only applicable to FIs supervised by the CBTT. All deficiencies which included the essential criteria of the former R. 7 were implemented by provisions of the FOR except for the requirement that a respondent institution be able to provide relevant identification data upon request to the correspondent institution for “payable-through accounts”. This Recommendation incorporates requirements on financial institutions in relation to shell banks (former R. 18)
587. *Criterion 13.1* – The requirements of the criterion 13.1 are fully met in regulations 21 (2) (a) and (b), 21(3) (a) and (b) and 21 (4) of the FOR.
588. *Criterion 13.2* – The requirements of criterion 13.2 are fully met in regulations 21(3) (c) and (d) of the FOR.
589. *Criterion 13.3* – The requirements of criterion 13.3 are fully met in regulations 22(1) and (2) of the FOR.

#### *Weighting and Conclusion*

590. Consequently the Recommendation is rated C.

### ***Recommendation 14 – Money or value transfer services***

591. This Recommendation formerly SR. VI was rated NC in the 3rd MER since none of the requirements were included in legislation, regulations or other enforceable means. Some of the deficiencies which included all the essential criteria of the former SR. VI were addressed by amendment to the POCA to include MVTS providers in the AML/CFT regime and the CBTT implemented an AML/CFT supervision regime for foreign currency dealers. The remaining deficiencies include MVTS providers not being required to maintain a current list of agents and the authorities not implementing measures set out in the Best Practice Paper for SR VI. The new element in this Recommendation is a requirement to actively identify and sanction unlicensed or unregistered MVTS providers.
592. *Criterion 14.1* – MVTS providers, NRFIs are required to be registered with the FIUTT under section 18B of the FIUA and Regulation 28(1) of the FIUR. Section 5 of the Exchange Control Act empowers the CBTT to authorize a foreign currency dealer. This authorization is renewed annually.
593. *Criterion 14.2* – In accordance with Regulation 28 (2) of the FIUR, MVTS providers that fail to register with the FIUTT are liable to a fine of TT\$50,000 and a further TT\$5,000 for each day the offence continues. With regard to foreign currency dealers contravening any provision of the Exchange Control Act clause 3 of Part II of the Fourth Schedule to the Act provides for a maximum criminal fine of TT\$5,000 and imprisonment for two years on summary conviction and TT10,000 and imprisonment for five years on conviction on indictment for a person. While the imposition of a criminal fine on a corporate entity is inferred in the above provision, no detail as to the amount is provided. The above penalties with regard to the MVTS do not appear dissuasive particularly since

the MVTS providers in Trinidad and Tobago are well known international entities. Additionally the sanctions for the foreign exchange dealers are neither dissuasive nor proportionate in comparison with those of the MVTS providers.

594. *Criterion 14.3* - Section 18E and 18F of the FIUA requires the FIUTT to effectively monitor MVTS providers as listed businesses to secure compliance with AML/CFT enforceable requirements. The CBTT supervises foreign currency dealers for AML/CFT.
595. *Criterion 14.4* – Regulation 31A of the FOR as inserted by the FOAR 2014 requires the MVTS provider to maintain a list of all its agents and subagents accessible by CAs.
596. *Criterion 14.5* – Regulation 7(8) of the FOR as inserted by the FOAR 2014 mandates MVTS providers to include their agents in their AML/CFT programmes and monitor them for compliance with these programmes.

*Weighting and Conclusion*

597. This Recommendation is rated C.

***Recommendation 15 – New technologies***

598. This Recommendation formerly R. 8 was rated as ‘NC’ in the 3rd MER. The main issue was that none of the requirements were included in legislation, regulations or other enforceable means and existing requirements were only applicable to FIs supervised by the CBTT. As indicated in the 2nd FUR of May 2010, the outstanding deficiencies are (i) the requirement for financial institutions to be required to have measures for managing risks including specific and effective CDD procedures that apply to non-face to face customers. (ii) the requirement of having policies and procedures to prevent the misuse of technology for ML is only applicable to FIs. The main changes to this Recommendation cover the risks associated with all new or developing technologies and new products and business practices. It also incorporates a clarification that FIs should identify and assess the risks; and take measures to mitigate those risks. There is a new obligation for countries to identify and assess the risks.
599. *Criterion 15.1* - Regulation 23(1) of the FOR as amended by the FOAR 2014 requires FIs and LBs to identify and assess the ML risks arising from the development of new products and new business practices including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. The measure also includes TF risks.
600. *Criterion 15.2* – Regulation 23(2) of the FOR as amended by the FOAR 2014 requires FIs and LBs to undertake risks assessments prior to the launch of the new products, practices and technologies and take appropriate measures to manage and mitigate the risks.

*Weighting and Conclusion*

601. This Recommendation is rated C.

***Recommendation 16 – Wire transfers***

602. This Recommendation formerly SR. VII was rated NC since the requirements in place were not mandatory and were only applicable to the FIs supervised by the CBTT. The deficiencies included all essential criteria of the former SR.VII and were addressed with the enactment of the FOR except for the requirement for ordering FIs to verify the identity of the originators of wire transfers of EUR/US\$1,000 or more in accordance with former R. 5 and measures to effectively monitor the compliance of FIs with rules and regulation implementing former SR. VII. The Recommendations includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.
603. *Criterion 16.1* – Regulation 34 of the FOR requires all cross-border wire transfers to be accompanied by the name and address of the originator, national identification number or passport number where an address is not available, and number of the account or in its absence a unique reference number. Regulation 34(2B) of the FOR as amended by the FOAR 2014 requires a FI to verify the accuracy of this information. Beneficiary information requirements are included in regulation 34(2) subsections (d) and (e) of the FOR and include the name of the beneficiary, number of the beneficiary account to be used to process the transaction or a unique transaction reference number which allows for the tracing of the transaction.
604. *Criterion 16.2* – Regulation 33(4) of the FOR as amended by the FOAR included all the requirements of the criterion concerning the transmission of a batch file from a single originator cross-border to beneficiaries.
605. *Criterion 16.3* – As already indicated all wire transfers are subject to the requirements of regulation 34 of the FOR which would include those under USD/EUR 1,000. As such the analysis applicable to criterion 16.1 is also relevant to criterion 16.3.
606. *Criterion 16.4* - As already indicated FIs are required by regulation 34(2B) of the FOR as amended by the FOAR to verify the accuracy of the originator information for all wire transfers.
607. *Criterion 16.5* – All domestic wire transfers are required by regulation 33 (1) of the FOR to be accompanied by originator information specified in regulation 34 of the FOR in accordance with the criterion.
608. *Criterion 16.6* – As per regulations 33(1) and 34(1) to (3) of the FOR all domestic wire transfers are to be accompanied by originator and beneficiary information which must be kept in a format so it can be produced to the FIUTT. As already noted, details of beneficiary information beyond identification data has not be specified as required by criterion 16.1. However identification data by its nature should allow for the wire transfer to be traced back to the beneficiary.
609. *Criterion 16.7* – Regulations 31 and 32 of the FOR requires that records of all domestic and international transactions which includes wire transfers be maintained in accordance with Recommendation 11. These records should include originator information and identification data on the recipient as stipulated in regulations 33 and 34 of the FOR. Additionally, details of beneficiary information as outlined in regulation 34(2) subsections (d) and (e) of the FOR would also be included in these records.
610. *Criterion 16.8* – Regulation 33(3) of the FOR stipulates that a wire transfer cannot be effected if the originator does not supply identification data requested by the FI one of the requirements of criterion 16.1. Criterion 16.8 stipulates that the ordering financial institution should not execute a

wire transfer if it does not comply with any of the requirements of criteria 16.1 to 16.7.

611. *Criterion 16.9* - Regulation 33(2) of the FOR requires intermediary FI participating in wire transfers to relay all originator and beneficiary information to other relevant intermediary institutions.
612. *Criterion 16.10* – Regulation 31 of the FOR requires all financial institutions (FIs) who engage in domestic or cross-border wire transfers to retain records for a period of 6 years. This covers instances where the FI is an ordering, intermediary or beneficiary FI.
613. *Criterion 16.11* – Regulation 33(6)(a) of the FOR as amended by the FOAR 2014 requires intermediary FIs to take reasonable measures to identify domestic and cross border transfer that lack the required originator or beneficiary information.
614. *Criterion 16.12* – Regulation 33(6)(b) of the FOR as amended by the FOAR 2014 requires intermediary FIs to have provisions to have risk-based policies and procedures to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and determine follow-up action.
615. *Criterion 16.13* – Regulation 34(6)(a) of the FOR as amended by the FOAR 2014 requires beneficiary FIs to take reasonable measures to identify domestic and cross-border wire transfers lacking the required originator or beneficiary information.
616. *Criterion 16.14* – Regulation 34(5) of the FOR as inserted by the FOAR 2014 requires the beneficiary FI to verify the identity of the recipient of a domestic or cross-border wire transfer over six thousand TT dollars (US\$940.) if the identity has not been previously verified and to maintain a record of this information.
617. *Criterion 16.15* – Regulation 33(6)(b) of the FOR as amended by the FOAR 2014 requires beneficiary FIs to have provisions to have risk-based policies and procedures to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and determine follow-up action.
618. *Criterion 16.16* – MVTS providers are categorized as FIs in section 2 of POCA and the First Schedule of POCA and are required to comply with all relevant AML/CFT obligations. Consequently, the analysis with regard to compliance with the requirements of criteria 16.1 to 16.15 above is applicable.
619. *Criterion 16.17* – The requirements of this criterion will be addressed in a proposed amendment to the FOR.
620. *Criterion 16.18* – Section 22AB(d) of the ATA requires FIs and LBs on receipt of a list of UN designated entities and the consolidated list of court orders designating entities whose funds have to be frozen, not to enter into a transaction, or continue a business relationship with the listed entities and to submit a STR to the FIUTT. While the provision deals with prohibiting the conduct of transactions with designated persons there is no requirement to take freezing actions as set out in the criterion.

#### *Weighting and Conclusion*

621. The outstanding deficiencies include requirements for MVTS providers that control both the ordering and beneficiary side of a wire transfer and record requirements for intermediary FIs.

622. This Recommendation is rated LC.

### ***Reliance, Controls and Financial Groups***

#### ***Recommendation 17 – Reliance on third parties***

623. This Recommendation formerly R.9 was rated NC in the 3rd MER due to the requirements in place not being mandatory and only applicable to the FIs supervised by the CBTT. All the deficiencies of the Recommendation which included all essential criteria have remained outstanding. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.

624. *Criterion 17.1* – Regulations 11(1B), 11(1C) and 11(1D) of the FOR as inserted by the FOAR includes most of the requirements of criteria 17.1(a), 17.1(b) and 17.1(c). It is noted that regulation 11(1D) of the FOR includes requirements of 17.1(c) for a FI or LB to satisfy itself that the third party FI or LB is regulated or supervised or monitored and has measures in place for compliance with CDD and record-keeping requirements.

625. *Criterion 17.2* - Regulation 11(1E) of the FOR as inserted by the FOAR 2014 requires a FI or LB to consider whether a third party FI or LB is regulated or supervised or monitored and has measures in place for compliance with customer due diligence and record-keeping requirements and take into consideration the level of risk of the countries in which the third party FI or LB is located. The jurisdiction implements the requirement by placing the responsibility for determining countries in which third parties can be based on the FIs and LBs rather than on the country. Assessors conclude that this satisfies the requirement of 17.2.

626. *Criterion 17.3* – Regulation 11(1F) of the FOR as inserted by the FOAR 2014 states that where a FI or LB relies on a group third party FI or LB that the relevant Supervisory Authority may determine that the requirements of sub-regulations (1B) to (1D) (i.e. criterion 17.1) are satisfied if the group applies CDD and record-keeping requirements and programmes against money laundering which are supervised at a group level by the relevant Supervisory Authority and that higher country risk as identified on a FATF list is adequately mitigated by anti-money laundering policies of the group. Regulations 11(1F) when read together with Regulations 7 fully covers the criterion.

#### ***Weighting and Conclusion***

627. This Recommendation is rated C.

#### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

628. Recommendation 18 is a combination of former R. 15 and 22. Former R. 15 was rated PC in the 3rd FUR due to internal controls not extended to FT no designation of a compliance officer at management level and lack of certain aspects of a compliance program. Former R. 22 was rated NC due to no legal requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF standards. The deficiencies identified in former R. 15 were dealt with by the enactment of the FOR. The only deficiency outstanding was the

omission of new developments in methods and trends in ML and TF from the training obligation. The deficiencies of former R. 22 were addressed in the CBTT Guideline on AML/CFT applicable to those FIs supervised by the CBTT. With regard to other FIs, the deficiencies remain outstanding except for the requirement for branches of FIs to apply the higher AML/CFT standard where minimum host and home country AML/CFT standards differ. No new requirements have been included in R. 18.

629. *Criterion 18.1* – Reg. 7 of the FOR requires compliance programs to be appropriate for their respective FIs and LBs and requires a risk-based approach to monitoring financial activities of FIs LBs for the implementation of programmes against ML/TF risks. Regulation 3 (1) of the FOR requires the designation of a manager or official at managerial level as the Compliance Officer of a FI or LB. Regulation 5 (1) of the FOR requires FIs and LBs to use the best staff recruitment practices as a guide for hiring staff of the highest integrity and competence. Regulation 7 (e) requires that an effective risk-based audit function to evaluate the compliance program be part of the compliance program.
630. Regulation 6(1) of the FOR as amended by the FOAR 2014 stipulates ongoing employee training.
631. *Criterion 18.2* - The requirements of criterion 18.2 have been included in regulations 7(3) and 7(4) of the FOR as inserted by the FOAR 2014.
632. *Criterion 18.3* – Regulations 7(5), 7(6) and 7(7) of the FOR as inserted by the FOAR 2014 impose requirements on FIs in accordance with criterion 18.3. It is noted that these requirements are not extended to cover LBs.

#### *Weighting and Conclusion*

633. This recommendation is rated C.

#### ***Recommendation 19 – Higher-risk countries***

634. This Recommendation, formerly R 21 was rated ‘PC’ in the 3rd MER. The rating was based on the fact that FIs were not required to give special attention to business relationships and transactions with persons (including legal persons and other institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. Deficiencies identified were addressed in POCA, the FIUA and with the publication of the list of countries identified by the FATF as non-compliant or not sufficiently compliant.
635. *Criterion 19.1* - Regulation 7 of the FOR stipulates that the compliance programme should include procedures and control for the adoption of a RBA for monitoring financial activities which would include high risk categories and a list of countries published by the FIUTT which are non-compliant or insufficiently compliant with the FATF Recommendations. CBTT and TTSEC have issued guidance in relation to high risk and ECDD. Paragraph 5.2 of the FIUTT’s CDD Guide require entities supervised by the FIUTT to apply enhanced due diligence to all clients from jurisdictions identified by the FATF as non-compliant or insufficiently compliant with the FATF Recommendations.

636. *Criterion 19.2* - (a) The FIUTT under Section 17(2) of the FIUA, can by order set out countermeasures that may be utilised by a FI or LB against countries identified by the FATF as non-compliant or insufficiently compliant with the Recommendations. (b) However, there is no reference that the country would be able to independently apply countermeasures.
637. *Criterion 19.3* - Section 17(1) of the FIUA, requires the FIUTT to publish as frequently as necessary in the Gazette and at least two daily newspapers a list of countries identified by the FATF as non-compliant or insufficiently compliant with the Recommendations, while this should advise FIs of concerns about weaknesses in the AML/CFT systems of the listed countries it does not include countries not identified by the FATF.

*Weighting and Conclusion*

638. Aspects of criteria have been addressed. There are no measures for the country to independently apply countermeasures and FIs are only advised of concerns about the weaknesses of countries identified by the FATF.
639. This Recommendation is rated PC.

***Reporting of Suspicious Transactions***

***Recommendation 20 – Reporting of suspicious transaction***

640. This Recommendation (formerly R.13 and SR. IV) was rated in the 3rd MER as ‘LC’. This rating was given due to Trinidad and Tobago deciding not issue large denomination banknotes or encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. As indicated in the 10th FUR, the outstanding requirement is the exclusion of one-off transactions from the suspicious transaction reporting requirement. In terms of the review of the Standard by the FATF, this Recommendation is unchanged.
641. *Criterion 20.1* - As indicated in para. 37 of the 2nd FUR, FIs and LBs are required in section 55A(1) of POCA, to make a STR/SAR to the FIUTT on knowing or having reasonable grounds to suspect that funds used for a transaction are the proceeds of a specified offence, which is defined in POCA as an indictable offence. The criminalization of the TF makes it an indictable offence and therefore predicate offence for ML. Additionally, the reporting of suspicious transactions with regard to TF to the FIUTT is contained at Section 22C(3) of the ATA.
642. *Criterion 20.2* - Section 55A(1) of POCA covers this criterion. This criterion is met.

*Weighting and Conclusion*

643. This Recommendation is rated C.

***Recommendation 21 – Tipping-off and confidentiality***

644. Trinidad and Tobago was rated 'PC' for R.21, (then R.14), in its 3rd MER. The main deficiency at the time was that there was no prohibition of disclosure of the reporting of a STR to the designated FIU.
645. *Criterion 21.1* – Section 55B of the POCA provides protection to relevant reporting officials, from criminal, civil and administrative liability where they report suspicious activities (SARs) or suspicious transactions (STRs) to the FIUTT 'in good faith' irrespective of the result of the communication. The POCA makes no mention of this protection applying where the underlying criminal offence is unknown or actually occurred.
646. *Criterion 21.2* – As noted in para. 119 of the 2nd FUR, the offence of tipping-off is applicable to directors and staff of a FI or LB. Tipping off is only applicable when a STR/SAR has been filed with the FIUTT in accordance to Sec 55A(2) of the POCA and Sec 22C (4) of the ATA. This measure does not address STRs/SARs that are being filed.

*Weighting and conclusions*

647. The requirements of the Recommendation are not fully met. There is a requirement for Financial Institutions and their directors, officers and employees to be protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by legislative, regulatory or administrative provision, if they report on their suspicions in good faith to the FIUTT but there is no mention that this protection applies where the underlying criminal offence is unknown or actually occurred. Additionally, tipping-off is only applicable when a STR/SAR has been filed and not while its being filed.
648. This Recommendation is rated LC.

***Designated non-financial businesses and professions***

***Recommendation 22 – DNFBPs: Customer due diligence***

649. The First Schedule of the POCA covers all DNFBPs as defined by the FATF. Trinidad and Tobago refers to DNFBPs as listed businesses and the terms will be used interchangeably herein. In addition to the DNFBPs defined by the FATF, Trinidad and Tobago has also included art dealers, motor vehicle sales, money or value transfer services, gaming house, pool betting and National Lotteries online betting games. Private Members' Clubs cover the activities associated with casinos. In the previous evaluation R. 12 was rated 'NC'. In the 10th FUR at paras. 41-44, two main outstanding deficiencies were identified for R. 12 that would affect the analysis of issues in R. 22. The outstanding deficiencies relate to (a) the lack of coverage of the activities of creating, operating or management of legal persons or arrangements by lawyers, accountants or other independent legal professionals; (b) the activities of trust and service company providers acting as ( or arranging for another person to act as) a trustee for an express trust has not been included and (c) the applicable transaction threshold for gaming houses, pool betting, national lotteries online betting games and private members clubs is TT\$90,000 (US\$14, 285) for one-off transactions.
650. Amendments to the First Schedule of POCA listing the various activities of LBs as enacted by the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act 15 of 2014 address deficiencies (a) and (b) as described above. With regard to deficiency (c) reg. 11(1A) of the FOR as amended by the FOAR 2014 requires private members' clubs to apply the obligations of the FOR to transactions of TT\$18,000 (US\$2,860.) and over, which is within the transaction level of US\$3,000. The issue that arises as a result of new

requirements is as follows: (i) whether there are measures to keep up-to-date and relevant information through reviews of existing records for LBs. Pursuant to section 3 of the Financial Obligations (Financing of Terrorism) Regulations, 2011 (FOFTR). LBs are now under supervisory control with regard to TF matters. Deficiencies identified in R. 10, 11, 12, 15 and 17 for FIs will also be applicable here for LBs. More specific details will be found at those referenced Recommendations.

651. *Criterion 22.1(R.10)* –CDD requirements in recommendation 10 applies equally to LBs. Consequently, the deficiency identified in criterion 10.20 applies.
652. *Criterion 22.2(R.11)* – All criteria as set out in the FOR are applicable to LBs, the FOR requires that transaction records should be made available to the Supervisory Authority upon its request while the criterion requires that all CDD information and transaction records are available swiftly to domestic CAs upon appropriate authority.
653. *Criterion 22.3(R.12)* – The measures that pertain to the requirements for this criterion are contained in the FOR and the FIU Guidance Notes on PEPs.
654. *Criterion 22.4(R.15)* – The Authorities cited the FOR as providing the requirements to meet this criterion, which deals with new and emerging technologies.
655. *Criterion 22.5(R.17)* – Reg. 11 of the FOR as amended by the FOAR 2014 has provisions addressing criteria of Recommendation 17. With regard to reliance on third parties, the following deficiencies were noted for this criterion. With regard to criterion 17.2, the jurisdiction implements the requirements by placing the responsibility for determining countries in which third parties can be based on the FIs and LBs rather than on the country.

#### *Weighting and Conclusion*

656. There are minor deficiencies with regard to compliance with R. 10 for LBs /DNFBPs. (See. R. 10 for additional details). Minor deficiencies also exist for.
657. This Recommendation is rated LC.

#### ***Recommendation 23 – DNFBPs: Other measures***

658. This Recommendation was formerly R. 16 and was rated ‘NC’ in the 3rd MER. The main deficiency noted in the MER was the lack of supervision and regulation of DNFBPs for AML compliance. (See. Section 4.33 of the 3rd MER). There is only one outstanding issue pertaining to the former R. 13, which relates to the reliance of Section 55(3) STR reporting on the situations noted in Section 55(2), which limit the types of transactions that should be reported. This situation was presented in the 3rd MER at paras. 349-350, but was not raised as an issue by the Assessors. However, it was subsequently raised by the Secretariat. See. Discussion at para. 37-39 of the 2nd FUR. Additionally, FOR Reg. 12(4) also requires the reporting of suspicious transactions, but seems to have an issue with the timing of the suspicion in that it refers to monitored transactions by LB. There are no outstanding issues with regard to the former R.14.
659. *Criterion 23.1(R.20)* – The requirement to report suspicious transactions related to ML to the FIUTT is contained in the POCA at Section 55A and Reg. 12(4) of the FOR. The references to the FIU Guidance on Reporting Procedures are not relevant since this measure is required to be in law.

The reporting of suspicious transactions with regard to TF to the FIUTT is contained at Section 22C(3) of the ATA. Criterion 20.2, is met by Section 55(2) of the POCA.

660. *Criterion 23.2(R.18)* – The requirements for criterion R.18 are contained in the FOR. The noted deficiencies are as follows: Criterion 18.1(c), which has been largely met because the risk-based approach has been limited to monitoring financial activities rather than the implementation of programmes against ML/TF risks; most requirements of criterion 18.2 have been included in regulations 7(3) and 7(4) of the FOR as inserted by the FOAR 2014.; Criterion 18.3 is met. Regulations 7(5), 7(6) and 7(7) of the FOR as inserted by the FOAR 2014 impose requirements on FIs in accordance with criterion 18.3. .
661. *Criterion 23.3(R.19)* –The Authorities have cited FOR Reg. 7(c) and (h), which provide elements that must form part of an LBs compliance programme. It is therefore not a requirement to be implemented when dealing with higher risk countries. The FIU Guidelines, para. 5.2(vii), provides for EDD when dealing with high risk countries identified by the FATF. There are however no measures for EDD that are proportionate to the risks for business relationships and transactions. See. Details at R. 19.
662. *Criterion 23.4(R.21)* – With regard to tipping-off, directors, officers and employees of DNFBPs are protected from disclosure. The issue that arises is as follows: criterion 21.2 is not met. Section 55A(2) of the POCA and Section 22C(4) of the ATA make provisions for tipping-off, however both measures deal with tipping-off for transactions that have been made to the FIUTT or a police officer and not to transactions that are ‘being’ made.

#### *Weighting and Conclusion*

663. There are deficiencies with regard to internal controls for LBs. While there is a deficiency with regard to higher risk countries, the jurisdiction has the ability to impose countermeasures and advise LBs about concerns in other jurisdictions which are more important aspects of dealing with higher risk countries. The tipping-off deficiencies are significant because they create a gap that can be used to give persons suspected of ML/TF an advantage.
664. The deficiencies noted for FIs are applicable to LBs (DNFBPs). This Recommendation is rated LC.

## **6. SUPERVISION**

### ***Recommendation 26 – Regulation and supervision of financial institutions***

665. This Recommendation formerly R.23 was rated NC due to the securities sector, credit unions, money transfer companies and cash couriers not being subject to AML/CFT supervision and the TTSEC not applying the IOSCO Principles for the supervision of the securities sector with regard to AML/C FT.
666. *Criterion 26.1* – Regulation 2 of the FOR defines the CBTT as the supervisory authority for FIs under the FIA, the IA and the TTSEC as the supervisory authority for FIs under the SA. CBTT is also the supervisory authority for bureaux de charge, and the five Significantly Important Financial Institutions (SIFIs). The role of the supervisory authority as stipulated in regulation 40 of the FOR is to ensure compliance with the obligations of the FOR which sets out AML obligations. These obligations were extended to cover TF by regulation 3 of the FOFTR. Section 6 of the SA requires the TTSEC to ensure compliance with the POCA and any other written law in relation to the

prevention of ML and TF. Section 18F of the FIUA empowers the FIUTT to monitor and take necessary measures to secure compliance with AML/CFT obligations.

667. *Criterion 26.2* – Sections 16 and 17 of the FIA and section 11 of the IA requires that companies doing banking business or business of a financial nature or carrying on insurance business to be licensed or registered by the CBTT respectively. Section 5 of the Exchange Control Act provides for the CBTT to authorise a person to be an authorised dealer in foreign currency. Section 51(1) of the SA requires any person carrying on the activities of a broker-dealer, investment adviser or underwriter to be registered in accordance with the SA. Section 7 of the Co-operatives Societies Act (CSA) requires credit unions to be registered under the CSA. Regulation 28(1) of the FIUR requires LBs which include MVTs providers to register with the FIUTT. Regulation 22 of the FOR prohibits a FI having a correspondent relationship with a shell bank and mechanisms exists with the licensing regime of the CBTT that prohibit the establishment or operations of shell bank in Trinidad and Tobago.
668. *Criterion 26.3* – The Second Schedule of the FIA details comprehensive fit and proper criteria for the CBTT to approve directors, controlling and significant shareholders, acquirers and officers of FIs licensed under the FIA as per sections 20, 23, 25, 29, 33, and 71 – 75 of the FIA. With regard to insurance companies section 17 of the IA only provides for the CBTT to approve the managing director or controller of the company on the basis of fit and proper at the time of registration of the company under the IA. Section 54 of the SA requires substantial shareholders of registrants of the SA to be approved by the TTSEC on the basis of being fit and proper. A substantial shareholder is defined as any person who directly or indirectly or beneficially owns or controls more than 10 percent of the voting shares of a registrant under the SA. The above provision is limited to shareholders and does not include directors and management of registrants. Under regulation 4(2) of the FOR, approval is required for the position of compliance officer which is a senior managerial position in accordance with regulation 3 of the FOR. As a senior officer the compliance officer is subject to the fit and proper criteria in the approval of the position. The above measures are adequate for FIs under the FIA but are limited for insurance companies and registrants under the SA. There are no provisions for credit unions.
669. *Criterion 26.4* – No information has been provided to permit an assessment of compliance with the core principles i.e. the Basel Committee on Banking Supervision (BCBS) Principles 1-3, 5-9, 11-15, 26 and 29; International Association of Insurance Supervisors (IAIS) Principles 1, 3-11, 18, 21-23, and 25; and International Organization of Securities Commission (IOSCO) Principles 24, 28, 29 and 31; and Responsibilities A, B, C and D. While sections 8, 42, 43, 62 and 77 of the FIA facilitate consolidated supervision and reporting, there are no such provisions in the IA. Similar provisions have been included in the IA Bill currently in Parliament. While the authorities assert that the SA incorporates the IOSCO Core Principles, information with regard to the Principles mentioned above has not been provided. Trinidad and Tobago indicated that the 2010 FSAP report covers these. This is outside the period of review and therefore the jurisdiction appears to have not consider such compliance since 2010. Under regulation 2 of the FOR, the CBTT is the regulator of bureau de change for compliance with the AML/CFT obligations of the FOR and the FOFTR and similarly the FIUTT for MVTs providers.
670. *Criterion 26.5* – Regulation 35(1) of the FIUR requires the FIUTT to determine the frequency and intensity of supervision based on the ML and TF risks faced by the supervised entity, the size and characteristics of the entity, the overall sector risk and the adequacy of the entity's internal controls, policies and procedures. The above measure does not include ML/TF risks in the country as required by the criterion. CBTT and TTSEC have compliance manuals in place that includes these provisions as well.

671. *Criterion 26.6* – Supervisors review through onsite and desk based techniques which includes a risk based assessment. FIUTT and CBTT are more developed and robust than the TTSEC which is in its infant stage.

*Weighting and Conclusion*

672. While all FIs are required to be either licensed or registered only the FIA has adequate measures to prevent criminals or their associates from gaining control or significant ownership of FIs. Additionally information has not been submitted to assess compliance with the core principles or the risk-based approach used by the supervisors.

673. Not all FIs management are subject to fit and proper assessment, such as the credit unions; and there is little to no barrier to entry for MVTs providers.

674. This Recommendation is rated PC.

***Recommendation 27 – Powers of supervisors***

675. This Recommendation formerly R. 29 was rated NC due to lack of supervisory powers of the Credit Union Supervisory Unit (CUSU) and the inadequate supervisory powers of enforcement and sanction against FIs and their directors or senior management for failure to comply with AML/CFT requirements. During the follow-up process, responsibility for supervision of credit unions was placed with the FIUTT which began to implement an AML/CFT supervisory regime and enactment of the SA enhanced the supervisory powers of the TTSEC. Deficiencies remain with regard to the effective implementation of AML/CFT supervisory regime for credit unions.

676. *Criterion 27.1* – Regulation 40 of the FOR empowers the CBTT, FIUTT and the TTSEC to take such regulatory measures as necessary to secure compliance of their respective licensees and registrants with the requirements of the FOR and FOFTR. Regulation 40 of the FOR as amended by the FOR 2014 allows supervisory authorities to use regulatory measures prescribed by the Act or legislation under which the FI or LB was licensed or registered. While this extends the range of regulatory measures this provision is only applicable for the requirements of the FOR and FOFTR and therefore this provision does not cover all AML/CFT obligations. Section 18F of the FIUA empowers the FIUTT to monitor and take necessary measures to secure compliance with AML/CFT obligations. However, Regulation 40A (c) also allows for regulators to issue guidelines in relation to AML/CFT matters and these guidelines carry a wide range of penalties. Similar provisions exist for the CBTT to issue guidelines under the FIA and the TTSEC under SA.

677. *Criterion 27.2* – Section 62(13) of the FIA empowers the CBTT to conduct inspections of FIs licensed under the FIA amendment in 2009. Section 6 of the IA provide for the CBTT to conduct inspections of insurance companies. Section 89 of the SA empowers the TTSEC to conduct inspections of the registrants under the SA. Section 18G of the FIUA empowers the FIUTT to carry out on-site inspections. The above provisions allow for supervisors to inspect banks, registrants of the SA and unregulated FIs.

678. *Criterion 27.3* – Section 62(7) of the FIA empowers the CBTT to access all records and request any information of a FI in performance of its duties under the FIA. Section 64 of the IA grants the CBTT the power to request any information regarding the insurance business of any company

registered under the IA. This provision would allow access to information relevant to monitoring compliance with AML/CFT requirements. Sections 88 and 151 of the SA provides for the TTSEC to be able to request any document or information necessary to perform its functions, powers, or duties under the SA. Section 18G of the FIUA gives the FIUTT the power to enter a non-regulated FIU and take any document or information necessary to secure compliance with AML/CFT obligations.

679. *Criterion 27.4* –The deficiencies identified in relation to recommendation 35 are equally applicable here.

#### *Weighting and Conclusion*

680. While the supervisory authorities have powers to conduct inspections and compel production of information there are varying limits in these powers in relation to supervising compliance with AML/CFT obligations. Additionally, sanctions are not proportionate or dissuasive. Deficiencies remain with regard to the effective implementation of AML/CFT supervisory regime for credit unions. The requirement in section 18G of the FIUA to obtain consent from an owner/ occupier of a business to enter an LB by the FIUTT conflicts with the FATF requirement. A Court Order should not be required for supervisors to carry out their work.

681. This Recommendation is rated LC.

#### ***Recommendation 28 – Regulation and supervision of DNFBPs***

682. Recommendation 28 (prior R.28) was rated as ‘NC’ in the 3rd MER. The main deficiencies identified were the absence of legal requirements, regulatory and supervisory regime for the gaming houses, pool betting and lotteries; measures to identify the beneficial ownership and designated authority for monitoring the DNFBPs. This situation remains outstanding. In the 10th FUR this Recommendation was rated partially compliant. The new FATF Standard specifically indicates that the systems for monitoring and ensuring compliance with AML/CFT requirements should be performed by a supervisor or SRB. It also required that the supervisor or SRB take necessary measures to prevent criminals or their associates from being professionally accredited and to have effective, proportionate and dissuasive sanctions.

683. *Criterion 28.1* – (a) Section 11 of the Gambling and Betting Act (GBA) appears to provide for gambling to be conducted under the premises of the private members club. No reference has been provided by the authorities for private members club to apply for an annual licence under the GBA. However, sections 3 and 5 of the Registration of Clubs Act require the initial registration and annual renewal of registration of private members club. The authorities of Trinidad and Tobago indicated that part of the process of renewing a licence under the GBA requires the renewal of a certificate to conduct gambling activities pursuant to Section 5(4) under the Registration of Clubs Act, Chapter 21:01. (b) No information was provided. (c) Since PMCs are LBs (See the First Schedule of POCA), under Section 18F of the FIUA the FIUTT has been designated with the responsibility for supervising PMCs for compliance with AML/CFT obligations.

684. *Criterion 28.2 and 28.3* - Under the Section 18F of the FIUA, the FIUTT is the Supervisory Authority responsible for monitoring and ensuring compliance of LBs and other categories of LBs (motor vehicle retailers and art dealers), with AML/CFT.

685. *Criterion 28.4* - (a) Section 18F of the FIUA requires the FIUTT to monitor non-regulated FIs and LBs and take necessary measures to secure compliance with AML/CFT obligations. These measures are not specified. However, section 18G of the FIUA provides for the FIUTT to conduct on-site inspections with the consent of the non-regulated FI or LB. In absence of such consent a police officer can obtain a warrant to permit such inspections. The above provisions while allowing for monitoring do not specify measures and requires the consent of non-regulated FIs and LBs for on-site inspection thereby raising concerns as to the power of the FIUTT to carry out its monitoring function. (b) No information has been provided. (c) Sanctions that are applicable to financial institutions are applicable also for listed business, in consequence the analysis for the R. 35 will be applicable to DNFBPs. Additionally, section 18H of the FIUA enables the FIUTT to issue a directive against a non-regulated FI or LB if in the opinion of the FIUTT the institution has violated or is about to violate any AML/CFT obligations. Directives can be issued to cease or refrain from a particular action which violates AML/CFT obligations or to perform necessary remedial action. Failure to comply with such directives can result in a court order.
686. *Criterion 28.5* - Regulation 35(1) of the FIUR requires the FIUTT to determine the frequency and intensity of supervision based on the ML and TF risks faced by the supervised entity, the size and characteristics of the entity, the overall sector risk and the adequacy of the entity's internal controls, policies and procedures. The above provision does require supervision on a risk-sensitive basis in accordance with the criterion.

#### *Weighting and Conclusion*

687. There appears to be no provisions for the FIUTT to take necessary legal or regulatory measures to prevent criminals from holding or having a management function in a DNFBP/LB. While there are provisions for the FIUTT to carry out AML/CFT supervision, the exact specifics are not specified and appear limited.
688. There is no adequate AML/CFT regime for the supervision of Private Members Clubs (PMCs), which operate as casinos. There is no measure in place which prevents criminals or their associates from holding key positions in a PMC.
689. Sanctions pursuant to Recommendation 35 are not dissuasive for non-compliance by FIs and LBs of breaches found during the off-site and on-site examinations.
690. This Recommendation is rated PC.

#### ***Recommendation 34 – Guidance and feedback***

691. This Recommendation was formerly R. 25 and was rated 'NC' during the last evaluation. At that time, the only AML/CFT guidelines available were those issued by CBTT and they were only relevant to institutions licensed by the CBTT.
692. *Criterion 34.1* – The CBTT, FIUTT and TTSEC as supervisory bodies are permitted to issue AML/CFT guidelines by their primary legislation. Section 10(c) of the FIA permits the CBTT to issue guidelines to assist with compliance with the POCA, the ATA and any other written law relating to the prevention of money laundering and combating the financing of terrorism. Sections 8(3)(d) and 18F(2) of the FIUA provide the FIUTT with the authority to set reporting standards for FIs and LBs and to issue guidelines for compliance with the AML/CFT laws respectively.

Additionally, Regulations 40A of the FOR permits the CBTT, TTSEC and FIUTT to provide guidelines and standards to supervised entities. The FIUTT provides feedback in the form of its annual report (Section 18 of FIUA). CBTT also provides feedback through guidance as well as its annual report. Section 12 of the FIA specifically states that contravention of the guidelines shall not constitute an offence, however, the Inspector of Financial Institutions (Inspector) can still take action under Section 86 of the FIA. That section allows the Inspector to issue compliance directions and obtain injunctions. Breach of a direction or injunction issued for AML/CFT purposes is an offence. Pursuant to Section 146 of the SA, the TTSEC has issued guidelines, this section also states that the guidelines do not constitute an offence, however Section 90(c) provides that any registrant that is in breach of any guidelines made under the POCA or any other Act for combating ML and TF, the CEO upon notifying the Chairman may issue a compliance direction to the registrant or SRO to take any action to remedy the breach. Where the registrant fails to comply with the compliance direction, the person is considered to have committed an offence and is liable on indictment to a fine of TT\$500,000 and imprisonment for 2 years. The FIUTT can set reporting standards for FIs and LBs pursuant to the POCA and ATA (See. Section 8(3)(d) of the FIUA) and also issue guidelines pursuant to Section 18F(2) of the FIUA. This requirement is also further represented in the FIUR at Reg. 30. Pursuant to Section 18H of the FIUA, the FIUTT can issue directives to FIs or LBs for violation of any of the guidelines issued by the FIUTT, while Section 18H(8) provides that in addition to any measures provided under the FIUA, the FIUTT may also apply to the High Court for an Order requiring the FI or LB to comply. Failure to comply with the Order of the Court is an offence on summary conviction of a fine of TT\$250,000 and imprisonment of three years. Section 18H(9).

#### *Weighting and Conclusion*

693. Trinidad and Tobago CAs and supervisors have issued guidelines. The level of feedback that is being provided to the FIs and LBs by their supervisory authorities is at a very high level, as it provides valued assistance to assist FIs and LBs in applying national AML/CFT measures, and in particular, detecting and reporting suspicious transactions.
694. This Recommendation is rated C.

#### ***Recommendation 35 – Sanctions***

695. This Recommendation was formerly R.17, which was rated ‘NC’ in the 3rd MER where the most relevant factor for that rating was that there were no provisions in legislation to withdraw, restrict or suspend the licence of the financial institution for non-compliance with AML/CFT requirements and lack of sanctions for legal persons (See. MER paragraphs 414 and 415). This key factor has not been addressed. However, a variety of regulations were modified to accommodate Assessors recommendations and in general to broaden the range of sanctions available for AML/CFT breaches. The issues to be determined are (i) whether the sanctions provided for AML/CFT breaches for R. 6 and 8-23 are proportionate and dissuasive and (ii) are applicable not only to FIs and LBs, but also to their directors and senior management.
696. *Criterion 35.1* – Several elements of R. 6 were missing, which means that the level of relevant penalties will be limited. See. R. 6 above. With regard to R. 8 there are no measures in place and therefore no sanctions. Section 86 of the FIA enables the CBTT to issue compliance directions for unsafe and unsound practice which is interpreted to include AML/CFT breaches particularly those of the CBG on AML/CFT. The compliance direction can include ceasing or refraining from committing an act, conduct or violation or performing a necessary remedial action. Failure to

comply with a compliance direction can result in a court order, contravention of which is liable to a fine of TT\$5,000,000 and in the case of a continuing offence a fine of TT\$500,000 a day. Additionally there is no provision for a range of sanctions to be applied proportionately. There is also a concern that the sanctions are not dissuasive. Section 90 of the SA gives the TTSEC the power to issue directions to remedy any breaches of AML/CFT requirements revealed during a compliance review or any other inspection. Section 90(8) of the SA specifies a penalty for failure to comply with directions on conviction on indictment of a fine of TT\$500,000 (US\$77,600) and imprisonment for two years. Additionally sections 57 and 58 of the SA provide for the suspension of registration, warning or censure as well as the revocation of registration of a registrant if the registrant has been convicted by a court for a contravention of the POCA or any other AML/CFT law. The measures above provide for limited sanctions, the suspension or revocation of registration and the application of a specific fine and term of imprisonment. There is no provision for a range of sanctions to be applied proportionately. There is concern that the sanctions are not dissuasive. A system similar to that of the CBTT is also detailed in section 18H of the FIUA with regard to the FIUTT with the same limitations as described above. Sanctions available are overall not proportionate and dissuasive. For instance, the fine available for failing to comply with FOR regulations is twice as the fine (though imprisonment time is differentiated) available for a failure to disclose a money laundering suspicion. See discussion on R. 15 above. For R. 9 there are no secrecy laws and accordingly there are no sanctions. For R. 10 - 23 sanctions are available for FIs and LBs pursuant to Sections 53 or 57 of the POCA, however there are gaps identified which are relevant since there are no sanctions which can be applied for tipping-off when filing a SAR/STR neither is there a sanction for tipping-off in respect of persons employed by the Government within the Public Service. The sanctions pursuant to Section 57(1) of the POCA appear to be proportionate and dissuasive in terms of criminal matters where an offence has been committed.

697. The sanctions under the ATA as amended by the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act 2014 appear to be dissuasive and proportionate to the sanctions under the POCA. In that regard however, there are no targeted financial sanctions for proliferation of financing as required by Recommendation 6 nor is there any specific sanctions regime for NPOs as relates to Recommendation 8. There are also serious deficiencies in the sanctions regime for DNFBPs as required by Recommendations 10-23. Sanctions based on directives are somewhat dissuasive, with the full effect being the ability of the High Court to impose Orders, the breach of which results in penalties involving fines and imprisonment. Generally, the sanctions provided are proportionate and dissuasive only for criminal matters. Administrative sanctions are neither proportionate nor dissuasive overall.

698. *Criterion 35.2* – Pursuant to Section 57 of the POCA; ML sanctions are applicable to ‘any officer, director or agent of the company.’ Reg. 9 of the FORATA sanctions cover officers which include by definition (Reg. 9(5)), director, manager secretary, CEO, member of the committee of management or a person acting in such a capacity. In the FIUA at Section 21(2) and (3), members of the BOD, CEO or other officer or owner or partner are liable for failure to disclose information pursuant to a disclosure order.

#### *Weighting and Conclusion*

699. Trinidad and Tobago has a range of proportionate and dissuasive, mostly criminal, sanctions for natural or legal persons, including directors and senior officers of companies and officers who report to the FIUTT, that fail to comply with the AML/CFT requirements of Recommendations 6,

10-23. No sanctions available for Recommendation 8 for which no provisions are in place and for R. 15 the sanctions are limited to the extent of the deficiencies noted.

700. Some inconsistencies could be found with the sanctions available, including across different pieces of legislation. For instance, the fine available for failing to comply with the FOR regulations is twice as much as the fine (though imprisonment time is differentiated) available for a failure to disclose a ML suspicion. The Assessors also noted that the sanction relating to “Tipping Off”, (R21), should be applicable to persons employed in the Public Service. However, this requires Regulation from the Minister for Public Administration. There is no indication that such Regulations are in place.
701. While there is a wide range of sanctions to address non-compliance with AML/CFT obligations, they, in many cases, are not proportionate to the infraction or sufficiently dissuasive to discourage reoccurrence.
702. This Recommendation is rated PC.

## **7. LEGAL PERSONS AND ARRANGEMENTS**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

703. The issue of legal persons and access to beneficial ownership (BO) and control information was dealt with under R. 33 in the previous round of evaluations. R. 33 was rated ‘PC’. The Assessors at that time found that while CAs had access to information stored by the Registrar of Companies (Registrar), the level of adequate, accurate and current information could not be ascertained (Section 5.1.3 of the 3rd MER). At paragraph 107 of the 10th FUR, an increase in access to beneficial ownership held by the Registrar was noted, with MOUs between the Registrar’s office and the FIUTT and the FIB and the CBTT having online access. The unresolved issue pertained to the level of accuracy etc. of the information stored. Paragraph 108 of the 3rd MER indicates a level of compliance of 78%. R. 24 currently has several more requirements than its predecessor, which call for a proper framework for identifying the different types, forms etc. of legal persons and the process for their creation. The assessment of ML/TF risks associated with the various forms of legal persons; the requirement for a company registry and the maintenance of specified types of information; the specific type of beneficial ownership information that should be held for the varying forms of legal person; the ability to cooperate with CAs; the maintenance of records; safeguards with regard to nominee shares and nominee shareholders and the ability to provide international cooperation through facilitating access to information held by the registry, exchanging of shareholder information and obtaining BO information on behalf of a foreign competent authority.
704. *Criterion 24.1* – The Companies Act Section 8 provides for the formulation and operation of companies. Section 9 of the Companies Act states the type of information that should be included in the Articles of Incorporation such as name and legal status i.e. whether limited; non-limited, NPO, etc. Public access can be obtained pursuant to Sections 191 and 473 of the Companies Act.
705. *Criterion 24.2* – This is a new criterion which requires that a full risk analysis of legal persons be undertaken. Assessment of risk has been carried out by the RGD<sup>14</sup> and through the NAMLC<sup>15</sup>.

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<sup>14</sup> Registrar’s General Department.

<sup>15</sup> Cabinet appointed National Anti-Money Laundering and Counter Financing of Terrorism Committee.

Assessors were provided with information which indicates that NAMLC considered the issue and hence certain recommendations were made, which resulted in changes to the process and procedures of the RGD<sup>16</sup>, and to various pieces of legislation such as the Stamp Duty (Special Provisions) Act, Chapter 76:03 and RGD Act Chapter 19:03. The jurisdiction and the RGD possess meaningful understanding of the risk posed.

706. *Criterion 24.3* – The legislative measures for this criterion are contained in the Companies Act at Section 71, which requires the names of directors of a company to be delivered to the Registrar at the time of the delivery of the Articles of Incorporation (Section 9 of the Companies Act). The Articles of Incorporation must include the name, whether it is limited or unlimited liability, whether a public company or an NPO. As noted above Section 473 of the Companies Act allows public access.
707. *Criterion 24.4* – Section 177 deals with the obligations of all companies to maintain records at their registered offices. These records include the register of all shareholders. Section 126 of the Companies Act enables a shareholder of a company to review the list of shareholders. Where a legal person that is a public company has substantial shareholders (i.e. 10% or more of shares), Section 184 requires that a Register of Substantial Shareholders be kept by the legal person, which must contain the name, address and the full particulars of shares held by the person or nominee. The name of the nominee must also be provided. The Registrar is legally entitled to a copy (or any part) of the said Register upon a written requirement to this effect addressed to the company (Section 184(2)). The Securities and Exchange Commission (as well as its agents or legal representatives) is also granted access to information required to be kept and maintained by a Company pursuant to Sections 177, 179 and 184 of the Companies Act. Access by any person to the shareholder’s list and information is possible upon payment of a reasonable fee and an affidavit (Section 191 of the Companies Act).
708. *Criterion 24.5* – Section 194 of the Companies Act requires the submission of annual returns, on the prescribed Form 28. The form requires the full legal name of the company; company number (if assigned); address of the registered office of the company; classes of shares and designation in each class, name of each shareholder whether a natural person or a corporation, address of natural person, address of natural person or registered office or the corporation; occupation if natural person and status if corp. (i.e. whether unlimited or limited); particulars of shares transferred; name of each director (first, middle and surname); full address of directors; other occupation of directors and the signature of a director. Section 194 provides a penalty for failure to comply with these measures. In accordance with the Companies Act, changes to the company’s name, registered office, directors, secretaries and legal structures of the company must be notified to the RGD within fifteen (15) – thirty (30) days and in some instances approved, failure of which attracts a penalty (Section 214, 217, 176(2), 79, 178(4)(b) respectively).
709. *Criterion 24.6* – (a) The Authorities did not provide a citation, however it appears that Section 194 of the Companies Act discussed above is relevant and meets this part of the criterion. (b) As discussed above, pursuant to Section 181 of the Companies Act public companies are required to

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<sup>16</sup> For instance, the establishment of the Compliance Unit in the RGD which *inter alia*, secures adherence with the post-incorporation filing requirements of the Companies Act as well as the removal of inactive companies from the Register of Companies; the conclusion of Memoranda of Understanding with the Financial Intelligence Unit and the Financial Intelligence Branch for sharing information; policy to more effectively govern the withdrawal of Duplicate Certificates of Title by bona fide registered owners of property and/or their authorized Attorneys-at-Law and the introduction of the use of an electronic signature for the Registrar General/Registrar of Companies that served to *inter alia*, eliminate the possibility of persons forging the signature of legal officers.

keep a register of substantial shareholders and the register is available to the Registrar upon request. The requirement does not specify that beneficial ownership information be maintained in the register of substantial shareholders. Additionally, this measure is only applicable to public companies and not to other types of legal persons. (c) No references were provided by Trinidad and Tobago.

710. *Criterion 24.7* – The Companies Act provides for a register of shareholders. It does not specifically define a register of shareholders to include the ultimate beneficial owner as contained in the FATF glossary or the need for regular updates, apart from annual updates.
711. *Criterion 24.8* – (a) No citation provided, however pursuant to Section 194 of the Companies Act; one director must sign the form providing the information on substantial shareholders. There is no indication that any particular person is responsible for providing information or giving assistance to Authorities. (b) No citation provided and no requirement found requiring a LB to be authorised to provide basic and beneficial ownership (BO) information and other assistance to the Authorities. (c) No comparable measure specified with regard to these issues.
712. *Criterion 24.9* – FOR Regs. 31 and 32 as cited by the Authorities pertains to the CDD record keeping procedures for FIs and LBs and not for BO information upon the dissolution or cessation of existence or after the date it ceases to be a customer of a professional intermediary or FI. Section 189 of the Companies Act pertains to the care of records, but does not provide at timeframe for keeping them.
713. *Criterion 24.10* – The Authorities have indicated that the FIUTT and FIB have access to information in the Companies, Civil and Land Registries through MOUs. The on-site confirmed that some law enforcement authorities do in fact have MOUs with the Registrar General’s Office where the information is kept. However there is currently no legal provision that mandates the submission or keeping of beneficial ownership information by the Registrar General for all legal persons nor is there a requirement for the timely submission of any changes to that information. The criterion is partially met.
714. *Criterion 24.11* –Section 33. (1) of the Companies Act provides that shares may be issued at such times, to such persons and for such consideration as the directors may determine. Section 33 (2) further states that no company may issue bearer shares or bearer share certificates. There is no clear prohibition on corporations issuing bearer share warrants as the issuance of warrants appear to be possible under regulations made under the Companies’ Act. However, whilst the regulation seems to make some provisions for the possible issuance of such there is no express provision in the Companies’ Act nor is there a regime for the operation of warrants in Trinidad and Tobago.
715. *Criterion 24.12* – (a)-(c) No legislative measures are in place with regard to nominee shares and nominee director requirements.
716. *Criterion 24.13* – Sanctions are pursuant to Sections 510, 512, 513 and 514. Both the Sections 512 and 513 sanctions do not appear to be dissuasive.
717. *Criterion 24.14* – (a) – (c) No relevant information was provided about measures to comply with the requirements of this criterion.

718. *Criterion 24.15* – No information has been provided to show that there is any monitoring as required by the criterion e.g. no reference to the existence of a register or minutes of meetings showing that the quality of assistance received with regard to requests for BO information from foreign countries.

*Weighting and Conclusion*

719. Overall there are measures that require the provision and retention of basic BO information for legal persons with the Registrar. Additional information such as substantial shareholders (10% or more for public companies) is kept by companies at their registered office. There appears to be no similar requirements for other forms of legal persons. The Registrar has access to registers kept at the companies' office. There are requirements to provide updated information to the Registrar by the filing of annual returns. There is also public access to the information on BO through the process of a fee and an affidavit. No comprehensive risk analysis pertaining to legal persons has been done; There are no requirements for nominee shares or nominee directors. Company formation requirements are set out in the Companies Act (section 8 and 9).

720. This Recommendation is rated PC.

***Recommendation 25 – Transparency and beneficial ownership of legal arrangements.***

721. This Recommendation (previously R. 34) was rated 'NC' in the 3rd MER. FOR and CBG previously contributed to compliance, in the sense of requiring all FIs and LBs to identify and verify the identity of the parties to a trust. The Requirements in the Fourth Round for this Recommendation have been expanded and thus some measures were not fully covered by the jurisdiction. Amendments to the FOR in 2014 have expanded the compliance framework in respect of trust service providers by requiring all FIs and LBs to identify and verify the parties to a trust. Amendments to the POCA in 2014 by way of the Miscellaneous Provisions Act, No. 15 of 2014 had the effect of extending AML/CFT obligations to include the activities of trust and company service providers and other relevant DNFBPs.

722. In Trinidad and Tobago, according to its previous Mutual Evaluation, the only existing trust companies were owned-operated through commercial banks (Trust and Merchant Banks) and trusts are registered as deeds in the Land Registry of the Registrar's General Department (See paragraphs 42 and 527) and information on them is publicly available (See. [http://www.legalaffairs.gov.tt/Land/PIMS\\_main.html](http://www.legalaffairs.gov.tt/Land/PIMS_main.html), consulted on September 5th, 2014). The site Frequently Asked Questions Section indicates that the Land Registry records among others, "Deeds", though not specifying if deeds of Trusts. This, despite there being/existing a contradictory provision to the statement of information on trusts being included in a Registry, according to the Companies Act (section 186) which states that certain information pertaining to trusts cannot be recorded. No updated information was provided by Authorities in this matter, so it can only be assumed that the situation remains. Moreover, the Deputy Registrar reconfirmed this position during the onsite interviews. FOR Reg. 17 indicates that when an applicant for business is a trustee, it is a requirement to exhibit evidence of appointment as a trustee through a certified copy of the Deed of Trust. The meaning of trustee is broad enough to include all parties relevant to a trust (i.e. settlor, protector, person providing the funds, among others, although identification of the beneficiary of the trust is not mentioned, identification of beneficiary is mentioned in the CBG, section 12). LBs are also required to know the purpose of the trust and to verify identity of the trustee. Similar provisions are contained in CBG (12.3.2 (i) and 12.3.2. (ii)).

723. *Criterion 25.1* – (a) Only the CBG contain both an indication of FIs making all reasonable efforts to obtain information about the true identity of the person behind the account or transaction performed and a reference to ongoing due diligence being exercised to ensure information is up to date, and to capture any changes in information provided. (b) There is no legislation in place that applies to this criterion. In other words, there was no specific information provided on the requirements of a trustee to hold basic information on other regulated agents of and service providers to the trust including investment advisors, managers and tax advisors (c) Section 55 of the POCA and FOR Reg. 31 apply to both FIs and LBs in the sense that records should be retained for a period of six years, therefore, this criterion is partially met for LBs and FIs which provide trustee services.
724. *Criterion 25.2.* - No provisions applicable to meet this criteria.
725. *Criterion 25.3* - Measures contained in FOR and CBG already cited are also applicable here. Trustees are obliged to disclose their status when forming a business, and before any occasional transactions under a certain threshold. Though it is important to mention that as established in the introductory paragraph, not all information pertaining to the trust may necessarily be available.
726. *Criterion 25.4.* - Trustees are not evidently prevented by law or enforceable means from providing CAs with any information relating to the trust or from providing FIs and LBs, upon request, with information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship. In fact, with regard to FIs that act as trustees, these are required to disclose information to Supervisory Authorities as provided by each FI's legislation, upon request. Relevant powers to obtain information (though not specifically pertaining to trusts) are contained in the SA sections 7, 88, and 151 and in the FIA, sections 75 and 78. However, no provisions seem available in the case of a LB.
727. *Criterion 25.5* - Trinidad and Tobago largely meets this criterion because CAs (FIUTT, CBTT, and TTSEC) have all the powers necessary to be able to obtain timely access to information held by trustees and other parties through SA and FIA (sections 7,88, 151, 75 and 78 as cited above) and POCA-section 32. Time to deliver information according to POCA would be seven days, unless modified or extended by a Judge. In practice, no production orders were requested prior to 3rd MER (See. paragraph 528), no information presented by Authorities to indicate otherwise.
728. *Criterion 25.6* – (a) Based on the MACMA, Trinidad and Tobago has the ability to provide international cooperation with regard to information that could be obtained locally. Registry seems available online, though what is accessible does not necessarily include information on Deeds of Trust, as explained in the introductory paragraphs for this Recommendation. Also refer to analysis under R. 37 and 40. Country does not facilitate access to information since it is unclear if information held online by Registry includes Deeds of Trust.
729. *Criterion 25.7* - Trustees are not held legally liable for any failure to perform the duties relevant to meeting their obligations as trustees, FIA sanctions cited by authorities do not specifically pertain to trusts. No specific quotations were provided.
730. *Criterion 25.8* - Trinidad and Tobago has provisions to ensure that there are proportionate, dissuasive sanctions for failing to provide access to information regarding the trust referred to in

criterion 25.1. (FIA Section 124, FOR Reg. 42, and CBG Appendix VII). There was no specification in terms of timeliness in the legislation. With regard to timelines, Sections 11, 12, 16 and Regulation 3(2) and 3(6) of the FIUA as well as Section 32 of the POCA are applicable.

#### *Weighting and Conclusion*

731. Trinidad and Tobago has not fully implemented measures to prevent the use of legal arrangements for money laundering and terrorism financing purposes. With the recent amendments in 2014 to the POCA and the FOR, there were stronger and more definitive requirements for trusts and other legal arrangements to obtain beneficial ownership information. There clearly has been outreach in the sector by the Regulators however there are some issues of concern. For example, the very recent nature of amendments within the sector made it difficult to properly assess how comprehensively these measures were being applied in terms of the maintaining of the information by TCSPs. Though there are some measures to identify all parties in a trust, there are no measures to ensure that information is accurate, kept to date and to enable and facilitate information sharing with domestic and foreign counterparts in a timely manner since Registry information digitalized and readily available does not necessarily cover Deeds of Trust. There are however, MOUs for information sharing between the TTSEC, CBTT and FIUs, as well as with other similar CAs which should be taken into consideration. This Recommendation is rated PC.

## **INTERNATIONAL COOPERATION**

### ***Recommendation 36 – International instruments***

732. This Rec. was formerly R. 35 and SR. I, which were both rated ‘NC’ in the 3rd MER. 2. There are no outstanding deficiencies from the last MER. The current issue is the level of compliance with the relevant Articles in each of the four Conventions.
733. *Criterion 36.1* – Trinidad and Tobago is a Party to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the 2000 UN Convention against Transnational Organized Crime (Palermo Convention), the United Nations Convention against Corruption (Merida Convention) and the 1999 UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention).
734. *Criterion 36.2* – The following are the relevant articles for each Convention that have not been fully implemented by Trinidad and Tobago: The Vienna Convention - Art. 4(Jurisdiction); Art. 8 – Transfer of Proceedings; Art. 11(Controlled deliveries); Art. 15(Commercial Carriers); Art. 19(Use of mails). The Palermo Convention - Art. 14(Disposal of confiscated proceeds of crime or property); Art. 19(Joint investigations); Art. 25(Assistance to and protection of victims). The Merida Convention – Art. 15(Bribery of national public officials); Art. 16(Bribery of foreign public officials); Art. 17(Embezzlement, misappropriation or other diversion of property by a public official); Art. 24(Concealment); Art. 26(Liability of legal persons); Art. 27(Participation and attempt); Art. 30(Prosecution, Adjudication and Sanction); Art. 48(Law Enforcement cooperation); Art. 50(Special investigative techniques); Art. 51(General provisions re asset recovery); Art. 52(Prevention and detection of transfers of proceeds of crime); Art. 54(Mechanisms for recovery of property through international cooperation in confiscation); Art. 55(International cooperation

for purposes of corruption) and Art. 57(Return and disposal of assets). The Terrorist Financing Convention – Art.3, 6, 9, 13, 16 and 17.

#### *Weighting and Conclusion*

735. It is important that all the relevant Conventions have been ratified by Trinidad and Tobago. Ratification in part requires that there be a sufficient level of enacted legislation to meet the requirements of the Conventions. The Articles noted as outstanding above, while important in most instances do not represent the most important aspects of the Conventions. That being said, there should still be measures that will address issues such as jurisdiction, controlled deliveries and other special investigative techniques and bribery of national and foreign public officials. Trinidad and Tobago is a Party to the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the 2000 UN Convention against Transnational Organised Crime (Palermo Convention), the United Nations Convention Against Corruption (Merida convention) and the 1999 UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention).
736. Trinidad and Tobago has not fully implemented several of the articles of the various conventions: Vienna Convention: Articles 4, 8, 11, 15 and 19; Palermo Convention: Articles 14, 19, 25; Merida Convention: Articles 15, 16, 17, 24, 26, 27, 30, 48, 50, 51, 52, 54, 55, 57; Terrorist Financing Convention: Articles 3, 6, 9, 13, 16 and 17.
737. This Recommendation is rated LC.

#### ***Recommendation 37 - Mutual legal assistance***

738. Recommendations 36 and SR.V were rated ‘LC’ and ‘NC’ respectively in the 3rd MER. The outstanding deficiency for R. 36 is (i) no mechanisms in place to deal with conflict of jurisdiction. There are no outstanding deficiencies for SR. V (See. 2nd FUR, paras. 94-96). New issues to be considered concern (i) a case management system for MLA and (ii) the range of investigative techniques. The MACMA generally provides the measures that cover MLA. There are also measures in the ATA with regard to information sharing, extradition and MLA.
739. *Criterion 37.1* – The MACMA covers any criminal proceedings, which will cover both ML and TF offences. The MACMA has no specific reference for providing assistance in a rapid manner. Additionally, there are Mutual Legal Assistance Agreements (MLATs) between the Government of Trinidad and Tobago and Canada, the United Kingdom and the United States of America that cover the proceeds of crime, confiscation and restraint. The ATA at Part VI also provides for information sharing, extradition and mutual assistance in criminal matters.
740. *Criterion 37.2* – Pursuant to section 3 of the MACMA, the Attorney General is the Central Authority for MLA matters. The MACMA governs the process for the transmission and execution of MLA requests, however, there are no clear processes (though there are criteria) for the timely prioritization and execution of MLA requests. The Authorities have noted that matters are prioritized on a case-by-case basis. There is no formal case management system in place to deal with MLA. The absence of a case management system makes it difficult to rate this criteria any higher as it appears that there is a possibility that cases may not be sufficiently monitored and delays may occur as a result.

741. *Criterion 37.3* – As noted previously, MLA is made pursuant to the MACMA. There appear to be no unreasonable and unduly restrictive conditions except where it relates to a criminal offence under the tax laws of a country (See. Sections 22(2)(k) and (3)). The assistance however may be granted where the tax offence is committed through an intentionally incorrect statement or through an intentional failure to declare income derived from an offence covered by the Inter-American Convention on Mutual Assistance in Criminal Matters. In the 3rd MER, it seems that the Assessors concluded that section 22(2)(k) was not a bar to certain types of tax offences (See. Paras. 581-583 of 3rd MER). However, the plain reading of the section suggests otherwise. The Act makes an unequivocal provision that assistance “shall be refused... if the request relates to a criminal offence under the tax laws of a Commonwealth country”. This means that there is not even a discretion in the Central Authority except where it pertains to the exception. MLA requests are made on the principle of reciprocity.
742. *Criterion 37.4* – (a) As noted above at criterion 37.3 a request can be refused where it involves a criminal offence under the tax laws. The issue of refusal on the basis of a tax offence is a live one that has a trickle-down effect into this criterion. Tax offences fall under the umbrella of fiscal matters. The exemptions to this refusal were also noted above. Additionally, section 4 of the MACMA provides the Attorney General with the discretion to subject the application of the Act in relation to a Commonwealth country to such conditions, exceptions or qualifications as may be contained in the Order giving effect to the Treaty. That provision is largely repeated in section 33 of the Act as it relates to non-Commonwealth countries allowing for the possibility of the Minister making such order giving effect to the Treaty subject to such limitations, conditions, exceptions or qualifications. The jurisdiction has indicated that no such Order introducing such limitations et al has ever been made. (b) Based on section 21 of the MACMA, there is no refusal based on secrecy or confidentiality requirements on FIs or LBs.
743. *Criterion 37.5* –The Authorities have indicated that a request for MLA must indicate the degree of confidentiality that is required. (See. First Schedule, para. 1(d), MACMA).
744. *Criterion 37.6* – A request may be refused on the basis of the dual criminality principle. As noted before, there is a level of discretion allowed on the part of the Central Authority. (Section 4, MACMA).
745. *Criterion 37.7* – There is no evidence that the measure in this criterion is in the MACMA. However, the 3rd MER at paras. 590-591 note that ‘when dual criminality is taken into account it is the conduct that is considered and not the description of the offence or technical framework of the law.’
746. *Criterion 37.8* – (a) Pursuant to section 23(3) of the MACMA where there is a request to obtain evidence, copies of records that are not publicly available may be produced or examined to the extent possible under the laws of Trinidad and Tobago. The types of information that may be obtained based on Section 7(c), MACMA are ‘judicial records, official records or other records, or documents or other articles...’ This reference to records seems general enough to include financial records from FIs. Section 25 of the MACMA allows authorities to respond to a request for search and seizure of any article or thing located in Trinidad and Tobago. More specifically, section 30, MACMA provide for the enforcement of foreign confiscation, forfeiture and restraint orders once the property is suspected to be in Trinidad and Tobago; a request is made to have the order enforced and the request is accepted. (b) Sections 23-31, MACMA provides the broad range of assistance that can be given under the MACMA. Also 33A through 33F which deal with summoning a person or obtaining evidence for an overseas process, in Trinidad and Tobago.

### *Weighting and Conclusion*

747. The MACMA provides a wide range of powers for Trinidad and Tobago to provide MLA. The issues of dual criminality and certain tax offences being subject to refusal can hinder the provision of MLA. However, there is a wide discretion given to the Central Authority that can mitigate these deficiencies.
748. Mutual Legal Assistance in Trinidad and Tobago is governed by MACMA. The Attorney General is the established Central Authority under the Act for receiving and execution of requests.
749. The Act does not make any express provisions on the need to provide rapid assistance to satisfy a request nor is there any formal case management system being maintained. The jurisdiction is party to MLATs with Canada, the United States of America and the United Kingdom. There is a limitation to criterion 37.3 in that a request may be refused for a criminal offence under the tax laws.
750. A discretion on the part of the Central Authority as set out in section 4 of the Act, creates a possibility for a request to be refused. This Recommendation is rated PC.

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

751. Trinidad and Tobago was rated as being LC for R.38 in its 3rd round MER with the lone deficiency being that financing of terrorism was not an offence and therefore not a predicate offence. Paragraph 53 of the second follow-up report noted that “the provisions of the ATA and the ATAA substantially comply with the criteria for SR II.” The new FATF requirements requiring analyses at 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are (i) whether measures exists for providing assistance to requests for non-conviction based confiscation; (ii) whether measures exists for managing and disposing of property frozen seized and confiscated; (iii) whether measures exists for managing and sharing confiscated proceeds with other countries.
752. *Criterion 38.1-* Section 29, 30 and 31 of the MACMA makes provision for Commonwealth Countries to request the Central Authority to trace, confiscate/forfeit and restraint property derived from a serious crime. However there is provision under Sec 33 (1) that allows for Non-Commonwealth countries to make such request. It must be noted that Sec 33 (2) states that an Order made under subsection (1) is subject to limitation, condition, exception and qualification as presented in the Order. The Assessors are not aware of the conditions, limitation etc. set out in Sec 33 (2). Competent Authority informed that these limitation and conditions are discussed before the relevant treaty is sign between Trinidad and Tobago and the Non- Commonwealth country. After negotiations between the countries should there be a disagreement over such limitation and condition then the treaty would not be signed. Section 36 & 37 of the POCA makes provision in relation to the enforcement of external confiscation orders and registration of external confiscation orders. There is no provision to trace, restrain and confiscate instrumentalities intended for use in ML/TF and predicate offence.
753. *Criterion 38.2 -* It is unclear how non-conviction based confiscation proceedings can be facilitated by the provisions of section 31 of the MACMA, as advanced by Trinidad and Tobago.

754. *Criterion 38.3* – (a) Pursuant to para. 594 of the 3rd MER, Trinidad and Tobago has coordinated seizure and confiscation with the USA and the UK. There is provision for coordination under the MACMA for Commonwealth countries. As noted previously there is provision under Sec 33 of the MACMA for provision of assistance to Non-Commonwealth countries, however these are subject to conditions, limitations, qualifications and conditions. Also section 31 of MACMA. (b) The legal measures for managing and disposing of property confiscated, forfeited or seized under the POCA are contained in section 58 of the POCA. Here a Seized Assets Fund is maintained by the Comptroller of Accounts. Funds placed here may be disposed by way of using them for a number of activities including by reciprocal sharing with a foreign state. The Minister has not made the regulations which will support the management of the funds. At section 37 (4) of the ATA a judge who is satisfied that the property which is the subject of a forfeiture order made by the Attorney General is terrorist property shall direct such property to be forfeited for disposed.

755. *Criterion 38.4* - As noted above, section 58 of the POCA provides for funds placed into the Seized Assets Funds to be disposed by reciprocal sharing with a foreign state. The Minister may make regulation to carry into effect of the section. These regulations include the appointment of the Seized Assets Funds committee, terms of office for members of the Committee, the basis, condition, procedure and realization upon which disbursement of the funds is allowed and the keeping of records and accounts of the fund.

*Weighting and conclusions*

756. There are no measures supporting non-conviction based confiscation proceedings. The mechanisms for managing frozen, seized or confiscated property are still being developed.

757. Trinidad and Tobago's legislation does not provide explicitly for expeditious provision of assistance.

758. In terms of 38.2, section 31 of the MACMA seems to allow for the possibility of restraining dealings with property and not an actual confiscation order that contemplates permanent deprivation of property.

759. With respect to sharing of confiscated property with other countries, the Seized Assets Fund has been set up to facilitate this type of measure however the Committee itself has not been established that would administer such a fund nor have Regulations been approved to govern the operations of such a Fund.

760. This Recommendation is rated PC.

***Recommendation 39 – Extradition***

761. This Recommendation was rated 'LC' in the 3rd MER. The deficiencies noted were the inability to extradite a fugitive for an offence relating to TF and piracy as such offences were found not to be criminalised by the Assessors. These offences were subsequently criminalised, through the enactment of the ATA and common law respectively. The new FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case

management system. Extradition in Trinidad and Tobago is governed by the Extradition (Commonwealth and Foreign Territories) Act (EA).

762. *Criterion 39.1* – (a) ML and TF are extraditable offences in Trinidad and Tobago pursuant to section 6 of the EA. (b) Although the Authorities indicated that the Central Authority Unit in the Attorney General’s Office is responsible for extradition requests, there is no evidence that a case management system is in place and a process for the timely execution of extradition requests. (c) Section 8 of the EA provides the conditions under which persons will not be extradited. They include reasons of habeas corpus, race, religion, politics etc. none of which can be considered unduly restrictive or unreasonable.
763. *Criterion 39.2* – (a) According with the Section 5 of the EA, a person accused of an extraditable offence or alleged to be unlawfully at large after conviction of an extraditable offence, in a declared Commonwealth territory, or in a declared foreign territory, may subject to and in accordance with the provisions of this Act, be arrested and returned to the declared Commonwealth territory or the declared foreign territory, as the case may be. The Act does not distinguish between individuals who are foreign nationals or nationals of Trinidad and Tobago, and it appears to apply to both, provided the offence in question is an extraditable offence. (b) Not relevant, since Trinidad and Tobago extradites its nationals.
764. *Criterion 39.3* - Pursuant to section 6(1)(b) of the EA ,the definition of extraditable offence refers to the conduct of the offence, rather than any specific terminology.
765. *Criterion 39.4* - Section 11 of the EA allows for the simplified extradition of consenting persons who waive formal extradition proceedings without the commencement of any procedures before a Magistrate.

*Weighting and conclusions*

766. This recommendation requires the implementation of a case management system to facilitate the timely execution of extradition requests. The process of extradition within Trinidad and Tobago is enabled through the EA. There are no apparent conditions to extradition that would be unduly restrictive to the facilitating of requests.
767. The Central Authority for extradition is the Attorney General. Whilst assistance is clearly being provided in these matters, there is no actual case management system or any indication of clear and efficient processes to enable the timely execution of extradition requests.
768. This Recommendation is rated LC.

***Recommendation 40 – Other forms of international cooperation***

769. Recommendation 40 was rated ‘PC’ in the 3rd MER. The deficiencies noted in that Report have been fully complied with. The country has, since the time of the mutual evaluation, signed a number of instruments with foreign CAs such as FIUs and other Securities Exchange Commissions, which have broadened Trinidad and Tobago’s capabilities to provide international cooperation. Current issues deal with the (i) spontaneous provision of information by CAs; (ii) whether any feedback is provided on received requests; (iii) safeguards for the confidentiality of information; (iv) whether there is any feedback to foreign counterparts by the FIUTT on the use of the information; the

outcome of the analysis etc. (v) the ability to form joint investigative teams and (vi) the exchange of information between non-counterparts.

770. *Criterion 40.1* – Pursuant to section 8(1) of the FIUA, the FIUTT can share financial intelligence and information with LEAs, FIs and LBs locally and internationally. Section 8 does not indicate whether the information is shared spontaneously, upon requests or both. Section 8(3)(f) as mentioned previously allows the FIUTT to exchange information with Egmont Members. Similar provisions are included in the FIA, the SA and IA (FIA Section 8 (2) (c) (though this provision is quite limited), SA Section 6 (h) and 19, and IA section 6A). Also, similar provisions are included in international treaties and MOUS signed by CAs. The Authorities note that the FIB can exchange ML information spontaneously or upon request, however no citation was provided for this.
771. *Criterion 40.2* – (a) All supervisory authorities can provide cooperation (FIA Section 8(2); SA Section 19; IA Section 6 and the FIA Section 8(3)(k)). (b) The CAs are allowed to enter MOUs or other types of cooperation agreements. (c) The FIUTT uses the Egmont principles for sharing information. The Central Authority implements its measures on a case-by-case basis. The FIUTT is the only competent authority with a clear and secure gateway to information (d) The FIUTT has a written policy as it relates to prioritization and timely processing of requests as outline in its SOP. However it is unsure if the other law enforcement and supervisory agencies have such policy. (e) No clear process for safeguarding information received save and except for the FIUTT that has a system as outlined in its SOP that pertains to the safeguarding of information in its possession. MACMA and Egmont principles would be applicable. (See also, response under 40.2(c)).
772. *Criterion 40.3* – Pursuant to section 8(3)(k) of the FIUA, the FIUTT can enter written agreements with regard to the performance of its functions. The FIUTT can also share information without agreements. Sections 19(3) and (4) of the SA allows the Securities Commission to enter into written agreements and MOUs. There is no indication that the CBTT can enter into bilateral and multilateral agreements to cooperate. Agreements between the TTSEC and between the FIUTT and foreign FIUs have been provided.
773. *Criterion 40.4* – There are no apparent measures that require requesting CAs to provide timely feedback upon request to CAs that they have received information from. Authorities indicated that the FIUTT provides feedback to CAs within fourteen (14) days of receiving the request for feedback on the disclosure, however no evidence was provided to the effect. It should be noted that the FIUTT does have provision in the form of a “feedback” for CA to provide information on the usefulness of the information it was provided with. This form is contained in the FIU SOP.
774. *Criterion 40.5* – (a) There is generally no indication that there are fiscally related restrictions to the exchange of information or assistance under this Recommendation however the refusal of assistance under section 22(k) and (3) under the MACMA where certain tax offences are involved, affects the rating of this criterion since it presents a potential obstacle or restriction on the provision of assistance. (b) The supervisory authorities for FIs and LBs can all share information. (FIA – Section 8(2); FIUA – Section 8(3), (g); SA – Sections 14 & 19; FIUR Reg. 21 and IA Section 4 (c) No indication that CAs can refuse a request on the ground that there is a local investigation or enquiry ongoing. (d) Based on requirements in the legislation noted at (b) above only the TTSEC does not have restrictions based on the status and nature of the counterpart authority.

775. *Criterion 40.6* – FIUR Reg. 21(3) addresses the issue of the use of shared information for the purposes for which it was requested. Section 16 of the MACMA provides restrictions on the use of information received pursuant to Sections 7, 10, 12 or 14 or things obtained pursuant to Section 9 by or on behalf of Trinidad and Tobago. Section 8(2) of the FIA requires that information provided in addition to being kept confidential be used strictly for the purpose for which it was disclosed.
776. *Criterion 40.7* – The Authorities have cited ‘tipping-off’ provisions under the POCA, which are not relevant to this criterion. Additionally, Reg. 8 of the FIUR has been cited, however this Reg. deals with general measures for the protection of financial intelligence and information as it pertains to the storage of financial intelligence and information. The FIUTT can provide information through the secure Egmont channels to other Egmont Members.
777. *Criterion 40.8* – There are measures in the FIUA (Section 8(3)(a),(e) and (f); SA (Section 19(2)(a); IA (Section 6A) and FIA (Section 8(2)(a)) all provide measures for CAs to conduct inquiries on behalf of their foreign counterparts and domestically.
778. *Criterion 40.9* – Pursuant to section 8(3)(f) of the FIUA, the FIUTT can disseminate financial intelligence and information to local and foreign authorities and affiliates within the intelligence community. The FIUTT has an adequate legal basis for providing co-operation on money laundering, associated predicate offences and terrorist financing. The provisions do not seem to restrict information sharing due to the type or nature of the FIUTT.
779. *Criterion 40.10* – There are no measures that permit the FIUTT to provide feedback to their foreign counterparts upon request on the use of the information provided and the outcome of analysis conducted base on the information provided.
780. *Criterion 40.11* – (a) Section 8(3)(e) of the FIUA provides that the FIUTT can engage in the exchange of financial intelligence and information with members of the Egmont Group or with foreign FIUs. (b) See discussion above a criterion 40.9 re section 8(3)(f) of the FIUA. Section 8(4)(a) provides for reciprocity with members of the Egmont Group or with foreign FIUs. See also analysis under R. 29.
781. *Criterion 40.12* – Financial supervisors have a legal basis for exchanging information. Section 19 of the SA permits the Securities Commission to cooperate with, provide information and receive information from other securities or financial regulatory authorities, exchanges, clearing agencies, SRBs/SROs, LEAs and other government agencies or regulatory authorities whether in Trinidad and Tobago or elsewhere. With regard to insurance, the CBTT or authorized person; pursuant to section 6A of the IA can disclose information regarding a registrant or policy holder to any local or foreign regulatory body or agency. For banks, the CBTT or authorized person; pursuant to the section 8(2)(a) of the FIA may disclose account information etc. to any local or foreign regulatory agency or body that regulates financial entities. The Authorities provided MOUs between TTSEC and foreign counterparts.
782. *Criterion 40.13* – As noted above, the supervisory authorities can share information both domestically and internationally. It would appear that this would include information that is domestically available to the relevant supervisory authority. The Authorities have also indicated that Regional MOUs have been signed to facilitate this process.

783. *Criterion 40.14* – (a) There is no provision for sharing regulatory information on the domestic system and general information on financial sectors. (b). - Prudential information, along with BO information and others would also be shared under the provisions stated above. (c) AML/CFT information can also be shared under the assumption above, since no restrictions are specified. See section 8(2)(a) of the FIA. One may argue that provisions are not specific enough to ensure free flow of information.
784. *Criterion 40.15* – The citations provided by the Authorities do not address the issue of allowing foreign counterparts to conduct inquiries themselves in the country in order to facilitate group supervision.
785. *Criterion 40.16* – There are no measures with regard to the receipt of prior authorisation of the requested supervisor for the dissemination of information.
786. *Criterion 40.17* – LEAs (FIB, Customs) also indicated that information is exchanged between INTERPOL and the FIB. Information is also, shared through the Customs Administration, CCLEC and the Joint Regional Communications Centre (JRCC). The extent of the information that can be shared via these mediums are unknown to the Assessors. The Authorities have cited section 4 of the Income Tax Act (ITA), however that measure deals with confidentiality of information.
787. *Criterion 40.18* – The Authorities advised that there are agreements with INTERPOL, CCLEC and other Customs Agreements however copies of these agreements were not provided to assess compliance with the requirements of the criteria.
788. *Criterion 40.19* – No citation was provided with regard to the ability of law enforcement to form joint investigative teams. There is also a specific restriction to joint investigations in the Income Tax Act (section 4).
789. *Criterion 40.20* – The measure noted for this criterion is supposed to be applicable to all CAs. The Authorities have cited a process used by the FIUTT for obtaining information through an MOU, which will include obtaining the consent of the original source when necessary. It is not clear that this process covers information exchange between non-counterparts. Since its Third Round Mutual Evaluation, the jurisdiction has sought to make improvements in the formalities for providing international cooperation. To that end, Trinidad and Tobago has signed several instruments with foreign CAs such as FIUs and other Securities Exchange Commissions. This has helped to cement the basis on which international cooperation is provided and to extend the jurisdiction's capacity to provide same.

#### *Weighting and conclusions*

790. Notwithstanding these significant improvements, there are still some deficiencies that remain. There is no provision in the FIUA legislation that speaks to the rapidity with which such information would be provided although there is evidence that information has been shared quickly pursuant to a request. The FIUTT is actively engage in spontaneous disclosure to foreign law enforcement authorities.
791. Trinidad and Tobago has indicated that all supervisory authorities have been enabled to provide cooperation. This is supported by the necessary legislative provisions. However no information was provided on whether the most efficient means of cooperation were used. Additionally, with the

exception of the FIUTT, there was no clear provision for the safeguarding of information by other CAs.

792. In terms of provision of exchange of information or assistance there was one restriction that was of concern. Under the MACMA there is a possibility of refusal of assistance under section 22(k) and (3) where certain tax offences are involved. That restriction affects the rating of this criterion since it presents a potential obstacle or restriction on the provision of assistance.
793. There are measures set out in the FIUA, the IA, and the FIA which all enable the relevant CAs to conduct inquiries both domestically and on behalf of their foreign counterparts.
794. Based on information gathered the Assessors were satisfied that joint investigations were actually being conducted although it was not clear whether there was legislation on this or a formal mechanism enabling this to be done. This criterion is not met.
795. The overall rating for this Recommendation is PC.

## **List of Abbreviations**

ACIB: Anti-Corruption Investigation Bureau  
AML: Anti Money Laundering  
ATA: Anti-Terrorism Act  
ATTIC: Association of Trinidad and Tobago Insurance Companies  
AREA: Association of Real Estate Agents  
BATT: Bankers Association of Trinidad and Tobago  
BIR: Board of Inland Revenue  
BNI: Bearer Negotiable Instrument  
CA: Competent Authority  
CARICOM: Caribbean Common Market and Community  
CBTT: Central Bank of Trinidad and Tobago  
CCCU Caribbean Confederation of Credit Unions  
CFATF: Caribbean Financial Action Task Force  
CGIU\_ Criminal Gang Intelligence Unit  
CDD: Customer Due Diligence  
CFT: Combating Financing of Terrorism  
CTD: Criminal Tax Division CTU:  
Counter-Trafficking Unit CSA:  
Co-Operative Societies Act  
DNFBPs: Designated Non-Financial Businesses and Professions  
DPP: Director of Public Prosecution  
EDD: Enhanced Due Diligence FATF:  
Financial Action Task Force FIA:  
Financial Institutions Act, 1993  
FIB: Financial Investigation Branch  
FIUTT: Financial Intelligence Unit of Trinidad and Tobago  
FIUA: Financial Intelligence Unit of Trinidad and Tobago Act  
FIUR: Financial Intelligence Unit Regulations  
FOR: Financial Obligations Regulations  
FT: Financing of Terrorism  
GDP: Gross Domestic Product  
IBATT: Insurance Brokers Association of Trinidad & Tobago  
IOSCO: International Organization of Securities Commissions  
IR: Intelligence Report  
KYC: Know Your Customer  
LEA: Law Enforcement Agency  
LB: Listed Business  
FI: Financial Institution  
MACMA: Mutual Assistance in Criminal Matters Act  
MFATT: Mutual Funds Association of Trinidad and Tobago  
MLAT: Mutual Legal Assistance Treaty  
MVTs: Money Value Transfer Services  
NAMLC: National Anti-Money Laundering Committee

NPO: Non-Profit Organisation  
OCNFB: Organize Crime, Narcotics and Firearms Bureau  
OAS: Organization of American States  
PEP: Politically Exposed Person  
PF: Proliferation Financing  
PMC: Private Members Club  
POCA: Proceeds of Crime Act, 2000  
RDD: Retrospective Due Diligence  
REDTRAC: Regional Drug Law Enforcement Training Centre  
SAF: Seized Asset Fund  
SAR: Suspicious Activity Report  
SDTT: Securities Dealers Association of Trinidad and Tobago  
SIA: Securities Industry Act, 1995  
SIFI: Systemically Important Financial Institution  
SOP: Standard Operating Procedures  
SRO: Self-Regulatory Organization  
SSA: Strategic Services Agency  
STR: Suspicious Transaction Report  
TF: Terrorist Financing  
TandT: Trinidad and Tobago  
TTPS: Trinidad and Tobago Police Service  
TTSE: Trinidad and Tobago Stock Exchange  
TTSEC: Trinidad and Tobago Securities and Exchange Commission  
UK: United Kingdom  
UN: United Nations  
US: United States  
USA: United States of America  
WMD: Weapons of Mass Destruction



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## Anti-money laundering and counter-terrorist financing measures – Trinidad and Tobago

### *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Trinidad and Tobago as at the date of the on-site visit January 12-23, 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Trinidad and Tobago's AML/CTF system, and provides recommendations on how the system could be strengthened.