

CFATF-V

CARIBBEAN FINANCIAL ACTION TASK FORCE



ANNUAL REPORT 1998-1999

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SUMMARY

As Member States of the Caribbean Financial Action Task Force look towards the new millennium, the accomplishments of the fifth operational year under the dynamic chairmanship of Honourable George A. McCarthy O.B.E. J.P., Financial Secretary, Cayman Islands Government, provide a significant degree of enthusiasm and confidence to the region's status as a respected and committed partner in the international battle against drug trafficking and money laundering.

During the 1998 -1999 period several Working Groups which were mandated to review aspects of our policies and procedures on several fronts, undertook and completed their assignments. The Council of Ministers Meeting V endorsed the recommendations on;

- 1) The Mutual Evaluation Programme and Procedures
- 2) The policy framework for the application of sanctions pursuant to Section VII 4 (x) of the Memorandum of Understanding and FATF Recommendation 21, and
- 3) The need to amend the 19 CFATF Recommendations based on the revision of the 40 FATF Recommendations in June 1996.

The stage is now set for action, innovation and continued success.

Pivotal to our work is the monitoring mechanism of the Mutual Evaluation Programme. Our existing Mutual Evaluation Procedures, last revised in November 1998 vis-à-vis the definition of a mutual evaluation examiner, have now undergone extensive and detailed overhaul with a view to expediting the timeframe between the completion of the Mutual Evaluation Visit and the adoption of the Report as final by the Council of Ministers.

Indeed the redrafted Procedures have proved to be quite successful as demonstrated by the evaluations of Jamaica and the British Virgin Islands.

The availability of these Reports to the Caribbean Anti Money Laundering Programme is of immense importance. This European Commission/CARIFORUM, United States of America and United Kingdom funded Programme is designed to meet the technical assistance and training needs of Member States. Therefore, the up to date information in the Mutual Evaluation Reports which will be at the disposal of the Programme Team as it commences this vital project is very timely indeed.

During the 1998-1999 Work Programme, some seven Mutual Evaluation Reports were discussed in Plenary and adopted by the CFATF Council of Ministers. The Schedule of visits as mandated by Council II is therefore on track as we move to complete the first round of evaluations during the upcoming sixth operational year.

Securing success on this front depends in no small measure, on the availability of a wide pool of experts from Member States who can serve as Mutual Evaluation Examiners. In this regard the Mutual Evaluation Examiners Training Workshop which was hosted by the Government of France during May 1999 has now afforded the Secretariat the services of a further 46 trained experts.

The lifeblood of the CFATF is the funds available to the Secretariat through the annual contributions of the Member States and our friends, the Co-operating and Supporting Nations, which allow for the undertaking of the Chairman's Work Programme each year.

During the 1998-1999 period, whilst applauding Members who paid on time, the failure of all annual contributions and outstanding receivables to arrive in a timely fashion despite the vigorous efforts of Chairman McCarthy and the Secretariat, was a major cause for concern.

During the course of the deliberations which sought to rectify the grave situation that existed, questions arose as to the commitment of some Members to the ideals as expressed in the Kingston Declaration and the Memorandum of Understanding, and whether the time had now come to withdraw Membership from those States who, by their own actions, have shown themselves to be dilatory and recalcitrant.

The CFATF Memorandum of Understanding speaks to the need to protect the economic, social and political well being of the region.

In this regard, in order to keep abreast of the activity of the criminal elements, a Typology Exercise was conducted into the Illegal Trade in Firearms and its Impact on the Drug Trade and Money Laundering in the Region.

Further, given the growing importance of the international financial services sector to the economies of a large majority of CFATF Member Countries, a Working Group was formed to study the implications for the region of the G-7 Initiative and the work of the Committee of Fiscal Affairs of the Organisation for Economic Co-operation and Development.

With a view to ensuring the regulatory and supervisory framework of the International Financial Services sector in CFATF Member States is adhering to responsible and accepted international standards, preliminary arrangements have begun for a major conference covering all aspects of this sector. The Secretariat is on the look out for partners, speakers and an appropriate venue.

Finally, this operational year saw change at the Executive staffing level of the Secretariat. As at February 28, 1999, A. Carlos Correa, who served in the capacity of Executive Director from January 29, 1997 to February 28, 1999, returned to the Department of the Treasury of the United States Government.

March 01, 1999 saw Calvin E.J. Wilson commencing duties as Executive Director with Pierre LAPAQUE, seconded by the Government of France, beginning a three-year term as Deputy Director.

THE CFATF MEMORANDUM OF UNDERSTANDING

MEMBERSHIP

As at the end of the fourth operational year, the CFATF membership remained at 25 throughout the 1998-1999 period.

Both Guatemala and Guyana had participated in the CFATF from inception but are not included in the list of Members. Indeed Guatemala was one of the twenty two countries who signed the MOU when it was concluded as final by the Council Meeting in Costa Rica in 1997 but problems surfaced thereafter which indicated that they had not formally and properly subscribed.

Guyana was not represented due to other unavoidable commitments and the Secretariat was subsequently directed by the Council to travel to Guyana to secure its subscription.

The Secretariat pursued leads during 1998-1999 to ascertain whether both jurisdictions were still interested in being re-incorporated as Members and, on the instructions of the Council of Ministers, is expected to continue its efforts throughout the period 1999-2000.

SECTION VII 4 (x)

At Council IV held during November 19-20, 1998 in the Cayman Islands, concern was expressed about the non participation in the affairs of the CFATF by some Members, in contravention of MOU Sec X 1 which states that: Each Member will be represented by one senior official in the Plenary.

In light of the concern, a mandate was given for the creation of a Working Group to consider the issue, as well as the failure of some Members to pay their annual contributions in a timely fashion, and to report to Plenary VIII.

The Working Group comprising Barbados, the Bahamas, the Dominican Republic and the Netherlands Antilles conducted their deliberations through the co-ordination of the Secretariat and recommended that the policy regarding the application of sanctions vis-à-vis MOU Section VII 4 (x) and Recommendation 21 should be adopted.

Council V duly endorsed both recommendations. See Attachments.

OUTREACH PROGRAMME

The Secretariat, in its outreach programme, was successful in securing the attendance of Venezuela to Plenary IX. Both Dr Pedro Andrés Rojas and Francisco Odreman were warmly welcomed.

CFATF Deputy Director, Pierre LAPAQUE had travelled for two days during June 1999 and met with Dra. Mildred Camero, President of the National Commission Against Drugs and Mr. Pedro Andrés Rojas, the Commission's Anti-Money Laundering Coordinator.

As a result of this trip, in addition to securing Venezuela's attendance, the Secretariat was able to concretize arrangements for the Mutual Evaluation of Venezuela which should have occurred during August 9-13, 1999 but which has now been deferred to November 8-12, 1999.

Another facet of the Secretariat's outreach programme has been efforts to re-engage Colombia who had participated in meetings of the CFATF from its inception. Council III in Barbados took note of the fact that Colombia had not signed the MOU. It would appear that Colombia's domestic laws prohibit its subscription to a MOU like the CFATF's which does not conform to international law governing treaties for the establishment of international organizations and which creates funding and other obligations for signatory governments.

Note was further taken of Colombia's importance to the region and with a view to circumventing the legal impediment, the Council adopted a new policy which provided that any nation could at the invitation of the Chairman, join the CFATF as an Observer subject to the completion of a positive mutual evaluation.

On the direction of the Council, the then Chair extended an invitation for Colombia to join the CFATF as an Observer and to conclude arrangements for its Mutual Evaluation with tentative dates of January 11-15, 1999 being suggested. However, no response has been forthcoming and the Secretariat will continue its efforts with a view to ascertaining whether Council III's invitation would be accepted.

Efforts to re-engage Nicaragua continued particularly, as their Mutual Evaluation should have occurred during November 9-13, 1998. New dates have been tentatively scheduled for September 18-22, 2000; however, confirmation of these dates is yet to be firmed up.

Active participation in every aspect of the affairs of this organization by each Member is one of the fundamental goals of the Secretariat. Equally, the Secretariat is seeking to ensure that the Dutch, English and Spanish speaking groupings are fully represented in all CFATF activities. Accordingly, the following countries performed as Interlocutors within the mutual evaluation framework during 1999.

Mutual Evaluation Report

Interlocutor

St Kitts and Nevis		Venezuela	Belize
Jamaica	-	Costa Rica	
St Lucia	-	Aruba	
Turks and Caicos Islands		Panama	Antigua and Barbuda
Bermuda		Grenada	Dominican Republic

Antigua and Barbuda
British Virgin Islands
St Vincent and the Grenadines
Dominica

Jamaica Netherlands Antilles
Anguilla St Vincent and the Grenadines
Barbados Anguilla
Grenada Bahamas

The Secretariat continued its efforts in conjunction with the FATF Secretariat to have Mexico admitted as a Co-operating and Supporting Nation. The next step, given that Mexico was admitted as an Observer within the FATF, would be the completion of arrangements by both the FATF and the CFATF for the Mutual Evaluation of Mexico.

All CFATF Members look forward to positive contributions from Mexico on completion of the formalities.

THE CFATF MUTUAL EVALUATION PROGRAMME

One of the central pillars through which Members are monitored vis-à-vis the effective implementation of the 19 CFATF Recommendations, the 40 FATF Recommendations as well as those other obligations arising out of the Kingston Declaration is the Mutual Evaluation Programme.

The Programme is designed to give due recognition where the standard benchmarks are met, and to identify weaknesses and make appropriate recommendations with a view to rectification.

Council II in Costa Rica mandated that all Members undergo mutual evaluation by the end of the year 2000 and a schedule of visits was drawn up accordingly. See Attachment.

EVALUATION VISITS

To date all the Mutual Evaluations have occurred by and large to schedule but for some Members who, for a variety of reasons, requested postponement during the 1998-1999 period such as Nicaragua, St Kitts and Nevis and Venezuela.

St Kitts and Nevis was evaluated during February 22-26, 1999. Nicaragua is scheduled to occur during September 18-22, 2000 although these dates are to be confirmed and Venezuela will be evaluated during November 8-12, 1999.

Plenary IX saw the discussion of the Mutual Evaluation Reports of St. Vincent and the Grenadines, Antigua and Barbuda, Bermuda, St. Lucia and Jamaica. Plenary X saw the discussion of the Mutual Evaluation Reports of Turks and Caicos Islands and the British Virgin Islands.

It is expected that Plenary XI will see the discussion of the Reports of both Dominica and St. Kitts and Nevis.

The Mutual Evaluation Programme is on track and gaining momentum.

EXAMINERS TRAINING SEMINAR

At Council III in Barbados, the need for both English and Spanish speaking mutual evaluation examiners was recognised and during May 04-05, 1999 at the CIFAD training facilities in Martinique, the CFATF Training Seminar for Mutual Evaluation Examiners was conducted under the auspices of the Government of France who provided generous support to this important initiative.

Special thanks must also be extended to Gilles Sabatier and his team for the enthusiasm and efficiency with which they assisted the Deputy Director Lapaque who was responsible for this exercise.

Solid support was also provided by the FATF Executive Secretary, Mr. Patrick Moulette, as well as FATF Members, France, the United Kingdom, Spain and the United States of America who gave willingly of their time, expertise and experience.

Thanks must also be extended to CFATF Members, Bahamas, Costa Rica, Jamaica, the Netherlands Antilles and Trinidad and Tobago from which experienced Examiners were drawn to make presentations.

The CFATF family expresses its gratitude for the continued goodwill and cooperation that exist between both the FATF and the CFATF.

The Seminar was well attended with some 46 delegates from 16 CFATF Member States taking part. **All Members received an Information Booklet of all the presentations. This was included in the envelope with the Summary Record for Plenary IX which was sent via courier.**

During November 1998, Council IV endorsed an expanded definition of the mutual evaluation examiner which included former senior officials with the relevant expertise and knowledge, so as to meet the acknowledged shortage of examiners.

Given the level of participation at the Seminar, the Secretariat can now call upon a much enhanced pool of examiners and looks with confidence to completing the final group of evaluations during 2000 and to making preparations for the second round of mutual evaluations which are due to commence at the beginning of 2001.

Indeed, for the mutual evaluation of the British Virgin Islands during July 1999, one of the participants, Ian Carrington, Director Bank Supervision Department, Central Bank of Barbados, performed the duties of Finance Expert.

MUTUAL EVALUATION PROCEDURES

The Mutual Evaluation Programme has not been free of difficulties and at Council Meeting IV concerns were expressed on the delays which were being experienced within the Programme.

Accordingly, a Working Group comprising the Bahamas, Barbados, Dominica, the Netherlands Antilles and the Secretariat was mandated to consider inter alia,

- (i) the delays that occur in the submission of the individual reports to the Secretariat by the Examiners for the compilation of the Mutual Evaluation Report;
- (ii) the length of time Members take to formulate a response to the Report;
- (iii) the fact that the Examined Country further delays adoption of the Report as final by the Council through their non-attendance at the Plenary meeting when the Report should be discussed.

The outcome of the Working Group deliberations is an extensive revision of the Mutual Evaluation Procedures, which is outlined at Appendix B.

Plenary IX reviewed the procedures and with some amendments recommended them to the Council of Ministers who gave the appropriate approval.

It must be noted that the Secretariat had tested these procedures during the Mutual Evaluations of St Kitts and Nevis, Jamaica, Dominica and the British Virgin Islands and they have proved beneficial in reducing the previous delays between the occurrence of the mutual evaluation and the adoption of the completed Report by the Council of Ministers as final.

Particular note must be made of the examinations of Jamaica and the British Virgin Islands. In the case of Jamaica, the visit took place during March 12-16 1999, the Report was discussed at Plenary IX in July 1999

and adopted in October 1999 at Council Meeting V. With the British Virgin Islands, the visit took place during July 26-30 1999, the Report was discussed at Plenary X and adopted at Council Meeting V in October 1999.

REVISED CFATF 19 RECOMMENDATIONS

The Typology Exercises Working Group was created as a result of the Revised Recommendations issued in June 1996 by the FATF.

Taking note of this, the CFATF Council of Ministers in Costa Rica mandated the conducting of a Typology Programme in order to ascertain the facts and circumstances of money laundering activity as it occurred in CFATF Member States.

This Programme looked at the money laundering possibilities in Domestic Financial Institutions, the Casino and Gaming Industry, International Finance and through the Emerging Cyberspace Technologies.

On considering the results, the Work Group recommended that the CFATF should endorse the Revised 40 FATF Recommendations, which was accepted by the Council of Ministers.

The Council further mandated the Work Group to consider the impact of the Revised Recommendations on the 19 CFATF Recommendations.

Accordingly, having considered particular facts and circumstances pertaining at various national levels, the Working Group recommended and the Council of Ministers endorsed the revision of the 19 CFATF Recommendations to reflect the changes as outlined on the 19 CFATF Recommendations. See attached.

Both the 19 CFATF and 40 FATF Revised Recommendations will be utilized from the inception of the second round of mutual evaluations commencing 2001.

CARIBBEAN ANTI-MONEY LAUNDERING PROGRAMME

This report details activities undertaken, and achievements since the commencement of the Anti-Money Laundering Programme effective March 1, 1999.

Main Activities Implemented

Office Premises & Equipment

On appointment in March 1999 one of the initial tasks of the Programme Manager was to implement a programme of office extension and redecoration within the CFATF office premises to accommodate the staffing level expectation for the Programme. Additionally, it has been necessary to identify all required office equipment for the initial launch and have same installed.

Recruitment

A Secretary to the Programme took up post on June 1, 1999 following local advertising in Trinidad & Tobago.

The United Kingdom agreement to fund the post of Law Enforcement Technical Adviser resulted in advertisements being distributed throughout the United Kingdom eventually leading to a selection process held on March 1 & 2, 1999, and the selected individual taking up post in Trinidad on March 25, 1999 (Barnard Humphris *Born - U.K.*).

Following Caribbean-wide advertisements for the posts of Legal/Judicial and Financial Sector Technical Advisers, selection panels, made up of donor and CFATF representatives, were held on 5th & 6th July, 1999 resulting in a Legal/Judicial Adviser (Fitz-Roy Drayton *Born - St. Vincent*) and a Financial Sector Adviser

(Manuel Vasquez *Born – Belize*) being selected. The expectation is that both individuals will take up their posts during the month of October 1999.

Programme Publicity

Much work has been done to promote the Programme within the Region to sensitize officials and organizations to the aims and objectives of the Programme and the benefits available in the months to come. This has included a number of formal presentations, delivered to, for example, the Annual General meeting of the Caribbean Commissioners of Police and the Regional Conference for Prosecutors and Financial Investigators.

Other Programmes/Agencies

Early identification was made of a number of other programmes or agency projects, being run in the Region touching upon money laundering issues. It was considered essential to meet with the Directors and Managers of these programmes and projects to determine that a mutually agreed approach be adopted to ensure the contributions are complimentary and not subject of conflict or confusion. Additionally, this approach guarantees that resources are not wasted in any way.

Main Preliminary Outputs

The work of the Caribbean Financial Action Task Force is now well established and understood in the Region. The programme of '*Mutual Evaluation*' conducted within countries tends to focus officials in such countries to their shortcomings or development needs in the area of money laundering prevention and detection. Having been sensitized to these issues I consider it appropriate that the Anti-Money Laundering Programme Advisers should then visit Country Officials, post Mutual Evaluation Examinations, for the purpose of offering advice and assistance.

As a consequence of Mutual Evaluation Examinations being conducted recently in Antigua & Barbuda, St. Vincent & the Grenadines, St. Kitts & Nevis, Jamaica and Dominica, a course has been planned and representatives from these Countries have been invited to attend, together with other representatives from Grenada and Trinidad.

Total Funds Disbursed

Owing to the delayed commencement of the Programme, the C.F.A.T.F. had been custodian of the first-year donation from Government of the United States of America. Upon launch of the Programme the U.S. funds were transferred to a new account styled '*Anti-Money Laundering Programme*' and these funds have been used for all commitments so far.

An initial cost estimate in respect of the European Communities Delegation for the period ending December 31, 1999 was developed and submitted. This has recently been accepted and the first three-month tranche (US\$108,990) has now been paid into the Programme Bank Account. To date, other than the salary contracted to the Programme Manager, no other moneys have been expended.

Law Enforcement Programme Implementation

The anti-money laundering course for law enforcement officers, previously mentioned, has been slated for the two-week period commencing October 4, 1999.

The intention of the course which has been designed by the Law Enforcement Technical Adviser in conjunction with experts from the United Kingdom, will be to equip the student with an in-depth theory of money laundering issues and detection methods. Thereafter, each student will be offered an attachment to an established Financial Investigation Unit to enable the individual to gain some on-the-job training.

Once the student(s) has/have been trained to this level, in conjunction with the wishes of their Governments, the law enforcement advisers will offer assistance to set up financial intelligence units in their respective countries. Each individual student, once qualified, will be recorded as an accredited officer for money laundering investigations, and local banks and financial institutions will be so advised, which, it is anticipated, will assist banking officials to have faith in the designated officers within their countries with whom they interact on money laundering enquiries.

In conjunction with the law enforcement training, both the Legal/Judicial and Financial Sector Advisers will be visiting representatives of the respective Governments offering advice and assistance in their areas of expertise. Whilst the Legal/Judicial representative will promote up-to-date effective laws and regulations designed for money laundering prevention and detection, he will also be offering training to lawyers, judges and magistrates whilst also working closely with the University of the West Indies and the related UNDCP which touches upon some aspect of the legal issues concerned with money laundering.

The Financial Sector Adviser likewise, will be offering advice and assistance to banks, financial institutions and offshore banking organisations and regulatory inspectors together with the offer to make video recorded presentations to assist banking staff in identifying suspect money laundering transactions and also, recommended reporting procedures.

The setting up of the Programme, implementation preparation and staff selection have taken some months. The Programme is now ready to deliver the products from a variety of aspects which should impact very positively in the Region.

STAFFING

A. Carlos Correa, seconded by the United States Department of the Treasury – FinCEN to the CFATF initially as Deputy Director in November 1995 assumed the Executive Directorship during January 1997.

His term of secondment concluded in February 1998 but was extended until February 28, 1999 with the acquiescence of the United States Government and the CFATF Council of Ministers.

Upon his departure and as at March 01, 1999, Calvin E. J. Wilson, who had previously joined the Secretariat as Deputy Director on February 08, 1998, assumed duties as Executive Director.

Mr. Pierre LAPAQUE, seconded by the Government of France was appointed to the position of Deputy Director.

Mr. LAPAQUE comes to the CFATF with fifteen years experience in the French Police with his last posting in Nice as Chief of the Fraud Squad in the French CID.

BUDGET AND FUNDING

The Budget for the period 1999 was in keeping with the format of previous years, making allowances for cost increases in travel, telephone, general office operations, staff remuneration, organizing the two Plenary Meetings, the Mutual Examiners Training Programme and one Typology Exercise.

As regards staff remuneration, the Budget included the funding for the Executive Director's position given the departure of A. Carlos Correa whose costs were underwritten by the United States Government.

However, the attendant costs were only borne in part as the fund previously established for the Deputy Director position was maintained and redirected to defray the remuneration of the Executive Director. As regards the secondment of the current Deputy Director, the associated costs are borne by the Government of France.

A perennial problem for the CFATF has been the failure of Members to pay their annual contributions in a timely fashion and the level of outstanding receivables. Council IV considered the level of arrears to be of significant concern and urged all Members to meet the obligations they have undertaken in a responsible fashion.

With the assistance of Chairman McCarthy, the Secretariat made vigorous efforts to achieve a reduction in the level of arrears with some success. However, the situation is still not altogether satisfactory. Indeed the Secretariat was placed in the unusual and embarrassing position of having to defer payment of outstanding invoices and having to consider the possibility of cancelling the Mutual Evaluation of Venezuela which fortunately was postponed at that Member's request from August 1999 when the Secretariat's finances were in dire straits, to November 1999.

Whilst commending those Members who made prompt payment, Chairman McCarthy urged those Members whose commitments had not been met to do so urgently and immediately.

Canada made a contribution of US\$13,333. for 1999

Note must also be made of the generosity of the United Kingdom who in addition to its annual contribution of US\$8,187. provided a further US\$16,170 which was utilized to modernize the computer equipment at the Secretariat.

The Government of France, in addition to meeting the costs of the Deputy Director and their usual annual contribution of US\$29,000 also met the costs of simultaneous interpretation and ground transportation for delegates at the Mutual Evaluation Examiners' Training Seminar in Martinique.

The Kingdom of the Netherlands contributed US\$ 30,000. for 1999.

The United States Government made a contribution of US\$45,000. for 1999.

The contribution for each CFATF Member for 1999 was put at US\$5193.33 but the Government of the Cayman Islands paid US\$10,000, and also met the costs of the coffee breaks at Plenary IX, which was held in their country. Jamaica paid US\$ 7660.72 and Barbados' additional contribution for 1998 was US\$4520.87. Trinidad and Tobago continues to provide accommodation to the Secretariat at an estimated value of US\$18,250 per annum in addition to its annual contribution.

However, given the increasing complexity and attendant costs of the battle with which we are engaged, the Secretariat is seeking to develop streams of income independent of the contributions of Members and COSUNs, and efforts in this regard will be intensified during 1999-2000.

WORK PROGRAMME 1998-1999

An important aspect of the obligations undertaken by Members as signatories to the CFATF Memorandum of Understanding is the need to protect the economic, political and social well being of the region.

One mechanism for the pursuit of this aim is the CFATF Typology Exercise Programme whereby a study of money laundering as it occurs as well as the evolving methods used by the launderers are explored. During the 1998-1999 period it was initially intended to conduct a typology study of the Free Trade Zones. However, due to the need to source additional partners in order to make the initiative sufficiently thorough and worthwhile, it was decided to defer exploration of this area to March 2000.

Consequently, given overwhelming concern, it was decided to conduct an examination of the Illegal Trade in Firearms and its Impact on the Drug Trade and Money Laundering in the region.

This Seminar took place during Plenary IX, Cayman Islands and was chaired by Sam Bulgin, Solicitor General, Cayman Islands who stood in for Chief Justice Anthony Smellie, Cayman Islands.

Remarks read on behalf of the Chief Justice set the tone for the proceedings and were followed by presentation from Grantley Watson, Commissioner of Police, Barbados, Bryan Sykes, Deputy Director of Public Prosecutions, Jamaica and Dr Rafael Sousa, Director Juridicio, Panama.

CFATF Deputy Director, Pierre LAPAQUE read remarks of a Senior Advisor from the United States and an intervention from Lic. Damián Santos, Asesor Económico, Dominican Republic, painted a clear picture of the link between the widespread circulation of sophisticated, illegal arms and ammunition and the drug trade in his country.

This Seminar was a first step in the discussions which will take place in the Member States as a means of determining the way forward on this issue and the presentations were collated and circulated by the Secretariat to all Prime Contacts.

Another issue which has significant implications for the region is the G7 Initiative on Harmful Tax Competition.

Meeting in London on May 9, 1998, G-7 Finance Ministers agreed on a major initiative to tackle the growing problems caused by harmful tax competition and the tax evasion and avoidance that it generates.

The Initiative reinforces the recommendations of the Organization for Economic Co-operation and Development for coordinated international action to allow information to be passed to tax authorities about transactions in tax havens and preferential tax regimes and complements the EU Code of Conduct on Business Taxation.

In the context of the international anti-money laundering systems, the initiative attempts to stem potential weaknesses by ensuring that financial institutions report suspicions about the movement of criminal assets regardless of whether they believe that the criminality involved is tax related.

Council IV was alerted to the implications of the foregoing for CFATF Member States and a Draft Resolution was prepared and discussed. Consensus centred on the need for the creation of a Working Group to be formed to study the issue and to develop a joint plan of action and response in the spirit of regional co-operation.

Members of the Working Group are the Bahamas, British Virgin Islands, Cayman Islands, Panama, Jamaica and the Secretariat, and there was strong support for the issue to be included in the Chairman's Work Programme for 1998-1999.

The inaugural meeting of the Working Group was held in the Cayman Islands on February 19, 1999 and a full report was presented to Plenary VIII by the Work Group Chair, Sam Bulgin, Cayman Islands.

Concern was expressed that attention to the core work of the CFATF as it relates to anti-money laundering issues should not be diverted by the purely fiscal implications of the G-7 Initiative.

However, given the fact that 21 of the countries on the OECD list of Tax Havens and Preferential Tax Regimes are CFATF Member States and that the issue is of critical importance to Member States and the economic stability of the region, Plenary VII adopted the Chair's report and mandated the Secretariat to forward it to the CARICOM Heads of Government and similar fora for the Spanish speaking members of the CFATF.

Further, with a view to seeking clarification on all aspects of the G-7 Initiative the Secretariat was required to arrange meetings between the CFATF and the FATF Steering Groups and also a meeting between the CFATF Working Group and the Committee on Fiscal Affairs of the OECD.

The first meeting is yet to be arranged. However, the Secretariat was successful in arranging a seminar between the OECD Committee on Fiscal Affairs and senior officials of CFATF Member States. This occurred on July 9, 1999 in the Cayman Islands outside the framework of the CFATF Plenary IX. On this occasion, Jeffrey Owens and Frances Horner made a presentation on the nature of the work that was being undertaken by the OECD and the manner in which it was approached.

In response the senior officials of the CFATF Member States were able to voice their concerns as to the manner in which the work of the OECD impacted on their individual countries as well as the implications for the economic well being of the Caribbean Basin region. The OECD have agreed to participate in a similar seminar in March 2000 in order to provide a progress report to the senior officials and to share experiences on the ongoing process.

The discussions were frank and proved to be immensely useful to all who attended.

On another front, the CARICOM States Heads of Government Meeting took place in early July and on the agenda for discussion was the work of the OECD and its implications for the region.

CFATF Executive Director had addressed, through the kind assistance of the CARICOM Secretariat, both senior officials and Ministers at the Second Joint Meeting of the Inter Governmental Task Force on Drugs and Ministers Responsible for National Security on the potential impact of the G-7 Initiative on the region. In light of the ensuing discussions it was agreed that the issue should be placed before the Heads of Government and indeed this occurred.

Taking cognizance of the implications of the issue for the region, a Policy Advisory Committee has been formed to explore the issue further and to advise the CARICOM Council for Finance and Planning on an appropriate regional strategy.

The Secretariat will liaise with the CARICOM Secretariat with a view to arriving at a common position and will endeavour to arrange a meeting between the Policy Advisory Committee and the CFATF Working Group so that a joint position could be adopted in response to the OECD's work.

EXTERNAL RELATIONS

FATF

During this fifth operational year, the very close co-operation that has been firmly established over the years between both the CFATF and the FATF continued to be cemented.

FATF President, Jun Yokota, in keeping with tradition, was invited to address Council Meeting IV which was held in the Cayman Islands during November 19-20, 1998.

President Yokota, in the spirit of both organizations being kept abreast of each other's affairs, outlined the FATF Work Programme for the upcoming year, the future of the FATF and the collaboration between the CFATF and the FATF.

As regards the latter, President Yokota confirmed that in January 1999 both the FATF and CFATF were to participate in an evaluation of Aruba and the Netherlands Antilles which are CFATF Members but which are also jurisdictions that are part of the Kingdom of the Netherlands, an FATF Member.

This evaluation exercise was to be undertaken by three examiners from the FATF and an expert examiner from the CFATF who was in fact Charles Leacock, Director of Public Prosecutions, Barbados.

Making reference to the Work Programme of the then CFATF incoming Chairman, Hon. George A. McCarthy O.B.E. J.P., Financial Secretary, Cayman Islands Government, President Yokota shared the importance of the

proposed training programme for CFATF Mutual Evaluation Examiners to the efficient operation of the Mutual Evaluation Programme and confirmed that a wealth of experience was gained by the FATF from two full rounds of evaluations.

Congratulations were extended to the CFATF on the considerable achievements which were made over the previous year and clear indications were given that the very close relationship of mutual co-operation and support that exists between both organizations would indeed continue.

In keeping with this spirit of fostering and deepening the ties between both organizations, CFATF Chairman, Hon. George A. McCarthy was invited to address FATF Plenary XI, Tokyo, Japan, June 28–July 02, 1999.

Chairman McCarthy expressed his distinct honour and pleasure at being afforded the opportunity to present the progress of the anti-money laundering programme within the Caribbean Basin region.

From a historical perspective, Chairman McCarthy recalled that the CFATF was the first regional initiative of the FATF almost a decade previously and confirmed its development into an active and respected ally in the international battle against drug trafficking and money laundering.

CFATF activities and related developments were outlined for the benefit of the delegates in attendance which included:

- (i) the CFATF series of Typology Exercises into money laundering as it occurs in the region which began in February 1996; and
- (ii) the Mutual Evaluation Programme which was proceeding on a schedule with seven mutual evaluation reports on CFATF Member States listed for discussion.

Mention was made of the regular review of the Mutual Evaluation Procedures so as to ensure that the programme operated efficiently and effectively and the fact that the Secretariat had been able to achieve improvements in timely delivery of the reports. Chairman McCarthy underlined the critical importance of the CFATF Training Seminar for Mutual Evaluation Examiners which was held in Martinique to the success of the Mutual Evaluation Programme.

He further underscored the valuable lessons, its successful completion provided on the importance of close international co-operation in effectively combating drug trafficking and money laundering.

Note was made of the financial support provided by the government of France, the administrative, moral and technical support of the FATF Secretariat and the presentations made by experts from FATF and CFATF Member States, all to the benefit of potential CFATF Examiners.

Further testimony to this need for international co-operation was being provided through the jointly funded European Commission/CARIFORUM, United States and United Kingdom programme designed to strengthen institutional capacity in the CFATF region's ability to combat money laundering.

In closing, Chairman McCarthy reiterated that the CFATF has common cause with a multitude of international bodies and individual governments in the fight against money laundering and underlined the importance of international co-operation. He made clear the fact that the CFATF was prepared to engage constructively with others as its vital work is taken forward and its successes consolidated.

However, he emphasized that the CFATF and its member governments have not in the past passively accepted, nor will they in the future accept at face value, problems defined by or solutions crafted by non-regional governments. Whatever utility such solutions may appear to have, they must first be assessed by Caribbean experts in the light of relevant laws, facts and circumstances.

DUBLIN GROUP MEETINGS

Members of the Dublin Group include Ambassadors from Canada, France, Japan, the Netherlands, the Federal Republic of Germany, the United States, the United Kingdom and UNDCP and EC representatives accredited to Trinidad and Tobago and Barbados.

Meetings are convened in order to discuss and ensure co-ordination between the various training and technical assistance initiatives in the region.

In keeping with tradition, since its establishment in Trinidad and Tobago, the CFATF Secretariat continued to attend these meetings during 1998-1999, providing information on CFATF programmes and the technical assistance and training needs of CFATF Members.

PUBLIC SPEAKING

During the 1998-1999 period, the Secretariat continued to receive and indeed accepted several invitations to speak and participate at conferences arranged by Member States as well as private sector organizations on anti-money laundering drugs initiatives and related developments in the Caribbean. A full schedule is attached.

United Nations Drug Control Programme

The close and supportive relationship between both the CFATF and the United Nations Drug Control Programme (UNDCP) continued its development and strengthening during 1998-1999, with on going meetings discussions taking place between the CFATF Executive/Deputy Directors and the UNDCP's Caribbean Regional Office Representative, Michael Platzter, Flavio Mirella and Jean- Luc Lemahieu.

Plans are currently in train for collaboration on a Typology Conference covering the money laundering risks in the Free Trade Zones which is planned for March 2000 in Port of Spain, Trinidad.

During June 16-19 1999, the Executive Director participated in a seminar on money laundering for the Prosecutors of the Dominican Republic in Santo Domingo which was organized by Jean-Francois Thony of the United Nations Office for Drug Control and Crime Prevention (UNODCCP).

The seminar was an important exercise, as it demonstrated the strong commitment of the National Drugs Council and Prosecutors in the Dominican Republic to counter the scourge of money laundering and opened the way for the launching of an overall UNODCCP judicial assistance project.

During 2000 the CFATF will arrange, in collaboration with the UNDCP, a major Conference in the region covering the International Financial Services sector. UNDCP's Ronald Ranochak has and will continue to offer valuable advice and provide his expertise to this proposed venture.

INTERPOL

During this past year, FOPAC worked with the CFATF Secretariat to become more involved in the Caribbean area. With this goal in mind, a FOPAC officer has participated in each Plenary and Typology session with an attempt to not only be present but to add to the session with whatever knowledge INTERPOL had available. We have taken a proactive posture in promoting the activities of the CFATF to our other member countries by information in our FOPAC Bulletin as well as direct positive references during any media contacts and interviews conducted. We supported project EUROSHORE which is a study by three European universities focused on analyzing the laws and workings of offshore jurisdictions which include a number of the CFATF jurisdictions. Our goal was to ensure these universities had accurate information for their study (which we gathered through the INTERPOL National Central Bureaus) rather than only information supplied by their own European countries. In September, the Secretary General made a formal request of all of the INTERPOL member countries to support the FATF 40 Recommendations and the efforts of all regional organizations

devoted to the fight against money laundering. Finally, Mr. Lapaque of the CFATF Secretariat was a key speaker at the 9th International Conference on Assets Derived from Crime which we hosted at the INTERPOL General Secretariat in October.

OTHER INTERNATIONAL ORGANISATIONS

During the 1998-1999 operational period, the CFATF continued to cement its links with other international organizations with whom we have common cause in the ongoing battle against drugs and money laundering and have a history of attending our meetings as Observers such as, CARICOM, the Caribbean Customs Law Enforcement Council, the Commonwealth Secretariat, the European Commission Drugs Control Office for the Caribbean, the Inter - American Development Bank and OAS/CICAD. With a view to broadening these relationships contacts were made with the Caribbean Development Bank and the United Nations Economic Commission for Latin America and the Caribbean.

SUMMARY – MUTUAL EVALUATION REPORTS

ST. VINCENT AND THE GRENADINES

St. Vincent and the Grenadines consists of more than twenty islands. In 1993 there was a seizure of approximately 3,000lbs of cocaine on premises at Glamorgan in St. Vincent and the Grenadines. A conviction followed and the penalty was a large fine and a term of imprisonment was imposed. There has been no other drug bust involving cocaine. The cocaine that was seized was not produced in St. Vincent and the Grenadines; therefore, it was brought into the country.

Marijuana production for export in the most part to neighbouring islands continues despite the Government's eradication efforts. Development of tourism and the International Financial Services sector as a means of attracting alternative sources of revenue is a major thrust of the Government.

Whilst acknowledging the need to modernize the financial services legislation, the Government's policy is that money laundering will not be tolerated. At the time of the visit, no National Anti- Money Laundering Standing Committee had been established nor had any resources, human or material, been devoted to anti money laundering efforts.

This deficiency was reflected in the lack of ongoing inter agency co-ordination or collaboration between the Drug Squad, the Criminal Investigation Department, Customs, Inland Revenue, the domestic Monetary Authority and the banks and other financial institutions.

There are six commercial banks operating in the country with two of them being indigenous institutions. Several life insurance companies, a building society, savings and loans institutions, credit unions and money remitters also operate in the domestic financial services sector which is regulated and overseen by the Eastern Caribbean Central Bank (ECCB), with licenses being issued in conjunction with the Ministry of Finance.

In May 1995, the ECCB issued Anti-Money Laundering Guidance Notes for licensed banks which require them to develop programmes against money laundering that are generally in keeping with the 40 FATF Recommendations in terms of customer identification, record keeping, the reporting of suspicious transactions and adequate internal policies and procedures.

The Guidelines do not have the force of law but are, nonetheless, quite effective in that the industry is aware that failure to adhere to them could result in them being introduced as regulations under the Banking Act.

Officials from the branches of foreign banks believe that their corporate policies on internal anti money laundering programmes exceeded ECCB requirements. However, at the government owned bank, the staff

displayed uncertainty as to the requirements of record keeping, retention limits, customer identification rules and internal corporate anti money laundering policies.

Applications for the registration of offshore companies must be made to the Offshore Finance Authority through a registered agent licensed by the Authority. At the time of the visit, the Authority was staffed with the Offshore Finance Inspector, the Registrar of International Business Companies and Trust, a secretary and an office attendant.

No information was provided to the Examiners about the entities under supervision. However, whilst registered agents and licencees had been briefed on the importance of their roles and the possible negative consequences of negligence, no regulations regarding customer identification, suspicious/large transaction reporting or the identification of beneficial owners of licensed institutions had been introduced.

In the non-bank financial intermediaries sector, there was found to exist a lack of appreciation of the nature and ills of money laundering and how it was or could be conducted in or through this area. No guidelines had ever been issued.

Money laundering per se is not a criminal offence but Sections 21 and 22 of the Drug Trafficking Offences Act (No. 45 of 1993) identify certain activities such as assisting and concealing or transferring proceeds of drug trafficking respectively.

The mens rea requirement is that the defendant knew or believed and, therefore, actual knowledge must be proven by the Prosecution. Restraint orders prohibiting the dealing in any realizable property held by an identified person may be issued but only in relation to proceedings instituted and in progress in St. Vincent and the Grenadines for a drug trafficking offence and the court must be satisfied that the defendant benefited from drug trafficking. (See Sections 12 and 13).

The proceeds of drug trafficking may be confiscated on the sentencing of a convicted drug trafficker and where it is shown that some benefit was derived from the offences for which he was convicted. For this purpose, drug trafficking consists of the import, export, production, supply and possession for supply of controlled drugs.

The Act applies to property whether it is situated in St. Vincent and the Grenadines or elsewhere and, on the application by or on behalf of a designated country, the court may register an external confiscation order if the order is final.

The Court, upon conviction for a drug trafficking offence may order the forfeiture of any article, money or any valuable related to the offence. St. Vincent and the Grenadines does not have a designated asset/forfeiture confiscation fund.

Mutual legal assistance in criminal matters between St. Vincent and the Grenadines and Commonwealth countries is provided for by the Mutual Legal Assistance in Criminal Matters Act. St. Vincent and the Grenadines has ratified the Vienna Convention, has with Venezuela, a Mutual Legal Assistance Treaty for drug cases and has concluded an Extradition Treaty with the United States of America.

A request for mutual legal assistance in criminal matters may be refused if the request concerns conduct which would not constitute an offence in St. Vincent and the Grenadines, is of a political character, or concerns military law obligations.

Mutual legal assistance between St. Vincent and the Grenadines and non-Commonwealth countries is not possible pursuant to the Mutual Legal Assistance in Criminal Matters Act. Section 30 of the Act indicates that regulations may give effect to a treaty between St. Vincent and the Grenadines and another country and direct that the Act shall apply in relation to that country. Where there is no treaty the Act does not apply.

The Confidentiality Act establishes the State's policy to protect and preserve confidentiality and to prevent unauthorized disclosure of all confidential information. Yet, such information is freely available to the Offshore Inspector or other duly authorized official investigating an offence committed or alleged to have been committed within and against the laws of St. Vincent and the Grenadines. Such information is also available in response to requests from foreign authorities for international mutual legal assistance. As regards the sharing of information where cases are still under investigation, it appears that this could be provided after due court process.

The Royal St Vincent and the Grenadines Police are authorized to deal with cases involving the proceeds of drug trafficking and, investigations into those matters are the province of the Asset Forfeiture Section which is staffed by officers trained in financial investigations. During the course of the investigation the Director of Public Prosecutions provides guidance.

St Vincent and the Grenadines Customs has limited awareness of money laundering, as its main focus is revenue collection. Additionally, limited resources prevent more wide spread training.

The Examiners took note of St Vincent and the Grenadines' efforts to develop a comprehensive legislative framework for the licensing, regulation and supervision of the International Financial Services Sector. However, there was an urgent need to recruit and train appropriate personnel so as to ensure the efficient and effective supervision of the Sector, with anti-money laundering programmes being an important and integral aspect.

Note was also taken of the intention to name money laundering specifically as a criminal offence and to expand the range of predicate offences beyond drug trafficking through the proposed Proceeds of Crime Act.

Both the Drug Trafficking Offences Act and the Drug (Prevention of Misuse) Act meet most of the Vienna Convention requirements. However, in order to comply with the CFATF Recommendations, confiscation should extend beyond drug trafficking proceeds to the proceeds of any money laundering offence and there should be a designated fund for anti-narcotics or anti money laundering efforts. However, the rights of innocent third parties affected by confiscation proceedings should be clarified.

Compliance with the Vienna Convention for Commonwealth jurisdictions is, for the most part, met through the Mutual Assistance in Criminal Matters Act. However, provisions should be made for non-Commonwealth countries and, in all cases, should go beyond drug trafficking to all money laundering offences.

Moreover, there is the need to look at the legislation for co-operative investigations with other jurisdictions as well as for spontaneous upon request exchanges of suspicious transaction information to foreign competent authorities.

Finally there was a need for the establishment of a Central Authority to deal with international co-operation and co-ordination in the field of money laundering.

ANTIGUA AND BARBUDA

This twin island state has, for several years, been acknowledged as a transshipment point for narcotics from South America to the United States and Europe and there is some local use of marijuana and crack cocaine. However, there have been increased efforts by the Government with a view to demand reduction and greater public awareness.

The ECCB regulates all domestic banking activities within the eight member ECCB states, including Antigua and Barbuda. There is a regular review of banks and the banking system and detailed on-site examinations are carried out at least every 12 months. The Ministry of Finance has the power to grant licenses for domestic banks in consultation with the ECCB.

Overall responsibility for the regulation of the offshore financial sector was handed over to the Office of National Drug and Money Laundering Control Policy (ONDCP) following recommendations made in 1996. Day to day supervision is carried out by the IBC Authority which now reports to the ONDCP.

Under the Proceeds of Crime Act 1993 and The Money Laundering (Prevention) Act 1996, a person who engages directly or indirectly in a transaction that involves money or other property that is proceeds of crime or receives, possesses, conceals, disposes of, or brings into Antigua and Barbuda, any money or other property that is the proceeds of crime, shall be taken to engage in money laundering, provided that he knew or ought reasonably to know that the money or other property is derived, obtained or realized directly or indirectly from some form of unlawful activity. The legislation also requires financial institutions, among other things, to retain documents relating to financial transactions for a minimum period of seven years.

The Money Laundering (Prevention) Act 1996 (MLPA 1996) was passed in recognition of the need to strengthen and modernize supervision and regulation of the financial sector and defines money laundering in much the same terms as does the POCA 1993 and makes provision to give assistance to foreign countries. The scope of such assistance includes tracing, freezing and forfeiting property connected to money laundering.

In respect of anti-money laundering regulations, the ECCB has not issued any which may affect the countries under its jurisdiction. However, it did issue a set of Anti-Money Laundering Guidance Notes for Licensed Financial Institutions in May 1995 which apply to all financial institutions supervised by the ECCB inclusive of some Non Bank Financial Institutions. Additionally, in February 1994, the ECCB issued the Basle Committee Notes on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering and also, in June 1997, established a brief Money Laundering Prevention Agreement. It is understood that adherence to the above by the banks forms part of the ECCB's on-site examinations procedures.

In light of the difficulties experienced in the offshore sector, the Government commissioned a Task Force to report on the IBC Authority, on its organization and functions and, in particular, to review the present regulatory regime governing offshore financial institutions.

The Task Force found that the framework of primary legislation is essentially sound and that the Government is committed to developing an effective money laundering prevention programme. Some recommendations include, inter alia, putting in place a working organizational structure for the IBC Authority, the implementation of "Know Your Customer" procedures, prohibition as to cash deposits, the requirement to appoint designated compliance officers and the improvement of international co-operation. The Government has approved all the recommendations of the Task Force and indications were given that they would be implemented with appropriate legislative amendments by August 1998.

Supervision of the casino and gaming industry was geared to the collection of revenue on behalf of the Government, with no regard for the potential use of this sector by money launderers. Several Internet wagering services are located in Antigua, most of them said to be located in the Free Trade Zone area. According to the Free Trade and Processing Zone Commissioner, his department was still on a learning curve on the regulatory aspects of offshore gaming.

Antigua & Barbuda is on its way to fulfilling the basic requirements of the 1988 United Nations Vienna Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances. The Misuse of Drugs (Amendment) Act, 1993 defines drug trafficking as including entering into or being otherwise concerned in an arrangement whereby the retention or control by or on behalf of another of the proceeds of drug trafficking by him is facilitated or the proceeds of drug trafficking by another are used to ensure that funds are placed at his disposal or are used for his benefit to acquire property by way of investment.

The Proceeds of Crime Act 1993 (No. 13 of 1993) contains provisions in Part Two for the making of forfeiture, confiscation and other related orders including "in rem" forfeiture order on abscondance. The Act also makes provision to give assistance to foreign countries which includes tracing, freezing and forfeiting property connected to money laundering.

The Mutual Assistance in Criminal Matters Act, 1993 (No.2 of 1993) makes provision with respect to the scheme relating to mutual assistance in criminal matters within the Commonwealth and in countries other than Commonwealth countries. The scope of assistance includes the obtaining of evidence, articles or things by search and seizure if necessary and tracing property derived or obtained from the commission of serious offences. It also makes provision for giving assistance in arranging attendance of persons to give evidence in a requesting country on a reciprocal basis.

The Extradition Act, 1993 (No.12 of 1993) establishes bilateral arrangements for the exchange of fugitives by way of an Extradition Treaty in 1996 between Antigua and the United States of America.

The Antigua and Barbuda Police Force is solely responsible for the investigation of money laundering and drug trafficking offences and is provided with additional assistance from the Antigua and Barbuda Coast Guard and the Defence Force with whom there are good relations. There is no Financial Investigations Unit (FIU), Task Force or Fraud Squad established to investigate financial crimes.

The principal function of The Office of the National Drug and Money Laundering Control Policy (ONDCP) is to co-ordinate Government's drug and anti-money laundering policy. It is not an enforcement agency and does not have a Financial Investigations Unit or the expertise to investigate money-laundering offences.

The Legislative Programme embarked upon by the Antigua and Barbuda Government demonstrates that there is some commitment on the part of the Executive to take aggressive action against money laundering. However, there still has been little or no progress in its proper implementation and this appears to stem from the inadequacy of the available resources.

Greater emphasis must be placed on specialised training for the Police Officers of the CID and the Narcotics Unit who would be required exclusively to conduct financial investigations. The expected arrival of a Customs and Excise Officer from the United Kingdom for a period of two years hopefully, would assist in this regard.

There is the need for the ONDCP to adopt a clearly defined strategy if it is to effectively execute the mandate given to it by Cabinet which is to co-ordinate Government's drug trafficking and anti-money laundering policy.

There is an urgent need to organise a comprehensive training programme in the form of seminars, courses, and workshops for all the relevant departments, agencies and personnel in order to better equip them to deal with the issue of drug trafficking and money laundering. Additionally, the deficiencies in the licensing and the supervision of financial institutions need to be addressed and the Mutual Legal Assistance, Extradition and other Treaties must be ratified.

BERMUDA

There is and has been only very little drug production in Bermuda. Drug traffickers are said to be primarily small time criminals who import and distribute drugs in small quantities. Money laundering by local traffickers may involve the purchase of valuable assets locally and the use of couriers to export quantities of cash for depositing into overseas accounts or for the purchasing of property or other valuable assets.

In February 1995 the United Kingdom extended to Bermuda its ratification of the 1988 Vienna Convention and, the Proceeds of Crime Act 1997, which is largely based on the United Kingdom Drug Trafficking Act 1994 and is applicable to proceeds of drug trafficking offences and various other serious criminal offences, came into force in January 1998. The Proceeds of Crime (Money Laundering) Regulations 1998, effective from January 30th 1998, define the anti-money laundering framework for regulated institutions and outline identification, record keeping, internal reporting and training procedures.

The National Anti- Money Laundering Committee (NAMLC) which was established in 1997 issued Guidance Notes on the Prevention of Money Laundering (effective March 2nd 1998) to assist the financial community to comply with anti-money laundering legislation by providing minimum standards of practice which are not mandatory but which may be taken into account when assessing whether there has been compliance with the Proceeds of Crime (Money Laundering) Regulations. The Guidance Notes advise the financial institutions as to the 'Know Your Customer' procedures, the recognition and reporting of suspicious transactions, record keeping procedures as well as staff training.

Various financial institutions, in recognition of the need to put in place these procedures, have responded by developing their own anti- money laundering manuals which are designed to provide employees with the nature and contents of the anti money laundering legislation and how it relates to the particular institution's policies and procedures.

The Bermuda Monetary Authority has responsibility for the supervision, regulation and inspection of financial institutions and in the performance of anti-money laundering supervision, is a member of the National Anti-Money Laundering Committee (NAMLC).

The Registrar of Companies, in conjunction with the Insurance Advisory Committee, plays a significant role in the prevention, detection and prosecution of money laundering.

Money laundering offences of concealing or transferring proceeds of criminal conduct, assisting another to retain proceeds of criminal conduct and acquisition, possession or use of proceeds of criminal conduct were created by Sections 43, 44, and 45 of the Proceeds of Crime Act 1997. Criminal conduct not only relates to the proceeds of drug trafficking but also to the proceeds of a number of other serious offences

Legislative provisions exist, which are also in accordance with Article 5.3 of the Vienna Convention, to enable information to be obtained from financial institutions, notwithstanding bank secrecy or similar rules and from other institutions and persons, in order to assist in investigations into drug trafficking offences.

Extradition between Bermuda and the United Kingdom or other Commonwealth countries or dependencies are conducted by reference to the (U.K.) Fugitive Offenders Act 1967 and the Fugitive Offenders (Bermuda) Order 1967 (S.I. 1967 No. 1905 as amended by S.I. 1968 Nos. 292, 1375 and 1696).

As regards extradition between Bermuda and non-Commonwealth countries, the examiners were referred to the United States of America (Extradition) Order 1976 (S.I. 1976 No. 2144) which applied to Bermuda, the Extradition Treaty concluded between the United Kingdom and the U.S.A. in 1972. Full implementation of Article 6.2 of the Vienna Convention and Recommendation 40 of the FATF Recommendations which require that money laundering offences be made extraditable will require amended legislation.

The Government of Bermuda has no authority to share its confiscated assets with countries which assisted in the confiscation process, although there is nothing to prevent the acceptance by Bermuda from other countries of confiscated assets which are not in the form of cash. All revenues or other moneys raised or received by Government or for Government purposes must be paid into and form part of a Consolidated Fund.

The Bermuda Police Service is the competent authority responsible for receiving and investigating reports of money laundering matters and, in order to enhance their capacity to effectively combat the money laundering phenomenon, provisions have been made by the Government for the establishment of a Financial Investigation Unit.

The principal duty of the Collector of Her Majesty's Customs is the protection of the revenue of Bermuda and money laundering counter measure education is not a significant feature of these training initiatives as money laundering was not considered a major issue until relatively recently.

In meeting the accepted international standards, Bermuda should establish an asset forfeiture fund for specific purposes and allow for the sharing of such funds where appropriate.

Development of the Financial Investigation Unit should continue with the assignment of sufficient and adequately trained staff and the provision of appropriate equipment, to enable the unit to carry out the functions of investigating and monitoring money-laundering matters for which it is established.

Sustained dialogue between the regulatory bodies, the financial institutions and the investigative and prosecutorial bodies would play a significant role in ensuring the maintenance of a crime-free financial system.

The existing law should be expanded to make money-laundering offences extraditable offences between Bermuda and a wider range of other countries than is presently the case.

ST. LUCIA

St. Lucia is believed to be a transshipment country with cocaine drops being made both on and offshore. At the time of the evaluation 50 – 60 kgs of cocaine and three times that amount of marijuana were seized and had been confiscated. Yet no ‘drug lords’ have been caught as small traffickers do not assist the authorities. Reports confirm a proliferation in the number of guns with links to the drug trade.

The prevailing view is that there is no significant degree of money laundering occurring in St. Lucia. The Ministry of Finance, despite being concerned about the situation, does not consider the problem to be of epidemic proportions. No prosecutions for money laundering offences have occurred in St. Lucia.

There is no Anti-Money Laundering Act per se. However, the question of money laundering is addressed in the Proceeds of Crimes Act, No 10 of 1993 which creates the offence of money laundering and the Drugs (Prevention and Misuse) Act, No 22 of 1988 which defines certain activities commonly found associated with money laundering as an offences.

Under the Proceeds of Crime Act, a person who engages directly or indirectly in a transaction that involves money or other property that is the proceeds of crime or receives, possesses, conceals, disposes of or brings into St Lucia any money or other property that is the proceeds of crime shall be taken to engage in money laundering, provided that he knew or ought reasonably to have known that the money or property was derived from some unlawful activity.

Money laundering per se is not an offence under the Drugs (Prevention and Misuse) Act, No. 22 of 1993, but it defines certain activities commonly associated with money laundering as offences. Section 17 provides if a person enters into or is otherwise concerned in an arrangement whereby

- (a) the retention or control by or on behalf of another (call him “A”) of the proceeds of drug trafficking by A is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) the proceeds of trafficking by A are used to secure funds that are placed at A’s disposal, or are used for A’s benefit to acquire property by way of investment, knowing or suspecting or having reasonable grounds to suspect that A is a person who carried on or has carried on drug trafficking, he is guilty of an offence.

The Extradition Act, No.12 of 1986 defines “extradition crime” in relation to a Commonwealth country or foreign state to which Part I applies as an offence however described, that if committed in St. Lucia would be a crime described in the Schedule or would be a crime that would be so described were the description to contain a reference to any intent or state of mind on the part of the person committing the offence.

The scheduled offences include inter alia, matters relating to kidnapping, bribery, fraudulent conversion, blackmail or extortion by means of threat or abuse of authority; an offence against bankruptcy or company law; and an offence against the laws relating to dangerous drugs, narcotics or psychotropic substances.

There are some seven licensed banks, four non-banks and 2,000 domestic companies registered. Supervision of the banks is carried out by regular meetings and on-site supervision every 18-24 months by the supervision staff of the Eastern Caribbean Central Bank (ECCB).

St Lucia has no anti-money laundering laws and the system utilized to guard against money laundering is one grounded upon self-regulation, ECCB Guidance Notes and moral suasion. Similarly, the non-banks in St Lucia also utilize a self-regulatory approach towards countering money laundering. Any reporting of money laundering cases or suspicions of same is done by the institution on a voluntary basis.

There is no code of conduct existing within the St. Lucian banking system. Banking operations in St. Lucia does not feature a standardized or uniform system as regards combating money laundering. Instead, each institution practises its unique system of controls, with reports of suspicious transactions referred internally to its Head Office, to the Ministry of Finance or to the Director of Financial Services.

There is need to cultivate a greater sensitivity to the matter of money laundering as money laundering is not perceived to be a significant problem by St. Lucia's financial sector. Most of the branches of the foreign banks rely on their internal money laundering guidelines while the local banking institution relies on ECCB guidelines. Accordingly, there is no necessity seen in terms of the strengthening of the anti money laundering systems being utilized by the banks.

There is no uniform record keeping requirements prevailing and it was acknowledged that accounts could be opened without standard identification documents, i.e. references, passports, etc., being provided or the customer being physically present in the bank. Instead, the bank manager has discretion to establish an "exception" list which precluded certain known persons from having to meet the ordinary account procedures and requirements.

The Evaluation Team was advised by the authorities in St Lucia that a draft Money Laundering Bill was being prepared and that the Government of St Lucia was committed in the fight against money laundering. The St. Lucian draft Bill will use the Barbadian Bill as its model.

Law Enforcement is new to its role in the anti money laundering efforts and, at this time, does not see it as a serious problem. Accordingly, the police approach has been to utilize its current manpower in those areas where it can take positive action. There is no dedicated Unit involved in Anti Money Laundering investigation and prosecution and there have been no money laundering cases brought before the Court. Very few fraud cases have been prosecuted and the Police Department is not prepared for cases involving computer evidence and the use of cell phones. Customs is more alert to its anti drug responsibilities than to combating money laundering. There is no radar equipment and no canine unit.

Knowledge of money laundering issues in the Department of the Director of Public Prosecutions is very limited and the Proceeds of Crime Act has never been tested by the Director. The Department is clearly in need of staff and appropriate training in relation to its responsibilities under the money laundering and offshore financial services legislation.

St Lucia does not have the necessary human or financial resources to address its legislative, structural and physical requirements at this time and, there is concern were St. Lucia to pursue its offshore financial services without a substantial improvement in its resources, that its ability to regulate the sector would be severely impeded.

JAMAICA

Jamaica has a serious drug problem and is considered the largest producer and exporter of marijuana. Cocaine is not produced on the island but its geographic location facilitates its use as a major transit country. Dealing in illegal drugs has long been an offence in Jamaica and the creation of the offence predates even the Vienna Convention in the form of The Dangerous Drugs Act of 1948. Law enforcement officials are engaged in community outreach work with schools and civic groups with a view to providing education in crime prevention and the consequences of involvement in criminal activity.

Whilst Bank of Jamaica and other financial industry officials are of the view that money laundering is not a serious threat, both the Minister of National Security and Justice and the Minister of Finance reiterated the firm commitment of the Government of Jamaica in the adherence of its international obligations to combat the incidence of drug trafficking and money laundering and to prevent the banking system and financial institutions from being used by the criminal.

Under the Money Laundering Act, the offence of money laundering is committed when a person engages in a transaction that involves property that is derived from the commission of a specified offence or acquires, possesses, uses, conceals, disguises, disposes of or brings into Jamaica, any such property; or converts or transfers that property or removes that property from Jamaica and the person knows at the time he engages in the transaction... that the property is derived or realized directly, or indirectly from the commission of a specified offence.”

The Act imposes an obligation on financial institutions to report to the Director of Public Prosecutions cash transactions of ten thousand United States dollars or more or an equivalent amount in Jamaican currency or any other currency and prohibits the disclosure of such reports to any person.

Moreover, a financial institution is also required to establish and implement programmes, policies, procedures and controls as may be necessary for preventing and detecting money laundering, including the establishment of procedures to ensure high standards of integrity of employees, the development of a system to evaluate the personal employment and financial history of employees and training of employees on a continuing basis with respect to their responsibilities under the Act.

While the above provisions make important inroads in the effort to fight money laundering, certain shortcomings are evident. Primary among these is the failure to criminalize non-drug money laundering and the omission to create an obligation on financial institutions to report suspicious transactions. It is also notable that the obligation to report threshold transactions applies only to cash transactions so that transactions in negotiable instruments other than cash are not caught by the Act.

Under the Drug Offences (Forfeiture of Proceeds) Act 1994, the D.P.P. is authorized to apply to a Judge of the Supreme Court for the forfeiture of property where a person is convicted of a prescribed offence. Property is liable to forfeiture where it was used in or in connection with the commission of a prescribed offence or is derived, obtained or realized directly from the commission of the offence. The proceeds of confiscated assets are deposited in the consolidated fund.

The Mutual Legal Assistance (Criminal Matters) Act, 1995, provides for the legal assistance in criminal matters between Jamaica and designated Commonwealth states as well as treaty states. Assistance can be provided in Jamaica where criminal proceedings have been instituted in a foreign state or if there is reasonable cause to believe that an offence is likely to be committed. The nature of assistance that can be given under the Act includes the location and identification of persons, examination of witnesses, production of documents and official records, service of documents, issuance and execution of warrants to search for and seize tainted property and the issuance and enforcement of forfeiture orders, pecuniary penalty orders and restraint orders. The prescribed offences for which assistance can be given are drug offences and money laundering. The Act does not define money laundering but it is unlikely that money laundering could be interpreted in wider terms than under the Money Laundering Act where the offence is confined to drug money laundering.

In addition, there is no statutory provision in place to facilitate the sharing of assets confiscated as a result of co-operative efforts of mutual assistance. A bill to remedy this situation has been passed by both Houses of Parliament and is awaiting the assent of the Governor General.

An Extradition Treaty has been negotiated with the United States of America and requests for extradition have been received from the U.S.A. and Canada. The examiners were informed that requests for extradition moved swiftly through the local judicial system.

Institutions authorized to take deposits within the Jamaican financial sector are commercial banks, licensed financial institutions (merchant banks), building societies and credit unions. All of the above except credit unions are supervised by the Bank of Jamaica.

In carrying out its supervisory function, the Bank of Jamaica does not differentiate between the anti-money laundering aspect of a financial institution's operations and the normal areas which would be of concern to supervisors. Testing for anti-money laundering compliance is done in conjunction with other prudential assessment procedures. This includes mandatory annual on-site examinations and on-going off-site review of prudential returns submitted on a weekly, monthly, quarterly and annual basis. Failure to adhere to the provisions of the Money Laundering Act may be indicative of unsafe banking practices. Such a finding can lead to regulatory action being taken under the relevant institution's governing statute in addition to penalties provided by the Money Laundering Act.

The Bank of Jamaica has maintained constant dialogue with its supervised institutions on the international best practices and banking standards relating to money laundering and has, since 1995 (in consultation with the industry), issued guidelines to assist such institutions to formulate their own policies and procedures. The financial industry has developed draft Money Laundering Guidance Notes for Banks, Building Societies, Cambios, Co-operative Societies and Insurance Companies.

These Guidance Notes are comprehensive and set out policies and procedures more stringent than required under legislative provisions. For example, procedures for the reporting and examples of suspicious transactions are included in the Guidance Notes. Further, although the provisions of the Money Laundering Act do not directly deal with the issue of overseas branches, the Guidance Notes indicate that the principles contained therein apply to all branches and subsidiaries abroad. Supervision of foreign branches is conducted on a consolidated basis and Bank of Jamaica's approval must first be obtained before a bank or merchant bank may establish a foreign branch.

The Asset Forfeiture Money Laundering Unit, a Sub-Unit of the Organized Crime Branch, was established in 1995. This unit is assigned the task of investigating money-laundering matters. There are on going national and international training initiatives for officers of the Narcotic Unit and, there appears to be a good working relationship between Jamaica and the U.S.A. and also, with its Caribbean neighbours in the fight against the drug trade. There exists a good working relationship between the Jamaican Defence Force and other law enforcement agencies.

The Jamaica Customs Department is undergoing a process of reform and modernization in order to meet the challenges of decreasing the vulnerability of the country's ports. Customs officials have noted a significant increase in the seizure of arms and ammunitions and are of the view that the acquisition of three mobile X-ray units and a similar unit for container traffic will enhance their capability to assist in the anti-drug and anti-money laundering efforts. Nevertheless, there is good co-operation between the Customs Department and the Police to whom drugs seizures are passed on. International co-operation occurs between Jamaican Customs officials and officials of the Customs Service and the FBI in Miami.

There is a genuine commitment on the part of the Government and its related agencies to the fight against drugs trafficking and money laundering and to cooperate with regional and International Governments. Legislation has been enacted to criminalize money laundering and enforce mandatory policies and procedures for financial institutions to prevent money laundering. These policies and procedures generally

comply with the FATF and CFATF Recommendations and demonstrate that the Government has made significant progress in the implementation of the 1988 Vienna Convention.

However, the failure to criminalize non-drug money laundering and the omission to create an obligation on financial institutions to report suspicious transactions should be addressed immediately. The critical issue of extending the predicate offences to serious crimes including fraud and arms trafficking should be given priority so that Jamaica is in step with international standards. The Office of the Director of Public Prosecutions needs to be strengthened as regards the engaging of relevant and experienced personnel such as a forensic accountant for the analysis of threshold transactions as are presently being reported, as well as suspicious transactions in the future.

The provision of mutual legal assistance in money laundering matters should be extended to cases where the predicate offence under investigation or prosecution by the requesting state is not merely a drug-related offence.

Adequate levels of resources and equipment should be made available to the Jamaica Customs Department so that they can be effective partners in the protection of the country's sea and airports. Additionally, the gravity of the drug trade should see the provision of more manpower and resources to the Narcotics Unit. The Asset Forfeiture and Money Laundering Unit should be provided with on going training in order to meet the demands of the increasing sophistication of the money launderers and fraudsters.

TURKS AND CAICOS ISLANDS

The Turks and Caicos Islands have indeed been used as transshipment points for drug traffickers and several seizures of cocaine have been made on Haitian carriers at Providenciales Airport in amounts of one kilogram or less. There is no hard evidence of the cultivation of cannabis. Although there is some evidence of it, money laundering is not considered a major problem despite the country's growing offshore finance industry.

The Turks and Caicos Islands have a number of statutes for the enforcement of money laundering offences relating to drug trafficking. Under the Control of Drugs Ordinance 1976, it is an offence to possess, import or export certain specified drugs and the Court may forfeit anything related to any offence under the Ordinance.

The Control of Drugs (Trafficking) Ordinance 1988 provides for the recovery of the proceeds of drug trafficking where a person has been convicted of a drug trafficking offence and has benefited therefrom.

Under Section 22, the offence of money laundering is provided for in relation to the concealing, transferring or assisting another to retain the proceeds of drug trafficking and carries a penalty on conviction or indictment to imprisonment for a term not exceeding twenty years and a fine without limit and on summary conviction to imprisonment for a term not exceeding fifteen years and to a fine not exceeding \$20,000.

Through the provisions of The Criminal Justice (International Co-operation) Ordinance of 1992, the Turks and Caicos Islands comply with the requirements of the 1988 Vienna Convention and provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash. Under this legislation, the Court is also able to obtain overseas evidence for use in a drug trafficking offence and to provide evidence for use in other jurisdictions upon their request providing the necessary formalities are met.

The Terms of Reference of the recently formed Anti-Money Laundering Committee mandate among other things, the development of anti-money laundering policies and legislation in compliance with international standards and the promotion of awareness of money laundering issues within the private sector.

The Mutual Legal Assistance (USA) Ordinance was enacted in 1990 to implement a Mutual Legal Assistance in Criminal Matters Treaty between the United Kingdom and the USA and extended to the Turks and Caicos Islands. The Treaty extends to all criminal matters.

The financial sector in the Turks and Caicos Islands is made up of domestic banks, overseas banks, trust companies, insurance companies, a number of management companies and a money transfer company. Licensing and supervision functions for these entities are carried out respectively by the Financial Services Commission (FSC) which reports directly to the Governor, the Permanent Secretary, Ministry of Finance and the Superintendent of Insurance. The Gaming Inspectorate regulates the operations of casinos with licences being issued by the Governor on their recommendation.

Neither the FSC nor any other government agency carries out on-site examinations to determine the effectiveness of anti-money laundering procedures of banks or other financial institutions. Despite its complement of 14, the FSC is significantly understaffed and no anti-money laundering guidelines have so far been issued to the financial sector by the regulatory authorities. However, foreign commercial banks advised that they have in place 'Know-Your-Customer' procedures for their branches.

The registration of companies can be completed within twenty-four hours and there is concern that the due diligence checks carried out prior to registering are inadequate and therefore, they should be more closely monitored.

Training of staff of financial institutions, particularly those of the non-bank financial sector, in the implementation of anti-money laundering procedures is also limited and in some cases non-existent. Similarly, the staff at the agencies responsible for the supervision of financial institutions and the enforcement of the various ordinances appears to be inadequately trained.

The Police appear to pay more attention to local low-level criminal acts and are not at all or only in part aware of the 40 FATF Recommendations or other international rules against money laundering. There have been no successful prosecutions of drug money laundering and there is a lack of material and equipment that would facilitate the activities of the Police Force. The use of computers and computer related equipment is limited and this is not expected to change in the short term.

To date, international co-operation has been a one way street. Since 1996, only six requests from other countries were made for inquiry and cooperation. No requests to other countries have been made and no money-laundering incident had taken place as a result of which documents at a financial establishment had to be confiscated.

The Police Development Project, financed by a donation from the Government of the United Kingdom will look to upgrade the Police Force to professional level and will be an important contribution to fight organized crime and money laundering.

The Customs Department, with a staff of 65, is distributed over two Divisions in Grand Turk and in Providenciales. The Department has one sniffer dog and enjoys close contact with the Police. There is a Mobile Task Force which has been created principally to tackle the nucleus of drug related crimes with eight officers stationed at ports of entry.

There are no International Rules and Regulations and/or Legislation within the field of anti-money laundering measures being utilized by the Department and no training programmes in place.

Staffing levels and adequate anti-money laundering training at the FSC and other regulatory and law enforcement agencies require urgent enhancement. Standards for the licensing and supervision of financial institutions and registering management and investment companies need to be reviewed to ensure that they are in keeping with international standards issued by agencies such as the Basle Committee, the FATF and the CFATF.

The Anti-Money Laundering Committee must acquire the necessary resources and expertise to ensure that it effectively carries out its mandate and must urgently call for the enactment of an Anti-Money Laundering Ordinance and related regulations and the establishment of a Financial Intelligence Unit/Reporting Authority.

In the operational performance of both the Police Force and the Customs Department, efforts must be made to guard against possible rivalry between both units. A small team consisting of personnel from both units should be created and should undertake education, training and anti- money laundering operations jointly.

THE BRITISH VIRGIN ISLANDS

Located just off the U.S. Virgin Islands and Puerto Rico, the British Virgin Islands (BVI) with its multiplicity of islands is an increasingly important location on the Caribbean transshipment corridor for the trafficking of cocaine between the producer countries of the South and the consumer countries of the North. Production of drugs is, in the main, limited to the cultivation of marijuana on a small scale. Given the robust financial activity in the country, it is possible that incidences of money laundering do occur in the British Virgin Islands, particularly at the layering and integration stages.

The general thrust of Government policy is the preservation of the integrity and reputation of the country as a centre for legitimate business through initiatives in the legislative framework and the financial sector and very importantly, a concerted public education campaign designed to sensitize the general public about the dangers of money laundering.

In recent years, a number of money laundering offences has been established by statute. Firstly, the Drug Trafficking Offences Act, 1992, by Section 23, criminalizes the act of assisting another to retain the proceeds of drug trafficking where the person providing the assistance knows or suspects that the other carries on or benefits from drug trafficking.

The Proceeds of Criminal Conduct Act, 1997 created a number of further money laundering offences, such as assisting another to retain the benefit of "criminal conduct, acquiring, possessing or using another's proceeds of "criminal conduct and concealing or transferring one's own or another's proceeds of "criminal conduct" (section 30).

Section 26 of the Drug Trafficking Offences Act empowers a High Court Judge to grant an order for production of, or access to material, on an application by a police officer with the fiat of the Attorney General. Section 31 of the Proceeds of Criminal Conduct Act makes it a criminal offence for anyone who knows or suspects that a suspicious transaction report has been made, or that the Reporting Authority or other official is investigating money laundering, to disclose any information likely to prejudice the investigation or ensuing investigation.

With respect to the restraint provisions, both the Drug Trafficking Offences Act and the Proceeds of Criminal Conduct Act empower the High Court to grant a Restraint Order barring any person from dealing with "realizable property" of the defendant.

The Mutual Legal Assistance (United States of America) Act, 1990, facilitates the provision, on a reciprocal basis, of legal assistance in criminal matters between the USA and the British Virgin Islands with the objective of enhancing the investigation, prosecution and suppression of criminal offences and allows for the sharing of assets with that country. Under the Criminal Justice (International Cooperation) Act, 1993, provision is made for facilitating co-operation with other countries in criminal proceedings and investigations. The Information Assistance (Financial Services) Bill will expand the scope of assistance that can be furnished between regulatory agencies in the BVI and similar foreign agencies.

Sections 24 and 25 of the Drug Trafficking Offences Act establish machinery for the registration by the High Court of external confiscation orders made by the courts of designated countries and, under section 7 of the Criminal Justice (International Cooperation) Act, 1993, read with the Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order 1996, provisions for confiscation and restraint apply to a broader range of offences. The application of external confiscation orders to the British Virgin Islands is also dealt with in the Proceeds of Criminal Conduct Act (Sections 32 and 33) and subsidiary legislation to designate the jurisdictions to be covered for the purposes of the Act is in draft form.

The activities of banks and trust companies are governed by the Banks and Trust Companies Act 1990 and its subsequent amendments in 1995 and 1996. Insurance companies fall under the Insurance Act 1994 while mutual funds operate under the Mutual Funds Act 1996 and amending legislation in 1997. The activities of International Business Companies are governed by the International Business Companies Act 1984 and amending legislation of 1988, 1990 and 1991.

The Territory's anti-money laundering efforts will soon be further supported by other legislation which include the Anti-Money Laundering Code of Practice Act and the Code of Conduct (Service Providers) Act. The Guidance Notes on the Prevention of Money Laundering which are also currently in draft form will also enhance the country's anti-money laundering framework.

The major pieces of legislation within the financial sector afford the appropriate regulatory authority adequate access to the records of licensees including appropriate gateway provisions providing for the sharing of information with international supervisory and law enforcement authorities.

Sole responsibility for the investigation of drug trafficking and money laundering lies with the Royal Virgin Islands Police Force (RVIPF) which comprises 167 Police Officers and 13 civilian employees. Its major problem is policing drug trafficking. The statistics between 1997 and 1998 showed a decrease in the amount of cocaine seized, no increase in the amount of cannabis seized, an increase in the number of cannabis plants discovered and an increase in the number of related arrests. In 1998, approximately 75 kilos of cocaine, 84 kilos of cannabis and 2229 cannabis plants were seized and 61 persons arrested for drug offences. There are no overall estimates of the amount of drugs sold or the value of the drug trade.

The Joint Anti-Money Laundering Co-ordinating Committee (JAMLACC), a broad based multi-disciplinary committee, was established in 1999 to co-ordinate all the BVI's anti-money laundering initiatives.

Steps should be taken to expand the money laundering offences under the Drug Trafficking Offences Act. The range of countries with which confiscated assets are shared should be increased, an asset forfeiture fund, separate from the Consolidated Fund, should be established and the proceeds dedicated to anti-drug and money laundering purposes.

The Financial Services Department should commence the on-site inspection of financial institutions and should conduct periodic reviews of the work undertaken by the insurance sector with particular reference to the annuity business. The Development Bank of The Virgin Islands should not continue as an unregulated entity.

The available resources and expertise at the FIU must be aggressively used at the earliest practicable stage for drug-related offences and greater emphasis must also be placed on its continued development. Customs Officers should receive training in money laundering techniques and the current shortage of staff and other equipment must be addressed urgently.

ARUBA (Kingdom of the Netherlands)

As in 1995, the most important criminal activity on Aruba stems from its role as a transit country for drug trafficking. According to law enforcement officials, there has also been an increase in the levels of drug consumption on Aruba, and of crime in general, and drug related crime accounts for 30-40% of crime on the island. Other predicate crimes on Aruba which appear to generate significant proceeds are fraud and tax fraud. The trend between money laundering and specified foreign predicate offences has not been clearly established, but the law enforcement authorities believe that laundering the proceeds of cocaine trafficking is significant. The authorities are uncertain of the money laundering techniques and methods that are most prevalent in Aruba, which makes it difficult to determine whether the amount of money being laundered has increased, and the degree to which the international payment system is being misused by money launderers in connection with the investment of illegitimate funds in Aruba or the layering of funds via accounts opened in Aruba.

Since the evaluation in 1995, Aruba has passed new legislation and undertaken a number of other measures aimed at strengthening its anti-money laundering system. In February 1996, the State Ordinance concerning the obligation to report unusual transactions in rendering financial services (the Reporting Ordinance), and the State Ordinance requiring identification when rendering financial services (the Identification Ordinance) came into effect. Following the passage of these measures, the Government has sought to address concerns relating to the casino and gambling industry, the use of legal entities, the import and export of cash and the Aruba Free Zone. Reports were prepared which make recommendations for strengthening the anti-money laundering measures in these sectors, and the necessary legislation has been drafted and is being discussed. These reports contain many valuable and innovative proposals, including improved licensing and supervision obligations, the introduction of know your customer policies, and the implementation in the non-financial sector of other mechanisms to prevent money laundering, and will considerably strengthen the anti-money laundering regime, once implemented.

The penal provisions are generally broad in scope. The money laundering offence applies to all crimes, extends to cases where the defendant should reasonably have suspected that the money was from the proceeds of the crime, and has penalties that should provide a significant disincentive. However there are two major weaknesses. First, proof of the specific predicate offence underlying the money laundering is required, which may be very difficult in many cases. Second, the offences restrict the property which can be laundered to money, securities and claims, thus excluding real or other personal property, which will cut down on the effectiveness of the offences. The lack of prosecutions for money laundering since the offences were enacted in 1993 suggests these deficiencies may have had an effect. Changes need to be made to the legislation to make successful prosecutions possible. The legislation dealing with confiscation appears to be broad and potentially very effective, and the issue is the practical application of the legislation. New legislation has also been introduced to substantially increase the possibilities for international mutual legal assistance. In June 1999, the Vienna Convention was put into force, and the 1990 Council of Europe Convention is expected to enter into force on 8 July. Now that the legal framework is in place, Aruba will need further practical experience. At the level of informal co-operation, changes are needed to make it easier for the Reporting Center on Unusual Transactions (MOT) to exchange information with other FIU, and not requiring a formal treaty before this can take place.

The unusual transaction reporting system is a complex one, and the MOT has made significant advances since the system was implemented in 1996. However, adequate technical and human resources are needed to ensure that the system is working properly, and the system could be improved by increased qualified resources. Other measures which could make the system more efficient include: on-line access to police and public registers, electronic inputting of unusual transaction reports, and an ability to obtain information from the tax, customs and social security authorities. The police and prosecutors are pursuing some money laundering cases based on STR, but would benefit from use of more proactive financial investigation methods and increased training. It would also be desirable if the law enforcement/prosecutorial structure for enforcing the new confiscation laws is reviewed, and steps taken to encourage investigating officers and prosecutors to actively pursue confiscation as an integral part of a criminal investigation.

In the financial sector, the Identification and Reporting Ordinances, combined with the CBA Directive, have provided a very sound structural basis for anti-money laundering measures in the banking sector. However a comprehensive and consistent approach is required for both banks and NBFIs, and certain financial services such as life insurance, money exchange or remittance, and pension fund activity should be put within the Identification Ordinance. The unusual transaction reporting system is working reasonably successfully so far, and the MOT and the ABA should be commended for moving to promptly review the system and to make the indicators more efficient. However, the total lack of reports from institutions other than banks needs to be promptly rectified, and the CBA should consider the circumstances under which it might report directly to the MOT. The MOT has worked to improve the level of feedback which is provided to financial and other reporting institutions, but further improvements could be made.

Internal control obligations and supervision for banks is mostly very sound, though the position of the two

offshore banks is a matter of some concern. These institutions have no physical presence on Aruba, their records are kept in Venezuela, and they have made few unusual transaction reports. It is therefore recommended that the system that has been adopted to supervise these institutions be reviewed. A significant weakness is that neither the internal control requirements nor supervision extends to NBFIs. The insurance sector will be covered when the new supervisory legislation comes into force, but measures need to be introduced for institutions such as check cashiers, and money exchange or remittance businesses. Finally in relation to supervision, MOT has been unable to conduct supervision due to lack of resources, and it is thus recommended that in order to ensure an efficient use of resources and to achieve greater clarity and consistency, the whole task of supervision be left to the CBA or other appropriate supervisory agency.

The active approach taken by Aruba has led to it being in substantial compliance with most of the FATF Forty Recommendations. Though there have been limited results to date, this has to be seen in the context of the size of the island and the newness of the system. Overall, many significant advances have been made. Once the recommendations referred to in the reports are in place, and the other current amendments completed, Aruba will need to focus its attention on the practical enforcement of the new laws and mechanisms. Overall, Aruba is to be commended for its active approach to combating money laundering, and it is hoped that continuing this approach will lead to significant results and effective system.

NETHERLANDS ANTILLES (Kingdom of the Netherlands)

The most important criminal activity on the Netherlands Antilles stems from its role as a transit country for drug trafficking. Other predicate crimes that are of significant concern are trafficking in firearms, fraud and to a lesser extent, smuggling of products such as tobacco. There are also crimes which are of concern to particular islands within the Antilles e.g. St. Maarten is experiencing problems with establishments that offer internet gambling without a permit. Information is not available about the extent to which the Netherlands Antilles is used to launder the proceeds of crimes committed abroad, even though such proceeds are likely to be more substantial than the proceeds from crimes committed within the Netherlands Antilles. Similarly, the authorities were unable to provide details on the money laundering techniques and methods that are most prevalent in the Netherlands Antilles. It is therefore difficult to determine whether the amount of money being laundered has increased, and the degree to which the international payment system is being misused by money launderers in connection with the investment of illegitimate funds in the Netherlands Antilles or the layering of funds via accounts opened there.

Since the last evaluation the Netherlands Antilles has substantially implemented most of its anti-money laundering system. The MOT-NA was established in October 1996, and became operative a year later. In February 1996 the National Ordinance concerning the reporting of unusual transactions (the Reporting Ordinance) and the National Ordinance requiring identification when rendering financial services (the Identification Ordinance) were enacted. Both Ordinances came into effect in late 1997. A set of indicators was also prepared for the financial sector which lays out the unusual transactions which must be reported, and in November 1996, the Central Bank also issued a set of guidelines on the detection and deterrence of money laundering. The government is currently preparing new indicators, and is considering how to ensure that casinos and remittance agents apply the proper anti-money laundering standards.

The penal provisions concerning money laundering generally have a wide scope. The offence applies to all crimes, extends to cases where the defendant should reasonably have suspected that the money was from the proceeds of the crime, and the penalties should provide a significant disincentive. A weakness is that the offences are restricted to laundering money, securities and claims, thus excluding real or other personal property, which limits the scope of the offence. The fact that no prosecution or conviction for money laundering has taken place since the offences were enacted in 1993 indicates the offence may be difficult to prove. There are also some other technical uncertainties as to the scope of the offence, and these should be clarified and any weaknesses removed. The legislation dealing with confiscation, seizure and ancillary matters appears to be broad reaching, and potentially very effective. Apart from some minor refinements that may be required in relation to property held by third parties, the issue now is the practical application of the legislation. Similarly, new legislation has been introduced to substantially increase the possibilities for

international mutual legal assistance. In June 1999, the Vienna Convention was put into force, and the 1990 Council of Europe Convention is expected to enter into force on 8 July, 1999. At the level of informal co-operation, changes need to be made to make it easier for MOT-NA to exchange information directly with other FIUs, without requiring a formal treaty before this can take place.

MOT-NA has made considerable progress since it became operational in October 1997. However, the unusual transaction reporting system is a complex and potentially time intensive system. It is very important in a small jurisdiction that the system is an efficient one, and the lack of computerisation in the Netherlands Antilles does cause delays and additional unnecessary costs. Manual inputting of unusual transaction reports, having to visit the police and manually compare files on a confidential basis, and visiting and searching public registers is a slow and inefficient method of analysing and processing reports. The priority should be to make the existing processing system more efficient and effective.

The BFO and the special public prosecutor with responsibility for the money laundering cases, combined with the larger RST unit, should provide a significant impetus and source of expertise for law enforcement efforts against money laundering and the proceeds of crime. However, the fact that money laundering investigations are confined to cases resulting from STRs, combined with the lack of statistics and results on confiscation suggests that a more proactive approach to money laundering and the proceeds of crime and the use of new investigative techniques is required. Customs currently has a limited role to play, but when the cross border declaration system is introduced, it should be complemented by increased powers for Customs officers to play a full role in implementing the system and working with the police and MOT-NA to prevent cross border cash money laundering

The Identification and Reporting Ordinances, and the Guidelines issued by the Central Bank provide a very sound foundation for the anti-money laundering measures in the financial sector, and the measures are in place and operational in the banking sector. However important further measures are still required in relation to some categories of NBFIs and the offshore sector, where there has been a lack of reports, and the CIWG and MOT-NA will need to address this issue in the context of broader controls outside the banking sector. There is also limited guidance outside credit institutions, and proper supervisory checks or controls are poor or non-existent for institutions such as unlicensed money remitters, casinos and the offshore sector (other than offshore banks and associated trust companies). The CIWG should take steps to identify the participants in these types of businesses, and to implement appropriate control mechanisms, guidelines and training.

Another significant concern relates to companies and foundations incorporated in the Netherlands Antilles, the difficulties in identifying the beneficial owner of property, and the unsupervised role of lawyers, accountants, and many trust companies in providing services to non-residents. Although the members of the VOB have signed onto a voluntary code of conduct that includes customer identification provisions based on the Basle Principles, and entities opening bank accounts in the Netherlands Antilles are thereby subject to applicable customer identification provisions, trust companies do not generally fall under the Identification or Reporting Ordinances. The government needs to ensure that: (a) participants in the offshore sector are subject to binding obligations to identify customers, keep records, report unusual transactions etc; (b) there are appropriate controls on the entry of trust companies and other firms into the industry; and (c) there is instituted a manageable system to supervise or at least independently audit those firms to check that they are complying with their obligations. Though the risks are not as significant, similar concerns regarding lack of internal controls, supervision, money laundering awareness and training, also apply to casinos and the Free Trade Zone. A number of fundamental steps concerning supervision and control are needed for reasons not just restricted to money laundering, and whilst pursuing these policy initiatives, it should also produce more detailed proposals for a cross border currency reporting regime, which could be implemented in due course.

Overall, considerable efforts have been made in the last four years and important steps towards compliance with the FATF forty Recommendations have been taken. Though much of the system is very recent, the penal legal system is nearly in place, an operational structure is established and the basic preventive measures are now in place in the banking sector. Though further refinements are required and additional measures are

necessary in relation to NBFIs and non-financial businesses, particularly the offshore sector, further experience is needed before a complete assessment can be made of the effectiveness of the system as a whole.

CONCLUSION

The CFATF, through the decisive guidance of Chairman George A. McCarthy, has achieved considerable success during the 1998 -1999 period. Our organisation accordingly stands as a respected and committed partner in the international struggle to protect our societies against the predations of the criminal element.

The CFATF is certain that the fullest co-operation of our Members and the friendship and support of the Co-operating and Supporting Nations will continue to project us forward during the year 2000.

Attachments

- 1) MOU Sec. VII 4 x
- 2) Recommendation 21
- 3) Mutual Evaluation Schedule
- 4) Mutual Evaluation Procedures
- 5) Revised 19 CFATF Recommendations
- 6) Public Speaking Attendance at Conferences