



**THE CARIBBEAN FINANCIAL ACTION TASK FORCE  
COUNTRY SITUATION REPORT ON ANTIGUA & BARBUDA**

**TABLE OF CONTENTS**

INTRODUCTION ..... 2  
    The Drug Situation ..... 2  
    The Money Laundering Situation ..... 3  
    The Terrorism Financing Situation..... 4  
    Prevention of Terrorism Act, 2001 ..... 4  
LEGAL SECTION ..... 7  
    Anti-Money Laundering Legislative Framework..... 8  
    Misuse of Drugs Act, 1993..... 8  
    Proceeds of Crime Act, 1993 ..... 8  
    Money Laundering (Prevention) Act, 1996 as Amended ..... 12  
    Mutual Assistance in Criminal Matters Act, 1993 ..... 25  
    Extradition Act, 1993 ..... 28  
FINANCIAL SECTION ..... 29  
    Financial Service Sector ..... 29  
    Legislation..... 29  
SUPERVISION OF FINANCIAL INSTITUTIONS ..... 30  
    Regulatory Authorities ..... 30  
    Training ..... 33  
LICENSING OF FINANCIAL INSTITUTIONS ..... 34  
ANTI-MONEY LAUNDERING REGIME..... 35  
    Client Information ..... 35  
    Maintaining Records..... 36  
    Reporting Suspicious Transactions..... 36  
    Threshold Requirements for Monitoring Cash Flows ..... 37  
    Access to Information ..... 37  
    Co-operation with other Regulatory Bodies ..... 39  
LAW ENFORCEMENT SECTION..... 39  
    ADMINISTRATIVE AUTHORITIES ..... 39  
        The Inter-Agency Task Force..... 39  
        The Office of National Drug and Money Laundering Control Policy ..... 39  
        The Supervisory Authority ..... 40  
    JUDICIAL /PROSECUTORIAL AUTHORITIES ..... 40  
        Office of the Director of Public Prosecutions..... 40  
    LAW ENFORCEMENT INSTITUTIONS ..... 41  
        The Antigua and Barbuda Police Force..... 41  
        The Customs and Excise Department ..... 41  
        The Antigua and Barbuda Defence Force..... 42  
        The Antigua and Barbuda Coast Guard ..... 43  
        The Immigration Department..... 43  
    LAW ENFORCEMENT COOPERATION ..... 43  
        National Cooperation ..... 43  
        International Cooperation..... 44  
CONCLUSION ..... 45

## **INTRODUCTION**<sup>1</sup>

1. Antigua and Barbuda is located in the middle of the Leeward Islands in the Eastern Caribbean. Antigua is the largest of the British Leeward Islands and is approx. 108 square miles. Barbuda is a flat coral island of 68 square miles. The current population is 68,000. The capital is St. Johns, which is located in Antigua. Antigua and Barbuda became an Associated State of the United Kingdom in 1967 and achieved full independence in 1981. Antigua and Barbuda has a democratically elected government.
2. This report will evaluate the legislative and administrative anti-money laundering measures for compliance with the Financial Action Task Force (FATF) Recommendations, the Criteria for Defining Non-Cooperative Countries or Territories (NCCTs), the Caribbean Financial Action Task Force (CFATF) Recommendations and the FATF Special Recommendations on Terrorist Financing. The evaluation is based on a review of information submitted by Antigua and Barbuda to the CFATF including legislation.

### **The Drug Situation**

3. Like other Caribbean Island States, Antigua with its many beaches, bays, inlets, and a relatively isolated Barbuda, is being used as a transshipment point for those persons involved in the international drug trade. Antigua and Barbuda is not a significant producer of marijuana or other drugs. However, as it is strategically located close to Puerto Rico (US) and serves as a regional air hub with direct connections to Europe (UK) and North America (Canada)), it has potential for use as a transshipment point to those locations. Drugs transported by air are mostly done by “body-packers” who frequently also come from the UK as tourists and afterward return with their cargo.
4. The involvement of citizens of Antigua and Barbuda as participants in the drugs trade is also usually in connection with the transportation process, either as the operators or crew of speedboats; and sometimes as couriers carrying drugs concealed on their person, in false bottomed suitcases or internally. Approximately 15 % of cannabis seized is locally grown product while the rest is imported. Marijuana for domestic consumption is mostly imported from St. Vincent. Antigua and Barbuda is also a major yacht mooring location, which is also a means of transshipment of illegal drugs.
5. South American traffickers are developing their own transport infrastructure and therefore depend less on local providers for logistical support. Intelligence sources suggest that some of these suspected South American traffickers have regularized their immigration status in Antigua and Barbuda and operate small businesses amongst other members of the Spanish speaking community. The language barrier and the local close-knit Spanish-speaking community make it difficult to develop intelligence on the activities of these people.

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<sup>1</sup> The information contained in the introduction was sourced from Antigua and Barbuda’s tourism website.

6. Recent intelligence reports, suggest that narcotics traffickers are attempting to use the names of legitimate businesses, without their knowledge, to smuggle moderate quantities of drugs through airport cargo. The most frequent points of origin of drugs transiting through Antigua and Barbuda according to officials of Antigua and Barbuda are: Colombia, Trinidad and Tobago, Grenada, St Vincent and the Grenadines, St Maarten (cocaine and cannabis) and Jamaica (Cannabis).

### **The Money Laundering Situation**

7. The anti-money laundering authority for Antigua and Barbuda is the Office of National Drug and Money Laundering Control Policy (ONDCP). Like any other country with domestic and international financial services Antigua and Barbuda is vulnerable to money laundering. The first Round Mutual Evaluation of Antigua and Barbuda was conducted during March 10-13, 1998 and the Second Round was done from 16<sup>th</sup> to 20<sup>th</sup> September 2002. Since the first Round, extensive amendments have been made to Antigua and Barbuda's anti-money laundering programme. Between 1998 and 2000, 35 offshore banks were closed either as a result of their involvement in money laundering (Eurofed) or Canadian and US based Ponzi scheme operators, or because the regulatory regime became too stringent. Only 20 banks are currently providing offshore banking services.
8. As a consequence of wide-ranging improvement to the financial regulations and the anti-money laundering regime, financial advisories imposed by the US and UK in 1999 were withdrawn in July 2001. Antigua and Barbuda was not listed by the FATF as a Non-Cooperative Country during its 1999 exercise. During the CFATF Plenary XIV and Council VII meeting in the Dominican Republic in October 2001, the Council concluded that Antigua and Barbuda had complied with all the recommendations of the 1998 Mutual Evaluation.
9. The 2001 amendments in the Money Laundering Prevention Act (MLPA) are now beginning to operate satisfactorily in the area of conviction-based forfeiture. While no one has been convicted in Antigua of money laundering offences, persons have been convicted in the US, which has resulted in the forfeiture of funds in Antigua. This is because Antigua and Barbuda has taken the unusual, but helpful, step of allowing foreign money laundering convictions, as well as local ones, to trigger its confiscation laws. The amendments in any case added new industry groups to the definition of "financial institutions" contained in the Act. The most notable is the offshore gaming industry. These financial institutions operate quite differently from the banking sector. The amendments in the International Business Corporation Act (IBCA) in October 2000 now require resident agents to ensure the accuracy of the records and registers that are kept by them. They are also required to keep the names of beneficial owners of IBC's and to disclose to authorities upon request.
10. Antigua and Barbuda introduced Internet Gaming regulations in 2001 (Interactive Gaming and Interactive Wagering Regulations 2001). An Offshore Gaming Directorate to supervise Internet Gaming has also been established to this end. This Directorate has issued Internet Gaming Technical Standards and Guidelines. The 2000 and 2001 amendments to the MLPA expand its coverage to include all types of gambling entities and impose financial limit reporting on the gambling entities. These reports are to be sent to the ONDCP. The

Government of Antigua and Barbuda is constantly assessing the regulations governing interactive gaming and interactive wagering in order to ensure effective regulation and supervision of the industry.

11. The Government of Antigua and Barbuda has also established a Supervisory Authority (SA) as mandated by the MLPA. The ONDCP is the national central Financial Intelligence Unit that receives all suspicious transactions reports from financial institutions (**FATF Recommendation Nos. 15-23, CFATF Recommendation No. 1** and **NCCT Criterion No. 25** is satisfied<sup>2</sup>). It has also issued regulations that implement its suspicious transactions reporting systems. The latest guidelines were issued on the 9th of September 2002. The new ONDCP headquarters, funded by the seized asset fund (**CFATF Recommendation No. 9**), also houses the National Joint Headquarters, the Drug Intelligence Unit, the Financial Intelligence Unit, the Financial Investigations Unit and the Government's Drug Control Policy Unit.
12. In 2002, the Antigua and Barbuda government legislated additional amendments to the MLPA, which augment the existing conviction-based forfeiture provisions with civil forfeiture laws. This allows Antigua and Barbuda to take action against assets, suspected of having been derived from unlawful sources both domestically and internationally. Antigua and Barbuda enacted anti terrorism and anti terrorist financing legislation in 2001.
13. An ONDCP Bill was also presented to Parliament in the spring of 2002. With the passage of the Bill into law, ONDCP has become a statutory institution with special responsibility for the enforcement of Antigua and Barbuda's anti money laundering legislation. The new legislation provides for the appointment of a Director, a Deputy Director and Investigation Officers with sufficient powers to enable them to investigate money-laundering offences and to detain and arrests suspects.

#### **The Terrorism Financing Situation**

14. In an effort to deal with the issue of terrorist financing, the Government of Antigua and Barbuda enacted the Prevention of Terrorism Act, 2001. The Government of Antigua and Barbuda also acceded to the 1999 International Convention on the Suppression of the Financing of Terrorism, which complies with **FATF Special Rec. No. I**.

#### ***Prevention of Terrorism Act, 2001***

15. The Prevention of Terrorism Act was enacted to 'prohibit the use of the territory of Antigua and Barbuda and any facilities provided therein for the promotion of terrorist activities.' This Act complies with UNSC Resolution 1373. In Section 2 of the Act the Supervisory Authority is defined as having the same meaning as the meaning assigned in the Money Laundering (Prevention) Act, 1996 as amended.(MLPA 1996). Accordingly, the Supervisory Authority under this Act is Mr. Wrenford Ferrance, Special Advisor/Director

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<sup>2</sup> Where NCCT Criteria are deemed to be 'satisfied' or 'in compliance', it means the same as 'not met' under the FATF rating system.

of the Office of National Drug and Money Laundering Control Policy (ONDCP). Pursuant to Section 3, the Supervisory Authority is authorised to designate a person as a terrorist or terrorist organisation if the Supervisory Authority reasonably suspects that the person has engaged in terrorist activity.<sup>3</sup>

16. Where a person or an organisation has been identified as a terrorist or a terrorist organisation, the Authority shall by declaration publish in the Gazette the name of the person, their date and place of birth, nationality, address, telephone number, passport number and tax identification number. In the case of an organisation, the name of the organisation, the date and place of incorporation, address, telephone number and facsimile number and any affiliated groups shall be declared. It should be noted that the designation as a terrorist or terrorist organization only takes effect upon publication.
17. Once publication takes place the Supervisory Authority can then write to any financial institution in Antigua and Barbuda directing them to restrain or freeze any account or other property that is held on behalf of the person or organization declared to be a terrorist. This complies with **FATF Special Rec. No. III**. The directions given by the Supervisory Authority are valid for a period of three months in the first instance, but can be extended through an ex parte application to the High Court by the Supervisory Authority.
18. Subsection (10) permits the Supervisory Authority to revoke any declaration once the circumstances that formed the basis of the designation no longer exist or where the national security of Antigua and Barbuda is no longer in danger. The revocation however does not affect any action taken or proceedings before the effective date of the revocation.
19. Pursuant to Subsection (12) of Section 3, a person designated as a terrorist or terrorist organisation has 30 days from the date of publication of the designation to apply to the High Court for an order to revoke the declaration and any written directions that are made pursuant to the Act. According to Subsection 14, the person seeking the revocation must prove that the subject of the declaration is not a terrorist or a terrorist organisation or the property that is the subject of the restraining or freeze direction is legally and beneficially owned by the applicant and not subject to any interest held by the terrorist or terrorist organization named in the relevant declaration.
20. Property that is subject to a restraining or freeze direction will be forfeited by the Crown if (a) no application is made for an extension of the restraining or freeze direction or the revocation of the designation as a terrorist or terrorist organisation within three (3) months of the date of the Order; (b) an application for the revocation of the designation as a terrorist and the application is determined or (c) the application is discontinued, withdrawn or struck out.
21. Section 4 prohibits the sale and supply of military hardware and software to terrorist and terrorist organisations or to Afghanistan under the control of the Government of the Taliban.

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<sup>3</sup> 'Terrorist activity' means activity that (a) involves a violent act or an act dangerous to human life, property or infrastructure; and (b) appears to be intended to –(i) intimidate or coerce a civilian population; (ii) influence the policy of government by intimidation or coercion; or (iii) affect the conduct of a government by mass destruction, assassination, kidnapping or hostage taking.

This includes any arms, weapons, ammunition, military vehicles and equipment, paramilitary equipment, aircraft or ship, technical advice, the chemical acetic anhydride or any chemical, biological or nuclear weapons of mass destruction.

22. At Section 5, the dealing with property or interest in property of a terrorist or terrorist organisation is prohibited. This includes any transactions or dealings that evades or avoids (or has that effect) and any attempt, or conspiracy to violate the prohibitions in the Act. Subsection (2) of this Section also prohibits any person in Antigua and Barbuda from dealing with any property (wherever situated) that is held by or on behalf of the territory of Afghanistan under the control of the Taliban Government, Osama bin Laden, the Al Qaida organisation, or any terrorist organisation.
23. Section 6 prohibits the use of financial services or the provision or acquisition of financial services or any other services to, from or for the benefit of or on the direction or order of the territory of Afghanistan under the control of the Government of the Taliban, Osama bin Laden, the Al Qaida organisation or any known terrorist or terrorist organisation. This provision partially meets **FATF Special Rec. No. II** since the financing of terrorism offence could be more definitive and there is no indication that the offence is a predicate offence of money laundering, although it should be noted that the MLPA 1996 does define money laundering as relating 'directly or indirectly to some form of unlawful activity'.
24. Pursuant to Section 7(1), no bank or financial institution licensed in Antigua and Barbuda shall transact any business with Osama bin Laden or the Al Qaida organisation or any other terrorist or terrorist organisation as the Supervisory Authority may declare from time to time. Subsection (2) permits the Supervisory Authority to direct (in writing) any bank or financial institution licensed in Antigua and Barbuda to freeze all accounts held in the name Osama bin Laden, the Al Qaida organisation or any other terrorist organisation or person associated with or suspected of having a relationship with Osama bin Laden or the Al Qaida organisation or any other terrorist or terrorist organisation.
25. The bank or financial institution has the responsibility of notifying the account holder that their account has been frozen. Once notified, the account holder has 30 days from the receipt of notice to apply to a Judge in Chambers to revoke the declaration and any written direction to freeze.
26. Section 8 requires any person who becomes aware that he has possession of or control over any assets or funds of a terrorist or terrorist organisation to retain possession and maintain control over the assets and funds and make a report to the Supervisory Authority. The report is to be made in accordance with the written instructions or directions of the Supervisory Authority. This complies with **FATF Special Rec. No. IV**. Section 8 could however be made more comprehensive by specifically making the provision applicable to financial institutions and other businesses or entities instead of just 'any person'.
27. Section 9 authorises the Supervisory Authority to investigate, regulate, review or prohibit any transaction in foreign exchange, currency or securities and any transfer or credit or payment by, through or to any banking institution to the extent that such transfers or payment involve any interests of any foreign country or national. Based on the

implementation measures taken this provision can be used to achieve compliance with FATF Special Recs. Nos. VI and VII.

28. Pursuant to Subsection (2) a financial institution or any person having control over any frozen assets, may be required to keep and maintain a proper record of the frozen asset. Section 10 provides that it shall be a defence to any action brought against any person who complies with any written direction or instruction issued by the Supervisory Authority to show that the compliance was in accordance with the Act. Additionally, no person shall be held liable by any Court for or with respect to anything done or omitted to be done in good faith in connection with and in reliance on the Act or any regulation, instruction or direction issued in accordance with the Act.
29. The offences are provided for by Section 11 and provide that persons who violate Section 4 (i.e. the sale or supply of military hardware or software) commit an indictable offence and are liable on conviction to twenty-five (25) years imprisonment. Additionally, the Court shall order that any funds or other property derived from such activity would be forfeited. This complies with **FATF Special Rec. No. III.**
30. Persons who fail to comply with Sections 5,6,7 or 9 or any order of the Supervisory Authority or report to the Supervisory Authority the existence of funds or assets belonging to terrorist or terrorist organisations (Section 8) commit an offence and is liable on conviction on indictment to a fine of \$100,000 or twice the amount of which the financial institution was required to retain possession or control over (whichever is greater).
31. According to Section 13, the Act is retroactive in that it covers any freezing of accounts as directed by the Supervisory Authority of Osama bin Laden or the Al Qaida organisation or the territory of Afghanistan (under the control of the Government of the Taliban) or any person known as a terrorist or terrorist organisation or suspected of the same. Section 13 allows the Minister (not specified, but assumed to be the Minister of National Security) to make regulations for the further implementation of the Act. In making the regulations issues relating to international cooperation, alternative remittances, wire transfers and charitable organisations should be given more consideration.

### **LEGAL SECTION**

32. The anti-money laundering legislative framework of Antigua and Barbuda comprises the Misuse of Drugs Act, 1993, the Proceeds of Crime Act, 1993, the Money Laundering (Prevention) Act, 1996 as amended 2001, 2002, the Money Laundering Prevention Regulations, 1996; the Mutual Assistance in Criminal Matters Act, 1993 and the Extradition Act, 1993.

### **THE ANTI-MONEY LAUNDERING LEGISLATIVE FRAMEWORK**

#### ***Misuse of Drug Act, 1993***

33. This Act makes provisions with regard to dangerous or otherwise harmful drugs and related matters. With regard to money laundering, this Act criminalizes drug

trafficking money laundering only. This is in keeping with **FATF Rec. No. 4** and **Art. 3 of the 1988 U.N. Vienna Convention**.

### *Proceeds of Crime Act, 1993*

34. The Proceeds of Crime Act, 1993 (POCA) provides for the forfeiture or confiscation of the proceeds of certain crimes and for connected or related matters. The 'proceeds of certain crimes' referred to in the preamble of the Act pertains to the proceeds of a Scheduled Offence<sup>4</sup> or any property or benefits that are derived or obtained through any act or omission that occurred outside of Antigua & Barbuda. Based on the list of Scheduled Offences noted at footnote 4, it is clear that provision is made for the criminalization of money laundering where the predicate offence is drug trafficking and or organized fraud, which comply with **FATF Rec. No. 4**. It should be noted that while the Schedule appears to limit money laundering to drug related offences and organized fraud, Section 61 in fact gives it a much broader scope. This will however be discussed later in the Report.
35. Part II of the Act deals with Forfeiture and Confiscation Orders and related matters. Thus pursuant to Section 5, where a person is convicted of a Scheduled Offence the Director of Public Prosecutions (DPP) may apply to the Court for a Forfeiture Order against tainted property<sup>5</sup> or a Confiscation Order against the person for benefits received by them from the commission of the offence. These provisions are in keeping with **FATF Rec. No. 7**.
36. The DPP is required to give no less than fourteen (14) days notice of his application for a Forfeiture Order to the person involved and/or persons who have an interest in the property. The same period of notice is required for Confiscation Orders. Pursuant to Section 7, notice must also be given by the DPP where he makes an application to have a Confiscation Order amended.
37. The window of opportunity for the making of a Forfeiture or Confiscation Order by the court is after conviction but before sentencing (Section 8(2)). Section 9 allows the DPP to apply for a Forfeiture Order against tainted property where the person has absconded. A conviction for the offence is not necessary under these circumstances. In order to be deemed absconders, the persons must have information laid against them alleging commission of the offence, a warrant for their arrest and reasonable but unsuccessful attempts to arrest the person for a period of six (6) months. Like before, notice must be given to Parties who in the opinion of the court appear to have an interest.

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<sup>4</sup> A Scheduled Offence comprises the following: 1. Possession of controlled drugs for the purpose of supply... 2. Trafficking in controlled drugs... 3. Assisting another to retain the benefits of drug trafficking... 4. Engaging in organized fraud... 5. Money laundering in relation to 1,2,3, & 4. 6. Possession of property derived from unlawful activity re: 1, 2, 3, &4.

<sup>5</sup> Tainted property in relation to a Scheduled Offence means property that is either used in or in connection with the commission of the offence or property derived, obtained or realized, directly or indirectly from the commission of the offence.

38. Section 10 provides for Forfeiture Orders against tainted property and where granted allows the relevant property to be forfeited to the Crown. The Court is allowed to make inferences in making a determination as to whether property is tainted. Provisions with regard to the registration of any property confiscated and its disposal etc. are dealt with in Section 11, while Section 12 allows the Court to void any transfers that may have been made subsequent to the seizure of the property or the service of a Restraining Order. Section 13 provides protection for third parties, who are affected by the Order. Section 15 allows the Court to order the payment of an amount equal to the value of the property where the property is unavailable for forfeiture. Thus there is a system of both property and value forfeiture. Amounts that a Court orders to be paid pursuant to Section 15 are treated as fines and accordingly carry terms of imprisonment for failure to pay.
39. Sections 18 through 24 deal with Confiscation Orders. The DPP may apply to the Court for a Confiscation Order following a person's conviction of a scheduled offence. Section 19 provides the rules that the Court should follow in determining the benefit derived from the commission of the offence and in assessing the value of that benefit, which represents the amount to be recovered under the Confiscation Order. These provisions for the confiscation of assets (and or their value) derived from the commission of a Scheduled Offence are in keeping with **CFATF Rec. No. 8**. Provisions are also made for the variation of Confiscation Orders and the lifting of the corporate veil. The latter allows the Court to make, subject to a Confiscation or Restraining Order, property that in the opinion of the Court is subject to the effective control of the person.
40. A Restraining Order referred to in Section 19b (1) (c) (i) and a Freeze Order referred to elsewhere in Section 19 are the same. They are used interchangeably and have the same meaning. However for absolute clarity the single place in which "restraint order" appears in section 19 should be read as "freeze order".
41. Part III of the Act deals with provisions for facilitating police investigations and preserving property liable to Forfeiture and Confiscation Orders. The issues therein will be discussed here briefly and at greater detail in the law enforcement section of the Report. Sections 25-30 pertain to the powers of search and seizure. Thus Section 25 allows a police officer who has reasonable grounds to suspect that tainted property is, or may be within 72 hours on any land, premises etc. to apply to a magistrate for a search warrant. The warrant can authorize the police officer to enter the land or premises, search it and seize property found there that the officer reasonably believes is tainted property. Pursuant to Section 28, the officer may also seize tainted property found in the land or premises but not specified in the warrant. Persons affected by the seizure of this 'other tainted property' can make an application to the Court to have property restrained.
42. Restraining Orders are dealt with in Sections 31 through 38. These Orders can be applied for where a person has been convicted of a Scheduled Offence or has been charged with a Scheduled Offence. The DPP is required to make the application, which can also be done *ex parte*. The Restraining Order prohibits the defendant or any person from disposing of or dealing with the property named in the Order. Provisions are however made for the payment of the person's reasonable living expenses and legal expenses in defending the

criminal charge. The provision for the freezing of assets is in keeping with **FATF Rec. No. 7**.

43. The Court upon an application by the DPP may also appoint a public trustee to take control of the property and manage it etc. It should be noted that Section 34 gives the Court the discretion to give notice that a Restraining Order is being made against a person's property. Before doing so however, the Court considers whether giving such notice would result in the disappearance, dissipation or reduction in value of the property. Section 37 makes it an indictable offence for a person to knowingly dispose of, or otherwise deal with, property that is subject to a Restraining Order. Penalties for this offence include a fine of \$100,000 or imprisonment for a period of five (5) years. Where the offence has been committed by a body corporate, the penalty is a fine of \$500,000. Pursuant to Section 39, an affected person can apply to have the Court review the Search Warrant and Restraining Order. A Restraining Order automatically expires after a period of six months unless the DPP applies for an extension of the Order. (Section 40).
44. Sections 42 through 47 deal with Production Orders and other information gathering powers. Production Orders can be applied for either (1) where a person has been convicted of a Scheduled Offence and a police officer has reasonable grounds for suspecting that the person has in his/ her possession or control relevant documents or (2) where a police officer has reasonable grounds to suspect that a person has committed a Scheduled Offence and the person has possession or control of a relevant document. It should be noted that accounting records that are used in the ordinary business of banking e.g. ledger, daybooks, cashbooks and account books are not subject to Production Orders.
45. Pursuant to Section 44(3) persons cannot be excused from producing or making documents available on the grounds that production of the documents will incriminate them or be a breach of an obligation against disclosure. The latter is important because it prevents the use of any secrecy or confidentiality clauses being used as a bar to the production of documents etc. It is a summary offence to fail to comply with a Production Order. Both natural persons and corporations can be held liable. Section 47 provides for search warrants and the conditions under which they would be issued to police officers.
46. Monitoring Orders are dealt with by Sections 48 and 49. These Orders permit a police officer (following application to and approval from the Court) to direct a financial institution to disclose information on transactions to him. The Order is valid for a maximum period of three (3) months and will only be granted by a Judge where he is satisfied that there are reasonable grounds for suspecting that the person has committed a crime; was involved or about to be involved in committing a Scheduled Offence or has benefited directly or indirectly from a criminal offence.
47. It is a summary offence for a financial institution to fail to comply with a Monitoring Order. Financial institutions are not permitted to disclose the existence or operation of the Monitoring Order except to an authorized police officer, an officer or agent of the institution itself or an attorney-at-law for the purpose of obtaining legal advice. Inappropriate disclosure of the existence or operation of a Monitoring Order is a summary offence.

48. Sections 50-54 deal with the obligations of financial institutions. These will be discussed here briefly and in greater detail in the financial section of the Report. Pursuant to Section 50, financial institutions are required to maintain for a minimum retention period of seven (7) years, documents pertaining to the opening and closing of accounts, the operation of individual's accounts; transmission of funds between Antigua and Barbuda and a foreign country etc. This provision is in compliance with **FATF Rec. No. 12 and FATF NCCT Criterion 6**. Documentation that represents 'one off' transactions (i.e. a single deposit, credit withdrawal etc.) or transactions that do not exceed \$5,000 have to be kept for the minimum retention period. The penalty for failure to retain documents for the required time is a fine of \$10,000 on summary conviction.
49. Section 52 allows a financial institution to disclose information about an account that it believes may be relevant to an investigation or of the prosecution of a person for an offence to a police officer or the DPP. It should be noted that this disclosure is discretionary, however, where a financial institution does make a disclosure, the institution itself and any officer, employee or agent acting in that capacity is protected from an action, suit or proceedings. Additionally, Section 53 gives protection to financial institutions and their employees, etc. Based on the definition of a financial institution provided at Section 54, non-bank financial institutions are also subject to these provisions i.e. those that fall under the Financial Institutions (Non-Banking) Act, and credit unions. In this regard, there is compliance with **FATF Rec. No. 8**.
50. The DPP may apply ex parte to a Judge for Order of Disclosure of Income Tax information. (Section 55). In making a determination the Judge would consider the representations of the DPP with regard to the offence, type of information, the value of that information to the investigation and or prosecution of the offence and whether there are reasonable grounds for believing that it is in the public interest to allow access to the information. Pursuant to Section 57, the Commissioner of Inland Revenue may object to the disclosure of all of the information requested or of any document amongst the requested information.
51. The four grounds for objecting are (1) that the Commissioner is prohibited from disclosing the information by bilateral or international treaty, convention etc. (2) a privilege is attached to the information by law, (3) the information has been placed in a sealed package pursuant to law or a court and (4) disclosure of the information would not be in the public interest. Section 59 prevents further disclosure of the information unless such disclosure is in relation to the investigation for which the Order was made. The fact that further disclosure is permissible suggests that this information can be shared with law enforcement or judicial personnel in foreign jurisdictions. These measures assist in compliance with **FATF NCCT Criterion 22**. Section 60 also makes provision for the disclosure of information from Government offices upon an application by the DPP to the Court.
52. Part IV of the Act deals with offences. Accordingly, Section 61 provides for the offence of money laundering, which is an indictable offence. The offence of money laundering pertains to the 'proceeds of crime', which refers to the proceeds of a Scheduled Offence (as directed earlier) or any property or benefits obtained or realized directly or indirectly from any act or omission which had it occurred in Antigua & Barbuda would have constituted an

offence. This satisfies **FATF Rec. No. 4, CFATF Rec. No. 4 and FATF NCCT Criterion 19.**

53. Money laundering has been defined in the broadest terms in Section 2 of the MLPA as engaging in a transaction involving money or property, which is the proceeds of unlawful activity. The scienter requirement is 'knows or ought reasonably to know', which is in keeping with **FATF Rec. No. 5 and CFATF Rec. No. 4.** Section 62 deals with the offence of possession of money or property that is derived from unlawful activity. Specifically, persons can be charged with this offence where they receive, possess, conceal or dispose of or bring into Antigua and Barbuda money or property that they know or ought reasonably to know is the proceeds of crime. Both individuals and corporations are liable.
54. A defence to this offence includes proof that the person did not know or have reasonable grounds for knowing that the property was derived either directly or indirectly from some form of unlawful activity. (See Section 62(2)). The offence of Organized Fraud is dealt with by Section 63 and is applicable to natural persons as well as a body corporate or for conduct engaged on behalf of a person other than a body corporate. A person may also be found guilty of a 'public fraud offence'<sup>6</sup> where the jury does not find the person guilty of organized fraud. Section 64 establishes mens rea for a body corporate or for conduct engaged on behalf of a person other than a body corporate.
55. Part V of the Act deals with miscellaneous issues, which include the enforcement of External Forfeiture and Confiscation Orders. (Section 67). Pursuant to this provision, a designated country<sup>7</sup> can apply to (i.e. a country outside Antigua and Barbuda) the Attorney General to have the Order registered by the Court in Antigua and Barbuda. The Court will not register an External Order until it is satisfied that at the time of registration, the Order is in force in the designated country; that the person against whom the Order is made was given sufficient notice and that the enforcement of the Order in Antigua and Barbuda would not be contrary to the interests of justice. Pursuant to Section 67(7), the Court may also register External Restraint Orders. The enforcement of External Orders is in keeping with **FATF Rec. No. 38 and CFATF Rec. No. 7.**
56. Other issues covered include compensation to an affected Party where there has been a serious default in the investigation of the matter etc., and costs as they pertain to persons who successfully bring action to have their property excluded from Restraint, Forfeiture or Confiscation Orders.

### ***Money Laundering (Prevention) Act, 1996 as Amended***

57. This Act provides for the prevention of money laundering and matters that are connected with or incidental to money laundering. The Act was amended in 1999 by Act No. 9 of 1999, in 2001 by Act No. 6 of 2001 and in 2002 by Act No. 17 of 2002. Of note, in the interpretation section is the meaning given to financial institution. A review of the First

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<sup>6</sup> A 'public fraud offence' is an offence pursuant to Sections 18 thru 22 and 23 of the Larceny Act.

<sup>7</sup> 'Designated Country' means a country or territory outside Antigua & Barbuda and designated by Section 67 of the Proceeds of Crime Act

Schedule shows a wide range of financial, non-bank financial and other businesses such as venture risk capital, money lending and pawning, real property businesses, credit unions, casinos, internet gambling and sports betting etc.

58. Money laundering is defined as engaging directly or indirectly in a transaction that involves money or other property knowing or having reasonable grounds to suspect that it was obtained, derived etc. directly or indirectly from some form of lawful activity or is an instrumentality. It should also be noted that Section 2(3) provides that where knowledge, belief, intent, purpose or suspicion is required as an element of an offence under the Act, then it may be inferred from objective, factual circumstances.
59. Section 2H explains the meaning of ‘money laundering activity’ as a reference to anything done by the person that at the time was a money laundering offence regardless of whether the person was charged with the offence or not. Section 3 of the Act provides that a person who engages in money laundering is guilty of an offence. The criminalisation of money laundering is in keeping with **FATF Rec. No. 4** **CFATF Rec. No. 4** and **FATF NCCT Criterion 19**.
60. The scienter requirement/mens rea of ‘knowing or having reasonable grounds to suspect’ meets the requirements of **FATF Rec. No. 5** and **CFATF Rec. No. 4**. The meaning of a ‘money laundering offence’ also includes offences against Section 61 of the Proceeds of Crime Act; Sections of the Misuse of Drugs Act; any foreign law as specified in the regulations and even where not specified if it would have been an offence against this Act had it occurred in Antigua and Barbuda. Money laundering offences also include offences against Sections 3, 5, 11A and 18 of this Act. The definition of person includes any entity natural or juridical, a corporation, partnership, association, trust etc. and therefore means that **FATF Rec. No. 6** has been complied with. ‘Proceeds of Crime’ and ‘Unlawful Activity’ are also defined.
61. Section 2A of the Act provides that with regard to the freezing and forfeiture of assets as a result of money laundering (Part IVA of the Act), a person is to be considered convicted of an offence: if he is convicted in Antigua and Barbuda or elsewhere, if a court with the consent of the person takes the offence for which the person was found guilty into account when passing sentence on the person for another offence; or where a declaration is made by the High Court (pursuant to Section 2B) that the person has absconded. As stated previously Section 2B deals with proceedings under Part IVA of the Act where a person absconds and as such provides the circumstances under which a person is considered to have absconded. Provision is also made where the person is considered to have absconded. Provision is also made where the person who absconds was charged in a country other than Antigua and Barbuda.
62. Section 2C gives guidance as to when property or an interest in property is subject to the effective control of a person, while Section 2D provides the property in which the defendant has an interest. Section 2F states that a person can be appointed a trustee under the Act if they qualify to be appointed as a receiver/manager or liquidator of a foreign corporation pursuant to the Business Corporation Act (as amended).

63. Part II of the Act deals with the prohibition of money laundering and as stated above Section 3 makes it an offence for a person to engage in money laundering. Section 4 provides that where a money laundering offence is committed by a body of persons whether corporate or unincorporated, every person who acted in an official capacity for or on behalf of the body of persons (whether as director, manager etc.) commits the offence and would be tried under Section 3. (**FATF Rec. No. 6**).
64. Section 5 criminalizes the aiding, abetting, counselling or procuring the commission of or conspiring to commit the offence of money laundering. This provision is in compliance with **CFATF Rec. No. 3**. The penalties for money laundering range from a fine of two hundred thousand dollars (\$200,000) or imprisonment for three (3) years or both on summary conviction, to a fine of \$1 Million or imprisonment for seven (7) years or both on conviction on indictment. Section 7 makes ‘tipping-off’ an offence, which complies with **FATF Rec. No. 17**.
65. The mens rea for the offence is ‘knowing’ or ‘suspecting’ and the penalty upon conviction is a fine of one hundred thousand dollars (\$100,000) and imprisonment for three (3) years. The falsification, concealment, destruction or otherwise of any document or material that is likely to be relevant to a money laundering investigation is an offence that is punishable on conviction to a fine of two hundred and fifty thousand dollars (\$250,000) and to imprisonment for five (5) years. (Section 8). Section 9 provides the Courts with jurisdiction whether or not the offence occurred in Antigua and Barbuda. This provision complies with **CFATF Rec. No. 4**.
66. Part III of the Act deals with Anti-Money Laundering Supervision. In that regard, Section 10 empowers the Minister responsible for national drug control and security to appoint a Supervisory Authority. At present, the Supervisory Authority under this Act is Mr. Wrenford Ferrance, Special Advisor/Director of the Office of National Drug and Money Laundering Control Policy. It should be noted that Section 10 specifies a ‘...person or persons to be known as the Supervisory Authority...’ The powers of the Supervisory Authority are itemized at Section 11 and include: the receipt of reports on suspicious transactions issued by financial institutions; the sending of the suspicious activity reports to law enforcement authorities where there are reasonable grounds to believe that money laundering is being, has been or is about to be committed; entering financial institutions to obtain information pertaining to any business transactions; instructing any financial institution or seeking assistance from any government department, statutory body or other public body to take the appropriate steps to facilitate any investigation etc. The latter complies with **FATF Rec. No. 18**.
67. It should be noted, that Section 11(vi) allows the Supervisory Authority to compile statistics and records and disseminate information within and outside of Antigua and Barbuda. This power when exercised falls within the ‘spirit’ of **FATF Rec. No. 31** as it pertains to the dissemination of information to competent authorities. Further, Sections 11(vii) and (ix) permit the Supervisory Authority to consult with any person, institution, or organization within or outside of Antigua and Barbuda. Such consultations include sending a copy of a suspicious transaction [Section 13(2)] or any other information. The sharing of this type of information is in compliance with **FATF Rec. No. 32 and FATF NCCT Criterion 15**.

68. Section 11(x) provides the authority to trace property that is the proceeds of offences against the laws of Antigua and Barbuda or elsewhere and also apply for the freezing and forfeiture of such property. This is in keeping with **FATF Rec. No. 38, CFATF Rec. No. 7 and NCCT Criterion 16.**
69. Section 11A (1) prohibits persons from opening accounts in financial institutions in a false name, while Section 11A(2) prohibits persons from operating accounts with financial institutions in a false name. This is in compliance with **FATF Rec. 10 and NCCT Criterion No. 4.** Other sub-sections of Section 11A: prohibit persons from authorizing the operation of an account if the account is in a false name; where the person is known by two or more names, the person can only use one of the names in opening or operating an account if he discloses the other names; the financial institution shall keep a record of the disclosure of the additional names and forward same to the Supervisory Authority.
70. The penalties for these offences are on summary conviction, a fine not exceeding twenty thousand dollars (\$20,000) or a term of imprisonment not exceeding two years or both. Sections 11(8)(a)(b) and (c) pertain to the determination of who is considered to have opened or operated a false account, while sub-section (c) makes the opening of a false account retroactive.
71. Sections 12 and 13 provide the obligation of financial institutions. Accordingly, Section 12(1) requires financial institutions to keep each customer generated financial transaction document in its original form for the minimum retention period, while, Section 12(2) requires to keep the original or retain a copy of each financial transaction document. It should be noted however, that according to Section 12(3), financial institutions do not need to retain copies where the financial transaction document relates to a single deposit, credit, withdrawal etc.
72. The minimum retention period in relation to a financial transaction document or a customer generated financial transaction document is defined at Section 12B. Generally it is a period of six years after the account is closed or the person ceases to use the deposit box or after a transaction takes place. This provision complies with **FATF Rec. No. 12 and FATF NCCT Criterion 6.** Financial institutions are also required to retain copies of each financial transaction document that is not a customer generated financial transaction document for the minimum period applicable to the document.
73. Section 12B defines ‘customer generated financial transaction document’ and ‘financial transaction document’. Essentially, the former refers to a document of a financial institution that relates to the opening or closing by a person of an account with the institution; the operation by a person of an account with the institution; the opening or use by a person of a deposit box or packet held by the institution etc., while the latter means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and includes the opening, operation or closing of an account held with the institution and the opening or use of a deposit box held by the institution.

74. Pursuant to Section 12(4), financial institutions are required to retain documents in a manner that makes their retrieval 'reasonably practicable'. Section 12(5) complies with **FATF Rec. No. 18** by providing that financial institutions comply with any instructions issued by the Supervisory Authority.
75. Financial institutions are also required to permit the Supervisory Authority or a person authorized by him to enter any premises of a financial institution during normal working hours and inspect records etc. (Section 12(5)(ii)). Section 12(5)(iii) requires financial institutions to comply with guidelines and training requirements issued by the Supervisory Authority. Compliance with this provision should ensure compliance with **FATF Rec. No. 19**. Financial institutions that contravene the Section 12 requirements are subject on summary conviction to a fine not exceeding \$20,000.
76. Pursuant to Sections 12A(1) & (2), financial institutions are required to keep a complete copy and maintain a register of any document where the original was released prior to the end of the minimum retention period that was applicable to the document. The failure by a financial institution to comply with subsections (1) & (2) will make it liable on summary conviction to a fine not exceeding \$20,000 Section (12A(3)). Section 13 specifically involves the reporting of suspicious business transactions by financial institutions. Thus Section 13(1) highlights the types of transactions that should receive special attention and in so doing complies with **FATF Rec. Nos. 14 and 21**, while Section 13(2) makes it mandatory to report suspicious transactions to the Supervisory Authority upon reasonable suspicion. The mandatory reporting of suspicious transactions complies with **FATF Rec. No. 15 and FATF NCCT Criterion 10**. Section 13(2A) states that the determination as to whether a suspicion was reasonable will be made objectively i.e. taking into consideration all the facts and surrounding circumstances.
77. Section 13(4) provides disclosure protection to financial institutions and their employees, staff, directors etc. when the disclosures are made in good faith. This is in keeping with **FATF Rec. No. 16**. The offence and penalties for the failure to make the mandatory disclosures are provided for at Sections 13(5) and 13(6) and are in compliance with **FATF NCCT Criterion 11**. It should be noted that under subsection (6) the possible penalties include the suspension or revocation of the licence of the financial institution by the appropriate Regulatory Authority.
78. Section 14 permits the Supervisory Authority or a law enforcement agency to apply to a High Court Judge for a search warrant to enter the premises of financial institutions where there are reasonable grounds to believe that they failed to keep business transaction records or have failed to report suspicious transactions or an officer or employee of the financial institution is committing, has committed or is about to commit a money laundering offence.
79. The Supervisory Authority or a law enforcement agency can also apply for a Property Tracking or -Monitoring Order (Section 15) or pursuant to Section 16 apply to a High Court Judge for a mandatory injunction against an officer or employee of a financial institution to force compliance with their obligations under Sections 12 and 13 of this Act. All these measures help to meet compliance with **FATFNCCT Criterion 11**.

80. In an effort to further curb money laundering, Section 17 provides that a person who has been convicted of an offence for which the sentence involves a term of imprisonment of twelve or more months (whether in Antigua and Barbuda or elsewhere) may not be eligible or licensed to carry on the business of a financial institution. This is in keeping with having measures that would prevent criminal elements as discussed in **FATF NCCT Criterion 3**.
81. Pursuant to Section 18 of the MLP Act a person must report the transfer of currency into or out of Antigua and Barbuda, where the amount of the currency transferred is not less than U.S.\$10,000. The failure to do so constitutes an offence. Provisions are given for determining when currency is considered to have entered into or been taken out of Antigua and Barbuda. Section 18A allows a Customs Officer, Police Officer or member of the Antigua and Barbuda Defence Force engaged in maritime duties, to seize and detain currency where there is reason to suspect that the currency represents a breach of Sections 18(1) or 18(2) of the Act (i.e. transferring in or out of Antigua and Barbuda without reporting) or is the proceeds of crime. These cross border measures are in keeping with **FATF Rec. No. 22 and CFATF Rec. No. 12**.
82. The seized currency can be detained for a period of seven (7) days unless an Order is made by a magistrate authorizing further detention. The Supervisory Authority can make the application to a magistrate for the continued detention. Where the magistrate is satisfied that there is no longer a reason for detaining the currency then he may make an order for its release.
83. Persons from whom the money was seized or who has an interest in the currency or the Supervisory Authority can make an application for an Order for its release. Pursuant to Section 18B(1), the Supervisory Authority can make an application to the Magistrate's Court for the forfeiture of the seized currency. The Supervisory Authority is required to give at least four teen (14) days notice to the person from whom the currency was seized and or any person who has an interest in the property of the application for forfeiture. The procedure for giving notice is dealt with at Section 28D. The Court can however make the Forfeiture Order in the absence of the person(s) notified.
84. Upon hearing the application and being satisfied that the currency is the proceeds of some form of unlawful activity (N.B. the interchangeable use again of 'proceeds of crime' and 'unlawful activity'. Compare Section 18A(1) and Section 18B (4)(A)), or an instrumentality of an offence (regardless of whether or not there has been a conviction for an offence) the Court may subject to certain considerations order that all or a part of the currency is forfeited to the Government of Antigua and Barbuda. The considerations are: (1) the use ordinarily made or intended for the currency and (2) claim of an interested third party who shows that they were unaware of any unlawful use etc. of the currency.
85. Part IV of the Act deals with the freezing and forfeiture of assets in relation to money laundering. Thus pursuant to Section 19, the Supervisory Authority may apply to the High Court for an order to freeze property where a person has been convicted of a money laundering offence or has been or is about to be charged with a money laundering offence or is suspected of having engaged in money laundering activity. The Judge can impose restrictions on the Freezing Order as he sees fit.

86. The application must be made *ex parte* and as with the application for seizure, the Supervisory Authority is required to give fourteen (14) days notice. It should be noted that Section 19(3) provides the conditions under which the property that is the subject of an application for a freezing order can be located in or out of Antigua and Barbuda and the conditions where the property must be located in Antigua and Barbuda.
87. Subsection (9) permits the Supervisory Authority to direct in writing a financial institution to freeze property for a period of up to seven (7) days while it makes the application for the freezing order to the Court. Section 19(1A) provides the conditions under which the Court would make the Freezing Order against the defendant and against a person other than the defendant where the offence or the suspected offence is a money laundering offence, while Section 19(1B) deals with the application for a Freezing Order based on the suspicion of the person being engaged in a money laundering activity.
88. The freezing or restricting of the use and or disposal of property is in keeping with **FATF Rec. No. 7**. Where a Freezing Order is made on the basis of a charge or suspicion of a money laundering offence or the suspicion of money laundering activity, the Order will cease to have effect thirty (30) days after it is made unless the defendant is charged with a money laundering offence or an application for a Civil Forfeiture or Civil Proceeds Assessment Order is made.
89. Part IVA of the Act deals with the automatic forfeiture of property upon conviction for a money laundering offence. Section 20 deals with the forfeiture of frozen property whose measures are also in compliance with **FATF Rec. No. 7**, while Section 20G provides for the establishment of a Forfeiture Fund. The Fund consists of the proceeds from the sale of all property forfeited pursuant to Sections 20 and 20A or penalties paid pursuant to Section 20B less a 20% management expense which is deposited into the Consolidated Fund. The funds and other proceeds that are forfeited must be used for the purposes of the Office of the ONDCP and other purpose deemed fit by the Minister. The creation of this Fund and its uses complies with **CFATF Rec. No. 9**.
90. Part IVB deals with civil forfeiture. Thus pursuant to Section 20A, where there is a Freeze Order in force under Part IV, the Supervisory Authority can apply to the High Court for a Civil Forfeiture Order which will allow the forfeiture of all or any interests in property that is subject to a Freezing Order. In making a determination as to whether to grant a Civil Forfeiture Order, the High Court must find that it is more probable than not that the defendant against whom the Freeze Order was made had been engaged in money laundering activity not more than six (6) years before the application for civil forfeiture was made.
91. The six (6) year period includes a period that began before the commencement of the section (Section 20A (5)). It should be noted that subsection (3) states that the High Court's finding does not have to be based on the commission of a particular offence but can be based on a finding that an offence constituting a money laundering activity was committed. According to the Explanatory Memorandum to the Amended legislation, the burden is on the defendant to prove that the property subject to civil forfeiture was lawfully obtained.

92. According to subsection (6), the quashing or setting aside of a conviction for a money laundering offence does not affect the validity of the Civil Forfeiture Order. The Civil Forfeiture Order also does not prevent the making of a Civil Proceeds Assessment Order. The latter Order assesses the value of the proceeds of the money laundering activity on which the Civil Forfeiture Order is based. Fourteen (14) days notice of an application for a Civil Forfeiture Order is required to be given to the defendant and any other party that has an interest in the property. The failure of notified persons to appear and give evidence does not prevent the Court from making the Order. These provisions for civil forfeiture exceed the FATF requirements as set out in the Forty Recommendations.
93. Section 20B deals with the measures required to apply for a Civil Proceeds Assessment Order. The Supervisory Authority can apply to the High Court for the Order requiring the defendant to pay to the Crown an amount assessed by the High Court as the value of the benefit he derived from his money laundering activities. These activities must have taken place not more than six (6) years before the application for the Order was made. Like the Civil Forfeiture Order, the finding of the Court does not have to be made on a particular offence, but could be based on the finding that the defendant engaged in money laundering activity. Additionally, the standard of proof to be applied to the Civil Proceeds Assessment Orders is that used in civil proceedings.
94. Pursuant to Section 20B(7), the making of a Civil Proceeds Assessment Order does not prevent the making of a Civil Forfeiture Order based on the same money laundering activity upon which the Civil Proceeds Assessment Order was made. It should also be noted that the Civil Proceeds Assessment Order is, according to Section 20B(10) a debt payable by the defendant to the Crown and as such, where an Order is made against a dead person then subsection (10) has effect before the final distribution of the estate as if the person had died the day after the making of the Order (Section 20B(11)).
95. Section 20C deals with the matters that are to be considered by a Court before it considers making a Civil Proceeds Order. The matters that are considered include: whether as a result of money laundering, money or the value of any interest in property was directly or indirectly acquired by the defendant or by another person at the request of the defendant; the value of any service, benefit or advantage that was provided for the defendant or another person at the request of the defendant or by the direction of the defendant as a result of money laundering activity; the value of the defendant's property before and after the money laundering activity and the defendant's income and expenditure before and after the money laundering activity etc.
96. Section 20C covers all property in which the defendant has an interest, either within or outside of Antigua and Barbuda and also proceeds acquired within or outside of Antigua and Barbuda in relation to money laundering activities. Part IVC of the Act pertains to the effect and enforcement of confiscation orders. Thus where an interest in property is forfeited by operation of Section 20, Civil Forfeiture Order or a Section 20A Order, the interests vest in the Crown and the Supervisory Authority is allowed to take possession of the property on behalf of the Crown. The Supervisory Authority then disposes of the property and the proceeds are paid into the Forfeiture Fund.

97. The High Court may also make ancillary orders that would for example facilitate the transfer of interests in property to the Crown. Section 20E provides the penalties for disposing of property that is subject to any of the Confiscation Orders discussed above. The only defences to disposal are to show that there was no notice of the status of the property and no reason to suspect that the property was forfeited. Pursuant to Section 20F, where the High Court is of the opinion that the interest in property is subject to the effective control of a person against whom a court has made a Civil Proceeds Assessment Order, the High Court upon application by the Supervisory Authority shall make an order declaring that the interest is available to satisfy the Civil Proceeds Assessment Order to the extent that there is no other property available to satisfy the Order.
98. Part IVE deals with the protection of third parties. Section 22 accordingly provides the limitations on the freezing or forfeiture of property. Thus, property may be excluded where the applicant can show that he was not involved in the commission of the offence and his interest in the property was not subject to the control of the defendant and the applicant had no knowledge of the commission of the offence or of any illegal use of the instrumentalities etc. and his interest was not obtained by gift.
99. Part V of the Act addresses international co-operation, which is an extremely important facet of any anti-money laundering framework. Section 23(1) provides for assistance to foreign countries by allowing the Court or Supervisory Authority in consultation with the Central Authority to cooperate with the Court or competent authority of another State. Subsection 2 allows the Court or Supervisory Authority to receive (pursuant to a mutual legal assistance treaty) a request (from a like organization of a foreign state) for the identification, tracing, freezing, seizing etc. of the property, proceeds or instrumentalities connected to money laundering. The Court may also invoke Part IVA (automatic forfeiture) or Part IVB (civil forfeiture) provisions. These measures comply with **FATF Rec. Nos. 37 and 38**.
100. Section 23(4) allows requests from the court or other competent authority of another State for assistance related to civil, criminal, or administrative investigation prosecution or proceedings, that involve money-laundering offences. This provision and Section 23(5b) as it pertains to tax matters, complies with **FATF NCCT Criteria 15, 16, 18, 20, and 22**. It should be noted that with this legislation, and the record of co-operation, that there is a willingness to comply with requests for mutual legal assistance as envisaged by **FATF NCCT Criterion 17**.
101. The provision of Section 23(6) ensures that Antigua and Barbuda comply with **FATF NCCT Criterion 9** in that secrecy and confidentiality clauses are not obstacles to sharing information pursuant to Section 23 of the Act. It should be noted that pursuant to Section 23(7) the assistance offered shall only be provided to countries with whom Antigua and Barbuda has entered into mutual assistance treaties on a bilateral or multilateral basis.
102. Miscellaneous provisions are dealt with in Part VI of the Act and include the provision at Section 24 that money laundering is to be considered an offence for the purposes of extradition or the rendition of fugitive offenders. This complies with **FATF Rec. No. 40**. Section 25 overrides, subject to the provisions of the Constitution any obligation pertaining

to secrecy or other restrictions on the disclosure of information, while Section 26 provides a blanket protection on disclosures that are in compliance with the Act. These Sections comply with **FATF Rec. Nos. 2 and 16 and FATF NCCT Criteria 8 and 9**. It should be noted that offences under the Act could only be prosecuted with the written consent of the Supervisory Authority or the DPP (Section 27).

103. The statute of limitations on proceedings is six (6) years after the date the offence was committed. (Section 28). Section 28A states that questions of fact to be decided by the Court on application under the Act are to be decided on the balance of probabilities. Section 28D provides the procedure for giving notice for certain applications and orders. The Supervisory Authority can give notice by personal service, service at the business address of counsel, service at last known address, service at the registered or principal office where a body corporate is involved *et cetera*. Section 29 allows the Minister to make regulations that would assist in the execution of the Act.

### ***Money Laundering (Prevention) Regulations, 1999***

104. The Money Laundering (Prevention) Regulations, 1999 were made by the Minister responsible for national drug control and security under Section 29 of the Money Laundering (Prevention) Act, 1996 and is intended to assist in the execution of the Act. The Regulations set the standards for due diligence and record keeping of financial institutions. They present four ‘cases’ that trigger certain identification, record keeping and internal reporting procedures. The ‘cases’ are as follows:

- Case 1 relates to negotiations between parties with a view to the formation of a business relationship;
- Case 2 relates to a situation where a person handling a particular transaction suspects that the applicant for business is engaged in money laundering;
- Case 3 refers to a ‘single large transaction’ of EC\$13,000 or more;
- Case 4 refers to a series of smaller transactions that together amount to EC\$13,000

105. Regulation 3 provides the systems and training to prevent money laundering by providing that a person cannot in the course of a relevant financial business<sup>8</sup> carried on by him, form a business relationship or carry out any transaction with another person unless he maintains identification, record-keeping and internal reporting procedures. Additionally, the person is also required to take periodic measures that would make their employees aware of the identification, record-keeping and internal reporting policies and the provisions of the

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<sup>8</sup> ‘Relevant financial business’ means: (i) any business of banking carried on by a person or institution who is authorised or required to be authorised by the Banking Act or the IBC Act; (ii) any activity carried on by a person or institution who is authorised or required to be authorised under Financial Institutions (Non –banking) Act; (iii) life assurance business carried on by a person or institution authorised or required to be authorised under the Insurance (Licence) Act or the IBC Act; (iv) investment business carried on by a person or institution licensed, or required to be licensed under the provisions of any law in force in Antigua and Barbuda; (v) any activity carried on by a person pursuant to any law authorising the business of property business, credit union, building societies and trust business; (vi) any activity carried on by a person in accordance with any law in relation to money brooking, money lending and pawning and (vii) any activity which is associated with a business falling within the paragraphs mentioned above.

MLPA 1996 and the Regulations. Regulation 3C also requires the owner of a relevant financial business to provide employees with training in the recognition and handling of transactions carried out by any person who is, or appears to be engaged in money laundering. These measures comply with **FATF Rec. Nos. 10 and 19 and FATF NCCT Criterion 5**.

106. Contravention of Regulation 3 requirements is an offence and the liability on conviction is a fine not exceeding EC\$50,000 or imprisonment for a term not exceeding two (2) years. Subsection 3 provides the things that a court can take account of when determining whether a person has complied with sub regulation (1) requirements. These include any relevant guidance issued, approved or adopted by a supervisory authority, which applies to the person, or where that does not exist any other relevant guidance issued by a body which regulates or is representative of any trade, profession etc. carried out by the person.
107. It is a defence for the person to show that they took all reasonable steps and exercised all due diligence to avoid the commission of the offence. It should be noted that pursuant to Regulation 4, offences (i.e. Regulation 3) can be committed by a body corporate/unincorporated and every person who at the time of the commission of the offence acted in an official capacity for or on behalf of the body of persons. This includes persons who acted as a director, manager, secretary or other similar officer. The susceptibility of corporations to criminal liability is in keeping with **FATF Rec. No. 6**.
108. Regulation 5 discusses the identification procedures for any business relationship or transaction and requires that an applicant for business produce satisfactory evidence of his identity as soon as is reasonably practicable after the first meeting. Where the evidence of identity is not forthcoming, procedures must require that the business shall not proceed or proceed on the direction of the Competent Authority. Where refraining from proceeding with the business would frustrate investigation into suspected money laundering, the business can proceed on the condition that a report is immediately lodged with the Attorney General in accordance with Regulation 11.
109. Sub regulation 2 states that identification procedures would be considered satisfactory if it can be reasonably established that the person is who he claims to be and the person receiving the identification is satisfied that the evidence meets internal procedures and policies for establishing identity. In making a determination as to what is reasonably practicable, the nature of the business or transaction, the ability to receive evidence of identity before commitments are made and with regard to single large transactions or a large series of transactions, the earliest stage at which there are reasonable grounds for presuming that the total amount payable by the applicant for business is EC\$13,000 are the factors to be considered.
110. The identification requirements comply with **FATF Rec. Nos. 10, 11 and 29 and FATF NCCT Criterion 4**. It should also be noted that Regulation 15 of the International Business Corporations Regulations, 1998 provides details on the types of customer identification and record-keeping information that institutions licensed by the International Financial Sector Authority must obtain when establishing individual accounts. The information includes the name and address of the account holder, passport number, business interest and anticipated

account activity. There are also specific identification requirements for the establishment of organization accounts.

111. Regulation 6(1) provides that where an applicant would be required to produce evidence of identity but the circumstances are such that payment is to be made by the applicant for business and it is reasonable for the documents to be sent by post or electronic means or for the payment details to be sent by post or given on the telephone etc. then the fact that the payment is debited from an account held in the applicant's name at a bank will be sufficient evidence of identity. The exceptions to this provision (Reg. 6(3)) are where there are suspicions about the circumstances of the payment or the payment is made by any person opening an account with a bank within the meaning of the Banking Act.
112. Regulation 7 deals with identification procedures where transactions are done on behalf of another and requires that identity information be obtained not only for the applicant business but also for the person on whose behalf the applicant for business is acting. This provision complies with **FATF Rec. No. 7 and FATF NCCT Criterion 13**. Where the identity information cannot be provided then the business relationship or transaction can only proceed in accordance with directions from the Competent Authority. Sub regulation (4) allows a person who is bound under Regulation 3(1) to obtain a written declaration for the applicant for business disclosing the identity of the principal. Where the principal is a body corporate this includes satisfactory identification of all the directors of the principal.
113. The requirement for a written declaration disclosing the principal is not applicable where the applicant for business is an attorney, notary public, chartered accountant, certified public accountant and auditor or nominee company practising in Antigua and Barbuda. These specified applicants for business must not be acting on their own behalf and must sign a declaration stating that they are acting in their professional capacity on behalf of an undisclosed principal and that a professional relationship has been maintained with the principal for the three months immediately preceding the application for business.
114. Where the three-month requirement cannot be met, they must show that they obtained satisfactory references from at least two persons who have maintained a professional relationship with the principal for the three-month period. Additionally, the declaration must state that the applicant for business was not engaged simply for the purpose of dealing with people bound by the provisions of Regulation 3(1), and that the applicant knows or will know the nature or the underlying transaction.
115. The applicant for business must also obtain satisfactory evidence of the identity of the principal (within the meaning of Regulation 5(2)) and maintain a record of the identities. Further, his declaration must state that he is not aware of any fact that indicates or causes him to believe or suspect that the assets or transactions involved are or will be derived from criminal activity. Finally, the declaration must state that the applicant for business (i.e. lawyer, accountant, etc.) will inform the principal (i.e. person bound by Regulation 3(1)) if the powers of the applicant for business are revoked or if in any statement in the written declaration ceases to be true.

116. There should also be an obligation for these specified applicants for business to notify the competent authority of any changes in the declaration. Sub regulation (6) provides a penalty on conviction of EC\$20,000 for an applicant of business who makes a false declaration.
117. Regulation 8 pertains to exemptions to identification procedures under Regulations 5 and 7 where: (i) there are reasonable grounds to believe that the applicant for business is a person who is bound by the provisions of Regulation 3(1); (ii) any transaction is carried out with a third part pursuant to an introduction made by a person in respect of whom there are reasonable grounds for believing that he is bound by Regulation 3(1) and who provides the name of the third party and gives and assurance that he has obtained evidence as to the identity of the third party and gives assurance that he has obtained evidence as to the identity of the third person; (iii) in relation to life insurance business, a periodic payment is payable in one instalment of an amount not exceeding EC\$1,000 and (iv) in relation to a life insurance business in respect of which a periodic premium is payable and where the total payment in any calendar year does not exceed EC\$500. Regulation 8 is not applicable to instances where there are suspicions of money laundering.
118. Record-keeping procedures are dealt with by Regulation 9. This regulation essentially states that record-keeping procedures maintained by a person will be deemed to be in compliance if they keep prescribed records for a period of at least five (5) years. The five year period, can depending on the records start at the date on which the relevant business was completed or the date on which all dealings taking place in the course of the business in question were completed. This complies with **FATF Rec. No. 12 and FATF NCCT Criterion 6**. Sub regulation 3 specifies the ‘date on which relevant business is completed’ for the four different case situations (i.e. whether it is at the negotiation stage where there is a suspicion or single large transaction or a large series of transactions).
119. Regulation 10 focuses on the internal reporting procedures maintained by the ‘Subject Person’. The latter term ‘Subject Person’ could probably be defined in the definition section of these Regulations as opposed to being introduced here as a new term without a specified meaning.
120. Reporting procedures maintained by a ‘Subject Person’ would be deemed to be in compliance with these Regulations if those procedures make provision for: (a) a compliance officer employed by the ‘Subject Person’ and who is responsible for receiving reports on any information or matter which gives rise to knowledge or suspicion that another person is engaged in money laundering, (b) consideration of the report in (a) by the compliance officer or other designated employee of the ‘Subject Person’ in order to determine whether or not the information contained in the report gives rise to a knowledge or suspicion that a person is engaged in money laundering, (c) reasonable access to be given to the compliance officer/designated person of any information held by the ‘Subject Person’ which can assist in reviewing the report and (d) a procedure for reporting any knowledge or suspicion that another person is engaged in money laundering as determined by the reporting officer or other designated employee.

121. It should be noted (Sub regulation (2)) that while the failure of a 'Subject Person' to maintain internal reporting procedures does not constitute a criminal offence, officials or employees of the 'Subject Person' could be subject to disciplinary proceedings. Sub regulation (3) provides for an offence akin to 'tipping off' whereby any official or employee of a 'Subject Person' who discloses to the person concerned or a third party that an investigation is being carried out in accordance with these Regulations commits an offence and is liable on conviction to a fine not exceeding EC\$100,000 or to imprisonment for a term not exceeding three (3) years or both. This complies with **FATF Rec. No. 17**.
122. Regulation 11 requires relevant businesses that are subject to Regulation 3(1) to disclose any information that indicates a person has or may been engaged in money laundering to the Competent Authority. The disclosure must be made as soon as is reasonably practicable. This measure complies with **FATF NCCT Criterion 10** and to a narrower degree with **FATF Rec. No. 15** since the latter speaks to criminal activity in general, while Regulation 11 specifies money laundering.
123. It should also be noted that while this regulation refers to disclosure for information, the International Business Corporations Regulations, 1998 (whose licences are bound by the MLPA and its regulations) specifies at Regulation 19, the appointment of a compliance officer and the reporting of suspicious activity reports to the Supervisory Authority with copies to the Competent Authority.
124. Information that is disclosed pursuant to Regulation 11 can only be used in connection with money laundering investigations (Regulation 12). Pursuant to Regulation 13, persons making disclosures in accordance with Regulations 7(5), 10 or 11 have disclosure protection in that any information disclosed would not be treated as a breach of the duty of professional secrecy or any other restriction upon disclosure. The disclosure protection complies with **FATF Rec. No. 16**. Regulation 14 essentially provides that the procedures that must be maintained by Regulation 3(1) businesses under Regulations 5 and 7 are not retroactive to the time before the regulations came into force.

#### ***Mutual Assistance in Criminal Matters Act, 1993***

125. The Mutual Assistance in Criminal Matters Act, 1993 makes provision for mutual assistance in criminal matters within the Commonwealth and also with non-Commonwealth Countries. The Central Authority for matters under the Act is the Attorney General.
126. Part II of the Act deals with requests by Antigua and Barbuda to Commonwealth Countries for assistance. Accordingly, Section 7 provides that where there are reasonable grounds to believe that evidence/information that is relevant to a criminal matter may be obtained in a Commonwealth Country, then a request to obtain the information is sent to the country. The types of evidence or information that can be requested include judicial records, samples of any matter or thing that has been taken, examined or tested, photographs of any building, place or thing etc. These provisions are in keeping with **FATF Rec. No. 38**.

127. Assistance may also be requested with regard to locating an individual and where his identity is unknown, to identifying and locating him. (Section 8); arranging the attendance of a person to give evidence in Antigua and Barbuda; transferring a prisoner and the service of documents etc. (Sections 10, 11 & 12). Section 13 restricts the use of any evidence or information obtained by Antigua and Barbuda to the proceedings for which the evidence or information was obtained. Section 14 provides for the immunities and privileges available to persons who go to give evidence in Antigua and Barbuda.
128. Sections 15 thru 17 deal with assistance in connection with serious offences.<sup>9</sup> Thus pursuant to Section 15, Antigua and Barbuda can request assistance with regard to identifying, locating or assessing the value or amount of property derived directly or indirectly from the commission of the serious offence. Section 16 allows requests to be made to have Restraint and Confiscation Orders that have been issued in Antigua and Barbuda enforced and or registered in Commonwealth Countries. Section 17 on the other hand allows Antigua and Barbuda to request that a Commonwealth Country make a Restraining Order where a person (in Antigua and Barbuda) has been or is likely to be charged with or convicted of a serious offence and a Confiscation Order has been or is likely to be made.
129. Part III of the Act covers requests by Commonwealth Countries to Antigua and Barbuda for assistance. Requests for assistance by Commonwealth Countries must meet the requirements established in the Schedule of the Act that deals with requests for assistance. Requirements include specifying the assistance requested; identifying the person, agency etc. that initiated the request; the period within which the request should be complied with; details of the proceedings; whether evidence should be taken orally or in writing, under oath etc.
130. Section 18(2) also permits informal requests under the Act to be transmitted orally. Where a Commonwealth Country requires confidentiality, that requirement should be stated and reasons given. Section 19 allows requests to be refused where in the opinion of the Antigua and Barbuda Central Authority, the request relates to prosecution or punishment for crimes that are of a political character, or crimes that prosecute or punish persons based on their sex, race, religion, nationality etc; or where the granting of the request would be contrary to the Constitution etc. The Central Authority is not required to give the grounds for refusing the request where the request involves the transfer of a prisoner pursuant to Section 24(1).
131. Sections 20 thru 25 address the giving of general assistance. General assistance includes assistance in: obtaining evidence; locating or identifying persons; obtaining an article or thing by search and seizure if necessary; arranging the attendance of a person; transferring prisoners and serving documents. These measures are in keeping with **FATF Rec. No. 37**. Sections 26 thru 28 pertain to assistance in connection with serious offences in Commonwealth Countries.

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<sup>9</sup> The definition of a serious offence depends on whether it is in relation to a law in Antigua and Barbuda or in a Commonwealth Country. Generally, however, it is an offence, which can carry a sentence of death or a term of imprisonment of not less than 3 years, and where the value of the proceeds of the offence is not less than the prescribed amount. (\$25,000 for Antigua and Barbuda).

132. Pursuant to these Sections, the central authority of a Commonwealth Country can request that Antigua and Barbuda assist in tracing property that has been derived or obtained directly or indirectly from the commission of a serious offence and that is suspected on reasonable grounds to be located in Antigua and Barbuda. Assistance can also be sought in relation to Confiscation and Restraining Orders against property that is derived or obtained directly or indirectly from a serious offence. The latter measure is in compliance with **FATF Rec. No. 38**.
133. Continuing in this vein, Section 28 permits a Court, upon proper application, to make a Restraining Order in accordance with the laws of Antigua and Barbuda, restraining dealings with the specified property. The central authority of the Commonwealth Country, must meet certain requirements such as a named person must be charged or likely to be charged and an order has been made or is likely to be made against the named person in the Commonwealth Country etc.
134. Part IV of the Act deals with the application of the Act to non-Commonwealth Countries. Generally, (though the regulations that may be prescribed by the Minister of Legal Affairs in accordance with Section 36) effect can be given to a treaty for bilateral mutual assistance between Antigua and Barbuda and the non-Commonwealth Country. The non-Commonwealth Country must be specified in the regulations. Section 30(2) provides that the regulations may direct that this Act deal with the non-Commonwealth Countries as if they were Commonwealth Countries.
135. Part V of the Act pertains to miscellaneous matters, which include certification by the Attorney General of the request for assistance, the fact that it meets the requirements of the Act and that the request was duly accepted in accordance with the Act. The issue of proof is also dealt with as it pertains to the authentication of documents. Other miscellaneous issues are the transit of persons in custody through Antigua and Barbuda from one Commonwealth Country to another; the escape of a person in lawful custody while in Antigua and Barbuda; the arrest of an escaped person and the making of regulations.
136. In addition to this Act, Antigua and Barbuda is a Party to the 1988 U.N. Vienna Convention by accession on April 5, 1993, which complies with **FATF Rec. No. 1**. Antigua and Barbuda is also a member of the Organization of the American States Inter-American Drug Abuse Control Commission (OAS/CICAD) Experts Group to Control Money Laundering.
137. In 1999, Antigua and Barbuda was also the first country in the Eastern Caribbean to exchange instruments of ratification with the United States to bring into force the Mutual Legal Assistance and Extradition Treaties. Antigua and Barbuda signed a Tax Information Exchange Agreement with the United States of America in December 2001<sup>10</sup>, which entered into force in February 2003. Antigua and Barbuda has also signed the UN Convention against Transnational Organized Crime (Sept. 2001)

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<sup>10</sup> Source: United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report-2001.

138. Compliance with **FATF NCCT Criteria 17, 18 and 20 thru 22** was considered appropriate when reviewed by the NCCT Monitoring Group.

***Extradition Act, 1993***

139. The Extradition Act provides at Section 3 for the extradition of persons from Antigua and Barbuda for crimes committed in a foreign state/jurisdiction. The procedure to be followed by the country requesting the extradition is set out in Part IV of the Act. Section 4 of the Act defines 'extradition crime' as generally conduct, which, had it occurred in Antigua and Barbuda would constitute an offence punishable by imprisonment for a period of at least twelve months.

140. Some of the other conditions include: the foreign state or Commonwealth Country's jurisdiction must be based on the nationality of the offender, the conduct that constitutes the offence occurred outside of Antigua and Barbuda etc. Since money laundering is an offence, which carries a term of imprisonment of more than 12 months, it qualifies as an extraditable offence. Thus there is compliance with **FATF Rec. No. 40**.

141. Part III provides the conditions under which a person would not be returned pursuant to Part IV of the Act. These include cases where the offence for which the person was accused or convicted is of a political character; it is an offence under the military law (which is not an offence under the general criminal law); the offence prosecutes the person for his sex, religion, race etc. or the person may be prejudiced at his trial if returned and punished, detained or restricted by reason of his race, religion, etc.

142. As stated before, Part IV of the Act provides the procedures to be followed to give effect to the extradition. Generally, the request must be made by a person recognized by the Minister of External Affairs as a diplomatic or consular representative of a foreign state or by or on behalf of the Government of a designated Commonwealth Country or the Governor of a colony. Additionally, particulars about the person, the offence etc. must be provided.

143. Part V of the Act deals with the treatment of persons returned. For example, Section 21 provides restrictions upon the proceedings for other offences in cases where a person is returned by a designated Commonwealth Country. Similarly, Section 22 provides that where a person who is returned to Antigua and Barbuda for an offence is tried and acquitted or proceedings are not started within six months, then the Minister may, if he thinks fit and upon the request of the person send him back free of charge to the Commonwealth Country from which he was extradited. Special cases such as where persons serve sentences outside of the country of conviction are dealt with by Part VI of the Act.

## FINANCIAL SECTION

### *FINANCIAL SERVICES SECTOR*

144. Antigua and Barbuda's banking facilities consist of international Canadian and British banks as well as several indigenous banks. The offshore jurisdiction, which was legislated in 1982, has the expertise of over 20 years experience in regulation of offshore banking, insurance and trust services. This expertise includes professional service providers such as experienced offshore bankers, trust and corporate managers, accountants and attorneys. The offshore financial centre is a small segment of Antigua and Barbuda's economy. As of January 2003 the financial services sector of Antigua and Barbuda comprised:

- Eight (8) Banks and 2 quasi-Banks in the domestic market;
- 15 banks operating with an offshore license;
- 6 licensed trust companies;
- About 13,000 international business corporations;
- Four-thousand (4,000) domestic and foreign companies;
- 36 licensed offshore gaming activities;
- A Western Union exchange office;
- A number of companies and agents operating in the domestic Insurance sector;
- A small number of Co-operative Societies and Credit Unions; and
- Law Firms and Offices of major accountancy firms.

145. In an attempt to attract foreign investors and to ensure a reputation that met international standards, the government of Antigua and Barbuda placed emphasis on preserving the integrity, security, and confidentiality of its offshore centres. This was pursued by consistent development of legislation to govern the operation of its IBCs.

### *LEGISLATION*

146. The main pieces of legislation covering money laundering in the financial services of Antigua and Barbuda are:

- The Insurance Act, 1969 as amended;
- The Eastern Caribbean Central Bank Agreement Act, 1983;
- The Proceeds of Crime Act, 1993; (**POCA**)
- The Banking Act 1991, as amended in 1993;
- The Banking Act (Disclosure in Statement Accounts) Regulations, 1994;

- The Banking Act (Credit Institutions Capital Requirement) Order, 1994;
- The Mutual Assistance in Criminal Matters Act, 1993;
- The Co-operative Societies Act, 1997; (**CSA**)
- The Interactive Gaming and Interactive Wagering Regulations, 1997 (**The ‘Wagering Regulations’**)
- The International Business Corporation Act, 1982 as amended in 1984, 1985, 1998, 1999, 2000, 2001 and 2002; (**IBCA**)
- The International Business Corporation Regulations, 1998; (**IBC Regulations**)
- The Money Laundering (Prevention) Act, 1996 as amended 1998, 1999, 2001 and 2002 (**MLPA**); and
- The Money Laundering (Prevention) Regulations, 1999; (**MLP Regulations**)
- The Prevention of Terrorism Act 2001

147. Additional documents intended to assist in the regulation of financial institutions include the “Money Laundering Guidelines for Financial Institutions”, issued by the Supervisory Authority on 9th September 2002.

## ***SUPERVISION OF FINANCIAL INSTITUTIONS***

### ***Regulatory Authorities***

148. **FATF Rec. Nos. 26, 27, CFATF Rec. No. 11** and **FATF NCCT Criterion 1** require countries to have in place an effective regulatory system that provides for bank and other financial institutions supervision, particularly with respect to international standards applicable to money laundering. In Antigua and Barbuda, like most OECD countries, there is no one supervisory body responsible for the effective regulation of all financial institutions and businesses in the financial services sector.
149. The regulatory regime for the financial institutions in Antigua and Barbuda consists of the Eastern Caribbean Central Bank (ECCB), the Financial Services Regulatory Commission (FSRC), the Registrar of Insurance and the Registrar of Cooperative Societies apart from a separate and independent anti-money laundering authority viz., the Office of National Drug and Money Laundering Control Policy (ONDCP).
150. The Government of Antigua and Barbuda has taken concrete steps to move towards a unified regulatory structure and uniform supervisory practices for its financial services sector, except the domestic banks, which are regulated and supervised by the ECCB, as discussed subsequently.

151. The ECCB is responsible for the supervision of financial institutions licensed under the Banking Act, that is, the domestic banking sector. Under Part III of the Act an auditor is to be appointed annually to examine the books and records of the banks and report on their financial position. At section 20, the ECCB is permitted to examine institutions whenever necessary. The Act also allows for the implementation of regulations to further provide guidelines for the monitoring of financial institutions governed by it, for example, the Banking Act (Credit Institutions Capital Requirement) Order 1994 which fixed the minimum capital for credit institutions at \$1,000,000.00.
152. The ECCB recommends to the Ministry of Finance (MOF) the granting or revocation of licenses. However, the Minister of Finance has the discretion to decline the grant of a license where it is not in the interest of the public to do so. The MOF must also consult the ECCB in the control of the network branches and bank opening hours. Foreign exchange regulations are covered by the MOF. The review of banks is done by both on-site examinations and off-site surveillance.
153. The onsite examination cycle is approximately eighteen (18) months. Offsite surveillance involves, *inter alia*, the delivery and examination of: (a) a quarterly return providing an analysis of customer's liabilities and a statement of assets and liabilities; (b) an annual audited return including an analysis of customers' liabilities, a profit and loss statement, a balance sheet and statement of assets and liabilities; and (c) an annual certification attesting to the ownership, directors and officers of the institution.
154. The examination reports of the ECCB are sent to the Boards of examined institutions and the Minister of Finance who forwards a copy to the Financial Secretary. Where information in the report is relevant to other domestic regulatory bodies, the Financial Secretary ensures that they are informed.
155. The International Financial Sector Authority (IFSA) was established in 1998<sup>11</sup>, as the supervisory authority for the regulation of financial institutions licensed under the International Business Corporations Act (IBCA). Its name was changed in 2002 by legislation to the Financial Services Regulatory Commission (FSRC). The FSRC is responsible for the administration of the International Business Corporations Act (IBCA) including but not limited to the issuing of certificates of incorporation, and licensing and regulating international financial institutions and the regulation and supervision of Internet Gaming and Wagering through one of its divisions, the Directorate of Offshore Gaming. The FSRC is also responsible for regulation and supervision of the domestic insurance companies (removing this function from the Registrar of Insurance), non-bank financial institutions, and co-operative societies. The Commission is headed by a Chairman who presides over a Board of Directors. An Administrator, who is also a Board Member, is the administrative and technical head of the Commission. The FSRC plays no role in the promotion of the sector.

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<sup>11</sup> By the amendment to section 316 of the IBCA.

156. Section 259 of the IBC Act requires an 'appropriate official or examiner' appointed by the Board of the FSRC to examine, at least once a year, the affairs, of each bank, trust and insurance company. Section 260 of the IBC Act gives the appointed examiner full access to all books, records and documents of the examined institution. Additionally, the IBC regulations require an annual examination to test compliance with anti-money laundering legislation and the IBC Act. The FSRC has increased its staff to effectively perform onsite and off-site examinations of licensed offshore banks. Members of the Board are prohibited from being shareholders, directors, officers or employees of institutions licensed under the IBCA.
157. The supervisory approach used by the FSRC includes but is not limited to; quarterly assessment reports on balance sheet, loan portfolio and annual financial statements; safety, soundness, and compliance audits; anti-money laundering systems audits; analysis and audit reports; and a one year examination cycle.
158. The supervisory/regulatory arms of the FSRC include the Supervisor of International Banks and Trusts, the Manager of International Business Corporations and Non Bank Financial Institutions, the Directorate of Offshore Gaming, and the Superintendent of International Insurance. The supervisory/regulatory arms report to the Administrator, who reports to the Board. At the date of the last mutual evaluation in September 2002, only five (5) examiners were assigned to the Supervisor of International Banks and Trusts. However, they are available for the examination of other financial institutions under the Commission.
159. By September 2002, there were twenty-two (22) international/offshore banks and six (6) international/offshore trust companies in Antigua and Barbuda. The onsite examination of these institutions started in May 2001 and eighteen (18) had been completed by September 2002. Seventeen (17) of the institutions were assessed as 80% compliant with the anti-money laundering requirements. The first onsite examination of a trust corporation was scheduled for October 2002. The examination cycle of one year was assessed as achievable.
160. Domestic insurance is regulated under the Insurance Act, 1969 and the Insurance Regulations, 1969. In April 2002, the IBCA was amended to empower the FSRC to administer, inter alia, the Insurance Act. A new draft Insurance Act, prepared by the ECCB for regulation of the domestic insurance sector has been presented in Parliament.
161. International or offshore insurance is regulated under the IBCA, which is administered by the FSRC. The designated regulator within the FSRC is the Superintendent of International Insurance Corporations. At the date of the last mutual evaluation there were no active international insurance companies in Antigua and Barbuda.
162. At September 2002, there were thirty-nine (39) gaming companies in Antigua and Barbuda. These companies are classified as IBCs and are governed by the IBCA and the Wagering Regulations. They are regulated by the Directorate of Offshore Gaming, which was established in 1997 and is now a division of the FSRC.

163. Officers from the Directorate of Offshore Gaming visit the gaming companies on a monthly basis to review compliance with the anti-money laundering requirements. The compliance officers at the companies are the principal points of contact for such reviews. Under Part XI of the Wagering Regulations, the officers have the power to request any and all information. Due diligence is done annually on individuals holding 5% or more of the shares of a gaming company.
164. The ONDCP is the primary agency responsible for anti-money laundering law enforcement and the co-ordination of the country's anti-money laundering efforts. Supervision regarding suspicious transactions rests with the Supervisory Authority under the 2001 amendment to the MLPA. Section 10 of the MLPA established the Supervisory Authority. The functions of the Supervisory Authority include the receipt of suspicious transaction reports from financial institutions.
165. The Supervisory Authority also has the power to conduct inspections of business transaction records kept by financial institutions, disseminate information within or without Antigua and Barbuda, mandate and provide training for financial institutions, trace property that is criminal proceeds and make applications for freezing and forfeiture of such property. The Supervisory Authority is also the Director of the ONDCP.
166. In addition to regulation by the supervisory bodies, all licensed financial institutions in Antigua and Barbuda, whether bank, non-bank, domestic or offshore, are subject to formal requirements of the statutory provisions of the MLPA. The 1999 MLP Regulations made pursuant to section 29 of the MLPA encompass identification procedures, record keeping, reporting of suspicious transactions, the education and training of employees and internal controls into one fully comprehensive piece of legislation.
167. The Regulations make financial institutions<sup>12</sup> obligated by statute to establish and maintain procedures for the purpose of preventing and recognizing possible money laundering transactions in the course of their business<sup>13</sup>. The authority given to the Supervisory Authority under the MLPA to issue guidelines for the further regulation of financial institutions was exercised in the September 2002 publication of the "Money Laundering Guidelines for Financial Institutions" in keeping with **FATF Rec. No. 28**.
168. These Guidelines are applicable to all institutions licensed under the Banking Act and the IBCA. The Guidelines, *inter alia*, allow for corporations to be prosecuted (**FATF Rec. No. 6**) if involved in money laundering schemes. Many financial institutions in Antigua and Barbuda have also issued policy manuals for the prevention of money laundering, making specific reference to the provisions of the MLPA. In one institution anti-money laundering software identical to programmes in the US is being utilized.

### **Training**

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<sup>12</sup> The Regulations define 'financial business' as the business of credit and financial institutions, life assurance, investment or collective investment schemes, stockbrokers and any activity associated with the previous institutions.

<sup>13</sup> Regulations 3(1) (b) and 3(1) (c).

169. The MLP Regulations strictly advocate the maintenance of internal procedures and controls to keep employees informed and to ensure application of the prevention techniques. It particularly requires on-going training for employees to be efficient in the recognition and handling of suspicious transactions. The Guidelines expand on this requirement and the need for staff awareness in compliance with **FATF Rec. No. 19**.

### **LICENSING OF FINANCIAL INSTITUTIONS**

170. Any institution operating in the domestic sector without a valid licence is liable on summary conviction to a fine of \$100,000.00 and/or five years imprisonment. Persons previously convicted of an offence may not be eligible to carry on the business of a financial institution thus excluding the influence of the criminal element (**FATF NCCT Criterion 3**). Additionally, no person can hold or acquire 20% of the total voting rights of a financial institution without the permission of the Minister of Finance.

171. In considering a licence application, the ECCB can conduct investigations into among other things, the financial condition and history of the applicant, the character of the business and the experience of the person or persons who constitute the management. The licensing of institutions under the Banking Act is covered by section 3 14. The Minister of Finance is responsible for the granting of licences, when recommended by the ECCB. The Minister of Finance has discretion in the best interest of the public to refuse to grant a licence.

172. The Board of Directors of the FSRC issues licences for the offshore sector, including the offshore banks and the IBCs. It is a requirement under the IBCA that international banking, trust and insurance businesses be licensed before it can be issued a certificate of incorporation under the Act, and if not, a 'tentative licence' should be applied for on behalf of the intended corporation<sup>15</sup>. Applications for a licence must contain various identification details including the names and addresses of the directors and the names of shareholders and the number of shares held by each.

173. Applications must be accompanied by the respective fees. There is a minimum amount of capital necessary for each area of the offshore sector namely: Banking – not less than USD 5,000,000.00; Trust Corporations – not less than USD500, 000.00<sup>16</sup>; and Insurance Companies – not less than USD250, 000.00. The ownership of an IBC cannot be held in bearer shares. Licensing of anonymously owned institutions is not allowed under the IBC Regulations in compliance with **FATF Rec. No. 10** and **FATF NCCT Criterion 4**.

174. The Interactive Gaming and Interactive Wagering Regulations (Wagering Regulations) by section 3 denies such operations a licence if not first registered under the IBCA and in possession of a certificate of good standing. The premises to be used for this purpose must

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<sup>14</sup> As amended by the Banking Act (Amendment) Act, 1993.

<sup>15</sup> Under section 228 of the said Act.

<sup>16</sup> Section 13 of the International Banks and Trust Corporations Act, 1995.

also be licensed<sup>17</sup>. Annual licence fees are prescribed in the Schedule to the Wagering Regulations and range from US\$50,000.00 to US\$75,000.00. Casinos and other gambling activities are covered by the requirements of the IBCA; these activities must be operated in the Free Trade Zone and are required to be licensed and incorporated under the IBCA. Applicants are subject to the ‘due diligence procedures’ contained in the Act and the Wagering Regulations.

## **ANTI-MONEY LAUNDERING REGIME**

### ***Client Information***

175. The basic banking principle of “know your customer” applies to all financial institutions of Antigua and Barbuda. They are expected to obtain evidence of the identities of prospective customers prior to entering into business commitments. The MLP Regulations of 1999 together with the Guidelines establish customer identification requirements for the domestic financial sector and offshore banking business. The 1998 amendment to the IBCA enumerates detailed identification requirements for customers of offshore financial institutions. **FATF Rec. Nos. 10 and 11** are accommodated by these legal obligations to obtain information and keep records of client information (**FATF NCCT Criterion 4, 6 and 12**).
176. The MLP Regulations require that ‘satisfactory evidence of identity’ be established in compliance with **FATF Rec. No. 11**. Evidence of identity is deemed satisfactory if it establishes whom the applicant purports to be, for example any valid document bearing a photograph and other personal details of the applicant. Where an applicant is not acting on his own behalf, full identification is necessary for both the intermediary and the person on whose behalf he is acting, together with written authorization for the applicant by the principal. Transactions cannot be carried out without this information and if such identification cannot be given it is to be considered suspicious and reported immediately.
177. Section 27(1) of the IBCA permits the issuance of bearer shares. However registered agents are required to keep a register of the beneficial owners of bearer shares and to disclose their names to the Regulatory Authority upon request. Intermediaries representing beneficial owners are required to obtain full identification of both the applicant and the beneficial owners.
178. Where identity cannot be taken the transaction is considered suspicious and consequently reported. Where the intermediaries are professionals or nominee companies there is little that must be reported to the financial institution. Further, the IBC Regulations 1998 prohibit issuance of licence (required for international banks, trust corporations and international insurance corporations) to an institution whose ownership is held directly or indirectly in bearer shares or otherwise unknown. **FATF NCCT Criterion 13** is therefore satisfied.

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<sup>17</sup> Under section 5 of the Wagering Regulations – by the Commission formed by section 3 of the Free Trade and Processing Zone Act.

179. Identification procedures are also required for transactions more than or equal to EC\$13,000.00, a series of structured transactions below the minimum of EC\$13,000.00, and any other that may appear suspicious.

### ***Maintaining Records***

180. MLP Regulation 9 requires that the records of customer identification and details of transactions be retained for use as evidence in investigations. Where investigations are ongoing it is prudent to retain records until the Solicitor General confirms that the case has been closed. The general objective is to be able to retrieve relevant information in a cost-effective manner, without undue delay. Sections 12 and 13 of the MLPA (as amended) require financial institutions to retain documents relating to financial transactions for at least 7 years, which more than fulfils the requirement of **FATF Rec. No. 12**. In keeping with **CFATF Rec. No. 13**, the sections also stipulate that failure to do so may result in a fine of \$10,000.00.

181. The resident agents of IBCs are required by the 2000 amendment to section 2 of the IBCA to maintain a record of offshore companies incorporated under the IBCA. While there is no public record of the shareholders, directors or beneficial owners of non-financial IBCs, (as is similarly the case in many OECD countries) this information is available to the FSRC upon request. In any event, there is no FATF requirement to record beneficial ownership information of companies.

### ***Reporting Suspicious Transactions***

182. The Supervisory Authority was created pursuant to the MLPA to mandate a reporting system for suspicious financial transactions (**FATF NCCT Criterion 10**). It is required to send suspicious transaction reports to the law enforcement authorities if it reasonably believes a money laundering offence is implicated. However, as the ONDCP, within which the Supervisory Authority and the FIU are located has a specialist money laundering investigation capacity, most SARs are dealt with in house by the ONDCP. The Act complies with **FATF Rec. No. 8** by imposing the reporting requirement on all financial institutions and not just banks.

183. Section 13(1) of the MLPA, as amended in 1998, directly applies **FATF Rec. No. 21** by requesting that financial institutions pay special attention to unusual business transactions especially 'relations and transactions with persons, including business and other financial institutions, from countries that have not adopted comprehensive anti-money laundering programmes'.

184. Reports of such transactions are to be made to the Supervisory Authority immediately (**FATF Rec. No. 15**). The Guidelines at Appendix II lists some examples of suspicious transactions for financial institutions as a reference of the most basic ways through which money could be laundered. The section additionally provides for the protection of the

reporter in accordance with **FATF Rec. No. 16** and creates an offence for situations where institutions or employees warn customers of impending investigations - **FATF Rec. No. 17**.

185. Regulation 10 of the MLP Regulations provides for the maintenance of internal reporting procedures by the appointment of a Money Laundering Reporting Officer (“MLR Officer”). In practice, the system entails bringing the suspicious transactions to the attention of a senior official before reporting to the MLR Officer thereby fully satisfying the requirements under the regulation. The MLR Officer in turn is required to determine whether the information contained in the report adequately gives rise to suspicion. He is only to investigate the transaction internally. Where he decides that the matter should not be reported further the MLR Officer must state his reasons in writing.
186. The financial institution is then required to disclose to the Supervisory Authority any reports not negated by the MLR Officer by means of a stipulated form<sup>18</sup>. The Authority is to acknowledge in writing the receipt of a Suspicious Transaction Report and give instructions to the institution regarding further transactions with the customer. The related information remains highly confidential at all stages of processing, as such, disclosure in the form of a warning that might prejudice an investigation is punishable on conviction by imprisonment of 3 years or a fine of no more than EC\$100,000.00 in keeping with **FATF Rec. No. 17**.
187. The Examiner appointed by the FSRC is responsible for reporting suspicious activity in the offshore sector to the Supervisory Authority. Suspicious activity reports filed by the Examiner have the same effect as reports filed under the MLPA.
188. The ONDCP is the FIU of Antigua and Barbuda. It receives and analyses reports of suspicious activity made to the Supervisory Authority. Therefore, Antigua and Barbuda satisfies **FATF NCCT Criterion 25**.

### ***Threshold Requirements for Monitoring Cash Flows***

189. In addition to the strict identification requirements for sums above the threshold of EC\$13,000.00, the MLPA at Section 18 introduced a reporting system for cash transferred into and out of Antigua and Barbuda in excess of US\$10,000.00 by any person not licensed as a banking institution. These restrictions satisfy the requirements of **FATF Rec. Nos. 22, 23 and 30**. Failure of a person to inform the Supervisory Authority under the MLPA of this fact may result in three (3) months imprisonment and/or a fine of \$10,000.00, in addition to the confiscation of the cash being transported in accordance with **CFATF Rec. No. 14**. Further, offshore banks are prohibited by law from accepting cash.

### ***Access to Information***

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<sup>18</sup> Appendix II of the Guidelines.

190. Financial institutions must ensure that MLP Officers are granted reasonable access to information that can be of assistance when considering suspicious transaction reports. Under Section 11 of the Banking Act the ECCB has the right to examine the books, accounts and records of a banking business where it suspects it is being carried out without a valid licence by obtaining an order of the High Court.
191. Refusal to make the information requested available to the ECCB is punishable, upon summary conviction, by a fine of \$5,000.00 and/or to imprisonment for a term of six (6) months. An examiner appointed by the ECCB for inspection of a licensed financial institution is to be supplied access to any information specified, including books, minutes, accounts, vouchers and securities. If the requested information is not disclosed or is falsified, the defaulting financial institution is guilty of an offence.
192. The Examiner appointed by the FSRC is entitled to information and if he is not allowed access to the records and documentation required of an institution, he could apply to the High Court for the production of the necessary information. The Court must, however, be satisfied that the order of this disclosure is needed in the public's interest. Failure to cooperate after the court order is obtained may result in immediate revocation of the corporation's licence.
193. The Act also places a duty on the resident agent to disclose on investigation the names of beneficial owners and bearer shares (FATF NCCT Criterion 13). Article 373 of the IBCA clearly enables the FSRC to disclose information as may be necessary to assist a 'foreign regulatory authority' in the exercise of its functions. Also, the investment bank, irrespective of the legal and fiduciary relationship between bank and customer<sup>19</sup>, gives precedent to the requirements of disclosure of information under the MLPA and other laws. The IBC Regulation 13 mandates that ownership and management information be provided to the FSRC on demand.
194. The Registrar of Co-operative Societies is allowed to examine any of its member societies' books, securities and accounts but shall investigate only on grant of an order of the Court; therefore it satisfies **FATF NCCT Criterion 7**.
195. Where a financial institution refuses to give information to an investigating officer he may apply to the Judge in Chambers, pursuant to Section 48 of the POCA, for a 'monitoring order' directing the institution to disclose information about transactions. The Judge must however be satisfied that there are reasonable grounds for suspecting an offence. Section 52(2) of the POCA protects the financial institution and its employees from suit where information is released for the purpose of assisting in the investigation or prosecution of a person under the Act.
196. It should be noted here as well that Section 25 of the MLPA, subject to the provisions of the Constitution, overrides any other law with respect to secrecy and the disclosure of privileged information and therefore satisfies **FATF NCCT Criterion 8**. The Supervisory

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<sup>19</sup> The Investment Bank Policy Manual.

Authority under the MLPA (Sections 11 and 12) also has the power to enter the financial institutions, copy documents and question employees.

### ***Co-operation with other Regulatory Bodies***

197. The Mutual Assistance in Criminal Matters Act (MACMA) allows Antigua and Barbuda to exchange information with other Commonwealth Countries where there are reasonable grounds to believe such information relevant to a criminal matter – resulting in compliance with **CFATF Rec. No. 15**.

## **LAW ENFORCEMENT SECTION**

### **ADMINISTRATIVE AUTHORITIES**

#### **The Inter-Agency Task Force**

198. The Inter-Agency Task Force (IATF) was established after the Mutual Evaluation Report of 1998. It implemented reforms identified in the Mutual Evaluation Report. With the full staffing of ONDCP and the increased powers of the Supervisory Authority and the divisions of ONDCP particularly the FIU, the Task Force now meets to share information and to ensure a smooth working relationship between the agencies, which include ONDCP, FSRC, Police, Antigua and Barbuda Defence Force (ABDF), Coast Guard, Customs, Immigration, and the Office of the Director of Public Prosecutions.

#### **The Office of National Drug and Money Laundering Control Policy**

199. ONDCP is the Department responsible for money laundering and illegal drugs intelligence and investigations. It was established administratively by Cabinet in 1996. However, in 2003<sup>20</sup> it became an independently statutory body with wide ranging powers to investigate money laundering and illegal drugs offences and to detain and arrest suspects.

200. It comprises the following units: Financial Investigative Unit, Financial Intelligence Unit and the Drugs Intelligence Unit. The Supervisory Authority is a statutory officer created by the MLPA in whom the various powers contained in the Act are vested. The Supervisory Authority is the Director of the ONDCP.

201. A British Advisor (from HM Customs) has been attached to the ONDCP since 1998. He has assisted with training and the establishment of the ONDCP. A legal expert on money laundering and asset forfeiture was attached to the ONDCP by the United Nations Drug Control Programme in December 2000. At the conclusion of his UN assignment in June

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<sup>20</sup> Office of National Drug and Money Laundering Control Policy Act, 2003.

2001, the contract of the legal expert was extended through to the middle of 2003 by the Government of Antigua and Barbuda at the Government's expense.

### **The Supervisory Authority**

202. The MLPA of 1996 originally created the statutory office of "Supervisory Authority" (SA). The SA is also the Director of ONDCP. The SA receives suspicious activity reports and investigates money-laundering activities. Where evidence of money laundering is revealed it investigates them, commences prosecution and applies for a freeze order. When a prosecution is commenced, responsibility for the conduct of the prosecution is handed over to the DPP. Whilst it is open to ONDCP to refer matters to other law enforcement agencies (such as drug matters to the Police), it usually deals with money laundering matters itself. The SA issues guidelines to financial institutions. It also compiles statistics and records, and disseminates information within or without Antigua and Barbuda.
203. The SA also provides training for officers of all financial institutions in Antigua and Barbuda in respect of business transactions, record keeping and reporting obligations. According to the latest amendments in the MLPA, the SA has the power to enter the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution. It may also consult with law enforcement officials and agencies within or outside Antigua and Barbuda in the investigation of money laundering activities and may share information with these bodies.

## **JUDICIAL/PROSECUTORIAL AUTHORITIES**

### **Office of the Director of Public Prosecutions**

204. The Examiners on the CFATF 2002 Mutual Evaluation were pleased to establish the heightened awareness within the DPP's Office concerning the threat of money laundering involving Antigua and Barbuda's financial framework.
205. The DPP was of the opinion that due to the awareness of his office with the existing anti money laundering legislation and availability of four (4) full time and a fifth (5<sup>th</sup>) part-time legally trained prosecutors, it currently has enough qualified staff to be able to handle a money laundering prosecution.
206. To date, (February 2003) there have not been any money laundering convictions. However a case conducted with the Canadian authorities based on a SAR directed to the ONDCP has resulted in a major success. This has also been reflected in the sharing of assets with Canada resulting from the Canadian convictions, and also in the handing over to the USA of three million US dollars (\$3,000,000) in 1999 of forfeited funds.
207. As shown in the table below and according to additional information received from the officials of Antigua and Barbuda, thirty-seven (37) investigations were commenced by the

Investigation Branch of the ONDCP since 1999. Of these 37 investigations, nine (9) were still ongoing during the CFATF Mutual Evaluation in September 2002.

	1999	2000	2001	2002
No. of ML investigations commenced	8	9	11	9
No. of ML Prosecutions commenced	-	3	2	-
No. of ML Convictions	-	-	-	-
No. of Confiscation Orders	1	1	2	2
Amount forfeited (EC dollars)	\$2,309,365	-	\$950,915	\$1,747,732

## ***LAW ENFORCEMENT INSTITUTIONS***

### ***The Antigua and Barbuda Police Force.***

208. The Royal Police Force of Antigua and Barbuda (RPFAB) is responsible for the investigation of financial crime and drug trafficking offences. Money laundering investigations as explained above, is the sole responsibility of ONDCP. The RPFAB has a total of 683 officers (2002 est.).
209. There was a good working relationship between the RPFAB and the DPP's office during the 2002 Mutual Evaluation. The RPFAB has within its organization a legal attaché that has been working closely with the DPP's office over the last year (2001) giving support to more complicated investigations. The RPFAB police prosecutors are trained in Barbados.
210. The RPFAB is one of the most important deliverers of seconded officers to the ONDCP. A total of 5 police officers were seconded to the ONDCP. The boundaries of this division are not perceived to be formal but generally there is a good understanding between the RPFAB and the ONDCP. The RPFAB supports the ONDCP and the ONDCP also has good communication with the RPFAB with regard to the transferring of investigations and dissemination of intelligence on money laundering.
211. The cooperation between the RPFAB and the Coast Guard is generally perceived to be positive by both agencies. The Coast Guard has a 24 hours service and can also be reached via radio communication by the Police.

### ***The Customs and Excise Department***

212. The Customs and Excise Department (CED) is responsible for maintaining the integrity of the borders and has a role in monitoring illegal drug and currency shipments under the Customs Act, the Exchange Control Act, and the MLPA. The CED has 190 posts and is

also represented in the ONDCP (Communication officer within the National Joint Headquarters).

213. A person who transfers currency exceeding US\$10,000 into or out of A & B is required to file a report with the Customs (**FATF Rec. No. 22** and **CFATF Rec. No. 12 complied**). While Customs are involved in the detection process, the seizure of drugs and illegal funds are dealt with by the RPFAB. The Customs Department should consider keeping its own statistics in order to be able to follow trends of drug movements and illegal cross bordering of funds.
214. If money is seized due to the failure of currency reporting, the investigation is handed over to the Police and the ONDCP and the money is passed on to the magistrate. There is a Customs Task Force consisting of three (3) persons stationed at the airport that cooperates with a unit of the RPFAB at the luggage area. The fact that there is a Customs officer at the Communication Unit of the ONDCP facilitates the easy sharing of information for the purposes of investigation between these two agencies. There is also an MOU drafted for closer cooperation between the CED and the Coast Guard. The CED also participates in CCLEC (Caribbean Customs Law Enforcement Council) and RAASI (Regional Airport Anti Smuggling Initiative).
215. CED has been receiving interdiction training at the Regional Law Enforcement Drug Training Centre (REDTRAC) trainings facilities in Jamaica, the British Military Assistance Training Team (BMATT) at Barbados presented by trainers from the United Kingdom, as well as a private consultant bureau in Miami. The CIFAD at Martinique has also presented training to CED officials. However, the 2002 CFATF Mutual Evaluation Report indicated the need for more skilled manpower and training in the field of currency smuggling enforcement and interdiction. An exchange program with other CCLEC member countries will benefit the level of expertise within the CED.

### **The Antigua and Barbuda Defence Force**

216. The Antigua and Barbuda Defence Force (ABDF) is primarily concerned with the territorial integrity of the islands and territorial waters of Antigua and Barbuda. It consists of 162 posts (with exclusion of the Coast Guard). The Mutual Evaluation Report of 1998 confirmed that the ABDF complemented the efforts made by the RPFAB in their fight against drug trafficking and money laundering.
217. The 2002 Mutual Evaluation acknowledges this ABDF position again and commends the commanders of the ABDF for their enthusiasm and commitment to the cause of combating drugs and money laundering in Antigua and Barbuda. This commitment is also clearly shown by the ABDF seconding three (3) military officers to the ONDCP and the ONDCP building being located on the Defence Force premises.

218. An Intelligence Unit is established within the ABDF. It is involved in intelligence gathering operations, which threaten national security, including drug trafficking. It also disseminates relevant information to the RPFAB and ONDCP in order to assist in law enforcement investigations.

### **The Antigua and Barbuda Coast Guard**

219. The Antigua and Barbuda Coast Guard, which is under command of the ABDF, has thirty-nine (39) posts. The Antigua and Barbuda Coast Guard has responsibility for the defence of territorial waters, prevention of illegal fisheries, environmental protection and also has a role in monitoring immigration laws and illegal drug and currency shipments. The Coast Guard has a good working relationship with the ONDCP. It also has good working relationships with the Immigration Department of Antigua and Barbuda and the RPFAB even though it has been admitted that the communication with the Police could be improved upon.

### **The Immigration Department**

220. The Immigration Department was removed from Police supervision in January 2000. The Department currently consists of forty-four (44) officers. Most of them twenty-nine (29) are located at the VC Bird International Airport, eight (8) are located in the Headquarters and the rest are deployed over the Dockyard and three (3) different seaports (Heritage Quay, Jolly Harbour and Deepwater Harbour). One Immigration officer is also included in the Drug Intelligence Unit of the ONDCP. According to authorities Immigration is involved in fighting illicit drug trafficking and money laundering and has a good working relationship with all agencies involved.

## **LAW ENFORCEMENT COOPERATION**

### **National Cooperation**

221. The team of CFATF examiners concluded during the 2002 Mutual Evaluation that with the establishment of the ONDCP and the new anti money laundering laws it seemed that there is clarity on which direction Antigua and Barbuda is going with regard to the fight against money laundering. This has resulted in the agencies involved being more cognizant of their role and cooperating with each other in the fight against money laundering.

222. The Government of Antigua and Barbuda is encouraged to continue promoting cooperation between government and non-government agencies (financial institutions) in order to promote the reporting of SARs.

**International Cooperation**

223. A Mutual Legal Assistance Unit was first established in the Attorney General's Chambers to facilitate expeditious processing of all requests for legal assistance under the MLAT. However, as mentioned above, The ONDCP is now the body to receive and act upon MLAT requests from foreign countries relating to anti-money laundering matters.
224. According to information received by the Antigua and Barbuda Government during the 2002 Mutual Evaluation only one foreign request has been denied to date. The ground for the refusal was that no equivalent offence to the offence being investigated in the requesting state existed in Antigua and Barbuda.
225. Disclosure of information to the Court or competent authority of another State is also not subject to any secrecy or confidentiality laws according to information received from the Government of Antigua and Barbuda.
226. The Government of Antigua and Barbuda and the US Government signed a Maritime Drug Law Enforcement Cooperation Agreement in April 1995, and an Over-Flight Agreement in June 1996. Antigua and Barbuda also supports the Regional Security System (RSS), a treaty-based organization to which the seven eastern Caribbean Countries, including Antigua and Barbuda, belong. The RSS coordinates some counter narcotics operations among member states. The RSS also operates a maritime training facility in Antigua and Barbuda for member-nation forces.
227. The ONDCP participates with foreign counterparts in joint operations relating to money laundering investigations that involve transactions or entities located in Antigua and Barbuda. These projects have involved officers from the FBI, DEA, IRS, RCMP, UK Customs, Belgium Examining Magistrate, and the Prosecutor General for the Ukraine. There are no restrictions for the ONDCP to cooperate with other international FIU's.

	1999	2000	2001	2002 (Sept.)
<b>No. of Requests Received</b>	5	3	3	1
<b>No. of Freeze orders made</b>	5	3	3	1
<b>Amount Confiscated</b>	\$2,309,365	-	\$950,915	\$1,747,732

		2000	2001	2002 (Sept.)
<b>No. MLAT Requests in ML matters</b>	17	8	12	5
<b>No. MLAT requests denied</b>	0	0	0	0

228. Antigua and Barbuda also participates in the activities of the Caribbean Customs Law Enforcement Council (CCLEC) project, through the Customs Reform and Modernization (CRM) program. It also participates in the Regional Clearance System (RCS) project and the Regional Airport Anti-Smuggling Initiative (RAASI), which aims to strengthen airport interdiction.

229. Antigua and Barbuda have also signed an Asset Sharing Agreement with Canada. It has shared confiscated assets with the Governments of the USA and Canada. US\$3 million was paid to the US Drug Enforcement Administration in 1999 and Canada paid over CAN\$500,000 to the Government of Antigua and Barbuda's Forfeiture Fund between 1999 and 2001.

### CONCLUSION

The anti-money laundering framework of Antigua and Barbuda has been strengthened substantially by the various amendments in 2000, 2001, and 2002 to the Money Laundering (Prevention) Act, 1996. Its provisions cover the majority of international and regional recommendations. The financing of terrorism was addressed by the enactment of the Prevention of Terrorism Act in October 2001. Consequently, as a result of the work of Antigua and Barbuda's law enforcement agencies, there have been convictions in other jurisdictions. At the end of the 2002 Mutual Evaluation visit there had been no money laundering convictions within Antigua and Barbuda as yet, however a number of persons and entities have been charged and are before the Courts.

In order to allow full transparency in the financial system, laws have been enacted to encompass the need for disclosure of all necessary client information, namely the identity of beneficial owners, shareholders and directors. These include the amendments to the IBCA in 1999 and 2000.

Antigua and Barbuda participates actively in regional law enforcement initiatives, structures, treaties and regional and international law enforcement operations related to money laundering and terrorist financing investigations.

While there was an acceptable level of communication and coordination between local law enforcement agencies during the 2002 Mutual Evaluation, there is room for some improvement. In this regard the Government of Antigua and Barbuda has decided to formalize the existing

operational relationships of the ONDCP, the Police, Customs, and the ABDF through the establishment of Memoranda of Understanding between them.

As of June 2000 when the FATF NCCT report was done to assess the extent to which Antigua and Barbuda met the defined criteria by the FATF, the country's legal framework was generally satisfactory and 20 of the 25 criteria were not met. Generally, attempts to comply with **FATF Rec. No. 8** have led to the implementation of legislation to govern the majority of non-bank financial institutions.

During the last 2 years, the Government of Antigua and Barbuda has shown a clear commitment to a regulatory anti-money laundering regime that now exceeds international standards. The implementation and enforcement of this anti money laundering framework has already shown results.

There are adequate laws to regulate money laundering in selected institutions and fully detailed general laws to cover many of the FATF recommendations.

- While some Laws are repetitive, the rules of statutory interpretation require that the most recent law take precedence.
- Under the 2002 Money Laundering Guidelines, proper identification is required for all accounts whether old or new;
- While FATF NCCT Criteria 13 and 14 do not require public disclosure of information concerning beneficial owners, Antigua and Barbuda requires that the information be available to regulatory and supervisory authorities that can share this information with authorities of foreign jurisdictions. In most instances, the acquisition of access to information is limited by the need for a court order, particularly so for customer information;
- Specific provision is made for exchanges of regulatory information with authorities in other countries. MLPA Section 26(2) provides that the Supervisory Authority may share any information in relation to an STR with any government agency or regulatory authority in or outside Antigua and Barbuda. Section 11(ix) provides that the Supervisory Authority may consult with any person inside or outside Antigua and Barbuda for the purposes of the exercise of the powers under the Act. Section 373 of the IBCA also permits sharing of the information with foreign regulatory authorities.
- Antigua and Barbuda was the first country in the Region to implement legislation to counter terrorism financing. The Prevention of Terrorism Act was passed into law in 2001.